CHAPTER 62
Electric, Gas and Water Utilities

ARTICLE 1
Incorporation and Powers of Utilities

62-1-1. [Incorporation.]

Corporations for the generation, production, transmission, distribution, sale or utilization of gas, electricity or steam for lighting, heating, power, manufacturing or other purposes may be organized under the general incorporation laws of this state.

History: Laws 1909, ch. 141, § 1; 1912, ch. 50, § 1; Code 1915, § 1021; C.S. 1929, § 32-401; 1941 Comp., § 72-101; 1953 Comp., § 68-1-1.

ANNOTATIONS

Compiler's notes. — Sections 62-1-1 to 62-1-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 1 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For requirement of certificate of public convenience and necessity before new utility construction or operation, *see* 62-9-1 NMSA 1978.

For municipal utilities, *see* 3-23-1 to 3-23-10, 3-24-1 to 3-24-10, 3-25-1 to 3-25-6, 3-26-1 to 3-26-3, 3-27-1 to 3-27-9 and 3-28-1 to 3-28-20 NMSA 1978.

For municipal franchises, *see* 3-42-1 and 3-42-2 NMSA 1978.

For powers of counties, *see* 4-37-1 NMSA 1978.

For Uniform Unclaimed Property Act, *see* Chapter 7, Article 8A NMSA 1978.

For Business Corporation Act, *see* Chapter 53, Articles 11 to 18 NMSA 1978 NMSA 1978.

For certification of telephone and telegraph companies, *see* 63-9-1 to 63-9-19 NMSA 1978.

Provisions applicable to telephone and telegraph companies. — Telephone and telegraph companies are subject to the provisions of this section, Sections 62-1-2, 62-1-3 and 3-42-2 NMSA 1978. *Mountain States Tel. & Tel. Co. v. Town of Belen*, 1952-NMSC-053, 56 N.M. 415, 244 P.2d 1112.

A telephone company which generates electricity for the conduct of its business comes within the purview of Sections 62-1-1 to 62-1-3 NMSA 1978. *City of Roswell v. Mountain States Tel. & Tel. Co.*, 78 F.2d 379 (10th Cir. 1935).

Power of eminent domain. — Corporation, engaged as a public utility in furnishing telephone service to the public, has the power of eminent domain. *State Hwy. Comm'n v. Ruidoso Tel. Co.*, 1963-NMSC-150, 73 N.M. 487, 389 P.2d 606.

Authorized foreign public utility may exercise eminent domain. — Under Sections 53-17-2 and 62-1-4 NMSA 1978 and this section, a foreign public utility authorized to do business in this state has the same right as a domestic public utility to exercise the power of eminent domain in this state. *El Paso Elec. Co. v. Real Estate Mart, Inc.*, 1979-NMSC-023, 92 N.M. 581, 592 P.2d 181.

Supervision of foreign public utilities. — Foreign public utilities authorized to do business in this state are subject to the same supervision as utilities incorporated under the laws of this state. *El Paso Elec. Co. v. Real Estate Mart, Inc.*, 1979-NMSC-023, 92 N.M. 581, 592 P.2d 181.

Sanitary projects association not public utility. — A sanitary projects association (*see* Article 29 of Chapter 3 NMSA 1978) was not transformed into a public utility by selling water to a limited number of nonmember water haulers and was not subject to the public service commission's (now public regulation commission's) regulatory jurisdiction. *El Vadito De Los Cerrillos Water Ass'n v. N.M. Pub. Serv. Comm'n*, 1993-NMSC-041, 115 N.M. 784, 858 P.2d 1263.

Provisions applicable to telephone and telegraph companies. — Sections 62-1-1 to 62-1-3 NMSA 1978 are applicable to telephone utilities. 1963 Op. Att'y Gen. No. 63-66.

Application of provisions to pipeline companies. 1973 Op. Att'y Gen. No. 73-26 and 1957 Op. Att'y Gen. No. 57-124 (rendered prior to 1996 amendment of N.M. Const., art. XI, §2).

Law reviews. — For article, "The Regulation of Public Utilities," see 10 Nat. Res. J. 827 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations § 150; 64 Am. Jur. 2d Public Utilities §§ 1, 2, 4, 82; 74 Am. Jur. 2d Telecommunications §§ 4, 8.

Authority from public official as affecting responsibility of public service corporation infringing property rights, 1 A.L.R. 403.

Perpetual franchise, 2 A.L.R. 1105.

Bank which has acquired a public service plant bound to continue its operation, 8 A.L.R. 248.

Irrigation company as a public utility, 8 A.L.R. 268, 15 A.L.R. 1227.

What are "public utilities" within provisions relating to municipal purchase, construction or repair of public utility, 9 A.L.R. 1033, 35 A.L.R. 592.

Municipal corporations owning or operating a public utility as within public utility acts, 10 A.L.R. 1432, 18 A.L.R. 946.

Right of public utility company to discontinue its entire service, 11 A.L.R. 252.

Contract for service by public utility in consideration of conveyance of property as affected by public utility acts, 11 A.L.R. 460, 41 A.L.R. 257.

Regaining of private status by a corporation after having become subject to the duties and obligations of a public utility, 34 A.L.R. 175.

Competition by grantor of nonexclusive franchise as violation of constitutional rights of franchise holder, 114 A.L.R. 192.

Right of public utility not having an exclusive franchise to protection against, or damages for, interference with its operations, property or plant by a competitor, 119 A.L.R. 432.

Conclusiveness of charter as regards character of corporation as a public utility corporation, 119 A.L.R. 1019.

Right of public utility to discontinue line or branch on ground that it is unprofitable, 10 A.L.R.2d 1121.

Special requirements of consumer as giving rise to liability, based on implied contract, for failure to furnish particular amount of electricity, gas or water, 13 A.L.R.2d 1233.

Incidental provision of utility services, by party not in that business, as subject to regulation by state regulatory authority, 85 A.L.R.4th 894.

Liability of owner of wires, poles, or structures struck by aircraft for resulting injury or damage, 49 A.L.R.5th 659.

18 C.J.S. Corporations § 25 et seq.; 29 C.J.S. Electricity § 10(1); 38A C.J.S. Gas §§ 56, 57; 73B C.J.S. Public Utilities § 15; 82 C.J.S. Steam § 2; 86 C.J.S. Telecommunications § 18.

62-1-1.1. Foreign corporations; powers.

Foreign corporations for the generation, production, transmission, distribution, sale or utilization of gas, electricity or steam for lighting, heating, power, manufacturing or other purposes, which are duly qualified to do business in this state and are public utilities under the New Mexico Public Utility Act, Section 62-3-1, et seq., 1978, Annotated [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], shall have the same rights and privileges including the power of eminent domain as domestic corporations of like character.

History: Laws 1979, ch. 259, § 1.

ANNOTATIONS

Compiler's notes. — Sections 62-1-1 to 62-1-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 1 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-1-2. [Acquisition of water rights; placing of equipment over roads, highways and waters.]

Such corporations may acquire water rights for power plants or other purposes either by purchase, by appropriation under the laws of this state or of the United States or by acquiring rights of persons or corporations having made such appropriations or filed applications therefor, and are authorized to place their pipes, poles, wires, cables, conduits, towers, piers, abutments, stations and other necessary fixtures, appliances and structures, upon or across any of the public roads, streets, alleys, highways and waters in this state subject to the regulation of the county commissioners and local municipal authorities.

History: Laws 1909, ch. 141, § 2; Code 1915, § 1022; C.S. 1929, § 32-402; 1941 Comp., § 72-102; 1953 Comp., § 68-1-2.

ANNOTATIONS

Compiler's notes. — Sections 62-1-1 to 62-1-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 1 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M.

Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For regulation of use of state highways by public utilities, *see* 67-3-12C and 67-3-41 NMSA 1978.

For appropriation of water rights, *see* 72-5-1 NMSA 1978 et seq.

This section and Section 62-1-3 NMSA 1978 must be construed together. *City of Roswell v. Mountain States Tel. & Tel. Co.*, 78 F.2d 379 (10th Cir. 1935).

Local governments may require utilities to bear costs of system relocation. – New Mexico has adopted the common-law rule permitting local governments to require utilities to bear the costs of system relocation required for public safety; thus, safety-related relocation costs are to be treated like other costs of service. *City of Albuquerque v. N.M. Pub. Regulation Comm'n*, 2003-NMSC-028, 134 N.M. 472, 79 P.3d 297.

A tariff approved by the public regulation commission permitting the Public Service Company of New Mexico to recover the costs of compliance with an ordinance requiring underground relocation was ultra vires in violation of the common-law rule where the relocation was a matter of public safety and the commission had made no finding that the ordinance was unreasonable. *City of Albuquerque v. N.M. Pub. Regulation Comm'n*, 2003-NMSC-028, 134 N.M. 472, 79 P.3d 297.

Provisions applicable to telephone utilities. — Sections 62-1-1 to 62-1-3 NMSA 1978 are applicable to telephone utilities. 1963 Op. Att'y Gen. No. 63-66.

Law reviews. — For article, "Water Requirements for Coal-fired Power Plants," see 24 Nat. Res. J. 137 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Easements § 99; 27A Am. Jur. 2d Energy and Power Sources, § 167; 61 Am. Jur. 2d Pipelines § 27; 74 Am. Jur. 2d Telecommunications § 15.

Placement, maintenance, or design of standing utility pole as affecting private utility's liability for personal injury resulting from vehicle's collision with pole within or beside highway, 51 A.L.R.4th 602.

29 C.J.S. Electricity §§ 15, 16; 38A C.J.S. Gas §§ 85, 86; 86 C.J.S. Telecommunications §§ 56, 119-123, 125.

62-1-3. Use of highways and streets; power of county commissioners.

The boards of county commissioners of the several counties are authorized to permit corporations organized pursuant to Section 62-1-1 NMSA 1978, public utilities under the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] and companies that provide public telecommunications service pursuant to the New Mexico Telecommunications Act [Chapter 63, Article 9A NMSA 1978] to use the public highways and the streets and alleys of unincorporated towns for their pipes, poles, wires, cables, conduits, towers, transformer stations and other fixtures, appliances and structures; provided that such use shall not unnecessarily obstruct public travel and provided further that the boards of county commissioners and municipal authorities of incorporated cities and towns are authorized to grant franchises not exceeding twenty-five years' duration to corporations for such purposes within their respective jurisdictions. A board of commissioners is authorized to impose charges for reasonable actual expenses incurred in the granting of any franchise pursuant to this section.

History: Laws 1909, ch. 141, § 3; Code 1915, § 1023; C.S. 1929, § 32-403; 1941 Comp., § 72-103; Laws 1949, ch. 8, § 1; 1953 Comp., § 68-1-3; Laws 1987, ch. 155, § 1.

ANNOTATIONS

Compiler's notes. — Sections 62-1-1 to 62-1-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 1 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For regulation of use of state highways by public utilities, *see* 67-3-12C, 67-3-41 NMSA 1978.

The 1987 amendment, effective June 19, 1987, substituted "corporations organized pursuant to Section 62-1-1 NMSA 1978 . . . Telecommunications Act" for "such corporation" near the beginning of the first sentence, added the second sentence and made minor changes in language throughout the section.

This section and Section 62-1-2 NMSA 1978 must be construed together. *City of Roswell v. Mountain States Tel. & Tel. Co.*, 78 F.2d 379 (10th Cir. 1935).

Telecommunications companies. — The authority of home rule municipalities to enter into contracts and create franchises with telecommunications companies is well established in New Mexico. *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258 (10th Cir. 2004) (decided prior to the 1996 amendment to N.M. Const., art. XI, §2).

Franchise fees are not rates. — Franchise fees charged by counties pursuant to Section 62-1-3 NMSA 1978 are not rates as defined in Section 62-3-3 NMSA 1978 and do not fall within the jurisdiction of the public regulation commission. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

Franchise fees are not taxes. — Franchise fees charged by counties pursuant to Section 62-1-3 NMSA 1978 are not taxes that the public regulation commission may consider when setting rates. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

Franchise fees are not items included in adjustment clauses. — Franchise fees charged by counties pursuant to Section 62-1-3 NMSA 1978 are not within the jurisdiction of the public regulation commission by analogy to fuel and purchased power adjustment clauses, over which the commission has jurisdiction under Section 62-8-7 NMSA 1978. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

Line item charges for franchise fees. — The public regulation commission did not have jurisdiction to enter an order requiring a public utility to stop including on customer's bills the franchise fee charges paid by the utility to a county for the right to use county right-of-way to deliver utility service to county residents and businesses. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

Meaning of "franchise". — The term "franchise" was used in generally accepted sense of grant of right to use highways, streets and alleys, rather than exercise of police power respecting their use. The consent of the state becomes effective when the franchise is obtained. *City of Roswell v. Mountain States Tel. & Tel. Co.*, 78 F.2d 379 (10th Cir. 1935).

Highway acquired by prescription may be used for normal communication methods. — A public highway acquired and established by prescription, and which was recognized and maintained by the corporate authorities of a county as a public highway, was in no way less than a public highway acquired by dedication, by condemnation or by authority of any other law of New Mexico. In any case, what was ordinarily acquired was an easement, by which the state or its political subdivisions were authorized by law to use the lands, lying within the boundaries of the streets and highways, for all lawful purposes consistent with every reasonable method of travel, transportation and communication for which public streets and highways are normally used. *Hall v. Lea Cnty. Elec. Coop.*, 1968-NMSC-040, 78 N.M. 792, 438 P.2d 632.

Electric power line is permissible use of highway. — The construction and maintenance of an electric power or transmission line, within the boundaries of a public highway, were consistent with the permissible uses to be made of a public highway easement and do not constitute an additional burden or servitude. *Hall v. Lea Cnty. Elec. Coop.*, 1968-NMSC-040, 78 N.M. 792, 438 P.2d 632.

Local ordinance not preempted by state law. — The City of Santa Fe ordinance which established procedures for telecommunications providers seeking access to city-owned rights-of-way is not preempted by state law. *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258 (10th Cir. 2004).

County franchise authorizes occupying streets of later village. — Telephone companies are included in the language of Section 3-42-2 NMSA 1978, and a franchise granted by a county board before incorporation of a village is adequate authority for occupying streets of the village and doing business until such time as the village itself offers a fair and equitable franchise for a maximum number of years and until a reasonable time has passed in which it may be considered by the company involved. *Village of Ruidoso v. Ruidoso Tel. Co.*, 1948-NMSC-067, 52 N.M. 415, 200 P.2d 713.

Town need accept only works actually constructed or started under county franchise. — In order to compel a town, incorporated after the granting of a franchise by the county commissioners, to accept such franchise, it was necessary that the holder of the franchise had erected or constructed, or in good faith commenced, the erection or construction of the works. *Village of Hobbs v. Mann*, 1935-NMSC-002, 39 N.M. 76, 39 P.2d 1025.

Authority to charge franchise fee. — A county board of commissioners may enter into franchise agreements with utility companies and impose a franchise fee in exchange for the county's reasonable expenses incurred in granting the franchise and for the utilities' use of public highways, streets and alleys under the franchise agreements. 2014 Op. Att'y Gen. No. 14-01.

County regulations must be reasonable and related to health and safety. — The statutory grant of regulatory powers to county commissions contained in this section is very general, but such regulations would have to be reasonable and related to public health and safety - in other words, to the design, construction, operation and maintenance of the facility. 1973 Op. Att'y Gen. No. 73-26.

County may not impose fees or rental charges. — There is no statutory authority for a county to impose fees or rental charges on a utility holding a certificate of public convenience and necessity from the public service commission (now public regulation commission) for use of rights-of-way of county roads. 1973 Op. Att'y Gen. No. 73-26.

City need not recognize franchise without construction in annexed territory. — A city is not bound by law to recognize the county franchise issued to a private company to operate in territories which have subsequently been annexed by the city, in which territories no construction of utility facilities has been commenced. 1964 Op. Att'y Gen. No. 64-129.

Application of provisions to telephone companies. — Sections 62-1-1 to 62-1-3 NMSA 1978 are applicable to telephone utilities. 1963 Op. Att'y Gen. No. 63-66.

County may not impose franchise tax. — A county, in the process of granting a franchise to a public utility for operation in the county, may not exact from the utility a franchise tax. 1957 Op. Att'y Gen. No. 57-51.

Application of provisions to pipeline companies. 1973 Op. Att'y Gen. No. 73-26 and 1957 Op. Att'y Gen. No. 57-124.

Cost of moving lines need not be reimbursed. — Southwestern public service company is not entitled under its franchise and under applicable statutes to be reimbursed for the cost of moving its transmission lines. 1955 Op. Att'y Gen. No. 55-6270.

County may not regulate use of state highway. — County commissioners have no right to grant any easement to a public utility over a state highway, the right-of-way of which came under the control of the state highway commission (now state transportation commission) after 1917. 1933 Op. Att'y Gen. 33-681 and 1973 Op. Att'y Gen. No. 73-26.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 245, 247, 249-265, 278.

Placement, maintenance, or design of standing utility pole as affecting private utility's liability for personal injury resulting from vehicle's collision with pole within or beside highway, 51 A.L.R.4th 602.

62-1-4. Eminent domain; surveys; entry on property; crossing right-of-way of another corporation.

A. Corporations organized pursuant to Section 62-1-1 NMSA 1978 are authorized to enter upon any property belonging to the state or to persons, firms or corporations for the purpose of making surveys and from time to time to appropriate so much of such property, not exceeding a strip one hundred feet wide in any one place, as may be necessary for their purpose. The corporations have the right of access to such property to construct and place their lines, pipes, poles, cables, conduits, towers, stations, fixtures, appliances and other structures and to repair them. If a corporation cannot agree with the owners as to a right-of-way or the compensation for a right-of-way, the corporation may proceed to obtain the right-of-way in the manner provided by law for condemnation of such property. Where it is necessary to cross the right-of-way of another corporation, the crossing shall be effected either by mutual agreement or in the manner now provided by law for the crossing of one railroad by another railroad; provided that the construction of any electric transmission lines crossing the right-of-way of a railroad shall comply with the minimum standards of the national electric safety code. When it is necessary for a corporation to construct any transmission line and associated facilities for the transmission of electrical power requiring a width for right-of-way of greater than one hundred feet, unless that width is agreed to by the parties, the applicant for the right-of-way shall apply to the New Mexico public utility commission as

provided in Section 62-9-3.2 NMSA 1978 for a determination of the width necessary for the right-of-way for the transmission line.

B. For the purposes of this section, "corporation" means individuals, firms, partnerships, companies, municipalities, rural electric cooperatives organized under Laws 1937, Chapter 100 or the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978], lessees, trustees or receivers appointed by any court.

History: Laws 1909, ch. 141, § 4; Code 1915, § 1024; C.S. 1929, § 32-404; 1941 Comp., § 72-104; 1953 Comp., § 68-1-4; Laws 1980, ch. 20, § 17; 1993, ch. 282, § 19.

ANNOTATIONS

Compiler's notes. — Laws 1937, ch. 100, referred to in Subsection B, was repealed by Laws 1939, ch. 47, § 34.

Sections 62-1-1 to 62-1-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 1 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For eminent domain proceedings, *see* Chapter 42A, NMSA 1978.

The 1993 amendment, effective June 18, 1993, in Subsection A, substituted "corporation" and "right-of-way" for references to "they" and "the same", substituted "New Mexico public utility commission" for "public service commission" and made stylistic changes throughout the subsection; and deleted "whatsoever" at the end of Subsection B.

Eminent domain matter of public policy. — The granting of the power of eminent domain, and the parameters thereto, is a matter of public policy for the legislature's determination. *El Paso Elec. Co. v. Real Estate Mart, Inc.*, 1979-NMSC-023, 92 N.M. 581, 592 P.2d 181.

Section authorizes entry by utility. — This section authorizes utility to enter land to survey and to appropriate land for the erection of power lines. *Zobel v. Public Serv. Co.*, 1965-NMSC-021, 75 N.M. 22, 399 P.2d 922.

Regardless of validity of utilities easement. — That electric power utility may have entered onto premises under an easement which landowners alleged was invalid would not make unlawful utility's entry onto premises pursuant to statute granting public

utilities such right of entry. *Garver v. Public Serv. Co.*, 1966-NMSC-261, 77 N.M. 262, 421 P.2d 788.

Right to damages in inverse condemnation. — This section gives the right to recover damages in inverse condemnation. *Kaiser Steel Corp. v. W.S. Ranch Co.*, 1970-NMSC-043, 81 N.M. 414, 467 P.2d 986.

Authorized foreign public utility may exercise eminent domain. — Under Sections 53-17-2 and 62-1-1 NMSA 1978 and this section, a foreign public utility authorized to do business in this state has the same right as a domestic public utility to exercise the power of eminent domain in this state. *El Paso Elec. Co. v. Real Estate Mart, Inc.*, 1979-NMSC-023, 92 N.M. 581, 592 P.2d 181.

Supervision of foreign public utilities. — Foreign public utilities authorized to do business in this state are subject to the same supervision as utilities incorporated under the laws of this state. *El Paso Elec. Co. v. Real Estate Mart, Inc.*, 1979-NMSC-023, 92 N.M. 581, 592 P.2d 181.

Authorized condemnor may be liable in trespass. — An authorized condemnor may be liable in trespass to a property owner for taking more land than is reasonably necessary or for causing excessive damage by the manner in which the taking occurs, but only when there is evidence of fraud, bad faith or gross abuse of discretion. *North v. Public Serv. Co.*, 1983-NMCA-124, 101 N.M. 222, 680 P.2d 603, cert. denied, 101 N.M. 11, 677 P.2d 624.

Damages for trespass when authorized condemnor is liable cover only that portion of the damage over and above what results from the taking itself. *North v. Public Serv. Co.*, 1983-NMCA-124, 101 N.M. 222, 680 P.2d 603, cert. denied, 101 N.M. 11, 677 P.2d 624.

Procedure for compensation for prior entry is exclusive. — In those jurisdictions in which there may be a constitutional taking of property by virtue of an exercise of the power of eminent domain prior to the payment of compensation, such procedure is justified by reason of legislative provision for an adequate method of obtaining just compensation by the owner. Under such circumstances the statutory remedy is deemed exclusive, and the owner is prevented from asserting the ordinary common-law actions arising from interference with his title or possession. *Kaiser Steel Corp. v. W.S. Ranch Co.*, 1970-NMSC-043, 81 N.M. 414, 467 P.2d 986.

Landowner cannot assert common-law action for damages. *Zobel v. Pub. Serv. Co.*, 1965-NMSC-021, 75 N.M. 22, 399 P.2d 922.

Trespass lies where there is no right to condemn. — Where parties are mistaken in their belief that they had the right to condemn, a trespass action would be proper. *Kaiser Steel Corp. v. W.S. Ranch Co.*, 1970-NMSC-043, 81 N.M. 414, 467 P.2d 986.

When consequential damages permitted. — Where a utility takes possession of property and grades roads outside the 100-foot easement allowed by Section 62-1-4 NMSA 1978, the condemnees are entitled to consequential damages if they can prove that the value of their property depreciated by reason of the entry and grading. *El Paso Elec. v. Real Estate Mart, Inc.*, 1982-NMCA-101, 98 N.M. 490, 650 P.2d 12, cert. denied, 98 N.M. 590, 651 P.2d 636.

Stipulation as to power of court to award damages held binding. — Stipulation is binding on the parties and properly given effect on remand where it was agreed that if a gas utility seeking to enjoin erection of a dwelling over its main line was found not to have a prescriptive easement, evidence of damages for the line crossing defendant's property would be considered by the court. *Southern Union Gas Co. v. Cantrell*, 1953-NMSC-092, 57 N.M. 612, 261 P.2d 645.

Condemnees may appeal although warrants have been issued to attorneys. — Where the clerk issued warrants to attorneys for condemnees for amounts of awards in eminent domain, but these warrants were not delivered to or endorsed by condemnees and funds that were deposited with clerk remained in hands of clerk, condemnees had not received benefit from judgment and were not barred from appealing judgment. *AT & T Co. v. Walker*, 1967-NMSC-049, 77 N.M. 755, 427 P.2d 267.

As to right to trial by jury, and waiver thereof. *El Paso Elec. v. Real Estate Mart, Inc.*, 1982-NMCA-101, 98 N.M. 490, 650 P.2d 12, cert. denied, 98 N.M. 590, 651 P.2d 636.

Law reviews. — For article, "Survey of New Mexico Law, 1979-80: Property," see 11 N.M.L. Rev. 203 (1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 300, 312.

Applicability of zoning regulations to projects of nongovernmental public utility as affected by utility's power of eminent domain, 87 A.L.R.3d 1265.

Unsightliness of powerline or other wire, or related structure, as element or damages in easement condemnation proceeding, 97 A.L.R.3d 587.

Eminent domain: review of electric power company's location of transmission line for which condemnation is sought, 19 A.L.R.4th 1026.

Eminent domain: unity or contiguity of separate properties sufficient to allow damages for diminished value of parcel remaining after taking of other parcel, 59 A.L.R.4th 308.

Eminent Domain: compensability of loss of visibility of owner's property, 7 A.L.R.5th 113.

Validity and construction of provision of Cable Communications Policy Act (47 USC § 541(a)(2)) allowing cable companies access to utility easements on private property, 113 A.L.R. Fed. 523.

29A C.J.S. Eminent Domain §§ 25, 207, 213, 219.

62-1-5. [General powers.]

In addition to the powers conferred by the general incorporation laws of the state, any corporation for one or more of the purposes mentioned in Section 62-1-1 NMSA 1978 organized under the laws of New Mexico may construct, maintain, extend, own, purchase or lease any plant, line or lines whether wholly within or wholly or partly without this state, and shall have the power to connect with or attach to the line or lines of other corporations or individuals, to join with other corporations or individuals in constructing, maintaining or operating such line or lines upon such terms as may be agreed upon, and to consolidate with other corporations organized for similar purposes under the laws of this state or of any other territory, state or country and to purchase, hold, own and vote the stock or securities of other corporations.

History: Laws 1909, ch. 141, § 5; Code 1915, § 1025; C.S. 1929, § 32-405; 1941 Comp., § 72-105; 1953 Comp., § 68-1-5.

ANNOTATIONS

Compiler's notes. — Sections 62-1-1 to 62-1-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 1 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Public utility may require a deposit to assure payment of accumulating charges for service or for protection of utility-owned equipment such as meters. 1957 Op. Att'y Gen. No. 57-101.

A public service company may enforce a regulation requiring a customer to make a reasonable deposit or payment in advance. Such a regulation enables the company to assure itself of compensation for its service and to protect itself against unknown or irresponsible persons. 1957 Op. Att'y Gen. No. 57-101.

62-1-6. Foreign municipal corporation; ownership; supervision.

A. Any municipal corporation located in another state and within twenty-five miles of the boundary of the state of New Mexico that has heretofore acquired or hereafter acquires property and facilities for the production, transmission and distribution of electricity, a part of which property and facilities is located in New Mexico, has full rights to own the property and facilities in New Mexico and to enjoy and use the property and facilities in all respects as might a private owner situated in New Mexico. The New Mexico public utility commission shall have general and exclusive power and jurisdiction to regulate and supervise the rates charged and service regulations made by such municipal corporations for electricity supplied by them to consumers in New Mexico in the manner provided for regulation and supervision of rates and service regulations for private corporations under the provisions of the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] to the same extent that it has now or hereafter may have jurisdiction over private utility corporations, and to do all things necessary and convenient in the exercise of that power and jurisdiction. The municipal corporation shall be subject to the laws of the state of New Mexico now existing or hereafter amended or enacted as to foreign corporations, shall designate a statutory agent resident in New Mexico upon whom process against the municipal corporation may be served and may sue and be sued in this state as a foreign corporation.

B. The state and its political subdivisions, notwithstanding any provisions contained in Chapter 62, Article 1 NMSA 1978, shall assess for taxation the property of any such foreign municipal corporation and shall levy taxes against its property and facilities in New Mexico in the same manner and to the same extent as electric properties owned by private corporations are now or may hereafter be taxed in this state.

C. The provisions of this section shall not operate to prevent a municipal corporation located in another state and further than twenty-five miles from the boundary of the state of New Mexico from owning any interest in a jointly owned generating facility.

History: 1941 Comp., § 72-106, enacted by Laws 1943, ch. 100, § 1; 1953 Comp., § 68-1-6; Laws 1979, ch. 260, § 16; 1993, ch. 282, § 20.

ANNOTATIONS

Compiler's notes. — Sections 62-1-1 to 62-1-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 1 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, in Subsection A, rewrote the first sentence, divided the former second sentence into the present second and third

sentences, in the present second sentence, substituted "New Mexico public utility commission" for "New Mexico public service commission", "them" for "such municipal corporation" preceding "to consumers", and "the Public Utility Act" for "Chapter 84 of the Laws of 1941", and in the present third sentence, added "The" at the beginning and deleted "foreign" preceding "municipal" near the end of the sentence; and, in Subsection B, deleted "of New Mexico" following "state", substituted "Chapter 62, Article 1 NMSA 1978" for "this act", and made minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 374, 385; 71 Am. Jur. 2d State and Local Taxation §§ 438 to 442.

73B C.J.S. Public Utilities §§ 72, 129 to 138; 84 C.J.S. Taxation §§ 118, 184, 427, 444.

62-1-7. [Applicability.]

That nothing in this act [62-1-6, 62-1-7 NMSA 1978] shall be construed to grant permission to any municipal corporation located outside the state of New Mexico to own or operate distribution facilities in New Mexico for the purpose of selling electricity to consumers in New Mexico who reside more than two (2) miles from the boundary of the state of New Mexico.

History: 1941 Comp., § 72-107, enacted by Laws 1943, ch. 100, § 2; 1953 Comp., § 68-1-7.

ANNOTATIONS

Compiler's notes. — Sections 62-1-1 to 62-1-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 1 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ARTICLE 2
Incorporation and Powers of Waterworks

62-2-1. Companies for supplying water; articles of incorporation.

Any five persons who desire to form a company for the purpose of constructing and maintaining reservoirs and canals or ditches and pipelines for supplying water for irrigation, mining, manufacturing, domestic and other public uses, including cities and towns, and for the improvement of lands in connection therewith shall make and sign

articles of incorporation that shall be acknowledged before the secretary of state or some person authorized by law to take the acknowledgment of conveyances of real estate. When so acknowledged, the articles shall be filed with the secretary of state.

History: Laws 1887, ch. 12, § 1; C.L. 1897, § 468; Code 1915, § 1026; C.S. 1929, § 32-406; 1941 Comp., § 72-201; 1953 Comp., § 68-2-1; 2013, ch. 75, § 23.

ANNOTATIONS

Compiler's notes. — Prior to the 1915 Code, this section provided for filing of articles with the secretary of the territory.

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For municipal water facilities, *see* 3-27-1 to 3-27-9 NMSA 1978.

For municipal water or natural gas associations, *see* Chapter 3, Article 28 NMSA 1978.

For use of waters and regulation of water by municipalities, *see* 3-53-1 to 3-53-5 NMSA 1978.

For certification of water and wastewater plant operators, *see* 61-33-1 to 61-33-9 NMSA 1978.

For community springs, tanks, reservoirs and ponds, *see* 72-10-1 to 72-10-10 NMSA 1978.

The 2013 amendment, effective July 1, 2013, required that articles of incorporation of water companies be filed with the secretary of state; added the title of the section; in the first sentence, after "towns, and for the", deleted "purpose of colonization and the" and after "lands in connection therewith" deleted "for either or both of said objects, either jointly or separately"; and in the second sentence, after "filed with the", deleted "state corporation commission" and added "secretary of state".

Diversion of water for domestic purposes is public purpose. — The diversion and distribution of water for irrigation and other domestic purposes is a public purpose. *Albuquerque Land & Irrigation Co. v. Gutierrez*, 1900-NMSC-017, 10 N.M. 177, 61 P. 357, *aff'd*, 188 U.S. 545, 23 S. Ct. 338, 47 L. Ed. 588 (1903).

Legislature has impliedly declared condemnation for water conveyance is for public use. — The legislature, in Section 72-1-5 NMSA 1978, has given to persons, firms, associations and corporations the right to condemn land right-of-way for the purpose of conveying water for beneficial uses. Since the power of eminent domain cannot be exercised without a "public use" being present, the legislature has impliedly declared such a "public use" to be present in such conveyance of water. *Kaiser Steel Corp. v. W.S. Ranch Co.*, 1970-NMSC-043, 81 N.M. 414, 467 P.2d 986.

Company seeking to divert water need not own lands to be irrigated. — It is not necessary that the company seeking to divert the water be the owner of the lands to be irrigated, or be employed by the owners, provided the water is used beneficially within a reasonable time. *Albuquerque Land & Irrigation Co. v. Gutierrez*, 1900-NMSC-017, 10 N.M. 177, 61 P. 357, *aff'd*, 188 U.S. 545, 23 S. Ct. 338, 47 L. Ed. 588 (1903).

Application need not be made in name of all persons to be benefited. — Sections 62-2-1 to 62-2-22 NMSA 1978 relating to the incorporation of waterworks companies and the powers which such companies may exercise, do not require that an application to appropriate public waters for a beneficial use must be made by or in the names of all persons who may ultimately use or be benefited by such use. *Mathers v. Texaco, Inc.*, 1966-NMSC-226, 77 N.M. 239, 421 P.2d 771.

Applicant may acquire right-of-way through existing ditch. — An applicant for the appropriation of waters for irrigation purposes may acquire by condemnation proceedings the right to use of the project, and a right-of-way through an existing ditch or canal of another appropriator, by enlargement. 1915 Op. Att'y Gen. No. 15-1508.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waterworks and Water Companies § 1 et seq.

Public utility acts, applicability to municipal corporation operating water plant, 18 A.L.R. 946.

Liability of water distributor for damage caused by water escaping from main, 20 A.L.R.3d 1294.

Water distributor's liability for injury due to condition of service lines, meters, and the like, which serve individual consumer, 20 A.L.R.3d 1363.

94 C.J.S. Waters § 248.

62-2-2. [Contents of articles of incorporation.]

Such articles shall set forth:

A. the full names of the incorporators, and the corporate name of such company;

B. the purpose or purposes for which such company is formed, and if the object be to construct reservoirs and canals, or ditches and pipelines for any of the purposes herein specified, the beginning point and terminus of the main line of such canals and ditches and pipelines, and the general course, direction and length thereof shall be stated;

C. the amount of the capital stock and the number of shares as definitely as practicable;

D. the term of existence of the company, which shall not exceed fifty years;

E. the number of directors, and the names of those who shall manage the business of the company for the first year;

F. the name of the city or town and county in which the principal place of business of the company is to be located.

History: Laws 1887, ch. 12, § 2; C.L. 1897, § 469; Code 1915, § 1027; C.S. 1929, § 32-407; 1941 Comp., § 72-202; 1953 Comp., § 68-2-2.

ANNOTATIONS

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-2-3. Filing of articles; certified copies.

A duly certified copy of the articles of incorporation executed by the secretary of state shall be filed in the office of the county clerk of each county through or into which any canal, ditch or pipeline may run or any reservoir may be established or in which the company may desire to transact business. Duly certified copies of the articles of incorporation shall be given by the secretary of state or county clerks, on the payment of the fees allowed by law, and shall be received as evidence in any of the courts of this state.

History: Laws 1887, ch. 12, § 3; C.L. 1897, § 470; Code 1915, § 1028; C.S. 1929, § 32-408; 1941 Comp., § 72-203; 1953 Comp., § 68-2-3; 2013, ch. 75, § 24.

ANNOTATIONS

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2013 amendment, effective July 1, 2013, required that the secretary of state certify articles of incorporation; added the title of the section; in the first sentence, after "certified copy of the articles", added "of incorporation" and after "executed by", deleted "state corporation commission" and added "secretary of state"; and in the second sentence, after "copies of the articles", added "of incorporation" and after "shall be given by", deleted "said commission" and added "the secretary of state".

62-2-4. [General powers.]

When articles of incorporation shall have been executed, acknowledged and filed, as herein required, the persons therein named shall, with their associates and successors, be deemed a body politic and corporate, by the name stated in such articles, for and during the period named therein, and shall have power to sue and be sued, in any court; to adopt and use a common seal and alter the same at pleasure; to purchase, acquire, hold, sell, mortgage and convey such real and personal estate as such corporation may require to successfully carry on and transact the objects for which it was formed; to appoint such officers, agents and servants as the business of the corporation may require, and exact of them such security as may be thought proper, and remove them at will; except, no director shall be removed from office unless by a two-third vote of the whole number of directors; and to adopt bylaws, not inconsistent with the laws of this state for the organization of the company, the management of its business and property, the regulation of its affairs, the transfer of its stock and for carrying on all kinds of business within the objects and purposes of the corporation.

History: Laws 1887, ch. 12, § 4; C.L. 1897, § 471; Code 1915, § 1029; C.S. 1929, § 32-409; 1941 Comp., § 72-204; 1953 Comp., § 68-2-4.

ANNOTATIONS

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time,

however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For power to borrow money, mortgage property and issue bonds, *see* 62-2-15 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters §§ 254 to 259.

62-2-5. [Additional powers.]

Corporations formed under this article for the purpose of furnishing and supplying water for any of the purposes mentioned in Section 62-2-1 NMSA 1978, shall have, in addition to the powers hereinbefore mentioned, rights as follows:

A. to cause such examinations and surveys for their proposed reservoirs, canals, pipelines and ditches to be made, as may be necessary to the selection of the most eligible locations and advantageous routes, and for such purpose, by their officers, agents and servants, to enter upon the lands or water of any person, or of this state;

B. to take and hold such voluntary grant of real estate and other property, as shall be made to them in furtherance of the purposes of such corporation;

C. to construct their canals, pipelines or ditches upon or along any stream of water;

D. to take and divert from any stream, lake or spring the surplus water, for the purpose of supplying the same to persons, to be used for the objects mentioned in Section 62-2-1 NMSA 1978, but such corporations shall have no right to interfere with the rights of, or appropriate the property of any persons except upon the payment of the assessed value thereof, to be ascertained as in this article provided: and provided, further, that no water shall be diverted, if it will interfere with the reasonable requirements of any person or persons using or requiring the same, when so diverted;

E. to furnish water for the purposes mentioned in Section 62-2-1 NMSA 1978, at such rates as the bylaws may prescribe; but equal rates shall be conceded to each class of consumers;

F. to enter upon and condemn and appropriate any lands, timber, stone, gravel or other material that may be necessary for the uses and purposes of said companies.

History: Laws 1887, ch. 12, § 17; C.L. 1897, § 484; Code 1915, § 1042; C.S. 1929, § 32-422; 1941 Comp., § 72-205; 1953 Comp., § 68-2-5.

ANNOTATIONS

Compiler's notes. — The 1915 Code compilers substituted the words "this article" for "this act." They presumably refer to Code 1915, ch. 23, art. 3, the effective provisions of

which are compiled as 62-1-1 to 62-1-5 and 62-2-1 to 62-2-22 NMSA 1978, while the original reference to "this act" meant Laws 1887, ch. 12, the effective provisions of which are compiled as 62-2-1 to 62-2-19, 62-2-21 and 62-2-22 NMSA 1978.

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For eminent domain proceedings, *see* 62-2-16 to 62-2-18 and Chapter 42A NMSA 1978.

For need for certificate of convenience and necessity before construction or operation of utility, *see* 62-9-1 NMSA 1978.

For excavation damage to underground utility lines and related facilities, *see* 62-14-1 to 62-14-8 NMSA 1978.

For appropriation of water, *see* 72-5-1 to 72-5-39 NMSA 1978.

Irrigation companies may go upon private lands to make a preliminary survey for right-of-way by eminent domain, to divert surplus water, unappropriated and subject to diversion, for this is a public purpose, and it is not necessary that the distributing company shall itself be a consumer, provided the water is used beneficially within a reasonable time. The burden of proving such facts is with the company. *Albuquerque Land & Irrigation Co. v. Gutierrez*, 1900-NMSC-017, 10 N.M. 177, 61 P. 357, *aff'd*, 188 U.S. 545, 23 S. Ct. 338, 47 L. Ed. 588 (1903).

Strangers may not raise question of interference with other appropriators. — The question whether the appropriation of water interferes with the rights of other appropriators cannot be raised by strangers not parties to the action. *Albuquerque Land & Irrigation Co. v. Gutierrez*, 1900-NMSC-017, 10 N.M. 177, 61 P. 357, *aff'd*, 188 U.S. 545, 23 S. Ct. 338, 47 L. Ed. 588 (1903).

62-2-6. [Directors; qualifications; election.]

The corporate powers of any corporation formed under this article shall be exercised by a board of not less than three directors who shall be stockholders of the company, and a majority of them citizens of the United States, and at least one-third of whom shall be residents of this state. Such directors shall be elected annually, after the expiration of the term of the directors named in the articles of incorporation, at such time and place,

and upon such notice, and in such mode as the bylaws of the company may provide; but all such elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to as many votes as he owns shares of stock, and the persons receiving the greatest number of votes shall be declared elected. When a vacancy occurs in the office of director by death, resignation or otherwise, such vacancy shall be filled for the remainder of the year in such manner as the bylaws shall prescribe. Should there be no election of directors, on the day fixed in the bylaws for such election, such election may be held at such other time as the bylaws may designate, and the directors in office may continue to act until their successors are elected.

History: Laws 1887, ch. 12, § 5; C.L. 1897, § 472; Code 1915, § 1030; C.S. 1929, § 32-410; 1941 Comp., § 72-206; 1953 Comp., § 68-2-6.

ANNOTATIONS

Compiler's notes. — The 1915 Code compilers substituted the words "this article" for "this act." They presumably refer to Code 1915, ch. 23, art. 3, the effective provisions of which are compiled as 62-1-1 to 62-1-5 and 62-2-1 to 62-2-22 NMSA 1978, while the original reference to "this act" meant Laws 1887, ch. 12, the effective provisions of which are compiled as 62-2-1 to 62-2-19, 62-2-21 and 62-2-22 NMSA 1978.

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-2-7. [Quorum in directors' meeting.]

A majority of the whole number of directors shall form a board for the transaction of business, and a decision of a majority of the directors assembled as a board shall be valid as a corporate act.

History: Laws 1887, ch. 12, § 6; C.L. 1897, § 473; Code 1915, § 1031; C.S. 1929, § 32-411; 1941 Comp., § 72-207; 1953 Comp., § 68-2-7.

ANNOTATIONS

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82,

as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-2-8. [Meetings of directors.]

The first meeting of the board of directors shall be held at such time and place as may be agreed upon by a majority of the persons named as such in the articles of incorporation, and all subsequent meetings shall be at such times and places as the bylaws may designate.

History: Laws 1887, ch. 12, § 7; C.L. 1897, § 474; Code 1915, § 1032; C.S. 1929, § 32-412; 1941 Comp., § 72-208; 1953 Comp., § 68-2-8.

ANNOTATIONS

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-2-9. [Transfer of shares.]

The stock of the company shall be deemed personal estate, and shall be transferrable [transferable] in such manner as shall be prescribed by the bylaws of the company; but no transfer shall be valid except between the parties thereto, until the same shall be so entered on the books of the company as to show the names of the parties by and to whom transferred, the number and designation of the shares and the date of transfer.

History: Laws 1887, ch. 12, § 8; C.L. 1897, § 475; Code 1915, § 1033; C.S. 1929, § 32-413; 1941 Comp., § 72-209; 1953 Comp., § 68-2-9.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For investment securities provisions of Uniform Commercial Code, *see* 55-8-101 to 55-8-511 NMSA 1978.

62-2-10. [Subscriptions to stock; payment; notice of assessment; sale of stock.]

The directors shall have power to call in and demand from the stockholders the sum by them subscribed, at such times and in such payments as they may deem proper; notice of such assessment shall be given to the stockholders personally, or shall be published once a week for at least four weeks, in some newspaper published at the place designated as the principal place of business of the corporation, or if none be published there, then by posting such notice for that period, in at least six of the most public places in the county in which said principal place of business of the corporation is located. If, after such notice has been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, so many of such shares may be sold as will be necessary for the payment of the assessment on all shares held by him. The sale of said shares shall be made as prescribed in the bylaws of the company, but all such sales shall be made at public auction, to the highest bidder, after notice thereof shall have been given as in this section provided for notice to stockholders of assessments; and the person who will agree to pay the assessment due, together with the expense of advertising, and other costs of such sale, for the smallest number of whole shares, shall be deemed the highest bidder. A complete record shall be kept of all assessments and sales of stock.

History: Laws 1887, ch. 12, § 9; C.L. 1897, § 476; Code 1915, § 1034; C.S. 1929, § 32-414; 1941 Comp., § 72-210; 1953 Comp., § 68-2-10.

ANNOTATIONS

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time,

however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For legal newspapers, *see* 14-11-2 NMSA 1978.

Bylaw providing for notice by registered mail is insufficient. — Provision in bylaw of a water company for notice of assessment by registered mail is insufficient notice under this section. 1917 Op. Att'y Gen. No. 17-1939.

This section does not contemplate any surplus from sale, as the bid must be for the payment of the assessment and costs for the smallest number of shares. 1917 Op. Att'y Gen. No. 17-1939.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters §§ 234, 293.

62-2-11. [Increase or decrease of capital stock.]

The capital stock of any such corporation may be increased or diminished at any meeting of the stockholders, but may only be done by a two-thirds vote of all the shares of stock, but in no case shall the capital stock be reduced below the outstanding indebtedness and liabilities of the corporation.

History: Laws 1887, ch. 12, § 12; C.L. 1897, § 479; Code 1915, § 1037; C.S. 1929, § 32-417; 1941 Comp., § 72-212; 1953 Comp., § 68-2-12.

ANNOTATIONS

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-2-12. [Commencement of business within one year.]

If any corporation formed under this article shall not organize and commence the transaction of its business within one year from the time of filing its articles of incorporation, its corporate powers shall cease.

History: Laws 1887, ch. 12, § 13; C.L. 1897, § 480; Code 1915, § 1038; C.S. 1929, § 32-418; 1941 Comp., § 72-213; 1953 Comp., § 68-2-13.

ANNOTATIONS

Compiler's notes. — The 1915 Code compilers substituted the words "this article" for "this act." They presumably refer to Code 1915, ch. 23, art. 3, the effective provisions of which are compiled as 62-1-1 to 62-1-5 and 62-2-1 to 62-2-22 NMSA 1978, while the original reference to "this act" meant Laws 1887, ch. 12, the effective provisions of which are compiled as 62-2-1 to 62-2-19, 62-2-21 and 62-2-22 NMSA 1978.

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-2-13. [Voluntary dissolution.]

Any corporation formed under this article or formed under any general law of this state, the principal business of which has been the construction and maintenance of dams, reservoirs, ditches and canals, and the distribution of water therethrough [there-through] for public use, may be disincorporated by a two-thirds vote of all the stockholders, and when such vote shall have been taken, notice thereof shall be given as required, by which notice shall state when and at what place application will be made to the district court or the judge thereof to have such corporation judicially declared dissolved, and at such time and place or at such other time and place to which said matter may be adjourned by the court or judge, such court or judge may hear evidence touching the matter, and if satisfied that all debts and liabilties [liabilities] of such corporation have been paid or that the same can be paid, settled, satisfied or compromised by the sale of the tangible assets of such corporation, and that the requisite vote in favor of dissolution has been duly given, such court or judge shall enter an order declaring the corporation dissolved, and thereafter the directors or trustees of such corporation shall sell and dispose of the tangible property thereof or such portion of the same as may be necessary to liquidate the indebtedness of the company, and apply the proceeds realized from such sale to the payment, satisfaction or compromise of the indebtedness of such corporation, the balance remaining to be distributed to the stockholders thereof in accordance with Section 62-2-14 NMSA 1978.

History: Laws 1887, ch. 12, § 14; C.L. 1897, § 481; Laws 1905, ch. 92, § 1; Code 1915, § 1039; C.S. 1929, § 32-419; 1941 Comp., § 72-214; 1953 Comp., § 68-2-14.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The 1915 Code compilers substituted the words "this article" for "this act." They presumably refer to Code 1915, ch. 23, art. 3, the effective provisions of which are compiled as 62-1-1 to 62-1-5 and 62-2-1 to 62-2-22 NMSA 1978, while the original reference to "this act" meant Laws 1887, ch. 12, the effective provisions of which are compiled as 62-2-1 to 62-2-19, 62-2-21 and 62-2-22 NMSA 1978.

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters §§ 68, 69, 159; 94 C.J.S. Waters §§ 330, 332.

62-2-14. [Powers of directors after dissolution.]

Upon the dissolution of any corporation, the directors at the time of dissolution shall be directors and agents of the creditors and stockholders of the corporation dissolved, and shall have full power to sue for and recover the debts and property of the corporation, by the name of the directors of such corporation, collect and pay any outstanding debts, settle its affairs and divide amongst the stockholders the money and property remaining after the payment of all debts, liabilites [liabilities] and necessary expenses.

History: Laws 1887, ch. 12, § 15; C.L. 1897, § 482; Code 1915, § 1040; C.S. 1929, § 32-420; 1941 Comp., § 72-215; 1953 Comp., § 68-2-15.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section

5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-2-15. [Borrowing money; bonds; mortgages.]

Corporations formed under this article shall have power to borrow such sums of money as may be necessary for the construction, completion or operation of their reservoirs, canals and ditches, or pipelines, or the purchase of any lands, water rights or other property necessary, in order to carry out the objects for which they were incorporated; and to issue and dispose of their bonds for any amount so borrowed, and to mortgage their corporate property and franchises to secure the payment of any debt contracted for the purpose aforesaid.

History: Laws 1887, ch. 12, § 16; C.L. 1897, § 483; Code 1915, § 1041; C.S. 1929, § 32-421; Laws 1941, ch. 15, § 2; 1941 Comp., § 72-216; 1953 Comp., § 68-2-16.

ANNOTATIONS

Compiler's notes. — The 1915 Code compilers substituted the words "this article" for "this act." They presumably refer to Code 1915, ch. 23, art. 3, the effective provisions of which are compiled as 62-1-1 to 62-1-5 and 62-2-1 to 62-2-22 NMSA 1978, while the original reference to "this act" meant Laws 1887, ch. 12, the effective provisions of which are compiled as 62-2-1 to 62-2-19, 62-2-21 and 62-2-22 NMSA 1978.

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For general power to mortgage property, *see* 62-2-4 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Occupations, Trades and Professions §§ 70, 73, 91, 100, 123, 127.

93 C.J.S. Waters §§ 190, 218; 94 C.J.S. Waters §§ 259, 326.

62-2-16. Eminent domain.

Corporations formed pursuant to Sections 62-2-1 through 62-2-22 NMSA 1978 have the power of eminent domain for the purpose of carrying out the provisions of Sections

62-2-1 through 62-2-22 NMSA 1978, and in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978].

History: Laws 1981, ch. 125, § 50.

ANNOTATIONS

Repeals and reenactments. — Laws 1981, ch. 125, § 50, repealed former 62-2-16 NMSA 1978, relating to the power of eminent domain, and enacted a new section.

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For eminent domain proceedings generally, *see* Chapter 42A NMSA 1978.

Right to condemn implies conveying water is "public use". — The legislature, in Section 72-1-5 NMSA 1978, has given to persons, firms, associations and corporations the right to condemn land right-of-way for the purpose of conveying water for beneficial uses. Since the power of eminent domain cannot be exercised without a "public use" being present, the legislature has impliedly declared such a "public use" to be present in such conveyance of water. *Kaiser Steel Corp. v. W.S. Ranch Co.*, 1970-NMSC-043, 81 N.M. 414, 467 P.2d 986 (rendered under prior law).

Section grants power only to corporations organized under article. — The powers of this section are limited to corporations incorporated under Sections 62-2-1 through 62-2-22 NMSA 1978. 1967 Op. Att'y Gen. No. 67-50 (mutual domestic water or sewage works association has no power of eminent domain).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Eminent domain: unity or contiguity of separate properties sufficient to allow damages for diminished value of parcel remaining after taking of other parcel, 59 A.L.R.4th 308.

93 C.J.S. Waters § 88; 94 C.J.S. Waters §§ 228, 247, 255.

62-2-17. [Construction of works; eminent domain.]

Such corporations shall be authorized to construct such branch, lateral or side canals, pipelines or ditches, as may be necessary to successfully accomplish the

objects and purposes for which they shall be organized, and shall have the same rights and powers as to the taking and appropriating of land and other property, to be used therefor, as is given and conferred by the next preceding section [62-2-16 NMSA 1978], or other sections of this article.

History: Laws 1887, ch. 12, § 19; C.L. 1897, § 486; Code 1915, § 1044; C.S. 1929, § 32-424; 1941 Comp., § 72-218; 1953 Comp., § 68-2-18.

ANNOTATIONS

Compiler's notes. — The 1915 Code compilers substituted the words "this article" for "this act." They presumably refer to Code 1915, ch. 23, art. 3, the effective provisions of which are compiled as 62-1-1 to 62-1-5 and 62-2-1 to 62-2-22 NMSA 1978, while the original reference to "this act" meant Laws 1887, ch. 12, the effective provisions of which are compiled as 62-2-1 to 62-2-19, 62-2-21 and 62-2-22 NMSA 1978.

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Right to condemn implies conveyance of water is "public use". — The legislature, in Section 72-1-5 NMSA 1978, has given to persons, firms, associations and corporations, the right to condemn land right-of-way for the purpose of conveying water for beneficial uses. Since the power of eminent domain cannot be exercised without a "public use" being present, the legislature has impliedly declared such a "public use" to be present in such conveyance of water. *Kaiser Steel Corp. v. W.S. Ranch Co.*, 1970-NMSC-043, 81 N.M. 414, 467 P.2d 986.

Section grants power only to corporations organized under article. — The powers of this section are limited to corporations incorporated under Sections 62-2-1 to 62-2-22 NMSA 1978. Mutual domestic water or sewage works association as organized under the Sanitary Projects Act of 1957 has no power of eminent domain. 1967 Op. Att'y Gen. No. 67-50.

62-2-18. Acquiring land of minors and incapacitated persons.

Should it become necessary for any such corporation to acquire the title to any land or other property belonging to any minor or incapacitated person, or which may belong to the estate of any deceased person, the title to any such property may be obtained in such manner as may be provided by law for the conveyance, sale or disposal of the

land or other property belonging to minors or incapacitated persons or the estates of deceased persons.

History: Laws 1887, ch. 12, § 20; C.L. 1897, § 487; Code 1915, § 1045; C.S. 1929, § 32-425; 1941 Comp., § 72-219; 1953 Comp., § 68-2-19; Laws 1975, ch. 257, § 8-124.

ANNOTATIONS

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For administration of decedent's estate, *see* 45-3-101 to 45-3-1302 NMSA 1978.

For protection of lands of minors or incapacitated persons, *see* 45-5-401 to 45-5-432 NMSA 1978.

62-2-19. [Use of materials on state lands.]

Corporations formed under this article for the purpose of furnishing or supplying water for any of the purposes mentioned in Section 62-2-1 NMSA 1978, shall have the right to use any timber, stone or other materials upon lands belonging to the state, and along the line of their canals or ditches, or in the vicinity of such reservoirs as may be necessary in the construction thereof.

History: Laws 1887, ch. 12, § 21; C.L. 1897, § 488; Code 1915, § 1046; C.S. 1929, § 32-426; 1941 Comp., § 72-220; 1953 Comp., § 68-2-20.

ANNOTATIONS

Compiler's notes. — The 1915 Code compilers substituted the words "this article" for "this act." They presumably refer to Code 1915, ch. 23, art. 3, the effective provisions of which are compiled as 62-1-1 to 62-1-5 and 62-2-1 to 62-2-22 NMSA 1978, while the original reference to "this act" meant Laws 1887, ch. 12, the effective provisions of which are compiled as 62-2-1 to 62-2-19, 62-2-21 and 62-2-22 NMSA 1978.

Prior to the 1915 Code, this section contained the provision "shall have the right and privilege of constructing their reservoirs, canals, pipelines or ditches on or over any of

the lands now belonging to this territory, or which may hereafter become the property of the territory."

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-2-20. [Corporations for serving cities and towns; rights and privileges.]

All corporations which have been heretofore or may hereafter be formed under the laws of New Mexico for the purpose of supplying water for domestic, irrigating or manufacturing purposes, for cities or towns, with a population of three thousand persons or more, shall have all the powers and shall be entitled to all the rights and privileges so far as they may be necessary for the transaction of the business of any and all such corporations as are conferred on railroad companies.

History: Laws 1884, ch. 41, § 1; C.L. 1884, § 231; C.L. 1897, § 467; Code 1915, § 1047; C.S. 1929, § 32-427; 1941 Comp., § 72-221; 1953 Comp., § 68-2-21.

ANNOTATIONS

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For powers, rights and privileges of railroad companies, *see* 63-2-1 to 63-2-18 NMSA 1978.

Failure to use does not lose right to appropriated water. — Failure to use water rightfully appropriated does not cause a loss of such property right. 1914 Op. Att'y Gen. No. 14-1171.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Waterworks as public building, 19 A.L.R. 547.

Liability of water company to private owner for breach of its contract with municipality to supply pressure for fire purposes, 62 A.L.R. 1205.

Right to cut off water supply because of failure to pay sewer service charge, 26 A.L.R.2d 1359.

94 C.J.S. Waters § 254.

62-2-21. [Corporations for serving cities and towns; laying mains in streets; service.]

Corporations formed under this article for the purpose of supplying water to any city, town or the inhabitants thereof for any purpose, may lay their mains or pipes in, along and upon any of the public streets or alleys of such city or town, subject to such regulations as may be provided by the corporate authorities of such city or town; and may furnish and supply such city or town or the inhabitants thereof, with water, upon such conditons [conditions] and terms as may be fixed by such corporations, or as may be agreed to by the consumers and such corporations.

History: Laws 1887, ch. 12, § 24; C.L. 1897, § 491; Code 1915, § 1048; C.S. 1929, § 32-428; 1941 Comp., § 72-222; 1953 Comp., § 68-2-22.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The 1915 Code compilers substituted the words "this article" for "this act." They presumably refer to Code 1915, ch. 23, art. 3, the effective provisions of which are compiled as 62-1-1 to 62-1-5 and 62-2-1 to 62-2-22 NMSA 1978, while the original reference to "this act" meant Laws 1887, ch. 12, the effective provisions of which are compiled as 62-2-1 to 62-2-19, 62-2-21 and 62-2-22 NMSA 1978.

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Franchise may be granted without referendum. — A franchise to maintain and operate an existing water plant and to make betterments may be granted by ordinance by a city without a referendum. *Asplund v. City of Santa Fe*, 1926-NMSC-002, 31 N.M. 291, 244 P. 1067.

City is estopped to deny mutual agreements. — A private waterworks company having agreed to furnish water to a city for 25 years, and the city having agreed not to operate waterworks in or near the town for the same time, and to rent hydrants, is estopped to deny that it operates under the contract. *Bankers Trust Co. v. City of Raton*, 258 U.S. 328, 42 S. Ct. 340, 66 L. Ed. 642 (1922).

Municipality may require removal of system after franchise expires. — A municipality cannot be enjoined from requiring the removal from the streets of the system of a waterworks company whose franchise has expired. *Bankers Trust Co. v. City of Raton*, 258 U.S. 328, 42 S. Ct. 340, 66 L. Ed. 642 (1922).

62-2-22. [Irrigation companies; restrictions on use of water.]

That no incorporation of any company or companies to supply water for the purposes of irrigation and other purposes, shall have any right to divert the usual and natural flow of water of any stream which by Section 73-2-9 NMSA 1978 has been declared a public acequia for any use whatever, between the fifteenth day of February and the fifteenth day of October of each year, unless it be with the unanimous consent of all and every person holding agricultural and cultivated lands under such stream or public acequia, and to be irrigated by the water furnished by said stream or public acequia, and that no incorporation of any company or companies shall interfere with the water rights of any individual or company, acquired prior to February 24, 1887.

History: Laws 1887, ch. 12, § 25; C.L. 1897, § 492; Code 1915, § 1049; C.S. 1929, § 32-429; 1941 Comp., § 72-223; 1953 Comp., § 68-2-23.

ANNOTATIONS

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Irrigation §§ 44-55.

Discrimination between property within and that outside municipality or other governmental district as to rates, 4 A.L.R.2d 595.

94 C.J.S. Waters §§ 314 to 368.

ARTICLE 3
Public Utility Act; Preamble and Definitions

62-3-1. Declaration of policy.

A. Public utilities, as defined in Section 62-3-3 NMSA 1978, are affected with the public interest in that, among other things:

(1) a substantial portion of public utilities' business and activities involves the rendition of essential public services to a large number of the general public;

(2) public utilities' financing involves the investment of large sums of money, including capital obtained from many members of the general public; and

(3) the development and extension of public utilities' business directly affects the development, growth and expansion of the general welfare, business and industry of the state.

B. It is the declared policy of the state that the public interest, the interest of consumers and the interest of investors require the regulation and supervision of public utilities to the end that reasonable and proper services shall be available at fair, just and reasonable rates and to the end that capital and investment may be encouraged and attracted so as to provide for the construction, development and extension, without unnecessary duplication and economic waste, of proper plants and facilities and demand-side resources for the rendition of service to the general public and to industry.

History: 1953 Comp., § 68-3-1, enacted by Laws 1967, ch. 96, § 2; 2008, ch. 24, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1967, ch. 96, § 2, repealed former 68-3-1, 1953 Comp., relating to declaration of policy, and enacted a new section.

Compiler's notes. — Sections 62-3-1 to 62-3-5 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 3 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time,

however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2008 amendment, effective May 14, 2008, in Subsection B, provided that capital and investment should provide for demand-side resources.

Telecommunications. — The Public Utilities Act does not apply to telecommunication services. *In re Qwest Communications Int'l, Inc.*, 2002-NMSC-006, 131 N.M. 770, 42 P.3d 1219.

Public regulation commission derives its authority and jurisdiction from the New Mexico Public Utility Act. *City of Sunland Park v. N.M. Pub. Regulation Comm'n*, 2004-NMCA-024, 135 N.M. 143, 85 P.3d 267, cert. denied, 2004-NMCERT-002, 135 N.M. 169, 86 P.3d 47.

Goals of utility regulation have been established. — The legislature has established certain goals which utility regulation and supervision are intended to achieve: reasonable and proper services should be made available to the public at fair, just and reasonable rates, and capital and investment should be encouraged and attracted for the plants and facilities which are to render that service. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Utilities excluded from commission's jurisdiction. — Absent a regulatory provision stating otherwise, or absent a willingness of the utility to serve "an indefinite public," any utilities not expressly brought within the scope of The Public Utility Act are excluded from the commission's jurisdiction. *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, 120 N.M. 579, 904 P.2d 28.

Section lists some, but not all, points of public interest. — A preamble is a declaration by the legislature of the reasons for the passage of the statute and is helpful in the interpretation of any ambiguities within the statute to which it is prefixed; however, the points of public interest in this section are not the only ones contemplated by the legislature. *Griffith v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-024, 86 N.M. 113, 520 P.2d 269.

Supervision of foreign public utilities. — Foreign public utilities authorized to do business in this state are subject to the same supervision as utilities incorporated under the laws of this state. *El Paso Elec. Co. v. Real Estate Mart, Inc.*, 1979-NMSC-023, 92 N.M. 581, 592 P.2d 181.

Public service commission's (now public regulation commission's) powers only come from statute. — The public service commission (now public regulation commission) is an administrative body created by statute and must therefore find its authority and jurisdiction conferred upon it either expressly or by necessary implication from the same statutory authority. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Commission may not distinguish between forms of ownership in rate-making. — The New Mexico legislature has made no distinction between public utilities operated as individuals, firms, partnerships, companies or corporations. Nowhere in the New Mexico Public Utility Act is the commission given authority, for the purpose of rate-making, to make a distinction between a public utility operated as a corporation from one operated as a sole proprietorship. *Moyston v. N.M. Pub. Serv. Comm'n*, 1966-NMSC-062, 76 N.M. 146, 412 P.2d 840.

Order that refund be passed on to consumers. — Public service commission (now public regulation commission) has no express or implied statutory authority to order the flow-through of refunds to electric company from power supplier to consumers. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Where refund was not trust fund for consumers. — Where refund was ordered paid over to power company by the federal power commission without any restrictions, and there was nothing in the order indicating an intention on the part of the commission to create a "trust fund" for the benefit of the ultimate consumers, the refund did not constitute a trust fund belonging to company's customers. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Charitable contributions and lobbying expenditures not passable to consumers. — A commission order which essentially prohibited utility companies from including charitable contributions and lobbying expenditures in their cost of service, and from thereby passing those expenses on to the ratepayers was a reasonable exercise of the commission's authority pursuant to Subsection B. *El Paso Elec. Co. v. N.M. Pub. Serv. Comm'n*, 1985-NMSC-085, 103 N.M. 300, 706 P.2d 511.

Advertising costs passable to consumers. — A commission order which allowed utility companies to include in their cost of service, and pass on to their ratepayers, expenditures for "informational" advertising (e.g., safety, billing practices, etc.), but not expenditures for "institutional" advertising (e.g., enhancement of corporate image), and which required that a utility show by "clear and convincing" evidence that an advertising expense is allowable was a reasonable exercise of the commission's authority pursuant to Subsection B, to insure that utility services are available "at fair, just and reasonable rates." *El Paso Elec. Co. v. N.M. Pub. Serv. Comm'n*, 1985-NMSC-085, 103 N.M. 300, 706 P.2d 511.

Rate increases to compensate predecessor utility for expenses. — The public service commission (now public regulation commission) did not have jurisdiction over rate increases requested by a natural gas distribution company to compensate the company's predecessor, which was not currently a public utility, for expenses incurred by the latter in fulfilling its function as a public utility. *Southern Union Gas Co. v. N.M. Pub. Util. Comm'n*, 1997-NMSC-056, 124 N.M. 176, 947 P.2d 133.

Lowering gas rate to reimburse for overpayment is subject to bankruptcy stay provisions. — Lowering of gas rate to reimburse customers for previous overpayments is not a rate setting function of the public service commission and, as such, was subject to bankruptcy stay provisions. *In re Jal Gas Co.*, 44 B.R. 91 (Bankr. D.N.M. 1984).

Financial affairs of public utilities are strictly regulated. — It is the public policy of the state to require strict regulation of the financial affairs of public utilities, to the end that they may be adequately financed and, among other things, render service at reasonable rates. *Hogue v. Superior Utils., Inc.*, 1949-NMSC-056, 53 N.M. 452, 210 P.2d 938 (1949).

Both ratepayers and investors must be justly treated. — In the determining of a proper rate of return under the statute, enough actual dollars must be produced that both ratepayers and investors are justly and reasonably treated. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Commission is vested with considerable discretion in determining whether a rate to be received and charged is just and reasonable. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

Commission not limited in factors to be considered in setting rates. — Neither New Mexico case law nor the Public Utility Act imposes any one particular method of valuation upon the commission in ascertaining the rate base of a utility; nor does the spirit of the statute tie the commission down to the consideration of a single factor in establishing rates. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

Commission must consider income taxes in fixing rates. — Rates which failed entirely to take federal and state income taxes to which unincorporated utility's operations had been subjected into account as operating expenses are unfair, unjust, unreasonable and discriminatory, and an amount equal to the tax the utility would pay, if incorporated, was a reasonable and realistic amount to be deducted from the utility's taxable income for rate-making purposes. *Moyston v. N.M. Pub. Serv. Comm'n*, 1966-NMSC-062, 76 N.M. 146, 412 P.2d 840.

Evidence must show rate fixed is reasonable and will achieve goals. — District court's holding below that commission's order was unreasonable and unlawful because it did not simply turn the cost of capital percentage directly into a rate of return was upheld by supreme court because it found there was little or no evidence that the particular rate chosen by the commission would achieve the statutory goals and therefore was unreasonable. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Valuation methods must be supported by substantial evidence. — Where gas company seeking rate increase proposed to trend the general plant account items by using a nationally recognized index, but the commission instead inserted its own

method - to simply use the untrended original cost, although the witness who strongly supported this approach admitted that he did not know whether this would accurately establish the reproduction cost of the items, the court held the commission's order was unreasonable, being unsupported by substantial evidence. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Commission may not remove entire construction item because interest was included. — The district court erred in failing to hold unreasonable and unlawful the commission's removal of $673,574 of construction work in progress from the company's rate base on the reasoning that it had included the interest on that amount, $4904.62, when the object was to determine accurately the value of the company's property. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Utility cannot contract against its negligence in performing duties. — A public service corporation, or a public utility such as an electric company, cannot contract against its negligence in the regular course of its business or in performing one of its duties of public service or where a public duty is owed or where public interest is involved. *Southwestern Pub. Serv. Co. v. Artesia Alfalfa Growers' Ass'n*, 1960-NMSC-052, 67 N.M. 108, 353 P.2d 62.

Requiring exhaustion of administrative remedies is constitutional. — The requirement of the Public Utility Act that a person first exhaust his administrative remedy before resorting to the courts does not violate N.M. Const., art. VI, § 13, granting general jurisdiction to the district courts except as elsewhere limited in such constitution. *Smith v. Southern Union Gas Co.*, 1954-NMSC-033, 58 N.M. 197, 269 P.2d 745.

Procedure may not be changed arbitrarily. — Although the public service commission (now public regulation commission) should be able to change its procedure, it should not arbitrarily or capriciously do so without good reasons. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Motion to bring record of previous case before court properly stricken. — It was not error on the part of the district court to strike the commission's motion for an amended praecipe, where this motion would have had the effect of bringing the record of a previous case before the court, and the record of that case was not a part of the record in the instant case. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Indians on reservation are not subject to regulation. — Indians acquiring gas resources from sources wholly upon Indian reservations within the state of New Mexico are not public utilities subject to regulation by the public service commission (now public regulation commission) of New Mexico. 1953 Op. Att'y Gen. No. 53-5690.

Indians operating a gas distribution system wholly on an Indian reservation regardless of the manner in which they acquire the gas on the reservation are not subject to the

laws of the state of New Mexico in relation to regulation as public utilities. 1953 Op. Att'y Gen. No. 53-5690.

Selling television signals does not require certificate. — There does not exist any requirement that a business, consisting of sale of television transmission signals, obtain a certificate of convenience and necessity from either the public service commission (now public regulation commission) of New Mexico or the corporation commission (now public regulation commission) of New Mexico before commencing to do business. 1954 Op. Att'y Gen. No. 54-5942.

Individual selling water to municipal utility is regulated utility. — An individual operating a water service and selling at wholesale water to a municipally owned utility would be a public utility to the extent this operation effects the public interest and as such would be subject to the jurisdiction of the public service commission (now public regulation commission). 1953 Op. Att'y Gen. No. 53-5715.

General jurisdiction does not cover water and sanitation districts. — The legislature did not intend to place water and sanitation districts under the general jurisdiction of the public service commission (now public regulation commission). 1971 Op. Att'y Gen. No. 71-56.

Commission is given jurisdiction of water and sanitation district rates. — Water and sanitation districts have not been declared to be subject to the jurisdiction of the public service commission (now public regulation commission) except in the limited area of approving the district board's rates, tolls and charges. 1971 Op. Att'y Gen. No. 71-56.

Law reviews. — For article, "The Regulation of Public Utilities," see 10 Nat. Res. J. 827 (1970).

For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

For note, "Conservation, Lifeline Rates and Public Utility Regulatory Commissions," see 19 Nat. Res. J. 411 (1979).

For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

For comment, "Regulation of Electric Utilities and Affiliated Coal Companies - Determining Reasonable Expenses," see 26 Nat. Res. J. 851 (1986).

For article, "State Regulation in a Deregulated Environment: A State-Level Regulator's Lament," see 27 Nat. Res. J. 799 (1988).

For 1984-88 survey of New Mexico administrative law, see 19 N.M.L. Rev. 575 (1990).

For note, "Administrative Law - The Constitutional Limits of the Power to Regulate: *Duquesne Light Co. v. Barasch*", see 20 N.M.L. Rev. 199 (1990).

For article, "Current Utility Regulatory Practice from a Historical Perspective," see 32 Nat. Res. J. 289 (1992).

62-3-2. Objects and purposes; liberal interpretation; repeal of inconsistent statutory provisions.

A. The following are the objects and purposes of this act.

(1) Experience has proven that electric service by rural electric cooperatives must be furnished under the regulation of the commission in order to effectuate the purposes of both the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978], as amended, and the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], as amended, and that without extending the coverage of the Public Utility Act, as amended, to rural electric cooperatives, the declared policy of the Public Utility Act, as amended, and the general welfare, business and industry of the state may be frustrated.

(2) It is the declared policy of the state that preservation of the public health, safety and welfare, the interest of consumers and the interest of investor-members require that the construction, development and extension of utility plants and facilities be without unnecessary duplication and economic waste. Experience has proven that this purpose cannot be accomplished without bringing the rural electric cooperatives and persons heretofore recognized as public utilities into parity of treatment with respect to the commission's independent jurisdiction and power to prevent unreasonable interference between proposed and existing plants, lines and systems.

(3) Experience has also proven that rural electric cooperatives are substantially different from investor-owned utilities, particularly relative to setting rates. Under the Rural Electric Cooperative Act, rural electric cooperatives are nonprofit membership corporations whose members have direct control over the cooperative's rates through an elected board of trustees. Generally, consumers of the cooperative's power are members. In contrast, consumers of power from investor-owned utilities have no control over the setting of rates by such utilities which are profit motivated. Experience has proven that the costs to rural electric cooperatives and the public at large in complete government regulation of their rates is greatly disproportionate to the need and benefits of complete rate regulation and interferes with the setting of fair, just and reasonable rates to all utilities. Experience has shown that a rational basis exists to provide procedures for setting rates of rural electric cooperatives different from and more limited than those for setting rates of investor-owned utilities. Without limiting government regulation of rate setting by rural electric cooperatives as provided by Section 62-8-7 NMSA 1978, the declared policy of the Public Utility Act, the provision of reasonable and proper utility services at fair, just and reasonable rates, and the general welfare, business and industry of the state may be frustrated.

(4) It is the intent of the legislature in enacting this statute to bring up to date the laws pertaining to public utilities and rural electric cooperatives so that the rural electric cooperative which is a public utility is subject to reasonable burdens and entitled to reasonable benefits which apply to public utilities generally, to insure more reasonable public regulation and supervision of public utilities, to facilitate the prevention of unnecessary duplication and economic waste between utility systems and to establish a system which will more adequately provide for the development and extension of reasonable and proper utility services at fair, just and reasonable rates. The accomplishment of this intent is necessary and vital to the preservation of the public health, safety and welfare.

B. This act shall be liberally construed to carry out its purposes.

C. Nothing contained in any other act governing the creation and operation of rural electric cooperatives which are public utilities, including Laws 1937, Chapter 100 and the Rural Electric Cooperative Act, as amended, shall be construed to conflict with any duty to which such a utility may be subject or with any benefit to which such a utility may be entitled under the Public Utility Act, as now or hereafter amended. In the event any provision of such other act, including Laws 1937, Chapter 100 or the Rural Electric Cooperative Act, as now or hereafter amended, is held to be repugnant to any provision of the Public Utility Act, as now or hereafter amended, the latter shall be controlling and the former is repealed to the extent of the repugnancy.

History: 1953 Comp., § 68-3-1.1, enacted by Laws 1967, ch. 96, § 9; 1985, ch. 176, § 1.

ANNOTATIONS

Compiler's notes. — The term "this act", referred to in Subsections A and B, first appears in Laws 1985, ch. 176, which is codified at 62-3-2 and 62-8-7 NMSA 1978, but is probably intended to be a reference to the Public Utility Act.

Sections 62-3-1 to 62-3-5 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 3 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs.,, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For Public Utility Act repealing repugnant provisions of Rural Electric Cooperative Act, *see* 62-15-32 NMSA 1978.

The 1985 amendment deleted "hereby declared to be" following "The following are" and "1967" following "purposes of this" in the introductory paragraph of Subsection A, deleted "public service" preceding "commission" near the beginning of Subsection A(1), substituted "this purpose" for "such purpose", "plants" for "plant" and "systems" for "system" in the second sentence of Subsection A(2), added present Subsection A(3), renumbered former Subsection A(3) as present Subsection A(4), substituting "which is a public utility is subject to reasonable burdens and entitled to reasonable benefits which apply to public utilities generally, to insure more reasonable public regulation" for "subject to all the burdens and entitled to all the benefits which apply to public utilities generally, to insure more rigid public regulation" in that subsection, deleted "1967" following "This" at the beginning of Subsection B, divided the former provisions of Subsection C into two sentences, substituting "operation of rural electric cooperatives which are public utilities" for "operation of public utilities brought under the regulation of the commission by virtue of this 1967 act" and deleting "and" following "hereafter amended" in the first sentence and substituting "is held to be" for "shall be held to be" and deleting "shall be, and" following "former" and "hereby" following "former is" in the second sentence of Subsection C.

Cooperatives may not be made utilities but excepted from regulations upon others. — Laws 1961, ch. 89 (repealed), insofar as it attempted to place rural electric cooperatives under the Public Utility Act by including them within the definition of "public utility" constituted an arbitrary and unreasonable classification in violation of the equal protection clauses because cooperatives were included in the act though not required to render service to the general public and no provision was made for complete regulation of rates charged by them or securities issued by them, whereas other electric utilities had to render service to the public and their rates and financing were completely supervised and controlled. *Community Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1966-NMSC-053, 76 N.M. 314, 414 P.2d 675, cert. denied, 385 U.S. 933, 87 S. Ct. 292, 17 L. Ed. 2d 213 (1966).

Formerly, rural electric cooperatives were not regulated by public utilities commission (now public regulation commission). *Socorro Elec. Coop. v. Public Serv. Co.*, 1959-NMSC-105, 66 N.M. 343, 348 P.2d 88.

Commission may not order that refund be passed on to consumers. — Public service commission (now public regulation commission) has no express or implied statutory authority to order the flow-through of refunds to electric company from power supplier to consumers. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Where refund was not trust fund for consumers. — Where refund was ordered paid over to power company by the federal power commission without any restrictions, and there was nothing in the order indicating an intention on the part of the commission to create a "trust fund" for the benefit of the ultimate consumers, the refund did not constitute a trust fund belonging to company's customers. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

It was the intent of the legislature that the Public Utility Act be liberally construed. 1969 Op. Att'y Gen. No. 69-81.

Law reviews. — For note, "Conservation, Lifeline Rates and Public Utility Regulatory Commissions," see 19 Nat. Res. J. 411 (1979).

62-3-2.1. Objects and purposes; liberal interpretation.

A. The following are declared to be the objects and purposes of this 1985 act. Experience has proven that the costs to ratepayers of small water utilities with annual revenues of less than five hundred thousand dollars ($500,000) and the public at large in complete government regulation of their rates is greatly disproportionate to the need and benefits of complete rate regulation and interferes with setting of fair, just and reasonable rates to all utilities. A rational basis exists to provide procedures for setting rates of such small water utilities different from and more limited than those for setting rates of other utilities. Without limiting government regulation of rate setting by small water utilities as provided by Section 62-8-7.1 NMSA 1978, the declared policy of the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], as amended, the provision of reasonable and proper utility services at fair, just and reasonable rates, and the general welfare, business and industry of the state may be frustrated.

B. The following are hereby declared to be the objects and purposes of these 1987 amendments to the Public Utility Act. Because small sewer utilities are similar to small water utilities, the costs to ratepayers of small sewer utilities with annual revenues of less than five hundred thousand dollars ($500,000) and the public at large in complete government regulation of their rates is greatly disproportionate to the need and benefits of complete rate regulation and interferes with setting of fair, just and reasonable rates to all utilities. A rational basis exists to provide procedures for setting rates of such small sewer utilities different from and more limited than those for setting rates of other utilities. Without limiting government regulation of rate setting by small sewer utilities as provided by Section 62-8-7.1 NMSA 1978, the declared policy of the Public Utility Act, the provision of reasonable and proper utility services at fair, just and reasonable rates, and the general welfare, business and industry of the state may be frustrated.

C. The following are declared to be the objects and purposes of this 1991 act. Experience has proven that the construction, development and extension of proper plants and facilities cannot be accomplished without unnecessary duplication and economic waste within areas certificated to water and sewer utilities without controls against duplicative intrusions into certificated areas by municipal utilities. A rational basis exists to prohibit intrusion of municipal water or sewer facilities or service into areas in which a public utility furnishes regulated services until that municipality elects to come within the terms of the Public Utility Act, in which event both systems will be brought into parity of treatment with respect to the commission's independent jurisdiction and power to prevent unreasonable interference between competing plants, lines and systems. Without such controls as provided by Section 62-9-1.1 NMSA 1978, the declared policy of the Public Utility Act, the provision of reasonable and proper utility

services at fair, just and reasonable rates and the general welfare, business and industry of the state may be frustrated.

D. The provisions of the 1985 and 1987 acts and of this 1991 act shall be liberally construed to carry out their purposes.

History: Laws 1985, ch. 221, § 1; 1987, ch. 52, § 1; 1991, ch. 143, § 1.

ANNOTATIONS

Compiler's notes. — Sections 62-3-1 to 62-3-5 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 3 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

"This 1985 act", referred to in the first sentence of Subsection A, and "the 1985 . . . acts," referred to in Subsection D, refer to Laws 1985, ch. 221, which is presently compiled as 62-3-2.1, 62-8-7, and 62-8-7.1 NMSA 1978.

The terms "these 1987 amendments," referred to in the first sentence in Subsection B, and "1987 act," referred to in Subsection D, apparently mean Laws 1987, ch. 52, which appears as 62-3-2.1, 62-3-3, 62-8-7.1 and 62-9-2.1 NMSA 1978.

The term, "this 1991 act", referred to in Subsections C and D, refers to Laws 1991, ch. 143, which is presently compiled as 62-3-2.1 and 62-9-1.1 NMSA 1978.

The 1991 amendment, effective April 3, 1991, substituted "62-8-7.1 NMSA 1978" for "62-8-7 NMSA 1978, as amended" near the end of Subsection A and added Subsections C and D.

The 1987 amendment, effective June 19, 1987, added Subsection B and made a minor word change near the beginning of Subsection A.

An exception for small municipalities was not created. — Subsection C of Section 62-3-2.1 NMSA 1978 lacks the explicit language required to create an exception subjecting small municipalities to the Public Utility Act or to public regulation commission jurisdiction, prohibit municipal utilities from serving in areas covered by a public utility's certificate of convenience and necessity, or expand the scope of the Public Utility Act or the public regulation commission's jurisdiction over municipalities beyond the controls identified in Section 62-9-1.1 NMSA 1978. *Moongate Water Co.,*

Inc. v. City of Las Cruces, 2012-NMCA-003, 269 P.3d 1, cert. granted, 2012-NMCERT-001.

62-3-3. Definitions.

Unless otherwise specified, when used in the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978]:

A. "affiliated interest" means a person who directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a public utility. Control includes instances when:

(1) a person is an officer, director, partner, trustee or person of similar status or function;

(2) a person owns directly or indirectly or has a beneficial interest in ten percent or more of voting securities of a person;

(3) a person has a level of ownership of securities other than voting securities that the commission establishes as creating a presumption of control; and

(4) the possession of the power to direct or cause the direction of the management and policies of a person exists in fact, notwithstanding the lack of ownership of ten percent or more of the person's voting securities;

B. "commission" means the public regulation commission;

C. "commissioner" means a member of the commission;

D. "municipality" means a municipal corporation organized under the laws of the state, and H-class counties;

E. "person" means an individual, firm, partnership, company, rural electric cooperative organized under Laws 1937, Chapter 100 or the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978], corporation or lessee, trustee or receiver appointed by any court. "Person" does not mean a class A county as described in Section 4-36-10 NMSA 1978 or a class B county as described in Section 4-36-8 NMSA 1978. "Person" does not mean a municipality as defined in this section unless the municipality has elected to come within the terms of the Public Utility Act as provided in Section 62-6-5 NMSA 1978. In the absence of voluntary election by a municipality to come within the provisions of the Public Utility Act, the municipality shall be expressly excluded from the operation of that act and from the operation of all its provisions, and no such municipality shall for any purpose be considered a public utility;

F. "securities" means stock, stock certificates, bonds, notes, debentures, mortgages or deeds of trust or similar evidences of indebtedness issued, executed or assumed by a utility;

G. "public utility" or "utility" means every person not engaged solely in interstate business and, except as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own, operate, lease or control:

(1) any plant, property or facility for the generation, transmission or distribution, sale or furnishing to or for the public of electricity for light, heat or power or other uses;

(2) any plant, property or facility for the manufacture, storage, distribution, sale or furnishing to or for the public of natural or manufactured gas or mixed or liquefied petroleum gas for light, heat or power or other uses; but "public utility" or "utility" shall not include any plant, property or facility used for or in connection with the business of the manufacture, storage, distribution, sale or furnishing of liquefied petroleum gas in enclosed containers or tank truck for use by others than consumers who receive their supply through any pipeline system operating under municipal authority or franchise and distributing to the public;

(3) any plant, property or facility for the supplying, storage, distribution or furnishing to or for the public of water for manufacturing, municipal, domestic or other uses; provided, however, that nothing contained in this paragraph shall be construed to apply to irrigation systems, the chief or principal business of which is to supply water for the purpose of irrigation;

(4) any plant, property or facility for the production, transmission, conveyance, delivery or furnishing to or for the public of steam for heat or power or other uses;

(5) any plant, property or facility for the supplying and furnishing to or for the public of sanitary sewers for transmission and disposal of sewage produced by manufacturing, municipal, domestic or other uses; provided that "public utility" or "utility" as used in the Public Utility Act does not include any utility owned or operated by a class A county as described in Section 4-36-10 NMSA 1978 either directly or through a corporation owned by or under contract with such a county; or

(6) any plant, property or facility for the sale or furnishing to or for the public of goods or services to reduce the consumption of or demand for electricity or natural gas, and is either a public utility under the definitions found in Paragraph (1) or (2) of this subsection, or is an alternative energy efficiency provider as described in Section 62-17-7 NMSA 1978;

H. "rate" means every rate, tariff, charge or other compensation for utility service rendered or to be rendered by a utility and every rule, regulation, practice, act,

requirement or privilege in any way relating to such rate, tariff, charge or other compensation and any schedule or tariff or part of a schedule or tariff thereof;

I. "renewable energy" means electrical energy generated by means of a low- or zero-emission generation technology that has substantial long-term production potential and may include, without limitation, the following energy sources: solar, wind, hydropower, geothermal, landfill gas, anaerobically digested waste biomass or fuel cells that are not fossil fueled. "Renewable energy" does not include fossil fuel or nuclear energy;

J. "service" or "service regulation" means every rule, regulation, practice, act or requirement relating to the service or facility of a utility;

K. "Class I transaction" means the sale, lease or provision of real property, water rights or other goods or services by an affiliated interest to a public utility with which it is affiliated or by a public utility to its affiliated interest;

L. "Class II transaction" means:

(1) the formation after May 19, 1982 of a corporate subsidiary by a public utility or a public utility holding company by a public utility or its affiliated interest;

(2) the direct acquisition of the voting securities or other direct ownership interests of a person by a public utility if such acquisition would make the utility the owner of ten percent or more of the voting securities or other direct ownership interests of that person;

(3) the agreement by a public utility to purchase securities or other ownership interest of a person other than a nonprofit corporation, contribute additional equity to, acquire additional equity interest in or pay or guarantee any bonds, notes, debentures, deeds of trust or other evidence of indebtedness of any such person; provided, however, that a public utility may honor all agreements entered into by such utility prior to May 19, 1982; or

(4) the divestiture by a public utility of any affiliated interest that is a corporate subsidiary of the public utility;

M. "corporate subsidiary" means any person ten percent or more of whose voting securities or other ownership interests are directly owned by a public utility;

N. "public utility holding company" means an affiliated interest that controls a public utility through the direct or indirect ownership of voting securities of that public utility;

O. "voting securities" means securities that carry the present right to vote for the election of directors or other members of the governing body ultimately responsible for the management of the organization; and

P. "future test period" means a twelve-month period beginning no later than the date a proposed rate change is expected to take effect.

History: 1953 Comp., § 68-3-2, enacted by Laws 1967, ch. 96, § 3; 1980, ch. 85, § 1; 1982, ch. 109, § 7; 1987, ch. 52, § 2; 1993, ch. 282, § 21; 1993, ch. 308, § 3; 1993, ch. 351, § 2; 1996, ch. 83, § 3; 1998, ch. 108, § 45; 2003, ch. 336, § 6; 2005, ch. 339, § 2; 2005, ch. 341, § 12; 2009, ch. 113, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1967, ch. 96, § 3, repealed former 68-3-2, 1953 Comp., relating to definitions for the Public Utility Act, and enacted a new 62-3-3 NMSA 1978.

Cross references. — For Public Utility Act repealing repugnant provisions of Rural Electric Cooperative Act, *see* 62-3-2 C and 62-15-32 NMSA 1978.

For definition of terms "public utility" or "utility", *see* 62-3-3 NMSA 1978.

For the Efficient Use of Energy Act, *see* Chapter 62, Article 17 NMSA 1978 et seq.

Compiler's notes. — Sections 62-3-1 to 62-3-5 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 3 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Laws 1937, Chapter 100, referred to in the first sentence in Subsection E, was repealed in 1939.

The 2009 amendment, effective June 19, 2009, added Subsection P.

The 2005 amendment, effective April 7, 2005, added Subsection G(6) to provide that public utility includes a plant, property or facilities for the sale or furnishing of goods or services to reduce the consumption or demand for utilities and is a public utility or an alternative emergency efficiency provider.

The 2003 amendment, effective June 20, 2003, inserted present Subsection I and renumbered subsequent subsections accordingly.

The 1998 amendment, effective January 1, 1999, deleted "Words and Phrases" in the section heading; substituted "public regulation" for "New Mexico public utility" in

Subsection B; in Subsection C, substituted "commissioner" for "commissioners" near the beginning and deleted "any" preceding "a member of" near the end; substituted "a" for "any" near the beginning of Subsection D; in Subsection E, substituted "an individual, firm, partnership, company" for "individuals, firms, partnerships, companies" near the beginning, substituted "cooperative" for "cooperatives" near the middle of Subsection E, substituted "corporation or lessee, trustee or receiver" for "as amended, corporations and lessees, trustees or receivers" near the middle, and substituted "'Person' does" for "It shall" in two places in Subsection E; near the end of Subsection G, deleted "now does or hereafter"; and made minor stylistic changes throughout the section.

The 1996 amendment, effective March 6, 1996, substituted "utility" for "service" in Subsection B; inserted "class A counties as described in Section 4-36-10 NMSA 1978" in Subsection D; added the proviso at the end of Paragraph (5) in Subsection G; and made stylistic changes throughout the section.

The 1993 amendment, effective June 18, 1993, rewrote Subsection A and made stylistic changes in Subsection M.

The 1987 amendment, effective June 19, 1987, in Subsection G, substituted "stated in Section 62-3-4 and 62-3-4.1 NMSA 1978" for "hereinafter stated" in the opening clause and added Paragraph (5) and made minor language changes throughout the section.

Franchise fees are not rates. — Franchise fees charged by counties pursuant to Section 62-1-3 NMSA 1978 are not rates as defined in Section 62-3-3 NMSA 1978 and do not fall within the jurisdiction of the public regulation commission. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

Franchise fees are not taxes. — Franchise fees charged by counties pursuant to Section 62-1-3 NMSA 1978 are not taxes that the public regulation commission may consider when setting rates. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

Franchise fees are not items included in adjustment clauses. — Franchise fees charged by counties pursuant to Section 62-1-3 NMSA 1978 are not within the jurisdiction of the public regulation commission by analogy to fuel and purchased power adjustment clauses, over which the commission has jurisdiction under Section 62-8-7 NMSA 1978. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

Line item charge for franchise fees. — The public regulation commission did not have jurisdiction to enter an order requiring a public utility to stop including on customer's bills the franchise fee charges paid by the utility to a county for the right to use county right-of-way to deliver utility service to county residents and businesses. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

United States and governmental agencies are not "persons". — The legislature, under this section, did not see fit to include or even mention the United States or governmental agencies as "persons." *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1971-NMSC-035, 82 N.M. 405, 482 P.2d 913, *overruled on another point by De Vargas Sav. & Loan Ass'n v. Campbell*, 1975-NMSC-026, 87 N.M. 469, 535 P.2d 1320.

The words "person or corporation" do not in their ordinary signification mean a sovereign government. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1971-NMSC-035, 82 N.M. 405, 482 P.2d 913, *overruled on another point by De Vargas Sav. & Loan Ass'n v. Campbell*, 1975-NMSC-026, 87 N.M. 469, 535 P.2d 1320.

Public Service Company of New Mexico. — Although considered a "public utility" under this section, the Public Service Company of New Mexico (PNM) is essentially a private corporation, not a public governmental agency, and its works are not to be considered as "public works" projects. *Cnty. of Santa Fe v. Pub. Serv. Co.*, 311 F.3d 1031 (10th Cir. 2002).

Readiness to serve public is principal characteristic of public utility. — The principal determinative characteristic of a public utility is that of service to, or readiness to serve, an indefinite public (or portion of the public as such) which has a legal right to demand and receive its services or commodities. *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646.

In determining a public utility question, the test is whether or not a person holds himself out, expressly or impliedly, as engaged in the business of supplying his product or service to the public, as a class, or to any limited portion of it. *Griffith v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-024, 86 N.M. 113, 520 P.2d 269.

The public or private character of the enterprise does not depend on the number of persons by whom it is used, but on whether or not it is open to the use and service of all members of the public who may require it, to the extent of its capacity. *Griffith v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-024, 86 N.M. 113, 520 P.2d 269; *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646.

Sufficient part to clothe operation with public interest. — The phrase "to the public" means sufficient sales to the public to clothe the operation with a public interest and does not mean willingness to sell to each and every one of the public without discrimination. *Griffith v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-024, 86 N.M. 113, 520 P.2d 269.

Class II transaction not found. — Electric utility's investment in building non-utility facilities for paper company in exchange for the company's promise to reimburse the utility over time through charges for steam and water service was not a purchase of a "security" under Subsection K(3) (now Subsection L(3)), and therefore did not constitute a Class II transaction, so as to require prior commission approval. *Plains Elec.*

Generation & Transmission Coop. v. N.M. Pub. Util. Comm'n, 1998-NMSC-038, 126 N.M. 152, 967 P.2d 827.

Corporation not serving public is not public utility. — Where corporation had not held nor was holding itself as ready, willing and able to provide natural gas service to or for the public or any segment thereof, it could not be considered a public utility. *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646.

Water association in control of developer of subdivision is public utility, as the character of the use is to serve all members of the public who buy lots from the developer, and the extent of the use is that an entire housing development is dependent upon the association for a prime necessity of life. *Griffith v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-024, 86 N.M. 113, 520 P.2d 269.

Formerly, cooperatives did not come within definition of "public utility". *Socorro Elec. Coop. v. Pub. Serv. Co.*, 1959-NMSC-105, 66 N.M. 343, 348 P.2d 88.

Public service (now public regulation) commission was not required to delineate an electric cooperative's service area where part of its system was in an area previously certificated to another utility. *Lea Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1965-NMSC-057, 75 N.M. 191, 402 P.2d 377, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433 (1966).

Cooperatives may not be made utilities but excepted from regulations upon others. — Laws 1961, ch. 89 (repealed), insofar as it attempted to place rural electric cooperatives under the Public Utility Act by including them within the definition of "public utility" constituted an arbitrary and unreasonable classification in violation of the equal protection clauses because cooperatives were included in the act though not required to render service to the general public and no provision was made for complete regulation of rates charged by them or securities issued by them, whereas other electric utilities had to render service to the public and their rates and financing were completely supervised and controlled. *Community Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1966-NMSC-053, 76 N.M. 314, 414 P.2d 675, cert. denied, 385 U.S. 933, 87 S. Ct. 292, 17 L. Ed. 2d 213.

No distinction made between utilities based on form of ownership. — The New Mexico legislature has made no distinction between public utilities operated as individuals, firms, partnerships, companies or corporations. Nowhere in the New Mexico Public Utility Act is the commission given authority, for the purpose of rate-making, to make a distinction between a public utility operated as a corporation from one operated as a sole proprietorship. *Moyston v. N.M. Pub. Serv. Comm'n*, 1966-NMSC-062, 76 N.M. 146, 412 P.2d 840.

Municipality not an "interested electric utility." — The definition of "person" in Subsection E of this section controls the meaning of "interested electric utility" in Section 62-6-25B NMSA 1978 and, thus, a municipality that had not elected to come

within the terms of the Public Utility Act was not authorized to seek wheeling orders from the commission. *Pub. Serv. Co. v. N.M. Pub. Util. Comm'n*, 1999-NMSC-040, 128 N.M. 309, 992 P.2d 860.

Regulation of "optional utility programs." — Commission had jurisdiction to require utility to establish a corporate subsidiary for purposes of instituting gas and electric "optional utility programs," which included surge suppression, maintenance and repair services, information services, and power quality solutions. *PNM Elec. Servs. v. N.M. Pub. Util. Comm'n*, 1998-NMSC-017, 125 N.M. 302, 961 P.2d 147.

Unregulated municipalities must comply with liquefied petroleum gas statutes. — Inasmuch as municipally operated and owned utilities are not subject to regulation by the public service commission (now public regulation commission) (unless they so elect), a village is required to comply with provisions relating to liquefied petroleum gas. 1948 Op. Att'y Gen. No. 48-5156.

Obligation of state agency. — A state agency, like any other user of utility service, has the statutory obligation to pay the rates therefor, including any late charges, under schedules approved by the commission, since late charges fall within the definition of "rate" in this section. 1988 Op. Att'y Gen. No. 88-80.

Extent of undertaking limits obligation to serve. — One who undertakes to serve the public undertakes an obligation which is limited by the extent of his profession, and he cannot be compelled to serve beyond the limits of that profession. Gas utility not required to serve city constructing line to utility's line. 1957 Op. Att'y Gen. No. 57-277.

Corporation may subject itself to regulation by selling electricity for resale to public. — When one utility sells electrical energy to another utility only, and not to the public, it is not subject to the provisions of this section, but notwithstanding the fact that by such operation it does not become a public utility, it subjects itself to regulation by the public service commission (now public regulation commission) when sale of the electricity is for resale to the public, to the extent necessary to determine that the cost to the utility shall be reasonable. 1952 Op. Att'y Gen. No. 52-5618.

Corporation may subject itself to regulation by selling water to municipal utility. — An individual operating a water service and selling at wholesale to a municipally-owned utility would be a public utility to the extent his operation affects the public interest and as such is subject to the jurisdiction of the public service commission (now public regulation commission). 1953 Op. Att'y Gen. No. 53-5715.

Law reviews. — For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M. L. Rev. 287 (1979).

For comment, "Regulation of Electric Utilities and Affiliated Coal Companies - Determining Reasonable Expenses," see 26 Nat. Res. J. 851 (1986).

For 1984-88 survey of New Mexico administrative law, see 19 N.M. L. Rev. 575 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 1, 2, 82.

Irrigation company as a public utility, 8 A.L.R. 268, 15 A.L.R. 1227.

Conclusiveness of charter, as regards character of corporation as a public utility corporation, 119 A.L.R. 1019.

Incidental provision of utility services, by party not in that business, as subject to regulation by state regulatory authority, 85 A.L.R.4th 894.

73B C.J.S. Public Utilities §§ 2, 3, 15.

62-3-4. Limitations and exceptions.

A. The term "public utility" or "utility", when used in the Public Utility Act, shall not include:

(1) any person not otherwise a public utility who furnishes the service or commodity only to that person or that person's employees or tenants, when such service or commodity is not resold to or used by others, or who engages in the retail distribution of natural gas or electricity for vehicular fuel; or

(2) a corporation engaged in the business of operating a railroad and that does not primarily engage in the business of selling the service or commodity but that only incidentally to its railroad business or occasionally furnishes the service or commodity to another under a separate limited or revocable agreement or sells to a utility or municipality for resale, or that sells the service or commodity to another railroad, the state or federal government or a governmental agency, or that sells or gives for a consideration under revocable agreements or permits quantities of water out of any surplus of water supply acquired and held by it primarily for railroad purposes; and such railroad corporation shall not be subject to any of the provisions of the Public Utility Act.

B. The business of any public utility other than of the character defined in Subsection G of Section 62-3-3 NMSA 1978 is not subject to provisions of the Public Utility Act.

History: 1953 Comp., § 68-3-3, enacted by Laws 1967, ch. 96, § 4; 1992, ch. 58, § 9; 1998, ch. 108, § 46; 2019, ch. 196, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 1967, ch. 96, § 4, repealed former 68-3-3, 1953 Comp., relating to limitations on and exceptions from definition of "public utility," and enacted the above section.

Compiler's notes. — Sections 62-3-1 to 62-3-5 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 3 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2019 amendment, effective June 14, 2019, provided that a person who engages in the retail distribution of electricity for vehicular fuel is not a public utility; in Subsection A, Paragraph A(1), after "only to", deleted "himself, his" and added "that person or that person's", and after "natural gas", added "or electricity".

The 1998 amendment, effective January 1, 1999, added new Subsection A, redesignated former Subsection A as Paragraph A(1), and deleted "as amended" following "shall not include:" near the middle of the Subsection; redesignated former Subsection B as Paragraph A(2), and in that Paragraph, deleted "as amended. Nothing contained in that act shall be construed as giving to the commission any powers or jurisdiction over public utilities covered by Section 7 of Article 11 of the constitution of New Mexico" from the end; and added new Subsection B.

The 1992 amendment, effective May 20, 1992, added the subsection designations; added "or who engages in the retail distribution of natural gas for vehicular fuel" at the end of Subsection A; substituted "Subsection G of Section 62-3-3 NMSA 1978" for "Subdivision F of Section 68-3-2 New Mexico Statutes Annotated, 1953 Compilation hereof" in the first sentence of the second paragraph of Subsection B; and made minor stylistic changes throughout the section.

Supplier of water to public is public utility. — In order to preserve the public welfare, any person not engaged solely in interstate business, who operates a facility which supplies water to the public for domestic use, is a public utility unless he supplies water only to himself, his tenants or his employees. *Griffith v. N.M.Pub. Serv. Comm'n*, 1974-NMSC-024, 86 N.M. 113, 520 P.2d 269.

Railroad furnishing water to town is not regulated by commission. — Public service commission (now public regulation commission) lacks jurisdiction in case in which a railroad which has been furnishing water service to an unincorporated town for years proposes to discontinue the same. 1947 Op. Att'y Gen. No. 47-5054.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Incidental provision of utility services, by party not in that business, as subject to regulation by state regulatory authority, 85 A.L.R.4th 894.

62-3-4.1. Certain persons not public utility.

A. Notwithstanding anything in the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] to the contrary, no person not otherwise a public utility shall be deemed to be a public utility subject to the jurisdiction, control or regulation of the commission and the provisions of the Public Utility Act solely because such person owns or controls all or any part of any plant, property or facility described in Paragraph (1) of Subsection G of Section 62-3-3 NMSA 1978:

(1) which is leased or held for lease or sale to any public utility or other lessee; or

(2) the operation and use of which is vested by lease or other contract in a public utility or other lessee; or

(3) for a period of not more than ninety days after termination of any lease or contract described in Paragraph (1) or (2) of this subsection or after such person gains possession of such property following a breach of such lease or contract.

B. The commission may upon application by a public utility issue its order approving the terms of any lease or contract described in Paragraph (1) or (2) of Subsection A of this section for the purpose of qualifying any party thereto for an exemption by the United States securities and exchange commission from the federal Public Utility Holding Company Act of 1935, as amended (Chapter 2C of Title 15 of the United States Code).

C. A public utility leasing all or any part of any plant, property or facility described in Paragraph (1) of Subsection G of Section 62-3-3 NMSA 1978 which is subject to any lease or contract described in this section shall comply with Section 62-9-1 NMSA 1978 with respect to such plant, property or facility.

D. Nothing in this section shall alter or modify the authority of the commission to regulate the rates and services of a person that is a public utility subject to the provisions of the Public Utility Act.

History: Laws 1981, ch. 345, § 1.

ANNOTATIONS

Compiler's notes. — Sections 62-3-1 to 62-3-5 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 3 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003.

Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Incidental provision of utility services, by party not in that business, as subject to regulation by state regulatory authority, 85 A.L.R.4th 894.

62-3-5. Collection of fees by public utilities.

Any public utility that owns or operates a public water supply system upon whom a fee is imposed pursuant to Section 74-1-7 or 74-1-8 NMSA 1978 shall be entitled immediately to collect the fee from its ratepayers, without a request for a change in rates. The utility shall notify the New Mexico public utility commission in writing of the imposition of the fee and, if practicable, shall show the fee as a separate line item on its bill.

History: Laws 1989, ch. 223, § 5; 1993, ch. 282, § 22.

ANNOTATIONS

Compiler's notes. — Sections 62-3-1 to 62-3-5 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 3 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, substituted "New Mexico public utility commission" for "New Mexico public service commission" in the second sentence.

ARTICLE 3A
Electric Utility Industry Restructuring Act of 1999 (Repealed.)

62-3A-1 to 62-3A-23. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 336, § 9, repealed 62-3A-1 through 62-3A-23 NMSA 1978, the Electric Utility Industry Restructuring Act of 1999, as enacted by Laws 1999, ch. 294, §§ 1 to 22 and Laws 2000, ch. 88, § 1, and as amended by Laws 2001, ch. 5, §§ 1 to 10, effective June 20, 2003. For provisions of the former sections, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

ARTICLE 4
Joint Hearings and Orders

62-4-1. Joint hearings and orders.

The commission, in the discharge of its duties under the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], may make joint investigations, hold joint hearings within or without the state and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state, the United States or any New Mexico Indian nation, tribe or pueblo. In the holding of such investigations or hearings or in the making of such order, the commission may function under agreements or compacts between states to regulate interstate commerce. The commission, in the discharge of its duties under the Public Utility Act, may also negotiate and enter into agreements or compacts with agencies of other states, pursuant to any consent of congress, for cooperative efforts in certificating the construction, operation and maintenance of major utility facilities in accord with the purposes of the Public Utility Act and for the enforcement of the respective state laws regarding same.

History: 1953 Comp., § 68-8-2.1, enacted by Laws 1977, ch. 191, § 1; 1993, ch. 282, § 44; 1998, ch. 108, § 47.

ANNOTATIONS

Compiler's notes. — Section 62-4-1 of the Public Utility Act is still effective as the repeal of Chapter 62, Article 4 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1998 amendment, effective January 1, 1999, deleted "public utility" following "The" at the beginning of the section; substituted "may" for "is authorized to" near the beginning of the section; substituted "or any New Mexico Indian nation, tribe or pueblo" for "whether" near the middle of the section; substituted "may also" for "is further authorized to" near the end of the section.

The 1993 amendment, effective June 18, 1993, substituted "public utility commission" for "public service commission" in the first sentence.

ARTICLE 5
New Mexico Public Utility Commission (Repealed.)

62-5-1 to 62-5-11. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 62-5-1 to 62-5-11 NMSA 1978, as enacted by Laws 1941, ch. 84, §§ 7, 11, and 13, relating to the operation of the public utility commission, effective January 1, 1999. For provisions of former sections, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

ARTICLE 6
Powers and Duties of Commission

62-6-1 to 62-6-3. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 62-6-1 to 62-6-3 NMSA 1978, as enacted by Laws 1941, ch. 84, §§ 14-16, relating to adoption of rules, reports to governor, and commissioners and employees rendering service to public utilities, effective January 1, 1999. For provisions of former sections, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

62-6-4. Supervision and regulation of utilities.

A. The commission shall have general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations and in respect to its securities, all in accordance with the provisions and subject to the reservations of the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], and to do all things necessary and convenient in the exercise of its power and jurisdiction. Nothing in this section, however, shall be deemed to confer upon the commission power or jurisdiction to regulate or supervise the rates or service of any utility owned and operated by any municipal corporation either directly or through a municipally owned corporation or owned and operated by any H class county, by a class B county as defined in Section 4-36-8 NMSA 1978 or by a class A county as described by Section 4-36-10 NMSA 1978 either directly or through a corporation owned by or under contract with an H class county, by a class B county as defined in Section 4-36-8 NMSA 1978 or by a class A county as described by Section 4-36-10 NMSA 1978 or the rates, service, securities or class I or class II transactions of a

generation and transmission cooperative. No inspection or supervision fees shall be paid by generation and transmission cooperatives, or by such municipalities or municipally owned corporations, a class B county as defined in Section 4-36-8 NMSA 1978, a class A county as described by Section 4-36-10 NMSA 1978 or H class counties or such corporation owned by or under contract with a class B county as defined in Section 4-36-8 NMSA 1978, a class A county as described by Section 4-36-10 NMSA 1978 or an H class county with respect to operations conducted in a class B county as defined in Section 4-36-8 NMSA 1978, in a class A county as described by Section 4-36-10 NMSA 1978 or in H class counties.

B. The sale, furnishing or delivery of gas, water or electricity by any person to a utility for resale to or for the public shall be subject to regulation by the commission but only to the extent necessary to enable the commission to determine that the cost to the utility of the gas, water or electricity at the place where the major distribution to the public begins is reasonable and that the methods of delivery of the gas, water or electricity are adequate; provided, however, that nothing in this subsection shall be construed to permit regulation by the commission with respect to a generation and transmission cooperative, except location control pursuant to Section 62-9-3 NMSA 1978 and limited rate regulation to the extent provided in Subsection D of this section, or of production or sale price at the wellhead of gas or petroleum.

C. The sale, furnishing or delivery of coal, uranium or other fuels by any affiliated interest to a utility for the generation of electricity for the public shall be subject to regulation by the commission but only to the extent necessary to enable the commission to determine that the cost to the utility of the coal, uranium or other fuels at the point of sale is reasonable and that the methods of delivery of the electricity are adequate; provided, however, that nothing in this subsection shall be construed to permit regulation by the commission of production or sale price at the wellhead of gas or petroleum. Nothing in this section shall be construed to permit regulation by the commission of production or sale price at the point of production of coal, uranium or other fuels.

D. New Mexico rates proposed by a generation and transmission cooperative shall be filed with the commission in the form of an advice notice, a copy of which shall be simultaneously served on all member utilities. Any member utility may file a protest of the proposed rates no later than twenty days after the generation and transmission cooperative files the advice notice. If three or more New Mexico member utilities file protests and the commission determines there is just cause in at least three of the protests for reviewing the proposed rates, the commission shall suspend the rates, conduct a hearing concerning reasonableness of the proposed rates and establish reasonable rates. Each protest must contain a clear and concise statement of the specific grounds upon which the protestant believes the proposed rates are unreasonable or otherwise unlawful; a brief description of the protestant's efforts to resolve its objections directly with the generation and transmission cooperative; a clear and concise statement of the relief the protestant seeks from the commission; and a formal resolution of the board of trustees of the protesting member utility authorizing the

filing of the protest. In order to determine whether just cause may exist for review, the commission shall consider whether each protestant has exhausted remedies with the generation and transmission cooperative or whether the generation and transmission cooperative has unreasonably rejected the protestant's objections to the proposed rates. A member utility shall present its objections to the generation and transmission cooperative in writing and allow a reasonable period for the generation and transmission cooperative to attempt resolution of, or otherwise respond to, those objections. A period of seven days after receipt of written objections will be deemed reasonable for the generation and transmission cooperative to provide a written response to the member utility, but a written response is not required if such time period extends beyond twenty days after the date on which the generation and transmission cooperative filed the advice notice. The generation and transmission cooperative and its members are expected to make a good faith effort to resolve the member utility's objections to the proposed rates during that period of time.

E. As used in this section, "generation and transmission cooperative" means a person with generation or transmission facilities either organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978] or organized in another state and providing sales of electric power to member cooperatives in this state.

History: Laws 1941, ch. 84, § 17; 1941 Comp., § 72-504; 1953 Comp., § 68-5-4; Laws 1963, ch. 55, § 1; 1977, ch. 73, § 1; 1980, ch. 85, § 2; 1993, ch. 308, § 4; 1996, ch. 83, § 4; 2000, ch. 85, § 1; 2003, ch. 277, § 1.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For regulation of foreign municipal corporations distributing electricity in state, *see* 62-1-6 NMSA 1978.

For option of municipal corporations and class H counties to be regulated, *see* 62-3-3E and 62-6-5 NMSA 1978.

For service regulations, *see* 62-6-19 NMSA 1978.

For meter regulations, *see* 62-6-20 to 62-6-22 NMSA 1978.

For safety regulations, *see* 62-6-24 NMSA 1978.

For municipal utilities generally, *see* 3-23-1 to 3-23-10, 3-24-1 to 3-24-10, 3-25-1 to 3-25-6, 3-26-1 to 3-26-3, 3-27-1 to 3-27-9, and 3-28-1 to 3-28-20 NMSA 1978.

For approval of water and sanitation district rates, *see* 73-21-16 L NMSA 1978.

The 2003 amendment, effective April 8, 2003, deleted "as defined in the Electric Utility Industry Restructuring Act of 1999" following "and transmission cooperative" in Subsections A and B and added Subsection E.

The 2000 amendment, effective March 7, 2000, in Subsection A, added "or the rates, service, securities or class I or class II transactions of a generation and transmission cooperative as defined in the Electric Industry Restructuring Act of 1999" at the end of the second sentence, inserted "generation and transmission cooperatives, or by" near the beginning of the third sentence; in Subsection B, inserted the phrase beginning "with respect to a generation" and ending "to the extent provided in Subsection D of this section, or" and deleted "except regulation of abandonment pursuant to Section 62-7-8 NMSA 1978" from the end, as well as from Subsection C following "gas or petroleum"; and added Subsection D.

The 1996 amendment, effective March 6, 1996, in Subsection A, inserted "a class A county as described by Section 4-36-10 NMSA 1978", and made stylistic changes.

The 1993 amendment, effective April 8, 1993, in Subsection A, substituted "reservations" for "reservation" in the first sentence, divided the former second sentence into the present second and third sentences, and inserted references to a class B county as defined in Section 4-36-8 NMSA 1978 in two places in the second sentence and in three places in the third sentence; and in Subsection B and the first sentence of Subsection C, made stylistic changes.

Express jurisdiction over rates is given to commission. — This section vests in the commission express jurisdiction, among other things, to regulate and supervise every public utility as respects its rates. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Including jurisdiction over increase in contract rate. — Where the commission had entered an order authorizing a public utility to enter into a contract and to continue to charge the gas rate therein specified until further notice and on the ex parte petition of the utility subsequently entered an interlocutory order making a rate increase to be effective until the commission could hold a hearing to determine and set a new and proper rate, the commission was moving strictly in conformity with the act creating it to determine one of the major questions submitted to its jurisdiction - a question of rates. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Sanitary projects association not a public utility. — A sanitary projects association (*see* Article 29 of Chapter 3 NMSA 1978) was not transformed into a public utility by selling water to a limited number of nonmember water haulers and was not subject to the public service commission's (now public regulation commission's) regulatory jurisdiction. *El Vadito De Los Cerrillos Water Ass'n v. N.M. Pub. Serv. Comm'n*, 1993-NMSC-041, 115 N.M. 784, 858 P.2d 1263.

Commission is vested with considerable discretion in determining whether a rate to be received and charged is just and reasonable. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

Commission does not have exclusive jurisdiction over rate disputes. — Neither N.M. Const., art. XI, § 7 (now repealed) nor the Telephone and Telegraph Company Certification Act grants the state corporation commission (now public regulation commission) general power and exclusive jurisdiction over disputes involving rates charged by a telephone company. *First Cent. Serv. Corp. v. Mountain Bell Tel.*, 1981-NMCA-012, 95 N.M. 509, 623 P.2d 1023 (decided prior to 1996 amendment to N.M. Const., art. XI, § 2.

Scope of authority. — Commission staff had the capacity to conduct settlement negotiations to determine the rate treatment of a utility's ownership interest in a nuclear generating station. *Attorney Gen. v. N.M. Pub. Serv. Comm'n*, 1991-NMSC-028, 111 N.M. 636, 808 P.2d 606.

Regulation of "optional utility programs." — Commission had jurisdiction to require utility to establish a corporate subsidiary for purposes of instituting gas and electric "optional utility programs," which included surge suppression, maintenance and repair services, information services, and power quality solutions. *PNM Elec. Servs. v. N.M. Pub. Util. Comm'n*, 1998-NMSC-017, 125 N.M. 302, 961 P.2d 147.

Complete remedy for testing rates provided. — The Public Utility Act envelops the commission with an aura of broad power and jurisdiction to determine just and reasonable rates and sets up a complete remedy within the framework of the act for testing their propriety and reasonableness. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Reasonable variations in rates permissible. — Subsection D of this section explicitly authorizes the New Mexico public regulation commission to conduct a hearing concerning the reasonableness of proposed rates and establish reasonable rates; rates incorporating unreasonable differences or discriminations would be unreasonable under Subsection D; there is nothing in the statute, however, indicating that the legislature intended to impose a flat ban on reasonable variations in utility rates of service between localities due to differing costs of service to different areas. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013.

Where generation and transmission cooperative filed with the New Mexico public regulation commission new advice notices setting interim utility rates, during the pendency of a suspended new utility rate design, that set one rate for protesting members of the cooperative and a different rate for non-protesting members of the cooperative, the commission's decision to reject the advice notices, claiming that they were discriminatory as a matter of law, was contrary to law; this section does not prohibit reasonable variations in utility rates, and the New Mexico supreme court held that the rates that the generation and transmission cooperative prescribe were not unreasonably discriminatory and there was no evidence otherwise of unreasonable discrimination. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013.

Authority over generation and transmission cooperatives. — Subsection D of this section is the only Public Utility Act's source of the New Mexico public regulation commission's authority over the utility rates of a generation and transmission cooperative. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013.

Where generation and transmission cooperative filed with the New Mexico public regulation commission new advice notices setting interim utility rates, during the pendency of a suspended new utility rate design, that set one rate for protesting members of the cooperative and a different rate for non-protesting members of the cooperative, the commission's reliance on 62-8-6 NMSA 1978 to reject the advice notices, claiming that they were discriminatory as a matter of law, was contrary to law; 62-8-6 NMSA 1978 cannot be the source of the commission's authority to disapprove the rates of a generation and transmission cooperative when the language of 62-8-6 NMSA 1978 expressly applies only to public utilities, and when Subsection D of this section is the only Public Utility Act's source of the commission's authority over the utility rates of generation and transmission cooperatives. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013.

A hearing concerning reasonableness is mandatory following a determination of "just cause". — When the New Mexico public regulation commission determines just cause in at least three protests of any generation and transmission cooperative advice notice, Subsection D of this section requires a commission hearing on the reasonableness of the protested rates, without distinguishing between interim and permanent rates. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013.

Where generation and transmission cooperative filed with the New Mexico public regulation commission new advice notices setting interim utility rates, during the pendency of a suspended new utility rate design, that set one rate for protesting members of the cooperative and a different rate for non-protesting members of the cooperative, the commission's decision to reject the advice notices without a hearing on reasonableness, claiming that the interim rate design was identical to the suspended rate design, was contrary to law; following a determination of just cause in at least three

protests of any generation and transmission cooperative advice notice, Subsection D of this section requires a commission hearing on the reasonableness of the protested rates, without distinguishing between interim and permanent rates. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013.

Public Regulation Commission Rule 27 does not apply to generation and transmission cooperatives. — Rule 27, the New Mexico public regulation commission's regulation establishing that a utility has the burden of supporting its interim rate relief request with evidence, is a form of relief from the rate-making powers the commission exercises over public utilities and not over generation and transmission cooperatives. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013.

Where generation and transmission cooperative filed with the New Mexico public regulation commission new advice notices setting interim utility rates, during the pendency of a suspended new utility rate design, that set one rate for protesting members of the cooperative and a different rate for non-protesting members of the cooperative, the commission's decision to reject the advice notices without a hearing, claiming the advice notices lacked the evidentiary support required by Rule 27, which establishes that a utility has the burden of supporting its interim rate relief request with evidence, was contrary to law; interim rate relief is a concept unique to public utilities because the only way a public utility can change its rates is by commission approval; a generation and transmission cooperative does not need to seek the commission's approval for interim rates because a generation and transmission cooperative can agree to a new rate and file that new rate pursuant to Subsection D of this section without requesting interim rate relief under Rule 27, and Subsection D does not require a generation and transmission cooperative to carry any burden of proof or pleading in order to set its rates. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013.

Requiring exhaustion of administrative remedies is constitutional. — The requirement of the Public Utility Act that a person first exhaust his administrative remedy before resorting to the courts does not violate N.M. Const., art. VI, § 13, granting general jurisdiction to the district courts except as elsewhere limited in such constitution. *Smith v. Southern Union Gas Co.*, 1954-NMSC-033, 58 N.M. 197, 269 P.2d 745.

Public service commission's (now public regulation commission's) order unconstitutional. — Orders of the public service commission (now public regulation commission) that effectively deregulated the retail side of the electric power industry in New Mexico in the absence of a statutory mandate from the legislature exceeded the commission's authority and violated the separation of powers doctrine. *State ex rel. Sandel v. N.M. Pub. Util. Comm'n*, 1999-NMSC-019, 127 N.M. 272, 980 P.2d 55.

All utilities not municipally owned are subject to commission's jurisdiction. — Under the Public Utility Act, the public regulation commission has no jurisdiction over public utilities that are owned and operated by a municipal corporation, unless they

agree otherwise. *City of Sunland Park v. N.M. Pub. Regulation Comm'n*, 2004-NMCA-024, 135 N.M. 143, 85 P.3d 267, cert. denied, 2004-NMCERT-002, 135 N.M. 169, 86 P.3d 47.

Power of commission does not extend to acts of utility not affecting its public duties; its jurisdiction is limited to matters or controversies wherein the rights of a utility and the public are involved. Its duties begin and end with conservation of the public interest, and are not concerned with individual rights of private litigants, and, ordinarily, it has no power to adjudicate purely private matters between a utility and an individual, or between two utilities. *Southwestern Pub. Serv. Co. v. Artesia Alfalfa Growers' Ass'n*, 1960-NMSC-052, 67 N.M. 108, 353 P.2d 62.

Jurisdiction of condemnation proceedings. – Because the 2000 amendment to Subsection A of this section exempted generation and transmission cooperatives from the regulatory jurisdiction of the public regulation commission, the commission lacked jurisdiction to consider an application under Section 42A-1-9 NMSA 1978 by a generation and transmission cooperative to enter and survey land for condemnation suitability studies. *Tri-State Generation & Transmission Ass'n. v. King*, 2003-NMSC-029, 134 N.M. 467, 78 P.3d 1226.

No power to alter common-law rule regarding allocation of relocation costs. – Because the legislature has not empowered the public regulation commission to alter the common-law rule permitting local governments to require utilities to bear the costs of system relocation required by public safety, the commission could not prohibit a city from requiring the Public Service Company of New Mexico to bear the costs of relocation required by ordinance where the commission did not find the ordinance to be unreasonable. *City of Albuquerque v. N.M. Pub. Regulation Comm'n*, 2003-NMSC-028, 134 N.M. 472, 79 P.3d 297.

Construction and enforcement of private contracts are for courts, not commission. — The commission, under the broad powers given it by the legislature, has the right to pass upon the question of whether or not a public utility may enter into a given contract, because of the effect such contract may have upon the power of the utility to carry out its purposes, but when a contract is once entered into, its construction and interpretation, and the rights growing out of the same, including the right to terminate, are to be determined by the courts. Power to pass on validity of a private contract or to enforce its provision is entrusted exclusively to the courts. *Southwestern Pub. Serv. Co. v. Artesia Alfalfa Growers' Ass'n*, 1960-NMSC-052, 67 N.M. 108, 353 P.2d 62.

Lawsuits involving utility with private parties. — The power in Subsection A of this section to "regulate and supervise" does not preempt lawsuits involving contracts a utility enters into with private parties. *Summit Prop., Inc. v. Public Serv. Co. of N.M.*, 2005-NMCA-090, 138 N.M. 208, 118 P.3d 716, cert. denied, 2005-NMCERT-007, 138 N.M. 145, 117 P.3d 951.

Connection fees. — Where there is nothing to indicate that the commission approved of the specific amount to be rebated in the form of connection fees, without approval by the commission, the connection fees cannot be categorized as "filed rates". *Summit Prop., Inc. v. Public Serv. Co. of N.M.*, 2005-NMCA-090, 138 N.M. 208, 118 P.3d 716, cert. denied, 2005-NMCERT-007, 138 N.M. 145, 117 P.3d 951.

Contract between utility and consortium of municipalities excluded. — Commission acted within its jurisdiction in excluding from jurisdictional rates a contract between a utility and a consortium of municipalities for the purchase of electricity, where exclusion of the contract in no way affected the municipalities' contract; it only affected the utility's ability to recover the cost of the contract from New Mexico consumers. *Public Serv. Co. v. N.M. Public Serv. Comm'n*, 1991-NMSC-018, 111 N.M. 622, 808 P.2d 592.

Rate increases to compensate predecessor utility for expenses. — The public service commission (now public regulation commission) did not have jurisdiction over rate increases requested by a natural gas distribution company to compensate the company's predecessor, which was not currently a public utility, for expenses incurred by the latter in fulfilling its function as a public utility. *Southern Union Gas Co. v. N.M. Pub. Util. Comm'n*, 1997-NMSC-056, 124 N.M. 176, 947 P.2d 133.

Commission has the general and exclusive power to regulate a public utility's rates. — Where PNM appealed the New Mexico public regulation commission's (commission) denial of recovery in its rate base for the repurchase of 64.1 MW of capacity and certain lease renewals at Palo Verde nuclear generating station (Palo Verde), and where the commission had previously authorized PNM to exercise its options to either renew the leases or repurchase the capacity in accordance with the terms of the leases, PNM was required to demonstrate the prudence of its decisions at Palo Verde for ratemaking purposes because the commission has the general and exclusive power to regulate a public utility's rates regardless of prior authorizations. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Where PNM appealed the New Mexico public regulation commission's (commission) denial of recovery in its rate base for the repurchase of 64.1 MW of capacity and certain lease renewals at Palo Verde nuclear generating station (Palo Verde), sufficient evidence supported the commission's finding that PNM's decisions were imprudent on the basis that PNM had failed to demonstrate that it considered alternative courses of action where the evidence established that PNM's latest integrated resource plan did not test extension of the leases and purchase of the capacity at Palo Verde against a wide range of futures/scenarios and input assumptions. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Where PNM appealed the New Mexico public regulation commission's (commission) decision to deny it recovery for the costs of converting certain San Juan generating station units to a balanced draft system, which is designed to reduce fugitive emissions, on the grounds that PNM had failed to demonstrate that these costs were prudently

incurred, the commission was within its authority in denying recovery, because the commission's finding that balanced draft was included in the permits for San Juan at PNM's request and not because it was required by the applicable environmental regulation was a finding specifically concerning the reasonableness of costs PNM was seeking to include in its rate base and was squarely within the authority of the commission to regulate the rates of public utilities and the obligation of the commission to ensure that those rates are just and reasonable. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Where the New Mexico public regulation commission included in PNM's rate base a $137.8 million prepaid pension asset (PPA), which is the amount by which investor contributions to a pension trust and earnings on those contributions exceed expenses, the commission did not err in allowing PNM to recover $137.8 million for its PPA because there was substantial evidence to support the commission's determination that the PPA was investor, rather than ratepayer, funded and the commission's decision was in accordance with law. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Denial of due process. — Where PNM appealed the New Mexico public regulation commission's (commission) denial of recovery in its rate base for the repurchase of 64.1 MW of capacity and certain lease renewals at Palo Verde nuclear generating station (Palo Verde), and where the commission found that PNM's actions in renewing and reacquiring the leases exposed ratepayers to costs associated with nuclear decommissioning responsibilities that likely would not have been incurred had an alternative resource other than nuclear been selected and denied recovery for all future nuclear decommissioning costs, the commission denied PNM's right to due process of law, because PNM was not given sufficient notice of a potential permanent disallowance of all recovery for its future contributions to the nuclear decommissioning trusts and was not afforded an opportunity to be heard on the issue.. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

If wellhead transactions are not involved. — Subsection B makes it abundantly clear that the commission can disallow, for rate-making purposes, any portion of a price paid by a utility which the commission finds to be unreasonable unless wellhead transactions are involved. *Maestas v. N.M. Pub. Serv. Comm'n*, 1973-NMSC-096, 85 N.M. 571, 514 P.2d 847.

Commission may not order that refund be passed on to consumers. — Commission has no express or implied statutory authority to order the flow-through of refunds to electric company from power supplier to consumers. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Where refund is not trust fund for consumers. — Where refund was ordered paid over to power company by the federal power commission without any restrictions, and there was nothing in the order indicating an intention on the part of the commission to create a "trust fund" for the benefit of the ultimate consumers, the refund did not

constitute a trust fund belonging to company's customers. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Commission's duty under Subsection C. — Commission is only required to find the ultimate fact, that being the reasonableness of the cost of fuel to a utility under Subsection C, and is not required to give reasons for its decision or to make a finding that is not an ultimate finding, such as the arms-length nature of transaction between utility and affiliate from which it purchased the fuel. *Attorney Gen. v. N.M. Pub. Serv. Comm'n*, 1984-NMSC-081, 101 N.M. 549, 685 P.2d 957.

Exemption from state antitrust law. — Arrangements between utilities approved and regulated by commission acting under statutory authority are exempt from state antitrust law. *Gonzales v. Public Serv. Comm'n*, 1985-NMSC-038, 102 N.M. 529, 697 P.2d 948.

Supervision of transactions with affiliates and nonaffiliates distinguished. — Normal burden to be met in making a prima facie case regarding costs incurred in transactions with nonaffiliates is a demonstration that the costs were, in fact, incurred; however, the normal burden regarding costs incurred in transactions with affiliates is heavier, requiring a showing of the reasonableness of the costs. *Attorney Gen. v. N.M. Pub. Serv. Comm'n*, 1984-NMSC-081, 101 N.M. 549, 685 P.2d 957.

Commission's general jurisdiction includes safety regulations and inspections. — The general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations includes the power to make safety regulations and enforce them through inspections. 1972 Op. Att'y Gen. No. 72-35.

General jurisdiction does not cover water and sanitation districts. — The legislature did not intend to place water and sanitation districts under the general jurisdiction of the commission. 1971 Op. Att'y Gen. No. 71-56.

Approving water and sanitation district rates. — Water and sanitation districts have not been declared to be subject to the jurisdiction of the commission except in the limited area of approving the district board's rates, tolls and charges. 1971 Op. Att'y Gen. No. 71-56.

It is the commission's duty to protect not only the utility but also its patrons. 1969 Op. Att'y Gen. No. 69-81.

Rules and regulations have force of law. — The rules and regulations of the commission duly adopted under this section and Section 62-6-24 NMSA 1978 have the force and effect of law which a utility must obey. 1969 Op. Att'y Gen. No. 69-81.

Compliance with rules excuses discontinuance of service under hazardous conditions. — Compliance with rules of the commission permitting a public utility to immediately discontinue service in the event of a condition determined by the utility to be hazardous would be a defense to a criminal action upon a refusal to render electric

service, but the burden would be upon the utility to produce some evidence that the condition was actually hazardous if the criminal action was brought against it, and to prove the existence of the rule itself. 1969 Op. Att'y Gen. No. 69-81.

All utilities not municipally owned are subject to commission's jurisdiction. — The commission is given authority by virtue of this section to regulate and supervise every private utility in respect to its rates and service regulations. This same statute specifically withholds from the commission any jurisdiction to regulate or supervise the rates or service of any utility owned and operated by a municipal corporation either directly or through a municipally owned corporation unless said municipality shall exercise its option to come within the provisions of the Public Utility Act as provided in Section 62-6-5 NMSA 1978. 1957 Op. Att'y Gen. No. 57-101.

The commission is not empowered to regulate or supervise the service and rates set by municipally owned utilities either in or outside the corporate limits. 1943 Op. Att'y Gen. No. 43-4395.

Commission's jurisdiction exempts utilities from liquefied petroleum gas statutes. — A public utility is exempt from the provisions of the law applicable to liquefied petroleum gases (Section 70-5-1 NMSA 1978 et seq.). The law places the general and exclusive power and jurisdiction to regulate and supervise every public utility in the commission. 1962 Op. Att'y Gen. No. 62-07.

Commission may delegate some of its authority over liquefied petroleum gas utilities. — The commission is authorized by this section and by the common law to delegate its authority to inspect and test liquefied petroleum gas utilities to the liquefied petroleum gas commission (now construction industries commission). Only the public service commission (now public regulation commission) can promulgate safety regulations, however, and it must make the final order regarding any violations of regulations. 1972 Op. Att'y Gen. No. 72-35.

Unregulated village must comply with liquefied petroleum gas statutes. — Inasmuch as municipally operated and owned utilities are not subject to regulation by the commission (unless there has been a local option election), a village is required to comply with provisions relating to liquefied petroleum gas. 1948 Op. Att'y Gen. No. 48-5156.

Commission may disallow unreasonable gas prices in fixing rates. — This section gives the commission some authority to review the prices of certain intrastate sales of natural gas to a utility. However, the nature of this grant of authority is the power only to determine whether the sale prices set by the parties are unreasonable (i.e., outside of a range of acceptable prices), in which case they should be disallowed for rate-making purposes, as expenses of the utility. This authority of the commission to determine the reasonableness of prices is limited to sales other than (i.e., after) the sale from the wellhead. 1977 Op. Att'y Gen. No. 77-01.

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Res. J. 599 (1967).

For note, "Conservation, Lifeline Rates and Public Utility Regulatory Commissions," see 19 Nat. Res. J. 411 (1979).

For comment, "Regulation of Electric Utilities and Affiliated Coal Companies - Determining Reasonable Expenses," see 26 Nat. Res. J. 851 (1986).

For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M. L. Rev. 184 (1973).

For article, "State Regulation in a Deregulated Environment: A State-Level Regulator's Lament," see 27 Nat. Res. J. 799 (1988).

For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M. L. Rev. 287 (1979).

For 1984-88 survey of New Mexico administrative law, see 19 N.M. L. Rev. 575 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 9 to 15, 240.

Power of public service commission to increase franchise rates, 3 A.L.R. 730, 9 A.L.R. 1165, 28 A.L.R. 587, 29 A.L.R. 356.

State regulation of rates to consumers of gas or electricity transported across state lines for light or power purposes, 7 A.L.R. 1094.

Power of state to change contract rates, 9 A.L.R. 1423.

Patron's right to question reasonableness of public utility rate authorized by legislature, 12 A.L.R. 404.

Right of public service corporation to change rate while another rate is undetermined, 16 A.L.R. 1219.

Termination of federal control as restoring rates fixed by public service commission, 19 A.L.R. 684, 52 A.L.R. 296.

Valuations for rate making as affected by advance in price conditions due to war, 20 A.L.R. 555.

Right to fix new rate for public utility where court sets aside rate fixed by commission as confiscatory, 57 A.L.R. 146.

Power of state or municipality to fix minimum public utility rates, 68 A.L.R. 1002.

Power of state or public service commission to regulate rates of municipally owned or operated public utility, 76 A.L.R. 851, 127 A.L.R. 94.

Profit factor in determining rates for municipally owned or operated public utility, 90 A.L.R. 700.

Allowance for depletion or amortization in respect of natural resources in fixing rates, 91 A.L.R. 1413.

Prohibition as means of controlling action of commission as to rates, 115 A.L.R. 19, 159 A.L.R. 627.

Adequacy, as regards right to injunction, of other remedy for review of order fixing public utility rates, 8 A.L.R.2d 839.

Right of customers of public utility with respect to fund representing a refund from another supplying utility upon a reduction of latter's rates, 18 A.L.R.2d 1343.

Public utility's right to recover cost of nuclear power plants abandoned before completion, 83 A.L.R.4th 183.

Incidental provision of utility services, by party not in that business, as subject to regulation by state regulatory authority, 85 A.L.R.4th 894.

Public service commission's implied authority to order refund of public utility revenues, 41 A.L.R.5th 783.

73B C.J.S. Public Utilities § 68.

62-6-4.1. Contract carriage.

A. The intent and purpose of this section is to encourage lower costs of natural gas for New Mexico consumers by providing competition in natural gas markets through contract carriage. Lower fuel costs are an integral part of New Mexico's economic development efforts because they preserve existing jobs, facilitate expansion of the state's businesses and provide incentives for new industry to locate in New Mexico.

B. The commission shall, by rule or order, authorize and require the nondiscriminatory and nonpreferential transportation of natural gas by any person subject to the jurisdiction of the commission for a seller or purchaser of natural gas to the extent of available capacity and subject to Subsections C and D of this section.

C. The commission may, in its discretion, impose such terms and conditions on the transportation of natural gas as may be necessary to safeguard deliverability and

operational efficiency and to prevent undue hardship and anticompetitive conduct by a public utility.

D. The rates and charges for the transportation of natural gas under this section shall be just, reasonable, nondiscriminatory and subject to approval by the commission.

E. For purposes of this section, "transportation" means exchange, backhaul, displacement or any other means of transporting and includes gathering.

F. A public utility shall be prohibited from the marketing and brokering of natural gas for delivery within New Mexico under this section. This prohibition shall not exclude a public utility from transporting natural gas for an affiliated corporation. Any contract to transport natural gas for an affiliate shall be an arms-length agreement containing no terms that are unavailable to other-end users, gas brokers or marketers.

G. The commission, upon a finding that a public utility is in violation of this section, may impose upon the utility a civil penalty not to exceed an amount three times the damages established by the complainant in the commission proceeding and issue such orders, including but not limited to a cease and desist order, to assure the nondiscriminatory and nonpreferential transportation of natural gas.

History: Laws 1985, ch. 8, § 1; 1987, ch. 93, § 1; 1993, ch. 282, § 29.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, made a stylistic change in Subsection F, and substituted "The commission" for "The public service commission" at the beginning of Subsection G.

The 1987 amendment, effective June 22, 1987, inserted present Subsection A and relettered the former subsections; in Subsection B, inserted "and nonpreferential" following "and require the nondiscriminatory" and substituted "Subsections C and D" for "Subsections B and C"; in Subsection C, added "and anticompetitive conduct by a public utility" at the end; in Subsection D, inserted "nondiscriminatory" following "shall be just, reasonable"; and added Subsections F and G.

Law reviews. — For article, "Regulatory Reform of the U.S. Natural Gas Industry: A Summing Up," see 27 Nat. Res. J. 841 (1988).

62-6-4.2. Transition cost recovery.

A. Notwithstanding repeal of the Electric Utility Industry Restructuring Act of 1999, unless otherwise waived, a public utility shall be entitled to an opportunity to recover its transition costs. Utilities may retain these transition costs as a regulatory asset on their books pending recovery, which shall be completed by January 1, 2010.

B. For purposes of this section, "transition costs" means the prudent, reasonable and unmitigable costs other than stranded costs, not recoverable elsewhere under either federally approved rates or rates approved by the commission, that a public utility would not have incurred but for its compliance with the requirements of the Electric Utility Industry Restructuring Act of 1999 and rules promulgated pursuant to that act relating to the transition to open access, and the prudent cost of severance, early and enhanced retirement benefits, retraining, placement services, unemployment benefits and health care coverage to public utility nonmanagerial employees who are laid off on or before January 1, 2003, that are not otherwise recovered as a stranded salary and benefits cost. Transition costs shall not include costs that the public utility would have incurred notwithstanding the Electric Utility Industry Restructuring Act of 1999.

History: Laws 2003, ch. 336, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 336 contained no effective date provision but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

Compiler's notes. — Electric Utility Industry Restructuring Act of 1999, Laws 1999, ch. 294, was codified as Chapter 62, Article 3A NMSA 1978 before being repealed by Laws 2003, ch. 336, § 9, effective June 20, 2003.

62-6-4.3. Public utilities; generating plant investment, construction, acquisition and operation.

A. A public utility may invest in, construct, acquire or operate a generating plant that is not intended to provide retail electric service to New Mexico customers, the cost of which is not included in retail rates and which business activities shall not be subject to regulation by the commission pursuant to the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], except as provided by Section 62-9-3 NMSA 1978. This section shall not diminish a public utility's obligation, by the prudent acquisition of resources, to serve its retail load at a cost of service no higher than the average book cost plus fuel, other operating and maintenance costs and the utility's authorized rate of return on investment of the utility's unregulated generation constructed or acquired after

January 1, 2001; provided that this provision does not apply to a public utility that does not acquire unregulated generation after January 1, 2001. The commission shall assure that the regulated business is appropriately credited for any off-system sales made from regulated assets.

B. This section shall apply only to a public utility that began investing in, constructing or acquiring generating plant pursuant to this section before July 1, 2004. This section shall continue to apply until the latest of:

(1) January 1, 2015;

(2) the date the public utility divests its interest in [a] generating plant acquired or constructed pursuant to the provisions of this section; or

(3) the date the plant receives a certificate of convenience and necessity in accordance with Section 62-9-1 NMSA 1978.

History: Laws 2003, ch. 336, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Effective dates. — Laws 2003, ch. 336 contained no effective date provision but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

62-6-4.4. Gas and electric utilities; combined service.

A public utility that provides both electricity and natural gas distribution services shall not be required to functionally separate its electric and gas transmission, transportation and distribution operations from each other. Any rule or order to the contrary is void. Nothing in this section shall prevent a combined gas and electric distribution company from selling the natural gas commodity to customers pursuant to tariffs approved by the commission.

History: Laws 2003, ch. 336, § 3.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 336 contained no effective date provision but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

62-6-4.5. Billing; franchise fees; gross receipts taxes.

A. A franchise fee charge shall be stated as a separate line entry on a bill sent by a public utility or a distribution cooperative utility to a customer and shall only be recovered from a customer located within the jurisdiction of the government authority imposing the franchise fee.

B. Any gross receipts taxes collected on electric services received by a retail customer in the state shall be stated as a separate line entry on a bill for electric service sent to the customer by a public utility or distribution cooperative utility.

History: Laws 2003, ch. 336, § 4.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 336 contained no effective date provision but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

Line item charges for franchise fees. — The public regulation commission did not have jurisdiction to enter an order requiring a public utility to stop including on customers' bills the franchise fee charges paid by the utility to a county for the right to use county right-of-way to deliver utility service to county residents and businesses. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

62-6-5. Local option.

Notwithstanding any of the provisions in Section 62-6-4 NMSA 1978, any municipality desiring to avail itself of all the benefits of the Public Utility Act [Articles 1 to 6 and 8 to 13 of Chapter 62 NMSA 1978] and of the regulatory services of the commission may elect to come within the provisions of that act and to have the utilities owned and operated by it, either directly or through a municipally owned corporation, regulated and supervised under the provisions of that act. When a municipality so elects, in the manner provided in this section, it shall be subject to all the provisions of the Public Utility Act. The election shall be held as follows:

A. at any time after the effective date of the Public Utility Act, the legal voters of any municipality may petition in writing the governing body of the municipality by filing a petition in the office of the municipal clerk to hold an election for the purpose of determining whether the municipality shall be subject to the provisions of that act. If the aggregate of the names signed to the petition equals or exceeds twenty-five percent of the number of legal votes cast in the municipality for governor at the last preceding general election, the governing body of the municipality shall call an election to be held within sixty days of the filing of the petition in accordance with the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978]. Provided, however, that if a local election is to be held within six months of the filing of the petition, the election provided for in this section shall be held at the same time as that election;

B. the election shall be held in the same manner as and with the same registration books as for other municipal elections. The ballots to be submitted to the voters at the election shall present the following questions:

"For regulation of municipally owned
utilities by the public
regulation commission _____

Against regulation of municipally owned
utilities by the public
regulation commission _____".

The votes at the election shall be counted, returned and canvassed as provided for in the Local Election Act. If the majority of all the votes are in favor of regulation of municipally owned utilities, the governing body of the municipality shall declare, by order entered upon the records of the municipality, that it is subject to all the provisions of the Public Utility Act. If the majority of all the votes are against such regulation, the result of the election shall be declared and entered in the same manner; and

C. no elections for the same purpose shall be held within two years of each other.

History: Laws 1941, ch. 84, § 17A; 1941 Comp., § 72-505; 1953 Comp., § 68-5-5; 1993, ch. 282, § 30; 2018, ch. 79, § 100.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For regulation of foreign municipal corporations distributing electricity in state, *see* 62-1-6 NMSA 1978.

For municipal elections, *see* 3-8-1 to 3-8-80 and 3-9-1 to 3-9-16 NMSA 1978.

The 2018 amendment, effective July 1, 2018, provided that elections called for the purpose of determining whether the municipality shall be subject to the provisions of the Public Utility Act shall be held as pursuant to the Local Election Act, and made technical and conforming changes; in Subsection A, after "filing of the petition", added "in accordance with the provisions of the Local Election Act", and after "Provided, however,

that if a", deleted "general municipal" and added "local"; and in Subsection B, deleted "utility" and added "regulation" preceding "commission" throughout the subsection, and after "canvassed as provided for in", deleted "general municipal elections" and added "the Local Election Act".

The 1993 amendment, effective June 18, 1993, in the introductory language, substituted "Section 62-6-4 NMSA 1978" for "Section 17 hereof" and "may elect" for "created by this Act, shall have the right to elect" in the first sentence, and divided the former first sentence into the present first and second sentences; in Subsection A, substituted "governing body of the municipality" for "Board of Trustees or municipal council" in the first sentence, and rewrote the second sentence; in Subsection B, deleted "may be available" following "books as" in the first sentence, deleted "to the voters" following "shall present" in the second sentence, deleted "of public utilities" following "regulation" in the second sentence in the last paragraph, and substituted "New Mexico public utility commission" for "New Mexico public service commission" in two places; and made stylistic changes throughout the section.

City not within commission's jurisdiction. — A city operating a water facility which had not elected to come under the Public Utility Act and which had a population of less than 200,000 was not a public utility within the jurisdiction of the public utility commission (now public regulation commission). *Morningstar Water Users Ass'n v. New Mexico Pub. Util. Comm'n*, 1995-NMSC-062, 120 N.M. 579, 904 P.2d 28.

Municipality may constitutionally compete with previously franchised utility. — The action of a municipal corporation in undertaking to compete with a privately operated public utility holding a franchise previously granted by the municipality itself in no way violates any constitutional right of the utility whether the right asserted be that based upon the constitutional provision invalidating laws which impair the obligation of a contract or those relating to the taking of property without due process of law, the injuring or destroying of property without just compensation or the denial of the equal protection of the laws. 1958 Op. Att'y Gen. No. 58-236.

Section provides exception to exemption of municipalities from commission jurisdiction. — The commission is given authority by virtue of Section 62-6-4 NMSA 1978 to regulate and supervise every private utility in respect to its rates and service regulations. This same statute specifically withholds from the commission any jurisdiction to regulate or supervise the rates or service of any utility owned and operated by a municipal corporation either directly or through a municipally owned corporation unless said municipality shall exercise its option to come within the provisions of the Public Utility Act as provided in this section. 1957 Op. Att'y Gen. No. 57-101.

62-6-6. Issuance, assumption or guarantee of securities.

A. The power of a public utility to issue, assume or guarantee securities and to create liens on its property situated within this state is a special privilege subject to the

supervision and control of the commission as set forth in the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978].

B. Except as provided in Subsection E of this section, a public utility, when authorized by order of the commission and not otherwise, may issue stocks and stock certificates and may issue, assume or guarantee other securities payable at periods of more than eighteen months after the date thereof for the following purposes only:

(1) making loans or grants from the proceeds of federal loans for economic development projects benefiting its service area;

(2) the acquisition of property;

(3) the construction, completion, extension or improvement of its facilities;

(4) the improvement or maintenance of its service;

(5) the discharge or lawful refunding of its obligations; or

(6) the reimbursement of money actually expended for purposes set forth in this subsection from income or from any other money in the treasury not secured by or obtained from the issue, assumption or guarantee of securities, within five years next prior to the filing of an application with the commission for the required authorization.

C. Notwithstanding the provisions of Subsection B of this section, the commission may authorize issuance by a public utility of shares of stock of any class as a dividend on outstanding shares of stock of the public utility of any class and may authorize the issuance of the same or a different number of shares of stock of any class in exchange for outstanding shares of stock of any class of the public utility, and the public utility may issue the stock so authorized.

D. The commission shall not authorize a borrowing under the provisions of Paragraph (1) of Subsection B of this section unless the governing board has approved the borrowing by a two-thirds' majority vote of the members present at a special meeting called for that purpose. The commission shall review the terms of the economic development loan or grant to ascertain the adequacy of any collateral, to have the right to inspect books and review the level of co-participation by the borrower or grantee.

E. Commission approval is not required for the issuance, assumption or guarantee of any security of a public utility whose securities are subject to oversight and approval by the federal government pursuant to the Rural Electrification Act of 1936, as amended, or any successor law to that act.

History: Laws 1941, ch. 84, § 18; 1941 Comp., § 72-506; Laws 1947, ch. 5, § 1; 1953 Comp., § 68-5-6; 1991, ch. 110, § 1; 2003, ch. 416, § 2.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2003 amendment, effective July 1, 2003, added "Except as provided in Subsection E of this section" at the beginning of Subsection B and added Subsection E.

The 1991 amendment, effective June 14, 1991, designated the formerly undesignated provisions as Subsections A to C; substituted "subject to the supervision and control of the commission as set forth in the Public Utility Act" for "hereby subjected to the supervision and control of the commission as hereinafter in this act set forth" at the end of Subsection A; in Subsection B, inserted Paragraph (1), inserted the paragraph designations "(2)" to "(6)," and inserted "set forth in this subsection" near the beginning of Paragraph (6); added "Notwithstanding the provisions of Subsection B of this section" at the beginning of Subsection C; added Subsection D; and made related changes and minor stylistic changes in Subsections B and C.

Unauthorized notes and mortgages are void. — Notes and mortgages issued without authority of the commission are void. *Hogue v. Superior Utils., Inc.*, 1949-NMSC-056, 53 N.M. 452, 210 P.2d 938.

Utility not liable for payment to protect unauthorized mortgage. — Where plaintiff paid $600 to protect a second mortgage on property of utility company which proved void because it was not authorized by the commission, he could not recover the sum from the utility. *Hogue v. Superior Utils., Inc.*, 1949-NMSC-056, 53 N.M. 452, 210 P.2d 938.

Utility may recover meter deposits applied on unauthorized note and mortgage. — Utility company was properly granted judgment for meter deposits where they were applied by sellers of the capital stock on a note and mortgage of the company which were invalid because not authorized by the commission. *Hogue v. Superior Utils., Inc.*, 1949-NMSC-056, 53 N.M. 452, 210 P.2d 938.

Law reviews. — For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 255 to 263.

Regulating issuance of securities by public utilities through public service commissions, 41 A.L.R. 889.

Conclusiveness of commission's decision or order as to issuance of securities, 41 A.L.R. 922.

Control over issue of securities to capitalize or fund bond discount, 72 A.L.R. 1232.

62-6-7. Application to commission; order of commission.

Such public utility shall, by written petition filed with the commission and setting forth the pertinent facts involved, make application to the commission for an order authorizing the proposed issue, assumption or guarantee of securities, and the application of the proceeds therefrom to the purposes specified. The commission shall, after such hearing and upon such notice as the commission may prescribe, enter its written order approving the petition and authorizing the proposed securities transactions, unless the commission shall find: that such transactions are inconsistent with the public interest; or that the purpose or purposes thereof are not permitted by this act; or that the aggregate amount of the securities outstanding and proposed to be outstanding will exceed the fair value of the properties and business of the public utility.

History: Laws 1941, ch. 84, § 19; 1941 Comp., § 72-507; 1953 Comp., § 68-5-7.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For investment securities, *see* 55-8-101 to 55-8-511 NMSA 1978.

For security dealers, *see* 58-13B-3 to 58-13B-19 NMSA 1978.

62-6-8. Exempted securities.

A. A public utility may issue securities, other than stock or stock certificates, payable at periods of not more than eighteen months after the date of issuance of same, and secured or unsecured, without application to or order of the commission, but no such securities so issued shall in whole or in part be refunded by any issue of stocks, stock

certificates or other securities having a maturity of more than eighteen months, except on application to and approval of the commission.

B. If a utility proposes to accomplish proposed financing by the issuance and delivery of notes, bonds or other evidences of indebtedness and of mortgages, deeds of trust or other security instruments therefor to the United States of America or any agency or instrumentality thereof, acting solely as the lender or with the participation of one or more other lenders, the application to the commission shall set forth the facts involved, the proposed application of the proceeds therefrom and any approval or expected approval thereof by the United States of America or its agency or instrumentality. No hearing by the commission shall be required for approval of the issuance and delivery of the evidences of indebtedness and security instruments to such lender or lenders and the commission shall approve the issuance and delivery thereof within the time provided in Section 62-6-9 NMSA 1978; provided that for good cause shown, the commission may order that a hearing shall be held with respect to the proposed financing. The order of approval of the commission may be conditioned on the approval of the issuance of the evidences of indebtedness or security by the United States of America or the agency or instrumentality thereof as may be appropriate.

History: 1953 Comp., § 68-5-8, enacted by Laws 1967, ch. 96, § 5; 1971, ch. 9, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1967, ch. 96, § 5, repealed 68-5-8, 1953 Comp., relating to securities exempted from approval requirements, and enacted a new 68-5-8, 1953 Comp.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-6-8.1. Additional jurisdiction.

Except as provided in Subsection E of Section 62-6-6 NMSA 1978 and notwithstanding any other provision of Sections 62-6-1 through 62-6-11 NMSA 1978, the commission shall have jurisdiction over and may regulate, by general order or regulation, securities of a public utility incorporated under the laws of this state that would otherwise be exempt from regulation by the commission pursuant to Section 62-6-6 NMSA 1978 or Subsection A of Section 62-6-8 NMSA 1978 and that is subject to regulation pursuant to 16 USC 824.

History: Laws 1979, ch. 50, § 1; 2003, ch. 416, § 3.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2003 amendment, effective July 1, 2003, added "Except as provided in Subsection E of Section 62-6-6 NMSA 1978 and" at the beginning.

62-6-9. Applications disposed of promptly.

All applications for the issuance, assumption or guarantee of securities shall be placed at the head of the commission's docket and shall be disposed of promptly, and within thirty days after petition is filed with the commission unless it is necessary for good cause to continue same for a longer period. Whenever such application is continued beyond thirty days after the time it is filed, the commission shall enter an order making such continuance and stating fully the facts necessitating same.

History: Laws 1941, ch. 84, § 21; 1941 Comp., § 72-509; 1953 Comp., § 68-5-9.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-6-10. No obligation on state.

No provision of this act, nor any act or deed done or performed in connection therewith, shall be construed to obligate the state of New Mexico to pay or guarantee in any manner whatsoever any security authorized, issued, assumed or guaranteed under the provisions of this act.

History: Laws 1941, ch. 84, § 22; 1941 Comp., § 72-510; 1953 Comp., § 68-5-10.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-6-11. Securities voidable unless approved.

All securities issued, assumed or guaranteed without application to and approval of the commission, except the securities mentioned in Sections 62-6-8 and 62-6-8.1 NMSA 1978, are voidable with the consent of the commission.

History: Laws 1941, ch. 84, § 23; 1941 Comp., § 72-511; 1953 Comp., § 68-5-11; Laws 1979, ch. 50, § 2; 2005, ch. 339, § 3.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, deleted the former provision that securities are void and provides that securities are voidable with the consent of the commission.

62-6-12. Acquisitions, consolidations, etc.; consent of commission.

A. With the prior express authorization of the commission, but not otherwise:

(1) any two or more public utilities may consolidate or merge with each other so as to form a new concern;

(2) any person and a public utility or public utility holding company may consolidate or merge with each other so as to form a new concern;

(3) stock of a public utility or public utility holding company may be acquired by:

(a) any person who prior to the acquisition of any such stock or part thereof is a person subject to regulation or classified as a public utility or public utility holding company in any jurisdiction;

(b) any person who is or during the course of an acquisition covered by this section becomes subject to regulation or is classified as a public utility or public utility holding company in any jurisdiction based on reasons other than solely the acquisition described in this paragraph;

(c) any person associated, affiliated or acting in concert with any person subject to regulation or classified as a public utility or public utility holding company in any jurisdiction for the purposes of any acquisition subject to the provisions of this section;

(d) any person associated, affiliated or acting in concert with any person described in Subparagraphs [Subparagraph] (a), (b) or (c) of this paragraph; or

(e) any person who, during the course of an acquisition covered by this section, merges or consolidates with a person described in Subparagraphs [Subparagraph] (a), (b), (c) or (d) of this paragraph.

(4) any public utility may sell, lease, rent, purchase or acquire any public utility plant or property constituting an operating unit or system or any substantial part thereof; provided, however, that this paragraph shall not be construed to require authorization for transactions in the ordinary course of business.

B. Any consolidation, merger, acquisition, transaction resulting in control or exercise of control, or other transaction in contravention of this section without prior authorization of the commission shall be void and of no effect.

C. Nothing in this section shall limit or expand the authority of the commission with respect to Class II transactions as provided in the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978].

History: Laws 1941, ch. 84, § 24; 1941 Comp., § 72-512; 1953 Comp., § 68-5-12; Laws 1983, ch. 250, § 1; 1989, ch. 33, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was added by the compiler and is not part of the law.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82,

as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For definition of "commission," *see* 62-3-3 NMSA 1978.

The 1989 amendment, effective June 16, 1989, designated the formerly undesignated introductory paragraph as Subsection A and inserted "prior" therein; deleted subsection designation "A" preceding Subsection A(1) and made a minor stylistic change in that subsection; added Subsection A(2); substituted present Subsection A(3) for former Subsection B, which read "any public utility may acquire the stock or any part thereof of any other public utility"; redesignated former Subsection C as present Subsection A(4) and made a minor stylistic change therein; and added present Subsections B and C.

The 1983 amendment added "and" at the end of Subsection B and added the language beginning with "or any substantial part thereof" at the end of Subsection C.

Jurisdiction of municipal condemnation of public utility. — Subsection A(4) of this section and Section 62-9-5 NMSA 1978 (abandonment) do not give the commission jurisdiction over municipal condemnations of regulated water and sewer utilities. *United Water N.M., Inc. v. N.M. Pub. Util. Comm'n*, 1996-NMSC-007, 121 N.M. 272, 910 P.2d 906.

Consent to sell real property. — The New Mexico public regulation commission has exclusive jurisdiction to determine whether a public utility's sale of real property is required to be approved by the commission. *OS Farms, Inc. v. N.M. Am. Water Co., Inc.*, 2009-NMCA-113, 147 N.M. 221, 218 P.3d 1269.

Where defendant, which was a public water utility regulated by the New Mexico public regulation commission, sold land to plaintiff; defendant reserved all water rights to its own use; defendant originally purchased the land to acquire water rights; and defendant decided to sell the land, reserving the water rights, to reduce plant investment and decrease the cost of maintaining the land, the public regulation commission had exclusive jurisdiction to determine whether the sale of the land required approval by the commission. *OS Farms, Inc. v. N.M. Am. Water Co., Inc.*, 2009-NMCA-113, 147 N.M. 221, 218 P.3d 1269.

Law reviews. — For note, "United Water New Mexico v. New Mexico Public Utility Commission: Why Rules Governing the Condemnation and Municipalization of Water Utilities May Not Apply to Electric Utilities," see 38 Nat. Res. J. 667 (1998).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities §§ 14, 72.

62-6-13. Application; approval of commission.

Application shall be made by the interested public utility by written petition containing a concise statement of the proposed transaction, the reason therefor and such other

information as may reasonably be required by the commission. Upon the filing of such application, the commission shall promptly investigate the same, with such hearing and upon such notice as the commission may prescribe, and unless the commission shall find that the proposed transaction is unlawful or is inconsistent with the public interest, it shall give its consent and approval in writing.

History: Laws 1941, ch. 84, § 25; 1941 Comp., § 72-513; 1953 Comp., § 68-5-13.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Only notice necessary is such as commission requires. — The notice requirement under Section 62-10-5 NMSA 1978 has application only when a proceeding is initiated by a complaint; otherwise the only notice necessary is such as is required by the commission. 1948 Op. Att'y Gen. No. 48-5138.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 255 to 263.

Merger or consolidation without required permit as affecting validity of contracts, 30 A.L.R. 890, 42 A.L.R. 1226, 118 A.L.R. 646.

73B C.J.S. Public Utilities §§ 68, 72.

62-6-14. Valuation by the commission.

A. When in the exercise of its powers and jurisdiction it is necessary for the commission to consider or ascertain the valuation of the properties or business of a public utility, or make any other determination involved in the fixing or setting of rates for a utility, the commission shall give due consideration to the history and development of the property and business of the particular public utility, to the original cost thereof, to the cost of reproduction as a going concern, to the revenues, investment and expenses of the utility in this state and otherwise subject to the commission's jurisdiction, to construction work in progress and to other elements of value and rate-making formulae and methods recognized by the laws of the land for rate-making purposes.

B. For the purpose of making such valuation or determinations, the members of the commission and its duly authorized agents and employees shall at all reasonable times have free access to the property, accounts, records and memoranda of the utility whose property and rights are being valued, and the utility shall aid and cooperate with the commission and its duly authorized agents and employees to the fullest degree for the purpose of facilitating the investigation.

C. In making any determination involving the rates or service of a utility, the commission may change its past practices or procedures, provided that substantial evidence on the record justifies such a change.

D. The commission shall set rates based on a test period that the commission determines best reflects the conditions to be experienced during the period when the rates determined by the commission take effect. If a future test period is proposed, the commission shall give due consideration that the future test period may best reflect those conditions.

E. Upon a request to include construction work in progress in the rate base, the commission shall grant the request only upon a finding that a project's costs are reasonable. The commission shall not include the associated allowance for funds used during construction in income. The projects for which the commission shall grant a request include environmental improvement projects and generation and transmission investments for which the utility has obtained a certificate of public convenience and necessity; provided that the projects are anticipated to be in service no later than five months after the end of a utility's test period, but in no event later than twenty-four months after the filing date of a utility's rate proceeding.

History: Laws 1941, ch. 84, § 26; 1941 Comp., § 72-514; 1953 Comp., § 68-5-14; Laws 1983, ch. 250, § 2; 2009, ch. 113, § 2.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For definition of "commission," *see* 62-3-3 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "commission's jurisdiction", added "to construction work in progress" and added Subsections D and E.

The 1983 amendment divided the formerly undivided language into Subsections A and B and, in Subsection A, substituted "is necessary" for "shall be necessary" and "or make any other determination involved in the fixing or setting of rates for a utility, the commission shall" for "it shall, in arriving at such valuation" and inserted "to the revenues, investment and expenses of the utility in this state and otherwise subject to the commission's jurisdiction" and "and rate-making formulae and methods." The 1983 amendment also inserted "or determinations" in Subsection B and added Subsection C.

Commission's remedy for utility's imprudent decision was reasonable. — Where PNM appealed the New Mexico public regulation commission's (commission) denial of recovery in its rate base for the repurchase of 64.1 MW of capacity and certain lease renewals at Palo Verde nuclear generating station (Palo Verde), and where the commission found that PNM's decisions were imprudent on the basis that PNM had failed to demonstrate that it considered alternative courses of action, the commission's remedy of disallowing recovery for the amount PNM paid for the 64.1 MW over the net book value of that capacity and allowing PNM to recover the costs of the five renewed leases was reasonable and lawful. The commission established valuations for the 64.1 MW and the renewed lease, which it considered appropriate to protect ratepayers and result in just and reasonable rates, and such an approach is a lawful and reasonable exercise of the commission's authority to determine the rate base of a utility and its obligation to ensure that rates are just and reasonable. It was reasonable and lawful for the commission to conclude that a total disallowance was not justified. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Method does not violate the statutory rate caps. — Where the New Mexico public regulation commission (commission) ordered PNM to revise its method for calculating fuel costs, specifically ordering PNM to remove renewable energy from its fuel and purchased power cost adjustment clause calculation, and where PNM proposed a method of calculating fuel costs which would partially correct the fuel cost misallocation by more accurately charging customers for the true costs of their conventional energy usage, the commission lawfully exercised its authority in adopting the new method, because the new method did not impose additional charges for renewable energy usage on large and exempt customers, but rather increased their fuel costs to more accurately reflect the true costs of their conventional energy usage. The new method for calculating fuel costs does not violate the statutory rate caps set forth in this section, and its adoption was consistent with due process. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Commission not limited in method of valuating utility or setting rates. — Neither New Mexico case law nor the Public Utility Act imposes any one particular method of valuation upon the commission in ascertaining the rate base of a utility; nor does the spirit of the statute tie the commission down to the consideration of a single factor in establishing rates. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

If plant acquisition adjustment is included as legitimate plant cost, it becomes a part of the rate base upon which a rate of return is to be computed. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

New Mexico is not "original cost" jurisdiction, but a "fair value" jurisdiction. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

"Used and useful" concept is but one factor among many to be considered by the commission in its rate base analysis. *New Mexico Indus. Energy Consumers v. N.M. Pub. Serv. Comm'n*, 1986-NMSC-059, 104 N.M. 565, 725 P.2d 244.

Utility may not capitalize capital investments previously treated as operating expenses. — Where prior capital investments were charged to operating expenses and the rate apparently fixed on that basis, a utility cannot later capitalize such amounts in determining original cost for ratemaking purposes. *Moyston v. N.M. Pub. Serv. Comm'n*, 1966-NMSC-062, 76 N.M. 146, 412 P.2d 840.

Commission may deduct deferred tax reserve from rate base. — The court did not err in failing to hold unreasonable and unlawful the commission's deduction from rate base of the company's reserve for deferred taxes because the statute does not compel inclusion of value of the latter type in the rate base and because the laws of the land do lend support for the commission's action. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Law reviews. — For article, "The Regulation of Public Utilities," see 10 Nat. Res. J. 827 (1970).

For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 138 to 172.

Valuations for rate making as affected by advance in price conditions due to war, 20 A.L.R. 555.

Propriety of considering capital structure of utility's parent company or subsidiary in setting utility's rate of return, 80 A.L.R.4th 280.

73B C.J.S. Public Utilities §§ 18 to 33.

62-6-15. Contract rate with the municipality and utilities; how established.

Rates and service regulations may be established by contract between the municipality and the utility for a specified term not exceeding twenty-five years, but only

by and with the approval of the commission to be expressed by its order. Whenever any such contract shall be made, it shall, before becoming effective, be submitted to the commission. Unless the commission shall find the provisions of any such contract inconsistent with the public interest, the interest of the consumers and the interest of investors, it shall approve the same, otherwise it shall disapprove the same, and, unless and until so approved, such contract shall be of no effect, but if it be approved, it shall be in all respects lawful. Any such new contract shall provide for a redetermination by the commission of the reasonableness of the rates at such intervals as the commission may prescribe not longer than five years and every order made by the commission approving any contract shall expressly state the intervals at which redetermination of rates shall be made. For the purpose of determining whether any such contract hereafter made is consistent with public interest, the commission shall hold such hearings, after notice, as may be necessary to its determination. This act is intended to make rates in existing franchises and contracts subject to the control of the commission only to the extent that the legislature may lawfully do so. The provisions of this section shall not apply to any contract between a municipality and a utility relating to electric power and energy sales between such entities if the electric power and energy which is the subject of such contract is generated by such municipality's generating facility or its interest in a jointly owned generating facility.

History: Laws 1941, ch. 84, § 27; 1941 Comp., § 72-515; 1953 Comp., § 68-5-15; Laws 1979, ch. 260, § 17.

ANNOTATIONS

Compiler's notes. — For the meaning of "this act", *see* 62-13-1 NMSA 1978 and notes thereto.

Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Contract on behalf of municipal inhabitants allowed. — This section allows municipalities to contract with a public utility for proposed rates and service regulations for utility service to municipal inhabitants. Any rates or service regulations set forth in the contract do not take effect, however, until they have been approved by the commission, which retains plenary authority to approve, disapprove, or modify them. *City of Albuquerque v. N.M. Pub. Serv. Comm'n*, 1993-NMSC-021, 115 N.M. 521, 854 P.2d 348.

Commission has jurisdiction over municipal contract rates. — The legislature intended to confer general and exclusive jurisdiction on the commission to regulate every intrastate rate to be charged by public utilities for the services they render to the extent provided in this article, including jurisdiction over contract rates between public utilities and municipalities. 1952 Op. Att'y Gen. No. 52-5597.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 Am. Jur. 2d Carriers § 105.

Public utility's right to recover cost of nuclear power plants abandoned before completion, 83 A.L.R.4th 183.

62-6-16. Commission may prescribe uniform accounts.

The commission may, when it deems it advisable to do so, upon notice and hearing, establish a uniform system of accounts for each utility, which system shall be uniform for all utilities of the same kind and class, and may make such regulations regarding the accounts of each utility for the purpose of insuring [ensuring] uniform and correct books of account and record as in the judgment of the commission may be necessary to carry out any of the provisions of this act.

History: Laws 1941, ch. 84, § 28; 1941 Comp., § 72-516; 1953 Comp., § 68-5-16.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — For the meaning of "this act", *see* 62-13-1 NMSA 1978 and notes thereto.

Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities § 68.

62-6-17. Office, books and records; sanction; penalty.

A. Every utility furnishing service within the state shall maintain an office located in the state. The commission by order may require any utility or any officer or agent of any utility to produce within the state or provide access to, at such reasonable time and place as the commission may designate, any books, records, accounts or documents kept in any office or place within or without the state, or certified copies thereof, whenever the production thereof is reasonably required and pertinent to any matter under investigation before the commission.

B. Whenever the production of books, records, accounts or documents is reasonably required by the commission and pertinent to any matter under investigation before the commission, the commission may require the utility or any affiliated interest participating in a Class I or II transaction to produce or provide access to, at such reasonable time and place as the commission may designate, such books, records, accounts or documents.

C. Any person whose interest may be adversely affected by the production of any books, records, accounts or documents may petition the commission for a protective order for confidential or proprietary information. The commission shall determine the materiality and relevancy of the books, records, accounts or documents to any matter before the commission and determine whether such books, records, accounts or documents contain confidential or proprietary information. If the commission determines such books, records, accounts or documents contain confidential or proprietary information that is material and relevant to the proceeding, it shall determine whether the public interest requires that such books, records, accounts or documents be produced in any hearing or investigation held under the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] or that an abstract of or the extraction of specific information from such books, records, accounts or documents be produced for use in any such hearing or investigation. Any books, records, accounts or documents determined under this section to contain confidential or proprietary information are not subject to the Public Records Act [Chapter 14, Article 3 NMSA 1978].

D. For so long as such information determined by the commission to contain confidential or proprietary information retains its confidential or proprietary character, any person who intentionally discloses such confidential or proprietary information is guilty of a misdemeanor and upon conviction shall be fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000).

History: Laws 1941, ch. 84, § 29; 1941 Comp., § 72-517; 1953 Comp., § 68-5-17; Laws 1980, ch. 85, § 3; 1982, ch. 109, § 8; 1993, ch. 351, § 3.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8,

amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, rewrote this section to the extent that a detailed comparison would be impracticable.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

For comment, "Regulation of Electric Utilities and Affiliated Coal Companies - Determining Reasonable Expenses," see 26 Nat. Res. J. 851 (1986).

62-6-18. Utilities required to report to commission.

Every utility when and as required by the commission, shall file with the commission such annual report and such other information as the commission may reasonably require. The commission shall prepare and distribute to every utility blank forms for the reports required under this section.

History: Laws 1941, ch. 84, § 30; 1941 Comp., § 72-518; 1953 Comp., § 68-5-18.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 Am. Jur. 2d Carriers §§ 219, 220; 64 Am. Jur. 2d Public Utilities § 235.

73B C.J.S. Public Utilities §§ 66, 67, 75.

62-6-19. Standard of service.

A. The commission may prescribe reasonable and adequate service regulations and standards of service rendered or to be rendered by any utility and may prescribe

such regulations for the examination and testing of such service and for the measurement thereof.

B. In order to assure reasonable and proper utility service at fair, just and reasonable rates, the commission may investigate:

(1) Class I transactions to determine the reasonableness of the cost and contract conditions to the utility in any such transaction; and

(2) Class II transactions or the resulting effect of such Class II transactions on the financial performance of the public utility to determine whether such transactions or such performance have an adverse and material effect on such service and rates.

C. A public utility engaging in any Class I or Class II transaction shall have the burden to produce such evidence and information as is sufficient to demonstrate:

(1) that such Class I transaction has resulted in reasonable cost and contract conditions to the utility; and

(2) that such Class II transaction or the resulting effect of such Class II transaction on the financial performance of the public utility has not materially and adversely affected the utility's ability to provide reasonable and proper utility service at fair, just and reasonable rates.

If the commission finds that the utility has failed to meet its burden, the commission may issue orders consistent with the authority granted to the commission under the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] to assure the provision of such service at such rates. Any such order that explicitly and directly requires the production of information shall be in accordance with Section 62-6-17 NMSA 1978.

D. The commission may issue such orders in connection with an evidentiary proceeding involving a public utility as it finds appropriate and necessary to assure that appropriate cost allocations are made and that no cross-subsidization occurs between the utility and an affiliated interest.

E. The commission shall, by November 30, 1982, promulgate rules and may amend such rules thereafter, to implement the provisions of Subsections B, C and D of this section, including the manner of conducting such investigations and making such determinations, and the specification of such reporting requirements as may be reasonably necessary and as are consistent with the provisions of this 1982 act.

F. For a period of thirteen months from the effective date of this subsection, no utility or affiliated interest shall engage in a new Class II transaction described in Paragraph (1) or (2) of Subsection K of Section 62-3-3 NMSA 1978, nor during that period shall any utility or affiliated interest controlled by a utility engage in any nonutility

activity not carried on prior to that effective date except as is necessary to protect or dispose of an asset, unless such nonutility activity had been the subject of substantial negotiations and had been publicly announced prior to the effective date of this section.

F.[G.] For a period of fifteen months from the effective date of this subsection, no utility or affiliated interest shall engage in a Class II transaction described in Paragraph (1) or (2) of Subsection K of Section 62-3-3 NMSA 1978, nor during that period shall any utility or affiliated interest controlled by a utility engage in any nonutility activity not carried on prior to that effective date except as is necessary to protect or dispose of an asset.

History: Laws 1941, ch. 84, § 31; 1941 Comp., § 72-519; 1953 Comp., § 68-5-19; Laws 1982, ch. 109, § 9.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1982, ch. 109, § 9 added two Subsections F.

Compiler's notes. — The term "the effective date of this subsection," referred to in each Subsection F, probably means the effective date of the 1982 act.

Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The term, "this 1982 act," referred to in Subsection E, means Laws 1982, ch. 109, which is compiled as 62-3-3, 62-6-17, 62-6-19, 62-8-7, 62-11-1 to 62-11-3, 62-11-5 and 62-11-6 NMSA 1978.

Cross references. — For denial of service by utility being petty misdemeanor, *see* 30-13-2 NMSA 1978.

Primary purpose of extending commission's jurisdiction to Class I transactions was to protect against allocation of some of a regulated utility's profits to its unregulated affiliate. *Gas Co. v. N.M. Pub. Serv. Comm'n*, 1984-NMSC-002, 100 N.M. 740, 676 P.2d 817.

Commission may impute gas processor's unreasonable revenues to affiliate utility. — Where a company processed natural gas for its affiliate gas utility in a Class I transaction and had unreasonable revenues when compared to similar natural gas processors, the commission was authorized to impute some of those revenues to the affiliate gas utility for rate-making purposes. *Gas Co. v. N.M. Pub. Serv. Comm'n*, 1984-NMSC-002, 100 N.M. 740, 676 P.2d 817.

Variations in rates not ipso facto discriminatory. — Section 62-8-6 NMSA 1978 does not prohibit variations in rates, nor does it require "equal service." Rather, it prohibits "unreasonable differences" in rates of service between localities. Allowing municipalities to contract with utilities for service rates to their inhabitants does not, therefore, ipso facto, violate Section 62-8-6 NMSA 1978. *City of Albuquerque v. N.M. Pub. Serv. Comm'n*, 1993-NMSC-021, 115 N.M. 521, 854 P.2d 348.

Company restructuring. — This section allows the commission to disapprove a public utility holding company restructuring prior to its completion. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1987-NMSC-124, 106 N.M. 622, 747 P.2d 917.

The commission properly disapproved a public utility holding company restructuring prior to its completion. This restructuring would have changed the status of certain subsidiaries of the utility to a status which can be called "sisters" (a subsidiary of a holding company of which the utility also is a co-equal subsidiary), which are not, under Section 62-3-3A NMSA 1978, included within the definition of an "affiliated interest." Therefore, this holding company structure would have prevented the commission's access, under Section 62-6-17 NMSA 1978, to the books and records of the "sister" necessary to ensure the reasonableness of transactions between that "sister" and the utility. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1987-NMSC-124, 106 N.M. 622, 747 P.2d 917.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

For note, "Conservation, Lifeline Rates and Public Utility Regulatory Commissions," see 19 Nat. Res. J. 411 (1979).

For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

For 1984-88 survey of New Mexico administrative law, see 19 N.M.L. Rev. 575 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 236.

Service of government as excuse for failure of carrier to discharge duty to individual, 8 A.L.R. 162.

Right of public utility company to discontinue its entire service, 11 A.L.R. 252.

Statutory requirement of adequate service and facilities by public utility as affecting liability for loss of private property through inadequate supply of water to extinguish fire, 27 A.L.R. 1279.

Public service commission's power to require extension of gas service into new territory, 31 A.L.R. 333.

Duty of public utility to duplicate service, 52 A.L.R. 1111.

Validity of contract which impairs or tends to impair the ability of a public service corporation to serve the public, 58 A.L.R. 804.

Constitutionality of statute or ordinance requiring public utility to supply fixtures or accessories or incidental service to customers free of charge or for fixed charge, 115 A.L.R. 1162.

Special requirements of consumer as giving rise to implied contract by public utility to furnish particular amount of electricity, gas or water, 13 A.L.R.2d 1233.

73B C.J.S. Public Utilities § 73.

62-6-20. Meter accuracy.

The commission may prescribe reasonable rules, regulations and standards to secure the substantial accuracy of all meters and other devices for measurement of utility service or products which shall be complied with by the utility and consumer.

History: Laws 1941, ch. 84, § 32; 1941 Comp., § 72-520; 1953 Comp., § 68-5-20; Laws 1965, ch. 289, § 5.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-6-21. Inspection of meters and other devices for measuring public utility service.

The commission shall adopt rules, regulations and standards to secure the accuracy of all meters and other devices for measurement of utility service or products, and the commission may examine and test any and all such meters and other devices under such rules and regulations as it may prescribe. At all inspections and tests made on complaints of consumers, representatives of the utility complained of and of the complainant may be present.

History: Laws 1941, ch. 84, § 33; 1941 Comp., § 72-521; 1953 Comp., § 68-5-21; Laws 1965, ch. 289, § 6.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-6-22. Meters and other measuring devices; testing; fees.

Any consumer or user may have any meter or measuring device tested by the utility once without charge after a reasonable period to be fixed by the commission by rule, and at shorter intervals upon payment of reasonable fees fixed by the commission. The commission shall declare and establish reasonable fees to be paid for other examining and testing [of] such meters and other measuring devices on the request of the consumer. If the test is requested to be made within the period of presumed accuracy as fixed by the commission since the last such test of the same meter or other measuring device, the fee to be paid by the consumer or user at the time of his request shall be refunded to the consumer or user if the meter or measuring device be found unreasonably defective or incorrect to the substantial disadvantage of the consumer or user. If the consumer's request is made at a time beyond the period of presumed accuracy fixed by the commission since the last such test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

History: Laws 1941, ch. 84, § 34; 1941 Comp., § 72-522; 1953 Comp., § 68-5-22; Laws 1965, ch. 289, § 7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-6-23. Authority to enter premises.

The commission and its officers and employees of the commission may during all reasonable hours, after reasonable notice to the utility, enter upon any premises occupied by any utility for the purpose of making examinations and tests and exercising any power provided for in this act, and may set up and use on such premises any apparatus and appliances necessary therefor. Such public utility shall have the right to be represented at the making of such examination, tests and inspections, and shall be given sufficient time before the making thereof to secure the presence of a representative of its selection.

History: Laws 1941, ch. 84, § 35; 1941 Comp., § 72-523; 1953 Comp., § 68-5-23.

ANNOTATIONS

Compiler's notes. — For the meaning of "this act", *see* 62-13-1 NMSA 1978 and notes thereto.

Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities §§ 14, 75.

62-6-24. Safety rules and regulations.

The commission shall have the right and is hereby empowered to adopt, promulgate and enforce such reasonable rules and regulations as may be required to protect users of gas or electricity from damage to their persons or property through the use of defective gas or electrical appliances or equipment, or improper installation thereof; and to require discontinuance by a consumer of the use of any defective appliance or equipment or the removal forthwith of any unsafe condition incident to the distribution of gas or electricity.

History: Laws 1941, ch. 84, § 36; 1941 Comp., § 72-524; 1953 Comp., § 68-5-24.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Commission's general jurisdiction includes safety regulations and inspections. — The general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations includes the power to make safety regulations and enforce them through inspections. 1972 Op. Att'y Gen. No. 72-35.

Commission may delegate its authority to inspect. — The commission is authorized by Section 62-6-4 NMSA 1978 and by the common law to delegate its authority to inspect and test liquefied petroleum gas utilities to the liquefied petroleum gas commission. Only the public service commission (now public regulation commission) can promulgate safety regulations, however, and it must make the final order regarding any violations of regulations. 1972 Op. Att'y Gen. No. 72-35.

Rules and regulations have force of law. — The rules and regulations of the commission duly adopted under Section 62-6-4 NMSA 1978 and this section have the force and effect of law which a utility must obey. 1969 Op. Att'y Gen. No. 69-81.

It is the commission's duty to protect not only the utility but also its patrons. 1969 Op. Att'y Gen. No. 69-81.

Utility must refuse service to customer with defective wiring. — A utility has a positive duty to refuse service to a customer whose wiring is known by the utility to be in a dangerous or defective condition. 1969 Op. Att'y Gen. No. 69-81.

Compliance with rules excuses discontinuance of service under hazardous conditions. — Compliance with rules of the commission permitting a public utility to immediately discontinue service in the event of a condition determined by the utility to be hazardous would be a defense to a criminal action upon a refusal to render electric service, but the burden would be upon the utility to produce some evidence that the condition was actually hazardous if the criminal action was brought against it, and to prove the existence of the rule itself. 1969 Op. Att'y Gen. No. 69-81.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of public service corporation to prescribe fixtures to be used in connection with its service, 37 A.L.R. 1367.

Duty of gas company as regards precautions to be taken upon or after discontinuing service to premises, 13 A.L.R.2d 1396.

Water distributor's liability for injury due to condition of service lines, meters and the like, which serve individual consumer, 20 A.L.R.3d 1363.

Liability in connection with fire or explosion incident to bulk storage, transportation, delivery, loading or unloading of petroleum products, 32 A.L.R.3d 1169.

62-6-25. Electrical power grids reports; transmission of electrical power; complaint procedures.

A. The commission may require electric utilities and rural electric cooperatives to furnish the commission with available information material to the reliability of electrical power grids within the state.

B. To ensure efficient and reliable operation of New Mexico electrical power grids and upon complaint of an interested electric utility or rural electric cooperative, and after notice and hearing, the commission may, to the extent permitted by federal law and consistent with the standards prescribed by law for compulsory wheeling service ordered by the federal energy regulatory commission, require another electric utility to provide transmission services to the complainant, subject to arrangements for compensation therefor by agreement between the utilities or pursuant to a rate schedule filed with the federal energy regulatory commission.

History: 1978 Comp., § 62-6-25, enacted by Laws 1983, ch. 104, § 1.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by

Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Severability. — Laws 1983, ch. 104, § 2 provided for the severability of the act if any part or application thereof is held invalid.

"Interested electric utility". — The definition of "person" in Section 62-3-3E NMSA 1978 controls the meaning of "interested electric utility" in Subsection B of this section and, thus, a municipality that had not elected to come within the terms of the Public Utility Act was not authorized to seek wheeling orders from the commission. *Public Serv. Co. v. N.M. Pub. Util. Comm'n*, 1999-NMSC-040, 128 N.M. 309, 992 P.2d 860.

62-6-26. Economic development rates for gas and electric utilities; authorization.

A. The commission may approve or otherwise allow to become effective, as provided in Subsection B of this section, applications from utilities or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 or filings by cooperative utilities pursuant to Section 62-8-7 NMSA 1978, as appropriate, for special rates or tariffs in order to prevent the loss of customers, to encourage customers to expand present facilities and operations in New Mexico and to attract new customers where necessary or appropriate to promote economic development in New Mexico. Any such special rates or tariffs shall be designed so as to recover at least the incremental cost of providing service to such customers.

B. The commission may approve or otherwise allow to become effective applications from utilities or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 and filings by cooperative utilities pursuant to Section 62-8-7 NMSA 1978 for economic development rates and rates designed to retain load for gas and electric utility customers. For purposes of this section and Section 62-8-6 NMSA 1978, economic development rates and rates designed to retain load are rates set at a level lower than the corresponding service rate for which a customer would otherwise qualify.

C. Except as provided in Subsection D of this section, economic development rates shall be approved or otherwise allowed to become effective for an electric utility or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 or filings by cooperative utilities pursuant to Section 62-8-7 NMSA 1978 only when the utility or the substantially full requirements supplier of the utility has excess capacity. For purposes of this section, "excess capacity" means the amount of electric generating and purchased power capacity available to the utility or such supplier that is greater

than the utility's or such supplier's peak load plus a fixed percentage reserve margin set by the commission.

D. Economic development rates may be approved or otherwise allowed to become effective for electric utilities or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 or filings by cooperative utilities pursuant to Section 62-8-7 NMSA 1978 that do not meet the qualifications of Subsection C of this section; provided that the following conditions are met:

(1) economic development rates approved under this subsection shall not be lower than the incremental cost of providing service to the economic development rate customer as determined by the commission. As used in this subsection, "economic development rate customer" means a customer that directly benefits from the economic development rate established pursuant to this subsection; and

(2) an economic development rate approved for any customer under this subsection shall last no longer than four years, except that the commission may approve the rate for up to twelve additional months if it finds that the additional period is necessary to attract a particular economic development rate customer to New Mexico.

E. Prior to July 1, 2035, the commission shall allow public utilities to recover prudent and reasonable costs incurred by a public utility for the ongoing development, construction or maintenance of resources for economic development projects that provide incremental capacity, or serve incremental load growth, within the economic development project's service area. For economic development projects implemented after the effective date of this 2025 act, the reasonable costs of economic development projects shall be recoverable in rates through a rate rider, base rates or a combination thereof, when the associated equipment and facilities begin serving the new load associated with the economic development project or the utility demonstrates that the economic development project provides benefits to existing customers. A public utility shall be allowed to defer costs incurred for economic development projects that are not included in rates to a regulatory asset. Notwithstanding the time lines in Subsection C of Section 62-9-1 NMSA 1978, the commission shall review a public utility's application for an economic development project and issue a final order approving, modifying or denying the application within six months of the application filing date; provided, however, that the commission may extend the time for granting approval for an additional three months for good cause shown. All projects shall be certified by the economic development department using industry standard guidelines for site selection and approved by the commission. All certified and approved projects shall be allowed to complete construction.

F. The economic development department shall certify, using industry standard guidelines for site selection, whether the economic development project will support reasonably anticipated economic development within the state. Prior to the certification, the department shall provide an opportunity for public comment regarding whether the proposed economic development project will support reasonably anticipated economic

development within the state. The department shall issue a certification letter within sixty days of a request from a public utility or project developer, and the certification letter shall be included in a public utility's application filed pursuant to Subsection E of this section.

G. For purposes of this section:

(1) "economic development project" means the construction or modification of new or existing electric generation facilities, energy storage facilities, transmission and distribution facilities, zero-carbon resources as defined in Subsection K of Section 62-16-3 NMSA 1978, alternative fuel facilities, energy efficiency programs, renewable energy and fuel cell facilities, recycled energy or other technologies necessary to serve reasonably anticipated new load and that have been certified by the economic development department pursuant to Subsection F of this section;

(2) "incremental capacity" means the increase in capacity attributable to new or expanded facilities up to ten percent of a public utility's total system peak load per calendar year;

(3) "incremental cost" at a minimum shall include all additional costs incurred to serve the economic development rate customer that would not otherwise have been incurred to serve other customers, fuel and purchased power costs, costs recoverable from customers pursuant to the Renewable Energy Act [Chapter 62, Article 16 NMSA 1978] and the Efficient Use of Energy Act [Chapter 62, Article 17 NMSA 1978] and the direct costs of facilities necessary to provide service to the customer. The commission shall not impute to the electric utility revenues that would have been received from the economic development rate or load retention customer if they had been provided service under the corresponding rate for which they would have otherwise qualified;

(4) "incremental load growth" means the increase in forecasted load attributable to commercial and industrial growth or electrification of utility customer infrastructure; and

(5) "recycled energy" means energy produced by a generation unit that converts the otherwise lost energy from exhaust stacks or pipes to electricity without combustion of additional fossil fuel.

History: Laws 1989, ch. 5, § 1; 1993, ch. 282, § 31; 2015, ch. 72, § 1; 2025, ch. 71, § 3.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is

ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2025 amendment, effective June 20, 2025, revised economic development rates for gas and electric utilities; added new Subsections E and F and redesignated former Subsection E as Subsection G; and in Subsection G, added new Paragraphs G(1) and G(2), new paragraph designation "(3)" and Paragraphs G(4) and G(5).

The 2015 amendment, effective June 19, 2015, amended the Public Utility Act to provide for economic development rates no lower than the incremental cost of providing service; in Subsection A, after "utilities pursuant to", deleted "Subsection F of"; in Subsection B, after "utilities pursuant to", deleted "Subsection F of"; in Subsection C, added "Except as provided in Subsection D of this section", and after "utilities pursuant to", deleted "Subsection F of"; and added Subsections D and E.

The 1993 amendment, effective June 18, 1993, substituted "The commission" for "The New Mexico public service commission" at the beginning of Subsections A and B; and, in Subsection C, in the second sentence, deleted "and Section 62-8-6 NMSA 1978" preceding "'excess capacity'", substituted "the commission" for "the New Mexico public service commission", and made a stylistic change.

62-6-26.1. Rates for clean fuels used as vehicular fuels; authorization.

The commission may approve or otherwise allow to become effective applications from public utilities, subject to the commission's jurisdiction under the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], for clean fuel rates, tariffs or other programs in order to encourage, develop or promote the development and use of natural gas and other clean fuels used as vehicular fuels. For the purposes of this section, clean fuel rates or tariffs are rates or tariffs set at a lower level than the corresponding service rate or tariff for which a customer would otherwise qualify.

History: Laws 1992, ch. 58, § 10; 1993, ch. 282, § 32.

ANNOTATIONS

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82,

as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, substituted "The commission" for "The New Mexico public service commission" at the beginning of the section.

62-6-27. Repealed.

ANNOTATIONS

Repeals. — Laws 1997, ch. 28, § 1 repealed 62-6-27, as enacted by Laws 1994, ch. 141, § 1, relating to gasoline sales information, effective June 20, 1997. For provisions of former section, *see* the 1996 NMSA 1978 on *NMOneSource.com*.

62-6-28. Clean energy investments; authorization; department of environment certification.

A. The commission shall adopt rules to allow public utilities a reasonable opportunity to recover costs incurred by a public utility for the development and ongoing construction of a clean energy project. Such costs must not exceed the level authorized by the commission in a proceeding to establish a reasonable level of expenditure that the public utility may undertake to develop and construct a clean energy project. The public utility shall recover approved costs reasonably incurred up to the time it files a general rate case whether or not the project is in service. This section does not relieve a public utility of its duty to act reasonably and prudently as circumstances indicate once development and construction of a clean energy project begins.

B. A public utility that incurs costs to reduce harmful air emissions at new or existing power plants may seek recovery of those costs in a general rate case, regardless of whether the technology or method used qualifies as a clean energy project or advanced coal technology. If a public utility seeks cost recovery for expenditures to reduce harmful air emissions beyond levels required by law or rule, the commission may find that such expenditures are reasonable.

C. The commission, upon petition or its own motion, shall open a docket to consider appropriate performance-based financial or other incentives to encourage public utilities to develop and construct clean energy projects.

D. As used in this section:

(1) "advanced coal technology" means new coal-based generation, coal gasification or other technology using coal as a fuel source that is certified by the department of environment to meet the following specifications:

(a) emits the lesser of: 1) what is achievable with the best available control technology; or 2) thirty-five thousandths pound per million British thermal units of sulfur

dioxide, twenty-five thousandths pound per million British thermal units of oxides of nitrogen and one hundredth pound per million British thermal units of total particulates in the flue gas;

(b) removes the greater of: 1) what is achievable with the best available control technology; or 2) ninety percent or more of the mercury from the input fuel;

(c) captures and sequesters or controls carbon dioxide emissions such that by the later of January 1, 2017, or eighteen months after the commercial operation date, no more than one thousand one hundred pounds per megawatt-hour of carbon dioxide is emitted into the atmosphere;

(d) all infrastructure required for sequestration is in place by the later of January 1, 2017, or eighteen months after the commercial operation date of the qualified generating facility;

(e) includes methods and procedures to monitor the disposition of the carbon dioxide captured and sequestered from the facility; and

(f) does not exceed seven hundred net megawatts nameplate capacity;

(2) "clean energy project" means the construction or modification of a new or existing electric generation facility in a manner that employs a technology that has additional financial risk because it is not commercially established or because it employs an established technology that is not commercially proven under the altitude, geographic or resource availability conditions under which it is proposed to operate and may include associated renewable energy storage facilities, recycled energy and, for the limited purposes of this section, advanced coal technology, or other technology as deemed appropriate by the commission; a "clean energy project" shall achieve emission levels no greater than those specified for advanced coal technology and shall not include nuclear power;

(3) "development" means the study, plan, design, site, permit, engineering, assessment and determination of the economic and operational feasibility at one or more locations and may include small-scale demonstration projects, if approved by the commission, as a reasonable expenditure;

(4) "recycled energy" means energy produced by a generation unit with a name-plate capacity of not more than fifteen megawatts that converts the otherwise lost energy from exhaust stacks or pipes to electricity without combustion of additional fossil fuel; and

(5) "sequester" means to store, or chemically convert, carbon dioxide in a manner that prevents its release into the atmosphere and may include the use of geologic formations and enhanced oil, coalbed methane or natural gas recovery techniques.

E The department of environment may issue rules governing the procedure for administering the certification provisions of this section.

History: Laws 2007, ch. 229, § 2.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 229, § 3 made this section effective July 1, 2007.

ARTICLE 7
Natural Gas Price Protection (Repealed.)

62-7-1 to 62-7-10. Repealed.

ANNOTATIONS

Repeals. — Laws 1984, ch. 123, § 13A, repealed 62-7-1 through 62-7-10 NMSA 1978, the Natural Gas Pricing Act, effective July 1, 1984.

62-7-11 to 62-7-23. Terminated.

ANNOTATIONS

Termination dates. — Laws 1984, ch. 123, § 15, terminated 62-7-11 to 62-7-23 NMSA 1978, as enacted by Laws 1984, ch. 123, the Natural Gas Price Protection Act, effective June 30, 1985.

ARTICLE 8
Duties and Restrictions Imposed Upon Public Utilities

62-8-1. Rates.

Every rate made, demanded or received by any public utility shall be just and reasonable.

History: Laws 1941, ch. 84, § 37; 1941 Comp., § 72-601; 1953 Comp., § 68-6-1.

ANNOTATIONS

Compiler's notes. — Sections 62-8-1 to 62-8-9 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See*

Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For commission jurisdiction over rates, *see* 62-6-4 NMSA 1978 and notes thereto.

For commission jurisdiction over water and sanitation district rates, *see* 73-21-16 L NMSA 1978.

Balancing of interests required. — To set a just and reasonable rate, the commission must balance the investor's interest against the ratepayer's interest. *In re Timeron Water Co.*, 1992-NMSC-047, 114 N.M. 154, 836 P.2d 73.

Rate requests carried out under Section 62-8-7 NMSA 1978. — Section 62-8-7 NMSA 1978 is the provision under which the overall purpose of this section is carried out for the given instance of a rate request. *Otero Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1989-NMSC-033, 108 N.M. 462, 774 P.2d 1050.

Commission not limited in method of valuating utility or setting rates. — Neither New Mexico case law nor the Public Utility Act imposes any one particular method of valuation upon the commission in ascertaining the rate base of a utility; nor does the spirit of the statute tie the commission down to the consideration of a single factor in establishing rates. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

As commission is vested with considerable discretion in determining whether a rate to be received and charged is just and reasonable. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

Commission's remedy for utility's imprudent decision was reasonable. — Where PNM appealed the New Mexico public regulation commission's (commission) denial of recovery in its rate base for the repurchase of 64.1 MW of capacity and certain lease renewals at Palo Verde nuclear generating station (Palo Verde), and where the commission found that PNM's decisions were imprudent on the basis that PNM had failed to demonstrate that it considered alternative courses of action, the commission's remedy of disallowing recovery for the amount PNM paid for the 64.1 MW over the net book value of that capacity and allowing PNM to recover the costs of the five renewed leases was reasonable and lawful. The commission established valuations for the 64.1 MW and the renewed lease, which it considered appropriate to protect ratepayers and result in just and reasonable rates, and such an approach is a lawful and reasonable exercise of the commission's authority to determine the rate base of a utility and its obligation to ensure that rates are just and reasonable. It was reasonable and lawful for the commission to conclude that a total disallowance was not justified. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Commission did not exceed its authority in denying utility's recovery for costs. — Where PNM appealed the New Mexico public regulation commission's (commission) decision to deny it recovery for the costs of converting certain San Juan generating station units to a balanced draft system, which is designed to reduce fugitive emissions, on the grounds that PNM had failed to demonstrate that these costs were prudently incurred, the commission was within its authority in denying recovery, because the commission's finding that balanced draft was included in the permits for San Juan at PNM's request and not because it was required by the applicable environmental regulation was a finding specifically concerning the reasonableness of costs PNM was seeking to include in its rate base and was squarely within the authority of the commission to regulate the rates of public utilities and the obligation of the commission to ensure that those rates are just and reasonable. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Discretion to review rates efficiently. — The statutory scheme vests broad discretion in the commission to review utility rates in an efficient and reasonable manner. *Otero Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1989-NMSC-033, 108 N.M. 462, 774 P.2d 1050.

Assignment of issue to separate proceeding. — The commission may assign an issue raised in a rate request hearing to a separate proceeding. *Otero Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1989-NMSC-033, 108 N.M. 462, 774 P.2d 1050.

If plant acquisition adjustment is included as legitimate plant cost, it becomes a part of the rate base upon which a rate of return is to be computed. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

Ordering increase in contract rate is within commission's jurisdiction. — Where the commission had entered an order authorizing a public utility to enter into a contract and to continue to charge the gas rate therein specified until further order and on the ex parte petition of the utility subsequently entered an interlocutory order making a rate increase to be effective until the commission could hold a hearing to determine and set a new and proper rate, the commission was moving strictly in conformity with the act creating it to determine one of the major questions submitted to its jurisdiction - a question of rates. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Burden of proof on utility. — The legislature has granted the commission discretion to place the burden of proof on the utility in any rate proceeding. *Otero Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1989-NMSC-033, 108 N.M. 462, 774 P.2d 1050.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 79 to 87.

Judicial relief from contract rates which have become inadequate, 6 A.L.R. 1659, 10 A.L.R. 1335.

Validity, construction and effect of provisions for the appropriation of excess income of public utility, 33 A.L.R. 488.

Variations of electric utility rates based on quantity used, 67 A.L.R. 821.

Right of public utility to make minimum monthly bill or fixed monthly service charge, 122 A.L.R. 193.

Discrimination between property within and that outside governmental districts as to public service or utility rates, 4 A.L.R.2d 595.

Special requirements of consumer as giving rise to liability, based on implied contract, for failure to furnish particular amount of electricity, gas or water, 13 A.L.R.2d 1233.

Variations of utility rates based on flat and meter rates, 40 A.L.R.2d 1331.

Amount paid by public utility to affiliate for goods or services as includible in utility's rate base and operating expenses in rate proceeding, 16 A.L.R.4th 454.

Public utilities: validity of preferential rates for elderly or low-income persons, 29 A.L.R.4th 615.

Public utility's right to recover cost of nuclear power plants abandoned before completion, 83 A.L.R.4th 183.

73B C.J.S. Public Utilities §§ 15 to 59.

62-8-2. Service.

Every public utility shall furnish adequate, efficient and reasonable service.

History: Laws 1941, ch. 84, § 38; 1941 Comp., § 72-602; 1953 Comp., § 68-6-2.

ANNOTATIONS

Compiler's notes. — Sections 62-8-1 to 62-8-9 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See*

Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For jurisdiction of commission over service by public utility, *see* 62-6-4 and 62-6-19 to 62-6-22 NMSA 1978.

For denial of service by utility being petty misdemeanor, *see* 30-13-2 NMSA 1978.

Term "reasonable" imports a standard of reasonable care requiring the presence of fault as a prerequisite to liability. *Rossin v. S. Union Gas Co.*, 472 F.2d 707 (10th Cir. 1973).

Standard of care for power company. — A power company engaged in distributing electric current over its wires to consumers is not an insurer of the safety of the consumer or anyone else, although the company must exercise a high degree of care to protect those likely to come in contact with its wires. The care required is that commensurate with the dangerous character of the business and consistent with its practical operation and extends not only to the erection, maintenance and operation of the company's plant and apparatus, but also to an inspection thereof and to the discovery of defects. *Southwestern Pub. Serv. Co. v. Artesia Alfalfa Growers' Ass'n*, 1960-NMSC-052, 67 N.M. 108, 353 P.2d 62.

Duty to furnish service is imposed by law. — The duty of a public utility to furnish adequate, efficient and reasonable service is imposed by law, separate and apart from any contractual obligation to its consumers and entirely apart from any pertinent matters filed with the commission. *Southwestern Pub. Serv. Co. v. Artesia Alfalfa Growers' Ass'n*, 1960-NMSC-052, 67 N.M. 108, 353 P.2d 62.

A public utility's obligation to provide adequate, efficient and reasonable service is statutory and not contractual and there is no obligation that provides for a utility to continue electrical service to a customer for an indefinite term at a set rate. *Gonzales v. Public Serv. Comm'n*, 1985-NMSC-038, 102 N.M. 529, 697 P.2d 948.

Commission cannot relieve utility of liability for negligence. — The authority of the commission is sufficiently broad to empower it to establish rules and regulations for the government of the utility in the prosecution of its business, but such public service commission (now public regulation commission) cannot relieve a utility from liability under the law of negligence by any rule it may adopt. *Southwestern Pub. Serv. Co. v. Artesia Alfalfa Growers' Ass'n*, 1960-NMSC-052, 67 N.M. 108, 353 P.2d 62.

Utility cannot contract against its negligence. — A public service corporation, or a public utility such as an electric company, cannot contract against its negligence in the regular course of its business or in performing one of its duties of public service or

where a public duty is owed or where public interest is involved. *Southwestern Pub. Serv. Co. v. Artesia Alfalfa Growers' Ass'n*, 1960-NMSC-052, 67 N.M. 108, 353 P.2d 62.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 6, 16.

Right of public utility company to discontinue its entire service, 11 A.L.R. 252.

Liability of one maintaining high tension electric wires over private property of another for injuries thereby inflicted, 14 A.L.R. 1023, 56 A.L.R. 1021.

Right to string electrical wires across railroad right-of-way, 18 A.L.R. 619.

Validity of service charge for gas meter, 20 A.L.R. 225, 122 A.L.R. 194.

Implied obligation with respect to character or extent of service by gas company, 21 A.L.R. 671.

Electric light plant as nuisance, 23 A.L.R. 1410, 90 A.L.R. 1207.

Gas company's liability for injury or damage by escaping gas, 25 A.L.R. 262, 29 A.L.R. 1250, 47 A.L.R. 488, 90 A.L.R. 1082, 138 A.L.R. 870.

Injunction against anticipated or threatened nuisance from storage of gas, 26 A.L.R. 948, 32 A.L.R. 724, 55 A.L.R. 880.

Statutory requirement of adequate service and facilities by public utility as affecting liability for loss of private property through inadequate supply of water to extinguish fire, 27 A.L.R. 1279.

Right of company to prescribe fixtures to be used in connection with service, 37 A.L.R. 1368.

Duty of company to instruct patron as to economical manner of using service or give him equivalent concession, 38 A.L.R. 1065.

Duty of public utility to notify patron in advance of temporary suspension of service, 52 A.L.R. 1078.

Duty of public utility to duplicate service, 52 A.L.R. 1111.

Right of public utility corporation to refuse its service because of collateral matter not related to that service, 55 A.L.R. 771.

Cost involved as affecting duty to extend electrical service or supply individual applicant, 58 A.L.R. 537.

Mandamus to compel service by electric company, 83 A.L.R. 950.

Duty and liability in respect of sagging electrical wires maintained over highway, 84 A.L.R. 690.

Liability of utility company for delay in commencing service, 97 A.L.R. 838.

Construction of contract regarding time of payment for public utility service, 97 A.L.R. 982.

Damages for breach of duty to furnish electricity, 108 A.L.R. 1192.

Municipal corporation's power to sell meters to consumers as adjunct of services furnished, 108 A.L.R. 1459.

Right of utility on expiration of street franchise by limitation to discontinue service, 112 A.L.R. 631.

Constitutionality of statute or ordinance requiring public utility to supply fixtures or accessories or incidental service to customers free of charge or for fixed charge, 115 A.L.R. 1162.

Validity of contract for exemption of public service company from liability for own negligence, 175 A.L.R. 38.

Right of public utility to discontinue line or branch on ground that it is unprofitable, 10 A.L.R.2d 1121.

Deposit required by public utility, 43 A.L.R.2d 1262.

Liability of electric light or power company to patron for interruption, failure or inadequacy of power, 4 A.L.R.3d 594.

Payment of charge as condition of further service, 19 A.L.R.3d 1227.

Water distributor's liability for injury due to condition of service lines, meters and the like which serve individual consumer, 20 A.L.R.3d 1363.

Racial or religious discrimination in furnishing of public utility services or facilities, 53 A.L.R.3d 1027.

Liability of one other than electric power or light company or its employee for interruption, failure, or inadequacy of electric power, 15 A.L.R.4th 1148.

Liability of electric utility to nonpatron for interruption or failure of power, 54 A.L.R.4th 667.

Liability of electric company to one other than employee for injury or death arising from commencement or resumption of service, 46 A.L.R.5th 423.

Liability of municipal corporation or electric utility for injury resulting from inoperative, malfunctioning, or otherwise defective street light, 111 A.L.R.5th 579.

Debtor's protection under 11 USCS § 366 against utility service cutoff, 83 A.L.R. Fed. 207.

73B C.J.S. Public Utilities § 73.

62-8-3. Schedules.

Under such rules and regulations as the commission may prescribe, every public utility subject to the jurisdiction of the commission, shall file with the commission, within such time and in such form as the commission may designate, schedules showing all rates established by it and collected or enforced, or to be collected or enforced, within the jurisdiction of the commission. The utility shall keep a copy of such schedules open to public inspection under such rules and regulations as the commission may prescribe.

History: Laws 1941, ch. 84, § 39; 1941 Comp., § 72-603; 1953 Comp., § 68-6-3.

ANNOTATIONS

Compiler's notes. — Sections 62-8-1 to 62-8-9 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Fee payable for each schedule, not each instrument. — Fee provided for is payable for each rate schedule filed even though all schedules filed under rules of the commission may be included in one instrument. 1941 Op. Att'y Gen. No. 41-3939.

Law reviews. — For note, "Conservation, Lifeline Rates and Public Utility Regulatory Commissions," see 19 Nat. Res. J. 411 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities §§ 5, 29, 41, 59.

62-8-4. Schedules to show classifications.

Such schedules filed by every public utility shall set forth the classification of users and the rates to be charged as to each classification; and every utility shall have the right to make reasonable classifications of its users.

History: Laws 1941, ch. 84, § 40; 1941 Comp., § 72-604; 1953 Comp., § 68-6-4.

ANNOTATIONS

Compiler's notes. — Sections 62-8-1 to 62-8-9 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Refund to wholesale users held not discriminatory. — There was no de facto discrimination where electric company gave refund to wholesale users and did not give it to small consumers who did not have contracts with the power company. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Am. Jur. 2d, A.L.R. and C.J.S. references.— 64 Am. Jur. 2d Public Utilities §§ 117 to 125.

Public utilities: validity of preferential rates for elderly or low-income persons, 29 A.L.R.4th 615.

62-8-5. Adherence to schedules.

No public utility shall directly or indirectly, by any device whatsoever, or in anywise, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by such public utility than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this act, nor shall any person receive or accept any service from a public utility for a compensation greater or less than that prescribed in such schedules.

History: Laws 1941, ch. 84, § 41; 1941 Comp., § 72-605; 1953 Comp., § 68-6-5.

ANNOTATIONS

Compiler's notes. — Sections 62-8-1 to 62-8-9 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws

1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities §§ 5, 56.

62-8-6. Discrimination.

No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person within any classification or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage. No public utility shall establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service. Nothing shall prohibit, however, the commission from approving:

A. economic development rates;

B. rates designed to retain load;

C. rates and programs designed to reduce the burden of energy costs on low-income customers; and

D. energy efficiency programs designed to reduce the burden of energy costs on low-income customers pursuant to the Efficient Use of Energy Act [Chapter 62, Article 17 NMSA 1978].

History: Laws 1941, ch. 84, § 42; 1941 Comp., § 72-606; 1953 Comp., § 68-6-6; Laws 1989, ch. 5, § 2; 1993, ch. 282, § 33; 2008, ch. 24, § 2; 2025, ch. 147, § 1.

ANNOTATIONS

Compiler's notes. — Sections 62-8-1 to 62-8-9 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For denial of service by utility being petty misdemeanor, *see* 30-13-2 NMSA 1978.

The 2025 amendment, effective July 1, 2025, authorized the commission to approve rates and programs designed to reduce the burden of energy costs on low-income customers; added new subsection designations "A" and "B"; added new Subsection C and new subsection designation "D".

The 2008 amendment, effective May 14, 2008, authorized the commission to approve energy efficiency programs to reduce the burden of energy costs on low-income customers.

The 1993 amendment, effective June 18, 1993, substituted "the commission" for "the New Mexico public service commission" in the last sentence.

The 1989 amendment, effective June 16, 1989, added the last sentence.

Cost recovery based on a uniform per kilowatt hour basis. — Where a public utility applied for an emergency fuel and purchased power cost adjustment clause; the public regulation commission approved a fuel and purchased power cost adjustment clause that permitted the public utility to recover its fuel and purchased power costs through a uniform per kilowatt hour charge; the public utility's expert witness testified that the proposed fuel and purchased power cost adjustment clause fairly apportioned cost recovery across different rate classes; the commission had a long standing policy that required fuel and purchased power costs to be recovered on a uniform per kilowatt basis; and the policy was reflected in a rule promulgated by the commission, emergency fuel and purchased power cost adjustment clause was supported by substantial evidence. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Discrimination in rates or service is prohibited. — This section prohibits any unreasonable preference or advantage to any corporation or person as to rates or service. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Tariff permitting utility to recover costs of relocation required by a local ordinance did not impermissibly assess different rates for different communities in violation of this section. *City of Albuquerque v. N.M. Pub. Regulation Comm'n*, 2003-NMSC-028, 134 N.M. 472, 79 P.3d 297.

Refund to wholesale users held not discriminatory. — There was no de facto discrimination where electric company gave refund to wholesale users and did not give it to small consumers who did not have contracts with power company. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Ordering change in contract rate is within commission's jurisdiction. — Where the commission had entered an order authorizing a public utility to enter into a contract and to continue to charge the gas rate therein specified until further order and on the ex parte petition of the utility subsequently entered an interlocutory order making a rate

increase to be effective until the commission could hold a hearing to determine and set a new and proper rate, the commission was moving strictly in conformity with the act creating it to determine one of the major questions submitted to its jurisdiction - a question of rates. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Variation between rates of different utilities is not discrimination within the meaning of this section. *Gonzales v. Public Serv. Comm'n*, 1985-NMSC-038, 102 N.M. 529, 697 P.2d 948.

Contract on behalf of municipal inhabitants allowed. — This section does not prohibit variations in rates, nor does it require "equal service." Rather, it prohibits "unreasonable differences" in rates of service between localities. Allowing municipalities to contract with utilities for service rates to their inhabitants does not, therefore, ipso facto, violate this section. *City of Albuquerque v. N.M. Pub. Serv. Comm'n*, 1993-NMSC-021, 115 N.M. 521, 854 P.2d 348.

Law reviews. — For note, "Conservation, Lifeline Rates and Public Utility Regulatory Commissions," see 19 Nat. Res. J. 411 (1979).

For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 38 to 42, 110 to 116.

Franchise provisions for free or reduced rates of public service corporations as within constitutional or statutory provision prohibiting discrimination, 10 A.L.R. 504, 15 A.L.R. 1200.

Right to discriminate against a concern which desires service for resale, 12 A.L.R. 327, 112 A.L.R. 773.

Discrimination by public utility in respect of extension of credit, 12 A.L.R. 964.

Discrimination in operation of municipal utility, 50 A.L.R. 126.

Discrimination between property within and that outside governmental districts as to public service or utility rates, 4 A.L.R.2d 595.

Deposit required by public utility, 43 A.L.R.2d 1262.

Racial or religious discrimination in furnishing of public utility services or facilities, 53 A.L.R.3d 1027.

73B C.J.S. Public Utilities § 43.

62-8-7. Change in rates.

A. At any hearing involving an increase in rates or charges sought by a public utility, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.

B. Unless the commission otherwise orders, no public utility shall make any change in any rate that has been duly established except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force and the time when the changed rates will go into effect and other information as the commission by rule requires. The utility shall also give notice of the proposed changes to other interested persons as the commission may direct. All proposed changes shall be shown by filing new schedules that shall be kept open to public inspection. The commission for good cause shown may allow changes in rates without requiring the thirty days' notice, under conditions that it may prescribe.

C. Whenever there is filed with the commission by any public utility a complete application as prescribed by commission rule proposing new rates, the commission may, upon complaint or upon its own initiative, except as otherwise provided by law, upon reasonable notice, enter upon a hearing concerning the reasonableness of the proposed rates. If the commission determines a hearing is necessary, it shall suspend the operation of the proposed rates before they become effective but not for a longer initial period than nine months beyond the time when the rates would otherwise go into effect, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months. The commission shall hear and decide cases with reasonable promptness. The commission shall adopt rules identifying criteria for various rate and tariff filings to be eligible for suspension periods shorter than what is allowed by this subsection and to be eligible for summary approval without hearing.

D. If after a hearing the commission finds the proposed rates to be unjust, unreasonable or in any way in violation of law, the commission shall determine the just and reasonable rates to be charged or applied by the utility for the service in question and shall fix the rates by order to be served upon the utility or the commission by its order shall direct the utility to file new rates respecting such service that are designed to produce annual revenues no greater than those determined by the commission in its order to be just and reasonable. Those rates shall thereafter be observed until changed, as provided by the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978].

E. Except as otherwise provided by law, any increase in rates or charges for the utility commodity based upon cost factors other than taxes or cost of fuel, gas or purchased power, filed for after April 4, 1991, shall be permitted only after notice and hearing as provided by this section. The commission shall enact rules governing the use of tax, fuel, gas or purchased power adjustment clauses by utilities that enable the commission to consider periodically at least the following:

(1) whether the existence of a particular adjustment clause is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable rates to all customer classes;

(2) the specific adjustment mechanism to recover tax, gas, fuel or purchased power costs;

(3) which costs should be included in an adjustment clause, procedures to avoid the inclusion of costs in an adjustment clause that should not be included and methods by which the propriety of costs that are included may be determined by the commission in a timely manner, including what informational filings are required to enable the commission to make such a determination; and

(4) the proper adjustment period to be employed.

F. Except as otherwise provided by law, any increase in rates or charges for a public utility as defined in Paragraph (3) of Subsection G of Section 62-3-3 NMSA 1978 based upon cost factors other than taxes or cost of fuel, gas, purchased power or acquisition of water resources shall be permitted only after notice and hearing as provided by this section. For the purposes of this subsection, "acquisition of water resources" does not include the purchase or other permanent acquisition of water rights. The commission shall enact rules governing the use of tax, fuel, gas, purchased power or water resource acquisition adjustment clauses by such utilities that enable the commission to consider periodically at least the following:

(1) whether the existence of a particular adjustment clause is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable rates to all customer classes;

(2) the specific adjustment mechanism to recover tax, gas, fuel, purchased power or acquisition of water resource costs;

(3) which costs should be included in an adjustment clause, procedures to avoid the inclusion of costs in an adjustment clause that should not be included and methods by which the propriety of costs that are included may be determined by the commission in a timely manner, including what informational filings are required to enable the commission to make such a determination; and

(4) the proper adjustment period to be employed.

G. The commission may eliminate or condition a particular adjustment clause if it finds such elimination or condition is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable rates to all customer classes; provided, however, that no such elimination or condition shall be ordered unless such elimination or condition will not place the affected utility at a competitive disadvantage. The commission rules shall also

provide for variances and may provide for separate examination of a utility's adjustment clause based upon that utility's particular operating characteristics.

H. Whenever there is filed with the commission a schedule proposing new rates by a rural electric cooperative organized under the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978] or by a foreign distribution cooperative, the rates shall become effective as proposed by the rural electric cooperative or the foreign distribution cooperative without a hearing, except as provided in this subsection. The rural electric cooperative or the foreign distribution cooperative shall give written notice of the proposed rates to its affected patrons in New Mexico at least thirty days prior to the filing with the commission. Upon the filing with the commission of a protest setting forth grounds for review of the proposed rates signed by the lesser of one percent of or twenty-five members of a customer rate class of the rural electric cooperative or foreign distribution cooperative and if the commission determines that there is just cause for reviewing the proposed rates on one or more of the grounds of the protest, the commission shall suspend the rates and conduct a hearing concerning the reasonableness of any proposed rates filed by a rural electric cooperative or a foreign distribution cooperative pursuant to Subsections C and D of this section. The protest shall be filed no later than twenty days after the filing with the commission of the schedule proposing the new rates. The hearing and review shall be limited to the issues set forth in the protest and for which the commission may find just cause for the review, which issues shall be contained in the notice of hearing. The provisions of this subsection shall not be construed to affect commission authority or procedure to regulate the sale, furnishing or delivery by wholesale suppliers of electricity to rural electric cooperatives or foreign distribution cooperatives pursuant to Section 62-6-4 NMSA 1978. In addition to the adjustments permitted by Subsections E and G of this section, the commission may authorize rate schedules of rural electric cooperatives and foreign distribution cooperatives to recover, without notice and hearing, changes in the cost of debt capital incurred pursuant to securities that are lawfully issued. This subsection shall not apply to any foreign distribution cooperative that proposes rates for any of its customer rate classes in the state that are higher than the rates it charges to the same or substantially similar customer rate class in the state under the laws of which the foreign distribution cooperative is organized. For the purposes of this subsection:

(1) "foreign distribution cooperative" means a rural electric distribution cooperative corporation serving its members at retail and transacting business in New Mexico pursuant to the authority granted under Section 62-15-26 NMSA 1978;

(2) "member of a foreign distribution cooperative" means a retail customer in New Mexico serviced by a foreign distribution cooperative; and

(3) "member of a rural electric cooperative" means a member as defined by the Rural Electric Cooperative Act.

History: 1978 Comp., § 62-8-7, enacted by Laws 1991, ch. 251, § 1; 1998, ch. 108, § 48; 2003, ch. 416, § 4; 2007, ch. 186, § 1; 2011, ch. 155, § 1; 2011, ch. 170, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1991, ch. 251, § 1 repealed former 62-8-7 NMSA 1978, as amended by Laws 1985, ch. 221, § 2, relating to change in rates, and enacted the above section, effective April 4, 1991.

Compiler's notes. — Sections 62-8-1 to 62-8-9 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

2011 Multiple Amendments. — Laws 2011, ch. 155, § 1 and 2011, ch. 170, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, 2011, ch. 170, § 1, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2011, ch. 155, § 1 and 2011, ch. 170, § 1 are described below. To view the session laws in their entirety, *see* the 2011 session laws on *NMOneSource.com*.

Laws 2011, ch. 170, § 1, effective July 1, 2011, in Subsection G, permitted foreign distribution cooperatives to increase rates, without a hearing, if the proposed rates are not higher than the rates the cooperative charged in the state in which it is organized; permitted the commission to suspend the cooperative's rates if there is a protest by the specified number of customers; and added definitions of "foreign distribution cooperative" and "member of a foreign distribution cooperative".

Laws 2011, ch. 155, § 1, effective July 1, 2011, added Subsection F to permit water utilities to increase rates, without notice and hearing, based on taxes, the cost of fuel, gas and purchased power, and the cost to purchase or acquire permanent water rights.

The 2007 amendment, effective July 1, 2007, in Subsection G, required that a petition for hearing be signed by the lesser of one percent or twenty-five members of a customer class.

The 2003 amendment, effective July 1, 2003, substituted "that are lawfully issued" for "the issuance of which are approved by the commission" following "pursuant to securities" in Subsection G.

The 1998 amendment, effective January 1, 1999, deleted "as provided in this section" near the beginning of Subsection A; in Subsection B, substituted "that" for "which" at the beginning and inserted "and other information as the commission by rule requires" near the middle; rewrote Subsection C; in Subsection E, substituted "April 4, 1991" for "the effective date of this section" near the middle and deleted "and regulations" preceding "shall enact rules" near the end; and added Subsection F, redesignated former Subsection F as Subsection G and made minor stylistic changes in Subsection G.

Franchise fees are not items included in adjustment clauses. — Franchise fees charged by counties pursuant to Section 62-1-3 NMSA 1978 are not within the jurisdiction of the public regulation commission by analogy to fuel and purchased power adjustment clauses, over which the commission has jurisdiction under Section 62-8-7 NMSA 1978. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

Denial of due process. — Where PNM appealed the New Mexico public regulation commission's (commission) denial of recovery in its rate base for the repurchase of 64.1 MW of capacity and certain lease renewals at Palo Verde nuclear generating station (Palo Verde), and where the commission found that PNM's actions in renewing and reacquiring the leases exposed ratepayers to costs associated with nuclear decommissioning responsibilities that likely would not have been incurred had an alternative resource other than nuclear been selected and denied recovery for all future nuclear decommissioning costs, the commission denied PNM's right to due process of law, because PNM was not given sufficient notice of a potential permanent disallowance of all recovery for its future contributions to the nuclear decommissioning trusts and was not afforded an opportunity to be heard on the issue.. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Adequate public notice. — Where a public utility applied for an emergency fuel and purchased power cost adjustment clause; the public regulation commission published a public notice of the proceedings which stated that the public utility had asked the commission to implement the proposed fuel and purchase power cost clause and to include conditions to mitigate the impact on customer bills during peak periods and incentives to the public utility to control costs, that the public utility contended that it was experiencing serious cash flow problems, that it was at risk of losing its investment grade rating, that it was experiencing a loss of overall financial integrity, and that the lack of a fuel and purchased power cost adjustment clause would result in the downgrading of the public utility's credit rating, and that because of the serious concerns raised by the public utility regarding its imminent financial crisis, the commission had established an expedited procedural schedule for reviewing the emergency fuel and purchased power cost adjustment clause; and the commission subsequently decided that the public utility's financial condition was not relevant to the issue of whether the commission should grant the emergency fuel and purchased power cost adjustment clause, the notice properly informed the public of the arguments raised in the public utility's application and of the expedited procedural schedule, was not inadequate or misleading, and did not deny the intervenors procedural due process.

Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Expedited procedural schedule. — Where a public utility applied for a rate increase and a fuel and purchased power cost adjustment clause; a hearing examiner appointed by the public regulation commission issued a recommendation that the application for the fuel and purchased power cost adjustment clause be denied; the public utility then applied for an emergency fuel and purchased power cost adjustment clause; the commission severed the emergency application from the underlying rate case and determined that the commission would take administrative notice of any evidence relevant to the emergency application that was in the underlying rate case; intervenors participated in the underlying rate case; because the public utility contended that it was facing an immediate and critical financial crisis due to the lack of appropriate recovery of rapidly escalating fuel and purchased power costs, the commission established an expedited procedural schedule for reviewing the public utility's application which required the intervenors to file testimony within nine days after notice of the proceeding had been published; and the commission subsequently granted the intervenors two extensions of time which extended the time period in which the intervenors were required to file their responsive testimony from 12 to 42 days, the commission's denial of the intervenors' additional requests for extensions of time was not arbitrary, capricious or unreasonable and did not deny the intervenors procedural due process. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Failure of commissioners to attend public hearings on matters on which they vote. — Where a public utility applied for an emergency fuel and purchased power cost adjustment clause; the public regulation commission held public hearings on the public utility's application; two members of the commission who voted in favor of the public utility's application did not personally attend many of the public hearings; and the intervenors did not present any evidence to support their claim that the two commissioners failed to review the evidentiary record prior to voting, the intervenors failed to show they were denied their procedural due process right to a full and fair hearing. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Failure of commissioners to recuse themselves. — Where a public utility applied for an emergency fuel and purchased power cost adjustment clause; the public utility contended that it was facing an immediate and critical financial crisis due to the lack of appropriate recovery of rapidly escalating fuel and purchased power costs; at a hearing that was held before the commission held public hearings on the merits of the public utility's application, two commissioners argued that in view of the public utility's financial crisis, the commission should grant the public utility interim relief on its application; the intervenors filed a motion requesting that the two commissioners recuse themselves from participating in the proceeding on the grounds that they had prejudged the merits of the public utility's application; and the two commissioners declined to recuse themselves, the intervenors were not denied their procedural due process right to a fair

and impartial hearing. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

To require a utility to offset its fuel and purchased power costs against cost-savings in other areas would undermine the direct and automatic nature of the cost recovery system inherent in the fuel and purchased power cost adjustment clause authorized by Subsection E of Section 62-8-7 NMSA 1978. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Recovery of costs of prudency review audit. — Where a public utility applied for an emergency fuel and purchased power cost adjustment clause; the public regulation commission approved the fuel and purchased power cost adjustment clause and required the public utility to pay the costs of an independent prudency review of its fuel and purchased power costs by auditors selected by and under the direction of the commission; and after issuance of the commission's order approving the fuel and purchased power cost adjustment clause, the commission issued a request for proposals to select a qualified auditor which summarized the scope of the audit and the scope of the prudence review, the independent audit provided for sufficient regulatory oversight. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Filing schedule of rate changes. — Where a public utility applied for an emergency fuel and purchased power cost adjustment clause; the public utility notified the public regulation commission of its proposed rate changes in the application; the public was notified of the proposed rate changes when the commission published notice of the proceedings; the commission's final order granting the fuel and purchased power cost adjustment clause required the public utility to file new schedules for the fuel and purchased power cost adjustment clause within five days after the date of the final order; and the public utility filed new schedules six days before the fuel and purchase power cost adjustment clause went into effect, the public utility complied with the substantive requirements of Subsection B of Section 62-8-7 NMSA 1978. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Regulation 17.9.550.17(A)(2) NMAC does not require a showing that fuel and purchased power costs are volatile or fluctuate more than some other cost of providing service. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Substantial evidence supported finding that costs fluctuate and cannot be determined in a rate case. — Where a public utility applied for an emergency fuel and purchased power cost adjustment clause and the public utility provided testimony that prices for all fuels had increased substantially and had become more volatile compared with past years, fuel and purchased power prices and off system sales were difficult to predict for rate setting purposes, financial markets downgrade the credit rating of public utilities that do not have fuel and purchased power cost adjustment clauses, natural gas

will be an increasing percentage of the public utility's fuel base, purchased power agreements will have variable fuel costs based on natural gas prices, natural gas prices have evidenced 50% to 60% price swings, and the public utility's long term contracts for nuclear fuel and coal were not fixed price contracts, the commission's findings that the public utility's fuel and purchased power costs periodically fluctuate and cannot be precisely determined in a rate case were supported by substantial evidence. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Purchased power. — Renewable energy certificates unaccompanied by the purchase of the renewable energy that the certificates represent do not constitute purchased power and the renewable energy certificate costs cannot be recovered through the automatic adjustment clause. *N.M. Indus. Energy Consumers v. N.M. PRC*, 2007-NMSC-053, 142 N.M. 533, 168 P.3d 105.

The commission exceeded its authority when it determined that renewable energy certificates costs were closely related to purchased power and recoverable through the automatic adjustment clause. *N.M. Indus. Energy Consumers v. N.M. PRC*, 2007-NMSC-053, 142 N.M. 533, 168 P.3d 105.

The public regulation commission did not exceed its authority in setting a just and reasonable rate for a rural electric cooperative. — Where appellant, a public utility and rural electric cooperative organized under the Rural Electric Cooperative Act, 62-15-1 to 62-15-37 NMSA 1978, appealed from an order of the New Mexico public regulation commission (commission) rejecting rates proposed by the rural electric cooperative and directing the rural electric cooperative to adopt rates which the commission determined to be just and reasonable, arguing that the commission exceeded its authority because it had no power to fix different rates for a rural electric cooperative but could only approve or deny the rates as proposed, the commission did not exceed the scope of its authority, because the legislature has expressly recognized that the commission may regulate a rural electric cooperative's rates and that the regulation of these rates is a matter of public concern, and once the commission's jurisdiction under 62-8-7(H) NMSA 1978 was invoked, the commission had plenary authority to determine whether a cooperative's proposed rates were just and reasonable, and if the commission finds those rates are unreasonable, then the commission has the authority to fix just and reasonable rates for that cooperative. *Socorro Elec. v. N.M. Pub. Regul. Comm'n*, 2024-NMSC-017.

The public regulation commission's decision to reject rural electric cooperative's proposed revenue requirement was lawful, reasonable, and supported by substantial evidence. — Where appellant, a public utility and rural electric cooperative organized under the Rural Electric Cooperative Act, 62-15-1 to 62-15-37 NMSA 1978, appealed from an order of the New Mexico public regulation commission (commission) rejecting a rate increase proposed by the rural electric cooperative and directing the rural electric cooperative to adopt rates which the commission determined to be just and reasonable, arguing that the commission's decision to deny its proposed revenue

increase attempted to set financial objectives for the rural electric cooperative, appellant's argument was without merit, because the commission did not set financial objectives for the rural electric cooperative by rejecting its proposed revenue requirement, but rather denied the rural electric cooperative's proposed rates because it determined, based on exhibits and expert testimony in the record, that the rates were not just and reasonable and that the cooperative had not shown a need for increased revenue. The just and reasonable standard of the Public Utility Act requires rates to be 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. *Socorro Elec. v. N.M. Pub. Regul. Comm'n*, 2024-NMSC-017.

The public regulation commission's revenue reallocation and rate design decisions were lawful, reasonable, and supported by substantial evidence. — Where appellant, a public utility and rural electric cooperative organized under the Rural Electric Cooperative Act, 62-15-1 to 62-15-37 NMSA 1978, appealed from an order of the New Mexico public regulation commission (commission) rejecting a rate increase proposed by the rural electric cooperative, directing the rural electric cooperative to adopt rates which the commission determined to be just and reasonable and ordering the rural electric cooperative to make several adjustments to its proposed rate design, arguing that the commission's order to reallocate revenues and redesign the cooperative's rates was unlawful because the commission had no power to direct the rural electric cooperative to adopt a different allocation or design but was limited to approving or denying the allocation and design as proposed, the commission's revenue reallocation was not unlawful, arbitrary or capricious, because revenue allocation and rate design are public matters, and once the commission's jurisdiction under 62-8-7(H) NMSA 1978 was invoked, the commission had considerable discretion in the area of rate design, and appellant has not shown that the commission's reallocation and design decisions were arbitrary or capricious. *Socorro Elec. v. N.M. Pub. Regul. Comm'n*, 2024-NMSC-017.

Rate requests carried out under this section. — This section is the provision under which the overall purpose of Section 62-8-1 NMSA 1978 is carried out for the given instance of a rate request. *Otero Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1989-NMSC-033, 108 N.M. 462, 774 P.2d 1050.

Commission is vested with considerable discretion in determining whether a rate to be received and charged is just and reasonable. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

Discretion to review rates efficiently. — The statutory scheme vests broad discretion in the commission to review utility rates in an efficient and reasonable manner. *Otero Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1989-NMSC-033, 108 N.M. 462, 774 P.2d 1050.

Commission may change rates by unilateral action followed by hearing. — This section contains express language conferring power on the commission, by unilateral action, to make a change in rates, providing hearing on what is a fair and reasonable rate follows in due season on proper notice and an opportunity is made for all interested parties to be heard. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

The public regulation commission did not violate the Public Utility Act or due process by summarily rejecting appellant's proposed bill-credit rate without a hearing. — In a consolidated appeal, where appellants and intervenors challenged a community solar rule's prohibition against subtracting transmission costs from a utility's community solar bill-credit rate as an unlawful subsidy under the Community Solar Act, 62-16B-1 NMSA 1978 to 62-16B-8 NMSA 1978, and where appellant challenged the public regulation commission's (commission) refusal to hold a hearing when it rejected appellant's initial proposed bill-credit rate, ordered appellant to file a rate that complied with its rule, and allowed appellant's revised bill-credit rate to take effect, the commission did not violate statute or due process when it rejected appellant's proposed bill-credit rate without a hearing, because the commission was under no obligation to hold a hearing on a question of policy that was fully debated and considered during the rulemaking process and was clearly answered by the rule itself. *Sw. Pub. Serv. Co. v. N.M. Pub. Regul. Comm'n*, 2025-NMSC-013.

Including increase in contract rate. — Where the commission had entered an order authorizing a public utility to enter into a contract and to continue to charge the gas rate therein specified until further order and on the ex parte petition of the utility subsequently entered an interlocutory order making a rate increase to be effective until the commission could hold a hearing to determine and set a new and proper rate, the commission was moving strictly in conformity with the act creating it to determine one of the major questions submitted to its jurisdiction - a question of rates. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Action on rate change not required within nine months. — With respect to rate changes, this section does not make it mandatory for the commission to act within any specific time; it merely provides that if the commission fails to act within the nine-month suspension period, the utility may put the proposed rates into effect. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1979-NMSC-042, 92 N.M. 721, 594 P.2d 1177.

Commission may not order refund passed on to consumers. — Commission has no express or implied statutory authority to order the flow-through of refunds to electric company from power supplier to consumers. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Where refund is not trust fund for consumers. — Where refund was ordered paid over to power company by the federal power commission without any restrictions, and there was nothing in the order indicating an intention on the part of the commission to create a "trust fund" for the benefit of the ultimate consumers, the refund did not

constitute a trust fund belonging to company's customers. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Commission's order held unsupported by substantial evidence. — Where gas company seeking rate increase proposed to trend the general plant account items by using a nationally recognized index, but the commission instead inserted its own method - to simply use the untrended original cost, although the witness who strongly supported this approach admitted that he did not know whether this would accurately establish the reproduction cost of the items, the court held the commission's order was unreasonable, being unsupported by substantial evidence. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Assignment of issue to separate proceeding. — The commission may assign an issue raised in a rate request hearing to a separate proceeding. *Otero Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1989-NMSC-033, 108 N.M. 462, 774 P.2d 1050.

Burden of proof on utility. — The legislature has granted the commission discretion to place the burden of proof on the utility in any rate proceeding. *Otero Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1989-NMSC-033, 108 N.M. 462, 774 P.2d 1050.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

For note, "Conservation, Lifeline Rates and Public Utility Regulatory Commissions," see 19 Nat. Res. J. 411 (1979).

For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

For comment, "Regulation of Electric Utilities and Affiliated Coal Companies - Determining Reasonable Expenses," see 26 Nat. Res. J. 851 (1986).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Change of rates by public utility while another rate is undetermined, 16 A.L.R. 1219.

Joinder or representation of several claimants in action to recover overcharge, 1 A.L.R.2d 160.

Public utility's right to recover cost of nuclear power plants abandoned before completion, 83 A.L.R.4th 183.

73B C.J.S. Public Utilities § 17.

62-8-7.1. Hearing procedures for change of rates of small water and sewer utilities.

A. Whenever there is filed with the commission any schedule proposing any new rates pursuant to Section 62-8-7 NMSA 1978 by any public utility as defined in Paragraph (3) or (5) of Subsection G of Section 62-3-3 NMSA 1978 with equal to or fewer than an aggregate of one thousand five hundred service connections in any utility operating district or division in New Mexico averaged over the previous three consecutive years, the rates shall become effective as proposed by the utility without a hearing; provided that the utility shall be required to give written notice of the proposed rates to the ratepayers receiving service from the utility at least sixty days prior to filing the proposed rate change with the commission; and provided further that the commission shall enter upon a hearing concerning the reasonableness of any proposed rates filed by such a utility pursuant to Subsections C and D of Section 62-8-7 NMSA 1978 when a rate increase would have the effect of increasing the rates fifty percent or more in a twelve-month period or upon the filing with the commission of a protest seeking review of the proposed rates signed by ten percent or more of the ratepayers or twenty-five ratepayers, whichever is more, receiving service from such a utility if the commission determines there is just cause for reviewing the proposed rates. For purposes of this section, a "service connection" means a metered hookup to the utility's water system or a sewer tap to the utility's wastewater system, and each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer. The petition shall be signed by the person in whose name service is carried. The petition shall be filed no later than twenty days after the filing with the commission of the schedule proposing the new rates. In all other respects, Section 62-8-7 NMSA 1978 shall apply to such water utilities. If a utility provides both water and sewer service, the service connection revenues attributable to the provision of water service only shall determine whether the procedures specified in this subsection shall apply to a schedule proposing new rates for water service, and the service connection revenues attributable to the provision of sewer service shall determine whether the procedures specified in this subsection shall apply to a schedule proposing new rates for sewer service. Nothing in this subsection shall prevent a utility from filing for a rate change pursuant to any other rule or procedure of the commission.

B. Whenever there is filed with the commission a schedule proposing new rates pursuant to Section 62-8-7 NMSA 1978 by a public utility as defined in Paragraph (3) or (5) of Subsection G of Section 62-3-3 NMSA 1978, with more than an aggregate of one thousand five hundred service connections and fewer than an aggregate of five thousand service connections in any utility operating district or division in New Mexico averaged over the previous three consecutive years, the rates shall become effective as proposed by the public utility without a hearing; provided that the public utility shall be required to give written notice of the proposed rates to the ratepayers receiving service from the public utility at least sixty days prior to filing the proposed rate change with the commission; and provided further that the commission shall enter upon a hearing concerning the reasonableness of proposed rates filed by such a public utility pursuant to Subsections C and D of Section 62-8-7 NMSA 1978 when a rate increase would have

the effect of increasing rates more than eight percent in a twelve-month period, or upon the commission staff's motion or upon the filing with the commission of a protest seeking review of the proposed rates signed by ten percent or more of the ratepayers receiving service from the public utility, if the commission determines there is just cause for reviewing the proposed rates. The petition shall be signed by the person in whose name service is carried. The petition shall be filed no later than twenty days after the filing with the commission of the schedule proposing the new rates. In all other respects, Section 62-8-7 NMSA 1978 shall apply to such water utilities. If a public utility provides both water and sewer service, the service connection revenues attributable to the provision of water service only shall determine whether the procedure specified in this subsection shall apply to a schedule proposing new rates for water service, and the service connection revenues attributable to the provision of sewer service shall determine whether the procedures specified in this subsection shall apply to a schedule proposing new rates for sewer service. Nothing in this subsection shall prevent a public utility from filing for a rate change pursuant to any other rule or procedure of the commission.

C. Notwithstanding the provisions of Subsections A and B of this section, a public utility as defined in Paragraph (3) or (5) of Subsection G of Section 62-3-3 NMSA 1978, with fewer than an aggregate of five thousand service connections in any utility operating district or division in New Mexico averaged over the previous three consecutive years, that is currently in good standing with all applicable requirements of the commission, may adjust its charges for commodity and service by up to two percent in any calendar year without a hearing; provided that the public utility shall not have changed its rates in the prior twelve-month period; and provided further that the public utility shall be required to give written notice of the proposed rate adjustments to the ratepayers receiving service from the public utility prior to its effective date. The increased rates shall not become effective until at least thirty days after notice and filing with the commission. If a public utility provides both water and sewer service, the service connection revenues attributable to the provision of water service only shall determine whether the procedure specified in this subsection shall apply to any schedule proposing any new rate or rates for water service, and the service connection revenues attributable to the provision of sewer service shall determine whether the procedures specified in this subsection shall apply to any schedule proposing any new rate or rates for sewer service. Nothing in this subsection shall prevent a public utility from filing for a rate change pursuant to any other rule or procedure of the commission.

History: Laws 1985, ch. 221, § 3; 1987, ch. 52, § 3; 2005, ch. 339, § 4.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, deleted the former provision of Subsection A, which provided that rates become effective without hearing if filed by a public utility whose annual operating revenues averaged less that $500,000 over a consecutive three year period; provided in Subsection A that rates become effective without hearing if filed by a public utility with equal to or fewer than an aggregate of one

thousand five hundred connections in any district or division averaged over the previous three consecutive years; provided in Subsection A that the commission shall hold a hearing if a protest is signed by ten percent of ratepayers or twenty-five ratepayers, whichever is more, if the commission determines there is just cause for reviewing the proposed rates; added the definition of "service connection" in Subsection A to include a metered hookup to the utility's water system or a sewer tap to the utility's wastewater system; changed "annual operating revenues" to "service connection revenues" in Subsection A; provided in Subsection A that nothing shall prevent a utility from filing for a rage change pursuant to any other rule or procedure of the commission; added Subsection B to provide for rates changed by a public utility with more than an aggregate of one thousand five hundred service connections and fewer that an aggregate of five thousand service connections; added Subsection C to provide for rate increase of up to two percent without a hearing by a public utility that has fewer than an aggregate of five thousand service connections and that meets the criteria of Subsection C.

The 1987 amendment, effective June 19, 1987, designated the existing language as Subsection A (there is no Subsection B), substituted "this section" for "this act" near the beginning of the second sentence, added the present last sentence and made minor language changes throughout the section.

62-8-8. Inspection and supervision fee.

A. Each utility doing business in this state and subject to the control and jurisdiction of the commission with respect to its rates or service regulations shall pay annually to the state a fee for the inspection and supervision of such business in an amount equal to five hundred ninety thousandths percent of its gross receipts from business transacted in New Mexico for the preceding calendar year. That sum shall be payable on the last day of July in each year. An inspection and supervision fee shall be paid by utilities in addition to all property, franchise, license, intangible and other taxes, fees and charges provided by law. No similar inspection and supervision fee shall be measured by the amount of the gross receipts of such utility for the calendar year next preceding the date fixed in this section for the payment of the fee. In the case of utilities engaged in interstate business, the inspection and supervision fee shall be measured by the gross receipts of those utilities from intrastate business only for that preceding calendar year and not in any respect upon receipts derived wholly or in part from interstate business. No inspection and supervision fee shall be charged on the gross receipts from the sale of gas, water or electricity to a utility regulated by the commission for resale to the public.

B. Prior to July 1, 2031, the fees established pursuant to this section may be adjusted annually by the commission; provided that any increase shall not be greater than the prior year's increase in the employment cost index for state and local government as published by the federal bureau of labor statistics.

History: 1953 Comp., § 68-6-8, enacted by Laws 1967, ch. 96, § 6; 1992, ch. 22, § 1; 2003, ch. 14, § 21; 2005, ch. 339, § 5; 2025, ch. 84, § 2

ANNOTATIONS

Repeals and reenactments. — Laws 1967, ch. 96, § 6, repealed 68-6-8, 1953 Comp., relating to inspection and supervision fees, and enacted the above section.

The 2025 amendment, effective July 1, 2025, increased the amount of the inspection and supervision fee that must be paid by each utility doing business in the state and changed the date by when the fee must be paid, and authorized the public regulation commission to adjust the inspection and supervision fee annually; in Subsection A, after "equal to five hundred" deleted "six" and added "ninety", after "shall be payable on" deleted "or before", after the next occurrence of "the" deleted "first" and added "last", and after "day of" deleted "April" and added "July"; and added Subsection B.

The 2005 amendment, effective July 1, 2005, changed the date the sum is payable from the last day of February to the first day of April.

The 2003 amendment, effective July 1, 2003, substituted "fee" for "fees" in the section heading, in the first sentence, substituted "five hundred six thousandths" for "one-half of one" following "an amount equal to", deleted "In calendar year 1992, that sum shall be payable in equal quarterly installments on or before the last day of February, May, August and November, respectively. Thereafter" preceding "That sum shall", substituted "An inspection and supervision fee shall be paid by utilities in addition to" for "Inspection and supervision fees shall be paid by such utilities in addition to any and" preceding "all property, franchise", deleted "now or hereafter" preceding "provided by law", in the final and penultimate sentences substituted "the inspection and supervision fee" for "the fees".

The 1992 amendment, effective March 5, 1992, substituted the present second and third sentences for the former second sentence, which read "Said sum shall be payable in equal quarterly installments on or before the last day of February, May, August and November in each year" and made stylistic changes.

Recovery of costs of prudency review audit. — Where a public utility applied for an emergency fuel and purchased power cost adjustment clause; the public regulation commission approved the fuel and purchased power cost adjustment clause; to ensure the proper administration of the fuel and purchased power costs adjustment clause and to ensure that the public utility’s electric power was generated at the lowest reasonable cost, the commission required the public utility to pay the costs of an independent prudency review of its fuel and purchased power costs by auditors selected by and under the direction of the commission; and the commission permitted the public utility to treat all prudency review costs paid by the public utility as a regulatory asset which could be recovered from the public utility’s ratepayers through the public utility’s base rates, the costs of the prudency review audit were a legitimate operating expense of the

public utility and could be recovered through its base rates. *Albuquerque Bernalillo Co. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Fees permitted for prior year's services. — The commission has authority to assess and collect inspection and supervision fees for the preceding year, despite the fact that, during the year the fees are actually assessed and become payable, the utility is no longer doing business in New Mexico. *United Waterworks, Inc. v. N.M. Pub. Util. Comm'n*, 2000-NMCA-057, 129 N.M. 262, 5 P.3d 584.

Legislative intent is that fees collected go to the state, not to any specific fund. Once deposited with the state, in the general fund, they may be appropriated by the legislature as it sees fit. Thus, the commission is only entitled for its operation to such money generated by the fees collected pursuant to this section as the legislature may appropriate. The commission may not expend the entire amount received. 1978 Op. Att'y Gen. No. 78-10.

Fee calculated at beginning of year based on past year's receipts. — Under this section the fee to be paid in any given year is calculated at the beginning of the year on the basis of gross receipts for the past year. It is only the payment of the fee which is permitted to be spread throughout the year. 1967 Op. Att'y Gen. No. 67-96.

Where utility operates only for part of a year, it is liable for the full annual fee. 1943 Op. Att'y Gen. No. 43-4266 (rendered under former statute).

Effect of disposing of major part of holdings. — Where utility disposes of a major part of its holdings, the fees for the remaining holdings will be based upon gross receipts of such remaining holdings for the previous year. 1943 Op. Att'y Gen. No. 43-4266 (rendered under former statute).

First fees paid by rural electric cooperatives. 1962 Op. Att'y Gen. No. 62-16 (rendered under former statute).

62-8-9. Disposition of funds; interest and penalty on late payments.

A. All fees and money collected under the provisions of the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], including fees provided for in Section 62-13-2 NMSA 1978 and including fees and charges for inspection and supervision, for stenographic services and for transcripts of evidence, shall be remitted by the commission to the state treasurer not later than the day following receipt. Payments provided for in the Public Utility Act shall be obligatory upon all utilities subject to the Public Utility Act.

B. When a fee is not paid on the date it is due, interest shall be paid to the state on the amount due. The interest on the amount due shall start to accrue on the day following the due date and will continue to accrue until the total amount due is paid. The

rate of interest on a late fee payment shall be fifteen percent per year, computed at the rate of one and one-fourth percent per month.

C. In addition to any interest due on a late fee payment, a penalty shall be paid to the state for failure to pay the fee when it was due. The penalty imposed shall be two percent of the amount of the fee due.

D. The attorney general, in the name of the state, shall bring suit to collect fees, interest and penalties that remain unpaid.

History: 1953 Comp., § 68-6-9.1, enacted by Laws 1957, ch. 25, § 1; 1992, ch. 23, § 1.

ANNOTATIONS

Compiler's notes. — Sections 62-8-1 to 62-8-9 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1992 amendment, effective July 1, 1992, added the present catchline; added the Subsection A designation; in Subsection A, made a section reference substitution, inserted "inspection and supervision, for", deleted the former last sentence, relating to failure, neglect or refusal of a utility to pay on the date it is due, and made stylistic changes; and added Subsections B, C, and D.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities § 65.

62-8-10. Utility service; seriously ill individuals.

Utility service shall not be discontinued to any residence where a seriously or chronically ill person is residing if the person responsible for the utility service charges does not have the financial resources to pay the charges and if a licensed physician, physician assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner certifies that discontinuance of service might endanger that person's health or life and the certificate is delivered to a manager or officer of the provider of the utility service at least two days prior to the due date of a billing for service. The commission shall provide by rule the procedure necessary to carry out this section.

History: 1978 Comp., § 62-8-10, enacted by Laws 2000, ch. 88, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 2000, ch. 88, § 2 repealed former 62-8-10 NMSA 1978, as amended by Laws 1993, ch. 282, § 34, relating to the discontinuance of utility service to seriously ill persons, and enacted a new section, effective March 7, 2000.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of electric utility to nonpatron for interruption or failure of power, 54 A.L.R.4th 667.

Debtor's protection under 11 USCS § 366 against utility service cutoff, 83 A.L.R. Fed. 207.

62-8-11. Consumer information; disclosure prohibited.

A. A public utility, as defined pursuant to Section 62-3-3 NMSA 1978, or its employees or agents shall not sell or disclose consumers' nonpublic personal information without the customer's permission or unless it is in accordance with standardized credit reporting practices, pursuant to the provisions of Chapter 56, Article 3 NMSA 1978 or the federal Fair Credit Reporting Act or other reporting requirements imposed on the public utility.

B. Exempted from the provisions of this section are:

(1) the public regulation commission pursuant to the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] and the Public Regulation Commission Act [Chapter 8, Article 8 NMSA 1978] and rules adopted pursuant to those acts; or

(2) an action by a government agency or an officer, employee or agent of an agency acting on behalf of the agency to obtain telephone records in connection with the performance of the official duties of the agency.

History: Laws 2007, ch. 90, § 1.

ANNOTATIONS

Cross references. — For the federal Fair Credit Reporting Act, *see* 15 U.S.C. § 1681 et seq.

Effective dates. — Laws 2007, ch. 90, § 2 made Laws 2007, ch. 90, § 1 effective July 1, 2007.

62-8-12. Applications to expand transportation electrification.

A. No later than January 1, 2021, and thereafter upon request by the commission, but no more frequently than every two years, a public utility shall file with the commission an application to expand transportation electrification. Applications may include investments or incentives to facilitate the deployment of charging infrastructure

and associated electrical equipment that support transportation electrification, including electrification of public transit and publicly owned vehicle fleets, rate designs or programs that encourage charging that supports the operation of the electric grid and customer education and outreach programs that increase awareness of such programs and of the benefits of transportation electrification.

B. When considering applications for approval, the commission shall consider whether the investments, incentives, programs and expenditures are:

(1) reasonably expected to improve the public utility's electrical system efficiency, the integration of variable resources, operational flexibility and system utilization during off-peak hours;

(2) reasonably expected to increase access to the use of electricity as a transportation fuel, with consideration given for increasing such access to low-income users and users in underserved communities;

(3) designed to contribute to the reduction of air pollution and greenhouse gases;

(4) reasonably expected to support increased consumer choices in electric vehicle charging and related infrastructure and services; allow for private capital investments and skilled jobs in related services; and provide customer information and education;

(5) reasonable and prudent, as determined by the commission; and

(6) transparent, incorporating public reporting requirements to inform program design and commission policy.

C. A public utility that undertakes measures to expand transportation electrification pursuant to this section shall have the option of recovering the public utility's reasonable costs for the expansion through a commission-approved tariff rider or base rate or both.

D. The provisions of this section do not apply to a distribution cooperative organized pursuant to the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978].

E. As used in this section:

(1) "low-income" means annual household adjusted gross income, as defined in the Income Tax Act [Chapter 7, Article 2 NMSA 1978], of equal to or less than two hundred percent of the federal poverty level;

(2) "transportation electrification" means the use of electricity from external sources to power all or part of passenger vehicles, trucks, buses, trains, boats or other equipment that transport goods or people; and

(3) "underserved community" means an area in this state, including a county, municipality or neighborhood, or subset of such area, where the median income of the area is low-income.

History: Laws 2019, ch. 196, § 1.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 196 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-8-13. Application for grid modernization projects; advanced grid technology projects.

A. A public utility may file an application with the commission to approve grid modernization projects that are needed by the utility, or upon request of the commission. Applications may include requests for approval of investments or incentives to facilitate grid modernization, rate designs or programs that incorporate the use of technologies, equipment or infrastructure associated with grid modernization and customer education and outreach programs that increase awareness of grid modernization programs and of the benefits of grid modernization. Applications shall include the utility's estimate of costs for grid modernization projects. Applications may include requests for approval of advanced grid technology projects pursuant to Subsection G of this section. Applications for grid modernization projects shall be filed pursuant to Sections 62-9-1 and 62-9-3 NMSA 1978, as applicable.

B. When considering applications for approval, the commission shall review the reasonableness of a proposed grid modernization project and as part of that review shall consider whether the requested investments, incentives, programs and expenditures are:

(1) reasonably expected to improve the public utility's electrical system efficiency, reliability, resilience and security; maintain reasonable operations, maintenance and ratepayer costs; and meet energy demands through a flexible, diversified and distributed energy portfolio, including energy standards established in Section 62-16-4 NMSA 1978;

(2) designed to support connection of New Mexico's electrical grid into regional energy markets and increase New Mexico's capability to supply regional energy needs through export of clean and renewable electricity;

(3) reasonably expected to increase access to and use of clean and renewable energy, with consideration given for increasing access to low-income users and users in underserved communities;

(4) designed to contribute to the reduction of air pollution, including greenhouse gases;

(5) reasonably expected to support increased product and program offerings by utilities to their customers; allow for private capital investments and skilled jobs in related services; and provide customer protection, information or education;

(6) transparent, incorporating public reporting requirements to inform project design and commission policy; and

(7) otherwise consistent with the state's grid modernization planning process and priorities.

C. Except as provided in Subsection D of this section, a public utility that undertakes grid modernization projects approved by the commission may recover its reasonable costs through an approved tariff rider or in base rates, or by a combination of the two. Costs that are no greater than the amount approved by the commission for a utility grid modernization project are presumed to be reasonable. A tariff rider proposed by a public utility to fund approved grid modernization projects shall go into effect thirty days after filing, unless suspended by the commission for a period not to exceed one hundred eighty days. If the tariff rider is not approved or suspended within thirty days after filing, it shall be deemed approved as a matter of law. If the commission has not acted to approve or disapprove the tariff rider by the end of the suspension period, it shall be deemed approved as a matter of law.

D. Costs for a grid modernization project that only benefits customers of an electric distribution system shall not be recovered from customers served at a level of one hundred ten thousand volts or higher from an electric transmission system in New Mexico, except for advanced grid technology projects pursuant to Subsection G of this section.

E. The provisions of this section do not apply to a distribution cooperative organized pursuant to the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978].

F. As used in this section, "grid modernization" means improvements to electric distribution or transmission infrastructure through investments in assets, technologies or services that are designed to modernize the electrical system by enhancing electric distribution or transmission grid reliability, resilience, interconnection of distributed energy resources, distribution system efficiency, grid security against cyber and physical threats, customer service or energy efficiency and conservation and includes:

(1) advanced metering infrastructure and associated communications networks;

(2) intelligent grid devices for real-time or near-real-time system and asset information;

(3) automated control systems for electric transmission and distribution circuits and substations;

(4) high-speed, low-latency communications networks for grid device data exchange and remote and automated control of devices;

(5) distribution system hardening projects for circuits and substations designed to reduce service outages or service restoration times, but does not include the conversion of overhead tap lines to underground service;

(6) physical security measures at critical distribution substations;

(7) cybersecurity measures;

(8) systems or technologies that enhance or improve distribution system planning capabilities by the public utility;

(9) technologies to enable demand response;

(10) energy storage systems and microgrids that support circuit-level grid stability, power quality, reliability or resiliency or provide temporary backup energy supply;

(11) infrastructure and equipment necessary to support electric vehicle charging or the electrification of community infrastructure or industrial production, processing or transportation; and

(12) new customer information platforms designed to provide improved customer access, greater service options and expanded access to energy usage information.

G. When considering advanced grid technology projects for approval, the commission shall review the reasonableness of the projects proposed and whether the investments, programs and expenditures of the project would:

(1) reduce costs to ratepayers by avoiding or deferring the need for investment in new generation or transmission, including new rights of way;

(2) assist with ensuring grid reliability, including transmission and distribution system stability, while integrating sources of renewable energy into the grid;

(3) support the diversification of energy resources and enhance grid security;

(4) reduce greenhouse gases and other air pollutants resulting from power generation, as required by the energy standards established pursuant to Section 62-16-4 NMSA 1978;

(5) be reasonably expected to increase access to and the use of clean and renewable energy, with consideration given for increasing access for low-income users and users in underserved communities;

(6) be consistent with the state's grid modernization planning and priorities; and

(7) be the most cost effective among feasible alternatives, taking into consideration future benefits for customers that may reasonably result from the selection of advanced transmission technologies.

H. As used in this section, "advanced grid technology project" means a project that is consistent with the priorities of the state's grid modernization planning and that is contemplated by a utility's most recent integrated resource plan or most recent grid modernization plan that makes use of advanced grid technologies.

History: Laws 2020, ch. 15, § 3; 2021, ch. 110, § 1; 2025, ch. 93, § 1.

ANNOTATIONS

The 2025 amendment, effective July 1, 2025, provided for the inclusion of advanced grid technology projects by public utilities when filing an application for approval of grid modernization projects, and defined "advanced conductor" and "advanced grid technology"; in the section heading, added "advanced grid technology projects"; in Subsection A, after "grid modernization projects", added "Applications may include requests for approval of advanced grid technology projects pursuant to Subsection G of this section."; in Subsection D, after "New Mexico" added "except for advanced grid technology projects pursuant to Subsection G of this section"; and added new Subsections G and H.

The 2021 amendment, effective April 6, 2021, clarified that grid modernization projects may include distribution system hardening projects for circuits and substations designed to reduce service outages or service restoration times, but does not include the conversion of overhead tap lines to underground service; in Subsection F, Paragraph F(5), after "projects for circuits", deleted "not including the conversion of overhead tap lines to underground service", and after "restoration times", added "but does not include the conversion of overhead tap lines to underground service".

62-8-14. Definitions.

As used in Chapter 62, Article 8 NMSA 1978:

A. "advanced conductor" means a conductor that has a direct current electrical resistance at least ten percent lower than existing conductors of a similar diameter while simultaneously increasing the energy carrying capacity by at least seventy-five percent;

B. "advanced grid technology" means hardware or software technology that increases the efficiency, capacity or reliability of existing or new electric transmission and distribution systems, facilities and equipment and includes advanced conductors, thermal ratings, grid enhancing technology and technology determined by the commission or the federal energy regulation commission to increase the efficiency, capacity or reliability of an existing or new transmission facility;

C. "advanced power flow controllers" means hardware or software technology used to push or pull electric power in a manner that balances overloaded lines and underused corridors within a distribution or transmission system;

D. "dynamic line ratings" means hardware or software technology used to appropriately update the calculated thermal limits of existing distribution or transmission lines based on real-time and forecasted weather conditions;

E. "grid enhancing technology" means hardware or software technology that reduces congestion or enhances the flexibility of electric transmission and distribution systems by increasing the capacity of a line or rerouting electricity from overloaded to uncongested lines while maintaining industry safety standards and includes dynamic line ratings, advanced power flow controllers and topology optimization; and

F. "topology optimization" means hardware or software technology that identifies reconfigurations of the distribution or transmission grid and can enable the routing of power flows around congested or overloaded distribution or transmission elements.

History: Laws 2025, ch. 93, § 2.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 93, § 7 made Laws 2025, ch. 93, § 2 effective July 1, 2025.

ARTICLE 9
The Utility Franchise

62-9-1. New construction; 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 operation. This section does not require a public utility to secure a certificate for an extension within any municipality or district within which it lawfully commenced operations before June 13, 1941 or for an extension within or to territory already served by it, necessary in the ordinary course of its business, or for an extension into territory contiguous to that already occupied by it and that is not receiving

similar service from another utility. If any public utility or mutual domestic water consumer association in constructing or extending its line, plant or system unreasonably interferes or is about to unreasonably interfere with the service or system of any other public utility or mutual domestic water consumer association rendering the same type of service, the commission, on complaint of the public utility or mutual domestic water consumer association claiming to be injuriously affected, may, upon and pursuant to the applicable procedure provided in Chapter 62, Article 10 NMSA 1978, and after giving due regard to public convenience and necessity, including reasonable service agreements between the utilities, make an order and prescribe just and reasonable terms and conditions in harmony with the Public Utility Act [Articles 1 through 6 and 8 through 13 of Chapter 62 NMSA 1978] to provide for the construction, development and extension, without unnecessary duplication and economic waste.

B. If a certificate of public convenience and necessity is required pursuant to this section for the construction or extension of a generating plant or transmission lines and associated facilities, a public utility may include in the application for the certificate a request that the commission determine the ratemaking principles and treatment that will be applicable for the facilities that are the subject of the application for the certificate. If such a request is made, the commission shall, in the order granting the certificate, set forth the ratemaking principles and treatment that will be applicable to the public utility's stake in the certified facilities in all ratemaking proceedings on and after such time as the facilities are placed in service. The commission shall use the ratemaking principles and treatment specified in the order in all proceedings in which the cost of the public utility's stake in the certified facilities is considered. If the commission later decertifies the facilities, the commission shall apply the ratemaking principles and treatment specified in the original certification order to the costs associated with the facilities that were incurred by the public utility prior to decertification.

C. The commission may approve the application for the certificate without a formal hearing if no protest is filed within sixty days of the date that notice is given, pursuant to commission order, that the application has been filed. The commission shall issue its order granting or denying the application within nine months from the date the application is filed with the commission. Failure to issue its order within nine months is deemed to be approval and final disposition of the application; provided, however, that the commission may extend the time for granting approval for an additional six months for good cause shown.

D. Notwithstanding the time lines contained in Subsection C of this section, for applications certified by the economic development department pursuant to Subsection F of Section 62-6-26 NMSA 1978, the commission shall issue an order granting or denying the application within six months from the date the application is filed with the commission. Failure to issue the commission's order within six months is deemed to be approval and final disposition of the application; provided, however, that the commission may extend the time for granting approval for an additional three months for good cause shown.

E. In an application for a certificate of public convenience and necessity for an energy storage system, the commission shall approve energy storage systems that:

(1) reduce costs to ratepayers by avoiding or deferring the need for investment in new generation and for upgrades to systems for the transmission and distribution of energy;

(2) reduce the use of fossil fuels for meeting demand during peak load periods and for providing ancillary services;

(3) assist with ensuring grid reliability, including transmission and distribution system stability, while integrating sources of renewable energy into the grid;

(4) support diversification of energy resources and enhance grid security;

(5) reduce greenhouse gases and other air pollutants resulting from power generation;

(6) provide the public utility with the discretion, subject to applicable laws and rules, to operate, maintain and control energy storage systems so as to ensure reliable and efficient service to customers; and

(7) are the most cost effective among feasible alternatives.

F. As used in this section:

(1) "energy storage system" means methods and technologies used to store electricity; and

(2) "mutual domestic water consumer association" means an association created and organized pursuant to the provisions of:

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

(b) the Sanitary Projects Act [Chapter 3, Article 29 NMSA 1978].

History: Laws 1941, ch. 84, § 46; 1941 Comp., § 72-701; 1953 Comp., § 68-7-1; Laws 1965, ch. 289, § 10; 1967, ch. 96, § 1; 1990, ch. 95, § 1; 2000, ch. 51, § 1; 2005, ch. 340, § 1; 2019, ch. 65, § 25; 2025, ch. 71, § 4.

ANNOTATIONS

Compiler's notes. — Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23,

Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2025 amendment, effective June 20, 2025, provided for expedited ratemaking orders; and added new Subsection D and redesignated former Subsections D and E as Subsections E and F, respectively.

The 2019 amendment, effective June 14, 2019, provided guidelines for the public regulation commission when reviewing for approval an application for a certificate of public convenience and necessity for an energy storage system, and defined "energy storage system; added a new Subsection D and redesignated former Subsection D as Subsection E; and in Subsection E, added a new Paragraph E(1) and redesignated former Paragraphs E(1) and E(2) as Subparagraphs E(2)(a) and E(2)(b), respectively.

The 2005 amendment, effective July 1, 2005, added Subsection B to provide for the determination of the rate making principles and treatment that will be applicable for a facility that is subject to a certificate of public convenience and necessity; and added Subsection C to provide for the approval of the certificate of public convenience and necessity without a hearing.

The 2000 amendment, effective May 17, 2000, designated the existing provisions of the section as Subsection A, and in Subsection A deleted "after the effective date of this 1941 act" following "No public utility shall" in the first sentence, substituted "June 13, 1941" for "the effective date of this 1941 act" in the second sentence, deleted "Notwithstanding any other provision of the Public Utility Act, as amended, or any privilege granted under that act" from the beginning of the third sentence, and added Subsection B.

The 1990 amendment, effective May 16, 1990, inserted "or mutual domestic water consumer association" following "public utility" in three places, substituted "Chapter 62, Article 10 NMSA 1978" for "Sections 68-8-1 through 68-8-16 New Mexico Statutes Annotated, 1953 Compilation" in the third sentence and made numerous stylistic changes throughout the section.

Constitutionality. — The preference in this section indicated by its protection of mutual domestic water consumer associations from invasion by a regulated utility but not from an unregulated utility does not lack a rational basis, and an argument that it unconstitutionally discriminates against the invaded utility solely on the basis of the status of the invader was without merit. *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, 120 N.M. 579, 904 P.2d 28 (decided prior to 2000 amendment).

Deference to commission interpretation. — The court will defer to the public regulation commission's interpretation of the ambiguous phrase "unreasonably interfere with the service or system" because the public regulation commission has policy-making authority to plan and coordinate the activities of New Mexico public utilities and because the public regulation commission has developed the expertise to understand the operation of public utilities. *Doña Ana Mut. Domestic Water Consumers Ass'n v. N.M. Pub. Regulation Comm'n*, 2006-NMSC-032, 140 N.M. 6, 139 P.3d 166.

Interpretation of "unreasonably interfere with the service or system". — The public regulation commission interpretation of the phrase "unreasonably interfere with the service or system", which presumes that all contiguous territory lies within a utility's "service or system", and its definition of "contiguous" to include territory within one-half mile of a public utility's pipes or facilities are not arbitrary or capricious. *Doña Ana Mut. Domestic Water Consumers Ass'n v. N.M. Pub. Regulation Comm'n*, 2006-NMSC-032, 140 N.M. 6, 139 P.3d 166.

Substantial evidence of interference. — Evidence that encroachment by a competing public utility on the service area of an objecting public utility would interfere with the objecting public utility's physical system, planning to provide future service and ability to realize economies of scale for its customers is substantial evidence of interference with the service or system of the objecting public utility. *Doña Ana Mut. Domestic Water Consumers Ass'n v. N.M. Pub. Regulation Comm'n*, 2006-NMSC-032, 140 N.M. 6, 139 P.3d 166.

State engineer approval of water rights obtained by an encroaching public utility to be used in disputed service area occupied by another public utility does not preclude the public regulation commission from entering an order denying the encroaching public utility the right to provide service in the disputed area. *Doña Ana Mut. Domestic Water Consumers Ass'n v. N.M. Pub. Regulation Comm'n*, 2006-NMSC-032, 140 N.M. 6, 139 P.3d 166.

Water users association not within commission's jurisdiction. — A water users association formed under Chapter 73, Article 5 NMSA 1978 was not a mutual domestic water consumer within the meaning of this section; further, absent any evidence showing the association was subject to the Public Utility Act, it did not come within the jurisdiction of the public utility commission (now public regulation commission). *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, 120 N.M. 579, 904 P.2d 28 (decided prior to 2000 amendment).

City not within commission's jurisdiction. — A city operating a water facility which had not elected to come under the Public Utility Act and which had a population of less than 200,000 was not a public utility within the jurisdiction of the public utility commission (now public regulation commission). *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, 120 N.M. 579, 904 P.2d 28 (decided prior to 2000 amendment).

Certificate is needed for construction, but not for extensions where lawfully operating. — This section prohibits construction of any facilities for public utility service without first obtaining a certificate of convenience and necessity, and provides that the holder of a certificate need not get a permit for extensions within a district where it has lawfully commenced operations, or to territory being served by it and necessary in the ordinary course of its business. *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433.

New certificate not required for service to few transferred customers. — It is not required that utility obtain a new certificate for the purpose of providing service to a few customers who are to be transferred to it from another utility. *Gonzales v. Pub. Serv. Comm'n*, 1985-NMSC-038, 102 N.M. 529, 697 P.2d 948.

1967 amendment to this section did not annul appellant's certificate of public convenience and necessity which was valid at the date of amendment. *Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-045, 86 N.M. 255, 522 P.2d 802.

Other provisions govern revocation of certificate. — If the commission is assumed to have power to revoke a certificate, the authority as well as the procedure therefor is found in Sections 62-10-1 to 62-10-16 NMSA 1978 rather than in Sections 62-9-1 and 62-9-4 NMSA 1978, as contended by the commission. *Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-045, 86 N.M. 255, 522 P.2d 802; *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433 (1966).

Commission cannot deny right to continue under valid certificate. — The commission cannot deny to service company its right to continue in the area covered by its certificate if its certificate has been exercised as required by Section 62-9-4 NMSA 1978, or, in other words, if its certificate is valid in the area sought to be served by it, even though other public utilities have overlapping or conflicting certificates; furthermore, the commission cannot hold existing franchise rights null and void, nor can it make an order which would conflict with Section 62-9-2 B NMSA 1978, which states that when certificates granted utilities under that section overlap, certificates theretofore issued and exercised within the time required are valid under Section 62-9-4 NMSA 1978 and both utilities shall be permitted to continue service. *Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-045, 86 N.M. 255, 522 P.2d 802; *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433.

Even though commission could find certificate void under this section. — A conclusion that the certificate of a public service company was null and void, if based upon proper findings, could probably be made in determining the issues in a hearing under this section as a necessary incident of the larger questions presented thereunder. *Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-045, 86 N.M. 255, 522 P.2d

802; *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433.

If holder does not exercise certificate in time. — A certificate of public convenience and necessity cannot be declared null and void in the absence of findings by the commission, based upon substantial evidence, that the certificate holder failed to exercise its right with diligence. *Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-045, 86 N.M. 255, 522 P.2d 802; *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433.

Formerly, section did not apply to rural electric cooperatives. *Socorro Elec. Coop. v. Pub. Serv. Co.*, 1959-NMSC-105, 66 N.M. 343, 348 P.2d 88; 1957 Op. Att'y Gen. No. 57-31.

Section does not apply to water and sanitation districts. — Water and sanitation districts are not required by statute to obtain a certificate of convenience and necessity as are public utilities under the jurisdiction of the commission. 1971 Op. Att'y Gen. No. 71-56 (decided prior to 2000 amendment).

Law reviews. — For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 36 Am. Jur. 2d Franchises §§ 6, 7; 64 Am. Jur. 2d Public Utilities §§ 237, 277.

Validity of contract between public utilities other than carriers, dividing territory and customers, 70 A.L.R.2d 1326.

Public utility's right to recover cost of nuclear power plants abandoned before completion, 83 A.L.R.4th 183.

73B C.J.S. Public Utilities §§ 3, 66, 69, 99.

62-9-1.1. Additional authority with respect to water and sewer utilities.

A. Notwithstanding any other provision of the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], or any provision of the Municipal Code [Chapter 3 NMSA 1978, except Article 66], or any privilege granted under either act, if any municipality that has not elected to come within the terms of the Public Utility Act, as provided in Section 62-6-5 NMSA 1978, constructs or extends or proposes to construct or extend its water or sewer line or system or water pumping station or reservoir into a geographical area described in a certificate of public convenience and necessity granted by the commission to a public utility rendering the same type of service, the commission, on complaint of the public utility claiming to be injuriously affected thereby,

shall, after giving notice to the municipality and affording the municipality an opportunity for a hearing with respect to the issue of whether its water or sewer line, plant or system actually intrudes or will intrude into the area certificated to the public utility, determine whether such intrusion has occurred or will occur. If the commission determines such an intrusion has occurred or will occur, the municipality owning or operating the water or sewer utility shall cease and desist from making such construction or extension in the absence of written consent of the public utility involved and approval of the commission.

B. The authority and jurisdiction conferred by Subsection A of this section shall be in addition and cumulative to the independent authority of the commission to determine territorial disputes between public utilities and between mutual domestic water consumer associations and public utilities as provided in Section 62-9-1 NMSA 1978, which provisions shall govern the resolution of a territorial dispute between a municipality that has elected to come within the terms of the Public Utility Act, as provided in Section 62-6-5 NMSA 1978, and any other public utility rendering the same type of service. Provided, however, in the event that a certificate of public convenience and necessity granted to such a municipality overlaps, or conflicts with, a valid certificate previously issued by the commission and exercised within the term required under Section 62-9-4 NMSA 1978, the municipal utility shall be permitted to continue operation of its plant, line and system in existence upon the effective date of this 1991 act and the other public utility may continue service in the area covered by its certificate, subject to the other provisions of the Public Utility Act.

C. For purposes of this section, "municipality" means any municipality that has a population of more than two hundred thousand as determined in the most recent federal decennial census and is located in a class A county.

History: Laws 1991, ch. 143, § 2.

ANNOTATIONS

Compiler's notes. — Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Right of municipality to provide service in the certified area of a public utility. — Where the public regulation commission issued the public utility a certificate of public convenience and necessity authorizing the public utility to provide water in an area outside the limits of the municipality; the municipality later annexed three undeveloped tracts of land within the public utility's certified area, subdivided the land and committed

itself to provide water to the subdivision; and the municipality had not elected to become subject to the Public Utilities Act, Section 62-1-1 NMSA 1978 et seq., and did not have a population of more than 200,000, the public utility's certificate of public convenience and necessity did not prevent the municipality from competing with the public utility in the certified area because the municipality was not subject to the Public Utilities Act. *Moongate Water Co., Inc. v. City of Las Cruces*, 2013-NMSC-018, 302 P.3d 405, aff'g 2012-NMCA-003, 269 P.3d 1.

Certificate of convenience and necessity did not grant exclusive service rights against a small municipality. — A certificate of public convenience and necessity issued by the public regulation commission does not grant a public utility service rights against a municipality that has a population less than or equal to two hundred thousand people and that has not elected to be subject to the Public Utility Act. *Moongate Water Co., Inc. v. City of Las Cruces*, 2012-NMCA-003, 269 P.3d 1, cert. granted, 2012-NMCERT-001.

Where a privately owned and regulated public utility company held a certificate of convenience and necessity issued by the public regulation commission to provide water service to residents in an area of new residential subdivisions; a municipality annexed the area, extended its water utility infrastructure into the area as part of its municipal water utility system, and began providing water service to residents in the area; and the municipality had a population of less than two hundred thousand and had not elected to be subject to the Public Utility Act, the certificate of convenience and necessity did not give the public utility exclusive service rights in the area against the municipal water system. *Moongate Water Co., Inc. v. City of Las Cruces*, 2012-NMCA-003, 269 P.3d 1, cert. granted, 2012-NMCERT-001.

City not within commission's jurisdiction. — A city operating a water facility which had not elected to come under the Public Utility Act and which had a population of less than 200,000 was not a public utility within the jurisdiction of the public utility commission (now public regulation commission). *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, 120 N.M. 579, 904 P.2d 28.

62-9-2. Applications by utilities brought under the Public Utility Act.

A. Within sixty days after the effective date of this 1967 act, each utility brought within the jurisdiction of the commission by virtue of this 1967 act shall file with the commission an application, in such form as may be prescribed by the commission, for a certificate of public convenience and necessity covering its present plant, lines and system. Upon proof of the existence and operation of the plant, lines and system upon the effective date of this 1967 act, the commission shall grant the certificate to the utility.

B. In the event the certificate granted a utility under Subsection A of this section overlaps or conflicts with a valid certificate heretofore issued by the commission and exercised within the time required under Section 62-9-4 NMSA 1978, both certificates shall be valid and both utilities shall be permitted to continue service subject to the other

provisions of the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], as amended.

History: 1953 Comp., § 68-7-1.1, enacted by Laws 1967, ch. 96, § 7; 1993, ch. 282, § 35.

ANNOTATIONS

Repeals and reenactments. — Laws 1967, ch. 96, § 7, repealed 68-7-1.1, 1953 Comp., relating to applications by utilities covered by the Public Utility Act by virtue of Laws 1961, ch. 89, and enacted the above section.

Compiler's notes. — The words "this 1967 act," appearing in Subsection A, refer to Laws 1967, ch. 96, compiled as 62-3-1 to 62-3-4, 62-6-8, 62-8-8, 62-9-1, 62-9-2 and 62-9-6 NMSA 1978.

Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, in Subsection A, deleted "public service" following "jurisdiction of" and made stylistic changes; and substituted "Section 62-9-4 NMSA 1978" for "Section 68-7-2 New Mexico Statutes Annotated, 1953 Compilation" in Subsection B.

Certificate cannot be held void unless not exercised diligently. — A certificate of public convenience and necessity cannot be declared null and void in the absence of findings by the commission, based upon substantial evidence, that the certificate holder failed to exercise its right with diligence. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-045, 86 N.M. 255, 522 P.2d 802.

Application covering existing facilities must be granted. — Upon timely filing of an application for a certificate of public convenience and necessity to cover a cooperative's "present plant, lines and system" and upon proof that the same are in existence and operating, the certificate so applied for must be granted. *Lea Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1965-NMSC-057, 75 N.M. 191, 402 P.2d 377, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433 (1966) (decided under former similar provision).

Regardless of conflicting or overlapping certificates. — The commission cannot deny to service company its right to continue in the area covered by its certificate if its certificate has been exercised as required by Section 62-9-4 NMSA 1978, or, in other words, if its certificate is valid in the area sought to be served by it, even though other public utilities have overlapping or conflicting certificates; furthermore, the commission cannot hold existing franchise rights null and void, nor can it make an order which would conflict with this section, which states that when certificates granted utilities under this section overlap, certificates theretofore issued and exercised within the time required are valid under Section 62-9-4 NMSA 1978 and both utilities shall be permitted to continue service. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-045, 86 N.M. 255, 522 P.2d 802; *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433.

New certificate and conflicting or overlapping certificate are both valid. — Subsection B provides that both the certificate so granted as well as any pre-existing certificate overlapping or conflicting with that granted to the cooperative shall be valid and the service under both shall continue. No suggestion of delineation of areas or territory served or to be served is contained in the plain language used by the legislature. *Lea Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1965-NMSC-057, 75 N.M. 191, 402 P.2d 377, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433 (1966) (decided under former similar provision).

62-9-2.1. Applications by sewer utilities brought under the Public Utility Act.

Within six months after the effective date of these 1987 amendments to the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], each sewer utility brought within the jurisdiction of the commission by virtue of these 1987 amendments to the Public Utility Act shall file with the commission an application, in such form as may be prescribed by the commission, for a certificate of public convenience and necessity covering its present plant, lines and system. Upon proof of the existence and operation thereof upon the effective date of these 1987 amendments to the Public Utility Act, the commission shall grant to the utility such certificate. The commission shall enter upon a hearing to determine whether the rate or rates of such a sewer utility in effect on the effective date of these amendments to the Public Utility Act are just and reasonable pursuant to Subsection D of Section 62-8-7 NMSA 1978 upon the filing with the commission of protests signed by ten percent or more of the ratepayers receiving sewer service from such a sewer utility. For purposes of this section, each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer. The protest shall be signed by the person in whose name service is carried. The protests shall be filed no later than sixty days after the filing with the commission of an application by the sewer utility for a certificate of public convenience and necessity as prescribed by this section. Each sewer utility filing an application for a certificate of public convenience and necessity under this section shall

be required at the time of filing to give written notice to its ratepayers of the filing of its application and the ratepayers' rights to protest its rates under this section.

History: Laws 1987, ch. 52, § 4; 1993, ch. 282, § 36.

ANNOTATIONS

Compiler's notes. — The terms "these amendments" and "these 1987 amendments," referred to throughout the first three sentences, apparently mean Laws 1987, ch. 52, which appears as Sections 62-3-2.1, 62-3-3, 62-8-7.1 and 62-9-2.1 NMSA 1978.

Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, in the first sentence, inserted "1987" preceding "amendments" and substituted "the commission" for "the public service commission"; made a stylistic change in the second sentence; and substituted "The commission" for "The public service commission" at the beginning of the third sentence.

62-9-3. Location control; limitations.

A. The legislature finds that it is in the public interest to consider any adverse effect upon the environment and upon the quality of life of the people of the state that may occur due to plants, facilities and transmission lines needed to supply present and future electrical services. It is recognized that such plants, facilities and transmission lines will be needed to meet growing demands for electric services and cannot be built without in some way affecting the physical environment where these plants, facilities and transmission lines are located. The legislature therefore declares that it is the purpose of this section to provide for the supervision and control by the commission of the location within this state of new plants, facilities and transmission lines for the generation and transmission of electricity for sale to the public.

B. A person, including any municipality, shall not begin the construction of any plant designed for or capable of operation at a capacity of three hundred thousand kilowatts or more for the generation of electricity for sale to the public within or without this state, whether or not owned or operated by a person that is a public utility subject to regulation by the commission, or of transmission lines in connection with such a plant, on a location within this state unless the location has been approved by the commission. For the purposes of this section, "transmission line" means any electric transmission line

and associated facilities designed for or capable of operations at a nominal voltage of two hundred thirty kilovolts or more, to be constructed in connection with and to transmit electricity from a new plant for which approval is required.

C. Application for approval shall contain all information required by the commission to make its determination, be made in writing setting forth the facts involved and be filed with the commission. The commission shall, after a public hearing and upon notice as the commission may prescribe, act upon the application. The commission may condition its approval upon a demonstration by the applicant that it has received all necessary air and water quality permits. A public utility regulated by the commission may submit an application pursuant to Section 62-9-1 NMSA 1978 for a certificate of public convenience and necessity prior to filing an application for location approval pursuant to this section in order to determine the need for the generating plant or transmission line prior to determination of the appropriate location.

D. Approval shall not be required for additions to or modifications of an existing plant or transmission line.

E. The commission shall approve the application for the location of the generating plant unless the commission finds that the operations of the facilities for which approval is sought will not be in compliance with all applicable air and water pollution control standards and regulations existing or will unduly impair system reliability. The commission shall not require compliance with performance standards other than those established by the agency of this state having jurisdiction over a particular pollution source.

F. The commission shall approve the application for the location of the transmission lines unless the commission finds that the location will unduly impair important environmental values or the operation of the proposed transmission lines will unduly impair power system reliability.

G. An application shall not be approved pursuant to this section that violates an existing state, county or municipal land use statutory or administrative regulation unless the commission finds that the regulation is unreasonably restrictive and compliance with the regulation is not in the interest of the public convenience and necessity, in which event and to the extent found by the commission, the regulation shall be inapplicable and void as to the siting. When it becomes apparent to the commission that an issue exists with respect to whether a regulation is unreasonably restrictive and compliance with the regulation is not in the interest of public convenience and necessity, it shall promptly serve notice of that fact by certified mail upon the agency, board or commission having jurisdiction for land use of the area affected and shall make the agency, board or commission a party to the proceedings upon its request and shall give it an opportunity to respond to the issue. The judgment of the commission shall be conclusive on all questions of siting, land use, aesthetics and any other state or local requirements affecting the siting.

H. A public utility subject to the jurisdiction of the commission may elect to file an application pursuant to this section with the commission for location approval of an electric transmission line or associated facilities designed for or capable of operation at a nominal voltage of one hundred fifteen kilovolts or more but less than two hundred thirty kilovolts if:

(1) the public utility files an application for construction, extension, rebuilding or improvement of the electric transmission line or associated equipment under any applicable county or municipal land use statute, ordinance or administrative regulation; and

(2) the agency, board or commission of the county or municipality disapproves the application. For purposes of this subsection, "disapprove" means the failure of the county or municipal agency, board or commission to issue a final order approving the application within two hundred forty days of the public utility's filing of a complete application with the agency, board or commission. An application shall be deemed complete if within fifteen working days of the public utility's filing of the application, or a supplement or amendment thereto, the agency, board or commission fails to send written notice to the public utility enumerating the specific requirements under the applicable county or municipal land use statute, ordinance or administrative regulation that the application fails to satisfy.

I. Upon consideration of the application and the standards set forth in Subsection G of this section, the commission may authorize construction, extension, rebuilding or improvement of the transmission line or facilities notwithstanding the prior disapproval of the county or municipal agency, board or commission. The judgment of the commission shall be conclusive on all questions of siting, land use, aesthetics and any other state or local requirements affecting the siting.

J. Nothing in this section shall be deemed to confer upon the commission power or jurisdiction to regulate or supervise any person, including a municipality, that is not otherwise a public utility regulated and supervised by the commission, with respect to its rates and service and with respect to its securities, nor shall any other provision of the Public Utility Act be applicable with respect to such a person, including a municipality.

K. The commission may approve an application filed pursuant to this section without a formal hearing if no protest is filed within sixty days of the date that notice is given that the application has been filed. The commission shall issue its order granting or denying the application within six months from the date the application is filed with the commission; provided, however, that:

(1) if a public utility simultaneously files an application for approval of location of a transmission line pursuant to this section and an application for a certificate of public convenience and necessity pursuant to Subsection B of Section 62-9-1 NMSA 1978, the commission shall issue its order granting or denying the applications within nine months from the date the applications are filed with the commission; provided,

however, that the commission may extend the time for granting approval an additional six months for good cause shown;

(2) if a public utility files an application for approval of location of a transmission line pursuant to this section after its application for a certificate of public convenience and necessity has been approved pursuant to Subsection B of Section 62-9-1 NMSA 1978, the commission shall issue its order granting or denying the application for approval of location of a transmission line within ninety days from the date the application is filed with the commission; and

(3) if a public utility files an application for approval of location of a transmission line pursuant to this section while its application for a certificate of public convenience and necessity is pending pursuant to Subsection B of Section 62-9-1 NMSA 1978, and the application for a certificate is subsequently approved, the commission shall issue its order granting or denying the application for approval of location of a transmission line within ninety days from the date the application for certificate of public convenience and necessity is approved.

L. Failure to issue its order approving or denying an application filed pursuant to this section within the time periods set forth in Subsection [J] K of this section is deemed to be approval of the application; provided, however, that the commission may extend the time for granting approval for a transmission line that is subject to this section for an additional nine months upon finding that the additional time is necessary to determine if the proposed location of the line will unduly impair important environmental values.

M. In determining if the proposed location of the transmission line will unduly impair important environmental values, the commission may consider the following factors:

(1) existing plans of the state, local government and private entities for other developments at or in the vicinity of the proposed location;

(2) fish, wildlife and plant life;

(3) noise emission levels and interference with communication signals;

(4) the proposed availability of the location to the public for recreational purposes, consistent with safety considerations and regulations;

(5) existing scenic areas, historic, cultural or religious sites and structures or archaeological sites at or in the vicinity of the proposed location; and

(6) additional factors that require consideration under applicable federal and state laws pertaining to the location.

History: 1953 Comp., § 68-7-1.2, enacted by Laws 1971, ch. 248, § 1; 2001, ch. 303, § 1; 2005, ch. 339, § 6; 2005, ch. 340, § 2.

ANNOTATIONS

Compiler's notes. — Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For public utilities subject to jurisdiction of commission, *see* 62-3-3 G, 62-3-4, 62-6-4 and 62-6-5 NMSA 1978.

For regulation of issuance of securities, *see* 62-6-7 and 62-6-8 NMSA 1978.

2005 Multiple Amendments. — Laws 2005, ch. 339, § 6 and Laws 2005, ch. 340, § 2, both effective July 1, 2005, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2005, ch. 340, § 2, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2005, ch. 339, § 6, and Laws 2005, ch. 340, § 2 are described below. To view the session laws in their entirety, *see* the 2005 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2005, ch. 339, §6, made substantive changes dealing with system reliability, and also made several minor technical changes. Laws 2005, ch. 340, § 2, provided that a public utility may apply for a certificate of public convenience and necessity before applying for location approval in order to determine the need for the plant or line prior to a determination of the appropriate location, provided a list of conditions that permit a public utility to file an application for location approval for an electric transmission line, provided for the authorization of a transmission line that has been disapproved by a county or municipal agency, board or commission, provided that the commission may approve an application without a hearing if no protest is filed within sixty days after notice has been given that an application has been filed, provided that if a public utility simultaneously files an application for location approval and an application for a certificate of public convenience and necessity, the commission shall issue its order within nine months after the applications are filed, provided that if a public utility files an application for location approval after an application for a certificate of public convenience and necessity has been approved, the commission shall issues its order within ninety days after the application is filed, and that if a public utility files an application for location approval while its application for public convenience and necessity is pending and the application for a certificate is subsequently approved, the commission shall issues its order within ninety days after the application for a certificate is approved, provided that failure to issue its order approving or denying an application filed pursuant to this

section within the time periods set forth in this section is deemed to be approval of the application, and provided criteria for determining if a location of a transmission line will unduly impair environmental value.

Laws 2005, ch. 340, § 2, effective July 1, 2005, provided in Subsection C that a public utility may apply for a certificate of public convenience and necessity before applying for location approval in order to determine the need for the plant or line prior to a determination of the appropriate location; deleted the former provision in Subsection E, which provided that no approval is required for construction in progress on the effective date of this section; added Subsection H to provide for the conditions that permit a public utility to file an application for location approval for an electric transmission line; added Subsection I to provide for the authorization of a transmission line that has been disapproved by a county or municipal agency, board or commission; provided in Subsection K that the commission may approve an application without a hearing if no protest is filed within sixty days after notice has been given that an application has been filed; added Subsection K (1) through (3) to provide that if a public utility simultaneously files an application for location approval and an application for a certificate of public convenience and necessity, the commission shall issue its order within nine months after the applications are filed; provided that if a public utility files an application for location approval after an application for a certificate of public convenience and necessity has been approved, the commission shall issue its order within ninety days after the application is filed; and that if a public utility files an application for location approval while its application for public convenience and necessity is pending and the application for a certificate is subsequently approved, the commission shall issue its order within ninety days after the application for a certificate is approved; provided in Subsection L that failure to issue its order approving or denying an application filed pursuant to this section within the time period set forth in Subsection J is deemed approval and deleted for former time period of six month within which the commission had to issue an order; and added Subsection M to provide criteria for determining if a location of a transmission line will unduly impair environmental value.

Laws 2005, ch. 339, § 6, effective July 1, 2005, changed "lines" to "transmission lines" in Subsection A; provided in Subsection E that the commission shall approve the location of the plant unless the commission finds that the operations of the facilities will unduly impair system reliability; and provided in Subsection F that the commission shall approve the location of the transmission lines unless the commission finds that the operation of the transmission lines will unduly impair power system reliability, and provided:

The 2001 amendment, effective June 15, 2001, deleted "within this state" following "a public utility subject to regulation by the commission" in Subsection B; deleted former Subsection C, concerning application for approval by an existing public utility; redesignated the subsequent subsections; in present Subsection C, deleted "If a person is not a public utility regulated by the commission" from the beginning of the subsection, added the "all information" requirement, and added the approval condition at the end of

the subsection; substituted "section" for "act" in current Subsection D; added Subsection I; and made stylistic changes throughout the section.

Scope of commission authority. – Because the legislature empowered the public regulation commission to modify the common-law rule of relocation only for local regulations deemed unreasonable under Subsection G of this section, a tariff permitting the Public Service Company of New Mexico to recover relocation costs was ultra vires where the commission made no finding that the ordinance requiring the relocation was unreasonable. *City of Albuquerque v. N.M. Pub. Regulation Comm'n*, 2003-NMSC-028, 134 N.M. 472, 79 P.3d 297.

The commission's attempt to preempt local regulations imposing the costs of relocation on the Public Service Company of New Mexico was an unlawful infringement on the power of local governments to regulate the use of public ways by utilities. *City of Albuquerque v. N.M. Pub. Regulation Comm'n*, 2003-NMSC-028, 134 N.M. 472, 79 P.3d 297.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

For article, "The Energy-Water Nexus: Socioeconomic Considerations and Suggested Legal Reforms in the Southwest," see 50 Nat. Res. J. 563 (2010).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 237.

62-9-3.1. Limited regulation of certain jointly owned generation facilities.

No municipality or H class county shall hereafter begin construction or operation of any jointly owned generating facility within this state without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction or operation; provided, however, that the commission's regulation shall be limited to such determination unless the municipality or H class county has elected to come under the general supervision of the commission as provided by law.

History: Laws 1979, ch. 260, § 18.

ANNOTATIONS

Compiler's notes. — Laws 1979, ch. 260, § 19, provided that the act shall be liberally construed to carry out its purposes.

Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998,

Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Severability. — Laws 1979, ch. 260, § 20, provided for the severability of the act if any part or application thereof is held invalid.

62-9-3.2. Application for determination of right-of-way width.

A. Unless otherwise agreed to by the parties, no person shall begin the construction of any transmission line requiring a width for right of way of greater than one hundred feet without first obtaining from the commission a determination of the necessary right-of-way width to construct and maintain the transmission line. For the purposes of this subsection, "construction" does not include acquisition of rights of way, preparation of surveys or ordering of equipment.

B. For the purposes of this section, "transmission line" means any electric transmission line and associated facilities requiring a width for right of way of greater than one hundred feet.

C. Application for the right-of-way width determination shall contain all information required by the commission to make its determination, be made in writing, setting forth the facts involved, and be filed with the commission.

D. The applicant shall cause notice of the time and place of hearing on the application for the right-of-way determination to be given to any owner of property proposed to be taken and, if applicable, to the person in actual occupancy of the property. Notice shall be given by mailing a copy by ordinary first class mail at least twenty days before the time set for hearing. Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

E. The commission shall, after public hearing, act upon the application.

F. The commission shall issue its order granting or denying the application within six months from the date the application is filed with the commission. Failure to issue its order within six months is deemed to be approval of the application.

History: Laws 1980, ch. 20, § 18; 1993, ch. 282, § 37; 2001, ch. 303, § 2.

ANNOTATIONS

Compiler's notes. — Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23,

Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2001 amendment, effective June 15, 2001, deleted former Subsection C, concerning application by a person regulated by the commission; redesignated the subsequent subsections; in current Subsection C, deleted language concerning application by persons not regulated by the commission, and inserted the "all information" requirement; and added Subsection F.

The 1993 amendment, effective June 18, 1993, deleted "public service" preceding "commission" in the first sentence of Subsection A; and made minor stylistic changes in Subsections A and E.

Law reviews. — For article, "Survey of New Mexico Law, 1979-80: Property," see 11 N.M.L. Rev. 203 (1981).

62-9-4. Authority exercised.

A certificate of convenience and necessity shall remain in full force and effect for the period designated by the commission unless such authority is modified or becomes void because the authority has not been exercised within such period.

History: 1978 Comp., § 62-9-4, enacted by Laws 1980, ch. 20, § 19.

ANNOTATIONS

Repeals and reenactments. — Laws 1980, ch. 20, § 19, repealed former 62-9-4 NMSA 1978, relating to the time in which a certificate of convenience may be acted on, and enacted a new section.

Compiler's notes. — Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Law reviews. — For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

For article, "Survey of New Mexico Law, 1979-80: Property," see 11 N.M.L. Rev. 203 (1981).

62-9-5. Abandonment of service.

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

History: Laws 1941, ch. 84, § 48; 1941 Comp., § 72-703; 1953 Comp., § 68-7-3; Laws 1983, ch. 250, § 3; 2005, ch. 276, § 1.

ANNOTATIONS

Compiler's notes. — Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For definition of "commission," *see* 62-3-3 NMSA 1978.

For denial of service by public utility being petty misdemeanor, *see* 30-13-2 NMSA 1978.

The 2005 amendment, effective June 17, 2005, provided that in considering public necessity, the commission shall consider the impact the abandonment of service on all customers served, directly or indirectly, by the facilities sought to be abandoned.

The 1983 amendment deleted "regulated" at the end of the catchline and rewrote the text of the section.

Constitutionality of commission's actions. — Exclusion of an electric utility's interest in a generating facility from its rate base, coupled with the commission's refusal to decertify the facility, did not violate the due process provisions or the takings clauses of the New Mexico and United States constitutions. *Public Serv. Co. v. Public. Serv. Comm'n*, 1991-NMSC-083, 112 N.M. 379, 815 P.2d 1169.

Construction of section. — The first part of this section refers to "continuation of service", while the second part addresses "continuation of the service or use of the facility". Thus, the section is written in the disjunctive to provide not for alternative bases upon which decertification of facilities is authorized, but for distinct factual scenarios giving rise to abandonment. *Public Serv. Co. v. Public. Serv. Comm'n*, 1991-NMSC-083, 112 N.M. 379, 815 P.2d 1169.

Jurisdiction of municipal condemnation of public utility. — This section and Section 62-6-12A(4) NMSA 1978 (sale of assets) do not give the commission jurisdiction over municipal condemnations of regulated water and sewer utilities. *United Water N.M., Inc. v. N.M. Pub. Util. Comm'n*, 1996-NMSC-007, 121 N.M. 272, 910 P.2d 906.

Certificate is no longer necessary for abandonment of service; all that is required is the commission's permission and approval. *Gonzales v. Public Serv. Comm'n*, 1985-NMSC-038, 102 N.M. 529, 697 P.2d 948.

Application to sale of vacant land. — Sale of 41 vacant acres within 2,564-acre electric utility site was not an "abandonment" of a "facility," and did not require the permission and approval of the commission. *Plains Elec. Generation & Transmission Coop. v. N.M. Pub. Util. Comm'n*, 1998-NMSC-038, 126 N.M. 152, 967 P.2d 827.

Burden of proof. — Utility, as the movant for abandonment, bore the burden to establish the factual predicate upon which the commission could base its decision to grant or deny abandonment. *Public Serv. Co. v. Public Serv. Comm'n*, 1991-NMSC-083, 112 N.M. 379, 815 P.2d 1169.

Utility's assertion that "exclusion from rates of the 26.10% interest in that unit . . . represents a loss in terms of capital costs alone of $19.8 million a year" fell short of the required showing, where the utility failed to demonstrate with any degree of certainty the overall impact continued regulation had on its financial condition. *Public Serv. Co. v. Public Serv. Comm'n*, 1991-NMSC-083, 112 N.M. 379, 815 P.2d 1169.

Mandamus was the appropriate remedy where the New Mexico public regulation commission refused to follow a nondiscretionary duty. — Where petitioners filed an emergency petition on behalf of the state of New Mexico seeking a writ of mandamus against the New Mexico public regulation commission (commission) to direct the commission and its individual commissioners to apply the Energy Transition Act (ETA), 62-18-1 to 62-18-23 NMSA 1978, to proceedings related to public service company of New Mexico's (PNM) abandonment of units one and four of the San Juan generating

station (San Juan), and where the commission asserted that the ETA did not apply because abandonment proceedings had already begun prior to the ETA's enactment, petition for writ of mandamus was granted because the commission did not have the authority to initiate an abandonment proceeding, and as a matter of law, abandonment proceedings for San Juan units one and four did not effectively begin until PNM filed its application for abandonment, which was after the ETA was enacted. The ETA serves as the statutory scheme that the legislature provided for abandonment proceedings, and therefore the commission had a nondiscretionary obligation to apply the ETA to the San Juan abandonment proceedings. *State ex rel. Egolf v. N.M. Pub. Regulation Comm'n*, 2020-NMSC-018.

Law reviews. — For note, "United Water New Mexico v. New Mexico Public Utility Commission: Why Rules Governing the Condemnation and Municipalization of Water Utilities May Not Apply to Electric Utilities," see 38 Nat. Res. J. 667 (1998).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 328.

Discontinuance of entire service, 11 A.L.R. 252.

Discontinuance of one of several different kinds of service, 21 A.L.R. 578.

Right to cut off water supply from one tenant on nonpayment by another, 28 A.L.R. 489.

Duty of public utility to notify patron in advance of temporary suspension of service, 52 A.L.R. 1078.

Damages for wrongfully shutting off gas, 108 A.L.R. 1188.

Right of user of public utility discontinuing use, 112 A.L.R. 230.

Right of utility on expiration of street franchise by limitation to discontinue service, 112 A.L.R. 631.

Right of public utility to discontinue line or branch on ground that it is unprofitable, 10 A.L.R.2d 1121.

Right to shut off one served by common service pipe for nonpayment by another, 19 A.L.R.3d 1227.

Right of public utility to discontinue or refuse service at one address because of refusal to pay for past service rendered at another, 73 A.L.R.3d 1292.

Public utility's right to recover cost of nuclear power plants abandoned before completion, 83 A.L.R.4th 183.

73B C.J.S. Public Utilities §§ 69, 73.

62-9-6. Certificates; application; issuance.

Before any certificate may be issued under Sections 62-9-1 through 62-9-6 New Mexico Statutes Annotated, 1978 Compilation, a certified copy of its articles of incorporation or charter, if the applicant be a corporation, shall be on file in the office of the commission. Every applicant for a certificate shall give such reasonable notice of its application as the commission may require and shall file in the office of the commission such evidence as shall be required by the commission to show that such applicant has received the consent and franchise from the municipality wherein construction and operation is proposed. The commission shall have power, after hearing, to issue said certificate, as prayed for, or to refuse to issue the same, or to issue it for the construction or operation of a portion only of the contemplated facility, line, plant or system, or extension thereof, or for the partial exercise only of said rights or privilege, and may attach to the exercise of the rights granted by said certificates such terms and conditions in harmony with the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], as amended, as in its judgment the public convenience and necessity may require. Except as otherwise provided in Section 62-9-2 New Mexico Statutes Annotated, 1978 Compilation, in determining whether any certificate shall issue as prayed for, the commission shall give due regard to public convenience and necessity including, but not limited to, any reasonable service agreement between the applicant and another utility and unnecessary duplication and economic waste. Whenever a public utility is engaged or is about to engage in construction or operation without having secured a certificate of public convenience and necessity as required by the provisions of the Public Utility Act, as amended, any interested person may file a complaint with the commission. The commission may, with or without notice, make its order requiring the public utility complained of to cease and desist from such construction or operation until the commission makes and files its decision on said complaint or until the further order of the commission. The commission may after hearing, after reasonable notice, make such order and prescribe such terms and conditions in harmony with the Public Utility Act, as amended, as are just and reasonable.

History: 1953 Comp., § 68-7-4, enacted by Laws 1967, ch. 96, § 8.

ANNOTATIONS

Repeals and reenactments. — Laws 1967, ch. 96, § 8, repealed 68-7-4, 1953 Comp., relating to application for and issuance or denial of certificates, and enacted a new section.

Compiler's notes. — Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003,

Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Provision of non-utility services. — Because electric utility's Certificate of Convenience and Necessity (CCN) contained no specific restrictions regarding non-utility use, the commission incorrectly determined that the utility violated the CCN when it provided or agreed to provide non-utility services to paper company. *Plains Elec. Generation & Transmission Coop. v. N.M. Pub. Util. Comm'n*, 1998-NMSC-038, 126 N.M. 152, 967 P.2d 827.

62-9-7. Legislative declaration; voluntary service agreements.

A. The legislature declares that the existing scheme of public utility regulation is adequate to exempt voluntary service agreements, as approved and regulated pursuant to the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], from the antitrust laws.

B. In exercising its authority pursuant to Chapter 62, Article 9 NMSA 1978, the commission may, after public hearing upon at least twenty days notice, approve voluntary service agreements between utilities providing similar service proposing the delineation between themselves of one or more service areas in which each shall be entitled to furnish service, if the commission first determines that the proposed delineation of service areas is consistent with the public convenience and necessity and otherwise conforms to the Public Utility Act.

C. Voluntary service agreements that the commission, after public notice and hearing, has previously approved are deemed to comply with Subsection A of this section and to have the same effect as if approved pursuant to Subsection B of this section.

D. Approval of a voluntary service agreement shall not affect the duties and restrictions imposed upon a public utility pursuant to Chapter 62, Article 8 NMSA 1978.

History: Laws 1991, ch. 121, § 1.

ANNOTATIONS

Compiler's notes. — Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as

amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ARTICLE 10
Hearings Before the Commission

62-10-1. Complaints as to rates, etc.; hearing by commission.

Upon a complaint made and filed by any municipality, or by any person or party affected, that any rate, service regulation, classification, practice or service in effect or proposed to be made effective is in any respect unfair, unreasonable, unjust or inadequate, the commission may proceed, if the commission finds probable cause for said complaint, and without such complaint, the commission, whenever it deems that the public interest or the interest of consumers and investors so requires, may proceed, to hold such hearing as it may deem necessary or appropriate; but no such hearing shall be had without notice, and no order affecting such rates, service regulations, classifications, practice or service complained of shall be entered by the commission without a hearing and notice thereof. Any utility may make complaint as to any matter within the provisions of this act affecting it.

History: Laws 1941, ch. 84, § 50; 1941 Comp., § 72-801; 1953 Comp., § 68-8-1.

ANNOTATIONS

Compiler's notes. — For the meaning of "this act", *see* 62-13-1 NMSA 1978 and notes thereto.

Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For costs in proceedings before commission, *see* 62-13-3 NMSA 1978.

Article governs revocation of certificate of convenience and necessity. — If the commission is assumed to have power to revoke a certificate of public convenience and necessity, the authority as well as the procedure therefor would be found in this article rather than in Sections 62-9-1 and 62-9-4 NMSA 1978 even though a conclusion that the certificate of the service company was null and void, if based upon proper findings,

could probably be made in determining the issues in a hearing under Section 62-9-1 NMSA 1978 as a necessary incident of the larger questions presented thereunder. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-045, 86 N.M. 255, 522 P.2d 802; *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433.

Law reviews. — For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 240, 264 to 275.

Prohibition as means of controlling action of rate-making official, 115 A.L.R. 19, 159 A.L.R. 627.

Representation of another before state public utilities or service commission as practice of law, 13 A.L.R.3d 812.

73B C.J.S. Public Utilities §§ 16, 77, 50, 51, 175.

62-10-2. Other hearings by commission.

The commission may in addition to the hearings specifically provided by this act, conduct such other hearings as may be required in the administration of the powers and duties conferred upon it by this act, after notice as hereafter provided shall be given to the persons interested therein.

History: Laws 1941, ch. 84, § 51; 1941 Comp., § 72-802; 1953 Comp., § 68-8-2.

ANNOTATIONS

Compiler's notes. — For the meaning of "this act", *see* 62-13-1 NMSA 1978 and notes thereto.

Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-10-3. Complaint to be filed and become commission record.

Whenever any complaint shall be made as herein provided, the same shall be filed and shall become a part of the permanent records of said commission; and whenever the commission without complaint shall determine that a hearing or investigation is necessary or appropriate, it shall make written specifications of the matters to be considered upon such hearing or investigation, and the same shall be filed and become a part of the permanent records of said commission.

History: Laws 1941, ch. 84, § 52; 1941 Comp., § 72-803; 1953 Comp., § 68-8-3.

ANNOTATIONS

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 267.

62-10-4. Complaint and specifications, served on utility.

Whenever the commission shall determine to hold a hearing or conduct an investigation upon a complaint made and filed as in this article provided, it shall fix a time and place for public hearings thereupon; and whenever the commission shall determine to conduct a hearing or investigation upon specifications filed by it, it shall fix a time for public hearings of the matter [matters] under investigation; and a copy of the complaint or a copy of the specifications filed by the commission as basis for said hearings shall be served upon the person or utility interested. All hearings shall be held at the offices of the commission in Santa Fe, or at such place in the state as the commission may designate.

History: Laws 1941, ch. 84, § 53; 1941 Comp., § 72-804; 1953 Comp., § 68-8-4.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler and is not part of the law.

Compiler's notes. — The words "this article" refer to Laws 1941, ch. 84, §§ 50 to 65, compiled as 62-10-1 to 62-10-16 NMSA 1978.

Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-10-5. Hearings to be public and notice of hearing to be given.

All hearings, and investigations, held or made by the commission, shall be public; and before proceeding to hold any such hearing or make any such investigation, the commission shall give the utility and the complainant at least twenty days' notice of the time and place when and where such matters will be considered and determined, and all parties shall be entitled to be heard, through themselves or their counsel, and shall have process to enforce the attendance of witnesses. At the hearing held pursuant to such notice, the commission may take such testimony as may be offered or as it may desire.

History: Laws 1941, ch. 84, § 54; 1941 Comp., § 72-805; 1953 Comp., § 68-8-5.

ANNOTATIONS

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Notice requirement only applies to complaint proceedings. — The notice requirement under this section has application only when a proceeding is initiated by a complaint; otherwise, the only notice necessary is such as is required by the commission. 1948 Op. Att'y Gen. No. 48-5138.

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities § 80.

62-10-6. Separate hearings of several complaints.

When complaint is made of more than one matter or thing, the commission may, when convenience so requires, order separate hearings thereon, and may thereupon hear and determine the several matters complained of separately and at such times as it may prescribe. In any hearing, proceeding or investigation conducted by the commission, any party may be heard in person or by attorney.

History: Laws 1941, ch. 84, § 55; 1941 Comp., § 72-806; 1953 Comp., § 68-8-6.

ANNOTATIONS

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-10-7. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 62-10-7 NMSA 1978, as amended by Laws 1985, ch. 116, § 1, relating to hearings, effective January 1, 1999. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

62-10-8. Process.

The commission, and each commissioner, may issue subpoenas, subpoenas duces tecum and all necessary process in proceedings pending before it, and such processes shall extend to all parts of the state and may be served by any person authorized to serve process out of the district courts of New Mexico.

History: Laws 1941, ch. 84, § 57; 1941 Comp., § 72-808; 1953 Comp., § 68-8-8.

ANNOTATIONS

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws

2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

62-10-9. Witnesses.

The commission and each of the commissioners, for the purposes mentioned in this act, may administer oaths, examine witnesses at any hearing and certify official acts. In case of failure on the part of any person or persons to comply with any lawful order of the commission, or with any subpoena or subpoena duces tecum, or in the case of the refusal of any witness to testify concerning any matter on which he may be interrogated lawfully, any court of record of general jurisdiction or a judge thereof, may on application of the commission or of a commissioner compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such a court or a refusal to testify therein.

History: Laws 1941, ch. 84, § 58; 1941 Comp., § 72-809; 1953 Comp., § 68-8-9.

ANNOTATIONS

Cross references. — For contempt proceedings, *see* 34-1-1 to 34-1-4 NMSA 1978.

Compiler's notes. — For the meaning of "this act", *see* 62-13-1 NMSA 1978 and notes thereto.

Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 232.

73B C.J.S. Public Utilities §§ 80, 87.

62-10-10. Depositions.

The commission or any commissioner or any party to the proceedings may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions, and any party as provided by law in civil actions may be required to answer written interrogatories propounded by the commission or any commissioner or any other party to the proceedings.

History: Laws 1941, ch. 84, § 59; 1941 Comp., § 72-810; 1953 Comp., § 68-8-10; Laws 1965, ch. 289, § 12.

ANNOTATIONS

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For taking depositions, *see* Rules 1-026 and 1-032 NMRA.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities § 80.

62-10-11. Certified copies; evidence.

Copies of official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the secretary under the official seal of the commission to be true copies of the original shall be evidence in like manner as the originals, in all matters before the commission and in the courts of this state.

History: Laws 1941, ch. 84, § 60; 1941 Comp., § 72-811; 1953 Comp., § 68-8-11.

ANNOTATIONS

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was

repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 269.

73B C.J.S. Public Utilities §§ 82 to 85.

62-10-12. Recording orders.

Every order, finding, authorization or certificate issued or approved by the commission under any provisions of this act shall be in writing and entered on the records of the commission. A certificate under the seal of the commission that any such order, finding, authorization or certificate has not been stayed, suspended or revoked shall be received as evidence in any proceedings as to the facts therein stated.

History: Laws 1941, ch. 84, § 61; 1941 Comp., § 72-812; 1953 Comp., § 68-8-12.

ANNOTATIONS

Compiler's notes. — For the meaning of "this act", *see* 62-5-9 NMSA 1978 and notes thereto.

Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 274.

73B C.J.S. Public Utilities §§ 89 to 92.

62-10-13. Fees.

Witnesses who are summoned before the commission shall be paid the same fees and mileage as are paid to witnesses in the courts of record of general jurisdiction. Witnesses whose depositions are taken pursuant to the provisions of this act, and the officer taking the same, shall be entitled to the same fees as are paid for like services in such courts.

History: Laws 1941, ch. 84, § 62; 1941 Comp., § 72-813; 1953 Comp., § 68-8-13.

ANNOTATIONS

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For fees and mileage as paid to witnesses in district courts, *see* 38-6-4 NMSA 1978.

For fees for taking depositions, *see* 14-12-19B, 39-2-8 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Constitutionality and construction of statute imposing upon public service corporation expense of investigation of its affairs, 101 A.L.R. 197.

73B C.J.S. Public Utilities § 80.

62-10-14. Decisions.

After the conclusion of any hearing the commission shall make and file its findings and order. The findings of fact shall consist only of such ultimate facts as are necessary to determine the controverted questions presented by the proceeding. Such findings shall be separately stated and numbered, and each thereof shall state briefly and plainly an ultimate fact necessary to determine a controverted question; and there shall be such a finding of fact as to each of the controverted questions presented by the proceeding. The order of the commission shall be based upon said findings of fact, and a copy of the findings of fact and of the order, certified under the seal of the commission, shall be served upon the person against whom it runs, or his attorney, and notice thereof shall be given to the other parties to the proceeding or their attorneys. Said order shall take effect and become operative thirty days after the service thereof, unless otherwise provided. If an order cannot in the judgment of the commission be

complied with within thirty days, the commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply therewith, and may, on application and for good cause shown, extend the time for compliance fixed in its order.

History: Laws 1941, ch. 84, § 63; 1941 Comp., § 72-814; 1953 Comp., § 68-8-14.

ANNOTATIONS

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Requiring exhaustion of administrative remedies is constitutional. — The requirement of the Public Utility Act that a person first exhaust his administrative remedy before resorting to the courts does not violate N.M. Const., art. VI, § 13, granting general jurisdiction to the district courts except as elsewhere limited in such constitution. *Smith v. Southern Union Gas Co.*, 1954-NMSC-033, 58 N.M. 197, 269 P.2d 745.

This section requires only a finding of an ultimate fact, and where that fact is found, the supreme court cannot interpret it to require any additional basis for the commission's order. *International Minerals & Chem. Corp. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-032, 81 N.M. 280, 466 P.2d 557.

This section requires that the commission find only ultimate facts and does not require it to give reasons for its decision. The ultimate fact is the logical result of the proofs reached by reasoning from the evident facts. It is a conclusion of fact. *International Minerals & Chem. Corp. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-032, 81 N.M. 280, 466 P.2d 557.

Unnecessary but erroneous findings of fact are not grounds for reversal. — Erroneous findings of fact, unnecessary to support the decision of a court, are not grounds for reversal. *International Minerals & Chem. Corp. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-032, 81 N.M. 280, 466 P.2d 557.

Failure to number findings not grounds for reversal. — That the findings were unnumbered would not justify a reversal on the grounds that the requirements of this section were not followed. *International Minerals & Chem. Corp. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-032, 81 N.M. 280, 466 P.2d 557.

Moving party has burden of proof. — Although this section does not specifically place any burden of proof on the complainant, the courts have uniformly imposed on administrative agencies the customary common-law rule that the moving party has the burden of proof. International Minerals & Chem. Corp. v. N.M. Pub. Serv. Comm'n, 1970-NMSC-032, 81 N.M. 280, 466 P.2d 557.

Burden of proving rate discrimination not met. — Where commission found that no unreasonable discrimination existed between rates charged to complainant's classification of service and to respondent's classifications of service, complainant failed to sustain the burden of proving unlawful or unreasonable discrimination as to rates charged to various members of its own classification. *International Minerals & Chem. Corp. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-032, 81 N.M. 280, 466 P.2d 557.

Commission is not bound by opinions of experts so long as the commission's ultimate decision is supported by substantial evidence. *Attorney Gen. v. N.M. Pub. Serv. Comm'n*, 1984-NMSC-081, 101 N.M. 549, 685 P.2d 957.

Commission is only required to find ultimate fact: it is not required to give reasons for its decision or to make a finding that is not an ultimate finding. *Attorney Gen. v. N.M. Pub. Serv. Comm'n*, 1984-NMSC-081, 101 N.M. 549, 685 P.2d 957.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 273, 274.

Necessity of some evidence at hearing to support decision of commission, 123 A.L.R. 1349.

73B C.J.S. Public Utilities §§ 88 to 92.

62-10-15. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 62-10-15 NMSA 1978, as enacted by Laws 1941, ch. 84, § 64, relating to record of proceedings, effective January 1, 1999. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

62-10-16. Rehearing.

After an order or decision has been made by the commission, any party to the proceedings, may within thirty days after the entry of the order or decision apply for a rehearing in respect of any matters determined in said proceedings and specified in the application for rehearing, and the commission may grant and hold such rehearing on

said matters. The commission shall either grant or refuse an application for rehearing within twenty days after the application therefor is filed in the office of the commission; and a failure by the commission to act upon such application within that period shall be deemed a refusal thereof. If the application be granted, the commission's order shall be deemed vacated, and the commission shall enter a new order after the rehearing shall have been concluded.

History: Laws 1941, ch. 84, § 65; 1941 Comp., § 72-816; 1953 Comp., § 68-8-16.

ANNOTATIONS

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Motion for rehearing not acted upon is deemed refused. — A timely motion for rehearing, filed in accordance with this section but not acted upon by the commission within 20 days, is deemed refused. *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of public service corporation to judicial relief from contract rates which have become inadequate, 10 A.L.R. 1335.

73B C.J.S. Public Utilities § 96.

ARTICLE 11
Review of Commission Orders

62-11-1. Right of appeal.

Any party to any proceeding before the commission may file a notice of appeal in the supreme court asking for a review of the commission's final orders. If an application for rehearing has been filed, a notice of appeal must be filed within thirty days after the application for rehearing has been refused or deemed refused because of the commission's failure to act within the time specified in Section 62-10-16 NMSA 1978. If an application for rehearing has not been filed, a notice of appeal must be filed within thirty days after the entry of the commission's final order. Every notice of appeal shall

name the commission as appellee and shall identify the order from which the appeal is taken. Any person whose rights may be directly affected by the appeal may appear and become a party, or the supreme court may, upon proper notice, order any person to be joined as a party.

History: Laws 1941, ch. 84, § 66; 1941 Comp., § 72-901; 1953 Comp., § 68-9-1; Laws 1965, ch. 289, § 14; 1982, ch. 109, § 11; 1993, ch. 282, § 38.

ANNOTATIONS

Compiler's notes. — Sections 62-11-1 to 62-11-6 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, made minor stylistic changes in the first and second sentences, and deleted "New Mexico public service" preceding "commission" in the next-to-last sentence.

Requiring exhaustion of remedies is constitutional. — The requirement of the Public Utility Act that a person first exhaust his administrative remedy before resorting to the courts does not violate N.M. Const., art. VI, § 13, granting general jurisdiction to the district courts except as elsewhere limited in such constitution. *Smith v. Southern Union Gas Co.*, 1954-NMSC-033, 58 N.M. 197, 269 P.2d 745.

Section liberally applied in determining standing for review. — The language "[a]ny party to any proceeding before the commission" is broad and requires liberal application in determining standing for review pursuant to this section. *Community Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1983-NMSC-026, 99 N.M. 493, 660 P.2d 583.

Courts have jurisdiction to vacate unlawful administrative order. — The statutory provisions for limited review of an order of a commission by the district court do not oust the courts of jurisdiction to annul and vacate a final administrative order as unlawful. *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646.

Complete administrative remedy for testing rates is provided. — The Public Utility Act envelops the commission with an aura of broad power and jurisdiction to determine just and reasonable rates and sets up a complete remedy within the framework of the act for testing their propriety and reasonableness. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Action will be dismissed if remedies have not been exhausted. — Where plaintiff brought action to enjoin commission from enforcing new gas rates and to recover amounts paid without waiting for final determination in pending statutory review proceeding, complaint was properly dismissed because plaintiff failed to exhaust administrative remedies. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Standard of review for appeal is whether there is substantial evidence in the record as a whole to support the agency's decision. *Gonzales v. Public Serv. Comm'n*, 1985-NMSC-038, 102 N.M. 529, 697 P.2d 948.

Review limited. — On appeals from administrative bodies the questions to be answered by the court are questions of law and are restricted to whether the administrative body acted fraudulently, arbitrarily or capriciously, whether the order was supported by substantial evidence and, generally, whether the action of the administrative body was within the scope of its authority. *Maestas v. N.M. Pub. Serv. Comm'n*, 1973-NMSC-096, 85 N.M. 571, 514 P.2d 847; *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646.

Section 62-12-2 applicable. — Where it is alleged that the public regulation commission is acting outside the scope of its jurisdiction or refusing to perform under the Public Utility Act, Section 62-12-2 NMSA 1978 is applicable. *City of Sunland Park v. N.M. Pub. Regulation Comm'n*, 2004-NMCA-024, 135 N.M. 143, 85 P.3d 267, cert. denied, 2004-NMCERT-002, 135 N.M. 169, 86 P.3d 47.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For comment, "Regulation of Electric Utilities and Affiliated Coal Companies - Determining Reasonable Expenses," see 26 Nat. Res. J. 851 (1986).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 276 to 291.

73B C.J.S. Public Utilities §§ 96, 101 to 138.

62-11-2. Notice to the commission.

Upon the filing of a notice of appeal, the appellant shall cause a copy thereof to be served upon the commission and parties of record in the proceeding before the

commission in the manner prescribed by the Rules of Appellate Procedure for Civil Cases. Within thirty days after service of the notice of appeal or such further time as the supreme court for good cause may specify, the commission shall certify to the supreme court the record of the testimony taken before the commission and all exhibits offered or received in evidence at the hearing before the commission, and all pleadings, findings, conclusions, orders and opinions, or certified copies thereof, made and entered in, or in connection with, the hearing before the commission; provided, however, that the parties and the commission may stipulate that a specified portion only of the testimony taken at the hearing before the commission shall be certified to the supreme court for review on appeal.

History: Laws 1941, ch. 84, § 67; 1941 Comp., § 72-902; 1953 Comp., § 68-9-2; Laws 1965, ch. 289, § 15; 1982, ch. 109, § 12.

ANNOTATIONS

Compiler's notes. — Sections 62-11-1 to 62-11-6 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For service of process, *see* Rule 1-004 NMRA.

For Rules of Appellate Procedure, *see* Rule 12-101 NMRA et seq.

Law reviews. — For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities §§ 101 to 117.

62-11-3. Appeal on the record.

The appeal shall be heard on the record made before the commission, and the supreme court shall not permit the introduction of new evidence addressed to any of the issues presented at the hearing before the commission.

History: Laws 1941, ch. 84, § 68; 1941 Comp., § 72-903; 1953 Comp., § 68-9-3; Laws 1965, ch. 289, § 16; 1982, ch. 109, § 13.

ANNOTATIONS

Compiler's notes. — Sections 62-11-1 to 62-11-6 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Administrative decisions. — In review of administrative orders, additional evidence cannot be introduced. *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities §§ 126 to 138.

62-11-4. Burden of showing that the order is unreasonable or unlawful.

The burden shall be on the party appealing to show that the order appealed from is unreasonable, or unlawful.

History: Laws 1941, ch. 84, § 69; 1941 Comp., § 72-904; 1953 Comp., § 68-9-4; Laws 1965, ch. 289, § 17.

ANNOTATIONS

Compiler's notes. — Sections 62-11-1 to 62-11-6 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Standard of review. — On appeal, the court, viewing the evidence in the light most favorable to the order appealed from, determines whether the order was supported by substantial evidence, was neither arbitrary nor capricious, and was within the commission's scope of authority. *Plains Elec. Generation & Transmission Coop. v. N.M. Pub. Util. Comm'n*, 1998-NMSC-038, 126 N.M. 152, 967 P.2d 827.

Grounds required for reversal. — The party challenging a commission decision must show that agency action falls within one of the oft-mentioned grounds for reversal,

including: whether the decision is arbitrary and capricious; whether it is supported by substantial evidence; and whether it represents an abuse of the agency's discretion by being outside the scope of the agency's authority, clear error, or violative of due process. *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, 120 N.M. 579, 904 P.2d 28.

Burden of proving construction was not commenced in time. — The burden was on petitioners-landowners, as the moving parties before the commission, to demonstrate by substantial evidence, and thereby prove to the commission, that electrical cooperative failed to commence construction of a transmission line and related facilities within the time prescribed by Section 62-9-4 NMSA 1978. *Lone Mountain Cattle Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-008, 83 N.M. 465, 493 P.2d 950.

When commission's construction of certificate and statutes is binding. — The commission's construction of the certificate issued by it and the statutes governing its operation was binding on review, unless this construction was unreasonable or unlawful. *Lone Mountain Cattle Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-008, 83 N.M. 465, 493 P.2d 950.

Utility's request for proposal process was not arbitrary or capricious. — Where the public service company of New Mexico (PNM) submitted an application for the public regulation commission (PRC) to approve its renewable energy procurement plan for the year 2018, and where, in its application, PNM sought to demonstrate its compliance with the Renewable Energy Act, 62-16-1 to -10 NMSA 1978, requirements and obtain the PRC's approval of renewable energy procurements, the PRC's approval of PNM's solar energy procurement plan was not unreasonable or unlawful, because PNM's request for proposal (RFP) gave all bidders a fair opportunity to participate and compete for PNM's selection, and evidence in the record demonstrates that the challenged aspects of PNM's RFP were consistent with industry standards. *N.M. Indus. Energy Consumers v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-015.

Public Regulation Commission's summary fact-finding procedure denied qualifying facility due process. — In a case that arose under the federal Public Utility Regulatory Policies Act of 1978 (PURPA), which was designed to encourage the development of small power production facilities in order to diversify the nation's energy sources and thereby reduce the demand for traditional fossil fuels, where appellant filed a petition with the New Mexico public regulation commission (PRC), contending that it is a "qualifying facility" under PURPA and requested that the PRC enter an order declaring that Lea county electric is obligated under PURPA to purchase the energy and capacity that appellant produces and determine the proper "avoided costs" Lea county electric is required to pay appellant for its energy and capacity, and where the PRC determined that it would process appellant's filing as a complaint subject to the formal complaint process set forth in its rules of procedure and not as a petition for a declaratory order, and where the PRC further summarily dismissed the complaint with prejudice, finding that the affidavits and supporting documentation constituted substantial evidence that Lea county electric transferred its mandatory purchase obligation to another electric

utility which served as Lea county electric's "full-requirements" supplier, the New Mexico supreme court vacated and annulled the PRC's final order, because the summary fact-finding procedure employed by the PRC violated due process when it precluded appellant from presenting evidence and developing a record on the disputed full-requirements issue. The PRC's decision was also not supported by substantial evidence, and was therefore arbitrary, capricious, or an abuse of discretion. *D Resolute Wind 1 LLC v. N.M. Pub. Regul. Comm'n*, 2022-NMSC-011.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities §§ 126 to 128.

62-11-5. Decision on appeal.

The supreme court shall have no power to modify the action or order appealed from, but shall either affirm or annul and vacate the same. The supreme court shall vacate and annul the order complained of if it is made to appear to the satisfaction of the court that the order is unreasonable or unlawful. Proceedings in the supreme court shall be governed by the provisions of this act and by the Rules of Appellate Procedure for Civil Cases promulgated by the supreme court of New Mexico.

History: Laws 1941, ch. 84, § 70; 1941 Comp., § 72-905; 1953 Comp., § 68-9-5; Laws 1982, ch. 109, § 14.

ANNOTATIONS

Compiler's notes. — For the meaning of "this act", *see* 62-13-1 NMSA 1978 and notes thereto.

Sections 62-11-1 to 62-11-6 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For Rules of Appellate Procedure, *see* Rule 12-101 NMRA et seq.

Entire order must be annulled if part is unlawful. — Where the court finds part of the order of the commission to be unreasonable and unlawful, it must annul the entire order. The court has no power to modify the order of the commission. *Moyston v. N.M. Pub. Serv. Comm'n*, 1966-NMSC-062, 76 N.M. 146, 412 P.2d 840.

Supreme court is limited to affirming or reversing lower court. — Because of the form of this section (prior to the 1982 amendment), supreme court was limited in its disposition of cause to affirming or reversing the lower court, and the cause cannot be remanded to permit the commission to supply necessary findings. *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433 (1966).

Court is limited in its review to determining whether the order of the commission was unreasonable and/or unlawful, whether it was supported by substantial evidence and, generally, whether the action of the commission was within the scope of its authority. *Llano, Inc. v. S. Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646.

On appeals from administrative bodies the questions to be answered by the court are questions of law and are restricted to whether the administrative body acted fraudulently, arbitrarily or capriciously, whether the order was supported by substantial evidence and, generally, whether the action of the administrative body was within the scope of its authority. The district court may not substitute its judgment for that of the administrative body. *Maestas v. N.M. Pub. Serv. Comm'n*, 1973-NMSC-096, 85 N.M. 571, 514 P.2d 847; *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646; *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1979-NMSC-042, 92 N.M. 721, 594 P.2d 1177.

Commission decision not upheld without substantial evidence. — Although every inference is to be drawn in support of the commission's decision, a reviewing court may not uphold a commission's decision which is not supported by substantial evidence. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1979-NMSC-042, 92 N.M. 721, 594 P.2d 1177.

Questions of fact are for commission, not court. — Whether or not the construction had been commenced on a certain date is a question of fact to be determined by the commission. *Lone Mountain Cattle Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-008, 83 N.M. 465, 493 P.2d 950.

When commission's construction of certificate and statute is binding. — The commission's construction of the certificate issued by it and the statutes governing its operation was binding on review, unless this construction was unreasonable or unlawful. *Lone Mountain Cattle Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-008, 83 N.M. 465, 493 P.2d 950.

Once commission's order is annulled and vacated, a rate case is in the same posture it was in before the original decision was rendered: the commission may hold additional hearings and take additional testimony just as if the vacated order had never been entered; however, because the proposed rates may be put into effect after expiration of the initial nine-month period, the commission will have every reason to act expeditiously to enter new findings based on substantial evidence. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1979-NMSC-042, 92 N.M. 721, 594 P.2d 1177.

Regulation held neither arbitrary nor capricious. — The question of a potential for abuse in a regulation allowing company to adjust consumers' rates relative to change in the company's cost prior to the approval by the commission in that the company could negotiate contracts with its subsidiaries who supply 26% of its natural gas at favorable rates, and thereby accrue hidden profits, was a question of fact for the commission to decide, and as the commission's findings were supported by substantial evidence, this regulation was neither arbitrary nor capricious. *Maestas v. N.M. Pub. Serv. Comm'n*, 1973-NMSC-096, 85 N.M. 571, 514 P.2d 847.

Commission's finding of fact held supported by substantial evidence. — Considering petitioner's burden of proof, the nature and extent of the evidence adduced and the qualifications of the commission in knowing and understanding what is meant by "surveys" and "construction," in the sense in which these terms are used in the construction of power transmission lines and related facilities, the commission's finding of fact was supported by substantial evidence, and it is not the province of the court to substitute its judgment for that of the commission. *Lone Mountain Cattle Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-008, 83 N.M. 465, 493 P.2d 950.

Commission's order held unsupported by substantial evidence. — Where gas company seeking rate increase proposed to trend the general plant account items by using a nationally recognized index, but the commission instead inserted its own method - to simply use the untrended original cost, although the witness who strongly supported this approach admitted that he did not know whether this would accurately establish the reproduction cost of the items, the court held the commission's order was unreasonable, being unsupported by substantial evidence. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Commission's establishment of a two-tiered rate plan that allowed residential customers to elect between a higher customer access fee combined with a lower distribution charge per therm, or choose a lower customer access fee combined with a higher distribution charge was not supported by the evidence. *Attorney Gen. v. N.M. Pub. Util. Comm'n*, 2000-NMSC-008, 128 N.M. 747, 998 P.2d 1198.

Commission's order in a utility-rate proceeding was vacated and remanded because its decision on the disallowance of gas company's actual tax expenses was arbitrary, its determination of zero cash working capital was lacking a basis in substantial evidence and the amount of its award for aircraft expenses was unsupported by substantial evidence. *Zia Natural Gas Co. v. N.M. Pub. Util. Comm'n*, 2000-NMSC-011, 128 N.M. 728, 998 P.2d 564.

In its final order regarding a gas utility's requested rate increase, the commission's denial of recovery of losses on reacquired debt, the denial of the opportunity for the utility to recover reservation fees in a separate proceeding, the denial of certain settlement expenses and rate case expenses, and the dramatic increase in the residential access charge were not supported by substantial evidence. *PNM Gas Servs. v. N.M. Pub. Util. Comm'n*, 2000-NMSC-012, 129 N.M. 1, 1 P.3d 383.

Factors considered in rate hearing. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1979-NMSC-042, 92 N.M. 721, 594 P.2d 1177.

Departure from prior practice without notice. — A regulatory body cannot, without prior notice, abruptly depart from past practice on which the regulatee has relied and impose a retroactive refund requirement upon the regulatee. However, once notice was given, nothing prevented the commission from adopting a new regulatory practice and applying it prospectively; if the regulatee chose not to comply, it did so at its own peril. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1993-NMSC-032, 115 N.M. 678, 858 P.2d 54.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities §§ 125 to 128.

62-11-6. Appeals; supreme court may stay or suspend commission's order.

The pendency of an appeal shall not of itself stay or suspend the operation of the order of the commission, but, during the pendency of such proceedings, the supreme court in its discretion may stay or suspend, in whole or in part, the operation of the commission's order on such terms as it deems just and in accordance with the practice of courts exercising equity jurisdiction. If the supreme court stays or suspends the operation of an order of the commission, pending a review of the order, the court may require the party seeking the stay or suspension to secure the other parties against loss due to the delay in the enforcement of the order, in case the order on appeal is affirmed, in such amount and in such form as the supreme court shall direct.

History: Laws 1941, ch. 84, § 71; 1941 Comp., § 72-906; 1953 Comp., § 68-9-6; Laws 1982, ch. 109, § 15; 1983, ch. 250, § 4.

ANNOTATIONS

Compiler's notes. — Sections 62-11-1 to 62-11-6 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For definition of "commission," *see* 62-3-3 NMSA 1978.

The 1983 amendment inserted "stay or suspend commission's order" at the end of the catchline and substituted "If the supreme court stays or suspends the operation of an order of the commission, pending a review of the order, the court may require the party seeking the stay or suspension to secure" for "Any party shall have the right to secure from the supreme court an order suspending or staying the operation of an order of the commission, pending a review of such order, by securing" in the second sentence.

A party looking to stay a public regulation commission final order must seek a stay from the commission before requesting a stay from the New Mexico supreme court. — Where El Paso electric company (El Paso electric) submitted its 2018 annual renewable energy plan to the New Mexico public regulation commission (commission), in which El Paso electric sought a ten-year extension of its agreement with the Camino Real energy facility to purchase renewable energy certificates at a price of $30 per megawatt hour of renewable energy, which doubled the $15 per megawatt hour price for the certificates under its expiring agreement with the Camino Real facility, and where the commission issued a final order approving the proposal, and where the city of Las Cruces (city) filed a notice of appeal with the New Mexico supreme court seeking review of the commission's final order and requesting that the court stay the portion of the commission's order that approved El Paso electric's agreement with the Camino Real facility, the city was required to first seek a stay from the commission, because a party is required to pursue relief from an administrative agency, where available, before seeking redress from the courts, which allows for the development of a complete factual record and preserves the New Mexico supreme court's role as a court of review. *City of Las Cruces v. N.M. Pub. Regulation Comm'n*, 2020-NMSC-016.

The New Mexico public regulation commission retains jurisdiction to act on a stay request following a final order. — Where El Paso electric company (El Paso electric) submitted its 2018 annual renewable energy plan to the New Mexico public regulation commission (commission), in which El Paso electric sought a ten-year extension of its agreement with the Camino Real energy facility to purchase renewable energy certificates at a price of $30 per megawatt hour of renewable energy, which doubled the $15 per megawatt hour price for the certificates under its expiring agreement with the Camino Real facility, and where the commission issued a final order approving the proposal, the commission was within its authority to grant the city of Las Cruces' motion for stay despite a pending appeal, because the commission retains jurisdiction to act on a stay request following a final order. *City of Las Cruces v. N.M. Pub. Regulation Comm'n*, 2020-NMSC-016.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

62-11-7. Repealed.

ANNOTATIONS

Repeals. — Laws 1982, ch. 109, § 16, repealed 62-11-7 NMSA 1978, relating to appeals to the supreme court. For present provisions, *see* 62-11-1 to 62-11-6 NMSA 1978.

Laws 1982, ch. 109, contained no effective date provision, but was enacted at the session which adjourned on February 18, 1982. *See* N.M. Const., art. IV, § 23.

ARTICLE 12
Enforcement of Orders and Duties

62-12-1. Mandamus; injunction; utilities.

Whenever the commission shall be of the opinion that any person or utility is failing or omitting or about to fail or omit to do anything required of it by this act or by any order of the commission, or is doing anything or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of this act or of any order of the commission, it may direct the attorney general of New Mexico to commence an action or proceeding in the district court in and for the county of Santa Fe, or in the district court of the county in which the complaint or controversy arose, in the name of the state of New Mexico for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunction. The attorney general of New Mexico shall thereupon begin such action or proceeding by petition to such court, alleging the violation or threatened violation complained of, and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify a time, not exceeding thirty days after the service of the copy of the petition, within which the public utility or person complained of must plead, and in the meantime said public utility or person may for good cause shown be restrained. In case of default, the court shall immediately inquire into the facts and circumstances of the case. Such corporations or persons as the court may deem necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction issue or be made permanent as prayed for in the petition, or in such modified or other form as will afford appropriate relief. An appeal may be taken as in other civil actions.

History: Laws 1941, ch. 84, § 73; 1941 Comp., § 72-1001; 1953 Comp., § 68-10-1.

ANNOTATIONS

Compiler's notes. — For the meaning of "this act", *see* 62-13-1 NMSA 1978 and notes thereto.

Sections 62-12-1 to 62-12-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 12 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1,

Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For mandamus, *see* 44-2-1 to 44-2-14 NMSA 1978.

For injunctions, *see* Rules 1-065 and 1-066 NMRA.

For the Rules of Appellate Procedure, *see* Rule 12-101 NMRA et seq.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52 Am. Jur. 2d Mandamus §§ 108 to 110; 64 Am. Jur. 2d Public Utilities §§ 30, 275, 277, 278.

Joinder or representation of several claimants in action to recover overcharge, 1 A.L.R.2d 160.

Adequacy, as regards right to injunction, of other remedy for review of order fixing utility rates, 8 A.L.R.2d 839.

Propriety of injunctive relief against diversion of water by municipal corporation or public utility, 42 A.L.R.3d 426.

73B C.J.S. Public Utilities § 59.

62-12-2. Actions against commission.

In case the commission or its members shall undertake to act in excess of its jurisdiction and authority conferred under this act, or without jurisdiction; or in case the said commission or its members shall undertake to exercise rights or privileges not conferred upon it by this act or by law; or in case the said commission or its members shall fail or refuse in the performance of any duties or obligations imposed upon it by the terms of this act, then the person interested or whose rights are affected may bring suit by mandamus, prohibition, injunction or other appropriate remedy against the said commission in its statutory name in this act provided, to compel performance of the

duties and obligations imposed upon said commission by this act, or to restrain said commission and its members from the exercise of jurisdiction not by this act conferred. Consent of the state is hereby expressly given to the maintenance of such suits against said commission. Any such action shall be brought against said commission in the district court of Santa Fe county, New Mexico, or in the district court of the county in which the complaint or controversy arose. Any judgment or decree entered against the commission shall be binding upon the commission and each and every member thereof.

History: Laws 1941, ch. 84, § 74; 1941 Comp., § 72-1002; 1953 Comp., § 68-10-2.

ANNOTATIONS

Compiler's notes. — For the meaning of "this act", *see* 62-13-1 NMSA 1978 and notes thereto.

Sections 62-12-1 to 62-12-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 12 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For prohibition, *see* N.M. Const., art. VI, § 13.

For mandamus, *see* 44-2-1 to 44-2-14 NMSA 1978.

For injunctions, *see* Rules 1-065 and 1-066 NMRA.

Equity has inherent power to restrain acts beyond commission's jurisdiction. — The power to restrain the exercise by the commission of acts entirely beyond or in excess of its jurisdiction inheres in a court of equity, and a mere declaration of the power in this section adds no new strength to the power. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Complete administrative remedy for testing rates is provided. — The Public Utility Act envelops the commission with an aura of broad power and jurisdiction to determine just and reasonable rates and sets up a complete remedy within the framework of the act for testing their propriety and reasonableness. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Increasing contract rate is not in excess of commission's jurisdiction. — Where the commission had entered an order authorizing a public utility to enter into a contract and to continue to charge the gas rate therein specified until further order and on the ex

parte petition of the utility subsequently entered an interlocutory order making a rate increase to be effective until the commission could hold a hearing to determine and set a new and proper rate, the commission was moving strictly in conformity with the act creating it to determine one of the major questions submitted to its jurisdiction - a question of rates. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Section applicable. — Where it is alleged that the public regulation commission is acting outside the scope of its jurisdiction or refusing to perform under the Public Utility Act, this section is applicable. *City of Sunland Park v. N.M. Pub. Regulation Comm'n*, 2004-NMCA-024, 135 N.M. 143, 85 P.3d 267, cert. denied, 2004-NMCERT-002, 135 N.M. 169, 86 P.3d 47.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 278.

Prohibition as means of controlling action of ratemaking officials, 115 A.L.R. 19, 159 A.L.R. 627.

73B C.J.S. Public Utilities §§ 66, 129-138.

62-12-3. Actions preferred.

All actions and proceedings under this act, and all actions or proceedings to which the commission or the state of New Mexico may be a party, and in which any question arises under this act, or under or concerning any order or decision of the commission, may be preferred over all other civil causes except election causes, irrespective of position on the calendar.

History: Laws 1941, ch. 84, § 75; 1941 Comp., § 72-1003; 1953 Comp., § 68-10-3.

ANNOTATIONS

Compiler's notes. — For the meaning of "this act", *see* 62-13-1 NMSA 1978 and notes thereto.

Sections 62-12-1 to 62-12-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 12 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as

amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For assignment of cases for trial, *see* Rule 1-040 NMRA.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

62-12-4. Violation of orders.

Any person or corporation which violates any provision of the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] or which fails, omits or neglects to obey, observe or comply with any lawful order, or any part or provision thereof, of the commission is subject to a penalty of not less than one hundred dollars ($100) nor more than one hundred thousand dollars ($100,000) for each offense.

History: Laws 1941, ch. 84, § 76; 1941 Comp., § 72-1004; 1953 Comp., § 68-10-4; Laws 1983, ch. 250, § 5; 1993, ch. 220, § 2.

ANNOTATIONS

Compiler's notes. — Sections 62-12-1 to 62-12-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 12 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For definition of "commission," *see* 62-3-3 NMSA 1978.

The 1993 amendment, effective June 18, 1993, substituted "the Public Utility Act" for "this act" near the beginning and "one hundred thousand dollars ($100,000)" for "ten thousand dollars ($10,000)" near the end of the section.

The 1983 amendment substituted "ten thousand dollars ($10,000)" for "one thousand dollars."

Am. Jur. 2d, A.L.R. and C.J.S. references. — Imprisonment for overcharge by public utility, 40 A.L.R. 82.

62-12-5. Separate offenses.

Every violation of the provisions of this act or of any lawful order of the commission, or any part or portion thereof by any corporation or person is a separate and distinct offense, and in case of a continuing violation after a first conviction each day's continuance thereof shall be deemed to be a separate and distinct offense.

History: Laws 1941, ch. 84, § 77; 1941 Comp., § 72-1005; 1953 Comp., § 68-10-5.

ANNOTATIONS

Compiler's notes. — For the meaning of "this act", *see* 62-13-1 NMSA 1978 and notes thereto.

Sections 62-12-1 to 62-12-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 12 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-12-6. Penalties cumulative.

All penalties accruing under this act shall be cumulative, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public utility or any officer, director, agent or employee thereof or any other corporation or person.

History: Laws 1941, ch. 84, § 78; 1941 Comp., § 72-1006; 1953 Comp., § 68-10-6.

ANNOTATIONS

Compiler's notes. — For the meaning of "this act", *see* 62-13-1 NMSA 1978 and notes thereto.

Sections 62-12-1 to 62-12-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 12 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities § 59.

62-12-7. Action to recover penalties.

Actions to recover penalties under this act shall be brought in the name of the state of New Mexico in the district court of Santa Fe county.

History: Laws 1941, ch. 84, § 79; 1941 Comp., § 72-1007; 1953 Comp., § 68-10-7.

ANNOTATIONS

Compiler's notes. — For the meaning of "this act", *see* 62-13-1 NMSA 1978 and notes thereto.

Sections 62-12-1 to 62-12-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 12 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Law reviews. — For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

ARTICLE 13
Public Utility Act Miscellaneous Provisions

62-13-1. Short title.

Articles 1 through 6 and 8 through 13 of Chapter 62 NMSA 1978 may be cited as the "Public Utility Act".

History: Laws 1941, ch. 84, § 80; 1941 Comp., § 72-1101; 1953 Comp., § 68-11-1; 1993, ch. 220, § 1; 1993, ch. 282, § 39; 1993, ch. 351, § 1.

ANNOTATIONS

Compiler's notes. — Chapter 62, Article 3A, the Electric Utility industry Restructuring Act of 1999, enacted by Laws 1999, ch. 294, was not enacted as a part of the Public

Utility Law. Presently the Public Utility Act consists of Chapter 62, Articles 1 to 3, 4 to 6, and 8 to 13 NMSA 1978.

Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 220, § 1, effective June 18, 1993, Laws 1993, ch. 282, § 39, effective June 18, 1993 and Laws 1993, ch. 351, § 1, effective July 1, 1993, which rewrote the section, which read: "This act shall be known, and cited and referred to, as the Public Utility Act". The section is set out as amended by Laws 1993, ch. 351, § 1. See 12-1-8 NMSA 1978.

Law reviews. — For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

For note, "Preemption - Atomic Energy," see 24 Nat. Res. J. 761 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 13.

73B C.J.S. Public Utilities § 63.

62-13-2. Fees.

The commission shall collect fees for the following, which shall be remitted to the state treasurer not later than the day following receipt; provided that the commission may increase by administrative rule the fees set forth in this section in amounts that do not exceed the cost of administrative proceedings before the commission:

A. for filing any rate schedule, service rule or regulation or sample form, or amendment thereto, one dollar ($1.00);

B. for filing each application, petition or complaint, twenty-five dollars ($25.00);

C. for copies of papers, testimony and records, the reasonable cost of such copies as the commission may provide from time to time by rule; and

D. for certifying any copy of any paper, testimony or record, two dollars ($2.00).

History: 1953 Comp., § 68-11-2.1, enacted by Laws 1957, ch. 25, § 2; 1965, ch. 289, § 19; 1993, ch. 282, § 40; 2025, ch. 84, § 3.

ANNOTATIONS

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2025 amendment, effective July 1, 2025, authorized the public regulation commission to increase by administrative rule the fees set forth in this section; in the introductory clause, after the semicolon, added "provided that the commission may increase by administrative rule the fees set forth in this section in amounts that do not exceed the cost of administrative proceedings before the commission".

The 1993 amendment, effective June 18, 1993, in the introductory language, deleted "New Mexico public service" preceding "commission" and made stylistic changes; added the subsection designations; and added "; and" at the end of Subsection C.

Fee payable for each schedule, not each instrument. — The fee provided for is payable for each rate schedule filed even though all schedules filed under rules of the commission may be included in one instrument. 1941 Op. Att'y Gen. No. 41-3939 (rendered under former statute).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Constitutionality and construction of statute imposing upon public service corporation expense of investigation of its affairs, 101 A.L.R. 197.

73B C.J.S. Public Utilities § 65.

62-13-2.1. Refund of fees.

If the commission dismisses a complaint for lack of probable cause, the commission may refund a fee paid pursuant to Subsection B of Section 62-13-2 NMSA 1978 if the commission determines that the dismissed complaint was filed in good faith.

History: Laws 2007, ch. 223, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 223 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

62-13-3. Costs.

A. Except as otherwise provided by law, in all proceedings before the commission and in the courts, each party to the controversy shall bear his own costs and no costs shall be taxed against either party.

B. In any commission rate proceeding in which the utility seeks rates to recover adjusted test-year litigation expenses there shall be no presumption that the litigation expenses are prudent. Nothing in this section shall be construed to create or imply a presumption of prudence for any utility expenditures not addressed in this section.

C. As used in this section, "litigation expenses" means all attorneys' fees, consulting fees and other costs of litigation, including in-house expenditures.

History: Laws 1941, ch. 84, § 82; 1941 Comp., § 72-1103; 1953 Comp., § 68-11-3; Laws 1983, ch. 250, § 6; 1993, ch. 265, § 1.

ANNOTATIONS

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For definition of "commission," *see* 62-3-3 NMSA 1978.

For hearings before commission, *see* 62-10-1 to 62-10-16 NMSA 1978.

For review of commission orders, *see* 62-11-1 to 62-11-6 NMSA 1978.

The 1993 amendment, effective June 18, 1993, designated the existing provisions as Subsection A, and added Subsections B and C.

The 1983 amendment deleted "transfer of cause to another county" at the end of the catchline, deleted the former second sentence, relating to the transfer of a cause to another county, added "Except as otherwise provided by law" at the beginning of the section and deleted "on review" following "and in the courts."

Rate case expenses. — By removing the presumption of reasonableness with respect to litigation expenses, the legislature did not intend to preclude the pragmatic practice of estimating rate case expenses, but intended that utilities demonstrate the reasonableness of rate case expenses, whether estimated or actual. *In re PNM Gas Servs.*, 2000-NMSC-012, 129 N.M. 1, 1 P.3d 383.

Because the enactment of Subsection B was intended to effect a change in the policy of with respect to litigation expenses, a gas utility failed to carry its burden of proving that the amount of its requested rate case expense was reasonable and prudent by presenting only a budget-based estimate with no itemization of costs or evidence of reasonableness. *In re PNM Gas Servs.*, 2000-NMSC-012, 129 N.M. 1, 1 P.3d 383.

62-13-4. Interstate commerce not affected.

Neither this act nor any provision thereof shall apply to or be construed to apply to commerce with foreign nations or commerce among the several states of this Union, except insofar as the same may be permitted under the provisions of the constitution of the United States and the acts of congress.

History: Laws 1941, ch. 84, § 83; 1941 Comp., § 72-1104; 1953 Comp., § 68-11-4.

ANNOTATIONS

Compiler's notes. — For the meaning of "this act", *see* 62-13-1 NMSA 1978 and notes thereto.

Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities § 145.

62-13-5. Mortgages and deeds of trust; execution by corporations distributing electric energy, natural gas and providing telephone and telegraph services.

The provisions of Sections 62-13-5 through 62-13-7 NMSA 1978 shall apply to mortgages, deeds of trust and other security instruments hereafter executed by, and to secure the payment of bonds, notes or other obligations of:

A. corporations engaged in this state in the generation, manufacture, transmission, distribution and sale of electric energy and power to the public;

B. corporations engaged in this state in the transportation, distribution and sale through local distribution system or systems of natural gas to the public for domestic, commercial, industrial or any other use;

C. corporations owning or operating in this state any gas pipeline or lines for the transportation and sale of natural gas to other pipeline companies or to local distributing systems, or to municipalities, or to industrial consumers for their own use; and

D. corporations engaged in this state in providing telephone or telegraph service to the public.

History: 1953 Comp., § 68-11-6, enacted by Laws 1961, ch. 76, § 1; 1973, ch. 253, § 1.

ANNOTATIONS

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 6 to 8, 256.

29 C.J.S. Electricity § 19; 38A C.J.S. Gas § 42; 73B C.J.S. Public Utilities §§ 8, 15, 72; 86 C.J.S. Telegraphs, Telephones, Radio and Television § 17.

62-13-6. [Mortgages and deeds of trust; notice of lien; after-acquired property.]

Any mortgage, deed of trust or other security instrument hereafter executed by any corporation referred to in Section 1 [62-13-5 NMSA 1978] of this act, which by its terms subjects to the lien thereof property then owned, and any property to be acquired by the corporation subsequent to the execution by it of such mortgage, deed of trust or other security instrument, upon the deposit thereof for record, and the payment of the proper recordation and filing fees, in the proper recording office of any county in this state shall constitute notice of the lien of such mortgage as to the property situated in such county and specifically described in such mortgage, deed of trust or other security instrument and shall also constitute notice of the lien of such mortgage, deed of trust or other

security instrument as to the property in such county acquired by the corporation subsequent to the execution and deposit for record as aforesaid. Every mortgage, deed of trust or other security instrument of the class to which the provisions of the act [62-13-5 to 62-13-7 NMSA 1978] are applicable shall have typed or printed on the title page, or the first page thereof, substantially the following: "This instrument contains after-acquired property provisions."

History: 1953 Comp., § 68-11-7, enacted by Laws 1961, ch. 76, § 2.

ANNOTATIONS

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For secured transactions under the Uniform Commercial Code, *see* 55-9-101 to 55-9-507 NMSA 1978.

62-13-7. [Prior mortgages and deeds of trust not impaired.]

The provisions of the act [62-13-5 to 62-13-7 NMSA 1978] shall be applicable only to mortgages, deeds of trust and other security instruments that are executed after the effective date of this act by a corporation of the class referred to in Section 1 [62-13-5 NMSA 1978] of this act and which comply with the provisions of this act with respect to the filing thereof for record. No mortgage, deed of trust or other security instrument executed and filed for record prior to the effective date of this act, regardless of whether the same was executed by a corporation of the class referred to in Section 1 of this act, or otherwise, shall be impaired, invalidated or otherwise affected by any of the provisions of this act. The provisions of this act are cumulative of existing statutes, including statutes enacted by this twenty-fifth legislature, and nothing herein shall be so construed as to modify or affect existing statutes relating to the execution or recording or filing of mortgages, deeds of trust or other security instruments.

History: 1953 Comp., § 68-11-8, enacted by Laws 1961, ch. 76, § 3.

ANNOTATIONS

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by

Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-13-8. Filing with the secretary of state.

Any mortgage, deed of trust, security agreement or similar security instrument, or instrument supplemental thereto, or amendatory or in satisfaction thereof, covering any real or personal property situate in more than one county in this state, which is made to secure the payment of bonds, notes or other obligations issued, or to be issued, by any public utility, rural electric cooperative, telephone company or railroads shall be executed and acknowledged in the same manner as are conveyances of real estate and shall be filed in the office of the secretary of state. The secretary of state shall endorse his certificate upon the filed instrument, specifying thereon the day and hour of the instrument's receipt, and the file number assigned to it, which shall be evidence of such facts. The secretary of state shall retain the instrument in his office, and filing the instrument in his office shall be notice to all the world of its existence and contents from the time of filing.

History: 1953 Comp., § 68-11-9, enacted by Laws 1965, ch. 112, § 1; 1973, ch. 253, § 2; 1979, ch. 78, § 1.

ANNOTATIONS

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-13-9. Refiling instruments with any county clerk.

Any mortgage, deed of trust, security agreement or similar security instrument, or instrument supplementary thereto, or amendatory or in satisfaction thereof, covering any real or personal property situate in more than one county in this state, which was heretofore made to secure the payment of bonds, notes or obligations issued, or to be issued, by any public utility, rural electric cooperative, telephone company or railroads, and which was heretofore filed or recorded in the office of the county clerk of any county of this state, or a copy thereof was certified to by any county clerk of this state, may be

refiled in the office of the secretary of state as provided in Section 62-13-8 NMSA 1978. Refiling shall thereafter, as to any real or personal property covered thereby and not previously released, be of the same effect as if the instrument had been originally filed in the office of the secretary of state in conformity with the provisions of Section 62-13-8 NMSA 1978. Nothing herein contained, however, shall require refiling of any instrument.

History: 1953 Comp., § 68-11-10, enacted by Laws 1965, ch. 112, § 2; 1973, ch. 253, § 3; 1979, ch. 78, § 2.

ANNOTATIONS

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-13-10. Fees.

A uniform fee for filing, indexing and furnishing filing data for any instrument filed under the provisions of Sections 62-13-8 and 62-13-9 New Mexico Statutes Annotated, 1978 Compilation, shall be one dollar ($1.00). Upon request of any person, the secretary of state shall furnish a copy of such instrument, and shall, upon request, certify the copy as being a true and correct copy of the instrument on file in his office. A uniform fee for each copy shall be seventy-five cents ($.75) per page, and the uniform fee for each certification shall be fifty cents ($.50). The secretary of state shall further certify as a true and correct copy of any instrument filed in his office pursuant to the provisions of Sections 62-13-8 and 62-13-9 New Mexico Statutes Annotated, 1978 Compilation, any typed, printed or photocopied instrument furnished to him by any person if he shall find the copy to be a true and correct copy. The uniform fee for each certification shall be fifty cents ($.50).

History: 1953 Comp., § 68-11-11, enacted by Laws 1965, ch. 112, § 3.

ANNOTATIONS

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983).

Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities § 65.

62-13-11. Recording notice in office of county clerk.

If any instrument filed with the secretary of state under the provisions of Sections 62-13-8 or 62-13-9, New Mexico Statutes Annotated, 1978 Compilation, covers any real property, a notice shall be recorded in each county where any part of such real property is situate setting forth the nature of such instrument, the date thereof, the names of the parties thereto and the date such instrument was filed with the secretary of state. The notice shall be signed and acknowledged in the same manner as other instruments relating to real estate and entitled to recording.

History: 1953 Comp., § 68-11-12, enacted by Laws 1965, ch. 112, § 4.

ANNOTATIONS

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-13-12. Effect of filing with the secretary of state; duration of filing.

The filing of an instrument with the secretary of state under the provisions of Sections 62-13-8 and 62-13-9 NMSA 1978 together with the recording of the notice under the provisions of Section 62-13-11 NMSA 1978 in the office of the county clerk in each county where any real property is situate shall for all intents and purposes be equivalent to recording the same instrument in the office of the county clerk in each county where any part of the real or personal property is situate, as contemplated by Sections 14-9-1 through 14-9-9 NMSA 1978, and equivalent to filing the instrument as contemplated by Sections 55-9-401 through 55-9-407 NMSA 1978, which filed instrument shall remain effective until a termination statement is filed.

History: 1953 Comp., § 68-11-13, enacted by Laws 1965, ch. 112, § 5; 1979, ch. 78, § 3; 1981, ch. 301, § 1; 1982, ch. 15, § 1.

ANNOTATIONS

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-13-12.1. Effect of instruments previously filed.

All instruments on file with the secretary of state, the filing of which, pursuant to Section 62-13-12 NMSA 1978, is equivalent to filing as contemplated by Sections 55-9-401 through 55-9-407 NMSA 1978, which instruments were filed prior to, and in effect on, July 1, 1981, shall remain effective until a termination statement is filed, and the refiling thereof or the filing of a continuation statement with respect thereto shall not be required.

History: Laws 1981, ch. 301, § 2.

ANNOTATIONS

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-13-13. Deposits; interest.

Interest on deposits shall be set annually at a rate equal to the federal five-year treasury note rate as reported on the first day of the calendar year by the federal reserve board of governors and shall be paid on any deposit required of a consumer by any public utility as defined in Section 62-3-3 NMSA 1978 or by any telephone company as defined in Section 63-9-2 NMSA 1978 or by any waterworks organized under Chapter 62, Article 2 NMSA 1978.

History: Laws 1979, ch. 292, § 1; 2004, ch. 100, § 1; 2005, ch. 336, § 1.

ANNOTATIONS

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs.,100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2005 amendment, effective July 1, 2005, deleted the former provision that interest at a minimum rate a year equal to the federal rate shall be paid on deposits and provided that interest on deposits shall be set annually at a rate equal to the federal rate and shall be paid on deposits.

The 2004 amendment, effective May 19, 2004, deleted the minimum interest rate of 9% and inserted in its place "a year equal to the federal five-year treasury note rate as reported on the first day of the calendar year by the federal reserve board of governors".

62-13-13.1. Renewable energy distributed generation facilities; owners and operators not public utilities.

A. Notwithstanding any other provision of the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] to the contrary, a person not otherwise a public utility shall not be deemed to be a public utility subject to the jurisdiction, control or regulation of the commission and the provisions of the Public Utility Act solely because the person owns or controls all or any part of any renewable energy distributed generation facility that:

(1) is located on the host's site;

(2) produces electric energy used at the host's site and sold to the host or the host's tenants or employees located at the host's site; and

(3) shares a common point of connection with the electric utility serving the area and the host or the host's tenants and employees served by the renewable energy distributed generation facility.

B. Nothing contained in this section shall be interpreted to prohibit the sale of energy produced by the renewable energy distributed generation facility to the electric utility serving the area in which the renewable energy distributed generation facility is located.

C. As used in this section:

(1) "host" means the customer of a public utility who uses the electric energy produced by a renewable energy distributed generation facility and occupies the site upon which the renewable energy distributed generation facility is located;

(2) "renewable energy distributed generation facility" means a facility that produces electric energy by the use of renewable energy and that is sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the host at the site of the renewable energy distributed generation facility in accordance with applicable interconnection rules; and

(3) "site" means all the contiguous property owned or leased by the host, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights of way or utility rights of way.

History: Laws 2010, ch. 102, § 1 and Laws 2010, ch. 103, § 1.

ANNOTATIONS

Compiler's notes. — Laws 2010, ch. 102, § 1 and Laws 2010, ch. 103, § 1 enacted identical new sections, both effective January 1, 2011. The section was set out as enacted by Laws 2010, ch. 103, § 1. *See* 12-1-8 NMSA 1978.

62-13-13.2. Interconnected customers; utility cost recovery.

A. Upon request of an investor-owned utility in any general rate case, the commission shall approve interconnected customer rate riders to recover the costs of ancillary and standby services pursuant to this section only for new interconnected customers, except that a utility may seek approval of interconnected customer rate riders in the utility's renewable energy procurement plan filing before January 1, 2011, to be in effect until the conclusion of the utility's next general rate case. In establishing interconnected customer rate riders, the commission shall assure that costs to be recovered through the rate riders are not duplicative of costs to be recovered in underlying rates and shall give due consideration to the reasonably determinable embedded and incremental costs of the utility to serve new interconnected customers and the reasonably determinable benefits to the utility system provided by new interconnected customers during each three-year period after which new interconnected customer rate riders go into effect. The benefits to the utility system, as applicable, include avoided renewable energy certificate procurement costs, reduced capital investment costs resulting from the avoidance or deferral of capital expenditures, reduced energy and capacity costs and line loss reductions.

B. In a filing made pursuant to Subsection G of Section 62-8-7 NMSA 1978, a rural electric cooperative may implement rates or rate riders by customer class, giving due consideration to reasonably determinable costs and benefits of interconnected systems, that are specifically designed to recover from interconnected customers the fixed costs of providing electric services to those customers.

C. Nothing in this section shall be interpreted as preventing the utility from charging rates designed to recover all of its reasonable costs of providing service to customers.

D. As used in this section:

(1) "ancillary and standby services" means services that are essential to maintain electric system reliability and are required by or are a consequence of interconnecting distributed generation facilities to a utility's system and may include, among other services, regulation and frequency response, regulation and voltage support, spinning reserves and supplemental reserves;

(2) "interconnected customer" means a utility customer that is also interconnected to non-utility distributed generation facilities; and

(3) "new interconnected customer" means a customer that became an interconnected customer after December 31, 2010 or a customer whose renewable energy certificate purchase agreement entered into prior to January 1, 2011 is no longer in effect.

History: Laws 2010, ch. 102, § 2 and Laws 2010, ch. 103, § 2.

ANNOTATIONS

Compiler's notes. — Laws 2010, ch. 102, § 2 and Laws 2010, ch. 103, § 2 enacted identical new sections, both effective May 19, 2010. The section was set out as enacted by Laws 2010, ch. 103, § 2. *See* 12-1-8 NMSA 1978.

62-13-13.3. Renewable energy-related services; powers and duties of commission.

A. No later than July 1, 2011, the commission shall approve any new application for creation of a holding company filed by a public utility prior to January 1, 2011, as part of that utility's plan to offer renewable energy-related services for the residents of New Mexico; provided that the creation of the holding company shall be subject to such terms and conditions as are in the public interest. The creation of a holding company under this subsection shall not result in any loss of the commission's jurisdiction over corporate allocations to the utility or over costs that are charged to ratepayers.

B. Any order of the commission entered prior to January 1, 2011 declaring the public utility status of a person who owns or controls all or any part of any distributed generation facility and sells the electricity produced by the facility to other persons shall have no force or effect on or after May 19, 2010.

C. By December 31, 2012, the commission shall submit a report to the legislature that describes the effectiveness of the state's renewable energy distributed generation program in supporting the development of new renewable energy resources and that

identifies any recommended changes to improve the program's effectiveness, consistent with the public policies declared in the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978]. This report shall be no more than ten pages in length.

History: Laws 2010, ch. 102, § 3 and Laws 2010, ch. 103, § 3.

ANNOTATIONS

Compiler's notes. — Laws 2010, ch. 102, § 3 and Laws 2010, ch. 103, § 3 enacted identical new sections, both effective May 19, 2010. The section was set out as enacted by Laws 2010, ch. 103, § 3. *See* 12-1-8 NMSA 1978.

62-13-14. Prohibition against water utilities imposing additional standby charges on owners of structures containing automatic fire protection sprinkler systems.

No water utility defined as a public utility under the provisions of Section 62-3-3 NMSA 1978 shall impose sprinkler standby charges on the owners of structures that contain automatic fire protection sprinkler systems. As used in this section, "sprinkler standby charges" means additional charges imposed by a water utility on owners of structures because the structures are equipped with automatic fire protection sprinkler systems.

History: Laws 1987, ch. 294, § 1.

ANNOTATIONS

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See* Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-13-15. Appointment of receiver.

Whenever the commission determines, after notice and hearing, that a public utility is unable or unwilling to adequately service its customers or has been actually or effectively abandoned by its owners or operator, or consistently violates the rules or orders of the commission, the commission may commence an action in the district court of the county where the utility has its principal office or place of business for the appointment of a receiver to assume possession of its property and to operate its

system upon terms and conditions in accordance with the provisions of the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], commission rules and orders of the court. Upon the order of the court, the receiver may issue receiver's certificates to provide funds to operate, repair, improve or enlarge the public utility. Unless otherwise provided in the court order, payment of the receiver's certificates is a first lien on the real and personal property of the public utility. The court shall prescribe the certificate's form, term and rate of interest. Receiver's certificates are exempt from the operation of any law that regulates the issuance or sale of securities of public utilities.

History: Laws 2005, ch. 339, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 339, § 8 made Laws 2005, ch. 339, § 1 effective July 1, 2005.

62-13-16. Requiring the hiring of apprentices for the construction of facilities that generate electricity.

A. The construction of New Mexico facilities that generate electricity for New Mexico retail customers, and that are not located on the customer side of an electricity meter, shall be subject to the requirements provided in Subsection B of this section if the facilities are built as a result of competitive solicitations issued after July 1, 2020.

B. Subject to availability of qualified applicants, the construction of facilities that generate electricity for New Mexico retail customers shall employ apprentices from an apprenticeship program during the construction phase of a project at a minimum level of the following percentages of all persons employed for the project:

(1) ten percent for projects for which on-site construction commences beginning January 1, 2020, and prior to January 1, 2024;

(2) seventeen and one-half percent for projects for which on-site construction commences beginning January 1, 2024, and prior to January 1, 2026; and

(3) twenty-five percent for projects for which on-site construction commences beginning January 1, 2026.

C. Apprenticeship programs used for purposes of this section shall encourage diversity among participants, participation by those underrepresented in the industry associated with that apprenticeship program and participation from disadvantaged communities, as determined by the workforce solutions department. The department shall promulgate rules to ensure compliance with this section.

D. As used in this section, "apprenticeship program" means an apprenticeship program registered pursuant to the Apprenticeship Assistance Act [Chapter 21, Article 19A NMSA 1978].

History: Laws 2019, ch. 65, § 24.

ANNOTATIONS

Effective dates. —Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

ARTICLE 14
Excavation Damage to Pipelines and Underground Utility Lines

62-14-1. Purpose and intent.

The purpose of Chapter 62, Article 14 NMSA 1978 is to prevent injury to persons and damage to property from accidents resulting from damage to pipelines, underground utility lines, cable television lines and related facilities by excavating and blasting.

History: 1953 Comp., § 12-32-1, enacted by Laws 1973, ch. 252, § 1; 1987, ch. 156, § 1.

ANNOTATIONS

The 1987 amendment, effective June 19, 1987, substituted "Chapter 62, Article 14 NMSA 1978" for "this act" and "lines, cable television lines" for "line."

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Adjoining Landowners § 44 et seq.; 61 Am. Jur. 2d Pipelines §§ 15 to 18; 64 Am. Jur. 2d Public Utilities § 16.

62-14-2. Definitions.

As used in Chapter 62, Article 14 NMSA 1978:

A. "advance notice" means two working days;

B. "blasting" means the use of an explosive to excavate;

C. "cable television lines and related facilities" means the facilities of any cable television system or closed-circuit coaxial cable communications system or other similar

transmission service used in connection with any cable television system or other similar closed-circuit coaxial cable communications system;

D. "commission" means the public regulation commission;

E. "emergency excavation" means an excavation that must be performed due to circumstances beyond the excavator's control and that affects public safety, health or welfare;

F. "excavate" means the movement or removal of earth using mechanical excavating equipment or blasting and includes augering, backfilling, digging, ditching, drilling, grading, plowing in, pulling in, ripping, scraping, trenching, tunneling and directional boring;

G. "excavator" means a person that excavates;

H. "master meter system and operators" means a pipeline system that distributes natural gas or liquid propane gas within a public place, such as a mobile home park, housing project, apartment complex, school, university or hospital where the operator of the master meter system purchases gas from a distributor through a single large meter and resells the gas through a gas distribution pipeline system. The resale may occur as a payment included in a rental payment or association dues or as a separately metered system;

I. "means of location" means a mark such as a stake, a flag, whiskers or paint that is conspicuous in nature and that is designed to last at least ten working days if not disturbed;

J. "mechanical excavating equipment" means all equipment powered by any motor, engine or hydraulic or pneumatic device used for excavating and includes trenchers, bulldozers, backhoes, power shovels, scrapers, draglines, clam shells, augers, drills, cable and pipe plows or other plowing-in or pulling-in equipment;

K. "one-call notification system" means a communication system in which an operation center provides telephone services or other reliable means of communication for the purpose of receiving excavation notice and damage reporting information and distributing that information to owners and operators of pipelines and other underground facilities;

L. "person" means the legal representative of or an individual, partnership, corporation, joint venture, state, subdivision or instrumentality of the state or an association;

M. "pipeline" means a pipeline or system of pipelines and appurtenances for the transportation or movement of any oil or gas, or oil or gas products and their byproducts

subject to the jurisdiction of federal law or regulation, with the exception of master meter systems and operators;

N. "positive response" means a response, within the advance notice period, initiated by owners or operators of pipelines and underground facilities by reliable means of communication, to the one-call notification system's positive response registry system. A positive response allows the excavator to verify whether all affected pipeline and underground facility owners or operators have marked their underground facilities pursuant to Section 62-14-5 NMSA 1978 prior to commuting to the excavation site and commencing excavation;

O. "reasonable efforts" means notifying the appropriate one-call notification center or underground facility owner or operator of planned excavation;

P. "underground facility" means any tangible property described in Subsections C, M and Q of this section that is underground, but does not include residential sprinklers or low-voltage lighting; and

Q. "underground utility line" means an underground conduit or cable, including fiber optics, and related facilities for transportation and delivery of electricity, telephonic or telegraphic communications or water, sewer and fire protection lines, with the exception of master meter systems and operators.

History: 1953 Comp., § 12-32-2, enacted by Laws 1973, ch. 252, § 2; 1987, ch. 156, § 2; 1997, ch. 30, § 4; 2001, ch. 150, § 1 2007, ch. 177, § 1; 2011, ch. 103, § 1; 2013, ch. 90, § 1.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, defined "positive response" to require a positive response from the owner or operators of pipelines and underground facilities; and added Subsection N.

The 2011 amendment, effective June 17, 2011, added a definition of "master meter system and operators"; expanded the purpose of one-call notification systems to include receipt of damage reports; and clarified the definitions of "pipeline" and "underground utility line" by excluding master meter systems and operators.

The 2007 amendment, effective June 15, 2007, redefined "pipeline" to include all oil and gas pipelines subject to the jurisdiction of federal law or regulation.

The 2001 amendment, effective July 1, 2001, alphabetized the defined terms; added "and directional boring" in Subsection F; added Subsection G; rewrote Subsection H; added "and other underground facilities" in Subsection I; updated subsection references in Subsection N; and made stylistic changes.

The 1997 amendment, effective October 1, 1997, made stylistic changes throughout the section; added Subsection D and redesignated the remaining subsections accordingly; substituted the language beginning "oil or gas, oil or gas products" for "gas, mixture of gases or petroleum products suitable for domestic or industrial fuel" at the end of Subsection E; added the language beginning "and does not include" in Subsection H; in Subsection I, inserted "the legal representative of or", inserted "or an", and deleted "or any legal representative thereof"; deleted "reasonable" preceding "advance notice" in Subsection K; and added Subsection L.

The 1987 amendment, effective June 19, 1987, in the opening clause substituted "Chapter 62, Article 14 NMSA 1978" for "this act"; in Subsection E, inserted "or cable, including fiber optics, and" following "and underground conduit"; inserted present Subsections F and G; redesignated former Subsection F as present Subsection H; inserted present Subsections I and J; and made minor changes in language throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Pipelines § 2.

62-14-3. Excavation.

A person who prepares engineering plans for excavation or who engages in excavation shall:

A. determine the location of any underground facility in or near the area where the excavation is to be conducted, including a request to the owner or operator of the underground facility to locate the underground facility pursuant to Section 62-14-5 NMSA 1978;

B. plan the excavation to avoid or minimize interference or damage to underground facilities in or near the excavation area;

C. provide telephonic advance notice of the commencement, extent and duration of the excavation work to the one-call notification system operating in the intended excavation area, and to the owners or operators of any existing underground facility in and near the excavation area that are not members of the local one-call notification center, in order to allow the owners to locate and mark the location of the underground facility as described in Section 62-14-5 NMSA 1978 prior to the commencement of work in the excavation area, and shall request reaffirmation of line location every ten working days after the initial request to locate;

D. prior to initial exposure of the underground facility, maintain at least an estimated clearance of eighteen inches between existing underground facilities for which the owners or operators have previously identified the location and the cutting edge or point of any mechanical excavating equipment utilized in the excavation and continue excavation in a manner necessary to prevent damage;

E. provide such support for existing underground facilities in or near the excavation area necessary to prevent damage to them;

F. backfill all excavations in a manner and with materials as may be necessary to prevent damage to and provide reliable support during and following backfilling activities for preexisting underground facilities in or near the excavation area;

G. immediately notify the one-call notification system operating in the area in the form and format required by the commission and by telephone the owner of any underground facilities that may have been damaged or dislocated during the excavation work; and

H. not move or obliterate markings made pursuant to Chapter 62, Article 14 NMSA 1978 or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with the provisions of Chapter 62, Article 14 NMSA 1978.

History: 1953 Comp., § 12-32-3, enacted by Laws 1973, ch. 252, § 3; 1987, ch. 156, § 3; 2001, ch. 150, § 2; 2011, ch. 103, § 2.

ANNOTATIONS

The 2011 amendment, effective June 17, 2011, required persons planning or engaging in an excavation to report damages to or the relocation of underground facilities to the one-call notification system operating in the area of the excavation.

The 2001 amendment, effective July 1, 2001, substituted "determine" for "make reasonable efforts to inform himself of" in Subsection A; in Subsection C, substituted "telephonic advance notice" for "reasonable advance notice", inserted "the one-call notification system operating in the intended excavation area, and", "or operators" following "owners", "that are not members of the local one-call notification center", and "and shall request reaffirmation of line location every ten working days after the initial locate request"; in Subsection D, inserted "and continue excavation in a manner necessary to prevent damage"; substituted "immediately notify by telephone" for "notify as promptly as possible" in Subsection G; and added Subsection H; and made stylistic changes.

The 1987 amendment, effective June 19, 1987, in the opening clause substituted "prepares engineering plans for excavation or who engages" for "shall engage"; substituted "underground facility" for "pipeline or underground utility line" in Subsections A, B and E through G; in Subsection A inserted "including a request to the owner or operator of the underground facility to locate the underground facility pursuant to Section 62-14-5 NMSA 1978" at the end; in Subsection C substituted "any existing underground facility" for "pipelines or underground utility lines" near the middle and "location of the underground facility as described in Section 62-14-5 NMSA 1978 prior to the commencement of work" for "location of pipelines and underground utility lines" near

the end; in Subsection D inserted at the beginning "prior to initial exposure of the underground facility" and substituted "existing underground facility for which the owners or operators have previously identified the location" for "any nonexposed pipeline or underground utility line"; and made minor changes in language and punctuation throughout the section.

62-14-4. Emergency excavation.

Every person who engages in emergency excavation shall take all necessary and reasonable precaution to avoid or minimize interference with or damage to existing underground facilities in and near the excavation area and shall notify as promptly as possible the owners of underground facilities located in and near the emergency excavation area and the one-call notification system operating in the area in the form and format required by the commission. In the event of any damage to or dislocation of any underground facility caused by the emergency excavation work, the person responsible for the excavation shall immediately notify the owner of the underground facility and the one-call notification system operating in the area in the form and format required by the commission.

History: 1953 Comp., § 12-32-4, enacted by Laws 1973, ch. 252, § 4; 1987, ch. 156, § 4; 2011, ch. 103, § 3.

ANNOTATIONS

The 2011 amendment, effective June 17, 2011, required persons engaged in an emergency excavation to notify the one-call notification system operating in the area of the excavation that the excavation will occur and any damages to or the relocation of underground facilities.

The 1987 amendment, effective June 19, 1987, substituted "underground facility" for "pipelines and underground utility lines" the three places that phrase appears and made minor changes in language throughout the section.

62-14-5. Marking of facilities.

A. A person owning or operating an underground facility shall, upon the request of a person intending to commence an excavation and upon advance notice, locate and mark on the surface the actual horizontal location, within eighteen inches by some means of location, of the underground facilities in or near the area of the excavation so as to enable the person engaged in excavation work to locate the facilities in advance of and during the excavation work.

B. If the owner or operator of the underground facility finds that the owner or operator has no underground facilities in the proposed area of excavation, the owner or operator shall provide a positive response and, at the option of the owner or operator of

the underground facility mark the area as "Clear" or "No Underground Facilities" in the appropriate color code as specified in Section 62-14-5.1 NMSA 1978.

C. If the owner or operator fails to correctly mark the underground facility after being given advance notice and such failure to correctly mark the facility results in additional costs to the person doing the excavating, then the owner or operator shall reimburse the person engaging in the excavation for the reasonable costs incurred.

D. An owner of an underground facility shall not move or obliterate markings made pursuant to Chapter 62, Article 14 NMSA 1978 or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with the provisions of Chapter 62, Article 14 NMSA 1978.

History: 1953 Comp., § 12-32-5, enacted by Laws 1973, ch. 252, § 5; 1987, ch. 156, § 5; 2001, ch. 150, § 3; 2011, ch. 103, § 4; 2013, ch. 90, § 2.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, required owners or operators to provide a positive response if they have no underground facilities in the area of excavation; and in Subsection B, after "the owner or operator shall", deleted "contact the appropriate one–call notification center or mark" and added "provide a positive response and, at the option of the owner of the underground facility, mark the area as ‘Clear’ or ‘No Underground Facilities’", and after "NMSA 1978", deleted "marking the area as ‘Clear’ or ‘No Underground Facilities’. If the area is not marked ‘Clear’ or ‘No Underground Facilities’, the excavator shall contact the one-call notification system operating in the region in order to verify the area as ‘Clear’ or ‘No Underground Facilities’’.

The 2011 amendment, effective June 17, 2011, required excavators to contact the regional one-call notification system if an area is not marked as "Clear" or "No Underground Facilities" to verify the status of the area.

The 2001 amendment, effective July 1, 2001, inserted Subsections B and D, redesignating former Subsection B as present Subsection C and deleted "reasonable" preceding "advance notice" in Subsections A and C.

The 1987 amendment, effective June 19, 1987, designated the former provisions as set out in the main pamphlet as Subsection A; in Subsection A, substituted "an underground facility" for "pipeline or underground utility line" both places it appears and "locate and mark on the surface the actual horizontal location within twelve inches by some" for "mark by some reasonable and customary" near the middle; added Subsection B; and made minor changes in language throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Pipelines § 49.

62-14-5.1. Uniform color code for location of underground facilities.

In marking an excavation site and the location of underground facilities, both the excavator and the owner or operator shall use the following uniform color code:

A. blue for water;

B. green for sewer;

C. orange for communications or coaxial cable;

D. pink for survey;

E. purple for reclaimed water;

F. red for electric;

G. white for proposed excavation area; and

H. yellow for gas.

History: Laws 2001, ch. 150, § 4; 2011, ch. 103, § 5.

ANNOTATIONS

The 2011 amendment, effective June 17, 2011, included excavation sites and excavators within the scope of this section.

62-14-6. Liability for damage to underground facilities.

A. If any underground facility is damaged by any person who failed to make reasonable efforts to determine its location as provided in Chapter 62, Article 14 NMSA 1978, that person shall reimburse the owner of the underground facility for the actual cost of the damage to the underground facility, including the cost of restoration of services. The person engaging in the excavation may also be liable to the owner or operator of the underground facility for the comparative negligence of the person engaging in the excavation which results in damage to the facility for an additional amount not to exceed three hundred thousand dollars ($300,000) for each occurrence.

B. If any underground facility is damaged by any person who has made reasonable efforts to determine its location and the damaged underground facility was correctly located by the owner or operator of the underground facility as provided in Section 62-14-5 NMSA 1978, then that person causing the damage shall be liable to the owner or operator of the underground facility for only the actual cost of damage to the underground facility, including the cost of restoration of service.

C. If any underground facility is damaged by any person who has made reasonable efforts to determine its location and damage to the underground facility is caused by the failure of the owner or operator to correctly locate that underground facility as provided in Section 62-14-5 NMSA 1978, then the person engaging in the excavation shall have no liability for the damage to that facility.

D. It is not the intent of Chapter 62, Article 14 NMSA 1978 to impose civil liability to any person beyond that provided in this section.

History: 1953 Comp., § 12-32-6, enacted by Laws 1973, ch. 252, § 6; 1987, ch. 156, § 6; 2001, ch. 150, § 5.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "to determine its location" for "to inform himself as to its location" in Subsections A, B and C; and inserted "NMSA 1978" in Subsection D.

The 1987 amendment, effective June 19, 1987, designated the former first sentence as set out in the main pamphlet as Subsection A; in Subsection A, in the first sentence substituted "Chapter 62, Article 14 NMSA 1978, that" for "this act, then such" and "actual cost of the damage to the underground facility, including the cost of restoration of services" for "entire cost of the repair of such facility," added the second sentence and made minor changes in language throughout the subsection; added Subsections B and C; designated the former last sentence of the section as Subsection D and, in that subsection, substituted "Chapter 62, Article 14" for "this act."

Law reviews. — For article, "Bartlett Revisited: New Mexico Tort Law Twenty Years After the Abolition of Joint and Several Liability – Part One," see 33 N.M.L. Rev. 1 (2003).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Pipelines §§ 35, 36.

Excavator's liability for injury or damage resulting from explosion or fire caused by damaging of gas mains and pipes, 53 A.L.R.2d 1083.

Liability of one excavating on private property for injury to public utility cables, conduits or the like, 28 A.L.R.5th 603.

62-14-7. Liability for negligence notwithstanding information obtained.

The act of obtaining or making reasonable efforts to obtain information as required by Chapter 62, Article 14 NMSA 1978 shall not excuse any person making any excavation from doing so in a careful and prudent manner, nor shall it excuse such

person from liability for any damage or injury resulting from his negligence as limited in Section 62-14-6 NMSA 1978.

History: 1953 Comp., § 12-32-7, enacted by Laws 1973, ch. 252, § 7; 1987, ch. 156, § 7.

ANNOTATIONS

Cross references. — For negligent use of explosives being petty misdemeanor, *see* 30-7-6 NMSA 1978.

The 1987 amendment, effective June 19, 1987, substituted "Chapter 62, Article 14 NMSA 1978" for "this act" near the middle and added "as limited in Section 62-14-6 NMSA 1978" at the end.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35 C.J.S. Explosives § 11; 65A C.J.S. Negligence §§ 243, 273.

62-14-7.1. One-call notification system.

A. An owner or operator of an underground facility subject to Chapter 62, Article 14 NMSA 1978 shall be a member of a one-call notification system operating in the region with the exception of private underground facilities owned by a homeowner and operated and located on residential property. A one-call notification system may be for a region of the state or statewide in scope, unless federal law provides otherwise.

B. Each one-call notification system shall be operated by:

(1) an owner or operator of pipeline facilities;

(2) a private contractor;

(3) a state or local government agency; or

(4) a person who is otherwise eligible under state law to operate a one-call notification system.

C. If the one-call notification system is operated by owners or operators of pipeline facilities, it shall be established as a nonprofit entity governed by a board of directors that shall establish the operating processes, procedures and technology needed for a one-call notification system. The board shall further establish a procedure or formula to determine the equitable share of each member for the costs of the one-call notification system. The board may include representatives of excavators or other persons deemed eligible to participate in the system who are not owners or operators.

D. Excavators shall give advance notice to the one-call notification system operating in the intended excavation area and provide information established by rule of the commission, except when excavations are by or for a person that:

(1) owns or leases or owns a mineral leasehold interest in the real property on which the excavation occurs; and

(2) operates all underground facilities located in the intended excavation area.

E. The one-call notification system shall promptly transmit excavation notice information to owners or operators of pipeline facilities and other underground facilities in the intended excavation area.

F. After receiving advance notice, owners and operators of pipeline facilities and other underground facilities shall locate and mark their facilities in the intended excavation area and shall provide a positive response. The one-call notification center shall make available to the commission appropriate positive response records for investigations of alleged violations of Chapter 62, Article 14 NMSA 1978.

G. The one-call notification system shall provide a toll-free telephone number or another comparable and reliable means of communication to receive advance notice of excavation. Means of communication to distribute excavation notice to owners or operators of pipeline facilities and other underground facilities shall be reliable and capable of coordination with one-call notification systems operating in other regions of the state.

H. Operators of one-call notification systems shall notify the commission of its members and the name and telephone number of the contact person for each member and make available to the commission appropriate records in investigations of alleged violations of Chapter 62, Article 14 NMSA 1978.

I. One-call notification systems and owners and operators of pipeline facilities shall promote public awareness of the availability and operation of one-call notification systems and work with state and local governmental agencies charged with issuing excavation permits to provide information concerning and promoting awareness by excavators of one-call notification systems.

J. The commission may prescribe reasonable maximum rates for the provision of one-call services in New Mexico, provided that if the reasonableness of such rates is contested in the manner provided by commission rule, the burden of proof to show the unreasonableness of such rates shall be upon the person contesting their reasonableness.

History: Laws 1997, ch. 30, § 1; 2001, ch. 150, § 6; 2007, ch. 177, § 2; 2011, ch. 103, § 6; 2013, ch. 90, § 3.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, required owners and operators to provide a positive response; required the one-call center to provide positive response records to the commission; and in Subsection F, in the first sentence, after "excavation area", added "and shall provide a positive response" and added the second sentence.

The 2011 amendment, effective June 17, 2011, exempted private underground facilities owned by homeowners and operated and located on residential property from the requirement that the owners and operators of underground facilities be a member of the regional one-call notification system.

The 2007 amendment, effective June 15, 2007, required an owner or operator of an underground facility in a region in which a one-call system is operating to be a member of the one-call system by April 15, 2008 unless earlier membership is required by federal law; and added Subsection J.

The 2001 amendment, effective July 1, 2001, deleted "and regulation" following "rule" in Subsection D; inserted "and make available to the commission appropriate records in investigations of alleged violations of Chapter 62, Article 14 NMSA 1978" at the end of Subsection H; and substituted "promoting" for "promote" in Subsection I.

62-14-8. Penalties.

In addition to any other liability imposed by law, an excavator, after a formal hearing and upon a finding, who has failed to comply with Subsection C of Section 62-14-3 NMSA 1978 is subject to an administrative penalty of up to five thousand dollars ($5,000) for a first offense as assessed by the commission. Thereafter, the commission may assess an administrative penalty of up to a maximum of twenty-five thousand dollars ($25,000) for subsequent violations of Subsection C of Section 62-14-3 NMSA 1978. In addition to any other penalty imposed by law, an operator of underground pipeline facilities or underground utilities, excavator or operator of a one-call notification system, after formal hearing and upon a finding, who has willfully failed to comply with Chapter 62, Article 14 NMSA 1978 shall be subject to an administrative penalty of up to five thousand dollars ($5,000) for a first offense as assessed by the commission. Thereafter, upon finding that a violation of Chapter 62, Article 14 NMSA 1978 has occurred, the commission may, upon consideration of the nature, circumstances, gravity of the violation, history of prior violations, effect on public health, safety or welfare and good faith on the part of the person in attempting to remedy the cause of the violation, assess an administrative penalty up to a maximum of twenty-five thousand dollars ($25,000) per violation consistent with federal law. No offense occurring more than five years prior to the current offense charged shall be considered for any purpose. All actions to recover the penalties provided for in this section shall be brought by the commission. All penalties recovered in any such action shall be paid into the state general fund.

History: 1953 Comp., § 12-32-8, enacted by Laws 1973, ch. 252, § 8; 1993, ch. 282, § 41; 1997, ch. 30, § 5; 2001, ch. 150, § 7; 2011, ch. 103, § 7.

ANNOTATIONS

The 2011 amendment, effective June 17, 2011, authorized the imposition of an administrative penalty even if an operator's failure to comply with the law did not contribute to the damage of an underground facility.

The 2001 amendment, effective July 1, 2001, rewrote the section, which formerly provided for a civil penalty of up to $500 for those who willfully failed to comply with Chapter 62, Article 14 NMSA 1978, and stated who is responsible for prosecuting the case and the proper venue.

The 1997 amendment, effective October 1, 1997, made stylistic changes in the second and third sentences.

The 1993 amendment, effective June 18, 1993, made stylistic changes in the first sentence; in the second sentence, substituted "New Mexico public utility commission" for "public service commission" and "division of the regulation and licensing department" for "commission"; and substituted "their" for "its" in the next-to-last sentence.

62-14-9. Enforcement.

If any person excavates or intends to excavate in violation of Chapter 62, Article 14 NMSA 1978, the commission or any interested or affected owner or operator of an underground facility may file, in the district court of the county in which the excavation is occurring or intended, an action seeking to enjoin the excavation.

History: Laws 1997, ch. 30, § 2.

62-14-9.1. Alternative dispute resolution.

The commission shall promulgate rules for voluntary alternative dispute resolution procedures available to owners or operators, excavators and other interested parties regarding disputes that cannot be resolved through consultation and negotiation arising from damage to underground facilities, including any cost or damage incurred by the owner or operator or the excavator as a result of any delay in an excavation project while an underground facility is restored, repaired or replaced. The alternative dispute resolution procedure shall not affect civil penalties levied pursuant to Section 62-14-8 NMSA 1978 or change the basis for civil liability for damages.

History: Laws 2001, ch. 150, § 8.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 150, § 9 made Laws 2001, ch. 150, § 8 effective July 1, 2001.

62-14-10. Rule-making.

The commission shall promulgate rules and regulations to implement the provisions of Chapter 62, Article 14 NMSA 1978.

History: Laws 1997, ch. 30, § 3.

ARTICLE 15
Rural Electric Cooperatives

62-15-1. Short title.

Chapter 62, Article 15 NMSA 1978 may be cited as the "Rural Electric Cooperative Act".

History: Laws 1939, ch. 47, § 1; 1941 Comp., § 48-401; 1953 Comp., § 45-4-1; Laws 1998, ch. 108, § 49.

ANNOTATIONS

Cross references. — For jurisdiction of over rural electric cooperatives, *see* 62-3-2, 62-3-3 and 62-15-32 NMSA 1978 and notes thereto.

The 1998 amendment, effective January 1, 1999, substituted "Chapter 62, Article 15 NMSA 1978" for "This Act" near the beginning of the section.

Public service commission (now public regulation commission) was not required to delineate an electric cooperative's service area where part of its system was in an area previously certificated to another utility. *Lea Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1965-NMSC-057, 75 N.M. 191, 402 P.2d 377, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433 (1966).

Premature action. — Action by cooperative seeking to enjoin municipality from acquiring electric distribution and transmission lines outside of corporate limits where the cooperative held a prior franchise was brought prematurely since it did not yet own plant or transmission lines and could not show basis for relief in equity. *Sierra Elec. Coop. v. Town of Hot Springs*, 1947-NMSC-022, 51 N.M. 150, 180 P.2d 244.

Cooperatives are subject to highway and street regulations. — Rural electrification cooperatives are subject to the same regulations by the highway commission and the county or municipality for the use of rights-of-way as any other public utility, and would

be subject to the penal features of 67-8-13 and 67-8-14 NMSA 1978. 1952 Op. Att'y Gen. No. 52-5624.

Law reviews. — For note, "Corporate Law - Formulating and Applying a 'Proper Purpose' Analysis to a Books and Records Inspection Request - Schein v. Northern Rio Arriba Electric Cooperative, Inc.," see 28 N.M.L. Rev. 133 (1998).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 1, 4 to 9, 11 to 13, 49.

Duty of mutual association, nonprofit organization or cooperative to furnish utility services, 56 A.L.R.2d 413.

Validity and enforceability of bylaw amendment reducing benefits available to members, 61 A.L.R.3d 976.

Competency of juror as affected by his membership in cooperative association interested in the case, 69 A.L.R.3d 1296.

Liability of electric utility to nonpatron for interruption or failure of power, 54 A.L.R.4th 667.

3 C.J.S. Agriculture §§ 138 to 158; 43 C.J.S. Industrial Cooperative Societies §§ 1, 3.

62-15-2. Purpose; definition.

Cooperative nonprofit membership corporations may be organized under the Rural Electric Cooperative Act for the primary purpose of supplying electric power and energy and promoting and extending the use of electricity in rural areas. Corporations organized under that act and corporations which become subject to that act in the manner provided in that act and for the purposes of Sections 62-15-13, 62-15-14, 62-15-15 and 62-15-19 NMSA 1978, corporations organized on a nonprofit or cooperative basis under the laws of another state for the primary purpose of supplying electric power or energy are referred to in the Rural Electric Cooperative Act as "cooperatives".

History: Laws 1939, ch. 47, § 2; 1941 Comp., § 48-402; 1953 Comp., § 45-4-2; Laws 1987, ch. 36, § 1; 1998, ch. 46, § 1.

ANNOTATIONS

The 1998 amendment, effective March 6, 1998, inserted "and for the purposes of Sections 62-15-13, 62-15-14, 62-15-15 and 62-15-19 NMSA 1978, corporations organized on a nonprofit or cooperative basis under the laws of another state for the primary purpose of supplying electric power or energy" in the second sentence.

The 1987 amendment, effective June 19, 1987, in the first sentence substituted "primary purpose of supplying electric power and energy" for "purpose of supplying electric energy," and made minor changes in language and punctuation throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations § 4.

62-15-3. Powers.

A cooperative shall have power to:

A. sue and be sued, complain and defend, in its corporate name;

B. have perpetual existence by its corporate name;

C. adopt a corporate seal and alter the same at pleasure, and to use the seal by causing it or a facsimile of it to be impressed or affixed or in any other manner reproduced; but failure to have or to affix a corporate seal does not affect the validity of any instrument or any action taken in pursuance of or in reliance on any instrument;

D. own, operate, lease or control plant, property and facilities for the generation, transmission or distribution, sale or furnishing of electricity for light, heat or power or other uses; and to generate, manufacture, purchase, acquire, accumulate and transmit electric energy; and to distribute, sell, supply and dispose of electric energy in rural areas to or for its members, governmental agencies and political subdivisions and the general public;

E. make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises and installing electric and plumbing fixtures, appliances, apparatus and equipment of any kind and character; and in connection therewith to purchase, acquire, lease, sell, distribute, install and repair such electric and plumbing fixtures, appliances, apparatus and equipment; and to accept or otherwise acquire and to sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of notes, bonds and other evidences of indebtedness and any type of security therefor; and to lend money for its corporate purposes, invest and reinvest its funds; and to take and hold real and personal property as security for the payment of funds so loaned or invested;

F. make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, constructing, maintaining and operating electric refrigeration plants;

G. purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, exercise rights arising out of the ownership or possession thereof, use, employ, sell, assign, transfer, convey, mortgage, lend, pledge, hypothecate or otherwise dispose of

and otherwise use and deal in and with shares, rights, memberships or other interests in, or notes, bonds, debentures, mortgages, passbooks, certificates of deposit or other obligations of, other domestic or foreign corporations, associations, partnerships, limited partnerships or individuals, or direct or indirect obligations or securities of individuals, associations, cooperatives, partnerships, corporations or of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;

H. construct, purchase, take, receive, lease as lessee or otherwise acquire, and to own, hold, improve, use, equip, maintain and operate, and to sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, property, buildings, structures, dams, plants and equipment and any kind and class of real or personal property which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

I. purchase or otherwise acquire, and to own, hold, use and exercise, and to sell, assign, transfer, convey, mortgage, pledge, hypothecate or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way and easements;

J. make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the board of trustees shall determine and otherwise contract indebtedness, and to issue its notes, bonds and other evidences of indebtedness therefor, and to secure the payment of any thereof by mortgage, pledge, deed of trust, assignment, security agreement or any other hypothecation or encumbrance upon any or all of its then-owned or after-acquired real or personal property, assets, franchises, revenues or income;

K. construct, maintain and operate electric transmission and distribution lines along, upon, under and across all public thoroughfares, including without limitation all roads, highways, streets, alleys and bridges, and upon, under and across all publicly owned property;

L. exercise the power of eminent domain in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978] for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems;

M. conduct its business, carry on its operations, have offices and exercise the powers granted by the Rural Electric Cooperative Act in any state, territory, district or possession of the United States or in any foreign country;

N. adopt, amend and repeal bylaws consistent with the Rural Electric Cooperative Act and the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978];

O. make donations for the public welfare or for charitable, scientific or educational purposes, and in time of war to make donations in aid of war activities;

P. transact any lawful business in aid of governmental policy;

Q. subject to any limitations set forth in the articles of incorporation or bylaws, do such other and further acts and undertake such other and further activities and transactions for the mutual benefit of its members and patrons as may be done and undertaken by a corporation organized under the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] for the same or any additional lawful purpose, including the indemnification of and the procurement of insurance for present and former trustees, officers, employees and agents of the cooperative as if trustees and members were directors and shareholders respectively;

R. pay pensions and establish pension plans, pension trusts, bonus plans, health insurance plans, savings plans and any other incentive plans or employee relation plans customarily used by broadly held corporations for its trustees, officers and employees, or for its employees alone;

S. cease its corporate activities and surrender its corporate franchise; and

T. do and perform all other acts and things and have and exercise all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized, to effectuate the powers set forth in this section and to accept all the burdens and exercise all the benefits which apply to public utilities under the laws of New Mexico.

History: Laws 1939, ch. 47, § 3; 1941 Comp., § 48-403; 1953 Comp., § 45-4-3; Laws 1967, ch. 102, § 2; 1971, ch. 8, § 1; 1981, ch. 125, § 51; 1987, ch. 36, § 2.

ANNOTATIONS

Cross references. — For excavation damage to pipelines and underground utility lines, *see* 62-14-1 to 62-14-8 NMSA 1978.

The 1987 amendment, effective June 19, 1987, in Subsection P, substituted the present provisions for "in time of war transact any lawful business in aid of the United States in the prosecution of the war"; substituted the present provisions of Subsection Q for the provisions set out in the 1984 Replacement Pamphlet; and made minor changes in language and punctuation throughout the section.

Scope of service. — Prior to the 1967 amendment to Subsection D, a rural electric cooperative could only supply electric energy to its members, to governmental agencies and political subdivisions and to other persons not in excess of 10% of the number of its members. *Socorro Elec. Coop. v. Pub. Serv. Co.*, 1959-NMSC-105, 66 N.M. 343, 348 P.2d 88.

Power of eminent domain. – A corporation organized for the primary purpose of supplying electric power or energy to rural areas on a cooperative basis, although organized under the laws of another state and resulting from an interstate merger, is a rural electric cooperative under the Rural Electric Cooperative Act, and thus has the power of eminent domain under 62-15-14 NMSA 1978. Tri-State Generation & Transmission Ass'n v. King, 2003-NMSC-029, 134 N.M. 467, 78 P.3d 1226.

Premature action. — Action by cooperative seeking to enjoin municipality from acquiring electric distribution and transmission lines outside of corporate limits where cooperative held prior franchise was brought prematurely since it did not yet own plant or transmission lines and could not show basis for equitable relief. *Sierra Elec. Coop., Inc. v. Town of Hot Springs*, 1947-NMSC-022, 51 N.M. 150, 180 P.2d 244.

Powers of county commissioners over use of roads by utilities. 1973 Op. Att'y Gen. No. 73-26.

Law reviews. — For article, "Statutory Adoption of Several Liability in New Mexico: A Commentary and Quasi-Legislative History," see 18 N.M.L. Rev. 483 (1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 30 to 32.

43 C.J.S. Industrial Cooperative Societies §§ 5, 6.

62-15-3.1. Subsidiary business activities.

A. Cooperatives may form, organize, acquire, hold, dispose of and operate any interest up to and including full controlling interest in separate business entities that provide energy services and products and telecommunications and communications services and products, including cable and satellite television and water and wastewater collection and treatment, without prior approval from the public regulation commission so long as those other business entities meet all of the following conditions:

(1) the subsidiary is not financed with loans from the federal rural utilities service of the United States department of agriculture or the United States department of agriculture or with similar financing from any successor agency. This limitation shall not apply to rural utilities service loans or United States department of agriculture loans, or loans from successor agencies, to the extent the loan is to be used for a purpose authorized by the lending agency;

(2) the subsidiary fully compensates the cooperative for the use of personnel, services, equipment, tangible property and the cooperative's fully distributed costs, including all direct and indirect costs and the cost of capital incurred in providing the personnel, services, equipment or tangible property in question;

(3) the total investments, loans, guarantees and pledges of assets of a cooperative in all of its subsidiaries shall not exceed twenty percent of the cooperative's assets; and

(4) the subsidiary agrees to not offer any service or product to the public until it has obtained federal and state regulatory approvals, if any, required to provide the service or product to the public.

B. A director, or spouse of a director, of a cooperative may not be employed or have any financial interest in a separate business entity formed, organized, acquired, held or operated by that cooperative pursuant to the provisions of this section.

C. Should the public regulation commission, upon complaint showing reasonable grounds for investigation, find after investigation and public hearing that the charges for the transactions between the cooperative and other business entity do not conform with the provisions of this section, the public regulation commission is authorized to direct the cooperative to adjust those charges to comply with the provisions of this section. If the cooperative does not comply with the public regulation commission's directive, the public regulation commission is authorized to direct the cooperative to divest its interest in the other business entity. For purposes of enforcing this section, members of the public regulation commission, and the public regulation commission staff, are authorized to inspect the books and records of such other business entities and the cooperatives, provided that proprietary or confidential data or information of the separate business entities shall not be disclosed to a third party. The public regulation commission shall adopt rules and reporting requirements to enforce the provisions of this section.

D. Nothing in this section grants the public regulation commission the power to regulate a generation and transmission cooperative referred to in Section 62-6-4 NMSA 1978.

History: Laws 2003, ch. 416, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 416, § 6 makes the act effective on July 1, 2003.

62-15-4. Name.

The name of each cooperative shall include the words "electric" and "cooperative" and the abbreviation "inc."; provided that limitation shall not apply if, in an affidavit made by the president or vice president of a cooperative and filed with the secretary of state, it appears that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name. The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of, or authorized to transact business in, this state. The words "electric" and "cooperative" shall not both be used in the name of any corporation organized under the laws of, or authorized to

transact business in, this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of the Rural Electric Cooperative Act.

History: Laws 1939, ch. 47, § 4; 1941 Comp., § 48-404; 1953 Comp., § 45-4-4; 2013, ch. 75, § 25.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that cooperatives file an affidavit with the secretary of state that the cooperative is precluded from doing business in another state because its name includes the required words; and in the first sentence, after "filed with the", deleted "state corporation commission" and added "secretary of state".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 5 to 9.

43 C.J.S. Industrial Cooperative Societies § 4.

62-15-5. Incorporators.

Five or more natural persons, or two or more cooperatives, may organize a cooperative in the manner hereinafter provided.

History: Laws 1939, ch. 47, § 5; 1941 Comp., § 48-405; 1953 Comp., § 45-4-5.

62-15-6. Articles of incorporation.

A. The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to the Rural Electric Cooperative Act, shall be signed and acknowledged by each of the incorporators and shall state:

(1) the name of the cooperative;

(2) the address of its principal office;

(3) the names and addresses of the incorporators;

(4) the names and addresses of the persons who constitute its first board of trustees; and

(5) any provisions not inconsistent with the Rural Electric Cooperative Act deemed necessary or advisable for the conduct of its business and affairs.

B. The articles of incorporation shall be submitted to the secretary of state for filing as provided in the Rural Electric Cooperative Act.

C. It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under the Rural Electric Cooperative Act.

History: Laws 1939, ch. 47, § 6; 1941 Comp., § 48-406; 1953 Comp., § 45-4-6; 2013, ch. 75, § 26.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that articles of incorporation of cooperatives be filed with the secretary of state; and in Subsection B, after "submitted to the", deleted "state corporation commission" and added "secretary of state".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations § 1.

43 C.J.S. Industrial Cooperative Societies § 3.

62-15-7. Bylaws.

The original bylaws of a cooperative shall be adopted by its board of trustees. Thereafter bylaws shall be adopted, amended or repealed by the majority of the members present at any regular annual meeting or special meeting called for that purpose, a quorum being present. The bylaws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this act [62-15-1 to 62-15-32 NMSA 1978] or with its articles of incorporations [incorporation].

History: Laws 1939, ch. 47, § 7; 1941 Comp., § 48-407; 1953 Comp., § 45-4-7; Laws 1957, ch. 97, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Bylaws may be amended by vote at district meetings. — A rural electric cooperative may provide for the amendment of its bylaws by a vote taken at a series of meetings of voting districts rather than at a general meeting of all the members, but, in so doing, it cannot take away the power of the majority of members to adopt, amend or repeal the bylaws. 1961 Op. Att'y Gen. No. 61-62.

It is legal to provide for the amendment of bylaws by a majority vote of the members voting by districts, rather than at a general meeting of all the members. This interpretation does no violence to this section, since it mentions "regular annual meeting," and does not exclude a regular annual meeting or special meeting of a voting

district. The interpretation is supported by the liberal construction required to be given these statutes under Section 62-15-32 NMSA 1978. 1961 Op. Att'y Gen. No. 61-62.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 13 to 15, 21.

43 C.J.S. Industrial Cooperative Societies §§ 3 to 5, 7 to 11.

62-15-8. Members.

A. No person who is not an incorporator shall become a member of a cooperative unless the person agrees to use electric energy furnished by the cooperative when electric energy is available through its facilities. The bylaws of a cooperative may provide that any person, including an incorporator, shall cease to be a member of a cooperative if the person fails or refuses to use electric energy made available by the cooperative or if the electric energy is not made available to that person by the cooperative within a specified time after the person becomes a member of the cooperative. Membership in the cooperative shall not be transferable except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect of membership.

B. An annual meeting of the members shall be held at such time as shall be provided in the bylaws or, if not contrary to the bylaws, by the board of trustees.

C. Special meetings of the members may be called by the board of trustees, by any three trustees, by petition signed by not less than ten percent of the members or by the president.

D. Annual and special meetings of members, whether general or by voting districts established pursuant to the Rural Electric Cooperative Act, shall be held at such place as may be provided in the bylaws. In the absence of any such provision, all general meetings shall be held in the city or town in which the principal office of the cooperative is located, and all meetings by voting districts shall be held at a location set by the board of trustees within the boundaries of each district.

E. Except as otherwise provided in the Rural Electric Cooperative Act, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose for which the meeting is called, shall be given to each member by the board of trustees or the secretary, or their legal representatives, either personally or by mail not less than ten or more than twenty-five days before the date of the meeting. Failure to receive notice deposited in the mail addressed to a member at the member's address shown on the cooperative's books and records shall not affect the validity of any business conducted at a meeting.

F. Five percent of all members present in person constitutes a quorum for the transaction of business at all meetings of the members, unless the bylaws prescribe a

different number of members for determining a quorum. The bylaws may allow for ballots submitted by mail to be considered in establishing a quorum for the sole purpose of voting on an issue or question, the language of which is stated exactly in the notices and on the ballots provided to all members. If less than a quorum is present at any meeting, the majority of those present in person may adjourn the meeting from time to time without further notice. The failure to hold a meeting of members due to the absence of a quorum shall not affect the validity of any business conducted by the board of trustees.

G. Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person; provided that if the bylaws provide for voting by proxy or by mail, the bylaws shall prescribe the conditions under which proxy or mail voting shall be exercised. No person shall vote as proxy for more than three members at any meeting of the members.

H. All actions required by the Rural Electric Cooperative Act to be adopted or approved by a simple majority or greater number of members voting on the action at an annual or special meeting may be acted upon by voting at a general meeting or, to the extent and in the manner that the board of trustees may authorize, by voting by the voting districts established pursuant to that act, so long as the requisite majority of members voting on the action is obtained regardless of whether such a majority is obtained in any particular voting district. Action by voting by the voting districts shall be valid if a quorum exists as a result of a series of voting district meetings regardless of whether a quorum is present in any particular voting district.

History: Laws 1939, ch. 47, § 8; 1941 Comp., § 48-408; 1953 Comp., § 45-4-8; Laws 1961, ch. 210, § 1; 1983, ch. 273, § 1; 2019, ch. 131, § 1.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, provided that the bylaws of a rural electric cooperative may allow for ballots submitted by mail to be considered in establishing a quorum for voting on an issue or question; in Subsection F, after "unless the bylaws prescribe", deleted "the presence of a greater or lesser" and added "a different", after "number of members for", added "determining", and added "The bylaws may allow for ballots submitted by mail to be considered in establishing a quorum for the sole purpose of voting on an issue or question, the language of which is stated exactly in the notices and on the ballots provided to all members.".

The 1983 amendment rewrote Subsection A, substituted "bylaws or, if not contrary to the bylaws, by the board of trustees" for "bylaw" in Subsection B, inserted "by petition signed" and substituted "percent" for "per centum (10%)" in Subsection C, deleted "and the meeting shall be held at the place as may be designated in the petition" at the end of Subsection C and, in Subsection D, inserted "and special" and the language beginning with "whether general" and ending with "Cooperative Act" in the first sentence, and "general" in the second sentence and added the language beginning with

"and all meetings" at the end of the second sentence. The 1983 amendment also, in Subsection E, added the second sentence and rewrote the first sentence; in Subsection F, substituted "constitutes" for "shall constitute" and "or lesser number of" for "of the" in the first sentence, inserted "in person" in the second sentence and added the last sentence; in Subsection G, substituted "provided that" for "but" and "provide for voting by proxy or by mail, the bylaws shall prescribe" for "so provide, may also be by proxy or by mail; they shall also prescribe" in the second sentence, deleted "In any event" at the beginning of the third sentence; and added Subsection H.

Statutes, articles of incorporation, bylaws, application and certificate are contract. — Sections 62-15-1 to 62-15-32 NMSA 1978, together with the articles of incorporation and the bylaws of the cooperative, the application made by the plaintiff and the certificate of membership issued to him, constituted the contract between him and the cooperative. *King v. Farmers' Elec. Coop., Inc.*, 1952-NMSC-073, 56 N.M. 552, 246 P.2d 1041.

Member is bound by bylaws. — A member, in view of provision in his application agreeing to comply with and to be bound by provisions of the charter and bylaws of the cooperative, will, when such bylaws are reasonable, and enacted under properly delegated authority, be bound thereby. *King v. Farmers' Elec. Coop., Inc.*, 1952-NMSC-073, 56 N.M. 552, 246 P.2d 1041.

A member of the cooperative is not in position to challenge the validity of its bylaws, is presumed to know contents of its charter and bylaws and, having agreed, if accepted as a member, to abide by all its rules, regulations and bylaws, cannot be permitted to repudiate the same. *King v. Farmers' Elec. Coop., Inc.*, 1952-NMSC-073, 56 N.M. 552, 246 P.2d 1041.

Refusal of easement for line forfeits membership. — Member's refusal to grant needed right-of-way easement for transmission line, ipso facto, worked a forfeiture of his membership and abrogation of the contract for supplying member with electric service. *King v. Farmers' Elec. Coop., Inc.*, 1952-NMSC-073, 56 N.M. 552, 246 P.2d 1041.

Law reviews. — For note, "Corporate Law – Formulating and Applying a 'Proper Purpose' Analysis to a Books and Records Request – Schein v. Northern Rio Arriba Electric Cooperative," see 28 N.M. L. Rev. 133 (1998).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 13 to 15, 21 to 23, 25, 26.

43 C.J.S. Industrial Cooperative Societies §§ 7, 11.

62-15-9. Board of trustees; suits.

A. The business and affairs of a cooperative shall be managed by a board of not less than five trustees, each of whom shall be a member of the cooperative or of another cooperative which shall be a member thereof. The bylaws shall prescribe the number of trustees, the terms of the trustees and the manner of their election by the members, their qualifications, other than those provided for in the Rural Electric Cooperative Act, the manner of holding meetings of the board of trustees and of the election of successors to trustees who resign, die or otherwise are incapable of acting. The bylaws may provide for the removal of trustees from office and for the election of their successors and for the classification of trustees by terms of office. Without approval of the members, trustees shall not receive any salaries for their services as trustees and, except in emergencies, shall not be employed by the cooperative in any capacity involving compensation. The bylaws may, however, provide that a fixed per diem fee and advancement, reimbursement or a per diem amount in lieu of reasonably incurred expenses may be allowed to each trustee for attendance at each meeting of the board of trustees and of a committee thereof and for the performance of other cooperative business when such has had prior approval of the board of trustees.

B. The trustees of a cooperative named in any articles of incorporation, consolidation, merger or conversion shall hold office until the next following annual meeting of the members or until their successors have been elected and qualified.

C. A majority of the board of trustees constitutes a quorum.

D. If a husband and wife hold joint membership in a cooperative, either one, but not both, may be elected a trustee.

E. If the bylaws so provide, the board of trustees, by resolution adopted by a majority of the full board of trustees, may designate from among its members an executive committee and one or more other committees, except no such committee shall have authority to take any action on behalf of the board of trustees to distribute patronage refunds or in any matter which, under the articles of incorporation, bylaws or the Rural Electric Cooperative Act, requires the approval of the cooperative's members. Neither the designation of any such committee, the delegation thereto of authority nor action by such committee pursuant to such authority shall alone constitute compliance by any trustee not a member of the committee in question with the trustee's responsibility to act in accordance with the standard of conduct prescribed by Subsection E of this section.

F. Unless otherwise provided in the bylaws, any action required by the Rural Electric Cooperative Act to be taken at a meeting of the board of trustees, or any action which may be taken at a meeting of the board of trustees or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the trustees or all of the committee members, as the case may be. The consent shall have the same effect as a unanimous vote.

G. The board of trustees may exercise all of the powers of a cooperative except such as are conferred upon the members by the Rural Electric Cooperative Act or its articles of incorporation or bylaws.

H. No action shall be brought against a trustee as such or against the cooperative in its right unless the plaintiff was a member of record at the time of the transaction complained of and the complaint is verified and alleges with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the board of trustees and the reasons for the plaintiff's failure to obtain the action or for not making the effort. If the cooperative undertakes an investigation upon receipt of a demand by plaintiff for action, or following commencement of suit, the court may stay an action commenced as the circumstances reasonably require. If the court finds the action was brought without reasonable cause, it may require the plaintiff to pay defendants the reasonable expenses, including counsel fees, incurred by them in the defense of such action or to reimburse the cooperative for any indemnification provided a defendant pursuant to the Rural Electric Cooperative Act or the cooperative's bylaws.

History: Laws 1939, ch. 47, § 9; 1941 Comp., § 48-409; 1953 Comp., § 45-4-9; Laws 1957, ch. 200, § 1; 1987, ch. 36, § 3.

ANNOTATIONS

The 1987 amendment, effective June 19, 1987, in Subsection A, in the third sentence added "and for the classification of trustees by terms of office" at the end and, in the fifth sentence, substituted "a fixed per diem fee and advancement, reimbursement or a per diem amount in lieu of reasonably incurred expenses" for "a fixed fee and expenses of attendance, if any" and added the material at the end following "board of trustees"; added present Subsections E, F, and H; redesignated former Subsection E as present Subsection G; and made minor changes in language and punctuation throughout the section.

Trustee may serve as director. — A member of the board of trustees of a rural electric cooperative incorporated under New Mexico's Rural Electric Cooperative Act (Sections 62-15-1 to 62-15-32 NMSA 1978) may serve as the salaried director of the cooperative with approval of the members. 1971 Op. Att'y Gen. No. 71-111.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 19, 22.

43 C.J.S. Industrial Cooperative Societies §§ 6, 8.

62-15-9.1. Duties of trustees.

A trustee shall perform his duties as a trustee, including his duties as a member of any committee of the board upon which the trustee may serve, in good faith, in a manner the trustee believes to be in or not opposed to the best interests of the

cooperative and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties, a trustee shall be entitled to rely on factual information, opinions, reports or statements including financial statements and other financial data in each case prepared or presented by:

A. one or more officers or employees of the cooperative whom the trustee reasonably believes to be reliable and competent in the matters presented;

B. counsel, public accountants or other persons as to matters which the trustee reasonably believes to be within such persons' professional or expert competence;

C. a committee of the board upon which the trustee does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws as to matters within its designated authority, which committee the trustee reasonably believes to merit confidence, but the trustee shall not be considered to be acting in good faith if the trustee has knowledge concerning the matter in question that would cause such reliance to be unwarranted; or

D. any bulletin or other directive of the rural electrification administration, or successor agency, material to the matter in question.

A person who so performs such duties shall have no liability to the cooperative or to its members by reason of being or having been a trustee of the cooperative.

History: Laws 1987, ch. 238, § 13.

ANNOTATIONS

Law reviews. — For article, "Statutory Adoption of Several Liability in New Mexico: A Commentary and Quasi-Legislative History," see 18 N.M.L. Rev. 483 (1988).

62-15-9.2. Limitation on liability and indemnification of officers and trustees.

A. Cumulative to any other provision of the Rural Electric Cooperative Act as now or hereafter enacted, the bylaws of a cooperative may provide that a trustee shall not be personally liable to the cooperative or to its members for monetary damages for breach of fiduciary duty as a trustee unless:

(1) the trustee has breached or failed to perform the duties of his office in compliance with Section 62-15-9.1 NMSA 1978; and

(2) the breach or failure to perform constitutes willful misconduct or recklessless [recklessness]; or in the case of a trustee of a cooperative actively engaged in the generation and transmission of electric power, negligence, willful misconduct or recklessness. Such a provision in the bylaws shall, however, only

eliminate the liability of a trustee for action taken as a trustee or any failure to take action as a trustee at meetings of the board of trustees or of a committee of the board of trustees, or by virtue of action of the trustees without a meeting as may be permitted by the Rural Electric Cooperative Act as now or hereafter enacted, on or after the date when such provision in the bylaws becomes effective.

B. Cumulative to any other power granted by the Rural Electric Cooperative Act as now or hereafter enacted, each cooperative shall have the power to indemnify any trustee or officer or former trustee or officer of the cooperative or any person serving or having served at the request of the cooperative as a director, trustee, officer, partner, trustee, employee or agent of any cooperative, corporation, nonprofit corporation, partnership, joint venture, trust, unincorporated association, other incorporated or unincorporated enterprise or employee benefit plan or trust against reasonable expenses, costs and attorneys' fees actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of holding or having held such an office or position. The indemnification may include any amounts paid to satisfy a judgment or to compromise or settle a claim. The trustee, officer or other person shall not be indemnified if he shall be adjudged to be liable on the basis that he breached or failed to perform the duties of his office or position and the breach or failure to perform constitutes willful misconduct or recklessness. Advance indemnification to such persons may be allowed for reasonable expenses to be incurred in connection with the defense of the action, suit or proceeding, provided that the trustee, officer or other person shall reimburse the cooperative if it is subsequently determined that he was not entitled to indemnification. Each cooperative may make any other indemnification as authorized by the articles of incorporation or bylaws or by resolution adopted by the members after notice.

History: Laws 1987, ch. 238, § 14.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

62-15-10. Voting districts.

A. Notwithstanding any other provision of the Rural Electric Cooperative Act, the bylaws of a cooperative may provide that the territory in which a cooperative supplies electric energy to its members shall be divided into two or more voting districts and that, in respect of each such voting district:

(1) a designated number of trustees shall be elected by the members residing in that district;

(2) a designated number of delegates shall be elected by the members residing in that district; or

(3) both trustees and delegates shall be elected by the members residing in that district.

B. The bylaws shall prescribe the manner in which voting districts, and the members, delegates and trustees thereof, if any, elected therefrom, shall function. The bylaws shall also set forth the powers of the delegates, which may include the power to elect trustees. No delegate who has voted by proxy or by mail on an issue or question shall vote in person on the same issue or question.

C. Voting by members at voting district meetings shall be in person, unless otherwise provided in the bylaws. The bylaws shall prescribe the conditions under which voting by mail shall be exercised.

History: Laws 1939, ch. 47, § 10; 1941 Comp., § 48-410; 1953 Comp., § 45-4-10; 2011, ch. 38, § 1; 2019, ch. 131, § 2.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, provided that no delegate of a rural electric cooperative who has voted by proxy or by mail on an issue or question shall vote in person on the same issue or question; and in Subsection B, after "No delegate", deleted "at any meeting shall vote" and added "who has voted", and after "by proxy or by mail", added "on an issue or question shall vote in person on the same issue or question".

The 2011 amendment, effective June 17, 2011, added Subsection C to require that voting at voting district meetings be in person unless the bylaws provide otherwise, and to permit the bylaws to provide for voting by mail.

Amendment vote by districts rather than at general meeting deemed legal. — It is legal to provide for the amendment of bylaws by a majority vote of the members voting by districts, rather than at a general meeting of all the members. This interpretation does no violence to Section 62-15-7 NMSA 1978, since that section mentions "regular annual meeting" and "special meeting," and does not exclude a regular annual meeting or special meeting of a voting district. The interpretation is supported by the liberal construction required to be given these statutes under Section 62-15-32 NMSA 1978. 1961 Op. Att'y Gen. No. 61-62.

Rural electric cooperative cannot take away power of majority. — A rural electric cooperative may provide for the amendment of its bylaws by a vote taken at a series of meetings of voting districts rather than at a general meeting of all the members, but, in so doing, it cannot take away the power of the majority of members to adopt, amend or repeal the bylaws. 1961 Op. Att'y Gen. No. 61-62.

62-15-11. Officers.

The officers of a cooperative shall consist of a president, vice president, secretary and treasurer, who shall be elected annually by and from the board of trustees. No person shall continue to hold any of the above offices after he shall have ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint such other officers, agents or employees as it shall deem necessary or advisable and shall prescribe the powers and duties thereof. Any officer may be removed from office and his successor elected in the manner prescribed in the bylaws.

History: Laws 1939, ch. 47, § 11; 1941 Comp., § 48-411; 1953 Comp., § 45-4-11.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 18, 19, 49.

43 C.J.S. Industrial Cooperative Societies §§ 6, 8.

62-15-12. Amendment of articles of incorporation.

A. A cooperative may amend its articles of incorporation by complying with the following requirements:

(1) the proposed amendment shall be first approved by the board of trustees and shall then be submitted to a vote of the members at any annual or special meeting , the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make, shall be deemed to be approved on the affirmative vote of not less than two-thirds of those members voting on the amendment at that meeting; and

(2) upon approval by the members, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice president, and its corporate seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite in the caption that they are executed pursuant to the Rural Electric Cooperative Act and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state; and

(d) the amendment to its articles of incorporation.

The president or vice president executing the articles of amendment shall make and annex thereto an affidavit stating that the provisions of this section were duly complied with. The articles of amendment and affidavit shall be submitted to the secretary of state for filing as provided in the Rural Electric Cooperative Act.

B. A cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office by filing a certificate of change of principal office, executed and acknowledged by its president or vice president under its seal attested by its secretary, in the office of the secretary of state and in the office of the county clerk in each county in this state in which its articles of incorporation or any prior certificate of change of principal office was filed. The cooperative shall, within thirty days after the filing of the certificate of change of principal office in the office of the county clerk, file in the county clerk's office certified copies of its articles of incorporation and all amendments thereto, if they are not already on file in the county clerk's office.

History: Laws 1939, ch. 47, § 12; 1941 Comp., § 48-412; 1953 Comp., § 45-4-12; 2013, ch. 75, § 27.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that the articles of incorporation of a cooperative recite the date a certificate of change of office was filed with the secretary of state; in Subparagraph (c) of Paragraph (2) of Subsection A, after "in the office of the", deleted "state corporation commission" and added "secretary of state"; in the second unlettered paragraph of Subsection A, in the second sentence, after submitted to the", deleted "state corporation commission" and added "secretary of state"; and in Subsection B, in the first sentence, after "in the office of the" deleted "state corporation commission" and added "secretary of state".

62-15-13. Consolidation.

Any two or more cooperatives, each of which is designated a "consolidating cooperative" in this section, may consolidate into a new cooperative, designated the "new cooperative" in this section, by complying with the following requirements:

A. the proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect to the consolidation shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to the Rural Electric Cooperative Act and shall state:

(1) the name of each consolidating cooperative, the address of its principal office and the date of the filing of its articles of incorporation in the office of the secretary of state;

(2) the name of the new cooperative and the address of its principal office;

(3) the names and addresses of the persons who shall constitute the first board of trustees of the new cooperative;

(4) the terms and conditions of the consolidation and the mode of carrying it into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of membership in respect of the converted memberships; and

(5) any provisions not inconsistent with the Rural Electric Cooperative Act deemed necessary or advisable for the conduct of the business and affairs of the new cooperative;

B. the proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members of each consolidating cooperative at any annual or special meeting, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of a simple majority of those members of each consolidating cooperative voting thereon at that meeting; and

C. upon approval by the members of the respective consolidating cooperatives, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice president, and its seal shall be affixed thereto and attested by its secretary. The president or vice president of each consolidating cooperative executing the articles of consolidation shall make and annex to the articles of incorporation an affidavit stating that the provisions of this section were duly complied with by that cooperative. The articles of consolidation and affidavits shall be submitted to the secretary of state for filing as provided in Section 62-15-19 NMSA 1978.

History: Laws 1939, ch. 47, § 13; 1941 Comp., § 48-413; 1953 Comp., § 45-4-13; Laws 1979, ch. 64, § 1; 2013, ch. 75, § 28.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that articles of consolidation state the date the articles of incorporation were filed with the secretary of state; in Paragraph (1) of Subsection A, after "in the office of the", deleted "state corporation commission" and added "secretary of state"; and in Subsection C, in the third sentence, after "submitted to the", deleted "state corporation commission" and added "secretary of state".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 43 C.J.S. Industrial Cooperative Societies §§ 6, 13.

62-15-14. Merger.

Any one or more cooperatives, each of which is designated a "merging cooperative" in this section, may merge into another cooperative, designated the "surviving cooperative" in this section, by complying with the following requirements:

A. the proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect to the merger shall be first approved by the board of trustees of each merging cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to the Rural Electric Cooperative Act and shall state:

(1) the name of each merging cooperative, the address of its principal office and the date of the filing of its articles of incorporation in the office of the secretary of state;

(2) the name of the surviving cooperative and the address of its principal office;

(3) a statement that the merging cooperatives elect to be merged into the surviving cooperative;

(4) the terms and conditions of the merger and the mode of carrying it into effect, including the manner and basis of converting the memberships in the merging cooperatives into memberships in the surviving cooperative and the issuance of certificates of membership in respect of the converted memberships; and

(5) any provisions not inconsistent with the Rural Electric Cooperative Act deemed necessary or advisable for the conduct of the business and affairs of the surviving cooperative;

B. the proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of trustees of the respective cooperatives, parties to the proposed merger, shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of a simple majority of those members of each cooperative voting thereon at that meeting; and

C. upon approval by the members of the respective cooperatives, parties to the proposed merger, articles of merger in the form approved shall be executed and

acknowledged on behalf of each such cooperative by its president or vice president, and its seal shall be affixed thereto and attested by its secretary. The president or vice president of each cooperative executing the articles of merger shall make and annex to the articles of merger an affidavit stating that the provisions of this section were duly complied with by such cooperative. The articles of merger and affidavits shall be submitted to the secretary of state for filing as provided in Section 62-15-19 NMSA 1978.

History: Laws 1939, ch. 47, § 14; 1941 Comp., § 48-414; 1953 Comp., § 45-4-14; Laws 1979, ch. 64, § 2; 2013, ch. 75, § 29.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that articles of merger state the date the articles of incorporation were filed with the secretary of state; in Paragraph (1) of Subsection A, after "in the office of the", deleted "state corporation commission" and added "secretary of state"; and in Subsection C, in the third sentence, after "submitted to the", deleted "state corporation commission" and added "secretary of state".

Power of eminent domain. – A corporation organized for the primary purpose of supplying electric power or energy to rural areas on a cooperative basis, although organized under the laws of another state and resulting from an interstate merger, is a rural electric cooperative under the Rural Electric Cooperative Act, and thus has the power of eminent domain under this section. *Tri-State Generation & Transmission Ass'n v. King*, 2003-NMSC-029, 134 N.M. 467, 78 P.3d 1226.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 43 C.J.S. Industrial Cooperative Societies §§ 3, 6, 13.

62-15-15. Effect of consolidation or merger.

The effect of consolidation or merger shall be as follows:

A. the several cooperatives, parties to the consolidation or merger, shall be a single cooperative, which in the case of a consolidation shall be the new cooperative provided for in the articles of consolidation and in the case of a merger shall be that cooperative designated in the articles of merger as the surviving cooperative, and the separate existence of all cooperatives, parties to the consolidation or merger, except the new or surviving cooperative shall cease;

B. the new or surviving cooperative shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a cooperative organized under the provisions of the Rural Electric Cooperative Act. It shall possess all the rights, privileges, immunities and franchises, of a public as well as of a private nature, and all property, real and personal, applications for membership, all debts due on whatever account and all other choses in action of each of the consolidating or

merging cooperatives, and every interest of or belonging or due to each of the cooperatives consolidated or merged shall be deemed to be transferred to and vested in the new or surviving cooperative without further act or deed. The title to any real estate, or any interest therein, under the laws of this state vested in any such cooperatives shall not revert or be in any way impaired by reason of the consolidation or merger;

C. the new or surviving cooperative shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the cooperatives consolidated or merged, and any claim existing, or action or proceeding pending, by or against any of such cooperatives may be prosecuted as if the consolidation or merger had not taken place, but the new or surviving cooperative may be substituted in its place;

D. neither the rights of creditors nor any liens upon the property of any of such cooperatives shall be impaired by the consolidation or merger; and

E. in the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative; and in the case of a merger, the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes in the articles of incorporation are provided for in the articles of merger.

History: Laws 1939, ch. 47, § 15; 1941 Comp., § 48-415; 1953 Comp., § 45-4-15; 1998, ch. 46, § 2.

ANNOTATIONS

The 1998 amendment, effective March 6, 1998, in Subsection B, substituted "the Rural Electric Cooperative" for "this", deleted "as well" preceding "of", inserted "well as", deleted "furthermore all and" preceding "every", deleted "so" following "cooperatives", deleted "taken and" following "be", and substituted "or" for "to"; in Subsection E, substituted "in the articles of incorporation" for "therein"; and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 43 C.J.S. Industrial Cooperative Societies § 2.

62-15-16. Conversion of existing corporations.

Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy in rural areas may be converted into a cooperative and become subject to the Rural Electric Cooperative Act with the same effect as if originally organized under that act by complying with the following requirements:

A. the proposition for the conversion of the corporation into a cooperative and proposed articles of conversion to give effect to the conversion shall be first approved by the board of trustees or the board of directors of the corporation. The proposed

articles of conversion shall recite in the caption that they are executed pursuant to the Rural Electric Cooperative Act and shall state:

(1) the name of the corporation prior to its conversion into a cooperative;

(2) the address of the principal office of the corporation;

(3) the date of the filing of articles of incorporation of the corporation in the office of the secretary of state;

(4) the statute under which the corporation was organized;

(5) the name assumed by the corporation in compliance with the provisions of the Rural Electric Cooperative Act;

(6) a statement that the corporation elects to become a cooperative nonprofit membership corporation subject to the Rural Electric Cooperative Act;

(7) the manner and basis of converting either memberships in or shares of stock of the corporation into membership in the converted corporation; and

(8) any provisions not inconsistent with the Rural Electric Cooperative Act deemed necessary or advisable for the conduct of the business and affairs of the corporation;

B. the proposition for the conversion of the corporation into a cooperative and the proposed articles of conversion approved by the board of trustees or board of directors of the corporation shall then be submitted to a vote of the members or stockholders of the corporation at any duly held annual or special meeting, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of the corporation into a cooperative and the proposed articles of conversion, with such amendments thereto as the members or stockholders of the corporation choose to make, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of the corporation voting thereon at that meeting or, if the corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of the corporation represented at that meeting;

C. upon approval by the members or stockholders of the corporation, articles of conversion in the form approved by the members or stockholders shall be executed and acknowledged on behalf of the corporation by its president or vice president, and its corporate seal shall be affixed thereto and attested by its secretary. The president or vice president executing the articles of conversion on behalf of the corporation shall make and annex to the articles of conversion an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders of the proposition for the conversion of the corporation into a cooperative

and the articles of conversion were duly complied with. The articles of conversion and affidavit shall be submitted to the secretary of state for filing as provided in the Rural Electric Cooperative Act; and

D. the term "articles of incorporation" as used in the Rural Electric Cooperative Act shall be deemed to include the articles of conversion of a converted corporation.

History: Laws 1939, ch. 47, § 16; 1941 Comp., § 48-416; 1953 Comp., § 45-4-16; 2013, ch. 75, § 30.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that articles of conversion state the date the articles of incorporation were filed with the secretary of state; in Paragraph (3) of Subsection A, after "in the office of the", deleted "state corporation commission" and added "secretary of state"; and in Subsection C, in the third sentence, after "submitted to the", deleted "state corporation commission" and added "secretary of state".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 5 to 9.

43 C.J.S. Industrial Cooperative Societies § 6.

62-15-17. Initiative by members.

Notwithstanding any other provision of this act [62-15-1 to 62-15-32 NMSA 1978], any proposition embodied in a petition signed by not less than 10 per centum (10%) of all members of the cooperative, together with any document submitted with such petition to give effect to the proposition, shall be submitted to the members of a cooperative either at a special meeting of the members held within forty-five (45) days after the presentation of such petition or, if the date of the next annual meeting of members falls within ninety (90) days after such presentation or if the petition so requests, at such annual meeting. The approval of the board of trustees shall not be required in respect of any proposition or document submitted to the members pursuant to this section and approved by them, but such proposition or document shall be subject to all other applicable provisions of this act. Any affidavit or affidavits required to be filed with any such document pursuant to applicable provisions of this act shall, in such case, be modified to show compliance with the provisions of this section.

History: Laws 1939, ch. 47, § 17; 1941 Comp., § 48-417; 1953 Comp., § 45-4-17.

62-15-18. Dissolution.

A. A cooperative that has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed and acknowledged on behalf of the cooperative by a majority of the incorporators, which state:

(1) the name of the cooperative;

(2) the address of its principal office;

(3) the date of its incorporation;

(4) that the cooperative has not commenced business;

(5) that the amount, if any, actually paid in on account of membership fees, less any part of that money disbursed for necessary expenses, has been returned to those entitled to it and that all easements have been released to the grantors;

(6) that no debt of the cooperative remains unpaid; and

(7) that a majority of the incorporators elect that the cooperative be dissolved.

The articles of dissolution shall be submitted to the secretary of state for filing as provided in the Rural Electric Cooperative Act.

B. A cooperative that has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) the board of trustees shall first recommend that the cooperative be dissolved voluntarily, and the proposition that the cooperative be dissolved shall be submitted to the members of the cooperative at any annual or special meeting, the notice of which shall set forth that proposition. The proposed voluntary dissolution shall be deemed to be approved upon the affirmative vote of not less than two-thirds of all of the members of the cooperative;

(2) upon such approval, a certificate of election to dissolve, designated the "certificate" in this section, shall be executed and acknowledged on behalf of the cooperative by its president or vice president, and its corporate seal shall be affixed thereto and attested by its secretary. The certificate shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of its trustees; and

(d) the total number of members of the cooperative and the number of members who voted for and against the voluntary dissolution of the cooperative.

The president or vice president executing the certificate shall make and annex to it an affidavit stating that the provisions of this subsection were duly complied with. The certificate and affidavit shall be submitted to the secretary of state for filing as provided in the Rural Electric Cooperative Act;

(3) upon the filing of the certificate and affidavit with the secretary of state, the cooperative shall cease to carry on its business except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the secretary of state;

(4) after the filing of the certificate and affidavit with the secretary of state, the board of trustees shall immediately cause notice of the winding up of proceedings to be mailed to each known creditor and claimant and to be published once a week for two successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located;

(5) the board of trustees shall have full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy and discharge its debts, obligations and liabilities and do all other things required to liquidate its business and affairs. After paying or adequately providing for the payment of all its debts, obligations and liabilities, the board of trustees shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each member during the seven years next preceding the date of filing of the certificate or, if the cooperative was not in existence for that period, during the period of its existence; and

(6) when all debts, liabilities and obligations of the cooperative have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the cooperative have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution that shall thereupon be executed and acknowledged on behalf of the cooperative by its president or vice president, and its corporate seal shall be affixed thereto and attested by its secretary. The articles of dissolution shall recite in the caption that they are executed pursuant to the Rural Electric Cooperative Act and shall state:

(a) the name of the cooperative;

(b) the address of the principal office of the cooperative;

(c) that the cooperative has delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of that office;

(d) that all debts, obligations and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor;

(e) that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and

(f) that there are no actions or suits pending against the cooperative. The president or vice president executing the articles of dissolution shall make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with.

The articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection, shall be submitted to the secretary of state for filing as provided in the Rural Electric Cooperative Act.

History: Laws 1939, ch. 47, § 18; 1941 Comp., § 48-418; 1953 Comp., § 45-4-18; 1987, ch. 36, § 4; 2013, ch. 75, § 31.

ANNOTATIONS

Cross references. — For legal newspapers, *see* 14-11-2 NMSA 1978.

The 2013 amendment, effective July 1, 2013, required that articles of dissolution be delivered to the secretary of state; in Subsection A, in the introductory sentence, after "delivering to the", deleted "state corporation commission" and added "secretary of state"; in Subsection A(1), in the unlettered paragraph following Paragraph (7), after "submitted to the", deleted "state corporation commission" and added "secretary of state"; in Subsection B(3), in the unlettered paragraph following Subparagraph (d) of Paragraph (2), in the second sentence, after "submitted to the", deleted "state corporation commission" and added "secretary of state"; in Paragraph (3) of Subsection B, after "affidavit with the", deleted "state corporation commission" and added "secretary of state" and after filed by the", deleted "state corporation commission" and added "secretary of state"; in Paragraph (4) of Subsection B, after "affidavit with the", deleted "state corporation commission" and added "secretary of state"; in Subparagraph (c) of Paragraph (6) of Subsection B, after "delivered to the", deleted "state corporation commission" and added "secretary of state" and after "filed by the", deleted "state corporation commission" and added "secretary of state"; and in Subsection B, in the unlettered paragraph following Subparagraph (f) of Paragraph (6), after "submitted to the", deleted "state corporation commission" and added "secretary of state".

The 1987 amendment, effective June 19, 1987, in Subsection B, in the last sentence of Paragraph (1) substituted "all of the members of the cooperative" for "those voting thereon at such meeting," in Paragraph (3) substituted "state corporation commission" for "secretary of state," in Paragraph (5) inserted "the board of trustees" in the second sentence preceding "shall distribute the remainder of its property," and made minor changes in language and punctuation throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations § 22.

Distribution of funds by nonprofit corporation absent dissolution, 51 A.L.R.3d 1318.

43 C.J.S. Industrial Cooperative Societies §§ 2, 3.

62-15-19. Filing of articles.

Articles of incorporation, amendment, consolidation, merger, conversion or dissolution, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of the Rural Electric Cooperative Act, shall be presented to the secretary of state for filing in the records of that office. If the secretary of state finds that the articles presented conform to the requirements of that act, the secretary of state shall, upon the payment of the fees as provided in that act, file the articles in the records of the secretary of state's office, and upon such filing the incorporation, amendment, consolidation, merger, conversion or dissolution provided for in those articles shall be in effect. The secretary of state, immediately upon the filing in the secretary of state's office of any articles pursuant to the Rural Electric Cooperative Act, shall transmit a certified copy of the articles to the county clerk of the county in which the principal office of each cooperative or corporation affected by the incorporation, amendment, consolidation, merger, conversion or dissolution is located. The clerk of any county, upon receipt of any such certified copy, shall file and index it in the records of the clerk's office, but the failure of the secretary of state or of a clerk of a county to comply with the provisions of this section shall not invalidate the articles. The provisions of this section shall apply to certificates of election to dissolve and affidavits of compliance executed pursuant to Paragraph (2) of Subsection B of Section 62-15-18 NMSA 1978.

History: Laws 1939, ch. 47, § 19; 1941 Comp., § 48-419; 1953 Comp., § 45-4-19; 2013, ch. 75, § 32.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that articles be filed with the secretary of state; in the first sentence, after "presented to the", deleted "state corporation commission" and added "secretary of state"; in the second sentence, at the beginning of the sentence, deleted "state corporation commission shall find" and added "secretary of state finds", after "requirements of that act", deleted "he" and added "the secretary of state", and after "in the records of", deleted "his" and added "the secretary of state"; and in the third sentence, at the beginning of the sentence, deleted "state corporation commission" and added "secretary of state", after "upon filing in", deleted "his" and added "the secretary of state's"; and in the fourth sentence, after "the failure of the", deleted "state corporation commission" and added "secretary of state".

62-15-20. Refunds to members.

Revenues of a cooperative for any fiscal year in excess of the amount thereof necessary:

A. to defray expenses of the cooperative and of the operation and maintenance of its facilities during such fiscal year;

B. to pay interest and principal obligation of the cooperative coming due in such fiscal year;

C. to finance, or to provide a reserve for the financing of, the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

D. to provide a reasonable reserve for working capital;

E. to provide a reserve for the payment of indebtedness of the cooperative maturing more than one (1) year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year; and

F. to provide a fund for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative, shall, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during such fiscal year. Nothing herein contained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same shall become due.

History: Laws 1939, ch. 47, § 20; 1941 Comp., § 48-420; 1953 Comp., § 45-4-20.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 19, 22, 23.

62-15-21. Disposition of property.

A cooperative may not sell, convey, lease, exchange, transfer or otherwise dispose of all or any substantial portion of its property unless such sale, conveyance, lease, exchange, transfer or other disposition is authorized at a duly held meeting of the members thereof by the affirmative vote of not less than two-thirds of all of the members of the cooperative, and unless the notice of such proposed sale, lease or other disposition shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained, or any other provisions of law, the board of trustees of a cooperative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or the pledging, assignment for security purposes or encumbering of, any or all of the property, assets, rights, privileges,

licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the cooperative.

History: Laws 1939, ch. 47, § 21; 1941 Comp., § 48-421; 1953 Comp., § 45-4-21; Laws 1971, ch. 8, § 2.

ANNOTATIONS

Severability. — Laws 1971, ch. 8, § 3, provided for the severability of the act if any part or application thereof is held invalid.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 43 C.J.S. Industrial Cooperative Societies § 8.

62-15-22. Nonliability of members for debts of cooperative.

The private property of the members of a cooperative shall be exempt from execution for the debts of the cooperative and no member shall be liable or responsible for any debts of the cooperative.

History: Laws 1939, ch. 47, § 22; 1941 Comp., § 48-422; 1953 Comp., § 45-4-22.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations § 32.

62-15-23. Recordation of mortgages.

Any mortgage, deed of trust or other instrument executed by a cooperative or foreign corporation transacting business in this state, pursuant to this act [62-15-1 to 62-15-32 NMSA 1978], which, by its terms, creates a lien upon real and personal property then owned or after-acquired, and which is recorded as a mortgage of real property in any county in which such property is located or is to be located, shall have the same force and effect as if the mortgage, deed of trust or other instrument were also recorded or filed in the proper office in such county as a mortgage of personal property. Recordation of any such mortgage, deed of trust or other instrument shall cause the lien thereof to attach to all after-acquired property of the mortgagor of the nature herein described as being mortgaged or pledged thereby immediately upon the acquisition thereof by the mortgagor, and such lien shall be superior to all claims of creditors of the mortgagor and purchasers of such property and to all other liens, except liens of prior record, affecting such property.

History: Laws 1939, ch. 47, § 23; 1941 Comp., § 48-423; 1953 Comp., § 45-4-23.

62-15-24. Waiver of notice.

Whenever any notice is required to be given under the provisions of this act [62-15-1 to 62-15-32 NMSA 1978] or under the provisions of the articles of incorporation or bylaws of a cooperative, waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time fixed for the giving of such notice, shall be deemed equivalent to such notice. If a person or persons entitled to notice of a meeting shall attend such meeting, such attendance shall constitute a waiver of notice of the meeting, except in case the attendance is for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

History: Laws 1939, ch. 47, § 24; 1941 Comp., § 48-424; 1953 Comp., § 45-4-24.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 33, 34.

62-15-25. Trustees, officers or members; notaries.

No person who is authorized to take acknowledgments under the laws of this state shall be disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party, by reason of being an officer, director or member of such cooperative.

History: Laws 1939, ch. 47, § 25; 1941 Comp., § 48-425; 1953 Comp., § 45-4-25.

62-15-26. Foreign corporations.

Any corporation organized on a nonprofit or a cooperative basis for the purpose of supplying electric energy in rural areas and owning and operating electric transmission or distribution lines in a state adjacent to this state shall be permitted to extend its lines into and to transact business in this state without complying with any statute of this state pertaining to the qualification of foreign corporations for the transaction of business in this state. Any such foreign corporation, as a prerequisite to the extension of its lines into and the transaction of business in this state, shall, by an instrument executed and acknowledged in its behalf by its president or vice president under its corporate seal attested by its secretary, designate the secretary of state as its agent to accept service of process in its behalf. If any process is served upon the secretary of state, the secretary of state shall forthwith forward the process by registered mail to the corporation at the address specified in such instrument. Any such corporation may sue and be sued in the courts of this state to the same extent that a cooperative may sue or be sued in such courts. Any such foreign corporation may secure its notes, bonds or other evidences of indebtedness by mortgage, pledge, deed of trust or other encumbrance upon any or all of its then-owned or after-acquired real or personal

property, assets or franchises located or to be located in this state and upon the revenues and income.

History: Laws 1939, ch. 47, § 26; 1941 Comp., § 48-426; 1953 Comp., § 45-4-26; 2013, ch. 75, § 33.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that foreign corporations designate the secretary of state as agent to accept service of process; in the second sentence, after "designate the", deleted "state corporation commission" and added "secretary of state"; and in the third sentence, after "is served upon the", deleted "state corporation commission" and added "secretary of state".

62-15-26.1. Distribution cooperative utilities organized in other states; application.

A distribution cooperative utility organized pursuant to the laws of another state and providing bundled services in this state on April 1, 1999 to not more than twenty percent of its total customers may file an application with the commission seeking approval of its election to be governed by the laws related to electric restructuring of the state where the utility was organized. The commission shall approve the application if the distribution cooperative utility:

A. does not provide supply service to other than its service customers in this state; and

B. remains subject to the jurisdiction and authority of the commission for bundled service provided in this state.

History: Laws 2003, ch. 336, § 5.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 60 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

62-15-27. Fees.

The secretary of state shall charge and collect for:

A. filing articles of incorporation, five dollars ($5.00);

B. filing articles of amendment, three dollars ($3.00);

C. filing articles of consolidation or merger, five dollars ($5.00);

D. filing articles of conversion, five dollars ($5.00);

E. filing certificate of election to dissolve, two dollars ($2.00);

F. filing articles of dissolution, three dollars ($3.00); and

G. filing certificate of change of principal office, one dollar ($1.00).

History: Laws 1939, ch. 47, § 27; 1941 Comp., § 48-427; 1953 Comp., § 45-4-27; 2013, ch. 75, § 34.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, prescribed fees that the secretary of state is required to charge; and in the introductory sentence, deleted "state corporation commission" and added "secretary of state".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 34, 40, 44, 46.

62-15-28. Taxation.

Cooperative and foreign corporations transacting business in this state pursuant to the provisions of the Rural Electric Cooperative Act shall pay annually, on or before July 1, to the state corporation commission [public regulation commission] a tax of ten dollars ($10.00) for each one hundred persons or fraction thereof to whom electricity is supplied within this state, which tax shall be in lieu of all other taxes except those provided in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978]; provided, however, that in the event a contract has been entered into by a rural electric cooperative and a power consumer prior to February 1, 1961 and such contract does not contain an escalator clause providing for an increase for added tax liability on the cooperative, then the sale to such power consumer shall be exempt until the expiration, extension or renewal of the contract.

History: Laws 1939, ch. 47, § 28; 1941, ch. 195, § 1; 1941 Comp., § 48-428; 1953 Comp., § 45-4-28; Laws 1961, ch. 236, § 1; 1966, ch. 58, § 1; 1975, ch. 263, § 7; 1982, ch. 18, § 24.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

Nonseverability clauses. — Laws 1975, ch. 263, § 10, provided that the act is not intended to be severable, and that if any part thereof should be declared unconstitutional, the entire act should be declared void.

Laws 1975, ch. 263, § 9, was declared invalid under the supremacy clause of the United States constitution in Arizona Pub. Serv. Co. v. Snead, 441 U.S. 141, 99 S. Ct. 1629, 60 L. Ed. 2d 106 (1979).

Sales by rural electric cooperative exempt from school tax. — This statutory provision must be considered to exempt from the school tax the sale of electricity by a rural electric cooperative to its customers. Since the legal incidence of the emergency school tax is upon the vendor of the goods or services as a tax with respect to his privilege of doing business, it is clearly immaterial to the consideration of the first inquiry that the cooperative, the purchaser of the goods or services, may not itself be subject directly to the tax because of this statute. 1957 Op. Att'y Gen. No. 57-302.

Liability from compensating tax for out-of-state purchases. — Rural electric administration cooperatives are not liable for the payment of compensating tax on their out-of-state purchases of materials for use or consumption within the state. 1961 Op. Att'y Gen. No. 62-131.

Law reviews. — For article, "Taxation of Electricity Generation: The Economic Efficiency and Equity Bases for Regionalism Within the Federal System," see 20 Nat. Res. J. 877 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation § 514.

16C C.J.S. Constitutional Law § 881; 43 C.J.S. Industrial Cooperative Societies § 5; 84 C.J.S. Taxation § 251.

62-15-29. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 62-15-29 NMSA 1978, as enacted by Laws 1939, ch. 47, § 29, relating to exemption from jurisdiction of the state corporation commission, effective January 1, 1999. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

62-15-30. Securities Act exemption.

The provisions of the Securities Act, Chapter 44, Session Laws of New Mexico, 1921, shall not apply to the issuance of any note, bond or other evidence of indebtedness issued, executed and delivered by any cooperative to the United States of America or any agency or instrumentality thereof. The provisions of said Securities Act shall not apply to the issuance of membership certificates by any cooperative.

History: Laws 1939, ch. 47, § 30; 1941 Comp., § 48-430; 1953 Comp., § 45-4-30.

ANNOTATIONS

Compiler's notes. — Laws 1955, ch. 131, § 20, repeals the Securities Act, Laws 1921, ch. 44, referred to in this section. For present Securities Act of New Mexico, *see* 58-13B-1 to 58-13B-57 NMSA 1978.

62-15-31. "Rural area," "person" and "member" defined.

A. "Rural area" means any area not included within the boundaries of any municipality having a population in excess of five thousand persons; provided that a municipality having a population of more than five thousand persons shall not cease to be included within the term "rural area" if at the time of the commencement of the cooperative's or its predecessor's operation therein the population of the municipality was less than five thousand persons and the municipality has been and continues to be served by a cooperative; provided, however, that the population of any municipality shall not be included in any rural area if said municipality has a municipally owned plant or other operating noncooperative utility; and, provided further, that any cooperative shall not be permitted to operate in any municipality without first having obtained a franchise from the governing authorities.

B. "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof or any body politic.

C. "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein, and shall include a husband and wife admitted to a joint membership.

History: Laws 1939, ch. 47, § 31; 1941 Comp., § 48-431; Laws 1945, ch. 9, § 1; 1947, ch. 182, § 1; 1953 Comp., § 45-4-31; Laws 1967, ch. 102, § 3.

62-15-32. Construction of act; inconsistency.

The Rural Electric Cooperative Act shall be construed liberally. The enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things. Nothing contained in the Rural Electric Cooperative Act shall be construed, however, to conflict with any duty to which a cooperative is subject or with any benefit to which a

cooperative is entitled under the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978]. In the event any provision of the Rural Electric Cooperative Act is held to be repugnant to any provision of the Public Utility Act or to a cooperative's inclusion as a public utility thereunder, the latter shall be controlling and the former shall be held repealed to the extent of the repugnancy. Nothing in the Public Utility Act shall be deemed to authorize interference with, abrogation or change of the rights or obligations of a party under a wholesale power supply agreement, mortgage or financing agreement to which a distribution cooperative utility is a party.

History: Laws 1939, ch. 47, § 32; 1941 Comp., § 48-432; 1953 Comp., § 45-4-32; Laws 1967, ch. 102, § 4; 2003, ch. 336, § 7.

ANNOTATIONS

Compiler's notes. — Laws 1939, ch. 47, § 34 repealed Laws 1937, ch. 100, and provided that the former act, relating to electric membership corporations, shall continue in effect and be applicable to corporations formed under its provisions. For provisions applicable to electric membership corporations, *see* Laws 1937, ch. 100. For the Public Utility Act repealing repugnant provisions of Laws 1937, ch. 100, *see* 62-3-2C NMSA 1978 and this section.

Cross references. — As to Public Utility Act repealing repugnant provisions of Rural Electric Cooperative Act, *see* 62-3-2C NMSA 1978.

The 2003 amendment, effective June 20, 2003, deleted "as amended" or "as now or hereafter amended" following "the Rural Electric Cooperative Act" and "Public Utility Act" throughout the section and added the last sentence.

Junior licensee not to interfere with existing system. — Laws 1937, ch. 100, § 10 means that any system of the junior licensee shall be constructed in such manner as not to materially or unreasonably interfere with any existing system. *Hale v. Farmers Elec. Membership Corp.*, 1940-NMSC-009, 44 N.M. 131, 99 P.2d 454 (decided under former law).

No liability if operating in skillful manner. — Where it was not apparent that electric membership corporation had constructed and operated its power line in other than a skillful manner in accordance with the best and most modern methods, it was not liable for inductive interference with use of telephone lines erected and in use many years prior to installation of rural electric power system. *Hale v. Farmers Elec. Membership Corp.*, 1940-NMSC-009, 44 N.M. 131, 99 P.2d 454 (decided under former law).

62-15-33. Conversion of corporations organized under Laws 1937, Chapter 100, into cooperatives under the Rural Electric Cooperative Act, as amended.

A corporation created under Laws 1937, Chapter 100 shall be converted into a cooperative authorized to do business and entitled to all privileges and immunities of a cooperative under the Rural Electric Cooperative Act, as amended, being Laws 1939, Chapter 47, as amended, upon the adoption of a resolution to such effect by its board of directors.

History: 1953 Comp., § 45-4-33, enacted by Laws 1967, ch. 102, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1939, ch. 47, § 34, repealed Laws 1937, ch. 100.

62-15-34. Renewable portfolio standard.

A. Except as provided in Subsection E of this section, each distribution cooperative organized under the Rural Electric Cooperative Act shall meet the renewable portfolio standard requirements, as provided in this section, to include renewable energy in its electric energy supply portfolio as demonstrated by its retirement of renewable energy certificates. Requirements and targets of the renewable portfolio standard are as follows:

(1) no later than January 1, 2015, renewable energy shall comprise no less than five percent of each distribution cooperative's total retail sales to New Mexico customers;

(2) the renewable portfolio standard shall increase by one percent per year thereafter until January 1, 2020, at which time the renewable portfolio standard shall be ten percent of the distribution cooperative's total retail sales to New Mexico customers;

(3) a distribution cooperative shall have the following targets and requirements for renewable energy and zero carbon resources as a percentage of the distribution cooperative's total retail sales in New Mexico:

(a) a requirement of forty percent renewable energy by January 1, 2025;

(b) a requirement of fifty percent renewable energy by January 1, 2030; and

(c) a target of achieving the zero carbon resource standard by January 1, 2050, composed of at least eighty percent renewable energy; provided that: 1) achieving the target is technically feasible; 2) the rural electric cooperative is able to provide reliable electric service while implementing the target; and 3) implementing the target shall not cause electric service to become unaffordable; and

(4) renewable energy resources that are in a distribution cooperative's energy supply portfolio on January 1, 2008 shall be counted in determining compliance with this section.

B. By April 30 of each year, a distribution cooperative shall file with the public regulation commission a report on its purchases and generation of renewable energy during the preceding calendar year. The report shall include the cost of the renewable energy resources purchased and generated by the distribution cooperative to meet the renewable portfolio standard, an explanation of steps taken to minimize those costs, including competitive procurement and comparison of the price of electricity from renewable energy resources in the bids received by the distribution cooperative to recent prices for such electricity elsewhere in the southwestern United States, and an annual compliance plan for meeting the renewable portfolio standard for the following three years.

C. If, in any given year, a distribution cooperative determines that the average annual levelized cost of renewable energy that would need to be procured or generated for purposes of compliance with the renewable portfolio standard would be greater than sixty dollars ($60.00) per megawatt-hour at the point of interconnection of the renewable energy resource with the transmission system, adjusted for inflation after 2020, the distribution cooperative shall not be required to incur that excess cost; provided that the existence of this condition excusing performance in any given year shall not operate to delay compliance with the renewable portfolio standard in subsequent years. The provisions of this subsection do not preclude a distribution cooperative from accepting a project with a cost that would exceed sixty dollars ($60.00) per megawatt-hour.

D. A distribution cooperative shall report to its membership a summary of its purchases and generation of renewable energy during the preceding calendar year.

E. A distribution cooperative organized pursuant to the Rural Electric Cooperative Act shall meet the requirements and targets of the renewable portfolio standard pursuant to Subsection A of this section as demonstrated by the cooperative's retirement of renewable energy certificates associated with energy assigned to the cooperative; provided that a generation and transmission cooperative referred to in Section 62-6-4 NMSA 1978 shall be responsible for meeting the requirements and targets for all energy supplied to the distribution cooperatives in New Mexico. Energy from renewable energy and zero carbon resources that a generation and transmission cooperative supplies in compliance with the requirements and targets shall be verified at the point where the generation and transmission cooperative produces or takes delivery of the energy on behalf of the distribution cooperatives that the generation and transmission cooperative is serving.

History: Laws 2007, ch. 4, § 1; 2014, ch. 24, § 1; 2014, ch. 25, § 1; 2019, ch. 65, § 26.

ANNOTATIONS

Cross references. — For the public regulation commission, *see* 8-8-3 NMSA 1978.

The 2019 amendment, effective June 14, 2019, established new targets and requirements regarding New Mexico's renewable energy standard applicable to rural

electric cooperatives, removed the requirement that renewable resources be diversified, required that renewable energy comprise forty percent of each cooperative's load by the year 2025, fifty percent by the year 2030, and a target of achieving the zero carbon resource standard by the year 2050, changed a general renewable energy exemption based on cost to a more specific $60/MWh at the generator average cost limit, required rural electric cooperatives to meet the renewable portfolio standard requirements, and provided for verification of energy from renewable and zero carbon resources; in Subsection A, added "Except as provided in Subsection E of this section", after "electric energy supply portfolio", added "as demonstrated by its retirement of renewable energy certificates", after "Requirements", added "and targets", and after "renewable portfolio standard are", added "as follows", and in Paragraph A(3), deleted language requiring the renewable portfolio standard of each distribution cooperative be diversified, and completely rewrote the paragraph; deleted former Subsection B, which provided an exemption based on the cost of renewable energy, and redesignated former Subsection C as Subsection B; in Subsection B, after "renewable portfolio standard", added the remainder of the subsection; and added new Subsections C and E.

The 2014 amendment, effective March 6, 2014, changed the reporting date on purchases and generation of renewable energy for distribution cooperatives; in Subsection A, in Paragraph (3), after "availability", deleted "and"; and in Subsection C, in the first sentence, after "By", changed "March 1" to "April 30".

62-15-35. Renewable energy certificates; commission duties.

The public regulation commission shall establish:

A. a system of renewable energy certificates that can be used by a distribution cooperative to establish compliance with the renewable portfolio standard and that may include certificates that are monitored, accounted for or transferred by or through a regional system or trading program for any region in which a rural electric cooperative is located. The kilowatt-hour value of renewable energy certificates may be varied by renewable energy resource or technology; provided that:

(1) each renewable energy certificate shall have a minimum value of one kilowatt-hour for purposes of compliance with the renewable portfolio standard;

(2) three thousand four hundred twelve British thermal units of useful thermal energy is equivalent to one kilowatt hour for purposes of compliance with the renewable portfolio standard; and

(3) the following equation shall be used to calculate the annual renewable energy certificate value for a geothermal heat pump system: (coefficient of performance of heat pump unit – 1) X (ton rating of heat pump unit/.9) = number of megawatt-hours of renewable energy certificates; and

B. requirements and procedures concerning renewable energy certificates that include the provisions that:

(1) renewable energy certificates:

(a) are owned by the generator of the renewable energy unless: 1) the renewable energy certificates are transferred to the purchaser of the energy through specific agreement with the generator; 2) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the distribution cooperative purchaser of the renewable energy unless retained by the generator through specific agreement with the distribution cooperative purchaser of the energy; 3) a contract for the purchase of renewable energy is in effect prior to January 1, 2004, in which case the renewable energy certificates are owned by the purchaser of the energy for the term of such contract; or 4) the generator is a community solar facility, excluding a native community solar project, as those terms are defined in the Community Solar Act [62-16B-1 to 62-16B-8 NMSA 1978], in which case the renewable energy certificates are owned by the distribution cooperative to whose electric distribution system the community solar facility is interconnected;

(b) may be traded, sold or otherwise transferred by their owner to any other party; provided that the transfers and use of the certificate by a distribution cooperative for compliance with the renewable energy portfolio standard shall require the electric or useful thermal energy represented by the certificate to be contracted for delivery or consumed, or generated by an end-use customer of the distribution cooperative in New Mexico unless the commission determines that the distribution cooperative is participating in a national or regional market for exchanging renewable energy certificates;

(c) that are used for the purpose of meeting the renewable portfolio standard shall be registered, beginning January 1, 2008, with a renewable energy generation information system that is designed to create and track ownership of renewable energy certificates and that, through the use of independently audited generation data, verifies the generation and delivery of electricity or useful thermal energy associated with each renewable energy certificate and protects against multiple counting of the same renewable energy certificate;

(d) that are used once by a distribution cooperative to satisfy the renewable portfolio standard and are retired or that are traded, sold or otherwise transferred by the distribution cooperative shall not be further used by the distribution cooperative; and

(e) that are not used by a distribution cooperative to satisfy the renewable portfolio standard or that are not traded, sold or otherwise transferred by the distribution cooperative may be carried forward for up to four years from the date of issuance and, if not used by that time, shall be retired by the distribution cooperative; and

(2) a distribution cooperative shall be responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources and has not been retired, traded, sold or otherwise transferred to another party.

History: Laws 2007, ch. 4, § 2; 2015, ch. 64, § 1; 2015, ch. 71, § 1; 2021, ch. 34, § 9.

ANNOTATIONS

Cross references. — For the public regulation commission, *see* 8-8-3 NMSA 1978.

For the federal Public Utility Regulatory Policies Act of 1978, *see* 16 U.S.C. §§ 2601 to 2645.

The 2021 amendment, effective June 18, 2021, provided that renewable energy certificates are owned by the distribution cooperative to whose electric distribution system the community solar facility is interconnected when the generator of renewable energy is a community solar facility and provided an exception for native community solar projects; and in Subsection B, added Item B(1)(a)4).

The 2015 amendment, effective July 1, 2015, allowed renewable energy certificates to be issued for the use of thermal energy produced by geothermal energy sources and set standards for measurement of thermal energy and geothermal heat pumps; in Subsection A, after "provided that", designated the remainder of the subsection as Paragraph (1) of Subsection A; added Paragraphs (2) and (3) of Subsection A; in Paragraph (1)(b) of Subsection B, after "require the electric", added "or useful thermal"; and in Paragraph (1)(c) of Subsection B, after "delivery of electricity", added "or useful thermal energy".

Laws 2015, ch. 64, § 1 and Laws 2015, ch. 71, § 1, both effective July 1, 2015, enacted identical amendments to this section. The section was set out as amended by Laws 2015, ch. 71, § 1. *See* 12-1-8 NMSA 1978.

62-15-36. Renewable energy and conservation fee.

A. A distribution cooperative may collect from its customers a renewable energy and conservation fee of no more than one percent of the customer's bill. In no event shall a distribution cooperative collect more than seventy-five thousand dollars ($75,000) annually through the renewable energy and conservation fee from any single customer. Money collected through the renewable energy and conservation fee shall be segregated in a separate renewable energy and conservation account from other distribution cooperative funds and shall be expended only on programs or projects to promote the use of renewable energy, load management or energy efficiency. A distribution cooperative that collects a renewable energy and conservation fee from its customers shall report to the public regulation commission by March 1 of the following year the following information:

(1) the amount of money collected through the renewable energy and conservation fee in the previous calendar year;

(2) the programs or projects on which the funds collected were expended; and

(3) the determination of the distribution cooperative as to whether and in what amount to assess a renewable energy and conservation fee in the next calendar year.

B. Each distribution cooperative that collects a renewable energy and conservation fee from its customers shall deduct from the fees paid to the state pursuant to Section 62-8-8 NMSA 1978 an amount equal to fifty percent of the amount of money collected through the renewable energy and conservation fee during the preceding calendar year. The money shall be included in the account with other money from the renewable energy and conservation fee and expended only on programs or projects to promote the use of renewable energy, load management or energy efficiency.

History: Laws 2007, ch. 4, § 3.

ANNOTATIONS

Effective date. — Laws 2007, ch. 4, § 15 made Laws 2007, ch. 4, § 3 effective July 1, 2007.

62-15-37. Definitions; energy efficiency; renewable energy.

As used in the Rural Electric Cooperative Act:

A. "energy efficiency" means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices to result in a decrease in consumption of electricity without reducing the amount or quality of energy services;

B. "renewable energy" means electric energy generated by use of renewable energy resources and delivered to a rural electric cooperative;

C. "renewable energy certificate" means a certificate or other record, in a format approved by the public regulation commission, that represents all the environmental attributes from one megawatt-hour of electricity generated from renewable energy;

D. "renewable energy resource" means electric or useful thermal energy:

(1) generated by use of the following energy resources, with or without energy storage and delivered to a rural electric cooperative:

(a) solar, wind and geothermal;

(b) hydropower facilities brought in service on or after July 1, 2007;

(c) other hydropower facilities supplying no greater than the amount of energy from hydropower facilities that were part of an energy supply portfolio prior to July 1, 2007;

(d) fuel cells that do not use fossil fuels to create electricity;

(e) biomass resources, limited to agriculture or animal waste, small diameter timber, not to exceed eight inches, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico; provided that these resources are from facilities certified by the energy, minerals and natural resources department to: 1) be of appropriate scale to have sustainable feedstock in the near vicinity; 2) have zero life cycle carbon emissions; and 3) meet scientifically determined restoration, sustainability and soil nutrient principles; and

(f) landfill gas and anaerobically digested waste biomass; and

(2) does not include electric energy generated by use of fossil fuel or nuclear energy;

E. "useful thermal energy" means renewable energy delivered from a source that can be metered and that is delivered in the state to an end user in the form of direct heat, steam or hot water or other thermal form that is used for heating, cooling, humidity control, process use or other valid end-use energy requirements and for which fossil fuel or electricity would otherwise be consumed;

F. "zero carbon resource" means an electricity generation resource that emits no carbon dioxide into the atmosphere, or that reduces methane emitted into the atmosphere in an amount equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere, as a result of electricity production; and

G. "zero carbon resource standard" means providing New Mexico rural electric cooperative retail customers with electricity generated from one hundred percent zero carbon resources.

History: Laws 2007, ch. 4, § 4; 2015, ch. 64, § 2; 2015, ch. 71, § 2; 2019, ch. 65, § 27.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, defined "renewable energy", "renewable energy certificate", "zero carbon resource" and "zero carbon resource standard", and revised the definition of "renewable energy resource" as used in the Rural Electric Cooperative Act; added new Subsections B and C and redesignated former Subsection B as Subsection D; in Subsection D, in the introductory clause, after "renewable energy", added "resource", in Paragraph D(1), after "generated by use of",

deleted "low- or zero-emissions generation technology with substantial long-term production potential; and", redesignated former Paragraph B(3) as Paragraph D(2), and deleted "generated by use of renewable" and added "the following", after "energy resources", deleted "that may include" and added "with or without energy storage and delivered to a rural electric cooperative", in Subparagraph D(1)(a), after "geothermal", deleted "resources", in Subparagraph D(1)(b), after "service", added "on or", and added new Subparagraph D(1)(c) and redesignated former Subparagraphs B(2)(c) and B(2)(d) as Subparagraphs D(1)(d) and D(1)(e), respectively; in Subparagraph D(1)(d), after "fuel cells that", deleted "are" and added "do", after "not", added "use", and after "fossil", deleted "fueled" and added "fuels to create electricity", in Subparagraph D(1)(e), after "biomass resources", deleted "such as" and added "limited to", after "diameter timber", added "not to exceed eight inches", and after "New Mexico;", added the remainder of the subparagraph, and in Subparagraph D(1)(f), deleted "but" and added "and"; and added Subsections F and G.

The 2015 amendment, effective July 1, 2015, added "useful thermal energy" to the definitions of the Rural Electric Cooperative Act; in Subsection A, after "energy services", deleted "and"; in Subsection B, after "electric", added "or useful thermal"; in Paragraph (3) of Subsection B, after "nuclear energy", added "and"; and added Subsection C.

ARTICLE 16
Renewable Energy Act

62-16-1. Short title.

Chapter 62, Article 16 NMSA 1978 may be cited as the "Renewable Energy Act".

History: Laws 2004, ch. 65, § 1; 2007, ch. 4, § 5.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, changed the reference from "this act" to Chapter 62, Article 16 NMSA 1978.

62-16-2. Findings and purposes.

A. The legislature finds that:

(1) the generation of electricity through the use of renewable energy presents opportunities to promote energy self-sufficiency, preserve the state's natural resources and pursue an improved environment in New Mexico;

(2) the use of renewable energy by public utilities subject to commission oversight in accordance with the Renewable Energy Act can bring significant economic benefits to New Mexico;

(3) public utilities should be required to include prescribed amounts of renewable energy in their electric energy supply portfolios for sales to retail customers in New Mexico by prescribed dates;

(4) public utilities should be able to recover their reasonable costs incurred to procure or generate energy from renewable energy resources used to meet the requirements of the Renewable Energy Act;

(5) a public utility should have incentives to go beyond the minimum requirements of the renewable portfolio standard;

(6) public utilities should not be required to acquire energy generated from renewable energy resources that could result in costs above a reasonable cost threshold; and

(7) it may serve the public interest for public utilities to participate in national or regional renewable energy trading.

B. The purposes of the Renewable Energy Act are to:

(1) prescribe the amounts of renewable energy resources that public utilities shall include in their electric energy supply portfolios for sales to retail customers in New Mexico by prescribed dates;

(2) allow public utilities to recover costs through the rate-making process incurred for procuring or generating renewable energy used to comply with the prescribed amount; and

(3) protect public utilities and their ratepayers from renewable energy costs that are above a reasonable cost threshold.

History: Laws 2004, ch. 65, § 2; 2007, ch. 4, § 6.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, added Paragraphs (5) and (7) of Subsection A.

62-16-3. Definitions.

As used in the Renewable Energy Act:

A. "commission" means the public regulation commission;

B. "energy storage" means batteries or other means by which energy can be retained and delivered as electricity for use at a later time;

C. "municipality" means a municipal corporation, organized under the laws of the state, and H class counties;

D. "public utility" means an entity certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] but does not include rural electric cooperatives;

E. "reasonable cost threshold" means an average annual levelized cost of sixty dollars ($60.00) per megawatt-hour at the point of interconnection of the renewable energy resource with the transmission system, adjusted for inflation after 2020;

F. "renewable energy" means electric energy generated by use of renewable energy resources and delivered to a public utility;

G. "renewable energy certificate" means a certificate or other record, in a format approved by the commission, that represents all the environmental attributes from one megawatt-hour of electricity generated from renewable energy;

H. "renewable energy resource" means the following energy resources, with or without energy storage:

(1) solar, wind and geothermal;

(2) hydropower facilities brought in service on or after July 1, 2007;

(3) biomass resources, limited to agriculture or animal waste, small diameter timber, not to exceed eight inches, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico; provided that these resources are from facilities certified by the energy, minerals and natural resources department to:

(a) be of appropriate scale to have sustainable feedstock in the near vicinity;

(b) have zero life cycle carbon emissions; and

(c) meet scientifically determined restoration, sustainability and soil nutrient principles;

(4) fuel cells that do not use fossil fuels to create electricity; and

(5) landfill gas and anaerobically digested waste biogas;

I. "renewable portfolio standard" means the minimum percentage of retail sales of electricity by a public utility to electric consumers in New Mexico that is required by the Renewable Energy Act to be from renewable energy;

J. "renewable purchased power agreement" means an agreement that binds an entity generating power from renewable energy resources to provide power at a specified price and binds the purchaser to that price;

K. "zero carbon resource" means an electricity generation resource that emits no carbon dioxide into the atmosphere, or that reduces methane emitted into the atmosphere in an amount equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere, as a result of electricity production; and

L. "zero carbon resource standard" means providing New Mexico public utility customers with electricity generated from one hundred percent zero carbon resources.

History: Laws 2004, ch. 65, § 3; 2007, ch. 4, § 7; 2019, ch. 65, § 28.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, defined "energy storage", "renewable energy resource", "zero carbon resource" and "zero carbon resource standard", and revised the definitions of certain terms as used in the Renewable Energy Act; added a new Subsection B and redesignated former Subsections B through F as Subsections C through G, respectively; in Subsection E, after "cost threshold means", deleted "the cost established by the commission, above which a public utility shall not be required to add renewable energy to its electric energy supply portfolio pursuant to the renewable portfolio standard" and added the remainder of the subsection; in Subsection F, after "'renewable energy' means electric energy", deleted Subparagraphs F(1) through F(3) and added "and delivered to a public utility"; in Subsection G, after "attributes from one", deleted "kilowatt-hour" and added "megawatt-hour", after "electricity", deleted "generation" and added "generated", and after "renewable energy", deleted "resource"; added new Subsection H and redesignated former Subsections G and H as Subsections I and J; in Subsection I, after "'renewable portfolio standard' means the", added "minimum", after "retail sales", added "of electricity", and after "Renewable Energy Act to be", deleted "supplied by" and added "from"; in Subsection J, after "price and binds", deleted "a public utility to purchase the power at" and added "the purchaser to"; and added Subsections K and L.

The 2007 amendment, effective July 1, 2007, added Subsection B to define "municipality"; changed former Subsections B through D to Subsections C through E; added Subparagraph (b) of Paragraph (2) of Subsection E to include hydropower facilities brought in service after July 1, 2007; added Subsection F to define "renewal energy certificate"; changed former Subsection E to Subsection G; and added Subsection H to define "renewable purchased power agreement".

62-16-4. Renewable portfolio standard.

A. A public utility shall meet the renewable portfolio standard requirements, as provided in this section, to include renewable energy in its electric energy supply portfolio as demonstrated by its retirement of renewable energy certificates; provided that the associated renewable energy is delivered to the public utility and assigned to the public utility's New Mexico customers. For public utilities other than rural electric cooperatives and municipalities, requirements of the renewable portfolio standard are:

(1) no later than January 1, 2015, renewable energy shall comprise no less than fifteen percent of each public utility's total retail sales to New Mexico customers;

(2) no later than January 1, 2020, renewable energy shall comprise no less than twenty percent of each public utility's total retail sales to New Mexico customers;

(3) no later than January 1, 2025, renewable energy shall comprise no less than forty percent of each public utility's total retail sales of electricity to New Mexico customers;

(4) no later than January 1, 2030, renewable energy shall comprise no less than fifty percent of each public utility's total retail sales of electricity to New Mexico customers;

(5) no later than January 1, 2040, renewable energy resources shall supply no less than eighty percent of all retail sales of electricity in New Mexico; provided that compliance with this standard until December 31, 2047 shall not require the public utility to displace zero carbon resources in the utility's generation portfolio on the effective date of this 2019 act; and

(6) no later than January 1, 2045, zero carbon resources shall supply one hundred percent of all retail sales of electricity in New Mexico. Reasonable and consistent progress shall be made over time toward this requirement.

B. In administering the standards required by Paragraphs (5) and (6) of Subsection A of this section, the commission shall:

(1) not jeopardize the operation of a sewage treatment facility that captures and combusts methane gas in the facility's operations;

(2) maintain and protect the safety, reliable operation and balancing of loads and resources on the electric system;

(3) prevent unreasonable impacts to customer electricity bills, taking into consideration the economic and environmental costs and benefits of renewable energy resources and zero carbon resources;

(4) prevent carbon dioxide emitting electricity-generating resources from being reassigned, redesignated or sold as a means of complying with the standard;

(5) in consultation with the energy, minerals and natural resources department, undertake programs not prohibited by law to achieve the standard;

(6) in consultation with the department of environment, ensure that the standard does not result in material increases to greenhouse gas emissions from entities not subject to commission oversight and regulation; and

(7) in consultation with electricity transmission system operators responsible for balancing New Mexico electricity loads and resources, issue a report to the legislature by July 1, 2020, and each July 1 every four years thereafter. The report shall include:

(a) review of the standard, with a focus on technologies, forecasts, existing transmission, environmental protection, public safety, affordability and electricity transmission and distribution system reliability;

(b) evaluation of the anticipated financial costs and benefits to electric utilities in implementing the standard, including the impacts and benefits to customer electricity bills; and

(c) identification of the barriers to, and benefits of, achieving the standard.

C. Any customer that is a political subdivision of the state, or any educational institution designated in Article 12, Section 11 of the constitution of New Mexico with an enrollment of twenty thousand students or more during the fall semester on its main campus, with consumption exceeding twenty thousand megawatt-hours per year at any single location or facility and that owns facilities that produce renewable energy or hosts such facilities through a renewable purchased power agreement, shall not be charged by the utility for power purchases of one year or less or fuel on the amount of electricity purchased from the utility equal to the amount of renewable energy produced or hosted by the customer. The customer shall annually certify to the state auditor and notify the commission and the customer's serving electric utility of the amount of renewable energy produced at the customer-owned or customer-hosted facilities that generate renewable energy. The customer shall also certify to the state auditor and notify the commission that the customer will retire all renewable energy certificates associated with the renewable energy produced by those facilities. Any financial benefits as a result of the provisions of this subsection shall accrue to the customer immediately upon the effective date of this 2019 act and shall be reflected in customer bills each month, subject to annual true-up and reconciliation. The provisions of this subsection shall not prevent the utility from recovering all of its reasonable and prudent fuel and purchased power costs.

D. Upon a motion or application by a public utility the commission shall, or upon a motion or application by any other person the commission may, open a docket to develop and provide financial or other incentives to encourage public utilities to produce or acquire renewable energy that exceeds the applicable annual renewable portfolio standard set forth in this section; results in reductions in carbon dioxide emissions earlier than required by Subsection A of this section; or causes a reduction in the generation of electricity by coal-fired generating facilities, including coal-fired generating facilities located outside of New Mexico. The incentives may include additional earnings and capital investment opportunities for resources used in furtherance of the outcomes described in this subsection.

E. If, in any given year, a public utility determines that the average annual levelized cost of renewable energy that would need to be procured or generated for purposes of compliance with the renewable portfolio standard would be greater than the reasonable cost threshold, the public utility shall not be required to incur that excess cost; provided that the existence of this condition excusing performance in any given year shall not operate to delay compliance with the renewable portfolio standard in subsequent years. The provisions of this subsection do not preclude a public utility from accepting a project with a cost that would exceed the reasonable cost threshold. When a public utility can generate or procure renewable energy at or below the reasonable cost threshold, it shall be required to do so to the extent necessary to meet the applicable renewable portfolio standard and shall not be precluded from exceeding the standard.

F. By September 1, 2007 and until June 30, 2019, a public utility shall file a report to the commission on its procurement and generation of renewable energy during the prior calendar year and a procurement plan that includes:

(1) the cost of procurement for any new renewable energy resource in the next calendar year required to comply with the renewable portfolio standard; and

(2) testimony and exhibits that demonstrate that the proposed procurement is reasonable as to its terms and conditions considering price, availability, reliability, any renewable energy certificate values and diversity of the renewable energy resource; or

(3) demonstration that the plan is otherwise in the public interest.

G. By July 1, 2020, and each July 1 thereafter, a public utility shall file a report to the commission on the public utility's procurement and generation of renewable energy since the last report and a procurement plan that includes:

(1) the cost of procurement for new renewable energy required to comply with the renewable portfolio standard;

(2) the capital, operating and fuel costs on a per-megawatt-hour basis during the preceding calendar year of each nonrenewable generation resource rate-based by the utility, or dedicated to the utility through a power purchase agreement of one year or

longer, and the nonrenewable generation resources' carbon dioxide emissions on a per-megawatt-hour basis during that same year;

(3) information, including exhibits, as applicable, that demonstrates that the proposed procurement:

(a) was the result of competitive procurement that included opportunities for bidders to propose purchased power, facility self-build or facility build-transfer options;

(b) has a cost that is reasonable as evidenced by a comparison of the price of electricity from renewable energy resources in the bids received by the public utility to recent prices for comparable energy resources elsewhere in the southwestern United States; and

(c) is in the public interest, considering factors such as overall cost and economic development opportunities; and

(4) strategies used to minimize costs of renewable energy integration, including location, diversity, balancing area activity, demand-side management and load management.

H. The commission shall approve or modify a public utility's procurement plan within ninety days and may approve the plan without a hearing, unless a protest is filed that demonstrates to the commission's reasonable satisfaction that a hearing is necessary. The commission may modify a plan after notice and hearing. The commission may, for good cause, extend the time to approve a procurement plan for an additional ninety days. If the commission does not act within the ninety-day period, the procurement plan is deemed approved.

I. The commission may reject a procurement plan if, within forty days of filing, the commission finds that the plan does not contain the required information and, upon the rejection, shall provide the public utility the time necessary to file a revised plan; provided that the total amount of renewable energy required to be procured by the public utility shall not change.

History: Laws 2004, ch. 65, § 4; 2007, ch. 4, § 8; 2011, ch. 93, § 1; 2014, ch. 41, § 1; 2019, ch. 65, § 29.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, required that public utilities demonstrate compliance with the renewable portfolio standard requirements by their retirement of renewable energy certificates, expanded the renewable energy standard to require forty percent renewable energy by the year 2025, fifty percent by the year 2030, eighty percent by the year 2040, and one hundred percent emission free by the year 2045, provided additional duties for the public regulation commission in

administering new standards, expanded the application of certain provisions to educational institutions with an enrollment of twenty thousand students or more, expanded a directive to the public regulation commission to provide incentives to public utilities to exceed the law's renewable requirements, and provided additional reporting requirements for public utilities; in Subsection A, added "as demonstrated by its retirement of renewable energy certificates; provided that the associated renewable energy is delivered to the public utility and assigned to the public utility's New Mexico customers. For public utilities other than rural electric cooperatives and municipalities", deleted Paragraph A(1) and Subparagraphs A(1)(a) and A(1)(b) and redesignated former Subparagraphs A(1)(c) and A(1)(d) as Paragraphs A(1) and A(2), respectively, deleted former Paragraph A(2) and added new Paragraphs A(3) through A(6); added a new Subsection B and redesignated former Paragraph A(3) as Subsection C, Paragraph A(5) as Subsection D, and former Subsection B as Subsection E, respectively; in Subsection C, after "with an enrollment of", deleted "twenty-four" and added "twenty", after "consumption exceeding twenty", deleted the remaining language of former Paragraph A(3), deleted Paragraph A(4) and added the remainder of the subsection; in Subsection D, after "Upon a", deleted "commission", after "shall", added "or upon a motion or application by any other person the commission may", after "docket to", added "develop and", after "provide", deleted "appropriate performance-based", after "public utilities to", added "produce or", and deleted "The commission shall initiate rules by June 1, 2008 to implement this subsection; and", deleted former Paragraph A(6) and added the remainder of the subsection; in Subsection E, after "determines that the", added "average annual levelized", after "shall not operate to delay", deleted "the annual increases in" and added "compliance with", added "The provisions of this subsection do not preclude a public utility from accepting a project with a cost that would exceed the reasonable cost threshold.", after "required to", deleted "add renewable energy resources" and added "do so to the extent necessary", and after "applicable renewable portfolio standard", deleted "applicable in the year when the renewable energy resources are being added"; deleted former Subsection C and redesignated former Subsection D as Subsection F; in Subsection F, deleted "and July 1 of each year thereafter until 2022, and thereafter as determined necessary by the commission" and added "and until June 30, 2019", in Paragraph F(2), after "availability", deleted "dispatchability" and added "reliability"; added a new Subsection G and redesignated former Subsections E and F as Subsections H and I, respectively; in Subsection H, after "modify a public utility's", deleted "procurement or transitional"; in Subsection I, after "may reject a", deleted "procurement or transitional", after "procurement plan if", added "within forty days of filing, the commission", after "upon the rejection", deleted "may suspend the public utility's obligation to procure additional resources for" and added "shall provide the public utility", and after "total amount of renewable energy", added "required"; and deleted former Subsections G and H.

The 2014 amendment, effective May 21, 2014, exempted certain state educational institutions from charges for renewable energy procurements; and in Subsection A, in Paragraph (3), after "political subdivision of the state", added "or any educational institution designated in Article 12, Section 11 of the constitution of New Mexico, with an

enrollment of twenty-four thousand students or more during the fall semester on its campus".

The 2011 amendment, effective June 17, 2011, added Paragraph (3) of Subsection A to exempt certain political subdivisions from all charges by public utilities for renewable energy procurements if the political subdivision certifies that it will expend two and one-half percent of annual electricity charges to develop renewable energy generation.

The 2007 amendment, effective July 1, 2007, added Paragraph (1) of Subsection A, which added requirements for public utilities other than rural electric cooperatives and municipalities; deleted former Paragraph (2) of Subsection A, which provided that the renewable portfolio standard shall increase by one percent per year until January 1, 2011 when the renewal portfolio standard will remain fixed at ten percent per year; added Subparagraphs (b) through (d) of Paragraph (1) of Subsection A; added Paragraph (4) of Subsection A; in Subsection D, changed the date from September 1 of each year until 2012 to September 1, 2007 and July 1 of each year thereafter until 2022; changed the content of the report from purchases to procurement and generation; in Subsection E, changed all time periods from sixty days to ninety days; and added Subsection H.

Public Regulation Commission did not err in denying financial incentive application. — Where appellant requested a financial incentive in its application for approval of its 2022 Annual Renewable Energy Act Plan, proposing to retire enough renewable energy certificates in 2022, 2023, and 2024 to meet 2025's forty percent standard in each of those years, and where the public regulation commission (PRC) denied appellant's financial incentive request, finding that appellant failed to meet the threshold statutory requirement to qualify for an incentive by failing to introduce any evidence of any firm plans to acquire or produce any additional renewable energy as required by 62-16-4(D) NMSA 1978, the PRC did not err in denying the financial incentive request, because the plain language of 62-16-4(D) NMSA 1978 conditions the award of an incentive on a proposal to produce or acquire renewable energy, and appellant admitted at the hearing on its application that its incentive proposal did not include a specific plan to produce or acquire any additional renewable energy or renewable energy resources. *S.W. Pub. Serv. Co. v. N.M. Pub. Regul. Comm'n*, 2024-NMSC-012.

Appellant failed to meet its burden to show that the public regulation commission's order adopting amended rule was unreasonable or unlawful. — In response to 2019 amendments to the Renewable Energy Act (REA), 62-16-1 to 62-16-10 NMSA 1978, the public regulation commission (PRC) developed and approved amendments to Rule 572, including adding provisions that govern the availability of financial incentives to encourage public utilities to produce or acquire renewable energy in order to further the outcomes of 62-16-4 NMSA 1978, and following the PRC's adoption of the amendments, appellant challenged the PRC's adoption of the amended rule, arguing that various provisions of the amended rule exceed the scope of the REA, were arbitrary and capricious, and were void for vagueness, the New Mexico supreme

court dismissed appellant's challenges because the amended provisions were a reasonable exercise of the PRC's overarching duties under the Public Utility Act, appellant's claims were not supported by substantial evidence in the record, the PRC complied with due process when, in its notice of proposed rulemaking, it included a draft of the proposed rule and requested comments, and appellant failed to show that the challenged provisions of the amended rule were impermissibly vague in all of their applications. *S.W. Pub. Serv. Co. v. N.M. Pub. Regul. Comm'n*, 2024-NMSC-012.

Recovery of large customer cap costs. — The public regulation commission has discretion to determine whether renewable energy procurement reductions are necessary when large customer cap costs arise, and this section does not bar the allocation of large customer cap costs to customers who are not subject to a legislatively imposed limit on their renewable energy costs. *N.M. Att'y. Gen. v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-032.

Where the public regulation commission (PRC) approved utility's renewable energy cost rider which sought to recover $22 million of renewable energy procurement costs from customers who are not subject to a legislatively imposed limit on their renewable energy costs (non-capped customers), the PRC properly allocated large customer cap costs to non-capped customers to enable the utility to recover its reasonable renewable energy procurement costs; such a recovery mechanism is the only viable method of cost recovery that is consistent with the purposes of the Renewable Energy Act, 62-16-1 through 62-16-10 NMSA 1978. *N.M. Att'y. Gen. v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-032.

62-16-5. Renewable energy certificates; commission duties.

A. The commission shall establish:

(1) a system of renewable energy certificates that can be used by a public utility to establish compliance with the renewable portfolio standard and that may include certificates that are monitored, accounted for or transferred by or through a regional system or trading program for any region in which a public utility is located; and

(2) requirements and procedures concerning requirements for renewable energy certificates pursuant to Subsections B and C of this section.

B. Renewable energy certificates:

(1) are owned by the generator of the renewable energy unless:

(a) the renewable energy certificates are transferred to the purchaser of the electricity through specific agreement with the generator;

(b) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the public utility purchaser of the renewable energy;

(c) a contract for the purchase of renewable energy is in effect prior to July 1, 2019, in which case the renewable energy certificates are owned by the purchaser of the electricity for the term of such contract, unless otherwise agreed to in a contract approved by the commission; or

(d) the generator is a community solar facility, excluding a native community solar project, as those terms are defined in the Community Solar Act [62-16B-1 to 62-16B-8 NMSA 1978], in which case the renewable energy certificates are owned by the public utility to whose electric distribution system the community solar facility is interconnected;

(2) may be traded, sold or otherwise transferred by their owner, unless the certificates are from a rate-based public utility plant, in which case the entirety of the renewable energy certificates from that plant shall be retired by the utility on behalf of itself or its customers. Any contract to purchase renewable energy entered into by a public utility on or after July 1, 2019 shall include conveyance to the purchasing utility of all renewable energy certificates, and the entirety of those certificates shall be retired by that utility on behalf of itself or its customers or subsequently transferred to a retail customer for retirement under a voluntary program for purchasing renewable energy approved by the commission. A utility shall not claim that it is providing renewable energy from generation resources for which it has traded, sold or transferred the associated renewable energy certificates. The commission shall not disallow the recovery of the cost associated with any expired renewable energy certificate. The public utility shall annually file a report with the commission discussing:

(a) its use, sale, trading or transfer of renewable energy certificates; and

(b) whether and how its public claims of renewable energy generation account for renewable energy certificates that it has traded, sold or transferred;

(3) that are used for the purpose of meeting the renewable portfolio standard shall be registered with a renewable energy generation information system that is designed to create and track ownership of renewable energy certificates and that, through the use of independently audited generation data, verifies the generation and delivery of electricity associated with each renewable energy certificate and protects against multiple counting of the same renewable energy certificate; and

(4) may be carried forward for up to four years from the date of issuance to establish compliance with the renewable portfolio standard, after which they shall be deemed retired by the public utility.

C. A public utility shall be responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources.

History: Laws 2004, ch. 65, § 5; 2007, ch. 4, § 9; 2019, ch. 65, § 30; 2021, ch. 34, § 10.

ANNOTATIONS

Cross references. — For the Federal Public Utility Regulatory Policies Act of 1978, *see* 16 U.S.C. §§ 2601 to 2645.

The 2021 amendment, effective June 18, 2021, provided that renewable energy certificates are owned by the public utility to whose electric distribution system the community solar facility is interconnected when the generator of renewable energy is a community solar facility and provided an exception for native community solar projects; and in Subsection B, added Subparagraph B(1)(d).

The 2019 amendment, effective June 14, 2019, prohibited the trading, selling, or transferring of renewable energy certificates from rate-based public utility plants, and provided additional duties and responsibilities for public utilities regarding the sale or transfer of renewable energy certificates; added new subsection designation "A" and redesignated former Subsections A and B as Paragraphs A(1) and A(2), respectively; in Subsection A, Paragraph A(1), after "in which a public utility is located", deleted the remainder of the paragraph, which related to the kilowatt-hour value of renewable energy certificates, and in Paragraph A(2), after "renewable energy certificates", deleted "that include the provisions that" and added "pursuant to Subsections B and C of this section"; redesignated former Paragraph B(1) as Subsection B, former Subparagraph B(1)(a) as Paragraph B(1), former Subparagraph B(1)(a)1) as Subparagraph B(1)(a), former Subparagraph B(1)(a)2) as Subparagraph B(1)(b), former Subparagraph B(1)(a)3) as Subparagraph B(1)(c), former Subparagraph B(1)(b) as Paragraph B(2), former Subparagraph B(1)(c) as Paragraph B(3), and former Paragraph B(2) as Subsection C; in Subsection B, Subparagraph B(1)(b), after "transferred to the purchase of the", deleted "energy" and added "electricity", in Subparagraph B(1(b), after "purchaser of the renewable energy", deleted "unless retained by the generator through specific agreement with the public utility purchaser of the energy", in Subparagraph B(1)(c), changed "January 1, 2004" to "July 1, 2019", and after "such contract", added "unless otherwise agreed to in a contract approved by the commission", in Paragraph B(2), after "transferred by their owner", deleted language related to the transfer of renewable energy certificates and added the remainder of the paragraph, in Paragraph B(3), after "shall be registered", deleted "beginning January 1, 2009", deleted former Subparagraphs B(1)(d) and B(1)(e) and added paragraph designation "(4)", in Paragraph B(4), after "date of issuance", deleted "and, if not used by that time" and added "to establish compliance with the renewable portfolio standard, after which they"; and in Subsection C, after "eligible renewable energy resources", deleted "and has not been retired, traded, sold or otherwise transferred to another party".

The 2007 amendment, effective July 1, 2007, added the provision in Subparagraph (b) of Paragraph (1) of Subsection B that the electric energy be consumed or generated by an end-use customer of the public utility; and added Subparagraph (c) of Paragraph (1) of Subsection B.

62-16-6. Recovery for renewable energy and emissions reduction.

A. A public utility that procures or generates renewable energy shall recover, through the rate-making process, the reasonable costs of complying with the renewable portfolio standard. Costs that are consistent with commission approval of procurement plans or transitional procurement plans shall be deemed to be reasonable.

B. The commission shall not exclude from such cost recovery reasonable interconnection and transmission costs and costs to comply with electric industry reliability standards incurred by the public utility in order to deliver renewable energy to retail New Mexico customers.

C. If a public utility has been granted a certificate of public convenience and necessity prior to January 1, 2015 to construct or operate an electric generation facility and the investment in that facility has been allowed recovery as part of the utility's rate-base, the commission may require the facility to discontinue serving customers within New Mexico if the replacement has less or zero carbon dioxide emissions into the atmosphere; provided that no order of the commission shall disallow recovery of any undepreciated investments or decommissioning costs associated with the facility.

History: Laws 2004, ch. 65, § 6; 2007, ch. 4, § 10; 2019, ch. 65, § 31.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, prohibited the public regulation commission from excluding reasonable costs of recovery and costs to comply with electric industry reliability standards that are incurred to deliver renewable energy, and authorized the public regulation commission to require certain electric generation facilities to discontinue serving customers in the state if a replacement has less or zero carbon dioxide emissions into the atmosphere; in the section heading, added "and emissions reduction"; in Subsection B, after "transmission costs", added "and costs to comply with electric industry reliability standards"; and completely rewrote Subsection C.

The 2007 amendment, effective July 1, 2007, added Subsection C.

Rate making process. — The rate-making process includes both general rate cases and automatic adjustment clause recovery, depending upon the type of cost involved. *N.M. Indus. Energy Consumers v. N.M. PRC*, 2007-NMSC-053, 142 N.M. 533, 168 P.3d 105.

Cost of investor-supplied prepaid pension asset may be included in utility's rate base. — A utility can include prepayments for pension expenses in its rate base because the utility is out-of-pocket for such costs until they are recovered from ratepayers and is therefore entitled to recover its costs of financing such prepaid expenses; only investor-supplied working capital may be included in the rate base. *N.M. Att'y. Gen. v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-032.

Where utility's investors made contributions to its pension fund which generated earnings that effectively reduced the utility's pension expense, and the investors, not the ratepayers, absorbed the cost of funding the pension program, the prepaid pension asset was properly included in the rate base because the asset amounted to working capital that benefitted the ratepayers by reducing the total pension costs needed in the utility's revenue requirement. *N.M. Att'y. Gen. v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-032.

62-16-7. Commission; powers and duties; voluntary programs.

A. The commission:

(1) shall adopt rules regarding the renewable portfolio standard, including a provision for public utility records and reports; and

(2) may require that a public utility offer its retail customers a voluntary program for purchasing renewable energy that is in addition to electricity provided by the public utility pursuant to the renewable portfolio standard, under rates and terms that are approved by the commission.

B. All renewable energy purchased by a retail customer through an approved voluntary program shall:

(1) have all associated renewable energy certificates retired by the retail customer, or on that customer's behalf, by the public utility, and the certificates shall not be used to meet the public utility's renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978;

(2) be excluded from the total retail sales to New Mexico customers used to determine the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978; and

(3) not be subject to charges by the public utility to recover costs of complying with the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978.

History: Laws 2004, ch. 65, § 7; 2019, ch. 65, § 32.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, removed the renewable portfolio standard exemption for all-requirements electric supply contracts, and required that all renewable energy certificates associated with voluntary renewable energy purchase programs be retired by the public utility, be excluded from the total retail sales to New Mexico customers, and not be subject to charges by the public utility; in the section heading, deleted "additional" and added "voluntary programs"; added new subsection designation "A" and redesignated former Subsections A and B as Paragraphs A(1) and A(2), respectively; deleted former Subsection C, which related to a renewable portfolio standard exemption, and added a new Subsection B.

62-16-8. Rural electric cooperative; voluntary tariffs.

A. The commission may require that a rural electric cooperative:

(1) offer its retail customers a voluntary program for purchasing renewable energy under rates and terms that are approved by the commission;

(2) report to the commission the demand for renewable energy pursuant to a voluntary program; and

(3) comply with the requirements for the procurement of renewable energy set forth in the Rural Electric Cooperative Act.

B. The commission shall establish and amend rules and regulations for the implementation of renewable portfolio standards consistent with the Rural Electric Cooperative Act.

History: Laws 2004, ch. 65, § 8; 2007, ch. 4, § 11; 2019, ch. 65, § 33.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, in Paragraph A(1), after "approved by the commission", deleted "but only to the extent that the cooperative's suppliers make renewable energy available under wholesale power contracts".

The 2007 amendment, effective July 1, 2007, added Paragraph (3) of Subsection A and added Subsection B.

62-16-9. Existing rules.

The commission shall promulgate rules to implement the provisions of the Renewable Energy Act.

History: Laws 2004, ch. 65, § 9; 2019, ch. 65, § 34.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, required the public regulation commission to promulgate rules to implement the provisions of the Renewable Energy Act; and after "shall", deleted "establish and amend" and added "promulgate", and after "rules", deleted "and regulations for the implementation of renewable portfolio standards consistent" and added "to implement the provisions of".

62-16-10. Federal requirements.

Renewable energy procured or generated by a public utility to comply with a federal law, rule or regulation may be used to satisfy the required procurements of the Renewable Energy Act.

History: Laws 2004, ch. 65, § 10; 2019, ch. 65, § 35.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, allowed a public utility to use renewable energy procured or generated to comply with a federal law, rule or regulation to be used to satisfy the procurement requirements of the Renewable Energy Act; and after "generated by a public utility to", deleted "meet" and added "comply with", and after "federal", deleted "renewable portfolio standard" and added "law, rule or regulation".

ARTICLE 16A
New Mexico Renewable Energy Transmission Authority Act

62-16A-1. Short title.

Chapter 62, Article 16A NMSA 1978 may be cited as the "New Mexico Renewable Energy Transmission Authority Act".

History: Laws 2007, ch. 3, § 1; 2011, ch. 33, § 1.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, changed the statutory reference to the act to the chapter and article in the NMSA 1978.

62-16A-2. Definitions.

As used in the New Mexico Renewable Energy Transmission Authority Act:

A. "acquire" means to obtain eligible facilities by lease, construction, reconstruction or purchase;

B. "authority" means the New Mexico renewable energy transmission authority;

C. "bonds" means renewable energy transmission bonds and includes notes, warrants, bonds, temporary bonds and anticipation notes issued by the authority;

D. "eligible facilities" means facilities to be financed or acquired by the authority, in which, within one year after beginning the transmission or storage of any electricity, and thereafter, at least thirty percent of the electric energy, as estimated by the authority, originates from renewable energy sources;

E. "facilities" means electric transmission and interconnected storage facilities and all related structures, properties and supporting infrastructure, including any interests therein;

F. "finance" or "financing" means the lending of bond proceeds by the authority to a public utility or other private person for the purpose of planning, acquiring, operating and maintaining eligible facilities in whole or in part by that public utility or other private person;

G. "project" means an undertaking by the authority to finance or plan, acquire, maintain and operate eligible facilities located in part or in whole within the state of New Mexico;

H. "public utility" means a public electric utility regulated by the public regulation commission pursuant to the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] and municipal utilities exempt from public regulation commission regulation pursuant to Section 62-6-4 NMSA 1978 that own or operate facilities;

I. "renewable energy" means electric energy:

(1) generated by use of low- or zero-emissions generation technology with substantial long-term production potential; and

(2) generated by use of renewable energy resources that may include:

(a) solar, wind, hydropower and geothermal resources;

(b) fuel cells that are not fossil fueled; or

(c) biomass resources, such as agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas and anaerobically digested waste biomass; but

(3) does not include electric energy generated by use of fossil fuel or nuclear energy; and

J. "storage" means energy storage technologies that convert, store and return electricity to help alleviate disparities between electricity supply and demand, to facilitate the dispatching of electricity or to increase economic return on the sale of electricity.

History: Laws 2007, ch. 3, § 2.

ANNOTATIONS

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 2 effective July 1, 2007.

62-16A-3. New Mexico renewable energy transmission authority created; organization.

A. The "New Mexico renewable energy transmission authority" is created as a public body, politic and corporate, separate and apart from the state, constituting a governmental instrumentality for the performance of essential public functions.

B. The authority shall be composed of six members as follows:

(1) three members appointed by the governor with the advice and consent of the senate. The initial appointees shall be appointed for staggered terms of one, two and three years; thereafter, the members shall be appointed for three-year terms;

(2) the state treasurer or the state treasurer's designee;

(3) one member appointed by the speaker of the house of representatives who shall serve at the pleasure of the speaker of the house; and

(4) one member appointed by the president pro tempore of the senate who shall serve at the pleasure of the president pro tempore.

C. The qualifications of the members shall be as follows:

(1) one member appointed by the governor shall have expertise in financial matters involving the financing of major electrical transmission projects;

(2) the other four appointed members shall have:

(a) special knowledge of the public utility industry, as evidenced by college degrees or by experience, at least five years of which must be with the public utility industry; and

(b) knowledge of renewable energy development; and

(3) no member shall represent a person that owns or operates facilities.

D. The members initially appointed by the speaker of the house and the president pro tempore of the senate shall, by lot, determine one to have an initial term of two years and one to have an initial term of four years; thereafter, the appointments will be for staggered terms of four years.

E. In addition to the six voting members, the secretary of energy, minerals and natural resources shall serve as an ex-officio nonvoting member of the authority.

F. The governor shall designate an appointed member of the authority to serve as chair, and the authority may elect annually such other officers as it deems necessary.

G. The authority shall meet at the call of the chair or whenever four members shall so request in writing. A majority of members then serving constitutes a quorum for the transaction of business, but the affirmative vote of at least four members is necessary for any action to be taken by the authority.

H. The authority is not created or organized, and its operations are not conducted, for the purpose of making a profit, but it is expected to recover the costs of operating the authority. No part of the revenues or assets of the authority shall benefit or be distributable to its members, officers or other private persons. The members of the authority shall receive no compensation for their services, but the public members shall be reimbursed for actual and necessary expenses at the same rate and on the same basis as provided for public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

I. The authority is not subject to the supervision or control of any other board, bureau, department or agency of the state except as specifically provided in the New Mexico Renewable Energy Transmission Authority Act. No use of the terms "state agency" or "instrumentality" in any other law of the state shall be deemed to refer to the authority unless the authority is specifically referred to in the law.

J. The authority is a governmental instrumentality for purposes of the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978].

History: Laws 2007, ch. 3, § 3; 2011, ch. 51, § 4.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, decreased the number of members of the board from seven to six and removed the state investment officer as a member of the authority.

62-16A-4. Authority; duties and powers.

A. The authority shall:

(1) do any and all things necessary or proper to accomplish the purposes of the New Mexico Renewable Energy Transmission Authority Act;

(2) hire an executive director and such other employees or other agents as it deems necessary for the performance of its powers and duties, including consultants, financial advisors and legal advisors, and prescribe the powers and duties and fix the compensation of the employees and agents. The executive director of the authority shall direct the affairs and business of the authority, subject to the policies, control and direction of the authority; and

(3) maintain such records and accounts of revenues and expenditures as required by the state auditor. The state auditor or the state auditor's designee shall conduct an annual financial and legal compliance audit of the accounts of the authority and file copies with the governor and the legislature.

B. The authority may:

(1) make and execute agreements, contracts and other instruments necessary or convenient in the exercise of its powers and functions with any person or governmental agency;

(2) enter into contractual agreements with respect to one or more projects upon the terms and conditions the authority considers advisable;

(3) utilize the services of executive departments of the state upon mutually agreeable terms and conditions;

(4) enter into partnerships with public or private entities;

(5) identify and establish corridors for the transmission of electricity within the state;

(6) through participation in appropriate regional transmission forums, coordinate, investigate, plan, prioritize and negotiate with entities within and outside the state for the establishment of interstate transmission corridors;

(7) pursuant to Subsection C of this section, finance or plan, acquire, maintain and operate eligible facilities necessary or useful for the accomplishment of the purposes of the New Mexico Renewable Energy Transmission Authority Act;

(8) pursuant to the provisions of the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978], exercise the power of eminent domain for acquiring property or rights of way for public use if needed for projects if such action does not involve taking utility property or does not materially diminish electric service reliability of the

transmission system in New Mexico, as determined by the public regulation commission;

(9) receive by gift, grant, donation or otherwise, any sum of money, aid or assistance from the United States, the state of New Mexico, any other state, any political subdivision or any other public or private entity;

(10) for any project, provide information and training to employees of the project regarding any unique hazards that may be posed by the project, as well as training in safety work practices and emergency procedures;

(11) issue bonds pursuant to the New Mexico Renewable Energy Transmission Authority Act as necessary to undertake a project;

(12) enter into contracts for the lease and operation by the authority of eligible facilities owned by a public utility or other private person;

(13) enter into contracts for leasing eligible facilities owned by the authority, provided that any revenue derived pursuant to the lease shall be deposited in the renewable energy transmission bonding fund;

(14) collect payments of reasonable rates, fees, interest or other charges from persons using eligible facilities to finance eligible facilities and for other services rendered by the authority, provided that any revenue derived from payments made to the authority shall be deposited in the renewable energy transmission bonding fund;

(15) borrow money necessary to carry out the purposes of the New Mexico Renewable Energy Transmission Authority Act and mortgage and pledge any leases, loans or contracts executed and delivered by the authority;

(16) sue and be sued; and

(17) adopt such reasonable administrative and procedural rules as may be necessary or appropriate to carry out its powers and duties.

C. Except as provided in this subsection, the authority shall not enter into any project if public utilities or other private persons are performing the acts, are constructing or have constructed the facilities, or are providing the services contemplated by the authority, and are willing to provide funds for and own new infrastructure to meet an identified need and market. Before entering into a project, the following procedures shall be implemented:

(1) the authority shall provide to each public utility and the public regulation commission and publish one time in a newspaper of general circulation in New Mexico and one time in a newspaper in the area where the eligible facilities are contemplated and on a publicly accessible web page maintained by the authority, an initial notice

describing the project that the authority is contemplating, including a detailed description of the existing or anticipated renewable energy sources that justify the determination by the authority that the project facilities are eligible facilities. The description shall contain, at a minimum, the names of all persons that already are or will develop the renewable energy sources, all persons that will own the renewable energy sources and the peak output capacity, source type, location and anticipated connection date of the renewable energy sources;

(2) any person with an interest that may be affected by the proposed project shall have thirty days from the date of the last publication of the initial notice to challenge, in writing, the determination by the authority that the facilities are eligible facilities. If a challenge is received by the authority within the thirty days, the authority shall hold a public hearing no sooner than thirty days after receiving the challenge and after a minimum of two weeks notice in the same newspapers and web page in which the initial notice was given. Following the public hearing, the authority shall make a final determination of eligibility and give notice of the determination pursuant to Section 39-3-1.1 NMSA 1978. Any person or governmental entity participating in the hearing may appeal the final determination by filing a notice of appeal with the district court pursuant to Section 39-3-1.1 NMSA 1978;

(3) public utilities and other persons willing and able to provide money for, acquire, maintain and operate the eligible facilities described in the notice shall have the following time period to notify the authority of intention and ability to provide money for, acquire, maintain and operate the eligible facilities described in the notice:

(a) within ninety days of the date of the last publication of the initial notice if no challenge is received pursuant to Paragraph (2) of this subsection; or

(b) within ninety days of the date of the notice of determination if a challenge is received pursuant to Paragraph (2) of this subsection; and

(4) in the absence of notification by a public utility or other person pursuant to Paragraph (3) of this subsection, or if a person, having given notice of intention to provide money for, acquire, maintain and operate the eligible facilities contemplated by the authority, fails to make a good faith effort to commence the same within twelve months from the date of notification by the authority of its intention, the authority may proceed to finance or plan, acquire, maintain and operate the eligible facilities originally contemplated, provided that a person that, within the time required, has made necessary applications to acquire federal, state, local or private permits, certificates or other approvals necessary to acquire the eligible facilities shall be deemed to have commenced the same as long as the person diligently pursues the permits, certificates or other approvals.

D. In soliciting and entering into contracts for the transmission or storage of electricity, the authority and any person leasing or operating eligible facilities financed or

acquired by the authority shall, if practical, give priority to those contracts that will transmit or store electricity to be sold and consumed in New Mexico.

E. The authority and any eligible facilities acquired by the authority are not subject to the supervision, regulation, control or jurisdiction of the public regulation commission; provided that nothing in this subsection shall be interpreted to allow a public utility to include the cost of using eligible facilities in its rate base without the approval of the public regulation commission.

F. In exercising its powers and duties, the authority shall not own or control facilities unless:

(1) the facilities are leased to or held for lease or sale to a public utility or such other person approved by the public regulation commission;

(2) the operation, maintenance and use of the facilities are vested by lease or other contract in a public utility or such other person approved by the public regulation commission;

(3) the facilities are owned or controlled for a period of not more than one hundred eighty days after termination of a lease or contract described in Paragraph (1) or (2) of this subsection or after the authority gains possession of the facilities following a breach of such a lease or contract or as a result of bankruptcy proceedings; or

(4) the facilities do not affect in-state retail rates or electric service reliability.

G. A public utility subject to regulation of the public regulation commission pursuant to the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] may recover the capital cost of a project undertaken pursuant to the New Mexico Renewable Energy Transmission Authority Act from its retail customers only if the project has received a certificate of public convenience and necessity from the public regulation commission. A municipal utility exempt from regulation of the public regulation commission may recover such costs only if the project has been approved by the governing body of the municipality. Costs associated with a project undertaken pursuant to the New Mexico Renewable Energy Transmission Authority Act are not recoverable from retail utility customers except to the extent the costs are prudently incurred and the project is used and useful in serving those customers as determined by the public regulation commission.

History: Laws 2007, ch. 3, § 4.

ANNOTATIONS

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 4 effective July 1, 2007.

62-16A-5. Renewable energy transmission bonds; appropriation of proceeds.

A. The authority is authorized to issue and sell revenue bonds, known as "renewable energy transmission bonds", payable solely from the renewable energy transmission bonding fund, in compliance with the New Mexico Renewable Energy Transmission Authority Act, for the purpose of entering into a project when the authority determines that the project is needed.

B. The net proceeds from the bonds are appropriated to the authority for the purpose of financing or acquiring eligible facilities.

History: Laws 2007, ch. 3, § 5.

ANNOTATIONS

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 5 effective July 1, 2007.

62-16A-6. Renewable energy transmission bonding fund created; money in the fund pledged.

A. The "renewable energy transmission bonding fund" is created in the authority. The fund shall consist of revenues received by the authority from operating or leasing eligible facilities, fees and service charges collected and, if the authority has provided financing for eligible facilities, money from payments of principal and interest on loans. The authority may create separate accounts within the fund in connection with any issuance of renewable energy transmission bonds and may deposit in such separate accounts revenues received by the authority derived from the financing or leasing of eligible facilities. Any such separate account shall be held by a trustee acting under a trust indenture relating to those bonds. Earnings of the fund or any separate account shall be credited to the fund or the applicable separate account. Balances in the fund at the end of any fiscal year shall remain in the fund, except as provided in this section.

B. Money in the fund shall be deposited in a bank designated by the authority in an account or accounts as the authority may establish. Money in accounts shall be withdrawn on the order of persons whom the authority may authorize. All deposits of money shall be secured in such manner as the authority may determine. The state auditor and the state auditor's legally authorized representatives shall periodically examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing. The authority shall pay a reasonable fee for the examination as determined by the state auditor.

C. Money in the renewable energy transmission bonding fund is pledged for the payment of principal and interest on bonds issued pursuant to the New Mexico Renewable Energy Transmission Authority Act. Money in any separate account may be pledged solely to payment of bonds for which the separate account was created. Money in the fund or any separate account is appropriated to the authority for the purpose of paying debt service, including redemption premiums, on the bonds and the expenses incurred in the issuance, payment and administration of the bonds.

D. On the last day of January and the last day of July of each year, the authority shall estimate the amount needed to make debt service and other payments during the next twelve months from the renewable energy transmission bonding fund or any separate account created in the bond fund on the bonds plus the amount that may be needed for any required reserves or other requirements as may be set forth in the trust indenture related to the bonds. The authority shall transfer to the renewable energy transmission authority operational fund any balance in the renewable energy transmission bonding fund or any separate account created in the bond fund above the estimated amounts. Payments for administrative costs shall be deposited in the renewable energy transmission authority operational fund.

E. Bonds issued pursuant to the New Mexico Renewable Energy Transmission Authority Act shall be payable solely from the renewable energy transmission bonding fund or from any separate account, created within the bond fund or, with the approval of the bondholders, such other special funds as may be provided by law and do not create an obligation or indebtedness of the state within the meaning of any constitutional provision. No breach of any contractual obligation incurred pursuant to that act shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state, and the bonds are not general obligations for which the state's full faith and credit is pledged.

F. The state does hereby pledge that the renewable energy transmission bonding fund, including any separate account within the fund, shall be used only for the purposes specified in this section and pledged first to pay the debt service on the bonds issued pursuant to the New Mexico Renewable Energy Transmission Authority Act. The state further pledges that any law requiring the deposit of revenues in the renewable energy transmission bonding fund or authorizing expenditures from the fund shall not be amended or repealed or otherwise modified so as to impair the bonds to which the renewable energy transmission bonding fund is dedicated as provided in this section.

History: Laws 2007, ch. 3, § 6; 2011, ch. 33, § 2.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, authorized the authority to create separate accounts, held by a trustee under a trust indenture, in connection with the issuance of bonds and to deposit revenues from eligible facilities into the accounts; added Subsection B to permit money in the fund to be deposited in a bank and to be

withdrawn by persons authorized by the authority; in Subsection C, limited the pledge of money in separate accounts to the bonds for which the account was created; and in Subsection D, required that payments for administrative costs be deposited in the operation fund.

62-16A-7. Authority to refund bonds.

The authority may issue and sell at public or private sale bonds to refund outstanding renewable energy transmission bonds by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding bonds, or any combination thereof, when, in its opinion, such action will be beneficial to the state.

History: Laws 2007, ch. 3, § 7.

ANNOTATIONS

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 7 effective July 1, 2007.

62-16A-8. Renewable energy transmission bonds; form; execution.

A. The authority, except as otherwise specifically provided in the New Mexico Renewable Energy Transmission Authority Act, shall determine at its discretion the terms, covenants and conditions of the bonds, including, but not limited to, date of issue, denominations, maturities, rate or rates of interest, call features, call premiums, registration, refundability and other covenants covering the general and technical aspects of the issuance of the bonds.

B. The bonds shall be in such form as the authority may determine, and successive issues shall be identified by alphabetical, numerical or other proper series designation.

C. Bonds shall be signed and attested by the executive director of the authority and shall be executed with the facsimile signature of the chair of the authority and the facsimile seal of the authority, except for bonds issued in book entry or similar form without the delivery of physical securities. Any interest coupons attached to the bonds shall bear the facsimile signature of the executive director of the authority, which officer, by the execution of the bonds, shall adopt as the executive director's own signature the facsimile thereof appearing on the coupons. Except for bonds issued in book entry or similar form without the delivery of physical securities, the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978] shall apply, and the authority shall determine the manual signature to be affixed on the bonds.

History: Laws 2007, ch. 3, § 8.

ANNOTATIONS

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 8 effective July 1, 2007.

62-16A-9. Procedure for sale of renewable energy transmission bonds.

A. Bonds shall be sold by the authority at such times and in such manner as the authority may elect, either at private sale for a negotiated price or to the highest bidder at public sale for cash at par, above par or below par and accrued interest.

B. In connection with any public sale of the bonds, the authority shall publish a notice of the time and place of sale in a newspaper of general circulation in the state and also in a recognized financial journal outside the state. The publication shall be made once each week for two consecutive weeks prior to the date fixed for such sale, the last publication to be two business days prior to the date of sale. The notice shall specify the amount, denomination, maturity and description of the bonds to be offered for sale and the place, day and hour at which sealed bids therefor shall be received. All bids, except those of the state, shall be accompanied by a deposit of two percent of the principal amount of the bonds. Deposits of unsuccessful bidders shall be returned upon rejection of the bid. At the time and place specified in such notice, the authority shall open the bids in public and shall award the bonds, or any part thereof, to the bidder or bidders offering the best price. The authority may reject any or all bids and readvertise.

C. The authority may sell a bond issue, or any part thereof, to the state or to one or more investment bankers or institutional investors at private sale.

History: Laws 2007, ch. 3, § 9; 2011, ch. 33, § 3.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, authorized bonds to be sold at par, above par, or below par.

62-16A-10. New Mexico renewable energy transmission authority act is full authority for issuance of bonds; bonds are legal investments.

A. The New Mexico Renewable Energy Transmission Authority Act is, without reference to any other act of the legislature, full authority for the issuance and sale of renewable energy transmission bonds, which bonds shall have all the qualities of investment securities under the Uniform Commercial Code [Chapter 55 NMSA 1978] and shall not be invalid for any irregularity or defect or be contestable in the hands of bona fide purchasers or holders thereof for value.

B. The bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money.

History: Laws 2007, ch. 3, § 10.

ANNOTATIONS

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 10 effective July 1, 2007.

62-16A-11. Suit may be brought to compel performance of officers.

Any holder of bonds or any person or officer being a party in interest may sue to enforce and compel the performance of the provisions of the New Mexico Renewable Energy Transmission Authority Act.

History: Laws 2007, ch. 3, § 11.

ANNOTATIONS

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 11 effective July 1, 2007.

62-16A-12. Renewable energy transmission bonds tax exempt.

All renewable energy transmission bonds are exempt from taxation by the state or any of its political subdivisions.

History: Laws 2007, ch. 3, § 12.

ANNOTATIONS

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 12 effective July 1, 2007.

62-16A-13. Renewable energy transmission authority operational fund.

The "renewable energy transmission authority operational fund" is created in the authority. The fund shall consist of money appropriated and transferred to the fund. Earnings from investment of the fund shall be credited to the fund. Money in the fund is appropriated to the authority for the purpose of carrying out the provisions of the New Mexico Renewable Energy Transmission Authority Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. The

authority is authorized to establish procedures required to administer the fund in accordance with the New Mexico Renewable Energy Transmission Authority Act and state law.

History: Laws 2007, ch. 3, § 13; 2011, ch. 33, § 4.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, eliminated the requirement that disbursement of funds be made on warrants drawn by the secretary of finance and administration, and authorized the authority to establish procedures to administer the fund.

62-16A-14. Report to legislature.

The authority shall submit a report of its activities to the governor and to the legislature not later than December 1 of each year. Each report shall set forth a complete operating and financial statement covering its operations for the previous fiscal year.

History: Laws 2007, ch. 3, § 14.

ANNOTATIONS

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 14 effective July 1, 2007.

62-16A-15. Legislative oversight.

A. In addition to its other duties, the New Mexico finance authority oversight committee [6-21-30 NMSA 1978] shall:

(1) monitor and oversee the operation of the authority;

(2) meet on a regular basis to receive and review reports from the authority on implementation of the provisions of the New Mexico Renewable Energy Transmission Authority Act and to review rules proposed for adoption pursuant to that act;

(3) review and provide assistance and advice to the authority before the authority enters into a project;

(4) undertake an ongoing examination of the statutes, constitutional provisions, regulations and court decisions governing energy transmission and renewable energy development; and

(5) report its findings and recommendations, including recommended legislation or necessary changes, to the governor, to the public regulation commission and to each session of the legislature. The report and proposed legislation shall be made available on or before December 15 of each year.

B. Once each calendar quarter, the authority shall report to the legislative finance committee on all expenditures made and activities conducted in the fiscal year to date pursuant to the provisions of the New Mexico Renewable Energy Transmission Authority Act.

History: Laws 2007, ch. 3, § 15.

ANNOTATIONS

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 15 effective July 1, 2007.

62-16A-16. Proprietary information.

Information obtained by the authority that is proprietary technical or business information shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978]. Proprietary confidential information includes power purchase agreements, costs of production, costs of transmission, transmission service agreements, credit reviews, detailed power models and financing statements.

History: Laws 2011, ch. 33, § 5.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 33, § 6 made Laws 2011, ch. 33, § 5 effective July 1, 2011.

ARTICLE 16B
Community Solar

62-16B-1. Short title.

Sections 1 through 9 [8] [62-16B-1 to 62-16B-8 NMSA 1978] of this act may be cited as the "Community Solar Act."

History: Laws 2021, ch. 34, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material "[8]", was inserted by the compiler to correct a typographical error and is not part of the law.

Effective dates. — Laws 2021, ch. 34 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

62-16B-2. Definitions.

As used in the Community Solar Act:

A. "commission" means the public regulation commission;

B. "community solar bill credit" means the credit value of the electricity generated by a community solar facility and allocated to a subscriber to offset the subscriber's electricity bill on the qualifying utility's monthly billing cycle as required by the Community Solar Act;

C. "community solar bill credit rate" means the dollar-per-kilowatt-hour rate determined by the commission that is used to calculate a subscriber's community solar bill credit;

D. "community solar facility" means a facility that generates electricity by means of a solar photovoltaic device, and subscribers to the facility receive a bill credit for the electricity generated in proportion to the subscriber's share of the facility's kilowatt-hour output;

E. "community solar program" or "program" means the program created through the adoption of rules by the commission that allows for the development of community solar facilities and provides customers of a qualifying utility with the option of accessing solar energy produced by a community solar facility in accordance with the Community Solar Act;

F. "Indian nation, tribe or pueblo" means a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico;

G. "low-income customer" means a residential customer of a qualifying utility with an annual household income at or below eighty percent of area median income, as published by the United States department of housing and urban development, or that is enrolled in a low-income program facilitated by the state or a low-income energy program led by the qualifying utility or as determined by the commission;

H. "low-income service organization" means an organization that provides services, assistance or housing to low-income customers and may include a local or central tribal government, a chapter house or a tribally designated housing entity;

I. "nameplate capacity" means the maximum rated output of electric power production equipment that is commonly indicated on a nameplate physically attached to the generator and expressed in megawatts alternating current;

J. "native community solar project" means a community solar facility that is sited in New Mexico on the land of an Indian nation, tribe or pueblo and that is owned or operated by a subscriber organization that is an Indian nation, tribe or pueblo or a tribal entity or in partnership with a third-party entity;

K. "qualifying utility" means an investor-owned electric public utility certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] or a rural electric distribution cooperative that has opted in to the community solar program;

L. "subscriber" means a retail customer of a qualifying utility that owns a subscription to a community solar facility and that is by rate class a residential retail customer or a small commercial retail customer or, regardless of rate class, is a nonprofit organization, a religious organization, an Indian nation, tribe or pueblo or tribal entity, a municipality or a county in the state, a charter, private or public school as defined in Section 22-1-2 NMSA 1978, a community college as defined in Section 21-13-2 NMSA 1978 or a public housing authority;

M. "subscriber organization" means an entity that owns or operates a community solar facility and may include a qualifying utility, a municipality, a county, a for-profit or nonprofit entity or organization, an Indian nation, tribe, or pueblo, a local tribal governance structure or other tribal entity authorized to transact business in New Mexico;

N. "subscription" means a contract for a community solar subscription entered into between a subscriber and a subscriber organization for a share of the nameplate capacity from a community solar facility;

O. "total aggregate retail rate" means the total amount of a qualifying utility's demand, energy and other charges converted to a kilowatt-hour rate, including fuel and power cost adjustments, the value of renewable energy attributes and other charges of a qualifying utility's effective rate schedule applicable to a given customer rate class, but does not include charges described on a qualifying utility's rate schedule as minimum monthly charges, including customer or service availability charges, energy efficiency program riders or other charges not related to a qualifying utility's power production, transmission or distribution functions, as approved by the commission, franchise fees and tax charges on utility bills;

P. "tribal entity" means an enterprise, a nonprofit entity or organization or a political subdivision formed under the inherent sovereignty of an Indian nation, tribe or pueblo; and

Q. "unsubscribed electricity" means electricity, measured in kilowatt-hours, generated by a community solar facility that is not allocated to a subscriber.

History: Laws 2021, ch. 34, § 2.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 34 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

62-16B-3. Community solar facility requirements.

A. A community solar facility shall:

(1) have a nameplate capacity rating of five megawatts alternating current or less;

(2) be located in the service territory of the qualifying utility and be interconnected to the electric distribution system of that qualifying utility;

(3) have at least ten subscribers;

(4) have the option to be co-located with other energy resources, but shall not be co-located with other community solar facilities;

(5) not allow a single subscriber to be allocated more than forty percent of the generating capacity of the facility; and

(6) make at least forty percent of the total generating capacity of a community solar facility available in subscriptions of twenty-five kilowatts or less.

B. The provisions of this section shall not apply to a native community solar project; provided that a native community solar project shall be located in the service territory of a qualifying utility and be interconnected to the electric distribution system of that qualifying utility.

History: Laws 2021, ch. 34, § 3.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 34 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

The public regulation commission's interpretation of statute's prohibition against the co-location of community solar facilities was reasonable and within the commission's policy-making authority. — In a consolidated appeal, where appellants and intervenors challenged a community solar rule that authorizes the public regulation commission to consider, on a case-by-case basis, allowing more than one community solar facility to be located on the same parcel of land, in violation of 62-16B-3(A)(4) NMSA 1978, the public regulation commission did not exceed its policy-making authority in adopting the rule, because the commission's exercise of its policy-making was reasonable in opting for a flexible approach to determining whether community solar facilities are co-located and in opting to consider on a case-by-case basis whether two or more facilities may be located on the same parcel without violating the prohibition against co-location. *Sw. Pub. Serv. Co. v. N.M. Pub. Regul. Comm'n*, 2025-NMSC-013.

62-16B-4. Ownership of community solar facilities.

A. A community solar facility shall be owned or operated by a subscriber organization.

B. Third-party entities or subscriber organizations developing projects on the land of an Indian nation, tribe, or pueblo are subject to tribal jurisdiction.

C. Notwithstanding any provision of the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] to the contrary, a person not otherwise a public utility shall not be deemed to be a public utility subject to the provisions of the Public Utility Act solely because the person owns, controls or operates all or any part of a community solar facility.

History: Laws 2021, ch. 34, § 4.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 34 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

62-16B-5. Subscription requirements.

A. A subscription shall be:

(1) sized to supply no more than one hundred percent of the subscriber's average annual electricity consumption; and

(2) transferable and portable within the qualifying utility service territory.

B. The provisions of this section shall not apply to a native community solar project; provided that subscriptions to a native community solar project shall be transferable and portable within the qualifying utility service territory.

History: Laws 2021, ch. 34, § 5.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 34 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

62-16B-6. Community solar program administration.

A. A qualifying utility shall:

(1) acquire the entire output of a community solar facility connected to its distribution system;

(2) apply community solar bill credits to subscriber bills within one billing cycle following the cycle during which the energy was generated by the community solar facility;

(3) provide community solar bill credits to a community solar facility's subscribers for not less than twenty-five years from the date the community solar facility is first interconnected;

(4) carry over any amount of a community solar bill credit that exceeds the subscriber's monthly bill and apply it to the subscriber's next monthly bill unless and until the subscriber cancels service with the qualifying utility; and

(5) on a monthly basis and in a standardized electronic format, provide to the subscriber organization a report indicating the total value of community solar bill credits generated by the community solar facility in the prior month as well as the amount of the community solar bill credits applied to each subscriber.

B. A subscriber organization shall, on a monthly basis and in a standardized electronic format, provide to the qualifying utility a list indicating the kilowatt-hours of generation attributable to each subscriber. Subscriber lists may be updated monthly to reflect canceling subscribers and to add new subscribers.

C. If a community solar facility is not fully subscribed in a given month, the unsubscribed energy may be rolled forward on the community solar facility account for up to one year from its month of generation and allocated by the subscriber organization to subscribers at any time during that period. At the end of that period, any undistributed bill credit shall be removed, and the unsubscribed energy shall be

purchased by the qualifying utility at its applicable avoided cost of energy rate as approved by the commission.

D. The environmental attributes, including renewable energy certificates, associated with a community solar facility shall be owned by the qualifying utility to whose electric distribution system the community solar facility is interconnected; provided that environmental attributes associated with a native community solar project shall be owned by the owner of the native community solar project.

E. Nothing in the Community Solar Act shall preclude an Indian nation, tribe or pueblo from using financial mechanisms other than subscription models, including virtual and aggregate net-metering, for native community solar projects.

History: Laws 2021, ch. 34, § 6.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 34 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

62-16B-7. Public regulation commission; enforcement and rulemaking.

A. The commission shall administer and enforce the rules and provisions of the Community Solar Act, including regulation of subscriber organizations in accordance with the Community Solar Act and oversight and review of the consumer protections established for the community solar program.

B. The commission shall adopt rules to establish a community solar program by no later than April 1, 2022. The rules shall:

(1) provide an initial statewide capacity program cap of two hundred megawatts alternating current proportionally allocated to investor-owned utilities until November 1, 2024. The statewide capacity program cap shall exclude native community solar projects and rural electric distribution cooperatives;

(2) establish an annual statewide capacity program cap to be in effect after November 1, 2024;

(3) require thirty percent of electricity produced from each community solar facility to be reserved for low-income customers and low-income service organizations. The commission shall issue guidelines to ensure the carve-out is achieved each year and develop a list of low-income service organizations and programs that may pre-qualify low-income customers;

(4) establish a process for the selection of community solar facility projects and allocation of the statewide capacity program cap, consistent with Section 13-1-21 NMSA 1978 regarding resident business, Native American resident business, resident veteran business and Native American resident veteran business preferences;

(5) require a qualifying utility to file the tariffs, agreement or forms necessary for implementation of the community solar program;

(6) establish reasonable, uniform, efficient and non-discriminatory standards, fees and processes for the interconnection of community solar facilities that are consistent with the commission's existing interconnection rules and interconnection manual that allows a qualifying utility to recover reasonable costs for administering the community solar program and interconnection costs for each community solar facility, such that a qualifying utility and its non-subscribing customers do not subsidize the costs attributable to the subscriber organization pursuant to this paragraph;

(7) provide consumer protections for subscribers, including a uniform disclosure form that identifies the information that shall be provided by a subscriber organization to a potential subscriber, in both English and Spanish, and when appropriate, native or indigenous languages, to ensure fair disclosure of future costs and benefits of subscriptions, key contract terms, security interests and other relevant but reasonable information pertaining to the subscription, as well as grievance and enforcement procedures;

(8) provide a community solar bill credit rate mechanism for subscribers derived from the qualifying utility's total aggregate retail rate on a per-customer-class basis, less the commission-approved distribution cost components, and identify all proposed rules, fees and charges; provided that non-subscribers shall not subsidize costs attributable to subscribers; and provided further that if the commission determines that it is in the public interest for non-subscribers to subsidize subscribers, non-subscribers shall not be charged more than three percent of the non-subscribers' aggregate retail rate on an annual basis to subsidize subscribers;

(9) reasonably allow for the creation, financing and accessibility of community solar facilities; and

(10) provide requirements for the siting and co-location of community solar facilities with other energy resources; provided that community solar facilities shall not be co-located with other community solar facilities.

C. The commission may through rule establish a reasonable application fee for subscriber organizations that is designed to cover a portion of the administrative costs of the commission in carrying out the community solar program. Application fees collected by the commission shall be remitted to the state treasurer no later than the day after their receipt.

D. The commission shall solicit input from relevant state agencies, public utilities, low-income stakeholders, disproportionately impacted communities, potential owners or operators of community solar facilities, Indian nations, tribes and pueblos and other interested parties in its rulemaking process.

E. By no later than November 1, 2024, the commission shall provide to the appropriate interim legislative committee a report on the status of the community solar program, including the development of community solar facilities, the participation of investor-owned utilities and rural electric distribution cooperatives, low-income participation, the adequacy of facility size, proposals for alternative rate structures and bill credit mechanisms, cross-subsidization issues, local developer project selection and expansion of the local solar industry, community solar facilities' effect on utility compliance with the renewable portfolio standard and an evaluation of the effectiveness of the commission's rules to implement the Community Solar Act and any recommended changes.

History: Laws 2021, ch. 34, § 7; 2022, ch. 6, § 4.

ANNOTATIONS

The 2022 amendment, effective July 1, 2022, amended an existing provision that required the public regulation commission to establish a process for the selection of community solar facility projects and allocation of the statewide capacity program cap regarding resident businesses and resident veteran businesses to include Native American resident businesses and Native American resident veteran businesses; and in Subsection B, Paragraph B(4), after "regarding resident business", added "Native American resident business", and after "resident veteran business", added "and Native American resident veteran business".

The public regulation commission's interpretation of rulemaking provision was reasonable, lawful, and within the scope of the policy-making authority delegated by the legislature under the Community Solar Act. — In a consolidated appeal, where appellants and intervenors challenged the community solar rule's prohibition against subtracting transmission costs from a utility's community solar bill-credit rate as an unlawful subsidy under the Community Solar Act, 62-16B-1 NMSA 1978 to 62-16B-8 NMSA 1978, the public regulation commission did not exceed its policy-making authority in adopting the rule , because prohibiting the subtraction of transmission costs from the bill-credit rate was a reasonable exercise of the policy-making authority delegated under the Act to the New Mexico public regulation commission. *Sw. Pub. Serv. Co. v. N.M. Pub. Regul. Comm'n*, 2025-NMSC-013.

The public regulation commission's interpretation of statute's provision allowing the sharing of interconnection costs was reasonable and within the commission's policy-making authority. — In a consolidated appeal, where appellants and intervenors challenged a community solar rule that authorizes the public regulation commission to determine on a case-by-case basis whether the cost of distribution

system upgrades necessary to interconnect one or more community solar facilities may be eligible for some form of cost-sharing among ratepayers, including both subscribers and non-subscribers, arguing that any sharing of interconnections costs with non-subscribers necessarily results in subsidization, in violation of 62-16B-7(B)(6) NMSA 1978, the public regulation commission did not exceed its policy-making authority in adopting the rule, because the commission's interpretation of the provision to allow cost sharing in appropriate circumstances is a reasonable balancing of the interests of the community solar facilities, subscribers, non-subscribers, and utilities, in accordance with the authority delegated under the Community Solar Act. *Sw. Pub. Serv. Co. v. N.M. Pub. Regul. Comm'n*, 2025-NMSC-013.

The public regulation commission's interpretation of statute's prohibition against the co-location of community solar facilities was reasonable and within the commission's policy-making authority. — In a consolidated appeal, where appellants and intervenors challenged a community solar rule which authorizes the public regulation commission to consider on a case-by-case basis allowing more than one community solar facility to be located on the same parcel of land, in violation of 62-16B-3(A)(4) NMSA 1978, the public regulation commission did not exceed its policy-making authority in adopting the rule, because the commission's exercise of its policy-making was reasonable in opting for a flexible approach to determining whether community solar facilities are co-located and opting to consider on a case-by-case basis whether two or more facilities may be located on the same parcel without violating the prohibition against co-location. *Sw. Pub. Serv. Co. v. N.M. Pub. Regul. Comm'n*, 2025-NMSC-013.

The public regulation commission's delegation of responsibility to a third-party administrator to oversee the selection process for community solar projects was not unreasonable or unlawful. — In a consolidated appeal, where appellants and intervenors challenged a community solar rule's delegation of responsibility to a third-party administrator for selection of proposed projects for building and operating community solar facilities, arguing that the wholesale delegation of all aspects of the selection of projects violates the Community Solar Act's mandate, which requires the public regulation commission (commission) to establish a process for the selection of community solar facility projects, the commission did not exceed its policy-making authority in adopting the rule, because the commission has broad authority to enter into contracts to carry out its powers and duties, and here, the commission carried out these duties by first prescribing a detailed selection process by rule and then engaging a third-party administrator to manage that process. *Sw. Pub. Serv. Co. v. N.M. Pub. Regul. Comm'n*, 2025-NMSC-013.

62-16B-8. Rural electric distribution cooperatives.

A rural electric distribution cooperative may opt in to the community solar program and provide interconnection and retail electric services to community solar developments on a per-project or system-wide basis within its service territory. The decision of a rural electric distribution cooperative to opt in to the community solar program shall be in the sole discretion of the cooperative's governing board.

History: Laws 2021, ch. 34, § 8.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 34 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

ARTICLE 17
Efficient Use of Energy

62-17-1. Short title.

Chapter 62, Article 17 NMSA 1978 may be cited as the "Efficient Use of Energy Act".

History: Laws 2005, ch. 341, § 1; 2007, ch. 4, § 12.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, changed the reference from "Sections 1 through 11 of this act" to "Chapter 62, Article 17 NMSA 1978".

62-17-2. Repealed.

History: Laws 2005, ch. 341, § 2; 2008, ch. 24, § 3; repealed by Laws 2019, ch. 202, § 4.

ANNOTATIONS

Repeals. — Laws 2019, ch. 202, § 4 repealed 62-17-2 NMSA 1978, as enacted by Laws 2005, ch. 341, § 2, relating to findings, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

62-17-3. Policy.

It is the policy of the Efficient Use of Energy Act that public utilities, distribution cooperative utilities and municipal utilities include all cost-effective energy efficiency and load management programs in their energy resource portfolios, that regulatory disincentives to public utility development of cost-effective energy efficiency and load management be removed in a manner that balances the public interest, consumers' interests and investors' interests and that the commission provide public utilities an opportunity to earn a profit on cost-effective energy efficiency and load management resources that, with satisfactory program performance, is financially more attractive to the utility than supply-side resources.

History: Laws 2005, ch. 341, § 3; 2008, ch. 24, § 4.

ANNOTATIONS

The 2008 amendment, effective May 14, 2008, provided that utilities may be permitted to earn a profit on cost-effective energy efficiency and load management resources that are financially more attractive than supply-side resources.

62-17-4. Definitions.

As used in the Efficient Use of Energy Act:

A. "achievable" means those energy efficiency or load management resources available to the utility using its best efforts;

B. "advanced conductor" means a conductor that has a direct current electrical resistance at least ten percent lower than existing conductors of a similar diameter while simultaneously increasing the energy carrying capacity by at least seventy-five percent;

C. "advanced grid technology" means hardware or software technology that increases the efficiency, capacity or reliability of existing or new electric transmission and distribution systems, facilities and equipment and includes advanced conductors, thermal ratings, grid enhancing technology and technology determined by the commission or the federal energy regulation commission to increase the efficiency, capacity or reliability of an existing or new transmission facility;

D. "advanced power flow controllers" means hardware or software technology used to push or pull electric power in a manner that balances overloaded lines and underused corridors within a distribution or transmission system;

E. "commission" means the public regulation commission;

F. "cost-effective" means that the energy efficiency or load management program meets the utility cost test;

G. "customer" means a utility customer at a single, contiguous field, location or facility, regardless of the number of meters at that field, location or facility;

H. "distribution cooperative utility" means a utility with distribution facilities organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978] or similarly organized in other states;

I. "dynamic line ratings" means hardware or software technology used to appropriately update the calculated thermal limits of existing distribution or transmission lines based on real-time and forecasted weather conditions;

J. "energy efficiency" means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices to result in a decrease in consumption of electricity and natural gas without reducing the amount or quality of energy services;

K. "grid enhancing technology" means hardware or software technology that reduces congestion or enhances the flexibility of electric transmission and distribution systems by increasing the capacity of a line or rerouting electricity from overloaded to uncongested lines while maintaining industry safety standards and includes dynamic line ratings, advanced power flow controllers and topology optimization;

L. "large customer" means a customer with electricity consumption greater than seven thousand megawatt-hours per year or natural gas use greater than three hundred sixty thousand decatherms per year;

M. "load management" means measures or programs that target equipment or devices to result in decreased peak electricity demand or shift demand from peak to off-peak periods;

N. "program costs" means the prudent and reasonable costs of developing and implementing energy efficiency and load management programs, but "program costs" does not include charges for incentives or the removal of regulatory disincentives;

O. "public utility" means a public utility that is not also a distribution cooperative utility;

P. "topology optimization" means hardware or software technology that identifies reconfigurations of the distribution or transmission grid and can enable the routing of power flows around congested or overloaded distribution or transmission elements; and

Q. "utility cost test" means a standard that is met if the monetary costs that are borne by the public utility and that are incurred to develop, acquire and operate energy efficiency or load management resources on a life-cycle basis are less than the avoided monetary costs associated with developing, acquiring and operating the associated supply-side resources.

History: Laws 2005, ch. 341, § 4; 2008, ch. 24, § 5; 2013, ch. 124, § 1; 2013, ch. 220, § 1; 2019, ch. 202, § 1; 2025, ch. 93, § 3.

ANNOTATIONS

The 2025 amendment, effective July 1, 2025, defined the terms "advanced conductor", "advanced grid technology", "advanced power flow controllers", "dynamic line ratings", "grid enhancing technology", and "topology optimization" as used in the Efficient Use of Energy Act; added new Subsections B through D and redesignated former Subsections B through E as Subsections E through H, respectively; added a new Subsection I and

redesignated former Subsection F as Subsection J; added new Subsection K and redesignated former Subsections G through J as Subsections L through O, respectively; and added a new Subsection P and redesignated former Subsection K as Subsection Q.

The 2019 amendment, effective June 14, 2019, revised the definition of "utility cost test" as used in the Efficient Use of Energy Act; and in Subsection K, deleted "In developing this test for energy efficiency and load management programs directed to low-income customers, the commission shall either quantify or assign a reasonable value to reductions in working capital, reduced collection costs, lower bad debt expense, improved customer service effectiveness and other appropriate factors as utility system economic benefits."

The 2013 amendment, effective July 1, 2013, defined "program costs"; in Subsection C, after "program meets the", deleted "total resource" and added "utility"; added Subsection I; and in Subsection K, in the first sentence, at the beginning of the sentence, deleted "total resource" and added "utility", after "borne by the", added "public", and after "public utility", deleted "and the participants".

The 2008 amendment, effective May 14, 2008, added Subsections A and D and provided in Subsection J that the total resource cost test is met if the cost of energy efficiency or load management resources is less than the avoided costs of supply-side resources and that in developing programs directed to low-income customers, the commission shall qualify or assign a reasonable value to reductions of monetary and other factors as utility system economic benefits.

62-17-5. Commission approval; energy efficiency and load management programs; disincentives.

A. Pursuant to the findings and purpose of the Efficient Use of Energy Act, the commission shall consider public utility acquisition of cost-effective energy efficiency and load management resources to be in the public interest.

B. The commission shall direct public utilities to evaluate and implement cost-effective programs that reduce energy demand and consumption.

C. Before the commission approves an energy efficiency and load management program for a public utility, it shall find that the portfolio of programs is cost-effective and designed to provide every affected customer class with the opportunity to participate and benefit economically. The commission shall determine the cost-effectiveness of energy efficiency and load management measures using the utility cost test. In determining life-cycle costs and benefits of energy efficiency programs, the commission shall not adjust for taxes when selecting a discount rate. In determining life-cycle costs and benefits for energy efficiency and load management programs directed to low-income customers, the commission shall either quantify or assign a reasonable value to:

(1) reductions in working capital;

(2) reduced collection costs;

(3) lower bad-debt expense;

(4) improved customer service effectiveness; and

(5) other appropriate factors as utility system economic benefits.

D. The commission shall act expeditiously on public utility requests for approval of energy efficiency or load management programs.

E. Public utilities shall obtain commission approval of energy efficiency and load management programs before they are implemented. Public utilities proposing new energy efficiency and load management programs shall, before seeking commission approval, solicit nonbinding recommendations on the design, implementation and use of third-party energy service contractors through competitive bidding on the programs from commission staff, the attorney general, the energy, minerals and natural resources department and other interested parties. The commission may for good cause require public utilities to solicit competitive bids for energy efficiency and load management resources.

F. The commission shall:

(1) upon petition or its own motion, identify and remove regulatory disincentives or barriers for public utility expenditures on energy efficiency and load management measures in a manner that balances the public interest, consumers' interests and investors' interests;

(2) upon petition by a public utility, remove regulatory disincentives through the adoption of a rate adjustment mechanism that ensures that the revenue per customer approved by the commission in a general rate case proceeding is recovered by the public utility without regard to the quantity of electricity or natural gas actually sold by the public utility subsequent to the date the rate took effect. Regulatory disincentives removed through a rate adjustment mechanism shall be separately calculated for the rate class or classes to which the mechanism applies and collected or refunded by the utility through a separately identified tariff rider that shall not be used to collect commission-approved energy efficiency and load management program costs and incentives;

(3) provide public utilities an opportunity to earn a profit on cost-effective energy efficiency and load management resource development that, with satisfactory program performance, is financially more attractive to the utility than supply-side utility resources; and

(4) not reduce a utility's return on equity based on approval of a disincentive removal mechanism or profit incentives pursuant to the Efficient Use of Energy Act.

G. Public utilities providing electricity and natural gas service to New Mexico customers shall, subject to commission approval, acquire the cost-effective and achievable energy efficiency and load management resources available in their service territories. This requirement, however, for public utilities providing electricity service, shall not be less than savings of five percent of 2020 total retail kilowatt-hour sales to New Mexico customer classes that have the opportunity to participate in calendar year 2025 as a result of energy efficiency and load management programs implemented in years 2021 through 2025. No later than June 30, 2025, the commission shall adopt, through rulemaking, energy savings targets for electric utilities for years 2026 through 2030 based on cost-effective and achievable energy savings and provide utility incentives based on savings achieved.

H. A public utility that determines it cannot achieve the minimum requirements established in Subsection G of this section shall report to the commission on why it cannot meet those requirements and shall propose alternative requirements based on acquiring cost-effective and achievable energy efficiency and load management resources. If the commission determines, after hearing, that the minimum requirements of Subsection G of this section exceed the achievable amount of energy efficiency and load management available to the public utility or that the program costs of energy efficiency and load management to achieve the minimum requirements of Subsection G of this section exceed the program costs funding established in Subsection A of Section 62-17-6 NMSA 1978, the commission shall establish lower minimum energy savings requirements for the utility based on the maximum amount of energy efficiency and load management that it determines can be achieved.

History: Laws 2005, ch. 341, § 5; 2007, ch. 4, § 13; 2008, ch. 24, § 6; 2013, ch. 124, § 2; 2013, ch. 220, § 2; 2019, ch. 202, § 2; 2020, ch. 17, § 1.

ANNOTATIONS

The 2020 amendment, effective May 20, 2020, clarified that a rate adjustment mechanism may be adopted to ensure that revenue per customer in a rate case remains constant without regard to the quantity of either electricity or natural gas sold; and in Subsection F, Paragraph F(2), after "quantity of electricity", added "or natural gas".

The 2019 amendment, effective June 14, 2019, prohibited the commission from adjusting the discount rate for taxes when considering the life-cycle costs and benefits of energy and efficiency and load management programs; in Subsection C, added "In determining life-cycle costs and benefits of energy efficiency programs, the commission shall not adjust for taxes when selecting a discount rate. In determining life-cycle costs and benefits for energy efficiency and load management programs directed to low-income customers, the commission shall either quantify or assign a reasonable value

to", and added Paragraphs C(1) through C(5); in Subsection F, added new paragraph designation "(1)", in Paragraph F(1), after "identify", added "and remove", after "load management measures", deleted "and ensure that they are removed", and after "investors' interests", deleted "The commission shall also", added Paragraph F(2), new paragraph designation "(3)" and Paragraph F(4); and in Subsection G, after "five percent of", deleted "2005" and added "2020", after "sales to New Mexico", deleted "customers" and added "customer classes that have the opportunity to participate", after "calendar year", deleted "2014 and eight percent of 2005 total retail kilowatt-hour sales to New Mexico customers in 2020" and added "2025", and after "programs implemented", deleted "starting in 2007" and added "in years 2021 through 2025. No later than June 30, 2025, the commission shall adopt, through rulemaking, energy savings targets for electric utilities for years 2026 through 2030 based on cost-effective and achievable energy savings and provide utility incentives based on savings achieved".

The 2013 amendment, effective July 1, 2013, required public utilities to acquire available cost-effective and achievable energy efficiency and load management resources; in Subsection C, in the second sentence, after "measures using the", deleted "total resource" and added "utility"; in Subsection E, in the third sentence, after "for good cause require", added "public"; in Subsection G, in the second sentence, after "calendar year 2014 and" deleted "ten" and added "eight"; and in Subsection H, in the first sentence, after "A", added "public", and in the second sentence, after "load management available to the", added "public" and after "public utility", added "or that the program costs of energy efficiency and load management to achieve the minimum requirements of Subsection G of this section exceed the program costs funding established in Subsection A of Section 62-17-6 NMSA 1978".

The 2008 amendment, effective May 14, 2008, authorized the commission to require competitive bids for procurement of energy efficiency and load management resources in Subsection E; required the commission to provide utilities an opportunity to earn a profit on cost-effective energy efficiency and load management resources that are more financially attractive than supply-side resources in Subsection F; and added Subsections G and H.

The 2007 amendment, effective July 1, 2007, in Subsection F, added the provision that the commission shall act upon petition or its own motion to open a docket; changed "load management" to "load management measures"; added the requirement that if disincentives or barriers are found that an appropriate rate making treatment and performance-based, financial or other incentives be considered; and adds Subsection G.

The plain language of the Efficient Use of Energy Act provides for a full revenue decoupling mechanism. — Where, in 2020, a public electric utility filed a petition requesting the public regulation commission's approve a shared cost of service rider applicable to its residential and small commercial classes and which contained a full revenue decoupling mechanism ensuring that the revenue approved in the utility's 2015

general rate case would be recovered by the utility without regard to the quantity of electricity sold, and where several parties intervened in the proceedings and objected to the proposed rider on various grounds, including on the grounds that the rider was not related to removing regulatory disincentives to the utility's expenditures in energy efficiency and load management, and where, following a request by the utility for a stay of proceedings on its petition and a declaratory judgment on the meaning of 62-17-5(F)(2) NMSA 1978 of the Efficient Use of Energy Act (EUEA), 62-17-1 to 62-17-11 NMSA 1978, and where a hearing examiner determined that the EUEA did not compel the commission to approve a full revenue decoupling mechanism but that a partial revenue decoupling mechanism was consistent with the stated purpose of removing regulatory disincentives, the commission erred in approving and adopting the hearing examiner's decision, because the plain language of the EUEA demonstrates that the legislature expressed an intent to permit a utility to petition for a full revenue decoupling mechanism that will remove regulatory disincentives or barriers to utility expenditures in energy efficiency and load management in a manner that balances the public interest, consumers' interests, and investors' interests. *Coalition for Clean Affordable Energy v. N.M. Pub. Regul. Comm'n*, 2024-NMSC-016.

Expenses incurred for energy efficiency programs. — In determining public utility electricity rates, the public regulation commission has authority to consider expenses incurred by a public utility for energy efficiency programs and to permit public utilities to earn returns on the operating expenses incurred from energy efficiency programs. *N.M. Atty. Gen. v. N.M. Pub. Regulation Comm'n*, 2013-NMSC-042.

Where the public regulation commission approved the utility's adder rates to allow the utility to earn a profit on expenditures on energy efficiency and load management measures by using an operating ratio approach, rather than the traditional return-on-rate-base method, the commission did not exceed the scope of its authority because the commission has discretion to determine the appropriate method to apply in establishing just and reasonable utility rates and the authority to allow utilities to earn a profit on energy efficiency and load management resource development that is not tied to capital investments. *N.M. Atty. Gen. v. N.M. Pub. Regulation Comm'n*, 2013-NMSC-042.

Just and reasonable rates. — Rates created under the Efficient Use of Energy Act must be determined by the same ratemaking principles that apply to determine just and reasonable rates under the Public Utility Act, Sections 62-3-1 NMSA 1978 et seq. *N.M. Att'y Gen. v. N.M. Pub. Regulation Comm'n*, 2011-NMSC-034, 150 N.M. 174, 258 P.3d 453.

Where the public regulation commission issued a rule that permitted utilities to recover an adder rate for kilo-watt hours saved and reduced from annual demand due to energy efficiency programs; and the commission determined that the adder rate did not need to be cost-based, did not inquire into the utilities' revenue requirements or other traditional elements of the ratemaking process, and the utilities presented evidence only on the impact that the rule would have, because the adder rates were not evidence-based, cost-based or utility specific, there was no lawful basis for determining that the adder

rates were just and reasonable. *N.M. Att'y General v. N.M. Pub. Regulation Comm'n*, 2011-NMSC-034, 150 N.M. 174, 258 P.3d 453.

Substantial evidence supported final order. — Where the public regulation commission had approved the utility's adder rates for expenditures on energy efficiency and load management measures in a case decided under regulations that the supreme court subsequently vacated; the prior case was never appealed; the commission docketed the present case to determine whether the adder rates approved in the prior case were consistent with the supreme court ruling; and the commission relied on the factual findings in the prior case to support its determination that the adder rates were consistent with the supreme court ruling, the final order in the present case was supported by substantial evidence and the commission reasonably relied on the record in the prior case to support its determination because the present case involved a legal issue, not a ratemaking decision, the case did not depend upon any redetermination of facts adjudicated in the prior case, and the commission was required to review the record in the prior case in order to perform a legal review of the prior order. *N.M. Att'y. Gen. v. N.M. Pub. Regulation Comm'n*, 2013-NMSC-042.

62-17-6. Cost recovery.

A. A public utility that undertakes cost-effective energy efficiency and load management programs shall have the option of recovering its prudent and reasonable costs along with commission-approved incentives for demand-side resources and load management programs implemented after the effective date of the Efficient Use of Energy Act through an approved tariff rider or in base rates, or by a combination of the two. Program costs and incentives may be deferred for future recovery through creation of a regulatory asset. Funding for program costs shall be as follows:

(1) for investor-owned electric utilities, no less than three percent and no more than five percent of customer bills, excluding gross receipts taxes and franchise and right-of-way access fees, or seventy-five thousand dollars ($75,000) per customer per calendar year, whichever is less, for customer classes with the opportunity to participate; and

(2) for gas utilities, no more than five percent of total annual revenues or seventy-five thousand dollars ($75,000) per customer per calendar year.

B. Provided that the public utility's total portfolio of programs remains cost-effective, no less than five percent of the amount received by the public utility for program costs shall be specifically directed to energy-efficiency programs for low-income customers.

C. Unless otherwise ordered by the commission, a tariff rider approved by the commission shall:

(1) require language on customer bills explaining program benefits; and

(2) be applied on a monthly basis.

D. A tariff rider proposed by a public utility to fund approved energy efficiency and load management programs shall go into effect thirty days after filing, unless suspended by the commission for a period not to exceed one hundred eighty days. If the tariff rider is not approved or suspended within thirty days after filing, it shall be deemed approved as a matter of law. If the commission has not acted to approve or disapprove the tariff rider by the end of an ordered suspension period, it shall be deemed approved as a matter of law. The commission shall approve utility reconciliations of the tariff rider annually.

History: Laws 2005, ch. 341, § 6; 2007, ch. 4, § 14; 2008, ch. 24, § 7; 2013, ch. 124, § 3; 2013, ch. 220, § 3; 2019, ch. 202, §.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, revised cost recovery percentages; in Subsection A, after "Funding for program costs", deleted "for investor-owned electric utilities", and after "shall be", deleted "three" and added "as follows", added paragraph designations "(1)" and "(2)", in Paragraph A(1), added "for investor-owned electric utilities, no less than three percent and no more than five", after "opportunity to participate", deleted "Funding for annual program costs", in Paragraph A(2), after "gas utilities", deleted "shall not exceed three" and added "no more than five", after "total annual revenues", deleted "nor shall charges exceed" and added "or"; added new subsection designations "B" and "C", and redesignated former Subsection C as Subsection D; and in Subsection C, added paragraph designations "(1)" and "(2)", in Paragraph C(1), after "benefits; and", deleted "The tariff rider shall", and in Paragraph C(2), after "monthly basis", deleted "unless otherwise allowed by the commission".

The 2013 amendment, effective July 1, 2013, limited public utility cost recovery options; and in Subsection A, deleted the former third sentence, which provided for a limit of seventy-five thousand dollars per year to the tariff rider and the customer impact for utility customers and added the third, fourth and fifth sentences.

The 2008 amendment, effective May 14, 2008, in Subsection A, permitted a utility to recover costs and incentives for demand-side resources and load management resources through a tariff rider or base rates, or both and deletes the prohibition of cross subsidies of energy efficiency and load management activities and supply side activities.

The 2007 amendment, effective July 1, 2007, in Subsection A, changed the limitation that the tariff rider not exceed the lower of one and one-half percent to the limitation that the tariff rider not exceed the commission’s approved tariff.

62-17-7. Alternative energy efficiency provider.

With a public utility's consent, the commission may allow for an alternative entity to provide ratepayer-funded energy efficiency and load management to customers of that public utility.

History: Laws 2005, ch. 341, § 7.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 341, § 13 made Laws 2005, ch. 341, § 7 effective April 7, 2005.

62-17-8. Measurement and verification.

A. A public utility shall submit to the commission an annual report that provides information relating to the actions taken by the public utility to comply with the standards of the Efficient Use of Energy Act. The report shall include documentation of program expenditures, customer participation levels, estimated energy savings, demand reductions and customer monetary savings resulting from programs, evaluation of the cost-effectiveness of expenditures, evaluation of the cost-effectiveness of self-directed programs, a qualitative assessment of program effectiveness and any other information the commission may require pursuant to its rulemaking authority.

B. At least every three years, a public utility shall submit to the commission a comprehensive measurement, verification and program evaluation report prepared by an independent program evaluator. In preparing the report, the independent program evaluator shall measure and verify energy and demand savings, determine cost-effectiveness of the programs, assess the performance of the public utility in implementing energy efficiency and load management programs and, as appropriate, provide recommendations on how program performance can be improved.

C. The commission may direct a public utility to modify or terminate a particular energy efficiency or load management program if, after an adequate period for implementation of the program, the commission determines the program is not sufficiently meeting its goals and purposes. Termination of a program or programs shall be accomplished in a manner that allows the utility to fully recover its reasonable and prudent program costs.

History: Laws 2005, ch. 341, § 8; 2008, ch. 24, § 8.

ANNOTATIONS

The 2008 amendment, effective May 14, 2008, in Subsection A, provided that the report shall include customer participation levels, estimated energy savings, demand reductions and customer savings and a qualitative assessment program and added Subsection B.

62-17-9. Self-directed programs for customers; exemptions.

A. A large customer shall receive approval for a credit for and equal to the expenditures that customer has made at its facilities on and after January 1, 2005 toward cost-effective energy efficiency and load management. To receive approval, the large customer must demonstrate to the reasonable satisfaction of the utility or self-direct program administrator that its expenditures are cost-effective. Once approved, the credit may be used to offset up to seventy percent of the tariff rider authorized by the Efficient Use of Energy Act until the credit is exhausted. Eligible expenditures shall have a simple payback period of more than one year but less than seven years. Projects that have received rebates, financial support or other substantial program support from a utility are not eligible for a credit.

B. A large customer shall receive approval for an exemption to paying seventy percent of the tariff rider if the customer demonstrates to the reasonable satisfaction of the utility or self-direct program administrator that it has exhausted all cost-effective energy efficiency measures at its facility. As used in this section, "cost-effective" means all measures with a simple payback period of more than one year but less than seven years.

C. Large customers shall seek and receive approval for credits and exemptions under this provision from the utility or a commission-approved self-direct program administrator. Approvals or disapprovals by the utility or administrator shall be subject to commission review. Any credit not fully utilized in the year it is received shall carry over to subsequent years. Implementation of credits shall be designed to minimize utility administrative costs.

D. Except as otherwise provided in this section, projects, expenditures and exemptions under this section shall be evaluated by an independent program evaluator using the same measurement and verification standards applying to utility programs, subject to appropriate protections for confidentiality, by the utility or a commission-approved self-direct program administrator and reported in the annual report to the commission pursuant to the Efficient Use of Energy Act.

History: Laws 2005, ch. 341, § 9.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 341, § 13 made Laws 2005, ch. 341, § 9 effective April 7, 2005.

62-17-10. Integrated resource planning.

Pursuant to the commission's rulemaking authority, public utilities supplying electric or natural gas service to customers shall periodically file an integrated resource plan with the commission. Utility integrated resource plans shall evaluate renewable energy,

energy efficiency, load management, distributed generation and conventional supply-side resources on a consistent and comparable basis and take into consideration deployment of advanced grid technologies, risk and uncertainty of fuel supply, price volatility and costs of anticipated environmental regulations in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers. The preparation of resource plans shall incorporate a public advisory process. Nothing in this section shall prohibit public utilities from implementing cost-effective energy efficiency and load management programs and the commission from approving public utility expenditures on energy efficiency programs and load management programs prior to the commission establishing rules and guidelines for integrated resource planning. The commission may exempt public utilities with fewer than five thousand customers and distribution-only public utilities from the requirements of this section. The commission shall take into account a public utility's resource planning requirements in other states and shall authorize utilities that operate in multiple states to implement plans that coordinate the applicable state resource planning requirements. The requirements of this section shall take effect one year following the commission's adoption of rules implementing the provisions of this section.

History: Laws 2005, ch. 341, § 10; 2025, ch. 93, § 4.

ANNOTATIONS

The 2025 amendment, effective July 1, 2025, included advanced grid technologies in utility integrated resource plans; and after "take into consideration" added "deployment of advanced grid technologies".

The public regulation commission did not abuse its discretion in approving a contested stipulation. — Where appellant appealed from a final order issued by the New Mexico public regulation commission (PRC) approving a contested stipulation granting the public service company of New Mexico (PNM) certificates of public convenience and necessity (CCN) to acquire new generation resources and by filing a notice proposing to dismiss the protests to PNM's 2014 integrated resource plan (IRP), the PRC did not abuse its discretion in concluding that the supplemental stipulation fairly and justly resolved the CCN proceedings, because the hearings below were conducted in conformity with the governing regulation, the hearing examiner correctly identified the substantive legal standards necessary to resolve the merits of the contest, afforded appellant, a non-stipulating party, an opportunity to be heard on the merits of the stipulation, and made an independent finding, supported by substantial evidence in the record, that the stipulation resolves the matters in dispute in a way that is fair, just and reasonable and in the public interest, and the PRC's decision to file a notice proposing to dismiss the protests to PNM's 2014 IRP was a lawful exercise of the PRC's discretion, because the issues addressed in the CCN proceedings were the very same issues at the heart of the 2014 IRP protest proceedings. *New Energy Econ. v. N.M. Pub. Regulation Comm'n*, 2018-NMSC-024.

Revised integrated resource planning provisions of amended rule do not exceed the scope of the Efficient Use of Energy Act. — In a consolidated appeal, where electric utility companies El Paso electric company, public service company of New Mexico, and southwestern public service company (collectively appellants), sought judicial review of recently amended regulations governing the integrated resource planning (IRP) framework set out in 62-17-10 NMSA 1978 of the Efficient Use of Energy Act (EUEA), and where appellants argued that the procurement-related requirements provided for in the amended rule exceed the scope of the IRP framework laid out in the planning provisions of 62-17-10 NMSA 1978, the public regulation commission did not err in adopting the amended rule, because the intent of the statute is to identify the most cost-effective portfolio of resources to supply the energy needs of customers, and the revised IRP provisions of the amended rule advance the core purposes of the statute's planning provisions and do not exceed what has been statutorily authorized. *El Paso Elec. Co. v. N.M. Pub. Regul. Comm'n*, 2025-NMSC-009.

62-17-11. Distribution cooperative utilities.

A. Distribution cooperative utilities shall periodically examine the potential to assist their customers in reducing energy consumption or peak electricity demand in a cost-effective manner. Based on these studies, by January 1, 2009, distribution cooperative utilities shall establish energy efficiency and load management targets and begin to implement cost-effective energy efficiency and load management programs that are economically feasible and practical for their members and customers. Approval for such programs shall reside with the governing body of each distribution cooperative utility and not with the commission.

B. Each distribution cooperative utility shall file with the commission, concurrently with its annual report, a report that describes all of the distribution cooperative utility's programs or measures that promote energy efficiency, conservation or load management, including the deployment of advanced grid technologies. The report shall set forth the costs of each of the programs or measures for the previous calendar year and the resulting effect on the consumption of electricity. In offering or implementing energy efficiency, conservation or load management programs, a distribution cooperative utility shall attempt to minimize any cross-subsidies between customer classes.

C. Each distribution cooperative utility shall include in the report required by Subsection B of this section a description of all programs or measures to promote energy efficiency, conservation or load management, including the deployment of advanced grid technologies, that are planned and the anticipated date for implementation.

D. Costs resulting from programs or measures to promote energy efficiency, conservation or load management, including the deployment of advanced grid technologies, may be recovered by the distribution cooperative utility through its general rates. In requesting approval to recover such costs in general rates, the distribution

cooperative utility may elect to use the procedure set forth in Subsection H of Section 62-8-7 NMSA 1978.

History: Laws 2005, ch. 341, § 11; 2008, ch. 24, § 9; 2025, ch. 93, § 5.

ANNOTATIONS

The 2025 amendment, effective July 1, 2025, included advanced grid technologies in the annual reports of distribution cooperative utilities; and in Subsection B, C and D, after "load management" added "including the deployment of advanced grid technologies".

The 2008 amendment, effective May 14, 2008, required distribution cooperative utilities to establish energy efficiency and load management targets and to implement programs by January 1, 2009.

62-17-12. Self-sourced power generation.

A. Persons located within the state may receive electricity service using a qualified microgrid that may also deliver electricity to equipment, lines and facilities operated by an electric public utility; provided that the person and the electric public utility enter into an electric service agreement.

B. This section authorizes an electric public utility, subject to approval by the public regulation commission, to acquire self-source generation resources or energy and dedicate those resources or energy to retail services, wholesale services or self-generation services, or any combination of those services, and rates established for those services shall take into account the public interest and need, reliability and affordability. The public regulation commission shall not approve an acquisition pursuant to this section from a facility that does not qualify as a self-source generation resource.

C. Energy generated and sold from a self-source generation resource that is owned in whole or in part by a qualified microgrid shall not be considered retail sales or energy as contemplated under Sections 62-15-34, 62-16-4 and 62-18-10 NMSA 1978 until 2035, whether serving the qualified microgrid or purchased in whole or in part by the electric public utility to provide service. By 2045, all of the energy that a qualified microgrid generates and sells shall be from net-zero carbon resources. An operator of a qualified microgrid shall file reports as required by the public regulation commission, certifying the qualified microgrid's progress toward and compliance with the net-zero carbon resource standard.

D. A person who only provides self-source generation sales from a self-source generation resource to that person's employees or tenants, when the service or commodity is not resold to or used by others, shall not be considered an electric public utility.

E. As used in this section:

(1) "electric public utility" means an electric public utility certified by the public regulation commission to provide retail electric service in New Mexico pursuant to the Public Utility Act [Articles 1 through 6 and 8 through 13 of Chapter 62 NMSA 1978] that is not also a distribution cooperative utility;

(2) "net-zero carbon resource" means an electricity generation resource that emits no carbon dioxide into the atmosphere, or that reduces methane emitted into the atmosphere in an amount equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere, as a result of electricity production;

(3) "qualified microgrid" means a permanent or temporary electrical system that:

(a) incorporates a microgrid controller;

(b) includes a self-source generation resource that is capable of generating not less than twenty megawatts; and

(c) is capable of operating independently and disconnected from the grid;

(4) "self-source generation resource" means a permanent or temporary electricity generating resource that is dedicated to primarily serving the persons connected either directly or indirectly through business affiliates to the construction and installation of a qualified microgrid; and

(5) "self-source generation sales" means sales of electricity to persons or utilities generated from a self-source generation resource.

History: Laws 2025, ch. 93, § 6.

ANNOTATIONS

Compiler's notes. — Laws 2025, ch. 93, § 6 was not enacted as part of the Efficient Use of Energy Act, but was compiled there for the convenience of the user.

Effective dates. — Laws 2025, ch. 93, § 7 made Laws 2025, ch. 93, § 6 effective July 1, 2025.

ARTICLE 17A
Community Energy Efficiency Development Block Grant

62-17A-1. Short title.

This act [62-17A-1 to 62-17A-7 NMSA 1978] may be cited as the "Community Energy Efficiency Development Block Grant Act".

History: Laws 2022, ch. 10, § 1.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

62-17A-2. Definitions.

As used in the Community Energy Efficiency Development Block Grant Act:

A. "affordable housing" means residential housing primarily for low-income persons, including housing currently occupied by low-income persons or housing that is affordable to low-income persons based on assessed value, rent or estimated mortgage;

B. "community energy efficiency project" means a project that provides improvements to residential buildings in an underserved community that will in the aggregate reduce energy consumption, energy-related operating costs or the carbon intensity of energy consumption;

C. "community partner" means an organization that provides services or outreach to an underserved community to implement a community energy efficiency project;

D. "department" means the energy, minerals and natural resources department;

E. "division" means the energy conservation and management division of the department;

F. "energy efficiency" means measures that target efficient energy consumer behavior, equipment or devices and result in a decrease in energy consumption without reducing the amount or quality of energy services, and includes health and safety measures that use efficient equipment or devices to improve indoor air or drinking water quality;

G. "low-income person" means an individual, couple or family whose annual household adjusted gross income, as defined in Section 62 of the federal Internal Revenue Code of 1986, as that section may be amended or renumbered, does not exceed two hundred percent of the federal poverty level;

H. "registered apprenticeship program that promotes diversity" means an apprenticeship program registered pursuant to the Apprenticeship Assistance Act

[Chapter 21, Article 19A NMSA 1978] that encourages diversity among participants, participation by those underrepresented in the industry associated with the apprenticeship program and participation from disadvantaged communities as determined by the workforce solutions department;

I. "residential housing" means:

(1) a building, structure or portion thereof that is primarily occupied or designed for or intended primarily for occupancy as a residence by one or more households, including congregate housing, manufactured homes and other facilities; or

(2) real property that is offered for sale or lease for the construction or location on that real property of a building, structure or portion thereof that is intended primarily for occupancy as a residence by one or more households; and

J. "underserved community" means an area in the state, including a county, municipality or neighborhood, or subset of an area, where:

(1) the median adjusted gross income, as defined in Section 62 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, does not exceed two hundred percent of the federal poverty level; or

(2) there is a high energy burden or limited access to energy efficiency services as determined by department rule.

History: Laws 2022, ch. 10, § 2.

ANNOTATIONS

Cross references. — For the federal Internal Revenue Code of 1986, *see* 26 U.S.C.

Effective dates. — Laws 2022, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

62-17A-3. Community energy efficiency development block grant; program created; rulemaking; report to legislature.

A. The "community energy efficiency development program" is created and shall be administered by the division.

B. If state or federal funds have been deposited into the community energy efficiency block grant fund, the department shall:

(1) adopt rules to:

(a) administer the community energy efficiency development program;

(b) restrict eligibility for certain funds, if required by the entity that provided the funding to the program;

(c) govern the acceptance, evaluation and prioritization of applications submitted by qualified entities for grants made pursuant to the Community Energy Efficiency Development Block Grant Act;

(d) determine whether the status of a person or household is low-income; and

(e) assess whether the value, rent or estimated mortgage of residential housing is affordable to low-income persons;

(2) solicit, review and prioritize community energy efficiency project applications;

(3) make grants for community energy efficiency projects from the community energy efficiency development block grant fund; and

(4) approve and enter into contracts with grantees to implement selected community energy efficiency projects; provided that the contracts shall include project performance measures, penalties or other provisions that ensure the successful completion of the projects in accordance with Article 9, Section 14 of the constitution of New Mexico and shall require reporting on project performance, energy savings and non-energy benefits resulting from the energy efficiency measures.

C. The department shall not be required to carry out the responsibilities in Subsection B of this section in any year that there are insufficient funds available for making grants in the community energy efficiency block grant fund.

D. In a year in which state or federal funds have been deposited into the community energy efficiency block grant fund or in which a community energy efficiency project is in operation, the department and the New Mexico mortgage finance authority shall coordinate the work done in the state to implement energy efficiency measures.

E. By November 1 of each year in which a community energy efficiency project is in operation, the department shall provide to the interim legislative committee that addresses the status of the development of energy efficiency measures and programs a report on the status of participation in the community energy efficiency development program by people in underserved communities, the types of projects funded by grants made through the program and any recommended changes with respect to the program.

History: Laws 2022, ch. 10, § 3.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

62-17A-4. Community energy efficiency project requirements.

A. A county, municipality, Indian nation, tribe or pueblo or the New Mexico mortgage finance authority may submit an application to the department for a grant for a community energy efficiency project.

B. An application shall:

(1) describe the community energy efficiency project for which a grant is requested and how the project would support infrastructure improvements for affordable housing;

(2) describe how the community energy efficiency project would benefit an underserved community in which it is located;

(3) identify the targeted underserved community;

(4) set forth the energy efficiency improvements to residential units located within an underserved community that meet the following eligibility criteria pursuant to Article 9, Section 14 of the constitution of New Mexico:

(a) residential housing units occupied by low-income persons within an underserved community; or

(b) residential housing units within an underserved community that otherwise meet the criteria for housing that is affordable to low-income persons as established by the department in rule;

(5) propose a series of energy efficiency measures expected to reduce energy use in targeted households and the estimated reduction of energy use from the implementation of the measures;

(6) identify a service provider that will implement the energy efficiency measures in targeted households and set forth the experience of the service provider in working with the targeted underserved community;

(7) identify one or more community partners that will identify and work with targeted households to implement a community energy efficiency project in an underserved community and set forth the experience of the community partner in working with the targeted underserved community;

(8) set forth any commitment by a service provider or community partner to employ apprentices from a registered apprenticeship program that promotes diversity or to provide paid internships to persons from the targeted underserved community; and

(9) provide a project budget detailing anticipated expenditures and additional sources of funding that would complement a grant obtained pursuant to the Community Energy Efficiency Development Block Grant Act.

C. Notwithstanding the application requirements of Subsection B of this section, the New Mexico mortgage finance authority may submit an application that:

(1) describes the community energy efficiency project for which a grant is requested and how the project would support infrastructure improvements for affordable housing that would complement and not duplicate other energy efficiency programs in the state;

(2) either meets the requirements of Paragraphs (2) through (4) of Subsection B of this section or sets forth the energy efficiency improvements to residential housing units, regardless of whether the residential housing units are located in an underserved community; provided that the residential housing units meet the eligibility criteria established by the New Mexico mortgage finance authority pursuant to Article 9, Section 14 of the constitution of New Mexico; and provided further that the application describes how energy efficiency improvements to the residential housing units will help to reduce the energy burden of low-income households that may not qualify for other energy efficiency programs in the state;

(3) proposes a series of energy efficiency measures expected to reduce energy use in targeted households and the estimated reduction of energy use from the implementation of the measures;

(4) identifies a service provider that will implement the energy efficiency measures in targeted households and sets forth the experience of the service provider in working with underserved communities;

(5) identifies one or more community partners that will identify and work with targeted households and sets forth the experience of the community partner in working with underserved communities; and

(6) provides a project budget detailing anticipated expenditures and additional sources of funding that would complement a grant awarded pursuant to the Community Energy Efficiency Development Block Grant Act.

D. The department may require that applications meet additional criteria consistent with the goal of improving the energy efficiency, livability or public health and safety of affordable housing in underserved communities.

History: Laws 2022, ch. 10, § 4.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

62-17A-5. Required grant of authority.

A. The Community Energy Efficiency Development Block Grant Act is enacted to allow the state, a county or a municipality to provide or pay the costs of financing infrastructure necessary to support affordable housing projects as provided by Article 9, Section 14 of the constitution of New Mexico.

B. Prior to the department's final approval of an application for a grant pursuant to the Community Energy Efficiency Development Block Grant Act, an applicant that is a county or a municipality shall provide the department with a copy of the ordinance enacted by the county or municipality that provides the county's or municipality's formal approval for a specific community energy efficiency development block grant and includes in the ordinance the terms and conditions of the grant approved by the department. The department shall not approve an application for a community energy efficiency project if the county or municipality fails to enact an ordinance that gives formal approval for the terms and conditions approved by the department for the community energy efficiency development block grant and includes in the ordinance those exact terms and conditions.

C. Prior to the department's final approval of an application for a grant pursuant to the Community Energy Efficiency Development Block Grant Act, an applicant that is an Indian nation, tribe or pueblo shall provide the department with a copy of a resolution enacted by the Indian nation, tribe or pueblo that provides the Indian nation's, tribe's or pueblo's formal approval for a specific community energy efficiency development block grant and includes in the ordinance the terms and conditions of the grant approved by the department. The department shall not approve an application for a community energy efficiency project if the Indian nation, tribe or pueblo fails to enact a resolution that gives formal approval for the terms and conditions approved by the department for the community energy efficiency development block grant and includes in the resolution those exact terms and conditions.

D. Prior to the department's final approval of an application from the New Mexico mortgage finance authority for a grant pursuant to the Community Energy Efficiency Development Block Grant Act, the New Mexico mortgage finance authority shall provide the department with formal approval of the New Mexico mortgage finance authority to accept a specific community energy efficiency development block grant.

History: Laws 2022, ch. 10, § 5.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

62-17A-6. Selection of community energy efficiency projects.

A. When reviewing and selecting community energy efficiency projects for grants from the community energy efficiency development block grant fund, the department shall consider:

(1) the estimated reduction in energy use from the project;

(2) the geographic diversity of the portfolio of community energy efficiency projects to be approved by the department;

(3) the experience of each community partner or service provider identified in the application in working with the targeted underserved community;

(4) whether the application includes a commitment by a service provider or community partner to employ apprentices from a registered apprenticeship program that promotes diversity or to provide paid internships to persons from the targeted underserved communities;

(5) the value of the project as a demonstration project to provide data for the effectiveness of implementing similar projects elsewhere; and

(6) the degree to which the project benefits an underserved community, including any non-energy benefits and health benefits provided by the project.

B. Provided that the criteria are published in the project solicitation, the department may further consider in its review and selection of community energy efficiency projects:

(1) the degree to which the project will protect public health, including protecting underserved communities from a public health threat such as the coronavirus disease 2019;

(2) the degree to which the project will contribute to economic recovery, including from the coronavirus disease 2019 pandemic; or

(3) the degree to which the project will reduce economic hardship of individual families due to the coronavirus disease 2019 pandemic.

C. In considering an application from the New Mexico mortgage finance authority, the department shall consider whether full or partial funding of the New Mexico mortgage finance authority application would:

(1) promote geographic diversity of the portfolio of community energy efficiency projects;

(2) reduce the energy burden of low-income persons, within or outside of underserved communities, who would not be likely to otherwise receive energy efficiency improvements through other state programs; or

(3) help create a portfolio of community energy efficiency projects that would best meet the goals of the Community Energy Efficiency Development Block Grant Act.

History: Laws 2022, ch. 10, § 6.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

62-17A-7. Community energy efficiency development block grant fund created; administration.

A. The "community energy efficiency development block grant fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations to the fund, federal funding for purposes consistent with the fund and income from investment of the fund; provided that federal funding allocated to the state for the federal weatherization assistance program pursuant to 42 U.S.C. Section 6863 or the federal low income home energy assistance program pursuant to 42 U.S.C. Sections 8621 through 8630 shall not be deposited in the fund without the written approval of the appropriate federal agency and the New Mexico mortgage finance authority. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources or the secretary's authorized representative.

B. Money in the fund is subject to appropriation by the legislature to the department to carry out the purposes of the Community Energy Efficiency Development Block Grant Act, including the administrative costs of the department; provided that money in the fund that is derived from the federal government may be expended by the department without legislative authorization for any purpose that is consistent with the goal of reducing the energy burden of low-income persons or underserved communities as otherwise allowed by law, including carrying out the community energy efficiency development block grant program and the administrative costs of the department.

History: Laws 2022, ch. 10, § 7.

ANNOTATIONS

Cross references. — For the federal low-income home energy assistance program *see* 42 U.S.C.

Effective dates. — Laws 2022, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

ARTICLE 18
Energy Transition

62-18-1. Short title.

Sections 1 through 23 [62-18-1 to 62-18-23 NMSA 1978] of this act may be cited as the "Energy Transition Act".

History: Laws 2019, ch. 65, § 1.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-2. Definitions.

As used in the Energy Transition Act:

A. "adjustment mechanism" means a formula-based calculation used to make adjustments to the energy transition charges that are necessary to correct for any over-collection or under-collection of the energy transition charges, to provide for the timely and complete payment of scheduled principal and interest on energy transition bonds and the payment and recovery of other financing costs in accordance with a financing order;

B. "ancillary agreement" means a bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement or other similar agreement or arrangement entered into in connection with the issuance of an energy transition bond that is designed to promote the credit quality and marketability of the bond or to mitigate the risk of an increase in interest rates;

C. "assignee" means a person or legal entity, that may be newly created by the qualifying utility, to which an interest in energy transition property is sold, assigned, transferred or conveyed, other than as security, and any successor to or subsequent assignee of such a person or legal entity;

D. "commission" means the public regulation commission;

E. "electric delivery service" means transmission, distribution, generation, energy or any other service from a qualifying utility pursuant to commission-approved rate schedules or special contracts;

F. "energy transition bond" means a bond or other evidence of indebtedness or ownership that is issued by a qualifying utility or an assignee pursuant to a financing order, the proceeds of which are secured by or payable from energy transition property and that are non-recourse to the qualifying utility;

G. "energy transition charge" means a non-bypassable charge paid by all customers of a qualifying utility for the recovery of energy transition costs;

H. "energy transition cost" means the sum of:

(1) financing costs;

(2) abandonment costs, which for a qualifying generating facility shall not exceed the lower of three hundred seventy-five million dollars ($375,000,000) or one hundred fifty percent of the undepreciated investment in a qualifying generating facility being abandoned, as of the date of the abandonment. The abandonment costs subject to this limitation shall include:

(a) up to thirty million dollars ($30,000,000) per qualifying generating facility in costs not previously collected from the qualifying utility's customers for plant decommissioning and mine reclamation costs, subject to any limitations ordered by the commission prior to January 1, 2019 and affirmed by the New Mexico supreme court prior to the effective date of the Energy Transition Act, associated with the abandoned qualifying generating facility;

(b) up to twenty million dollars ($20,000,000) per qualifying generating facility in costs for severance and job training for employees losing their jobs as a result of an abandoned qualifying generating facility and any associated mine that only services the abandoned qualifying generating facility;

(c) undepreciated investments as of the date of abandonment on the qualifying utility's books and records in a qualifying generating facility that were either being recovered in rates as of January 1, 2019 or are otherwise found to be recoverable through a court decision; and

(d) other undepreciated investments in a qualifying generating facility incurred to comply with law, whether established by statute, court decision or rule, or necessary to maintain the safe and reliable operation of the qualifying generating facility prior to the facility's abandonment;

(3) any other costs required to comply with changes in law enacted after January 1, 2019 incurred by the qualifying utility at the qualifying generating facility; and

(4) payments required pursuant to Section 16 [62-18-16 NMSA 1978] of the Energy Transition Act;

I. "energy transition property" means the rights and interests of a qualifying utility or an assignee under a financing order, including the right to impose, charge, collect and receive energy transition charges in an amount necessary to provide for full payment and recovery of all energy transition costs identified in the financing order, including all revenues or other proceeds arising from those rights and interests;

J. "energy transition revenues" means revenues collected by or on behalf of a qualifying utility through an energy transition charge;

K. "financing cost" means the cost incurred by the qualifying utility or an assignee to issue and administer energy transition bonds, including:

(1) payment of the fee authorized pursuant to Subsection L of Section 5 [62-18-5 NMSA 1978] of the Energy Transition Act;

(2) principal, interest, acquisition, defeasance and redemption premiums that are payable on energy transition bonds;

(3) any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the energy transition bonds;

(4) any costs, fees and expenses related to issuing, supporting, repaying, servicing and refunding energy transition bonds, the application for a financing order, including related state board of finance expenses, or obtaining an order approving abandonment of a qualifying generating facility;

(5) any costs, fees and related expenses incurred relating to any existing secured or unsecured obligation of a qualifying utility or an affiliate of a qualifying utility that are necessary to obtain any consent, release, waiver or approval from any holder of such an obligation to permit a qualifying utility to issue or cause the issuance of energy transition bonds;

(6) any taxes, fees, charges or other assessments imposed on energy transition bonds;

(7) preliminary and continuing costs associated with subsequent financing; and

(8) any other related costs approved for recovery in the financing order;

L. "financing order" means an order of the commission that authorizes the issuance of energy transition bonds, authorizes the imposition, collection and periodic adjustments of the energy transition charge and creates energy transition property;

M. "financing party" means a trustee, collateral agent or other person acting for the benefit of a bondholder, and a party to an ancillary agreement or the energy transition bonds, the rights and obligations of which relate to or depend upon the existence of energy transition property, the enforcement and priority of a security interest in energy transition property or the timely collection and payment of energy transition revenues;

N. "lowest cost objective" means that the structuring, marketing and pricing of energy transition bonds results in the lowest energy transition charges consistent with prevailing market conditions at the time of pricing of energy transition bonds and the structure and terms of energy transition bonds approved pursuant to the financing order;

O. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, incorporated counties and H class counties;

P. "non-bypassable" means that the payment of an energy transition charge may not be avoided by an electric service customer located within a utility service area and shall be paid by the customer that receives electric delivery service from the qualifying utility imposing the charge for as long as the energy transition bonds secured by the charge are outstanding and the related financing costs have not been recovered in full;

Q. "non-utility affiliate" means, with respect to a qualifying utility, a person that is an affiliated interest, as that term is used in the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], but a "non-utility affiliate" does not include a public utility that provides retail utility service to customers in the state;

R. "public utility" means "public utility" as used in the Public Utility Act, but "public utility" does not include a distribution cooperative utility organized pursuant to the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978];

S. "qualifying generating facility" means a coal-fired generating facility in New Mexico that may be composed of multiple generating units that:

(1) has been granted a certificate of public convenience and for which abandonment authority is granted after December 31, 2018;

(2) is owned or leased, in whole or in part, by a qualifying utility;

(3) if operated by a qualifying utility prior to the effective date of the Energy Transition Act, is to be abandoned prior to January 1, 2023; and

(4) if not operated by a qualifying utility prior to the effective date of the Energy Transition Act, is to be abandoned prior to January 1, 2032; and

T. "qualifying utility" means a public utility that meets the requirements of Paragraph (1) of Subsection G of Section 62-3-3 NMSA 1978 and owns or leases all or a portion of a qualifying generating facility and its successor or assignees.

History: Laws 2019, ch. 65, § 2.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-3. Location of resource development after abandonment.

A. For a qualifying utility that abandons a qualifying generating facility in New Mexico prior to January 1, 2023, the qualifying utility shall, no later than one year after approval of the abandonment, apply for commission approval of competitively procured replacement resources. As part of that competitive procurement, and in addition to the criteria set forth in Subsections B and C of this section, projects shall be ranked based on their cost, economic development opportunity and ability to provide jobs with comparable pay and benefits to those lost due to the abandonment of a qualifying generating facility. The qualitative and quantitative data and analysis used to establish the ranking shall be available for review by parties to the commission proceeding.

B. In determining whether to approve replacement resources, the commission shall prefer resources with the least environmental impacts, those with higher ratios of capital costs to fuel costs and those able to reduce the cost of reclamation and use for lands previously mined within the county of the qualifying generating facility.

C. In considering responses to requests for proposals for replacement resources pursuant to this section, a qualifying utility shall inform prospective bidders that it promotes and encourages the use of workers residing in New Mexico to the greatest extent practicable and shall take that use into consideration in evaluating proposals.

D. The commission shall grant all necessary approvals for replacement resources; provided that the commission may determine that the particular resource proposed by the qualifying utility should not be approved and that, instead, an alternative replacement resource that meets the conditions of this section should be approved. The commission shall not disallow recovery of reasonable costs associated with requirements as to where the resources are located.

E. Replacement resources shall be subject to local property taxes or a binding commitment to make an equivalent payment in lieu of taxes.

F. As used in this section, "replacement resources" means up to four hundred fifty megawatts of nameplate capacity identified by the qualifying utility as replacement for a qualifying generating facility, and may include energy storage capacity; provided that such resources are located in the school district in New Mexico where the abandoned facility is located, are necessary to maintain reliable service and are in the public interest as determined by the commission.

History: Laws 2019, ch. 65, § 3.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-4. Financing order; application contents; pending applications.

A. A qualifying utility that is abandoning a qualifying generating facility may apply to the commission for a financing order pursuant to this section to recover all of its energy transition costs through the issuance of energy transition bonds. To obtain a financing order, a qualifying utility shall obtain approval to abandon a qualifying generating facility pursuant to Section 62-9-5 NMSA 1978. The application for the financing order may be filed as part of the application for approval to abandon a qualifying generating facility.

B. An application for a financing order shall include:

(1) a description of the facility that the qualifying utility proposes to abandon or for which abandonment authority was granted after December 31, 2018;

(2) an estimate of the energy transition costs and shall:

(a) identify the severance pay and job training expenses for affected employees losing their jobs as a result of an abandoned qualifying generating facility and any associated mine that only services the abandoned qualifying generating facility;

(b) identify costs not previously collected from the qualifying utility's customers for plant decommissioning and mine reclamation costs, subject to any limitations ordered by the commission prior to January 1, 2019 and affirmed by the New Mexico supreme court prior to the effective date of the Energy Transition Act, associated with the abandoned qualifying generating facility; and

(c) include an estimate of the financing costs associated with each series of energy transition bonds proposed to be issued;

(3) an estimate of the amount of energy transition charges necessary to recover the costs in Paragraph (2) of this subsection and the proposed calculation thereof, based on the estimated date of issuance and estimated principal amount of each series of energy transition bonds proposed to be issued;

(4) a description of the proposed adjustment mechanism that complies with the provisions of Section 6 [62-18-6 NMSA 1978] of the Energy Transition Act;

(5) a memorandum with supporting exhibits from a securities firm, such firm to be attested to by the state board of finance as being experienced in the marketing of bonds and capable of providing such a memorandum, that the proposed issuance satisfies the current published AAA rating or equivalent rating criteria of at least one nationally recognized statistical rating organization for issuances similar to the proposed energy transition bonds. The request for such attestation may be made by a qualifying utility prior to an application for a financing order, and the state board of finance shall act upon such a request promptly;

(6) a commitment by the qualifying utility to file with the commission following the issuance of the energy transition bonds:

(a) a description of the final structure and pricing of the bonds;

(b) updated financing costs and payment amount required pursuant to Section 16 [62-18-16 NMSA 1978] of the Energy Transition Act; and

(c) an updated calculation of the energy transition charges;

(7) an estimate of timing of the issuance and term of the energy transition bonds, or series of bonds; provided that the scheduled final maturity for each bond issuance shall be no longer than twenty-five years;

(8) identification of plans to sell, assign, transfer or convey, other than as a security, interest in energy transition property, including identification of an assignee, and demonstration that the assignee will be a financing entity wholly owned, directly or indirectly, by the qualifying utility that will be initially capitalized by the qualifying utility in such a way that equity interests in the financing entity are at least one-half percent of the total capital of the assignee;

(9) identification of ancillary agreements that may be necessary or appropriate;

(10) a description of a proposed ratemaking process to reconcile and recover or refund any difference between the energy transition costs financed by the energy transition bonds and the actual final energy transition costs incurred by the qualifying utility or the assignee;

(11) a proposed ratemaking method to account for the reduction in the qualifying utility's cost of service associated with the amount of undepreciated investments being recovered by the energy transition charge at the time that charge becomes effective; and

(12) a statement from the qualifying utility committing that the qualifying utility will use commercially reasonable efforts to obtain the lowest cost objective.

C. The application may include requests for approvals for new resources necessitated by the abandonment of a qualifying generating facility.

D. The qualifying utility or the commission may defer applications for needed approvals for new resources to a separate proceeding; provided that the application identifies adequate potential new resources sufficient to provide reasonable and proper service to retail customers.

E. If an application for approval to abandon a qualifying generating facility is pending before the commission on the effective date of the Energy Transition Act, the qualifying utility may file a separate application for a financing order, and the commission may join or consolidate the application for a financing order with the pending proceeding involving abandonment of the qualifying generating facility, with the consent of the applicant. On such joinder or consolidation, the time periods prescribed by the Energy Transition Act shall become applicable to the joined or consolidated case as of the date of the joinder or consolidation.

F. If a qualifying utility does not recover energy transition costs pursuant to the Energy Transition Act, the energy transition costs may be recovered pursuant to other applicable provisions of the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978].

History: Laws 2019, ch. 65, § 4.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

The Energy Transition Act does not violate procedural due process. — Where the public regulation commission (Commission) gave leave for the public service company of New Mexico to issue energy transition bonds of up to $361,000,000 in connection with the abandonment of its interests in the San Juan generating station units one and four and to collect separate and non-bypassable energy transition charges from its customers in repayment of the bonds, pursuant to the Energy Transition Act (ETA), §§ 62-18-1 through 62-18-23 NMSA 1978, and where appellants, two organizations that represent energy consumers, claimed that the ETA deprives energy consumers of procedural due process by allowing a qualified public utility to recover its energy transition costs without Commission oversight, appellants procedural due process was without merit, because the ETA as written contemplates that energy consumers will be given sufficient notice of the utility's application and a meaningful opportunity to be heard upon lodging a protest establishing good cause for a formal hearing in front of the Commission. *Citizens for Fair Rates & the Env't v. NMPRC*, 2022-NMSC-010.

The Energy Transition Act does not violate substantive due process. — Where the public regulation commission (Commission) gave leave for the public service company of New Mexico to issue energy transition bonds of up to $361,000,000 in connection with the abandonment of its interests in the San Juan generating station units one and four and to collect separate and non-bypassable energy transition charges from its customers in repayment of the bonds, pursuant to the Energy Transition Act (ETA), §§ 62-18-1 through 62-18-23 NMSA 1978, and where appellants, two organizations that represent energy consumers, claimed that the ETA does not permit the Commission to review a utility's estimated energy transition costs before issuing a financing order, and that this limitation on the Commission's authority violates substantive due process protections, appellants substantive due process challenge failed, because under the modified rational basis standard, appellants have not brought forth sufficient record evidence, legislative facts, judicially noticeable materials, case law, or legal argument to establish that the ETA lacks a rational relationship to the interests expressed in § 62-3-1(B) NMSA 1978. *Citizens for Fair Rates & the Env't v. NMPRC*, 2022-NMSC-010.

Appellants failed to demonstrate that the public regulation commission did not comply with statutory requirement. — Where the public regulation commission (Commission) gave leave for the public service company of New Mexico (PNM) to issue energy transition bonds of up to $361,000,000 in connection with the abandonment of its interests in the San Juan generating station units one and four and to collect separate and non-bypassable energy transition charges from its customers in repayment of the bonds, pursuant to the Energy Transition Act (ETA), §§ 62-18-1 through 62-18-23 NMSA 1978, and where appellants, two organizations that represent energy consumers, challenged the Commission's finding that PNM provided a memorandum from a securities firm that the proposed issuance satisfies the current published AAA rating as required by Subsection 62-18-4(B)(5), the Commission's finding was not in error because the Commission reasonably found that the senior advisor possessed actual or apparent authority to speak on behalf of the securities firm, based on the senior advisor's testimony that he was authorized to represent the

securities firm in the proceedings and that he was acting within the scope of his authority. *Citizens for Fair Rates & the Env't v. NMPRC*, 2022-NMSC-010.

62-18-5. Financing order; issuance; terms of bonds; reports to commission of disbursement of bond proceeds; review and audit of records.

A. The commission may approve an application for a financing order without a formal hearing if no protest establishing good cause for a formal hearing is filed within thirty days of the date when notice is given of the filing of the application for the financing order. If a hearing is held, the commission shall issue an order granting or denying the application for the financing order to a qualifying utility that is abandoning a qualifying generating facility and an order on an accompanying application of the qualifying utility for approval to abandon the qualifying generating facility within six months from the date the application for the financing order is filed with the commission. For good cause shown, the commission may extend the time for issuing the order for an additional three months.

B. Failure to issue an order approving the application or advising of the application's noncompliance pursuant to Subsection E of this section within the time prescribed by Subsection A of this section shall be deemed approval of the application for a financing order and approval to abandon the qualifying generating facility, if abandonment approval was requested as part of the application for the financing order pursuant to this subsection. The commission shall issue an order acknowledging the deemed approvals within seven days of the expiration of the time period described in Subsection A of this section.

C. If an application for a financing order is accompanied by a request for approval of new resources, this section provides an alternative time frame to that provided in Subsection C of Section 62-9-1 NMSA 1978, and the time frame specified in this section shall govern, unless the request has been deferred to a separate proceeding pursuant to Subsection D of Section 4 [62-18-4 NMSA 1978] of the Energy Transition Act.

D. The issuance of a financing order shall be the only approval required for the authority granted in the financing order.

E. The commission shall issue a financing order approving the application if the commission finds that the qualifying utility's application for the financing order complies with the requirements of Section 4 of the Energy Transition Act. If the commission finds that a qualifying utility's application does not comply with Section 4 of the Energy Transition Act, the commission shall advise the qualifying utility of any changes necessary to comply with that section and provide the applicant an opportunity to amend the application to make such changes. Upon those changes being made, the commission shall issue a financing order approving the application.

F. A financing order shall include the following provisions:

(1) approval for the qualifying utility or assignee to issue energy transition bonds as requested in the application, to use energy transition bonds to finance the maximum amount of the energy transition costs as requested in the application, as may be adjusted pursuant to Paragraph (6) of Subsection B of Section 4 of the Energy Transition Act, and to use the proceeds provided in Subsection A of Section 10 [62-18-10 NMSA 1978] of the Energy Transition Act;

(2) approval for the qualifying utility to recover the energy transition costs, as may be adjusted pursuant to Paragraph (6) of Subsection B of Section 4 of the Energy Transition Act, requested in the application through energy transition charges;

(3) approval of the energy transition charges necessary to recover the authorized energy transition costs, to be imposed through a non-bypassable energy transition charge as a separate line item on the qualifying utility's customer bills, assessed consistent with energy and demand cost allocations within each customer class, subject to update pursuant to the notice filing contemplated by Paragraph (6) of Subsection B of Section 4 of the Energy Transition Act and subject to the application of the adjustment mechanism as provided in Section 6 [62-18-6 NMSA 1978] of the Energy Transition Act, until the energy transition bonds issued pursuant to the financing order and the financing costs related to those bonds are paid in full;

(4) approval of the adjustment mechanism in compliance with Section 6 of the Energy Transition Act;

(5) a description of the energy transition property that is created by the financing order that may be used to pay, and secure the payment of, the energy transition bonds and financing costs authorized to be issued in the financing order;

(6) approval to enter into necessary or appropriate ancillary agreements;

(7) approval of any plans for selling, assigning, transferring or conveying, other than as a security, an interest in energy transition property; and

(8) approval of the proposed ratemaking process and method included in the application pursuant to Paragraphs (10) and (11) of Subsection B of Section 4 of the Energy Transition Act.

G. A financing order shall provide that the creation of energy transition property shall be simultaneous with the sale of the energy transition property to an assignee as provided in the application and the pledge of the energy transition property to secure energy transition bonds.

H. A financing order shall authorize the qualifying utility to issue one or more series of energy transition bonds for a scheduled final maturity of no more than twenty-five years for each series; provided that a rated final maturity may exceed twenty-five years.

With such authorization, the qualifying utility shall not subsequently be required to secure a separate financing order prior to each issuance.

I. The commission may require, as a condition of the financing order and in every circumstance subject to the limitations set forth in Subsection A of Section 7 [62-18-7 NMSA 1978] of the Energy Transition Act, that, during any period in which energy transition bonds issued pursuant to the financing order are outstanding, an assignee that is a non-utility affiliate and issues energy transition bonds shall provide in the affiliate's articles of incorporation, partnership agreement or operating agreement, as applicable, that in order for a person to file a voluntary bankruptcy petition on behalf of that assignee, the prior unanimous consent of the directors, partners, managers or members, as applicable, shall be required. Any such provision shall constitute a legal, valid and binding agreement of such shareholders, partners or members of the assignee and is enforceable against such shareholders, partners or members.

J. A financing order may require the qualifying utility to file with the commission a periodic report showing the receipt and disbursement of proceeds of energy transition bonds and any other documents necessary for the qualifying utility to implement the financing order. Upon issuance of the energy transition bonds, the qualifying utility shall file an advice notice with the commission, subject to review by the commission for errors and corrections, that identifies the actual energy transition charges to be included on customers' bills, effective fifteen days from the date the advice notice is filed.

K. A financing order may authorize the commission to review and audit the books and records of the qualifying utility and of an assignee that is a non-utility affiliate and issues energy transition bonds, relating to energy transition property and the receipt and disbursement of proceeds of energy transition bonds.

L. After review and approval by the department of finance and administration with regard to reasonableness of contracts for services, a financing order may authorize the commission to impose a fee on the qualifying utility to pay commission expenses for contract bond counsel accredited by a nationally recognized association of bond lawyers to provide advice and assistance to commission staff in reviewing an application for a financing order and the structure and marketing of the proposed energy transition bonds.

M. The provisions of this section shall not be construed to limit the authority of the commission to:

(1) investigate the practices of or to audit the books and records of a qualifying utility; or

(2) issue such further orders as may be necessary to effectuate the provisions of the Energy Transition Act.

History: Laws 2019, ch. 65, § 5.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

The Energy Transition Act does not violate procedural due process. — Where the public regulation commission (Commission) gave leave for the public service company of New Mexico to issue energy transition bonds of up to $361,000,000 in connection with the abandonment of its interests in the San Juan generating station units one and four and to collect separate and non-bypassable energy transition charges from its customers in repayment of the bonds, pursuant to the Energy Transition Act (ETA), §§ 62-18-1 through 62-18-23 NMSA 1978, and where appellants, two organizations that represent energy consumers, claimed that the ETA deprives energy consumers of procedural due process by allowing a qualified public utility to recover its energy transition costs without Commission oversight, appellants procedural due process was without merit, because the ETA as written contemplates that energy consumers will be given sufficient notice of the utility's application and a meaningful opportunity to be heard upon lodging a protest establishing good cause for a formal hearing in front of the Commission. *Citizens for Fair Rates & the Env't v. NMPRC*, 2022-NMSC-010.

The Energy Transition Act does not violate substantive due process. — Where the public regulation commission (Commission) gave leave for the public service company of New Mexico to issue energy transition bonds of up to $361,000,000 in connection with the abandonment of its interests in the San Juan generating station units one and four and to collect separate and non-bypassable energy transition charges from its customers in repayment of the bonds, pursuant to the Energy Transition Act (ETA), §§ 62-18-1 through 62-18-23 NMSA 1978, and where appellants, two organizations that represent energy consumers, claimed that the ETA does not permit the Commission to review a utility's estimated energy transition costs before issuing a financing order, and that this limitation on the Commission's authority violates substantive due process protections, appellants substantive due process challenge failed, because under the modified rational basis standard, appellants have not brought forth sufficient record evidence, legislative facts, judicially noticeable materials, case law, or legal argument to establish that the ETA lacks a rational relationship to the interests expressed in § 62-3-1(B) NMSA 1978. *Citizens for Fair Rates & the Env't v. NMPRC*, 2022-NMSC-010.

62-18-6. Adjustment mechanism; adjustment procedures; hearing procedures if commission determines adjustment made in error.

A. If the commission issues a financing order, the qualifying utility for which the order is issued may charge all of the qualifying utility's customers an energy transition charge, which shall be allocated to customer classes consistent with the production cost allocation methodology established by the commission in the qualifying utility's most recent general rate case. Energy transition charges shall be assessed consistent with the production cost allocation methodology and the determination of energy and

demand costs within each customer class, both of which shall be subject to the adjustment mechanism.

B. The commission shall periodically approve adjustments of the energy transition charges pursuant to the adjustment mechanism approved in the financing order to correct for any over-collection or under-collection of the energy transition charge and to provide for timely payment of scheduled principal of and interest on the energy transition bonds and the payment and recovery of financing costs in accordance with the financing order. Except as provided in Subsection C of this section, the qualifying utility shall file at least semiannually, or more frequently as provided in the financing order:

(1) a calculation estimating whether the existing energy transition charge is sufficient to provide for timely payment of scheduled principal of and interest on the energy transition bonds and the payment and recovery of other financing costs in accordance with the financing order or if either an over-collection or under-collection is projected; and

(2) a calculation showing the adjustment to the energy transition charge to correct for any over-collection or under-collection of energy transition charges.

C. The qualifying utility shall file the calculations described in Subsection B of this section at least quarterly during the two-year period preceding the final maturity date of the energy transition bonds.

D. The adjustment mechanism shall remain in effect until the energy transition bonds and all financing costs have been fully paid and recovered, any under-collection is recovered from customers and any over-collection is returned to customers.

E. On the same day the qualifying utility files with the commission its calculation of the adjustment to the energy transition charge, the qualifying utility shall cause notice of the filing to be given to the parties of record in the case in which the financing order was issued.

F. An adjustment to the energy transition charge filed by the qualifying utility shall be deemed approved without hearing thirty days after filing the adjustment unless:

(1) no later than twenty days from the date the qualifying utility filed the calculation of the adjustment, the commission is notified of a potential mathematical or transcription error in the adjustment; provided that the notice identifies the error with specificity; and

(2) the commission determines that the calculation of the adjustment is unlikely to provide for timely payment, or is likely to result in a material overpayment, of scheduled principal of and interest on the energy transition bonds and the payment and recovery of other financing costs in accordance with the financing order and, based on

that determination, suspends operation of the adjustment, pending a hearing limited to the issue of the error in the adjustment; provided that the suspension shall be for a period not to exceed sixty days from the date the qualifying utility filed the calculation of the adjustment.

G. If the commission determines that a hearing is necessary, the commission shall hold a hearing on the proposed adjustment that shall be limited to determining whether there is a mathematical or transcription error in the calculation of the adjustment. If, after a hearing, the commission determines that the calculation of the adjustment contains a mathematical or transcription error, the commission shall issue an order that rejects and corrects the adjustment. The qualifying utility shall adjust the energy transition charge in accordance with the commission's calculation within five days from issuance of the order. If the commission does not issue an order rejecting the adjustment with a determination of the corrected calculation within sixty days from the date the qualifying utility filed the adjustment, the adjustment to the energy transition charge shall be deemed approved.

H. No adjustment pursuant to this section, and no proceeding held pursuant to this section, shall affect the irrevocability of the financing order pursuant to Section 7 [62-18-7 NMSA 1978] of the Energy Transition Act.

History: Laws 2019, ch. 65, § 6.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-7. Financing order; irrevocability; amendments.

A. A financing order is irrevocable and the commission shall not reduce, impair, postpone or terminate the energy transition charges approved in the financing order, the energy transition property or the collection or recovery of energy transition revenues.

B. Subject to the limitation provided in Subsection A of this section, a financing order may be amended at the request of the qualifying utility to commence a proceeding and issue an amended financing order that:

(1) provides for refinancing, retiring or refunding all or a portion of an outstanding series of energy transition bonds issued pursuant to the original financing order; provided that the commission includes in the amended financing order the findings and requirements specified in Section 5 [62-18-5 NMSA 1978] of the Energy Transition Act; or

(2) adjusts the amount of energy transition costs to be financed by energy transition bonds that have not yet been issued to reflect updated estimated or actual costs that differ from costs estimated at the time of the initial financing order or to correct any errors.

C. The commission shall issue an order granting or denying the proposed amended financing order within thirty days of the filing of the request by the qualifying utility. No change in the credit rating of a qualifying utility from the credit rating at the time of issuance of a financing order shall impair the irrevocability of a financing order.

History: Laws 2019, ch. 65, § 7.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-8. Aggrieved parties; request for rehearing; judicial review.

A. A financing order shall be issued as a separate order from any other order issued by the commission on a requested approval in the application proceeding and is a final order of the commission. A party aggrieved by the issuance of a financing order may apply to the commission for a rehearing in accordance with Section 62-10-16 NMSA 1978; provided that such application shall be due no later than ten calendar days after issuance of the financing order. An application for rehearing shall be deemed denied if not acted upon by the commission within ten calendar days after the filing of the application.

B. An aggrieved party may file a notice of appeal with the supreme court in accordance with Section 62-11-1 NMSA 1978; provided that such notice shall be due no later than ten calendar days after denial of an application for rehearing or, if rehearing is not applied for, no later than ten calendar days after issuance of the financing order. The supreme court shall proceed to hear and determine the appeal as expeditiously as practicable.

History: Laws 2019, ch. 65, § 8.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-9. Conditions that keep financing orders in effect and energy transition charges imposed.

A. A financing order shall remain in effect until the energy transition bonds issued pursuant to the financing order and any related financing costs have been paid in full.

B. A financing order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization or insolvency of the qualifying utility or any non-utility affiliate or the commencement of any proceeding for bankruptcy or appointment of a receiver.

C. If energy transition bonds issued pursuant to a financing order are outstanding and the related energy transition costs have not been paid in full, the energy transition charges authorized by the financing order shall be collected by the qualifying utility or its successors or assignees, or a collection agent, in full through a non-bypassable charge that is a separate line item on customer bills and not a part of the qualifying utility's base rates. The charge shall be paid by all customers:

(1) receiving electric delivery service from the qualifying utility under commission-approved rate schedules or special contracts; and

(2) who acquire electricity from an alternative or subsequent electricity supplier in the utility service area, to the extent that such acquisition is permitted by New Mexico law.

History: Laws 2019, ch. 65, § 9.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-10. Qualifying utility duties.

A. Except as provided in Section 16 [62-18-16 NMSA 1978] of the Energy Transition Act, a qualifying utility that is abandoning a qualifying generating facility shall use the proceeds of the issuance of energy transition bonds only for purposes related to providing utility service to customers and to pay financing costs.

B. Energy transition revenues shall be applied solely to the repayment of energy transition bonds and the ongoing financing costs.

C. The failure of a qualifying utility to comply with any provision of the Energy Transition Act shall not invalidate, impair or affect a financing order, energy transition property, energy transition charge or energy transition bonds and financing costs. Payments to bondholders or financing parties on the energy transition bonds shall be made on a quarterly or semiannual basis pursuant to the terms of the energy transition bonds.

D. For a qualifying utility that receives approval of a financing order and issues sources of energy transition bonds, the qualifying utility's generation and sources of energy procured pursuant to power purchase agreements with a term of twenty-four months or longer, and that are dedicated to serve the qualifying utility's retail customers, shall not emit, on average, more than four hundred pounds of carbon dioxide per megawatt-hour by January 1, 2023, and not more than two hundred pounds of carbon dioxide per megawatt-hour by January 1, 2032 and thereafter. Compliance shall be measured and verified every three years with the first period commencing on January 1, 2023. The commission shall adopt rules to implement the requirements of this subsection.

History: Laws 2019, ch. 65, § 10.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-11. Commission treatment of energy transition bonds.

A. If the commission issues a financing order, the commission shall not treat:

(1) energy transition bonds issued pursuant to the financing order as debt of the qualifying utility;

(2) the energy transition charges paid under the financing order as revenue of the qualifying utility; or

(3) the energy transition costs to be financed by energy transition bonds as costs of the qualifying utility.

B. Reasonable actions taken by a qualifying utility to comply with the financing order shall be deemed to be just and reasonable for ratemaking purposes. Nothing in the Energy Transition Act shall:

(1) prevent or preclude the commission from investigating the compliance of a qualifying utility with the terms and conditions of a financing order and requiring compliance therewith;

(2) prevent or preclude the commission from imposing regulatory sanctions against a qualifying utility for failure to comply with the terms and conditions of a financing order or the requirements of the Energy Transition Act;

(3) affect the authority of the commission to apply the adjustment mechanism as provided in Section 6 [62-18-6 NMSA 1978] of the Energy Transition Act; or

(4) prevent or preclude the commission from including the qualifying utility's acquisition of replacement power resources in the qualifying utility's cost of service.

C. The commission shall not order or require a qualifying utility to issue energy transition bonds to finance any costs associated with abandonment of a qualifying generating facility. A utility's decision not to issue energy transition bonds shall not be a basis for the commission to refuse to allow a qualifying utility to recover energy transition costs in an otherwise permissible fashion, or as a basis to refuse or condition authorization to issue securities pursuant to Sections 62-6-6 and 62-6-7 NMSA 1978.

History: Laws 2019, ch. 65, § 11.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-12. Energy transition property; energy transition revenues.

A. Energy transition property that is created in a financing order shall constitute an existing, present property right, notwithstanding that the imposition and collection of energy transition charges depend on the qualifying utility continuing to provide electric energy or continuing to perform its service functions relating to the collection of energy transition charges or on the level of future energy consumption. Energy transition property shall exist whether or not the energy transition revenues have been billed, have accrued or have been collected and notwithstanding that the value or amount of the energy transition property is dependent on the future provision of electric energy or service to customers by the qualifying utility.

B. All energy transition property created in a financing order shall continue to exist until the energy transition bonds issued and all related financing costs pursuant to a financing order are paid in full.

C. All or any portion of energy transition property created in a financing order may be transferred, sold, conveyed or assigned to a non-utility affiliate that is:

(1) wholly owned, directly or indirectly, by the qualifying utility; and

(2) created for the limited purposes of acquiring, owning or administering energy transition property or issuing energy transition bonds under the financing order.

D. All or any portion of energy transition property may be pledged to secure the payment of energy transition bonds and all financing costs.

E. The formation by a qualifying utility of a non-utility affiliate for the purposes of acquiring, owning or administering energy transition property, issuing energy transition bonds pursuant to a financing order and transacting a transfer, sale, conveyance, assignment, grant of a security interest in or pledge of energy transition property by a qualifying utility to a non-utility affiliate, to the extent previously authorized in a financing order, does not require any further approval of the commission and shall not be subject to the rules of the commission regarding Class I transactions and Class II transactions, as defined by Section 62-3-3 NMSA 1978, except that the commission may examine the books and records of the non-utility affiliate.

F. If a qualifying utility defaults on any required payment of energy transition bonds, a court with jurisdiction in the matter, on application by an interested party and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the energy transition revenues for the benefit of bondholders, any assignees or financing parties. The order shall remain in full force and effect notwithstanding any bankruptcy, reorganization or other insolvency or receivership proceedings with respect to the qualifying utility or any non-utility affiliate.

G. Energy transition property, energy transition revenues and the interests of an assignee, bondholder or financing party in energy transition property and energy transition revenues are not subject to set-off, counterclaim, surcharge or defense by the qualifying utility or any other person or in connection with the bankruptcy, reorganization or other insolvency or receivership proceeding of the qualifying utility, non-utility affiliate or any other entity.

H. Any successor to a qualifying utility shall be bound by the requirements of the Energy Transition Act and shall perform and satisfy all obligations of, and have the same rights under a financing order as, the qualifying utility under the financing order in the same manner and to the same extent as the qualifying utility, including the obligation to collect and pay energy transition revenues to persons entitled to receive the revenues.

History: Laws 2019, ch. 65, § 12.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-13. Security interests; creation of security interest; priority over other liens; attachment on filing with secretary of state.

A. Except as otherwise provided in this section, the creation, perfection and enforcement of a security interest in energy transition property to secure the repayment of the principal of and interest on energy transition bonds, amounts payable pursuant to

an ancillary agreement and other financing costs are governed by this section. This section shall be deemed to supersede the provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978] and Chapter 62, Article 13 NMSA 1978, to the extent those provisions are inconsistent with this section.

B. The description or reference to energy transition property in a transfer or security agreement and a financing statement is sufficient only if the description or reference refers to the Energy Transition Act and the financing order creating the energy transition property. This section applies to all purported transfers of, grants of liens on or security interests in, energy transition property.

C. A security interest in energy transition property is created, valid and binding at the latest of when:

(1) the financing order is issued;

(2) a security agreement is executed and delivered; or

(3) value is received for the energy transition bonds.

D. The security interest attaches without any physical delivery of collateral or other act and the lien of the security interest shall be valid, binding and perfected against all parties having claims of any kind against the person granting the security interest, regardless of whether such parties have notice of the lien, on the filing of a financing statement with the secretary of state. The secretary of state shall maintain the financing statement in the same manner and in the same recordkeeping system maintained for financing statements filed pursuant to the Uniform Commercial Code-Secured Transactions [Chapter 55, Article 9 NMSA 1978]. Financing statements filed pursuant to this section shall be effective until a termination statement is filed.

E. A security interest in energy transition property is a continuously perfected security interest and has priority over any other lien that may subsequently attach to the energy transition property unless the holder of the security interest has agreed in writing otherwise.

F. The priority of a security interest in energy transition property is not affected by the commingling of energy transition revenues with other funds. Any pledgee or secured party shall have a perfected security interest in the amount of all energy transition revenues that are deposited in any account of the qualifying utility and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party.

G. No order of the commission amending a financing order and no application of the adjustment mechanism shall affect the validity, perfection or priority of a security interest in or transfer of energy transition property.

History: Laws 2019, ch. 65, § 13.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-14. Sale of energy transition property; perfecting interests; absolute transfer and true sale requirements.

A. Any sale, assignment or transfer of energy transition property to an assignee that is a financing entity that is wholly owned, directly or indirectly, by the utility shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title and interest in, to and under the energy transition property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A transfer of an interest in energy transition property shall be created when:

(1) the financing order creating the energy transition property has become effective;

(2) the documents evidencing the transfer of energy transition property have been executed and delivered to the assignee; and

(3) value is received.

B. On the filing of a financing statement with the secretary of state pursuant to Subsection D of Section 13 [62-18-13 NMSA 1978] of the Energy Transition Act, a transfer of an interest in energy transition property shall be perfected against all third persons, except creditors holding a prior security interest, ownership interest or assignment in the energy transition property previously perfected in accordance with Section 13 of that act.

C. The characterization of the sale, assignment or transfer as an absolute transfer and true sale, and the corresponding characterization of the property interest of the purchaser, shall not be affected or impaired by:

(1) commingling of energy transition revenues with other funds;

(2) the retention by the seller of:

(a) a partial or residual interest, including an equity interest, in the energy transition property, whether direct or indirect, or whether subordinate or otherwise; or

(b) the right to recover costs associated with taxes or license fees imposed on the collection of energy transition revenues;

(3) any recourse that the purchaser may have against the seller;

(4) any indemnification rights, obligations or repurchase rights made or provided by the seller;

(5) the obligation of the seller to collect energy transition revenues on behalf of an assignee;

(6) the treatment of the sale, assignment or transfer of energy transition property for tax, financial reporting or other purposes;

(7) any subsequent order of the commission amending a financing order pursuant to Subsection B of Section 7 [62-18-7 NMSA 1978] of the Energy Transition Act;

(8) any use of an adjustment mechanism approved in the financing order; or

(9) anything else that might affect or impair the characterization of the property.

History: Laws 2019, ch. 65, § 14.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-15. Fee assessments.

The energy transition charge stated as a separate line entry on a customer bill sent by a qualifying utility may be subject to an assessment of a franchise fee imposed by a municipality, county or other political subdivision of the state, pursuant to a utility franchise agreement. The imposition, collection and receipt of an energy transition charge is exempt from inspection and supervision fees assessed pursuant to the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978].

History: Laws 2019, ch. 65, § 15.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-16. Energy transition Indian affairs fund; energy transition economic development assistance fund; energy transition displaced worker assistance fund; community advisory committee.

A. The "energy transition Indian affairs fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

B. The Indian affairs department shall administer the energy transition Indian affairs fund, and money in the fund is subject to appropriation by the legislature only to that department to assist in addressing the conditions and issues of tribes and native peoples in the affected community.

C. The Indian affairs department shall develop an Indian affairs assistance plan to assist tribal and native people in the affected community that shall provide for the disbursement of money in the energy transition Indian affairs fund. In developing the plan, the Indian affairs department shall establish a public planning process in the affected community to inform the use of money in the fund. The Indian affairs department shall engage in consultation with Indian nations, tribes and pueblos in the affected community pursuant to the State-Tribal Collaboration Act [11-18-1 to 11-18-5 NMSA 1978]. The public planning process shall include at least three public meetings in the affected community. Expenditures from the fund shall be made after completion of the plan and as follows:

(1) to an entity approved by the Indian affairs department to receive funds for any program established at the Indian affairs department; and

(2) to tribal governments, public agencies or private persons to provide services and facilities in the affected community for promoting the welfare of Indian people.

D. The "energy transition economic development assistance fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

E. The economic development department shall administer the energy transition economic development assistance fund, and money in the fund is subject to appropriation by the legislature only to that department to assist in diversifying and

promoting the affected community's economy by fostering economic development opportunities unrelated to fossil fuel development or use.

F. The economic development department shall develop an economic diversification and development plan to assist the affected community that shall provide for the disbursement of money in the energy transition economic development assistance fund. In developing the plan, the economic development department shall request recommendations from the affected community's community advisory committee pursuant to Subsection K of this section and establish a public input process in the affected community to inform the use of money in the fund. The economic development department shall engage in consultation with Indian nations, tribes and pueblos in the affected area pursuant to the State-Tribal Collaboration Act. The public input process shall include at least three public meetings in the affected community. Expenditures from the fund shall be made pursuant to the plan and as follows:

(1) to an entity approved by the economic development department to receive funds for any program established at the economic development department;

(2) to assist employers to qualify for any tax relief for hiring displaced workers established under state or federal law; and

(3) to a municipality, county, Indian nation, pueblo or tribe or land grant community in New Mexico for programs designed to promote economic development in the affected community.

G. The "energy transition displaced worker assistance fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

H. The workforce solutions department shall administer the energy transition displaced worker assistance fund, and money in the fund is subject to appropriation by the legislature only to that department to assist displaced workers in an affected community.

I. The workforce solutions department shall develop a displaced worker development plan to assist displaced workers in an affected community that shall provide for the disbursement of money in the energy transition displaced worker assistance fund. In developing the plan, the workforce solutions department shall request recommendations from the affected community's community advisory committee pursuant to Subsection K of this section and establish a public input process in the affected community to inform the use of money in the energy transition displaced worker assistance fund. The workforce solutions department shall engage in consultation with Indian nations, tribes and pueblos in the affected area pursuant to the State-Tribal Collaboration Act. The public input process shall include at least three

public meetings in the affected community. Expenditures from the energy transition displaced worker assistance fund shall be made pursuant to the plan and as follows:

(1) to assist employers of displaced workers to qualify for any tax relief established under state or federal law;

(2) to the workforce solutions department:

(a) to provide assistance to displaced workers using any program established at that department; and

(b) for payment of costs associated with displaced workers enrolling and participating in certified apprenticeship programs in New Mexico; and

(3) to a municipality, county, Indian nation, pueblo or tribe or land grant community in New Mexico for job training and apprenticeship programs for displaced workers or for programs designed to promote economic development in the affected community.

J. Within thirty days of receipt of energy transition bond proceeds, a qualifying generating facility located in New Mexico shall transfer the following percentages of the financed amount of energy transition bonds as follows:

(1) one-half percent to the Indian affairs department for deposit in the energy transition Indian affairs fund;

(2) one and sixty-five hundredths percent to the economic development department for deposit in the energy transition economic development assistance fund; and

(3) three and thirty-five hundredths percent to the workforce solutions department for deposit in the energy transition displaced worker assistance fund.

K. In each affected community, a community advisory committee shall be convened. All meetings of the community advisory committee shall be held pursuant to the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. The secretaries of Indian affairs, economic development and workforce solutions shall appoint three conveners who reside in the affected community, at least one from each major political party and one representing one of the Navajo Nation chapter houses in the affected community. The conveners shall appoint members of the community advisory committee to include a member from each municipality, county, Indian nation, pueblo, tribe and land grant community, if any, in the affected community, at least four appointees representing diverse economic and cultural perspectives of the affected community and one appointee representing displaced workers in the affected community. Within sixty days of a request by the economic development department pursuant to Subsection F of this section, or the workforce solutions department pursuant to Subsection I of this section,

a community advisory committee shall provide recommendations to the requesting department on the use of available funds intended for the affected community.

L. As used in this section:

(1) "affected community" means a New Mexico county located within one hundred miles of a New Mexico facility producing electricity that closes, resulting in at least forty displaced workers; and

(2) "displaced worker" means a New Mexico resident who:

(a) was terminated from employment, or whose contract was terminated, due to the abandonment of a New Mexico facility producing electricity that resulted in the displacement of at least forty workers; and

(b) meets any other eligibility criteria established by the workforce solutions department.

History: Laws 2019, ch. 65, § 16; 2023, ch. 81, § 1.

ANNOTATIONS

The 2023 amendment, effective March 30, 2023, rewrote the definition of "displaced worker" as used in this section; and in Subsection L, Paragraph L(2), deleted former Subparagraphs L(2)(a) through L(2)(d) and added new Subparagraphs L(2)(a) and L(2)(b).

Projects that use fossil fuels to produce hydrogen are ineligible for funding from the energy transition economic development assistance fund. — The Energy Transition Economic Development Assistance Fund (fund) was created by the New Mexico legislature to assist in diversifying and promoting an affected community's economy by fostering economic development opportunities ***unrelated*** to fossil fuel development or use, and therefore the fund may not be used to subsidize the construction of two hydrogen generation projects, both of which utilize natural gas to produce hydrogen. The direct use of fossil fuels to manufacture hydrogen using the process proposed renders both projects ineligible for funding from the fund based on the plain meaning of the statute. 2025 Op. Att'y Gen. No. 25-10.

62-18-17. Energy transition bonds not public debt.

Energy transition bonds issued pursuant to the Energy Transition Act shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state. Bondholders shall have no right to have taxes levied by the legislature or the taxing authority of any county, municipality or other political subdivision of this state for the payment of the principal of or interest on energy transition bonds. The issuance of energy transition

bonds does not obligate the state or a political subdivision of the state to levy any tax or make any appropriation for payment of the principal of or interest on the bonds.

History: Laws 2019, ch. 65, § 17.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-18. Energy transition bonds as legal investments.

Energy transition bonds shall be legal investments for all governmental units, permanent funds of the state, finance authorities, financial institutions, insurance companies, fiduciaries and other persons requiring statutory authority regarding legal investments.

History: Laws 2019, ch. 65, § 18.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-19. State pledge not to impair.

A. The state pledges to and agrees with the bondholders, any assignee and any financing parties that the state shall not take or permit any action that impairs the value of energy transition property, except as allowed pursuant to Section 6 [62-18-6 NMSA 1978] of the Energy Transition Act, or reduces, alters or impairs energy transition charges that are imposed, collected and remitted for the benefit of the bondholders, any assignee and any financing parties, until the entire principal of, interest on and redemption premium on the energy transition bonds, all financing costs and all amounts to be paid to an assignee or financing party under an ancillary agreement are paid in full and performed in full.

B. Any person who issues energy transition bonds is permitted to include the pledge specified in Subsection A of this section in the energy transition bonds, ancillary agreements and documentation related to the issuance and marketing of the energy transition bonds.

History: Laws 2019, ch. 65, § 19.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-20. Choice of law.

The laws of the state of New Mexico as set forth in the Energy Transition Act shall govern the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right of creation of a security interest in energy transition property, an energy transition charge or a financing order.

History: Laws 2019, ch. 65, § 20.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-21. Conflicts.

In the event of any conflict between the Energy Transition Act and any other law regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any security interest in or transfer of energy transition property, the Energy Transition Act shall govern to the extent of the conflict.

History: Laws 2019, ch. 65, § 21.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-22. Validity on actions if act held invalid.

Effective on the date that energy transition bonds are first issued under the Energy Transition Act, if any provision of that act is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect the validity of any action allowed pursuant to that act that is taken by the commission, a qualifying utility, an assignee or any other person, a collection agent, a financing party, a bondholder or a party to an ancillary agreement and, to prevent the impairment of energy transition bonds issued or authorized in a financing order issued pursuant to the Energy Transition Act, any such action shall remain in full force and effect with respect to all energy transition bonds issued or authorized in a financing order pursuant to the Energy

Transition Act before the date that such provision is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason.

History: Laws 2019, ch. 65, § 22.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-23. Applicability.

The provisions of the Energy Transition Act shall not apply to a qualifying utility that makes an initial application for a financing order more than twelve years after the effective date of that act. This section shall not preclude a qualifying utility for which the commission has issued a financing order from applying to the commission for a subsequent order amending the financing order, pursuant to Section 7 [62-18-7 NMSA 1978] of the Energy Transition Act.

History: Laws 2019, ch. 65, § 23.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

ARTICLE 19
Public Regulation Commission

62-19-1. Short title.

Chapter 62, Article 19 NMSA 1978 may be cited as the "Public Regulation Commission Act".

History: Laws 1998, ch. 108, § 1; 2007, ch. 161, § 1; § 8-8-1, recompiled and amended as § 62-19-1 by Laws 2020, ch. 9, § 15.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 15 recompiled and amended former 8-8-1 NMSA 1978 as 62-19-1 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at

the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against.

The 2020 amendment, effective January 1, 2023, deleted "Chapter 8, Article 8" and added "Chapter 62, Article 19".

The 2007 amendment, effective June 15, 2007, changed the statutory reference to the act.

62-19-2. Definitions.

As used in the Public Regulation Commission Act:

A. "commission" means the public regulation commission;

B. "commissioner" means a person appointed to the public regulation commission; and

C. "person" means an individual, corporation, firm, partnership, association, joint venture or similar legal entity.

History: Laws 1998, ch. 108, § 2; § 8-8-2, recompiled and amended as § 62-19-2 by Laws 2020, ch. 9, § 16.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 16 recompiled and amended former 8-8-2 NMSA 1978 as 62-19-2 NMSA 1978, effective January 1, 2023.

The 2020 amendment, effective January 1, 2023, removed "elected" from the definition of "commissioner" as used in the Public Regulation Commission Act; and in Subsection B, after "means a person", deleted "elected or".

62-19-3. Public regulation commission.

A. The "public regulation commission", created in Article 11, Section 1 of the constitution of New Mexico, is composed of three commissioners appointed by the governor with the consent of the senate as provided in that article.

B. The commission shall annually elect one of its members chair, who shall preside at hearings. In the absence of the chair, the commission may appoint any other member to preside.

History: Laws 1998, ch. 108, § 3; § 8-8-3, recompiled and amended as § 62-19-3 by Laws 2020, ch. 9, § 17.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 17 recompiled and amended former 8-8-3 NMSA 1978 as 62-19-3 NMSA 1978, effective January 1, 2023.

The 2020 amendment, effective January 1, 2023, changed the composition of the public regulation commission from five elected commissioners to three commissioners appointed by the governor, and made certain technical amendments; and in Subsection A, after "composed of", deleted "five" and added "three", after "commissioners", deleted "elected from districts" and added "appointed by the governor with the consent of the senate", and after "article", deleted "and the Public Regulation Commission Apportionment Act".

62-19-4. Public regulation commission nominating committee.

A. The "public regulation commission nominating committee" is created and consists of seven members who are:

(1) knowledgeable about public utility regulation;

(2) not employed by or on behalf of or have a contract with a public utility that is regulated by the commission;

(3) not applicants or nominees for a position on the commission; and

(4) appointed as follows:

(a) four members appointed one each by the speaker of the house of representatives, the minority floor leader of the house of representatives, the president pro tempore of the senate and the minority floor leader of the senate, with no more than two members being from the same political party;

(b) two members appointed one each by the secretary of energy, minerals and natural resources and the secretary of economic development; and

(c) one member who is a member of an Indian nation, tribe or pueblo appointed by the governor.

B. A committee member shall:

(1) be a resident of New Mexico;

(2) serve a four-year term; and

(3) serve without compensation, but shall be reimbursed for expenses incurred in pursuit of the member's duties on the committee pursuant to the Per Diem and Mileage Act.

C. The committee and individual members shall be subject to the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978], the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978], the Financial Disclosure Act [10-16A-1 to 10-16A-8 NMSA 1978] and the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

D. Administrative support shall be provided to the committee by the staff of the commission.

E. Initial appointments to the committee shall be made by the appointing authorities prior to July 1, 2022. Subsequent appointments shall be made no later than thirty days before the end of a term.

F. The first meeting of the appointed members of the committee shall be held prior to September 1, 2022. The committee shall select one member to be chair and one member to be secretary. Following the first meeting, the committee shall meet as often as necessary in order to submit a list to the governor of no fewer than five qualified nominees for appointment to the commission for the terms beginning January 1, 2023. The list shall be developed to provide geographical diversity, and nominees on the list shall be from at least three different counties of the state.

G. Subsequent to January 1, 2023, the committee shall meet at least ninety days prior to the date on which the term of a commissioner ends and as often as necessary thereafter in order to submit a list to the governor, at least thirty days prior to the beginning of the new term, of no fewer than two qualified nominees from diverse geographical areas of the state for appointment to the commission for each commissioner position term that is ending.

H. Upon the occurrence of a vacancy in a commissioner position, the committee shall meet within thirty days of the date of the beginning of the vacancy and as often as necessary thereafter in order to submit a list to the governor, within sixty days of the first meeting after the vacancy occurs, of no fewer than two qualified nominees from diverse geographical areas of the state for appointment to the commission to fill the remainder of the term of each commissioner position that is vacant.

I. If a position on the committee becomes vacant during a term, a successor shall be selected in the same manner as the original appointment for that position and shall serve for the remainder of the term of the position vacated.

J. The committee shall actively solicit, accept and evaluate applications from qualified individuals for a position on the commission and may require an applicant to submit any information it deems relevant to the consideration of the individual's application.

K. The committee shall select nominees for submission to the governor who, in the committee's judgment, are best qualified to serve as a member of the commission.

L. A majority vote of all members of the committee in favor of a person is required for that person to be included on the list of qualified nominees submitted to the governor.

History: Laws 2020, ch. 9, § 18.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 9, § 63 made Laws 2020, ch. 9, § 18 effective January 1, 2022.

62-19-5. Qualifications of commissioners.

A. Commissioners shall be persons who are independent of the industries regulated by the commission and shall possess demonstrated competence.

B. In order to be appointed as a commissioner, a person must be qualified for office by:

(1) having a baccalaureate degree from an institution of higher education that has been accredited by a regional or national accrediting body and at least ten years of professional experience in an area regulated by the commission or in the energy sector and involving a scope of work that includes accounting, public or business administration, economics, finance, statistics, policy, engineering or law; or

(2) having higher education resulting in at least a professional license or a post-graduate degree from an institution of higher education that has been accredited by a regional or national accrediting body in a field related to an area regulated by the commission, including accounting, public or business administration, economics, finance, statistics, policy, engineering or law, and at least ten years of professional experience within the person's field.

C. A commissioner shall not have a financial interest in a public utility in this state or elsewhere and shall not have been employed by a commission-regulated entity at any time during the two years prior to appointment to the commission.

D. Commissioners shall give their entire time to the business of the commission and shall not pursue any other business or vocation or hold any other office for profit.

E. As used in this section, "professional experience" means employment in which the prospective appointee for commissioner regularly made decisions requiring discretion and independent judgment and:

(1) engaged in policy analysis, research, consumer advocacy or implementation in an area regulated by the commission or in the energy sector;

(2) managed, as the head, deputy head or division director, a federal, state, tribal or local government department or division responsible for utilities, energy policy or construction; or

(3) managed a business or organization regulated by the commission or in the energy sector that had five or more employees during the time it was managed by the prospective appointee.

History: Laws 2013, ch. 64, § 1; 2019, ch. 212, § 210; § 8-8-3.1, recompiled and amended as § 62-19-5 by Laws 2020, ch. 9, § 19; 2023, ch. 100, § 17.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 19 recompiled and amended former 8-8-3.1 NMSA 1978 as 62-19-5 NMSA 1978, effective January 1, 2023.

The 2023 amendment, effective July 1, 2024, removed management of a department or division responsible for transportation from the required qualifications of a commissioner appointed to the public regulation commission; and in Subsection E, Paragraph E(2), after "energy policy", deleted "transportation".

The 2020 amendment, effective January 1, 2023, removed "elected" and "candidate" from the requirements for a public regulation commissioner, removed certain references to election related activity, required commissioners to have a baccalaureate degree from an institution of higher education or a post-graduate degree in a field related to an area regulated by the commission, including policy, required at least ten years of professional experience within the person’s field, prohibited a commissioner from having a financial interest in a public utility, from having been employed by a commission-regulated entity at any time during the two years prior to appointment to the commission, and from pursuing any other business or holding any other office; in Subsection A, deleted "In addition to other requirements imposed by law" and added new language in the subsection; added subsection designation "B."; in Subsection B, in the introductory clause, after "to be", deleted "elected or", in Paragraph B(1), after "having", added "a baccalaureate degree from an institution of higher education that has been accredited by a regional or national accrediting body and", in Paragraph B(2), after "having", deleted " a total of ten years of combined professional experience as described in Paragraph (1) of this subsection and", after "professional license or a", deleted "baccalaureate" and added "post-graduate", after "accrediting body in", added "a field related to", after "statistics", added "policy", and after "engineering or law", added "and at least ten years of professional experience within the person’s field"; added new Subsections C and D and redesignated former Subsection B as Subsection E; in Subsection E, in the introductory clause, after "which the", deleted "candidate or", in Paragraph E(1), after "research", added "consumer advocacy", in Paragraph E(2),

after "utilities", added "energy policy", and in Paragraph E(3), after "managed by the", deleted "candidate or"; and deleted former Subsections C and D.

The 2019 amendment, effective April 3, 2019, revised the qualification criteria for being elected or appointed commissioner; in Subsection A, deleted Paragraph A(3); in Subsection C, after "declaration of candidacy.", added the remainder of the subsection; and in Subsection D, after "Subsection A of this section", added "or that the affidavit of the person seeking nomination does not contain sufficient information to determine if the person meets the requirements of Subsection A of this section".

62-19-6. Continuing education requirements for commissioners.

A. Beginning July 1, 2013, a commissioner shall complete:

(1) an ethics certificate course provided in person or online by a New Mexico public post-secondary educational institution in the first twelve-month period after taking office and at least one two-hour ethics course in each subsequent twelve-month period that the commissioner serves in office; and

(2) at least thirty-two hours of continuing education relevant to the work of the commission in each twelve-month period that the commissioner serves in office. Continuing education courses shall be endorsed by the national association of regulatory utility commissioners or by the relevant licensing or professional association for a qualifying area of study for degree holders pursuant to this section.

B. A commissioner shall be responsible for having the endorsing organization submit certification of completion of the hours of education required pursuant to Subsection A of this section to the commission's chief of staff.

C. If a commissioner fails to comply with the education requirements in Subsection A of this section by the last day of a twelve-month period, the commissioner's compensation for performing the duties of the office shall be withheld by the commission until the requirements for the preceding twelve-month period or periods have been met.

History: Laws 2013, ch. 64, § 2; § 8-8-3.2, recompiled and amended as § 62-19-6 by Laws 2020, ch. 9, § 20.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 20 recompiled and amended former 8-8-3.2 NMSA 1978 as 62-19-6 NMSA 1978, effective January 1, 2023.

The 2020 amendment, effective January 1, 2023, in Subsection C, deleted "As an exception to Section 8-1-1 NMSA 1978".

62-19-7. Recusal of commissioner or hearing examiner.

A. A commissioner or hearing examiner shall self recuse in any adjudicatory proceeding in which the commissioner or hearing examiner is unable to make a fair and impartial decision or in which there is reasonable doubt about whether the commissioner or hearing examiner can make a fair and impartial decision, including:

(1) when the commissioner or hearing examiner has a personal bias or prejudice concerning a party or its representative or has prejudged a disputed evidentiary fact involved in a proceeding prior to hearing. For the purposes of this paragraph, "personal bias or prejudice" means a predisposition toward a person based on a previous or ongoing relationship, including a professional, personal, familial or other intimate relationship, that renders the commissioner or hearing examiner unable to exercise the commissioner's or hearing examiner's functions impartially;

(2) when the commissioner or hearing examiner has a pecuniary interest in the outcome of the proceeding other than as a customer of a party;

(3) when in previous employment the commissioner or hearing examiner served as an attorney, adviser, consultant or witness in the matter in controversy; or

(4) when, as a nominee for appointment to the office of public regulation commissioner, the nominee announced how the nominee would rule on the adjudicatory proceeding or a factual issue in the adjudicatory proceeding.

B. If a commissioner or hearing examiner fails to self recuse when it appears that grounds exist, a party shall promptly notify the commissioner or hearing examiner of the apparent grounds for recusal. If the commissioner or hearing examiner declines to self recuse upon request of a party, the commissioner or hearing examiner shall provide a full explanation in support of the refusal.

History: Laws 1998, ch. 108, § 18; § 8-8-18, recompiled and amended as § 62-19-7 by Laws 2020, ch. 9, § 22.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 22 recompiled and amended former 8-8-18 NMSA 1978 as 62-19-7 NMSA 1978, effective January 1, 2023

The 2020 amendment, effective January 1, 2023, removed references to "candidate", and made certain technical amendments; and in Subsection A, Paragraph A(4), after "when, as a", deleted "candidate for" and added "nominee for appointment to the", after "office", added "of public regulation commissioner", and substituted each occurrence of "he" with "the nominee".

Recusal not warranted. — Commissioners properly declined to recuse themselves since the timing of their remarks indicated that they were based on the evidence adduced in the rate case, as well the direct testimony filed by the public service company of New Mexico (PNM) in the present case. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

62-19-8. Prohibited acts; nominees; commissioners and employees.

A. As used in this section, in addition to the definitions provided in Section 16 [62-19-2 NMSA 1978] of this 2020 act:

(1) "affiliated interest" means a person who directly controls or is controlled by or is under common control with a regulated entity, including an agent, representative, attorney, employee, officer, owner, director or partner of an affiliated interest. For the purposes of this definition, "control" includes the possession of the power to direct or cause the direction of the management and policies of a person, whether directly or indirectly, through the ownership, control or holding with the power to vote of ten percent or more of the person's voting securities;

(2) "intervenor" means a person who is intervening as a party in an adjudicatory matter or commenting in a rulemaking pending before the commission or has intervened in an adjudicatory or rulemaking matter before the commission within the preceding twenty-four months, including an agent, representative, attorney, employee, officer, owner, director, partner or member of an intervenor;

(3) "pecuniary interest" includes owning or controlling securities; serving as an officer, director, partner, owner, employee, attorney or consultant; or otherwise benefiting from a business relationship. "Pecuniary interest" does not include an investment in a mutual fund or similar third-party-controlled investment, pension or disability benefits or an interest in capital credits of a rural electric cooperative or telephone cooperative because of current or past patronage; and

(4) "regulated entity" means a person whose charges for services to the public are regulated by the commission and includes any direct or emerging competitors of a regulated entity and includes an agent, representative, attorney, employee, officer, owner, director or partner of the regulated entity.

B. In addition to the requirements of the Financial Disclosure Act [10-16A-1 through 10-16A-8 NMSA 1978] and the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978], nominees for appointment to the commission, commissioners and employees of the commission shall comply with the requirements of the Public Regulation Commission Act, as applicable.

C. A nominee for appointment to the commission shall not solicit or accept anything of value, either directly or indirectly, from a person whose charges for services to the

public are regulated by the commission. For the purposes of this subsection, "anything of value" includes money, in-kind contributions and volunteer services to the nominee or the nominee's organization, but does not include pension or disability benefits.

D. A commissioner or employee of the commission shall not:

(1) accept anything of value from a regulated entity, affiliated interest or intervenor. For the purposes of this paragraph, "anything of value" does not include:

(a) the cost of refreshments totaling no more than five dollars ($5.00) a day or refreshments at a public reception or other public social function that are available to all guests equally;

(b) inexpensive promotional items that are available to all customers of the regulated entity, affiliated interest or intervenor; or

(c) pension or disability benefits received from a regulated entity, affiliated interest or intervenor;

(2) have a pecuniary interest in a regulated entity, affiliated interest or intervenor, and if a pecuniary interest in an intervenor develops, the commissioner or employee shall divest that interest or self recuse from the proceeding with the intervenor interest; or

(3) solicit any regulated entity, affiliated interest or intervenor to appoint a person to a position or employment in any capacity.

E. After leaving the commission:

(1) a former commissioner shall not be employed or retained in a position that requires appearances before the commission by a regulated entity, affiliated interest or intervenor within two years of the former commissioner's separation from the commission;

(2) a former employee shall not appear before the commission representing a party to an adjudication or a participant in a rulemaking within one year of ceasing to be an employee; and

(3) a former commissioner or employee shall not represent a party before the commission or a court in a matter that was pending before the commission while the commissioner or employee was associated with the commission and in which the former commissioner or employee was personally and substantially involved in the matter.

F. The attorney general or a district attorney may institute a civil action in the district court for Santa Fe county or, in the attorney general's or a district attorney's discretion,

the district court for the county in which a defendant resides if a violation of this section has occurred or to prevent a violation of this section. A civil penalty may be assessed in the amount of two hundred fifty dollars ($250) for each violation, not to exceed five thousand dollars ($5,000).

History: Laws 1998, ch. 108, § 19; § 8-8-19, recompiled and amended as § 62-19-8 by Laws 2020, ch. 9, § 23.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 23 recompiled and amended former 8-8-19 NMSA 1978 as 62-19-8 NMSA 1978, effective January 1, 2023.

The 2020 amendment, effective January 1, 2023, substituted references to "candidate" with "nominee", and made certain technical amendments; in the section heading, deleted "candidates" and added "nominees"; in Subsection A, in the introductory clause, after "Section", deleted "2 of the Public Regulation Commission Act" and added "16 of this 2020 act"; in Subsection B, after "Governmental Conduct Act", deleted "candidates for" and added "nominees for appointment to", and after "requirements of", deleted "this section and Sections 17 and 18 of"; in Subsection C, after "A", deleted "candidate for election" and added "nominee for appointment", deleted paragraph designation "(1)" and Paragraph C(2), and after "volunteer services to the", deleted "candidate or his campaign" and added "nominee or the nominee's"; and in Paragraph D(1), in the introductory paragraph, deleted "For the purposes of this paragraph, a commissioner may accept allowable campaign contributions when campaigning for reelection.".

62-19-9. Commission; general powers and duties.

A. The commission shall administer and enforce the laws with which it is charged and has every power conferred by law.

B. The commission may:

(1) subject to legislative appropriation, appoint and employ such professional, technical and clerical assistance as it deems necessary to assist it in performing its powers and duties;

(2) delegate authority to subordinates as it deems necessary and appropriate, clearly delineating such delegated authority and any limitations;

(3) retain competent attorneys to handle the legal matters of the commission and give advice and counsel in regard to any matter connected with the duties of the commission and, in the discretion of the commission, to represent the commission in any legal proceeding;

(4) organize into organizational units as necessary to enable it to function most efficiently, subject to provisions of law requiring or establishing specific organizational units;

(5) take administrative action by issuing orders not inconsistent with law to assure implementation of and compliance with the provisions of law for which the commission is responsible and to enforce those orders by appropriate administrative action and court proceedings;

(6) conduct research and studies to improve the commission's operations or the provision of services to the citizens of New Mexico;

(7) conduct investigations as necessary to carry out the commission's responsibilities;

(8) apply for and accept grants and donations in the name of the state to carry out its powers and duties;

(9) enter into contracts to carry out its powers and duties;

(10) adopt such reasonable administrative, regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties;

(11) cooperate with tribal and pueblo governments on topics over which the commission and the other governments have jurisdiction and conduct joint investigations, hold joint hearings and issue joint or concurrent orders as appropriate; and

(12) apply to the district court for injunctions to prevent violations of any laws that it administers or rules or orders adopted pursuant to those laws.

C. The commission shall:

(1) prepare an annual budget for submission to the legislature;

(2) provide for surety bond coverage for all employees of the commission as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978] and pay the costs of such bonds;

(3) adopt rules to streamline the resolution of cases before it when appropriate by:

(a) the use of hearing examiners;

(b) the taking of evidence with the least delay practicable;

(c) limiting repetitious testimony; and

(d) adopting procedures for resolving cases in ways other than by trial-type hearings when appropriate, including consent calendars, conferences, settlements, mediation, arbitration and other alternative dispute resolution methods and the use of staff decisions; and

(4) provide a toll-free telephone number and publish it and the commission's general telephone number in local telephone directories.

D. A majority of the commission constitutes a quorum for the transaction of business; provided, however, that a majority vote of the commission is needed for a final decision of the commission.

History: Laws 1998, ch. 108, § 4; § 8-8-4, recompiled as § 62-19-9 by Laws 2020, ch. 9, § 59.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 59 recompiled former 8-8-4 NMSA 1978 as 62-19-9 NMSA 1978, effective January 1, 2023.

Hearings. — Where the PRC does not delegate its authority to a hearing examiner, but rather, conducts an evidentiary hearing before a full complement of commissioners, unexplained absences by commissioners should be the exception rather than the rule. The commissioners of the PRC have a constitutional and statutory obligation to participate actively and fully in the proceedings before them. *Albuquerque Bernalillo County Water Util. Auth. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Scope of commission's enforcement authority. — Although the PRC may seek injunctions and impose an administrative fine on a telecommunications provider for any act or omission that the provider knew or should have known was a violation of any applicable law or rule or order of the PRC, the PRC's regulatory authority is not limited to those remedies since the legislature gave it discretion to enforce its orders by appropriate administrative action and court proceedings, which includes discretion to issue an order requiring a telecommunications provider to provide consumer credit or refunds in order to prevent violations of the *New Mexico Telecommunications Act. Qwest Corp. v. N.M. Public Regulation Comm'n*, 2006-NMSC-042, 140 N.M. 440, 143 P.3d 478.

62-19-10. Propane service; commission duties.

A. The commission shall adopt rules to protect consumers' rights with respect to propane service.

B. The commission shall report by December 2009 to the appropriate interim legislative committee appointed by the New Mexico legislative council on the progress of the rulemaking pursuant to this section.

History: Laws 2009, ch. 216, § 1; § 8-8-4.1, recompiled as § 62-19-10 by Laws 2020, ch. 9, § 59.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 59 recompiled former 8-8-4.1 NMSA 1978 as 62-19-10 NMSA 1978, effective January 1, 2023.

62-19-11. Chief of staff; division directors; other staff.

A. The commission shall appoint a "chief of staff" who is responsible for the day-to-day operations of the commission staff under the general direction of the commission. The chief of staff shall serve at the pleasure of the commission.

B. With the consent of the commission, the chief of staff shall appoint division directors. Appointments shall be made without reference to party affiliation and solely on the ground of fitness to perform the duties of their offices.

C. Each director, with the consent of the chief of staff, shall employ such professional, technical and support staff as necessary to carry out the duties of the director's division. Employees shall be hired solely on the ground of their fitness to perform the job for which they are hired. Division staff are subject to the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978].

History: Laws 1998, ch. 108, § 5; 2000, ch. 57, § 1; 2013, ch. 74, §1; § 8-8-5, recompiled as § 62-19-11 by Laws 2020, ch. 9, § 59.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 59 recompiled former 8-8-5 NMSA 1978 as 62-19-11 NMSA 1978, effective January 1, 2023.

The 2013 amendment, effective March 29, 2013, in Subsection C, in the third sentence, deleted "Except as provided in Subsection D of this section"; and deleted former Subsection D, which permitted the superintendent of insurance to designate division positions with the consent of the chief of staff.

The 2000 amendment, effective May 17, 2000, inserted "Except as provided in Subsection D of this section" in the last sentence of Subsection C and added Subsection D.

62-19-12. Commission; organizational units.

The commission includes the following organizational units:

A. the administrative services division;

B. the consumer relations division;

C. the legal division;

D. the utility division; and

E. the pipeline safety bureau.

History: Laws 1998, ch. 108, § 6; 2007, ch. 161, § 2; 2013, ch. 74, § 2; 2020, ch. 9, § 21; § 8-8-6, recompiled as § 62-19-12 by Laws 2020, ch. 9, § 59; 2023, ch. 100, § 18.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 59 recompiled and amended former 8-8-6 NMSA 1978 as 62-19-12 NMSA 1978, effective January 1, 2023.

The 2023 amendment, effective July 1, 2024, added the pipeline safety bureau to, and removed the transportation division from, the list of organizational units included in the public regulation commission; in the section heading, deleted "divisions" and added "organizational units"; deleted former Subsection D and redesignated Subsection E as Subsection D; and added a new Subsection E.

Temporary provisions. — Laws 2023, ch. 100, § 80, effective July 1, 2024, provided that:

A. On July 1, 2024, all staff positions, functions, personnel, appropriations, money, records, equipment, supplies, other property and contractual obligations of the public regulation commission related to motor carrier regulation and enforcement, railroad safety enforcement and ambulance standards are transferred to the department of transportation.

B. Beginning July 1, 2024, all references in law, rules, orders and other official acts to the public regulation commission or the transportation division of the public regulation commission related to motor carrier regulation and enforcement, railroad safety enforcement and ambulance standards shall be deemed references to the department of transportation.

C. Beginning July 1, 2024, all contractual obligations of the public regulation commission related to motor carrier regulation and enforcement, railroad safety enforcement and ambulance standards are binding on the department of transportation.

D. The rules, orders and decisions of the public regulation commission related to motor carrier regulation and enforcement, railroad safety enforcement and ambulance standards shall remain in effect until repealed or amended.

The 2020 amendment, effective July 1, 2023, removed the fire marshal division from the public regulation commission; and deleted Subsection F.

The 2013 amendment, effective March 29, 2013, eliminated the insurance division; and deleted former Subsection C, which created the insurance division.

The 2007 amendment, effective June 15, 2007, added the fire marshal division to the organizational units.

62-19-13. Administrative services division; chief clerk.

A. The director of the administrative services division of the commission shall record the judgments, rules, orders and other proceedings of the commission and make a complete index to the judgments, rules, orders and other proceedings; issue and attest all processes issuing from the commission and affix the seal of the commission to them; and preserve the seal and other property belonging to the commission.

B. The administrative services division shall perform the following functions:

(1) case docketing;

(2) budget and accounting;

(3) personnel services;

(4) procurement; and

(5) information systems services.

History: Laws 1998, ch. 108, § 7; 2001, ch. 245, § 1; 2013, ch. 75, § 10; § 8-8-7, recompiled as § 62-19-13 by Laws 2020, ch. 9, § 59.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 59 recompiled former 8-8-7 NMSA 1978 as 62-19-13 NMSA 1978, effective January 1, 2023.

The 2013 amendment, effective July 1, 2013, eliminated the corporations bureau; in Subsection B, in the introductory sentence, after "division", deleted "includes the ‘corporations bureau’ and" and deleted Subsection C, which prescribed the duties of the corporations bureau.

The 2001 amendment, effective July 1, 2001, substituted "The director of the administrative services division of the commission" for "The chief of staff shall appoint a 'chief clerk' who" in Subsection A; in Subsection B, deleted "The chief clerk shall direct" from the beginning of the subsection; substituted "includes" for "including"; and inserted "shall perform".

62-19-14. Consumer relations division.

A. The consumer relations division shall:

(1) receive and investigate nondocketed consumer complaints and assist consumers in resolving, in a fair and timely manner, complaints against a person under the authority of the commission, including mediation and other methods of alternative dispute resolution; provided, however, that assistance pursuant to this paragraph does not include legal representation of a private complainant in an adjudicatory proceeding;

(2) work with the consumer protection division of the attorney general's office, the governor's constituent services office and other state agencies as needed to ensure fair and timely resolution of complaints;

(3) advise the commission on how to maximize public input into commission proceedings, including ways to eliminate language, disability and other barriers;

(4) identify, research and advise the commission on consumer issues;

(5) assist the commission in the development and implementation of consumer policies and programs; and

(6) perform such other duties as prescribed by the commission.

B. All complaints received by the division with regard to quality or quantity of service provided by a regulated entity or its competitors shall be recorded by the division for the purpose of determining general concerns of consumers. A report of consumer complaints and their status shall be included in the commission's annual report.

History: Laws 1998, ch. 108, § 8; § 8-8-8, recompiled as § 62-19-14 by Laws 2020, ch. 9, § 59.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 59 recompiled former 8-8-8 NMSA 1978 as 62-19-14 NMSA 1978, effective January 1, 2023.

62-19-15. Legal division.

A. The commission shall set minimum requirements for the director of the legal division, including membership in the New Mexico bar and administrative and supervisory experience.

B. The legal division shall:

(1) provide legal counsel for the commission in matters not involving advice on contested proceedings before the commission; and

(2) provide legal counsel to all divisions, including the legal component of the staff that represents the public interest in matters before the commission.

History: Laws 1998, ch. 108, § 10; § 8-8-10, recompiled as § 62-19-15 by Laws 2020, ch. 9, § 59.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 59 recompiled former 8-8-10 NMSA 1978 as 62-19-15 NMSA 1978, effective January 1, 2023.

Consolidation of legal division and office of general counsel under a single manager. — The legal division of the public regulation commission and the office of general counsel may not be consolidated under a single attorney manager under any circumstances. 2012 Op. Att'y Gen. No. 12-06.

Single manager of the legal division and the office of general counsel. — The appointment of a single attorney to manage the legal division of the public regulation commission and the office of general counsel as separate units where the single attorney manager would remain a member of the office of general counsel and engage in advisory activities with commissioners while performing administrative functions for the legal division, such as scheduling work assignments, performance review, and hiring and discipline, is not permissible. 2012 Op. Att'y Gen. No. 12-06.

Movement of attorneys between the legal division and of the office of general counsel. — Although the Public Regulation Commission Act does not prohibit the routine movement of attorneys between the legal division and the office of general counsel, the movement of attorneys will implicate Rule 16-107 NMRA of the rules of professional conduct which will require each attorney to undertake a conflicts analysis before accepting any assignment to ensure that there is no significant risk that the attorney's representation of the commission or a division will not be materially limited by the attorney's responsibilities to other clients within the agency. 2012 Op. Att'y Gen. No. 12-06.

62-19-16. Pipeline safety bureau.

The pipeline safety bureau shall serve as staff to the commission for the regulation of pipelines and pipeline safety, as provided by law.

History: Laws 1998, ch. 108, § 11; § 8-8-11, recompiled as § 62-19-16 by Laws 2020, ch. 9, § 59; repealed and reenacted by Laws 2023, ch. 100, § 19.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 59 recompiled former 8-8-11 NMSA 1978 as 62-19-16 NMSA 1978, effective January 1, 2023.

Repeals and reenactments. — Laws 2023, ch. 100, § 19 repealed former 62-19-16 NMSA 1978 and enacted a new section, effective July 1, 2024.

62-19-17. Utility division.

A. The utility division shall serve as staff to the commission in the regulation of electric, natural gas, renewable energy sources, telecommunications and water and wastewater systems as provided by law.

B. The commission shall set minimum educational and experience requirements for the director of the utility division.

C. The utility division shall represent the public interest in utility matters before the commission and may present testimony and evidence and cross-examine witnesses. In order to represent the public interest, the utility division shall present to the commission its beliefs on how the commission should fulfill its responsibility to balance the public interest, consumer interest and investor interest.

D. The utility division shall perform the functions of the telecommunications department of the former state corporation commission and staff functions, not including advisory functions, of the former New Mexico public utility commission.

E. Utility division staff shall not have ex parte communications with commissioners or a hearing examiner assigned to a utility case, except as expressly permitted pursuant to Section 8-8-17 NMSA 1978.

History: Laws 1998, ch. 108, § 12; 2003, ch. 346, § 1; § 8-8-12, recompiled as § 62-19-17 by Laws 2020, ch. 9, § 59.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 59 recompiled former 8-8-12 NMSA 1978 as 62-19-17 NMSA 1978, effective January 1, 2023.

The 2003 amendment, effective June 20, 2003, added the second sentence in Subsection C; and added the exception to Subsection E.

62-19-18. Telecommunications bureau.

A. The "telecommunications bureau" is created in the utility division of the public regulation commission.

B. The telecommunications bureau shall:

(1) review disputes between telecommunications providers;

(2) investigate each complaint on an expedited basis;

(3) address other telecommunications-related duties as required by the New Mexico Telecommunications Act [Chapter 63, Article 9A NMSA 1978] and the commission; and

(4) recommend actions to the commission.

C. Each complaint shall be resolved by the commission within sixty days unless extended for good cause by an order of the commission or hearing examiner that states with specificity the reason for and length of the extension.

History: Laws 2000, ch. 100, § 1; 2000, ch. 102, § 1; § 8-8-12.1, recompiled as § 62-19-18 by Laws 2020, ch. 9, § 59.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 59 recompiled former 8-8-12.1 NMSA 1978 as 62-19-18 NMSA 1978, effective January 1, 2023.

Duplicate laws. — Laws 2000, ch. 100, § 1 and Laws 2000, ch. 102, § 1 enacted identical new sections of law, effective March 7, 2000. The section was set out as enacted by Laws 2000, ch. 102, § 1. *See* 12-1-8 NMSA 1978.

62-19-19. Advisory staff.

A. The chief of staff may hire, with the consent of the commission, advisory staff with expertise in regulatory law, engineering, economics and other professional or technical disciplines to advise the commission on any matter before the commission. The chief of staff may hire on a temporary, term or contract basis such other experts or staff as the commission requires for a particular case.

B. Advisory staff shall:

(1) analyze case records;

(2) analyze recommended decisions;

(3) advise the commission on policy issues;

(4) assist the commission in the development of rules;

(5) assist the commission in writing final orders; and

(6) perform such other duties as required by the chief of staff.

History: Laws 1998, ch. 108, § 13; § 8-8-13, recompiled as § 62-19-19 by Laws 2020, ch. 9, § 59.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 59 recompiled former 8-8-13 NMSA 1978 as 62-19-19 NMSA 1978, effective January 1, 2023.

Expert's status. — Although an expert's relationship with the PRC and the expert's advice fell within the definition of advisory staff in Section 8-8-13(A) NMSA 1978 so that the PRC was not required to provide the parties with the substance of the expert's advice, under another set of facts the expert could fall under the category of a non-party expert subject to the restrictions on ex parte communications of Section 8-8-17 NMSA 1978. *Qwest Corp. v. N.M. Public Regulation Comm'n*, 2006-NMSC-042, 140 N.M. 440, 143 P.3d 478.

62-19-20. Hearing examiners.

A. The commission may appoint a commissioner or a hearing examiner to preside over any matter before the commission, including rulemakings, adjudicatory hearings and administrative matters.

B. A hearing examiner shall provide the commission with a recommended decision on the matter assigned to the hearing examiner, including findings of fact and conclusions of law. The recommended decision shall be provided to the parties, and they may file exceptions to the decision prior to the final decision of the commission.

C. When the commission has appointed a hearing examiner to preside over a matter, at least one member of the commission shall, at the request of a party to the proceedings, attend oral argument.

History: Laws 1998, ch. 108, § 14; 2003, ch. 346, § 2; 2013, ch. 74, § 3; § 8-8-14, recompiled as § 62-19-20 by Laws 2020, ch. 9, § 59.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 59 recompiled former 8-8-14 NMSA 1978 as 62-19-20 NMSA 1978, effective January 1, 2023.

The 2013 amendment, effective March 29, 2013, deleted reference to the Insurance Code; and in Subsection B, deleted "Except as provided in the New Mexico Insurance Code".

The 2003 amendment, effective June 20, 2003, added Subsection C.

62-19-21. Commission rules; procedures for adoption.

A. Unless otherwise provided by law, no rule affecting a person outside the commission shall be adopted, amended or repealed except after public notice and public hearing before the commission or a hearing examiner designated by the commission.

B. Notice of the subject matter of the rule, the action proposed to be taken, the manner in which interested persons may present their views and the method by which copies of the proposed rule, amendment or repealing provisions may be obtained shall be published at least once at least thirty days prior to the hearing date in the New Mexico register and two newspapers of general circulation in the state and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice. For each rule, amendment or repealing provision that affects only one or a limited number of municipalities, towns, villages or counties, notice shall be published in the largest circulation newspaper published and distributed locally in those areas as well as in a newspaper of general circulation in the state. Additional notice may be made by posting on the internet or by using other alternative methods of informing interested persons.

C. If the commission finds that immediate adoption, amendment or suspension of a rule is necessary for the preservation of the public peace, health, safety or general welfare, the commission may dispense with notice and public hearing and adopt, amend or suspend the rule as an emergency. The commission's finding of why an emergency exists shall be incorporated in the emergency rule, amendment or suspension filed with the state records center. Upon adoption of an emergency rule that is intended to remain in effect for longer than sixty days, notice shall be given within seven days of filing the rule as required in this section for proposed rules.

D. The commission shall issue a rule within eighteen months following the publication of that proposed rule or it shall be deemed to be withdrawn. The commission may propose the same or revised rule in a subsequent rulemaking.

E. All rules shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978]. Emergency rules shall be effective on the date the rules are filed with

the state records center. All other rules shall be effective fifteen days after filing, unless a later date is provided by the rule.

History: Laws 1998, ch. 108, § 15; 2001, ch. 117, § 1; § 8-8-15, recompiled as § 62-19-21 by Laws 2020, ch. 9, § 59.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 59 recompiled former 8-8-15 NMSA 1978 as 62-19-21 NMSA 1978, effective January 1, 2023.

The 2001 amendment, effective July 1, 2001, in Subsection B, revised the procedures for providing notice of proposed rulemaking by changing the day of publication requirement so that notice is to appear thirty days before the hearing date, instead of sixty; changing the publications in which notice shall be posted to two newspapers of general circulation and the New Mexico register, instead of three newspapers; changed the day that notice needs to be mailed to those who provided a written request for advanced notice to thirty days before the hearing date, instead of sixty; and made a provision for emergency rules to become effective the date they are filed in Subsection E.

62-19-22. Record of proceedings.

Unless otherwise provided by law, the commission may by rule provide that oral proceedings before the commission may be taken by any means that provides a full and complete record, including tape recording or stenography. The commission by rule shall determine when tape recordings are transcribed. A party to the proceeding may request a copy of a tape recording or a written transcript if one is provided. The commission may charge a reasonable fee for a copy of a proceeding. Copy costs shall be determined by the commission by rule and money collected shall be deposited in the general fund.

History: Laws 1998, ch. 108, § 16; § 8-8-16, recompiled as § 62-19-22 by Laws 2020, ch. 9, § 59.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 59 recompiled former 8-8-16 NMSA 1978 as 62-19-22 NMSA 1978, effective January 1, 2023.

62-19-23. Ex parte communications.

A. A commissioner shall not initiate, permit or consider a communication directly or indirectly with a party or his representative outside the presence of the other parties concerning a pending rulemaking after the record has been closed or a pending adjudication.

B. A hearing examiner shall not initiate, permit or consider a communication directly or indirectly with a party or his representative outside the presence of the other parties concerning a pending rulemaking or adjudication.

C. Notwithstanding the provisions of Subsections A and B of this section, the following ex parte communications are permitted:

(1) where circumstances require, ex parte communications for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are allowed if the commissioner or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication and the commissioner or hearing examiner makes provision to promptly notify all other parties of the substance of the ex parte communication;

(2) a commissioner may consult with another commissioner or with advisory staff whose function is to advise the commission in carrying out the commissioner's rulemaking or adjudicative responsibilities;

(3) a hearing examiner may consult with the commission's advisory staff;

(4) a commissioner or hearing examiner may obtain the advice of a nonparty expert on an issue raised in the rulemaking or adjudication if the commissioner or hearing examiner gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond; and

(5) pursuant to the public regulation commission's rulemaking authority a party to a proceeding may consult with the commission's advisory staff. By July 1, 2004, the commission shall establish such rules.

D. A commissioner or hearing examiner who receives or who makes or knowingly causes to be made a communication prohibited by this section shall disclose it to all parties and give other parties an opportunity to respond.

E. Upon receipt of a communication knowingly made or caused to be made by a party to a commissioner or hearing examiner in violation of this section, the commissioner or hearing examiner may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

History: Laws 1998, ch. 108, § 17; 2003, ch. 346, § 3; 2004, ch. 81, § 1; § 8-8-17, recompiled as § 62-19-23 by Laws 2020, ch. 9, § 59.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 59 recompiled former 8-8-17 NMSA 1978 as 62-19-23 NMSA 1978, effective January 1, 2023.

The 2004 amendments, effective May 19, 2004, revised Paragraph (2) of Subsection C to require the adoption of rules governing consultation with the commission's advisory staff.

The 2003 amendment, effective June 20, 2003, added Paragraph C(5).

Expert's status. — Although an expert's relationship with the PRC and the expert's advice fell within the definition of advisory staff in Section 8-8-13(A) NMSA 1978 so that the PRC was not required to provide the parties with the substance of the expert's advice, under another set of facts the expert could fall under the category of a non-party expert subject to the restrictions on ex parte communications of Section 8-8-17 NMSA 1978. *Qwest Corp. v. N.M. Public Regulation Comm'n*, 2006-NMSC-042, 140 N.M. 440, 143 P.3d 478.

62-19-24. Commission reports.

By December 1 of each year, the commission shall report to the legislature and the governor regarding its activities for the previous year in sufficient detail to disclose the workings of the commission and the impact of regulation on the industries regulated by the commission. The report may include suggestions and recommended changes in law, as the commission deems appropriate, that would be in the public interest.

History: Laws 1998, ch. 108, § 20; § 8-8-20, recompiled as § 62-19-24 by Laws 2020, ch. 9, § 59.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 9, § 59 recompiled former 8-8-20 NMSA 1978 as 62-19-24 NMSA 1978, effective January 1, 2023.

ARTICLE 20
Regional Water System Resiliency

62-20-1. Short title.

This act [62-20-1 to 62-20-7 NMSA 1978] may be cited as the "Regional Water System Resiliency Act".

History: Laws 2023, ch. 4, § 1.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 4, § 8 made Laws 2023, ch. 4, § 1 effective July 1, 2023.

62-20-2. Definitions.

As used in the Regional Water System Resiliency Act:

A. "authority" means a regional utility authority established pursuant to the Regional Water System Resiliency Act;

B. "board" means the board of directors of an authority;

C. "director" means a director of a board;

D. "dissolved entity" means an entity that transfers its assets and liabilities to an authority and subsequently goes through a legal dissolution;

E. "entity" means a public utility providing water or wastewater services;

F. "founding entity" means one of the original entities that established the authority;

G. "joining entity" means an entity that joins an authority after the authority is established;

H. "member" means a property owner receiving services from an authority; and

I. "service area" means the area to be served within the legal boundaries of an authority.

History: Laws 2023, ch. 4, § 2.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 4, § 8 made Laws 2023, ch. 4, § 2 effective July 1, 2023.

62-20-3. Creation of authority; merger with authority; service area.

A. An authority is a political subdivision of the state.

B. Two or more entities may create an authority.

C. Each founding or joining entity shall adopt a resolution signifying its intention to establish or join an authority. A founding or joining entity shall not adopt a resolution until notice of a public hearing has been given and a minimum of two public hearings have been held, in which proposed articles of incorporation and bylaws were available

for public viewing and comment. Public notice shall adhere to the requirements of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

D. The resolution shall state:

(1) the proposed name and purpose of the authority;

(2) the proposed service area of the authority; and

(3) the lead founding entity of the authority that shall act as the interim registered agent until the authority is established.

E. Upon adoption of the resolutions in accordance with Subsection C of this section, the founding entities shall execute the articles of incorporation and bylaws. The founding entities shall file the articles of incorporation and bylaws with the secretary of state. The articles of incorporation and bylaws are effective upon filing unless a different date is provided in the articles of incorporation. Amendments to the articles of incorporation or bylaws shall not become effective unless filed with the secretary of state. No corporate report shall be required of an incorporated authority.

F. The issuance of a certificate of incorporation by the secretary of state shall establish the authority.

G. A founding, joining or dissolved entity shall transfer to the authority all assets and liabilities pertaining to or owned by the entity. Prior to transferring any compliance liability, a compliance schedule that addresses the liability shall be developed and approved by the authority and relevant state or federal agencies.

H. An authority's initial service area shall consist of the founding entities' existing place of use on file with and approved by the state engineer, but shall not encroach upon the service area of an existing non-joining entity.

I. When an entity joins an authority, the joining entity's place of use on file with and approved by the state engineer shall become part of the authority's service area, but shall not encroach upon the service area of an existing non-joining entity.

J. An authority shall file a plat with the state engineer and in the property records of the county or counties where the service area is located that designates the authority's initial service area and any subsequent amendments.

K. When a founding or joining entity transfers a water right to an authority, the authority shall file a change of ownership form with the state engineer and shall apply to the state engineer to change the place of use or point of diversion of the transferred right.

History: Laws 2023, ch. 4, § 3.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 4, § 8 made Laws 2023, ch. 4, § 3 effective July 1, 2023.

62-20-4. Articles of incorporation.

The articles of incorporation of an authority shall recite in the caption that they are executed pursuant to the Regional Water System Resiliency Act, shall be signed and acknowledged by each of the founding entities and shall state:

A. the name of the authority;

B. the address of the authority's principal office;

C. the names and addresses of the founding entities;

D. the names and addresses of the persons who constitute the first board;

E. a plat or legal description of the boundaries of the authority's service area with such certainty as to enable a property owner to determine whether the owner's property is within the authority's service area; and

F. any provisions not inconsistent with the Regional Water System Resiliency Act deemed necessary or advisable for the conduct of the authority's business and affairs.

History: Laws 2023, ch. 4, § 4.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 4, § 8 made Laws 2023, ch. 4, § 4 effective July 1, 2023.

62-20-5. Authority powers and duties.

A. An authority may provide for water and wastewater services, road improvements for the protection of the authority's infrastructure, renewable energy projects or other projects that are integral to the operation and maintenance of the authority's facilities.

B. An authority may:

(1) own, regulate, supervise and operate the authority's facilities;

(2) assess a one-time fee for the privilege of connecting a property to the authority's service at a future date if the property line is within three hundred feet of the

authority's service lines and that property line is located within the boundaries of the authority;

(3) establish rates and impose assessments, fees and charges and take action necessary for the enforcement thereof;

(4) acquire, from a willing seller, hold and use water rights in an amount necessary to meet the authority's reasonable needs not to exceed forty years pursuant to Section 72-1-9 NMSA 1978;

(5) shut off, after notice, unauthorized connections, illegal connections or a connection for which charges are delinquent in payment;

(6) enter into contracts for services with governmental entities, including local, state and federal entities, Indian nations, tribes or pueblos or private entities, to carry out the purposes of the Regional Water System Resiliency Act;

(7) enter into joint powers agreements with other governmental entities;

(8) acquire and dispose of real property, personal property or rights of way;

(9) hire and retain agents, employees and consultants;

(10) adopt and use a governmental seal;

(11) sue, be sued and be a party to suits, actions and proceedings;

(12) receive grants, secure debt and issue revenue bonds for the development and improvement of infrastructure projects;

(13) subsume powers held by an entity forming or joining the authority; and

(14) have and exercise all rights and powers necessary, incidental to or implied from the specific powers granted in this section.

C. An agency or department that has promulgated rules that are applicable to an authority may, in its discretion or upon a petition of twenty-five percent of the members of the authority, investigate as the agency or department deems necessary to ensure the authority's compliance with all applicable statutes, rules, regulations and reporting requirements.

D. An authority is not subject to the jurisdiction of the public regulation commission or the provisions of the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978].

History: Laws 2023, ch. 4, § 5.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 4, § 8 made Laws 2023, ch. 4, § 5 effective July 1, 2023.

62-20-6. Board; creation; powers; duties.

A. An authority shall be governed by a board of directors. The board shall conduct elections pursuant to the Local Election Act [Chapter 1, Article 22 NMSA 1978] and in accordance with the Election Code [Chapter 1 NMSA 1978]. The initial board shall establish the boundaries and the number of electoral districts within two years of the creation of the authority. The board may provide for redistricting in its governance document upon any change in the authority's boundary. The terms of office for directors shall be four years.

B. The initial board shall have representation from each of the founding and joining entities. Each director shall reside within the electoral district of the authority from which that director is elected. The elected board shall serve staggered terms to be established in the governance document developed by the initial board. The directors of the initial board shall serve until their successors are elected and qualified. The board shall choose among its directors a chair, secretary and treasurer.

C. All powers, privileges and duties vested in or imposed upon an authority shall be exercised and performed by the board; provided that the board may delegate its powers by resolution to an officer or agent of the board, with the exception of the following:

(1) adoption of board policies and procedures;

(2) ratification of acquisition of property;

(3) initiation or continuation of legal action, except that initiation and filing of liens for unpaid rates and charges and suits for payment thereof and discontinuance of service for failure to pay such rates and charges may be delegated;

(4) establishment of fees, tolls, rates or charges; and

(5) issuance of revenue bonds.

D. Meetings of the board shall be held at least quarterly or at the call of the chair. A majority of the directors of the board constitutes a quorum for the transaction of any business. Except as provided in Subsection E of this section, the board shall only take action upon the affirmative vote of at least a majority of the board present. A vacancy in the membership of the board shall not impair the right of a quorum to exercise all rights and perform all duties of the board.

E. The non-delegable powers and duties provided in Subsection C of this section are only effective upon resolution passed by two-thirds of the directors of the board.

F. The board shall promulgate and adhere to policies and procedures for its conduct.

G. The board may disqualify a director of the board from voting on an issue when that director of the board has a financial interest or possible interest in the outcome of any policy, decision or determination before the board. A director of the board's status as a member of the authority does not, by itself, constitute a financial interest or possible interest for the purposes of this section.

H. The board may:

(1) adopt, amend and repeal bylaws;

(2) maintain offices at a place designated by the board; and

(3) employ an executive director who may employ staff.

I. The board shall:

(1) fix the time and place of meetings and the method of providing notice of the meetings in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978];

(2) promulgate orders, resolutions, policies and procedures necessary for the governance and management of the affairs of the authority and the execution of the powers vested in the authority;

(3) establish usage classifications;

(4) fix and from time to time uniformly increase or decrease utility rates, fees or other charges for services delivered or facilities operated or made available by the authority, subject to the following conditions:

(a) until paid, all rates, fees or charges constitute a lien subservient to a primary mortgage lien on and against the property served, and the lien may be enforced as provided by law;

(b) the board shall prescribe and enforce policies and procedures by which properties shall be connected with and disconnected from the facilities of the authority, including the amount of notice required before disconnection and payment plans to avoid discontinuing service to delinquent accounts; and

(c) after giving notice in accordance with an authority's policies and procedures, the board shall shut off or discontinue service for unauthorized connections, illegal connections or connections for which rates, tolls or other charges are delinquent in payment. The board may file suit in a court of competent jurisdiction to recover costs associated with an unauthorized, illegal or delinquent connection, including the cost of water delivered, charges for connection and disconnection and damages. Attorney fees shall be awarded to the prevailing party; and

(5) adopt an operating budget that supports the full cost of operation, maintenance and replacement as established by an asset management plan and a rate-setting analysis. The operating budget shall be subject to the approval of the department of finance and administration.

History: Laws 2023, ch. 4, § 6.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 4, § 8 made Laws 2023, ch. 4, § 6 effective July 1, 2023.

62-20-7. Acceptance of assets and liabilities of dissolved entities; acquisition of water rights.

Subject to any other statutory requirements for dissolution and transfer, an authority may accept a transfer of assets and liabilities upon the request, and the legal dissolution, of an entity that provides water or sewer services and is:

A. a political subdivision of the state;

B. a water and sanitation district established pursuant to the Water and Sanitation District Act [Chapter 73, Article 21 NMSA 1978];

C. a water and natural gas association established pursuant to Chapter 3, Article 28 NMSA 1978;

D. a water users' association established pursuant to Chapter 73, Article 5 NMSA 1978;

E. a corporation organized pursuant to the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] or Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978];

F. a public improvement district established pursuant to the Public Improvement District Act [Chapter 5, Article 11 NMSA 1978];

G. a municipal or county utility;

H. a company established pursuant to Chapter 62, Article 2 NMSA 1978;

I. an association established pursuant to the Cooperative Association Act [Chapter 53, Article 4 NMSA 1978] that has reorganized as a public entity;

J. an association or mutual domestic water consumers association organized under Laws 1947, Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52 or pursuant to the Sanitary Projects Act [Chapter 3, Article 29 NMSA 1978]; or

K. an authority created pursuant to the Regional Water System Resiliency Act.

History: Laws 2023, ch. 4, § 7.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 4, § 8 made Laws 2023, ch. 4, § 7 effective July 1, 2023.

ARTICLE 21
Essential Services Development

62-21-1. Short title.

This act [62-21-1 to 62-21-10 NMSA 1978] may be cited as the "Essential Services Development Act.

History: Laws 2025, ch. 125, § 1.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 125 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

62-21-2. Definitions.

As used in the Essential Services Development Act:

A. "broadband telecommunications network facilities" means the electronics, equipment, transmission facilities, fiber-optic cables and any other item directly related to a system capable of transmission of internet protocol or other formatted data at current federal communications commission baseline speed standard, all of which will be owned and used by a provider of internet access services;

B. "division" means the local government division of the department of finance and administration;

C. "essential services project" or "project" means an infrastructure project that allows access to internet, energy, water and wastewater services primarily for residential purposes;

D. "governing body" means the city council, city commission or board of trustees of a municipality or the board of county commissioners of a county;

E. "local government" means a municipality or county;

F. "municipality" means an incorporated city, town or village;

G. "person" means an individual, corporation, association, partnership or other legal entity;

H. "public support" means the provision of assistance by the state to provide direct or indirect assistance to support an essential services project, including for the provision of:

(1) land, buildings or other infrastructure by purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance;

(2) the placement of new broadband telecommunications network facilities; provided that the facilities shall not serve a public facility or location that already meets federal communications commission baseline speed standards;

(3) rights-of-way infrastructure, including trenching and conduit, for the placement of new broadband telecommunications network facilities;

(4) public works improvements essential to the location or expansion of a qualifying entity;

(5) payments for professional services contracts necessary to implement an essential services plan or provide public support for an essential services project;

(6) direct loans or grants for land, buildings or infrastructure;

(7) loan guarantees securing the cost of land, buildings or infrastructure; and

(8) grants for public works infrastructure improvements; and

I. "regional government" means any combination of municipalities and counties that enter into a joint powers agreement to provide public support for economic development projects pursuant to a plan adopted by all parties to the joint powers agreement.

History: Laws 2025, ch. 125, § 2.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 125 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

62-21-3. Public support shall be specifically authorized by law.

Public support for an essential services project shall be specifically authorized by law. The law shall include provisions to safeguard public money and other resources, including allowing the division to recover money and other resources from a local or regional government if the essential services project is not completed to the satisfaction of the division or otherwise does not meet the requirements provided in the Essential Services Development Act.

History: Laws 2025, ch. 125, § 3.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 125 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

62-21-4. Technical assistance from the division.

At the request of a local or regional government, the division shall provide technical assistance in the development of an essential services plan or project.

History: Laws 2025, ch. 125, § 4.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 125 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

62-21-5. Essential services development plan; contents; publication.

A. Prior to receiving public support, a local or regional government seeking to pursue an essential services project shall adopt a development plan to implement the project. Any plan or plan amendment shall be adopted by ordinance of the governing

body of the local government or each local government of a regional government proposing the plan or plan amendment.

B. The plan or the ordinance adopting the plan shall:

(1) describe the local or regional government's essential services development goals or strategies;

(2) describe the types of essential services projects that will qualify for public support under the plan;

(3) describe the criteria to be used to determine eligibility for public support for an essential services project;

(4) describe the manner in which a person or entity may submit an application for public support pursuant to Section 7 [62-21-7 NMSA 1978] of the Essential Services Development Act;

(5) describe the process the local or regional government will use to verify the information submitted on an application for public support;

(6) detail the need for the essential services projects contemplated in the plan and the benefit that the projects will bring to the local or regional government;

(7) describe the safeguards of public resources that will be ensured; and

(8) if a regional government, describe the joint powers agreement, including whether it can be terminated and, if so, how the contractual or other obligations, risks and any property will be assigned or divided among the local governments that are party to the agreement.

C. The plan shall be made available to the residents within the local or regional government area.

History: Laws 2025, ch. 125, § 5.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 125 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

62-21-6. Regional plans; joint powers agreement; regional government.

A. Two or more municipalities, two or more counties or one or more municipalities and counties may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] to develop a regional essential services development plan, which may consist of existing local plans. The parties to the agreement shall be deemed a regional government for the purposes of the Essential Services Development Act.

B. The joint powers agreement shall provide for appointment of a project manager who shall be responsible for the management of projects and money from public support. The agreement may provide for a regional body consisting of representatives from the governing bodies of each local government that is a party to the agreement and may determine the powers and duties of that body in implementing the regional government's plan and providing public support for essential services projects.

History: Laws 2025, ch. 125, § 6.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 125 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

62-21-7. Applications for public support.

A. After the adoption of an essential services development plan by a local or regional government, the local or regional government may begin accepting applications for public support of the local or regional government's essential services project. The application shall be on a form and in a manner as prescribed by the local or regional government.

B. The local or regional government shall review each application and any project determined to be eligible for public support shall be approved by ordinance.

C. The local or regional government's evaluation of an application shall be based on the provisions of the essential services development plan and any other information the local or regional government believes is necessary for a full review of the application.

D. The local or regional government may negotiate with an applicant on the type or amount of public support to be provided or on the scope of the essential services project.

History: Laws 2025, ch. 125, § 7.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 125 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

62-21-8. Deposit public support money in special fund.

A. A regional or local government that receives money from public support for an essential services project shall create a special fund into which the money from the public support shall be deposited and shall be expended only for essential services project purposes. Separate accounts shall be established for each essential services project.

B. In the case of a regional government, money from public support may be expended only as provided by the regional government's essential services development plan and joint powers agreement.

History: Laws 2025, ch. 125, § 8.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 125 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

62-21-9. Plan and project termination; deposit of unexpended funds in general fund.

A. At any time after approval of an essential services development plan, the governing body of the local government or the governing body of each local government in a regional government may enact an ordinance terminating the plan and dissolving or terminating any public support for essential services projects.

B. Any unexpended and unencumbered balance remaining in a local or regional government's special fund or account upon repeal of an essential services plan and termination of public support for or dissolution of a project shall be returned to the state treasurer, who shall deposit the returned amount in the general fund.

History: Laws 2025, ch. 125, § 9.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 125 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

62-21-10. State participation in essential services projects; project participation agreement; duties and requirements.

A. If public support is provided for an essential services project, the division shall enter into a project participation agreement with the local or regional government pursuant to this section.

B. A project participation agreement shall set out, at a minimum:

(1) a description of the public support to be provided for the essential services project;

(2) a schedule for project development and completion, including measurable goals and time limits for those goals;

(3) provisions for performance review and actions to be taken upon a determination that project performance is unsatisfactory; and

(4) a description of how the local or regional government will safeguard public money or other resources provided as public support for the essential services project.

History: Laws 2025, ch. 125, § 10.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 125 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.