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FISCAL IMPACT REPORT

SPONSOR <u>HJC</u>	LAST UPDATED <u>2/26/23</u>	ORIGINAL DATE <u>2/8/23</u>
SHORT TITLE <u>Low-Income Public Utility Rates</u>	BILL NUMBER <u>CS/House Bill 218/HJCS</u>	ANALYST <u>Torres, J</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Consultants		Up to \$800.0				PRC Operating Budget

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From (For Original House Bill 218*)
 Public Regulation Commission (PRC)
 New Mexico Attorney General (NMAG)
 Energy, Minerals and Natural Resources Department (EMNRD)
 Aging and Long-Term Services department (ALTSD)

*Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of HJC Substitute for House Bill 218

The House Judiciary Committee Substitute for House Bill 218 seeks to reduce the energy burden on low income New Mexicans by requiring all electric and gas Investor Owned Utilities (IOUs) and Rural Electric Cooperatives (RECs) to create special customer-subsidized “affordable rates” for “low income” households. The bill defines “affordable rates” as “a rate for electric and gas utility service designed to prevent an average low-income customer from paying an unsustainable share of income toward these services.” “Low income” households are defined as meeting 200 percent or less of the current federal poverty level guidelines for IOU customers and 150 percent or less for REC customers.

The bill requires IOUs to file an “initial proposed affordable rate” with the PRC no later than

January 1, 2024. This proposed rate becomes effective within 30 days unless the PRC obtains a 60 day extension. If not approved within 90 days, the rate is approved as a matter of law. REC's are not required to offer an "affordable rate" until their "next rate adjustment" after July 1, 2023.

A completely revised section entitled Investor-Owned Utility Affordable Rates for Low-Income Customers includes the following modifications:

- A. Each investor-owned public utility shall offer a just and reasonable affordable rate for low-income residential customers.

Subsection A now includes the language: "just and reasonable affordable rate."

- B. Each investor-owned public utility shall file with the commission an initial proposed affordable rate for low-income residential customers no later than January 1, 2024.

Subsection B now includes the deadline for initial low-income affordable rates, previously set forth in subsection A.

- C. Each investor-owned public utility shall file its initial proposed affordable rate with an advice notice that is served on all parties of record in the utility's last rate case at the time it files the advice notice with the commission. The filing shall include information showing that the rate: (1) is available to all low-income residential customers; (2) meets the definition of "affordable rate" as defined in this section; and (3) was developed after soliciting and considering nonbinding recommendations on the design and implementation of the rate from interested parties.

Subsection C now requires that the investor-owned public utility file its proposed affordable rate with an advice notice served on the commission and all parties of record. This subsection also specifies the information to be included in that advice notice.

- D. The initial proposed affordable rate shall go into effect thirty days after filing, unless suspended by the commission for a period not to exceed one hundred twenty days. If the commission has not acted to approve an affordable rate by the end of the suspension period, the initial proposed affordable rate shall be deemed approved as a matter of law. If, after a hearing, the commission finds the proposed rate to be unjust and unreasonable, the commission shall determine the just and reasonable affordable rate to be charged.

Subsection D indicates that the proposed affordable rate shall go into effect 30 days after filing unless suspended by the commission no longer than 120 days. The rate is improved as a matter of law if the commission does not approve within that timeline. If after hearing, the commission finds the proposed rule to be unjust and unreasonable, it shall determine the just and reasonable rate to be charged.

- E. Notwithstanding Subsection B of this section, an investor-owned public utility may elect to file its initial proposed just and reasonable affordable rate in its first general rate case that is to be filed after the effective date of this section; provided that the rate case shall be filed prior to December 31, 2025.

The public utility may file its proposed just and reasonable affordable rate after the bill's effective date, provided that it is filed as of December 31, 2025.

- F. Each investor-owned public utility shall file a proposed updated affordable rate, if an update is needed to maintain an affordable rate for low-income residential customers, for approval in future general rate cases.

Subsection F allows for public utility affordable rate updates.

- G. Nothing in this section shall prohibit the commission from:

- (1) approving an affordable rate that is a flat dollar amount rate reduction from general residential rates or a percentage rate reduction from residential rates; provided that the reduction is calculated to result in an affordable rate for the average low-income residential customer;
- (2) approving an affordable rate for low-income residential customers based on specified tiers of household income; or
- (3) authorizing programs that seek to decrease or eliminate participating customer arrears or increase the frequency of participating customer payments; provided that such programs shall be designed to increase affordability and continuity of service for participating customers and to reduce utility costs associated with customer account collection activities.

Subsection G specified the conditions under which the commission will not be prohibited from approving affordable rates.

- H. Each investor-owned public utility shall file affordable-rate evaluations every three years that measure:

- (1) the estimated change in energy burden for an average participating customer, based on publicly available income data and the utility's available billing and usage data;
- (2) disconnection notices and service disconnections;
- (3) frequency of customer payments, utility collection costs, arrearage and bad debt; and
- (4) any other relevant criterion that can be assessed with available data that the commission deems appropriate.

Subsection H specifies the information to be included in the public utility's three-year affordable rate evaluations.

- I. The commission shall promulgate rules and issue orders as necessary to implement, administer and evaluate affordable rates.

Subsection I calls for the promulgation of applicable commission rules.

- J. The commission shall allow an investor-owned public utility to recover: (1) the reasonable cost of implementing an affordable rate, including administrative costs, evaluation costs and start-up costs, on a timely basis; and (2) costs incurred because of an approved initial affordable rate in the investor-owned public utility's next general rate case.

Subsection J specifies costs that the investor owned utility may recover.

- K. Investor-owned public utilities may use information collected or created for the purpose of administering energy assistance programs to formulate affordable rates.

Subsection K allows for the formulation of affordable rates from data collected or created to administer these programs.

- L. As used in this section:

- (1) "affordable rate" means a rate for electric and natural gas utility service designed to prevent an average low-income customer from paying an unsustainable share of income toward these services, the design of which shall be further prescribed by the commission by rule or order and which may be based solely upon publicly available aggregate income data for New Mexico residents;
- (2) "energy burden" means the percentage of gross household income spent by a customer on an individual investor-owned public utility's bills;
- (3) "investor-owned public utility" means a public utility subject to regulation by the commission that provides electric or natural gas service to residential customers, but "investor-owned public utility" does not mean a cooperative organized pursuant to the Rural Electric Cooperative Act; and
- (4) "low income" means an annual household adjusted gross income, as defined in the Income Tax Act, equal to or less than two hundred percent of the current federal poverty level guidelines published by the United States department of health and human services."

Subsection L includes definitions of "affordable rate;" "energy burden;" "investor-owned public utility;" and "low income."

Revised Section 62-15-37 NMSA 1978 includes the following definitions:

- A. 'affordable rate' means a rate for electric and natural gas utility service designed to prevent an average low-income customer from paying an unsustainable share of income toward these services, the design of which shall be further prescribed by the commission by rule or order and which may be based solely upon publicly available aggregate income data for New Mexico residents;
- B. 'energy burden' means the percentage of gross household income spent by a customer on bills for electric service provided by a cooperative;
- D. 'low income' means an annual household adjusted gross income, as defined in the Income Tax Act, equal to or less than one hundred fifty percent of the current federal poverty level guidelines published by the United States department of health and human services.

A new Section 4 is enacted to read: "Rural Electric Cooperative Energy Affordability for Low-Income Residential Customers."

- A. Each cooperative shall establish an energy affordability plan for low-income residential customers by no later than the date of the cooperative's next general rate

adjustment.

This section requires that “each cooperative” establish an energy affordability plan as of the date of its next general rate adjustment.

- B. An energy affordability plan shall be designed to lower the energy burden of the average low-income residential customer in the cooperative's service territory.

The cooperative’s plan design shall “lower the energy burden of the average low-income residential customer.”

- C. An energy affordability plan may consist of:
 - (1) an affordable rate for low-income residential customers; or
 - (2) programs or services designed to reduce the energy burden of low-income residential customers that may include: (a) energy efficiency improvements; (b) weatherization improvements; (c) bill assistance funded by voluntary member contributions; (d) outreach and communications efforts; and (e) other programs to reduce energy burden; or
 - (3) a combination of Paragraphs (1) and (2) of this subsection.

Subsection C specified the contents of a cooperative’s “energy affordability plan.”

- D. Each cooperative shall annually publish a report on its website on the availability and progress of the cooperative's energy affordability plan, including the number of low-income residential customers served by each component of the program to the extent reasonably determinable and the estimated impact of the plan on the energy burden of an average low-income residential member of the cooperative.

The cooperative’s progress shall be published on its website annually as specified in this subsection.

- E. A cooperative that chooses to offer an energy affordability plan for low-income residential customers prior to its next general rate adjustment may recover any reasonable implementation costs through an existing rate adjustment mechanism or charge until its next general rate adjustment.

Subsection E provides for cooperative cost recovery.

The HJC Substitute for House Bill 218 addresses agency concerns by tightening up the language and applicability of this bill to specified “affordable rates,” rate structures, information, and deadlines.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

PRC indicates that outside consultants will likely need to be hired at considerable cost due to the rate adjustment requirements and timing necessitated by House Bill 218. Hiring costly

consultants for up to 16 rate cases will very likely result in a substantial budget impact to that agency.

PRC states:

The IOUs are required to file new affordable rates no later than January 1, 2024. Note that two IOUs have recently filed rate cases with the commission, with their cases currently underway. These new affordable rates would have to be filed outside of the general rate cases as advice notices. If protested, the advice notices could become cases. Since the new rates would be filed outside of the general rate cases, they could be argued as being piecemeal ratemaking which is contrary to general ratemaking principles.

Also, as noted above, conducting these rate setting procedures all at the same time will put significant strain on Staff resources. Staff will likely need to retain outside assistance (consultants) at considerable cost to manage in increased workload. Each consultant can be expected to cost between \$20 thousand to \$50 thousand per case.

Rural electric cooperatives are not required to offer affordable rates until their next rate adjustment after July 1, 2023. The bill will require a notice of proposed rulemaking to determine the criteria for the affordable rates. The date of this could be after July 1, 2023. The rural cooperatives may not have the rulemaking prior to their next rate case. If the rural electric cooperatives offer affordable rates in their next rate adjustment, and the proposed rates are protested, the commission could find itself hearing 16 cases.

SIGNIFICANT ISSUES

ENMRD states:

According to the U.S. Department of Energy’s Low-Income Energy Affordability Data (LEAD) tool (which unfortunately does not aggregate data by utility service area) energy burden as a percentage of income is generally greater in New Mexico’s rural areas.

Current law presents two issues regarding the authority of the PRC to prescribe preferential or discounted rates for low-income residential utility customers. HB218 resolves one of the two.

First, low-income discounts are arguably prohibited by the statutory provision in the Public Utility Act which prohibits utility rates or services granting any “unreasonable preference or advantage to any [...] person within any classification.” (NMSA 1978 § 62-8-6). HB 218 addresses this presumption, eliminating the statutory provision and replacing it with a new Subsection C (“Discrimination”).

More significantly, however, low-income discounts are also arguably presumed to be prohibited by the New Mexico Supreme Court case *Mountain States Legal Foundation v. NM Corp. Comm’n*, 101 N.M. 657 (1984), (“Mountain States”)¹. Mountain States concerned a telephone discount rate program for economically disadvantaged New Mexicans. The Supreme Court argued that “[a]lthough the Commission has been granted broad rate making powers by the New Mexico Constitution, the power to effect social

¹ <https://law.justia.com/cases/new-mexico/supreme-court/1984/15191-0.html>

policy through preferential rate making is not permitted. To find otherwise would empower the Commission to create a special rate for any group it determined to be deserving"; a power the Supreme Court reserves only for the Legislature. HB218 attempts to address that concern by creating express legislative direction to that end; however, it may not foreclose future litigation; the outcome of which is uncertain.

Low-income rate costs, under HB218, can be recovered by the utility from other rate classes – i.e., non-low-income customers will subsidize low-income ones. While utility service can be – and perhaps should be – regarded as a public good, rising utility costs due to subsidization is nevertheless a genuine concern to rate classes outside the low-income definition.

AGLT states:

From 2020 to 2021 in New Mexico, household utilities have increased by 6% (U.S. Bureau of Economic Analysis, "[SAPCE3 Personal consumption expenditures \(PCE\) by state by type of product 1/](#)", accessed Monday, January 30, 2023). Many older adults who live independently do not have the means to live with economic security. Estimates from the 2019 Elder Index suggest approximately half of older adults (65 years or older) living alone and almost a quarter of older adults (65 years or older) living in two-elder households lack the financial resources required to pay for basic needs (Mutchler, J., Yang, L., and N. V. Roldán. 2019. Living Below the Line: Economic Insecurity and Older Americans, Insecurity in the States 2019. Center for Social and Demographic Research on Aging Publications. 40). The Elder Index is a measure of the income needed by older adults to maintain independence and meet their daily living costs while staying in their own homes. The Elder Index measures the costs faced by households that include one or two older adults aged 65 or older living independently.

HB218 would result in lower utility costs, providing much-needed assistance to older adults living with financial insecurity.

NMAG states that the bill:

Is a rate-payer subsidized program, as opposed to a tax payer funded program such as the federally funded Low Income Home Energy Affordability Program (“LIHEAP”), which covers all fuel types, not only electricity and gas. The first release of federal LIHEAP funding provided NM with approximately \$23.5² million. However, LIHEAP has different eligibility thresholds than HB218. Specifically, LIHEAP requires households to have an income of between 150 percent and 170 percent of the specified federal poverty level and be comprised of a member who is either a child below 24 months of age, an elderly person or anyone who is likely to suffer from hypothermia. In addition, a person who participates or has family members who participate in certain other benefit programs, such as SNAP, SSI, TANF, automatically meets the eligibility standards for LIHEAP.

ADMINISTRATIVE IMPLICATIONS

² <https://www.acf.hhs.gov/ocs/policy-guidance/dcl-liheap-first-funding-release-fy23>

PRC states:

Commission staff will have to evaluate and establish the criteria used to develop the affordable rates. A NOPR will be required to establish the new regulatory requirements under Title 17. The rate filing requirements may result in protracted cases for the IOUs and numerous electric cooperative cases if protested.

TECHNICAL ISSUES

ENMRD states:

The definition of “affordable rate” is excessively vague, relying on the phrase ‘an unsustainable share of income’. Implementing HB218 will require a clearer sense of what an unsustainable share of income entails. EMNRD presents the following definitions as starting points for the bill sponsors.

- “Energy poor” households are defined as those spending more than 6 percent of household income on energy costs.
- Scholars also differentiate “energy stressed” households with energy burdens of 4–7 percent “energy burdened” households with 7–10 percent energy burdens, and “energy impoverished” households with energy burdens greater than 10 percent.

JT/ne/al