

# COMPARING 2019 SECURITIZATION LEGISLATION IN COLORADO, MONTANA, AND NEW MEXICO

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*Three Western states—Colorado, Montana, and New Mexico—passed securitization legislation in 2019. All three new laws authorize ratepayer-backed or “securitized” bonds to refinance utility investments in early-retired electric generation plants. In the near term, these provisions are likely to be used (if at all) on uneconomic but as-yet undepreciated coal plants. The details of the three bills reflect varied choices about policy effects, particularly on electricity consumers and the public interest.*

*This issue brief, part of [an ongoing series on managing the utility financial transition from coal to clean energy](#), compares the three new laws to illustrate differences in how legislators handled key consumer and public interest issues. As similar legislation is considered in other states in future legislative sessions, these comparisons can support informed decision-making when legislators decide how much protection to offer consumers and how much attention should be paid to public interest values and utility interests.*

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## CONSUMER AND PUBLIC INTEREST ISSUES FOR COAL SECURITIZATION LEGISLATION

Protecting consumers by refinancing utility investments through low-cost bonds represents a central goal in all three states’ legislation, yet each state’s policy reflects varying degrees of attention to these outcomes. The three bills each contain low-cost goals, but the bills vary considerably on the following issues:

- What utilities must include in applications to regulating commissions for financing orders approving bond issuance;
- What commissions deciding on utility applications must consider;
- What findings are required in commission financing orders;
- How much consulting and what kind of help commissions can use in making their decisions;
- Whether bonds may be issued for purposes other than refinancing for early plant retirements; and
- Whether bond proceeds can be used specifically to mitigate impacts on communities and workers when fossil plants are retired early.

In both Colorado and New Mexico, securitization legislation passed in 2019 had been considered in previous legislative sessions. In Colorado, a bill passed the House in 2017, but did not pass the Senate.<sup>i</sup> In New Mexico, legislation was considered but not enacted in 2018, and the legislation was passed in 2019 with substantial changes. In both states, securitization was one part of very substantial energy policy changes that set aggressive carbon reduction goals, among many other policies. In Montana, securitization was a stand-alone enactment, driven primarily by environmental advocates using ratepayer savings to motivate bipartisan support. The bill also had support from a smaller investor-owned utility that wanted the option to use bonds to refinance retirement of older coal plants.

## **SECURITIZATION**

The tool variously referred to as “securitized bonds,” “ratepayer-backed bonds,” or “ratepayer obligation charge bonds” is a low-cost capital option for utilities to replace higher-cost corporate finance.<sup>ii</sup> These bonds were extensively used to address utility-owned uneconomic, non-performing, and stranded generation assets in the 1990s and early 2000s, when about twenty states restructured utility generation markets to allow for competition in generating energy. Vertically integrated, regulated monopoly utilities that owned generation, transmission, and electricity distribution facilities were required to divest their generation assets before their costs were fully recovered from customers. This resulted in “stranded assets”—stranded because their cost recovery was no longer allowed to be charged to consumers in their electricity rates, and often these assets were unable to generate comparable returns in competitive markets. To reduce financial impacts of these unrecovered amounts, they were refinanced with securitized bonds.<sup>iii</sup>

At present, utility generation portfolios are undergoing similar changes. Wind and solar now usually provide lower-cost generation than existing coal-fired plants, necessitating a similar financial transition. Securitized bonds can be used to reduce consumer costs for paying off investment remaining when fossil plants are retired early. About \$50 billion in securitized utility bonds have been issued over the last twenty years, so many institutional investors are familiar with this class of investments.

Using state law and public utility commission (PUC) powers to create non-bypassable charges on utility consumers' bills creates investment security that makes low-cost capital available to mitigate consumer costs. Bonds issued are guaranteed by the states' legislative and regulatory powers to set rates and include conditions that can lead to AAA bond ratings. Whereas the returns paid to utility shareholders on assets in rate base sit in the 8-11 percent range, securitized bonds can deliver the lowest possible consumer costs in the 3-4 percent range for financing a range of utility capital requirements.

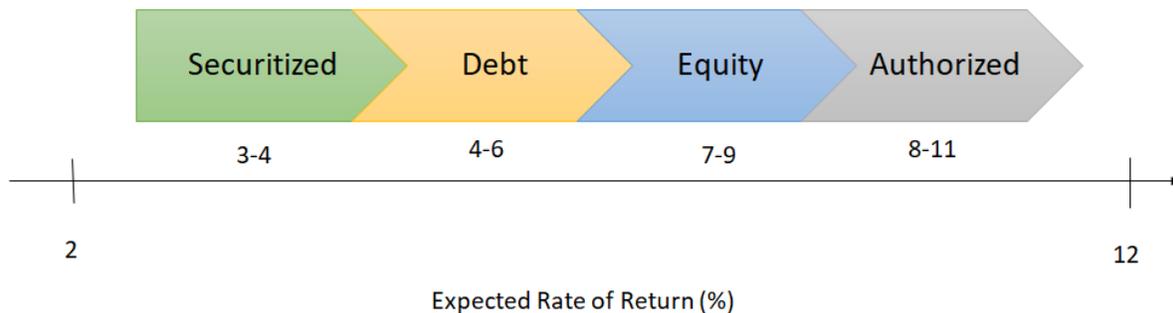


Figure 1 – Comparing rates of return for different utility financing mechanisms. Source: [Debt for Equity Utility Finance](#)

With correct legislative guidance, increased transparency surrounding debt issuances can lead to lowest costs for financing transactions, thus reducing consumers' costs. Most state regulatory commissions do not closely regulate utility financial transactions, since they oversee utility costs of capital. Without scrutiny, utilities and their financial partners finance utility investment requirements with incentives that include, but are not solely focused on, consumer welfare and public interest outcomes. The right policies in securitization legislation can empower commissions to provide increased and improved oversight of utility capital acquisitions, both debt and equity, by their experience gained paying close attention to terms on which new securitized debt is obtained. Less financing risk leads to lower costs for money.

Permissible bond uses must be defined in the state statute creating the bonds. For example, bonds can and have been used to pay off unrecovered capital costs in several cases:

- Plants that are retired early;
- Uneconomic plants sold at a loss to regulated utilities forced to restructure;
- System damages, e.g. storm damage;
- Financing recovery from catastrophic events (including revenue deficiencies due to COVID-19 economic disruption<sup>iv</sup>);
- Funding pollution reduction investments;
- Grid modernization;
- Cleaning up environmental pollution from utility operations; and
- Transition support payments to communities and workers impacted by retirements and discontinuation of generation plant and fossil fuel mining and transportation operations.

Key elements in a successful securitization bond offering, which must be codified in enabling legislation to meet investors' security requirements, include:

- Statutory authorization
- State pledge not to impair bondholders' right to being repaid on time and in full
- Active commission oversight
- Commission assistance from independent legal counsel and financial experts
- Irrevocable commission financing authorization order
- Automatic payment adjustment mechanism—trueing bond charges up or down.<sup>v</sup>

## **KEY ELEMENTS OF LEGISLATION**

Lessons drawn from comparing new securitization laws in Colorado, New Mexico, and Montana suggest that key elements of such enactments include sufficiently defining security; devoting attention to public interest outcomes; ensuring consumers are benefitted through lower costs; addressing replacement resources; and providing financing to mitigate community and worker impacts.

### **DEFINING SECURITY SUFFICIENTLY TO MEET AGENCY RATING REQUIREMENTS**

Since the bond creation, issuance, and repayment provisions are standardized to meet Wall Street rating agency requirements to obtain least-cost financing, the three new state laws—and most of the other existing laws on the books across the country—are quite similar. As such, these provisions in the new state laws do not offer comparative lessons, and each provides a model to satisfy rating agency requirements.

### **ATTENTION TO PUBLIC INTEREST OUTCOMES**

Public interest outcomes are defined in the three new state laws through provisions that identify permissible purposes for issuing bonds. To varying degrees, legislation:

- Specifies what public interest benefits utilities must quantify and include in their application for a commission financing order;
- Requires commissions to consider and make findings on public interest issues; and
- Defines replacement resources when plant retirements are contemplated.

Public interest outcomes include provisions that allow bonds to be used to improve generation economics, modernize utility infrastructure, rebuild after storm or fire damage, reduce or clean up pollution, mitigate impacts of plant retirements on communities and workers, and save consumers money. Since securitized bonds can be used in a variety of circumstances, it is probably wise to authorize bonds before they are needed, so as to be available in times of need.<sup>vi</sup> In other words, it is better to have the tool available and not need it than to need it and not have it. PUCs require varying levels of explicit authorization, depending on regulatory norms and whether state judicial precedent grants commissions discretion to consider public interest matters of first impression.

Colorado's new law<sup>1</sup> devotes the most attention to public interest and consumer protection. Montana's law<sup>2</sup> follows Colorado's approach, but does not go into as much detail or contain as many provisions related to these outcomes. New Mexico's law<sup>3</sup> has the least attention to these issues; the legislation preempts PUC oversight of consumer costs by defining recoverable dollar amounts and limiting time for implementation. Since utilities and their financial advisors have fiduciary duties to their shareholders, legislation should support the commissions' fiduciary duties to consumers and the public interest so the correct balance can be struck between consumers, the public interest, and utilities' and financial firms' fiduciary duties.

**Recommendation: Legislators should include public interest and consumer protection provisions in securitization bills to provide for maximum consumer and societal benefits.**

### **CONSUMER BENEFITS – LOWER COSTS**

Every securitized dollar paid to utilities is a ratepayer dollar, so the three states' laws pay a great deal of attention to saving consumers money. Savings provisions include requirements to seek lowest cost for issuing bonds, lowest available interest rates, best commercial terms available, specific bond ratings (AA or Aa2 or better in Montana), and long terms for bonds, allowing for lower annual costs for consumers. Utility applications for bond issuance approval must estimate consumer savings, calculate avoided rate impacts, reduce rates by amounts refinanced, and issue annual rate impact reports to customers. Additional estimates of transition costs for retiring a coal plant are required in New Mexico, including decommissioning and site reclamation as well as worker severance pay and job training expenses for affected plant and mine employees, which are measures also required by the legislation.<sup>4</sup>

The Colorado commission is required to perform comprehensive due diligence; oversee bond structure, marketing, and pricing; maximize benefits and minimize risks; and find that bonds and issuance costs are just, reasonable, and consistent with the public interest. Bonds must represent a prudent and reasonable financing mechanism, and they must provide substantial, tangible, and quantifiable net present value savings benefits greater than would exist without bonds. Securitization must mitigate customer rate impacts, provide materially lower costs, and achieve maximum net present value savings. Impact assistance costs are authorized for securitization as well.

Montana requires an estimate of consumer savings, requires that rates be reduced by the amount of investment refinanced with bonds, and provides for up to thirty-year bond maturities, providing the option for long-term bonds that can reduce consumers' monthly bills.

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<sup>1</sup> See Appendix Two at page 20 for specific language

<sup>2</sup> See Appendix Three at page 24 for specific language

<sup>3</sup> See Appendix Four at page 30 for specific language

<sup>4</sup> See *Financing to Mitigate Community and Worker Impacts*, p.8, below.

All three states enable utility commissions to oversee new bonds effectively. The legislation authorizes commissions to hire financial advisors or bond counsel with sole loyalty to the commission. Utilities will employ bond counsel and financial advisors with fiduciary duties owed to them and not to the commission or customers. Underwriters who are involved in structuring, marketing, and pricing bonds are not fiduciaries who owe allegiance to utilities, commissions, or electricity customers.<sup>5</sup> Underwriters will typically disclose that they owe their primary duty to their firms’ shareholders.

Oversight provisions in the Colorado statute are stronger than those in the Montana or New Mexico statutes. Colorado provides that both bond counsel and financial advisors can be hired by the commission to assist it, with funding for this work provided by the utility and recovered as part of bond costs. Colorado requires consultants to be free of certain conflicts of interest and to be solely loyal to the commission. New Mexico only authorizes bond counsel, and provides a fixed sum (\$300,000) for that consulting work regardless of effort. Montana provides that the commission can hire temporary staff, with fewer provisions specifying who must be hired.

All three states’ laws enable use of bonds for refinancing unpaid investment in coal-fired power plants upon early plant retirements. Under each statute, bonds may be sought by utilities but are voluntary. And all three states require bonds to achieve lowest interest rates but with varying degrees of specificity, which can significantly affect consumer costs. The standards and means for achieving “lowest-cost” bond economics are extensively detailed in the Colorado law, covered in moderate fashion in the Montana statute, and minimally addressed in New Mexico. The Colorado statute provides the strongest ratepayer protections and is considered a best practices model nationally. The table below identifies legislative priorities and shows which states include various provisions.

Montana’s legislative provisions concerning consumer protection and public interest outcomes appear to fall between Colorado’s extensive requirements and New Mexico’s relatively paltry coverage. The statute authorizes broader application for securitized bonds to address outcomes in addition to early plant retirements, so will deserve attention in the future to ascertain whether the broad outcomes authorized are actually addressed in practice by the PUC and utilities.

	Public Interest and Consumer Protection Requirements	CO	NM	MT
COMMISSION DUTIES AND AUTHOR	Performing comprehensive due diligence	X		X
	Overseeing bond structure, marketing, pricing	X		X

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<sup>5</sup> Underwriters and investment banks state clearly in their contracts that they are engaging in an arms-length transaction and their financial interests are not aligned with those of the issuer or the ratepayer. They are on the “other side” of the negotiating table.

	Retaining bond counsel, financial experts paid by utility with costs included in bonds	X		X
	Bond counsel and financial experts owe loyalty solely to commission and no financial interest or participation in bonds	X		
	Financing order must maximize benefits, minimize risks, and provide oversight for structuring, marketing, and pricing bonds	X		X
UTILITY BOND FINANCING APPLICATION AND REPORTING REQUIREMENTS	Estimate of consumer savings	X		X
	Avoided rate impacts	X		
	Rates reduced by amount financed	X		X
	Annual rate impact reports to customers	X		
	No commission penalty for electing not to apply for bonds	X	X	X
	Abandoned facility description		X	
	Estimated transition costs identifying severance pay, job training expenses, affected generation, and mine employees		X	
	Plant decommissioning, mine reclamation costs		X	
	Specific financing costs of energy transition bonds		X	
	30-year maturities, to be rated AA or Aa2 or better			X
REQUIRED COMMISSION FINDINGS	Lowest rates consistent with market conditions	X	X	X
	Least-cost transaction	X		
	Just and reasonable; consistent with public interest (including issuance costs)	X		X
	Reasonable plant retirement costs	X		
	Prudent and reasonable financing mechanism	X		X
	Substantial, tangible, quantifiable net present value benefits, greater than without bonds, maximizing net present value savings	X		X
	Refinancing mitigates customer rate impacts			X
	Refinancing materially lowers overall costs	X		
	Description of energy impact assistance property and authorization for impact assistance costs			X

**Recommendation: Provide detailed checklists for consumer protections that regulators must consider to focus on saving consumers money when bonds are used to refinance utility investments.**

## REPLACEMENT RESOURCES

Each state’s legislation addresses early plant retirements. Securitized bonds replace utility equity, on which shareholder returns are earned, with low-cost debt, with the intent to save consumers money. To sweeten the pot for utilities, a balanced financial transition to replace earnings for electric utility shareholders that refills utilities’ rate bases can be a legislative outcome, and can be managed to maintain customer savings.

This outcome is addressed in each state’s legislation. In Colorado, utilities are authorized to own up to 50 percent of replacement resources, if they are acquired as part of the normal planning and bidding process. New Mexico establishes a detailed process for utilities to acquire replacement resources through competitive procurement, with attention to locating resources in areas affected by plant retirement and with attention to local jobs and economic development. In Montana, utilities may build and own least-cost new generation, including storage and network modernization to support least-cost generation.

	Replacement Resources	CO	NM	MT
AUTHORIZED BOND USES	Refinance after early plant retirement	X	X	X
	Applies to a specific plant, in quantified amounts		X	
	Mitigate community and worker impacts	X	X	
	Capitalize infrastructure facilities, services, demand-side resources		X	
	Decommissioning and site restoration costs			X
	Replace damaged, destroyed transmission and delivery facilities			X
REPLACEMENT RESOURCE CONDITIONS	Competitive procurement of resources with the following attributes: <ul style="list-style-type: none"> <li>Ranked by cost, economic development benefits</li> <li>Jobs with comparable wages and benefits</li> <li>Higher capital-to-fuel cost ratio</li> <li>Preferred use of local labor</li> <li>Projects located in retired plant school district</li> </ul>		X	
	Carbon dioxide emissions limit		X	
	Consider new technologies, future environmental regulations			X
	Consistent with integrated resource plans	X		X
	Building and owning least-cost generation, including <ul style="list-style-type: none"> <li>Regulatory risks</li> <li>Current, future fuel, delivery infrastructure costs, risks</li> <li>Storage to increase least-cost generation</li> <li>Network modernization for least-cost generation</li> </ul>			X

**Recommendation:** Since utilities will face regulatory risks in seeking commission approval for ownership of some necessary clean replacement resources, including provisions that specify how approval can be gained will help reduce utility regulatory risks and resistance to using bonds.

## **FINANCING TO MITIGATE COMMUNITY AND WORKER IMPACTS**

Both Colorado and New Mexico enable bond financing to mitigate impacts to workers and communities affected by early generation plant retirements. Colorado’s securitization law allows the commission to provide funding from bond refinancing as part of its financing order. Colorado also passed separate legislation that sets up a Just Transition Office in the state’s Department of Labor; funds were appropriated to support staffing.<sup>6</sup> The Colorado PUC is authorized to include mitigation costs in bonds and to require fund transfers to the new office to implement mitigation efforts. In New Mexico, specific fund amounts are provided for these purposes, and detailed instructions are provided for how and where they are to be spent. Montana does not address these impacts.

**Recommendation:** Since impacts to workers and communities can be severe, particularly where fossil generation and mining are located in remote areas, allowing the use of some savings from refinancing for impact mitigation is a low-cost source of significant funding.

## **CONCLUSIONS AND RECOMMENDATIONS**

Legislative language addressing public interest and consumer benefits differs among the three new laws in terms of both content and quantity, providing a range of options for those considering what protections and benefits to include in proposed legislation. The following lessons emerge from comparing the three states’ laws:

- Securitized bonds are a method to benefit consumers, if consumer savings are a desired outcome in power sector financial transitions.
- Legislators can choose to emphasize public interest and consumer benefit outcomes by requiring different levels of utility and commission responsibility and transparency in implementing refinance through securitized bonds.
- Legislators can choose to apply bonding to a variety of outcomes, from early plant retirements and worker and community impact mitigation, to environmental remediations and infrastructure damage repairs and grid modernization investments.
- Given the rapid pace of change in the electric utility sector, securitized bonds are a tool that can provide benefits for consumers, among balanced outcomes that also include public interest values and protecting utility shareholders.
- It is probably better policy to authorize securitized bonds and not need them if other better options emerge than to need them and not have the authorization in place.

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<sup>6</sup> HB 19-1314 appropriates \$165,000 to open the Colorado Just Transition Office and requires a draft plan be developed by July 2020 and a final funding recommendation be sent to the General Assembly by 2024. The office has hired staff who have been on a “listening” tour in coal-dependent areas.



## APPENDIX ONE: SUMMARIES OF LEGISLATION

To assist those who might be contemplating drafting state securitization legislation, the following analysis summarizes laws enacted in Colorado, New Mexico, and Montana in 2019. Three appendices follow that contain language from the new laws.

### COLORADO ENERGY IMPACT BOND ACT – SB19-236

The Colorado Energy Impact Bond Act<sup>vii</sup> was enacted in 2019 as part of SB19-236, which reauthorized the Colorado Public Utilities Commission (COPUC) after a periodic legislative sunset review. A summary of public interest and consumer protection provisions follows. Appendix 2 contains the legislative language for each of the summarized provisions.

The COPUC reauthorization legislation contains a wide variety of new Colorado energy policies. It assigned to the COPUC the challenging duties to consider, act on, and report on regulatory, incentive, and market reforms that support clean energy goals contained in the legislation. Companion legislation was also adopted that further defined state clean energy policies, but these provisions are beyond the scope of this issue brief. The Bond Act, section 26 of SB19-236, represented a substantial part of the reauthorization bill. It advanced a number of policy directives to the COPUC aimed at supporting Colorado’s aggressive carbon reduction goals.

The Bond Act contains a variety of provisions that are recommended for legislators seeking to maximize consumer benefits and emphasize public interest outcomes in legislation authorizing securitization of early-retired power plants.<sup>7</sup> The Bond Act contains provisions addressing bonds that have become standardized since the first legislation that authorized this approach in the 1990s. These provisions:

- Specifically authorize utilities’ use of securitization, creating a property right to impose, adjust, bill, and collect a portion of consumers’ utility rates dedicated to paying off bonds;
- Grant state regulators special authority to issue a financing order for utilities to issue bonds and charge customers a dedicated monthly amount over the bonds’ life that applies to all customers and cannot be bypassed;
- Provide that PUC financing orders approve an adjustment mechanism that applies to the monthly customer charge to assure payments meet bond obligations; and
- Provide that PUC orders are irrevocable and commit that the state will never impair bondholders’ rights to receive the special charge as adjusted over time to repay bonds in full.

These key provisions create financial “security” that accompanies these bonds to achieve both low investor risks and low interest costs, as typically associated with AAA bond ratings. Thus, the bonds are both attractive to institutional investors and beneficial as a refinancing technique from a consumer perspective. Since these standard security provisions are typically found in all state

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<sup>7</sup> For utility financial transition policy background and information on securitization see: <https://americaspowerplan.com/power-transformation-solutions/financial-transition/>

securitization legislation and are usually quite similar to one another, they are not further analyzed here.

### **Colorado energy policy, consumer protection, and public interest securitization provisions**

Analysis of the Colorado legislation reveals consideration of a range of energy policy, consumer protection, and public interest concerns, as follows:

#### Utility application

- Utility applications for a financing order must identify estimated net projected cost savings and how bonds would avoid or mitigate customer rate impacts.
- Utilities are required to reduce rates in amounts equal to revenue requirements associated with utility assets being refinanced.
- An application for a financing order is voluntary for utilities; the commission may not penalize a utility solely for electing not to use securitized bonds.

#### Bonds

- Long-tenor bonds—up to 30 years scheduled with a legal final maturity of 32 years—are authorized.
- Long bond terms enable low bond costs and can appeal to long-term investors such as pension funds, banks, and insurance companies.<sup>8</sup>

#### Plant retirement

- Authorization to refinance early power plant retirement including mitigating worker and community impacts. The Act authorizes generation plant retirement as a purpose for issuing bonds. Assistance for affected workers and communities can be included in bond financing, if approved by the commission.

#### Commission approval

- Financing costs include the commission's expert outside counsel and consultants to ensure lowest possible transaction costs and best market outcomes.
- To issue a financing order, the commission must find retirement costs are reasonable; bond issuance and bond cost collection are just and reasonable and consistent with the public interest; bonds constitute a prudent and reasonable financing mechanism; and bonds will provide substantial, tangible, and quantifiable net present value savings or other consumer benefits greater than benefits without bond financing.
- A financing order "must" determine that bond structuring has a significant likelihood of lowering overall costs to consumers or significantly mitigating consumer rate impacts, compared with traditional methods of financing and recovering costs; the order also must provide detailed findings of fact addressing cost effectiveness and associated rate impacts on customers and customer classes.

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<sup>8</sup> Appendix Two contains the statutory language from the Colorado law for each of the listed features.

- Energy assistance funds may be transferred to a third-party entity designated by the commission to administer transition assistance to displaced workers and affected communities.
- Community assistance is to be provided in amounts equal to costs of voter-approved projects expected to be paid from revenue sources impacted by retirements.<sup>9</sup>
- The commission may include additional conditions different from those requested in a utility application.
- Conditions may be included in the financing order to maximize benefits and minimize risks; a process to structure, market, and price bonds may be specified; reasonableness of financing costs is required; and the commission must exercise comprehensive due diligence.

### Consumer protections

The Bond Act contains a section specifically setting forth consumer protections:

- The commission may attach conditions to a financing order to maximize benefits and minimize risks of the transition to consumers, impacted workers and communities, and electric utilities.
- The commission may specify and oversee a process to structure, market, and price bonds, including selection of underwriters, consistent with the public interest.
- The commission shall review and determine the reasonableness of all proposed up-front and ongoing financing costs.
- The commission must perform comprehensive due diligence in deciding whether to issue a financing order.

### Utility reports

- To provide retrospective transparency, the utility files information within six months of bond issuance.
- The commission reviews that information to determine whether actual bond issuance resulted in the lowest overall costs reasonably consistent with market conditions and financing order terms.
  - The commission may disallow incremental up-front costs in excess of lowest overall costs.
  - The commission may select and engage outside consultants and counsel experienced in similar bond financing; their loyalty is due solely to the commission.
  - Consultants and counsel must not have financial interests in bonds, and shall not participate in underwriting or secondary-market bond trading.
  - Costs for consultants and counsel must be paid by the utility applicant and may be included in bond financing costs.
- The utility shall annually analyze and disclose financing impacts on consumer rates.

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<sup>9</sup> This provision resulted from last-minute negotiations required to gain support to pass the bill. The additional costs this adds to a bond issue may impose an excessive financial burden on ratepayers, making bond use impractical. This condition from the Colorado legislation is not recommended for other states.

## Replacement resources

The Bond Act allows utilities to own up to 50 percent of replacement resources, if they are acquired by competitive bids premised on the COPUC's energy planning rules and if the commission approves ownership.

### **Colorado summary**

The Colorado Energy Impact Bond Act is premised on cold demographic math of fossil plant aging and assumes that retirements are inevitable. It creates a refinancing tool that utilities and regulators can use to rebalance the costs of transition to new cleaner resources in favor of consumers. By providing a refinancing method to increase consumer benefits, it aims to help foster a faster, and fairer, transition supported by Colorado legislators, its governor, the commission, and the public. A transition that saves consumers money is likely to happen faster, and with less risk, than a transition that costs more.

### **NEW MEXICO ENERGY TRANSITION ACT – SB 489**

New Mexico's Energy Transition Act (ETA),<sup>viii</sup> passed in 2019, contains a variety of energy policies, including authorizing use of securitized, or ratepayer-backed, bonds. A summary of public interest and consumer protection provisions follows. Appendix 3 contains the legislative language for each summarized provision. A similar bill was introduced in 2018 but failed to pass amid claims that it was a "utility give-away," providing too many benefits to Public Service of New Mexico (PNM), the state's dominant utility, and too few benefits to consumers and the environment. The lesson was that a utility-sponsored bill devoid of public interest protections could not gain enough support to pass.

In 2019, with substantial changes and amid political shifts favorable to clean energy policies, securitization became law in New Mexico as part of omnibus energy legislation.<sup>10</sup> The legislation was supported by PNM and shows evidence of the utility's impact on the legislative process. Most of the securitization provisions, responding to financial ratings agencies and investor concerns about security, are aimed at bond issuance processes and procedures and are focused on ensuring that bond investors are repaid. Because such provisions address rating agencies' requirements, they are fairly standard across different states and are not the focus of the analysis that follows.

### **Limits in the ETA**

ETA definitions specify amounts subject to securitization for the abandoned San Juan Generating Station, removing these amounts from the Public Regulatory Commission's (PRC) discretion. This unusual provision differs from securitization statutes in other states. Most states specify what securitization bonds can be used for but leave determination of amounts to the discretion of the

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<sup>10</sup> The Act was challenged at the New Mexico Supreme Court, which declined contesting petitions, sending the contesting parties back to the Public Regulation Commission: <https://www.sfreporter.com/news/2019/10/04/the-prc-is-back-in-charge/>. And see: <https://www.prnewswire.com/news-releases/new-mexico-supreme-court-declines-to-rule-on-applicability-of-energy-transition-act-300931095.html>

regulatory commission. The New Mexico amounts are “hard wired” into the legislation so the utility has complete certainty as to remaining investment amounts it can recover. These provisions, likely included to gain utility support, limit the ETA’s applicability to this single example and limit its application to future plant retirements or other potential uses of this refinancing technique, such as storm damage recovery or pollution reduction investments.

Another restriction on the use of securitized bonds in the ETA is a specified amount that can be considered, limiting “energy transition costs” to the lower of \$375 million or 150 percent of undepreciated investment in an abandoned plant, plus \$30 million for decommissioning and \$20 million for employee severance and job training.

The ETA also includes a quantified amount (\$300,000) for commission expenses for contract bond counsel to help the commission review its financing order and to oversee the structure and marketing of proposed energy transition bonds. The Act includes standards that require utility efforts to consummate a “commercially reasonable” bond transaction, which is arguably a lower standard than “best efforts.” If the standard for meeting public interest criteria becomes an issue before the PRC, the commission will need to establish criteria in addition to those found in the legislation, such as most favorable bond interest rates possible, least transaction costs, and overall consumer benefits net of costs.

Notably, the ETA does not specifically authorize the commission to engage bond financial experts. However, bond costs may include “any other related costs approved for recovery in the financing order.” This language, read expansively, might allow the PRC to include additional costs for expert financial advisors, if the commission is willing to risk exceeding the “not to exceed” limit in the reasonable expenses provision above. However, the commission has broad general authority over what costs can be required to be paid by the utility and recovered from customers.

The Act narrowly defines “qualifying generating facility” to include coal-fired plants owned or leased by a “qualifying utility” (an investor-owned utility such as PNM), authorized to be abandoned after December 31, 2018, or before January 1, 2023, or by January 1, 2032, if not operated by a “qualifying utility.” These limits almost certainly confine the Act’s applicability to the PNM San Juan plant.

### [Replacement resources](#)

The ETA addresses several considerations relating to how utilities are to acquire replacement resources for a retired coal plant. The utility that abandons a plant applies within a year for approval of competitively procured resources to replace the abandoned facility. Resources under consideration to provide replacement power must be ranked with regard to cost, economic development potential, and ability to create jobs with pay and benefits comparable to those at the abandoned facility. In deciding about replacement resources, the commission must consider higher ratios of capital-to-fuel costs and reclamation cost reductions through use of previously mined lands within the county where the abandoned plant was located.

In the acquisition process, the utility must inform potential bidders that it prefers use of New Mexico labor. Replacement resources are defined to include up to 450 MW, including storage, “located in the school district in New Mexico where the abandoned facility is located. . . .” These requirements are aimed at steering jobs and reinvestment into San Juan County, where retirement of the San Juan Generating Station primarily affects workers and the community.

### Financing order application

An abandoning utility may apply for a financing order to recover “all of its energy transition costs.” The application must include:

- A description of the facility to be abandoned;
- The estimated energy transition costs identifying severance pay and job training expenses for affected generation facility and associated mine employees;
- Plant decommissioning and mine reclamation costs; and
- Financing costs of energy transition bonds.

### Lowest bond cost objective

The applicant utility will “use commercially reasonable efforts” to obtain the lowest bond costs. The “lowest cost objective” means that structuring, marketing, and pricing energy transition bonds results in the lowest energy transition charges consistent with prevailing market conditions at the time of pricing energy transition bonds and the structure and terms of energy transition bonds approved pursuant to the financing order. This language is considered by consumer and clean energy advocates to be too broad to achieve least-cost bonds and to provide maximum savings for ratepayers.

Bond issuance and operations provisions that animate the bond transactions and assure that bondholders are repaid are found in Sections 5-9 of the Act. These provisions are consistent with similar provisions found in other states, so they are not further analyzed here.

The next unique provision of the New Mexico legislation is found in Section 10 of the Act:

- D. “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.” (Emphasis added).

This performance standard for generation requires increasing limits on carbon dioxide emissions over time and contributes to “carbon-free” electric sector goals that are found elsewhere in the Act.

Section 11 of the Act also limits applicability of use of securitized bonds in New Mexico. It states that 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 a basis to refuse or condition authorization to issue securities. These provisions balance application of the new law in favor of preserving the utility's decision-making prerogatives and control.

### Community and worker impact mitigation provisions

Section 16 of the Act sets up two new funds, one for community assistance and the other for worker assistance. Community assistance aims to diversify and promote affected communities' economies by fostering economic development opportunities unrelated to fossil fuel development or use. The state economic development department develops economic diversification and development plans that provide for disbursement of money in an assistance fund, using a public planning process. Fund proceeds can be provided to approved program entities, to assist employers to qualify for tax relief for hiring displaced workers, or to a city, county, or tribe to promote economic development.

The displaced worker assistance fund consists of appropriations, gifts, grants, donations, and bequests made to the fund and fund income. The workforce solutions department administers 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. The department develops a worker development plan to assist displaced workers in an affected community, using a public planning process in the community to inform use of funds. Fund expenditures are to support:

- Employers of displaced workers to qualify for any tax relief established under state or federal law;
- Displaced workers using any department program;
- Payment of costs associated with displaced workers enrolling and participating in certified apprenticeship programs in New Mexico; and
- A municipality, county, Indian nation, pueblo or tribe or land grant community in New Mexico with job training and apprenticeship programs for displaced workers or programs designed to promote economic development in the affected community.

To fund these impact mitigations, utilities transfer percentages of the financed amount of energy transition bonds as follows:

- One and sixty-five hundredths percent to the economic development department for deposit in the economic development assistance fund; and
- Three and eighty-five hundredths percent to the workforce solutions department for deposit in the displaced worker assistance fund.

An "affected community" means a New Mexico county located within 100 miles of a New Mexico facility producing electricity that closes, displacing at least forty workers. A "displaced worker" means a New Mexico resident who, within the previous twelve months, was terminated from employment, or whose contract was terminated, due to the abandonment of a New Mexico electric-producing facility that resulted in displacement of at least forty workers where the worker:

- Had at least 75 percent of the resident’s net income from the employment or contract associated with the abandoned facility;
- Has been unable to replace lost wages or whose annual wages are at least 25 percent less than when the qualifying facility was operating; and
- Does not qualify to take full benefits pursuant to a pension or retirement plan.

### Twelve-year sunset provision

The ETA 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 the Act.

### Apprenticeships

Section 24 of the Act requires percentage hiring requirements, as follows, for apprentices at generating facilities starting construction:

- Between January 1, 2020, and January 1, 2024 – 10 percent
- Between January 1, 2024, and January 1, 2026 – 17 percent
- After January 1, 2026 – 25 percent

### **New Mexico summary**

New Mexico’s ETA, like Colorado’s Bond Act, contains a variety of energy policies, standard bond implementation provisions, and a few references to consumer protection, although not as much emphasis on low-cost outcomes and consumer savings as the Colorado law. It sets time and dollar limits. The Act is aimed at a particular utility and, at least arguably, a single power plant. It provides transition assistance for workers and communities impacted by the abandonment of that plant, again in quantified dollar terms. These limits restrict the use of securitized bonds in New Mexico so the refinancing option has specific outcomes rather than general applicability.

### **MONTANA ENERGY ASSISTANCE BOND ACT – HB 467**

The Montana Energy Assistance Bond Act, passed in the 2019 legislative session, has both similarities with the new Colorado and New Mexico laws and a few differences.<sup>ix</sup> Montana’s legislation is the briefest of the three and, like the others, contains standard bond security-creating provisions sufficient to animate utility applications, commission consideration, and bond issuance procedures and assurances. Since these provisions do not differ much among the three states, they are not discussed here. Of interest, however, is how Montana assures public interest outcomes, and how the legislation dovetails with energy policy regarding climate goals and the transition to clean resources. Those provisions are summarized next. Appendix 3 contains language from Montana’s statute for each of the summarized provisions.

### **Legislative intent**

Montana’s legislature found it “imperative” to implement an “alternative financing mechanism” for “retirement and replacement” of electric infrastructure or facilities by using “low-cost securitized, rate-payer backed bonds.” It authorized the Public Service Commission (PSC) to review and approve financing orders, if appropriate and “in the interest of ratepayers.” Bond proceeds can be used to:

- Reduce long-term costs for retired or replaced electric infrastructure or facilities; and
- Make capital available for modernized infrastructure, facilities, and services, including “least-cost electric generating facilities and other supply-side and demand-side resources.”

### ***Bond tenor and included costs***

- Montana bonds have 30-year maturities, rated AA or Aa2 or better to appeal to large institutional bond investors and achieve lowest possible interest rates. Bond costs approved by the commission can include unrecovered capitalized costs of retired or replaced electric infrastructure or facilities and decommissioning and site restoration costs.

### ***Application requirements, financing orders***

Utilities “may” file applications with the PSC for bond approval. Filings must include an estimate of net present value of electric customer savings expected to result, compared with costs expected without bond refinancing, and one or more alternative refinancing options. After notice and hearing, the PSC may issue a financing order authorizing bonds if it finds:

- Costs are reasonable;
- Issuance of bonds and collection of charges to pay bond costs
  - Are just and reasonable;
  - Are consistent with the public interest;
  - “Constitute a prudent and reasonable mechanism for the financing of Montana energy impact assistance costs described in the application”; and
  - Will provide substantial, tangible, and quantifiable benefits to customers that are greater than benefits that would have been achieved absent issuance of Montana energy impact assistance bonds; and
- The proposed structuring, marketing, and pricing of bonds will
  - Significantly lower overall costs to customers or significantly mitigate rate impacts to customers relative to traditional methods of financing; and
  - Achieve maximum net present value of customer savings, as determined by the commission in a financing order, consistent with market conditions at the time of sale and financing order terms.

### ***Financing order***

The financing order must:

- Determine maximum costs that may be financed from bond proceeds;
- Describe a proposed customer billing mechanism for Montana energy impact assistance charges and include a finding that the mechanism is just and reasonable;
- Describe financing costs that may be recovered through Montana energy impact assistance charges and the period over which costs may be recovered, which must end no earlier than the date of final legal bond maturity;
- Describe Montana energy impact assistance property that is created and that may be used to pay, and secure payment of, Montana energy impact assistance bonds and financing costs authorized in the financing order; and

- Authorize the electric utility to finance Montana energy impact assistance costs through issuance of one or more series of Montana energy impact assistance bonds.

### ***Rate reductions***

Utilities must file rate reductions simultaneously with the inception of bond charges on customers, independently of schedules for closing and decommissioning retired facilities. They must specify a ratemaking process to reconcile differences between costs refinanced with bonds (such as taxes). The PSC may include conditions necessary to “promote the public interest and grant relief different than that requested in the utility bond application.”

### ***Temporary staff, specialized counsel, expert consultants***

PSC costs to engage temporary staff, specialized counsel, and expert consultants are considered bond financing costs.

### ***No utility penalties for financing choices***

The PSC may not refuse to allow cost recovery for retirements or replacements “solely” because utilities elect to finance them through mechanisms other than bonds.

### ***Consumer protections***

The commission’s approval of a financing order is irrevocable, typically addresses very large amounts of financing undertaken, and is not reviewable by future commissions. Thus, in addition to its other powers and duties, the commission:

- Shall perform comprehensive due diligence in evaluating an application for a financing order;
- Shall oversee the process used to structure, market, and price energy impact assistance bonds;
- May attach conditions to approval of a financing order as the commission finds appropriate to maximize financial benefits or minimize financial transaction risks to customers and to directly impacted Montana workers and communities;
- May specify details of the process used to structure, market, and price bonds, including underwriter selection;
- Shall review and determine the reasonableness of all proposed upfront and ongoing financing costs; and
- Shall ensure that structuring, marketing, and pricing of bonds maximizes net present value customer savings, consistent with market conditions and financing order terms.

Within 120 days after bond issuance, a utility shall file with the PSC information regarding actual upfront and ongoing bond financing costs, which the PSC shall review to:

- Determine the prudence of the utility’s actions; and
- Determine whether costs resulted in lowest overall costs that were reasonably consistent with both market conditions at the time of the issuance and financing order terms.

If the commission determines that electric utility actions were not prudent or were inconsistent with the financing order, it may apply any available remedies. The commission may not apply any

remedy that has the effect, directly or indirectly, of impairing bond security. In performing its responsibilities in accordance with [the portions of the Act governing bond issuance], the commission may engage outside consultants and counsel experienced in bond financing similar to Montana energy impact assistance bonds, and expenses associated with the engagement may be included as financing costs and included in the Montana energy impact assistance charge. Costs are not a state obligation and are assigned solely to the transaction.

### ***Annual consumer disclosure***

The utility must explain rate impacts from the financing of retirement or replacement of electric infrastructure in an annual filing with the commission.

### ***Commission may approve utilities' use of funds***

The commission may approve utilities' expenses for or investments in:

- Montana energy impact assistance property that reduces impact costs, considering new technologies and future environmental regulations;
- Building and owning least-cost generation resources, taking into consideration regulatory risks; current and future fuel; and fuel delivery infrastructure, costs, and risks, if added consistent with resource procurement or integrated least-cost resource plan;
- Building, owning, or purchasing electricity storage required by law or rule, if least cost or needed to increase least-cost resources in a generation portfolio;
- Investments in network modernization necessary to increase the amount of least-cost resources that can be added to a utility's system; and
- Replacing damaged or destroyed infrastructure or facilities for transmission or delivery of electricity to customers.

## **APPENDIX TWO: COLORADO LEGISLATIVE LANGUAGE**

Sunset Public Utilities Commission - SB 19-236 (2019)

<https://leg.colorado.gov/bills/sb19-236>

### **LONG-TENOR BONDS**

C.R.S. 40-1-102(5) CO-EI Bonds defined “. . . SCHEDULED MATURITY DATE AS DETERMINED REASONABLE BY THE COMMISSION BUT NOT LATER THAN THIRTY-TWO YEARS. . .” “. . .RATED AA OR AA2 OR BETTER. . .”

### **RETIREMENTS, MITIGATING WORKER AND COMMUNITY IMPACTS**

(7)(a) “CO-EI COSTS” MEANS “. . . CAUSED BY, ASSOCIATED WITH, OR REMAIN AS A RESULT OF THE RETIREMENT OF AN ELECTRIC GENERATING FACILITY LOCATED IN THE STATE.”

(B)(2) “AMOUNTS FOR ASSISTANCE TO AFFECTED WORKERS AND COMMUNITIES IF APPROVED BY THE COMMISSION”;

### **COMMISSION OUTSIDE COUNSEL AND FINANCIAL EXPERTS**

(13)(f) “ANY COSTS INCURRED BY AN ELECTRIC UTILITY TO PAY THE COMMISSION’S COSTS OF ENGAGING SPECIALIZED COUNSEL AND EXPERT CONSULTANTS EXPERIENCED IN SECURITIZED ELECTRIC UTILITY RATEPAYER-BACKED BOND FINANCING. . .”

### **UTILITY APPLICATION ESTIMATES SAVINGS, AVOID OR MITIGATE CUSTOMER RATE IMPACTS**

40-41-103. Financing orders - application requirements

(3) (a) AN APPLICATION FOR A FINANCING ORDER MUST INCLUDE THE FOLLOWING INFORMATION:

(VII) AN ESTIMATE OF THE NET PROJECTED COST SAVINGS OR A DEMONSTRATION OF HOW THE ISSUANCE OF CO-EI BONDS AND THE IMPOSITION OF CO-EI CHARGES WOULD AVOID OR SIGNIFICANTLY MITIGATE RATE IMPACTS TO CUSTOMERS AS COMPARED WITH TRADITIONAL METHODS OF FINANCING AND RECOVERING CO-EI COSTS FROM CUSTOMERS.

### **COMMISSION FINANCING ORDERS REQUIRED FINDINGS**

40-41-104. Issuance of financing orders. Commission may issue a financing order if:

(a) THE CO-EI COSTS DESCRIBED IN THE APPLICATION RELATED TO THE RETIREMENT OF THE ELECTRIC GENERATING FACILITIES ARE REASONABLE; (b) THE PROPOSED ISSUANCE OF CO-EI BONDS AND THE IMPOSITION AND COLLECTION OF CO-EI CHARGES: (I) ARE JUST AND REASONABLE; (II) ARE CONSISTENT WITH THE PUBLIC INTEREST; (PAGE 45-SENATE BILL 19-236) (III) CONSTITUTE A PRUDENT AND REASONABLE MECHANISM FOR THE FINANCING OF THE CO-EI COSTS DESCRIBED IN THE APPLICATION; AND (IV) WILL PROVIDE SUBSTANTIAL, TANGIBLE, AND QUANTIFIABLE NET PRESENT VALUE SAVINGS OR OTHER BENEFITS TO CUSTOMERS THAT ARE GREATER THAN THE BENEFITS THAT WOULD HAVE BEEN ACHIEVED ABSENT THE ISSUANCE OF

CO-EI BONDS; AND THE PROVISIONS OF THE FINANCING ORDER WILL ENSURE THAT THE PROPOSED STRUCTURING, MARKETING, AND PRICING OF THE CO-EI BONDS WILL: (I) MATERIALLY LOWER OVERALL COSTS TO CUSTOMERS OR AVOID OR MITIGATE RATE IMPACTS TO CUSTOMERS RELATIVE TO TRADITIONAL METHODS OF FINANCING AND RECOVERING CO-EI COSTS FROM CUSTOMERS; AND (II) ACHIEVE THE MAXIMUM NET PRESENT VALUE OF CUSTOMER SAVINGS, AS DETERMINED BY THE COMMISSION IN A FINANCING ORDER, CONSISTENT WITH MARKET CONDITIONS AT THE TIME OF SALE AND THE TERMS OF THE FINANCING ORDER.

### **COMMISSION REQUIRED FINANCING ORDER FINDINGS, COMPARISONS, IMPACTS ON CUSTOMER CLASSES**

(e) DETERMINE WHETHER THE PROPOSED STRUCTURING, EXPECTED (PAGE 46-SENATE BILL 19-236) PRICING, AND FINANCING COSTS OF CO-EI BONDS HAVE A SIGNIFICANT LIKELIHOOD OF LOWERING OVERALL COSTS TO CUSTOMERS OR AVOIDING OR SIGNIFICANTLY MITIGATING RATE IMPACTS TO CUSTOMERS AS COMPARED WITH TRADITIONAL METHODS OF FINANCING AND RECOVERING CO-EI COSTS FROM CUSTOMERS. A FINANCING ORDER MUST PROVIDE DETAILED FINDINGS OF FACT ADDRESSING COST-EFFECTIVENESS AND ASSOCIATED RATE IMPACTS UPON CUSTOMERS AND CUSTOMER CLASSES.

### **TRANSFER ENERGY ASSISTANCE FUNDS TO THIRD-PARTY ADMINISTRATOR**

(II) THE ENERGY ASSISTANCE FUNDS, IF INCLUDED IN THE BOND ISSUE, MAY BE TRANSFERRED TO A THIRD-PARTY ENTITY DESIGNATED BY THE COMMISSION TO ADMINISTER TRANSITION ASSISTANCE ON BEHALF OF DISPLACED WORKERS AND AFFECTED COMMUNITIES NO LATER THAN THE DATE ON WHICH THE ELECTRIC GENERATING FACILITY CEASES OPERATION;

### **UTILITY REQUIRED TO REDUCE RATES**

(4) A FINANCING ORDER MUST REQUIRE THE APPLICANT ELECTRIC UTILITY, SIMULTANEOUSLY WITH THE INCEPTION OF THE COLLECTION OF CO-EI CHARGES, TO REDUCE ITS RATES THROUGH A REDUCTION IN BASE RATES OR BY A NEGATIVE RIDER ON CUSTOMER BILLS IN AN AMOUNT EQUAL TO THE REVENUE REQUIREMENT ASSOCIATED WITH THE UTILITY ASSETS BEING FINANCED BY CO-EI BONDS.

### **COMMUNITY ASSISTANCE FOR VOTER-APPROVED PROJECTS<sup>11</sup>**

(5) “. . .THE FINANCING ORDER MUST PROVIDE FOR THE PAYMENT OF COMMUNITY ASSISTANCE TO THE LOCAL GOVERNMENT IN AN AMOUNT EQUAL TO THE COSTS OF THE VOTER-APPROVED PROJECTS THAT WERE EXPECTED TO BE PAID FROM THE REVENUE SOURCES DIRECTLY IMPACTED BY THE RETIREMENT. . . REDUCED ON AN EQUIVALENT BASIS TO THE EXTENT THAT PROPERTY TAX IS DERIVED FROM NEW ELECTRIC INFRASTRUCTURE DEVELOPED IN THE SAME IMPACTED COMMUNITY.”

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<sup>11</sup> This language for transition assistance is very costly to ratepayers and is not recommended.

**CONDITIONS TO MAXIMIZE BENEFITS, MINIMIZE RISKS; PROCESS TO STRUCTURE, MARKET, PRICE BONDS; REASONABLENESS OF FINANCING COSTS; COMPREHENSIVE COMMISSION DUE DILIGENCE**

40-41-107. Electric utility customer protection. (1) IN ADDITION TO ANY OTHER AUTHORITY OF THE COMMISSION: (a) THE COMMISSION MAY ATTACH SUCH CONDITIONS TO THE APPROVAL OF A FINANCING ORDER AS THE COMMISSION DEEMS APPROPRIATE TO MAXIMIZE THE BENEFITS AND MINIMIZE THE RISKS OF THE TRANSACTION TO CUSTOMERS, DIRECTLY IMPACTED COLORADO WORKERS AND COMMUNITIES, AND THE ELECTRIC UTILITY; (b) THE COMMISSION SHALL SPECIFY IN THE FINANCING ORDER A PROCESS TO STRUCTURE, MARKET, AND PRICE CO-EI BONDS, INCLUDING THE SELECTION OF THE UNDERWRITER OR UNDERWRITERS, IN A MANNER CONSISTENT WITH THE PUBLIC INTEREST AND THE LEGAL OBLIGATIONS OF THE ELECTRIC UTILITY; (c) THE COMMISSION SHALL REVIEW AND DETERMINE THE REASONABLENESS OF ALL PROPOSED UP-FRONT AND ONGOING FINANCING COSTS; AND (d) THE COMMISSION HAS THE AUTHORITY REQUIRED TO PERFORM COMPREHENSIVE DUE DILIGENCE IN ITS EVALUATION OF AN APPLICATION FOR A FINANCING ORDER AND HAS THE AUTHORITY TO OVERSEE THE PROCESS USED TO STRUCTURE, MARKET, AND PRICE CO-EI BONDS.

**COMMISSION MAY INCLUDE ADDITIONAL CONDITIONS DIFFERENT FROM THOSE REQUESTED IN A UTILITY APPLICATION**

(6) IN A FINANCING ORDER, THE COMMISSION MAY INCLUDE ANY CONDITIONS THAT ARE NECESSARY TO PROMOTE THE PUBLIC INTEREST AND MAY GRANT RELIEF THAT IS DIFFERENT FROM THAT WHICH WAS REQUESTED IN THE APPLICATION SO LONG AS THE RELIEF IS WITHIN THE SCOPE OF THE MATTERS ADDRESSED IN THE COMMISSION'S NOTICE OF THE APPLICATION.

**SIX-MONTH REVIEW: LOWEST OVERALL COSTS, DISALLOW EXCESS COSTS; ENGAGE OUTSIDE COUNSEL AND EXPERTS, DUTY OF LOYALTY TO COMMISSION, EXPENSES PART OF FINANCING COSTS**

(2) WITHIN ONE HUNDRED TWENTY DAYS AFTER THE ISSUANCE OF CO-EI BONDS, THE APPLICANT SHALL FILE WITH THE COMMISSION INFORMATION REGARDING THE ACTUAL UP-FRONT ISSUANCE COSTS OF THE CO-EI BONDS. THE COMMISSION SHALL REVIEW, ON A REASONABLY COMPARABLE BASIS, SUCH INFORMATION TO DETERMINE IF THE ISSUANCE RESULTED IN THE LOWEST OVERALL COSTS THAT WERE REASONABLY CONSISTENT WITH BOTH MARKET CONDITIONS AT THE TIME OF THE PRICING AND THE TERMS OF THE FINANCING ORDER. THE COMMISSION MAY DISALLOW INCREMENTAL UP-FRONT ISSUANCE COSTS IN EXCESS OF THE LOWEST OVERALL COSTS BY REQUIRING THE ELECTRIC UTILITY TO MAKE A CREDIT IN AN AMOUNT EQUAL TO THE EXCESS OF ACTUAL ISSUANCE COSTS INCURRED, AND PAID FOR OUT OF CO-EI BOND PROCEEDS, AND THE LOWEST OVERALL ISSUANCE COSTS AS DETERMINED BY THE COMMISSION. THE COMMISSION MAY NOT MAKE ADJUSTMENTS TO THE CO-EI CHARGES FOR ANY SUCH EXCESS UP-FRONT ISSUANCE COSTS. (3) IN PERFORMING ITS RESPONSIBILITIES UNDER THIS ARTICLE 4 1, THE COMMISSION MAY ENGAGE OUTSIDE CONSULTANTS AND COUNSEL, SELECTED BY THE COMMISSION, WHO ARE EXPERIENCED IN

SECURITIZED ELECTRIC UTILITY RATEPAYER-BACKED BOND FINANCING SIMILAR TO CO-EI BONDS. THESE OUTSIDE CONSULTANTS AND COUNSEL HAVE A DUTY OF LOYALTY SOLELY TO THE COMMISSION, MUST NOT HAVE ANY FINANCIAL INTEREST IN THE CO-EI BONDS, AND SHALL NOT PARTICIPATE IN THE UNDERWRITING OR SECONDARY MARKET TRADING OF THE CO-EI BONDS. THE EXPENSES ASSOCIATED WITH ANY ENGAGEMENT SHALL BE PAID BY THE APPLICANT UTILITY AND SHALL BE INCLUDED AS FINANCING COSTS AND INCLUDED IN THE CO-EI CHARGE, ARE NOT AN OBLIGATION OF THE STATE, AND ARE ASSIGNED SOLELY TO THE TRANSACTION. (4) IF AN ELECTRIC UTILITY'S APPLICATION FOR A FINANCING ORDER IS DENIED OR WITHDRAWN OR FOR ANY REASON NO CO-EI BONDS ARE ISSUED, ANY COSTS OF RETAINING EXPERT CONSULTANTS AND COUNSEL ON BEHALF OF THE COMMISSION, AS AUTHORIZED BY SUBSECTION (3) OF THIS SECTION AND APPROVED BY THE COMMISSION, SHALL BE PAID BY THE APPLICANT ELECTRIC UTILITY AND SHALL BE ELIGIBLE FOR RECOVERY BY THE ELECTRIC UTILITY, INCLUDING CARRYING COSTS, IN THE ELECTRIC UTILITY'S FUTURE RATES.

#### **UTILITIES MUST EXPLAIN FINANCING IMPACTS ON CUSTOMER RATES**

40-41-109. Electric utilities - duties. (1)(c) MUST EXPLAIN TO CUSTOMERS IN AN ANNUAL FILING WITH THE COMMISSION THE RATE IMPACT THAT FINANCING THE RETIREMENT OF ELECTRIC GENERATING FACILITIES WILL HAVE ON CUSTOMER RATES.

#### **APPLICATION FOR FINANCING ORDER VOLUNTARY; COMMISSION MAY NOT PENALIZE UTILITY SOLELY FOR ELECTING NOT TO USE SECURITIZED BONDS**

40-41-106 (2)(b)(3). Effect on commission jurisdiction.

THE COMMISSION MAY NOT REFUSE TO ALLOW THE RECOVERY OF ANY COSTS ASSOCIATED WITH THE RETIREMENT OF ELECTRIC GENERATING FACILITIES BY AN ELECTRIC UTILITY SOLELY BECAUSE THE ELECTRIC UTILITY HAS ELECTED TO RECOVER THOSE COSTS THROUGH TRADITIONAL RATEMAKING METHODS OR TO FINANCE THOSE ACTIVITIES THROUGH A FINANCING MECHANISM OTHER THAN CO-EI BONDS, WHETHER OR NOT A FINANCING ORDER WITH RESPECT TO SUCH COSTS HAS BEEN APPLIED FOR BY THE UTILITY OR ISSUED BY THE COMMISSION.

## APPENDIX THREE: NEW MEXICO LEGISLATIVE LANGUAGE

Energy Transition Act - SB 489 (2019)

<https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=489&year=19>

Appendix three contains the New Mexico Energy Transition Act language summarized above regarding key clean energy policy and bond securitization public policy and consumer protections, along with additional provisions that cover various other energy policy and regulatory considerations. These include:

- Carbon dioxide limits for generation;
- A reasonable cost threshold of \$60 per MWh at new generators' points of interconnection with the utility;
- A requirement that the NMPRC open a docket to consider a performance regulation that rewards utilities that exceed the renewable energy standards; and
- Utility reports on competitive solicitations and strategies used to minimize integration costs for new renewable energy.

### ETA SECTION 2(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 and may 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 of the Energy Transition Act. . .”

## **K. (1) FINANCING COSTS INCLUDE**

“reasonable commission expenses not to exceed three hundred thousand dollars (\$300,000), incurred for contract bond counsel that is 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.”

## **SECTION N. OF THESE DEFINITIONS DEFINES “LOWEST COST OBJECTIVE”**

“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;

## **“QUALIFYING GENERATING FACILITY” IS DEFINED NARROWLY**

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. . .”

## **SECTION 3. [NEW MATERIAL] LOCATION OF RESOURCE DEVELOPMENT AFTER ABANDONMENT.**

Sections A-F. Utility that abandons a plant shall apply within one year for approval of a competitive procured replacement resources ranked with regard to cost, economic development potential and ability to create jobs with pay and benefits comparable to those at the abandoned generation facility. Higher ratios of capital to fuel costs and reclamation cost reductions through use of previously mined lands within the county where the abandoned plant was located are to be considered in the commission’s decision. In the acquisition process the utility is required to inform potential bidders that it will prefer use of New Mexico labor. Replacement resources means up to 450 MW, including storage, “. . . located in the school district in New Mexico where the abandoned facility is located. . .”

## **SECTION 4. [NEW MATERIAL] FINANCING ORDER—APPLICATION CONTENTS-- PENDING APPLICATIONS.**

- A. Abandoning utility may apply for financing order to recover “. . . all of its energy transition costs.”
- B. Application shall include description of facility to be abandoned, estimate of energy transition costs identifying severance pay and job training expenses for affected generation facility and associated mine employees, plant decommissioning and mine reclamation costs, and financing costs of energy transition bonds.  
Utility will “use commercially reasonable efforts” to obtain the lowest (bond) cost objective.

**SECTION 5. [NEW MATERIAL] FINANCING ORDER--ISSUANCE--TERMS OF BONDS--REPORTS TO COMMISSION OF DISBURSEMENT OF BONDPROCEEDS--REVIEW AND AUDIT OF RECORDS.**

**SECTION 6. [NEW MATERIAL] ADJUSTMENT MECHANISM--ADJUSTMENT PROCEDURES--HEARING PROCEDURES IF COMMISSIONDETERMINES ADJUSTMENT MADE IN ERROR.**

**SECTION 7. [NEW MATERIAL] FINANCING ORDER--IRREVOCABILITY--AMENDMENTS.**

**SECTION 8. [NEW MATERIAL] AGGRIEVED PARTIES--REQUEST FORREHEARING--JUDICIAL REVIEW**

**SECTION 9. [NEW MATERIAL] CONDITIONS THAT KEEP FINANCINGORDERS IN EFFECT AND ENERGY TRANSITION CHARGES IMPOSED.**

**SECTION 10. [NEW MATERIAL] QUALIFYING UTILITY DUTIES.**

- E. “. . . 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.

**SECTION 11. [NEW MATERIAL] COMMISSION TREATMENT OF ENERGY TRANSITION BONDS.**

- 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

**SECTION 12. [NEW MATERIAL] ENERGY TRANSITION PROPERTY--ENERGY TRANSITION REVENUES.**

**SECTION 13. [NEW MATERIAL] SECURITY INTERESTS--CREATION OF SECURITY INTEREST--PRIORITY OVER OTHER LIENS--ATTACHMENT ON FILING WITH SECRETARY OF STATE.**

**SECTION 14. [NEW MATERIAL] SALE OF ENERGY TRANSITION PROPERTY--PERFECTING INTERESTS--ABSOLUTE TRANSFER AND TRUE SALEREQUIREMENTS**

**SECTION 15. [NEW MATERIAL] EXEMPTION FROM FEE ASSESSMENTS.**

## **SECTION 16. [NEW MATERIAL] ENERGY TRANSITION ECONOMIC DEVELOPMENT ASSISTANCE FUND--ENERGY TRANSITION DISPLACED WORKER ASSISTANCE FUND.**

B. “. . .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.

C. 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 establish a public planning process in the affected community to inform the use of money in the fund. 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 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.

D. 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.

E. 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.

F. 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 establish a public planning process in the affected community to inform the use of money in the fund. 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 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.

G. 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 and sixty-five hundredths percent to the economic development department for deposit in the energy transition economic development assistance fund; and (2) three and eighty-five hundredths percent to the workforce solutions department for deposit in the energy transition displaced worker assistance fund.

H. 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; (2) "displaced worker" means a New Mexico resident who: (a) within the previous twelve months, was terminated from employment, or whose contract was terminated, due to the abandonment of a New Mexico facility producing electricity that resulted in displacing at least forty workers; (b) had at least seventy-five percent of the resident's net income, as that term is defined in the Income Tax Act, from the employment or contract described in Subparagraph (a) of this paragraph; (c) has not been able to replace the lost wages described in Subparagraph (b) of this paragraph or whose annual wages are at least twenty-five percent less than when the qualifying facility was operating; and (d) does not qualify to take full benefits pursuant to a pension or retirement plan.

**SECTION 17. [NEW MATERIAL] ENERGY TRANSITION BONDS NOT PUBLIC DEBT.**

**SECTION 18. [NEW MATERIAL] ENERGY TRANSITION BONDS AS LEGAL INVESTMENTS.**

**SECTION 19. [NEW MATERIAL] STATE PLEDGE NOT TO IMPAIR.**

**SECTION 23. [NEW MATERIAL] 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.

**SECTION 24. A NEW SECTION OF THE PUBLIC UTILITY ACT IS ENACTED TO READ:"[NEW MATERIAL] REQUIRING THE HIRING OF APPRENTICES FOR THE CONSTRUCTION OF FACILITIES THAT GENERATE ELECTRICITY.**

- (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;
- (3) twenty-five percent for projects for which on-site construction commences beginning January 1, 2026.

**SECTION 25. SECTION 62-9-1 NMSA 1978 IS AMENDED TO READ:"62-9-1. NEW CONSTRUCTION--RATEMAKING PRINCIPLES."**

D. In an application for a certificate of public convenience and necessity for an energy storage system, the commission shall approve procurement of 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; and (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.

#### **SECTION 26. 62-15-34. RENEWABLE PORTFOLIO STANDARD.**

Distribution cooperatives. 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; (c) a target of achieving the zero-carbon resource standard by January 1, 2050

#### **SECTION 28. RENEWABLE ENERGY ACT.**

E. "reasonable cost threshold" \$60 per MWH at POI

#### **SECTION 29. SECTION 62-16-4 RENEWABLE PORTFOLIO STANDARD.**

2025 40%

2030 50%

2040 80%

2045 100% zero carbon resources

D. Upon a [commission] motion or application[by a public utility], the commission shall open a docket to develop and provide [appropriate performance-based] financial or other incentives to encourage public utilities to produce or acquire renewable energy [supplies] that [exceed] exceeds the applicable annual renewable portfolio standard set forth in this section;

#### **UTILITY TO FILE REPORTS, INCLUDING RENEWABLE ENERGY ACQUIRED**

(a) was the result of a competitive solicitation that included opportunities for bidders to propose purchased power, facility self-build or facility build-transfer options.

(4) strategies used to minimize costs of renewable energy integration, including location, diversity, balancing area activity, demand-side management and load management.

**SECTION 33. SECTION 62-16-8 RURAL ELECTRIC COOPERATIVE—VOLUNTARY TARIFFS.**

**SECTION 36. SECTION 74-2-5 NMSA 1978 DUTIES AND POWERS--ENVIRONMENTAL IMPROVEMENT BOARD--LOCAL BOARD.**

(b) standards of performance that limit carbon dioxide emissions to no more than eight hundred forty-five pounds per megawatt-hour on and after January 1, 2023 for a source that is an electric generating facility with an in-service date prior to January 1, 1984, that uses coal as a fuel source.

## **APPENDIX FOUR: MONTANA LEGISLATIVE LANGUAGE**

Montana Energy Assistance Bond Act - HB 467 (2019)

<https://leg.mt.gov/bills/2019/BillPdf/HB0467.pdf>

### **LEGISLATIVE INTENT**

HB 0467 Section 1. Short title. [Sections 1 through 19] may be cited as the “Montana Energy Impact Assistance Act”. Section 2. Purpose -- legislative intent. (1) The legislature finds that it is imperative to: (a) implement an alternative financing mechanism to address the retirement and replacement of electric infrastructure or facilities; and (b) authorize the public service commission to review and approve one or more financing orders, if it deems approval appropriate and in the interest of ratepayers.

(b) the state should authorize the issuance of low-cost securitized ratepayer-backed bonds. The proceeds of these bonds must be used solely to: (i) lower long-term costs paid by electric utility customers by reducing financing costs of certain retired or replaced electric infrastructure or facilities; and (ii) make available capital investment for modernized infrastructure and facilities and services, including least-cost electric generating facilities and other supply-side and demand-side resources.

10) “Least-cost generation resource” means an incremental supply-side or demand-side resource that when included in an electric utility's generation portfolio produces the lowest cost among alternative resources, considering both short-term and long-term costs and assessing the likelihood of changes in future fuel prices and future environmental requirements, among other considerations

### **BOND TENOR, INCLUDED COSTS**

(11) “Montana energy impact assistance bonds” \*\*\* have a scheduled maturity of no longer than 30 years and a final legal maturity date that is not later than 32 years from the issue date, that are rated AA or Aa2 or better by a major independent credit rating agency at the time of issuance, and that are issued by an electric utility or an assignee pursuant to a financing order.

(17) “Pretax costs” means costs approved by the commission, including but not limited to: (a) unrecovered capitalized costs of retired or replaced electric infrastructure or facilities; (b) costs of decommissioning and restoring the site of the electric infrastructure or facility

### **FINANCING APPLICATIONS, PSC ORDERS**

Section 4. Financing orders -- application requirements. (1) An electric utility may file an application with the commission for approval to issue Montana energy impact assistance bonds (e) an estimate of the net present value of electric utility customer savings expected to result if the financing order is issued as determined by a net present value comparison between the costs to customers that are expected to result from the financing of the undepreciated balances of electric infrastructure or facilities with Montana energy impact assistance bonds and the costs that would result from the application of traditional electric utility financing mechanisms to the

same undepreciated balances; and (f) one or more alternative financing scenarios in addition to the preferred scenario contained in the application.

Section 5. Issuance of financing orders. (1) After notice and hearing in accordance with [section 4(4)], the commission may issue a financing order if the commission finds: (a) the Montana energy impact assistance costs described in the application related to the retirement or replacement of electric infrastructure or facilities are reasonable; (b) the proposed issuance of Montana energy impact assistance bonds and the imposition and collection of Montana energy impact assistance charges: (i) are just and reasonable; (ii) are consistent with the public interest; (iii) constitute a prudent and reasonable mechanism for the financing of Montana energy impact assistance costs described in the application; and (iv) will provide substantial, tangible, and quantifiable benefits to customers that are greater than the benefits that would have been achieved absent the issuance of Montana energy impact assistance bonds; and (c) the proposed structuring, marketing, and pricing of the Montana energy impact assistance bonds will: (i) significantly lower overall costs to customers or significantly mitigate rate impacts to customers relative to traditional methods of financing; and (ii) achieve the maximum net present value of customer savings, as determined by the commission in a financing order, consistent with market conditions at the time of sale and the terms of the financing order. (2) (a) The financing order must: (i) determine the maximum amount of Montana energy impact assistance costs that may be financed from proceeds of Montana energy impact assistance bonds authorized to be issued by the financing order; (ii) describe the proposed customer billing mechanism for Montana energy impact assistance charges and include a finding that the mechanism is just and reasonable; (iii) describe the financing costs that may be recovered through Montana energy impact assistance charges and the period over which the costs may be recovered, which must end no earlier than the date of final legal maturity of the Montana energy impact assistance bonds; (iv) describe the Montana energy impact assistance property that is created and that may be used to pay, and secure the payment of, the Montana energy impact assistance bonds and financing costs authorized in the financing order; (v) authorize the electric utility to finance Montana energy impact assistance costs through the issuance of one or more series of Montana energy impact assistance bonds. An electric utility is not required to secure a separate financing order for each issuance of Montana energy impact assistance bonds or for each scheduled phase of the retirement or replacement of electric infrastructure or facilities approved in the financing order.

## **RATE REDUCTION**

(B) the applicant utility files to reduce its rates as required in subsection (5) simultaneously with the inception of the Montana energy impact assistance charges and independently of the schedule of closing and decommissioning of the electric infrastructure or facility; and (x) specify a future ratemaking process to reconcile any difference between the projected pretax costs included in the amount financed by Montana energy impact assistance bonds and the final actual pretax costs incurred by the utility in retiring or replacing the electric infrastructure or facility. (b) In a financing order, the commission may include any conditions that are necessary to

promote the public interest and may grant relief that is different from that which was requested in the application, as long as the relief is within the scope of the matters addressed in the commission's notice of the application.

### **TEMPORARY STAFF, SPECIALIZED COUNSEL, EXPERT CONSULTANTS**

(f) any costs incurred by the commission to hire and compensate additional temporary staff needed to perform its responsibilities under [sections 1 through 19] and in accordance with [section 9(4)] engage specialized counsel and expert consultants experienced in securitized electric utility ratepayer-backed bond financing similar to Montana energy impact assistance bonds.

(b) Expenses incurred by the commission to hire and compensate additional temporary staff needed to perform its responsibilities under [sections 1 through 19] must be included as financing costs and included in the Montana energy impact assistance charge. (5) If a utility's application for a financing order is denied or withdrawn for any reason and Montana energy impact assistance bonds are not issued, the commission's costs of retaining expert consultants, as authorized by subsection (4), must be paid by the applicant utility and are considered by the commission as a prudent deferred expense for recovery in the utility's future rates.

### **NO UTILITY PENALTIES FOR FINANCING CHOICES**

3) The commission may not refuse to allow the recovery of any costs associated with the retirement or replacement of electric infrastructure or facilities by an electric utility solely because the electric utility has elected to finance those activities through a financing mechanism other than Montana energy impact assistance bonds

### **ANNUAL CONSUMER DISCLOSURE**

(c) explain to customers in an annual filing with the commission the rate impact that financing of the retirement or replacement of electric infrastructure or facilities has on customer rates.

(4) An electric utility that obtains a financing order and causes Montana energy impact assistance bonds to be issued must demonstrate in an annual filing with the commission that Montana energy impact assistance revenues are applied solely to the repayment of Montana energy impact assistance bonds and other financing costs.

### **COMMISSION MAY APPROVE UTILITIES' USE OF FUNDS**

Section 18. Use of amounts received by electric utility as consideration for its transfer of Montana energy impact assistance property. (1) Subject to commission approval as required by subsection (2), an electric utility shall expend or invest amounts the electric utility receives as consideration for its transfer of Montana energy impact assistance property to reduce its Montana energy impact costs and may invest or expand the remaining funds as follows: (a) to build and own generation infrastructure and facilities that are least-cost generation resources, taking into consideration regulatory risk, current and future fuel cost and risk, and fuel delivery infrastructure costs, the addition of which is not inconsistent with the electric utility's resource procurement or integrated least-cost resource plan; (b) to build, own, or purchase electricity

storage capacity to the extent that the investment is either required by law or rule, is the least-cost, or is needed to increase the amount of least-cost generation resources that the electric utility is able to add to its generation portfolio; (c) to invest in network modernization to the extent that the modernization is necessary to increase the amount of least-cost generation resources able to be added to the electric utility's system; and (d) to replace any damaged or destroyed electric infrastructure or facilities involved in the transmission or delivery of electricity to Montana customers.

(2) In considering any application for approval of the use of Montana energy impact assistance bond proceeds, the commission shall: (a) use its regular process for consideration of applications; and (b) fully consider new energy technologies and future environmental regulations.

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vi Harnessing Financial Tools to Transform the Electric Sector. Sierra Club, 2018.

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