

## New Mexico Lawmakers Mull Securitization to Hasten Coal-Fired Plant Closures

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New Mexico lawmakers are considering a bill that would authorize the use of utility securitization to help fast-track coal plant closures while providing support for affected communities and moving the state toward a carbon-free future. Supporters claim the issuance of ratepayer-backed bonds to finance the remaining debt on the San Juan Generating Station will save money for ratepayers, who are already on the hook for financing coal-fired generation that has become uneconomical.

New Mexico's new Democratic leadership is making good on its clean-energy campaign promises with a slew of bills before the state Legislature. One of these, [SB 489](#), also known as the Energy Transition Act, would authorize the use of utility securitization to finance sunk costs of the San Juan Generating Station, an uneconomical coal plant in the northwestern part of the state.

Securitization would essentially refinance the utility's outstanding debt at a lower interest rate, saving money for ratepayers while recapturing Public Service Company of New Mexico's initial capital. If the bill is passed as written, those savings would also be used in part to support displaced workers with severance pay and retraining, as well as initial decommissioning and reclamation efforts.

The bill would also increase New Mexico's renewables portfolio standard from the current 20 percent by 2020 to 50 percent by 2030 for both investor-owned utilities and rural electric cooperatives. With incremental goals along the way, the bill would commit New Mexico to going completely carbon-free by 2050. "It's almost like pressing a reset button," Noah Long, director of the Interior West and Northwest climate and clean-energy program for the Natural Resources Defense Council, a backer of SB 489, said in an interview. "The [New Mexico Public Regulation Commission] authorized the original financing to run San Juan Generating Station through 2053, but circumstances have changed, and renewables are now much less costly than coal. This bill would give PNM a chance to get out of what has turned out to be a bad investment, get back their initial capital, and reinvest it where there are good opportunities."

"This is the governor's bill, and she did a lot of work to bring stakeholders to the table," Camilla Feibelman, director of the Sierra Club Rio Grande Chapter, another key supporter of the bill, said. "I'm not ready to visualize amendments; a lot of that process has already taken place."

**But critics claim that amendments are exactly what SB 489 needs.** "There are far too many escape Feibelman said those who characterize the bill as a bailout "are simply wrong." PNM stands to lose at least \$250 million of otherwise secured profits from shutting SJGS early, she estimates. "The Legislature's job is to establish a statute that the PRC implements," Feibelman said, adding that the NMPRC still has the authority to consider the terms of the plant's abandonment, which the commission initiated in January, and to approve the bonds [[13-00390-UT](#)] (see CEM No. 1521 [15.1]).

"The PRC would have to approve of [PNM's] replacement generation, too," she said. Natural gas generation is not expressly forbidden as a possible means of replacement generation in the bill, but Feibelman said it is more expensive than renewables. "Our integrated resource plan included two new sizable gas peaking plants as replacement power" for SJGS, PNM spokesman Ray Sandoval said in an email. "But we issued an all-source [request for proposals], and the bids we received contain a variety of solutions," he said, adding that technological advances will allow the utility to begin integrating energy storage into its system to further utilize renewable energy resources.

There is no standard template for utility securitization, panelists said at the Feb. 13 NMPRC meeting. “But best practices have emerged,” Joseph Fichera, CEO of Saber Partners, a New York-based corporate financial advisory firm, said. The panelists—including Becky Klein of Austin, Texas-based Klein Energy, a former chair of the Public Utilities Commission of Texas; and Dean Criddle, senior counsel at Orrick Herrington & Sutcliffe of San Francisco—agreed that strong utility-commission involvement leads to better outcomes for ratepayers. But SB 489 limits NMPRC oversight, a fact that raised eyebrows among the experts and the commissioners.

“The bill is apparently rather well supported in the Legislature and may well pass,” Commissioner Cynthia Hall said as she introduced the panelists, who had come at her invitation. Fichera, Klein and Criddle also consulted with NMPRC staff in preparing a fiscal-impact report on a [similar bill](#) that was defeated in 2018, Hall said. She worries SB 489 could affect the commission’s “ability to protect consumers to the extent we would like to.”

Successful legislation should grant the state utility commission “the authority to include additional terms and conditions in the financing order if, in its judgment, those terms would protect ratepayers by reducing costs or reducing risks,” Criddle said. A separate bill before the current Legislature, [SB 492](#), grants that authority, he said, while SB 489 does not. In fact, SB 489 “may have been drafted to preclude it,” Criddle added.

SB 492, titled the Utility Securitization Financing Bill or Ratepayer Relief Act, would authorize the use of utility securitization in the state generally. It does not offer provisions for worker transition and community impact, or any adjustment to the state’s RPS. “The Energy Transition Act takes PNM fairly far out of our comfort zone,” the company said in a statement issued through Sandoval. “Legislative leadership, environmental stakeholders, and community advocates determined to help New Mexico become a leader in the global energy transition have worked hard to develop bold energy initiatives and invited PNM to provide comments on the technical aspects of this policy initiative,” the company said.

Other differences between SB 489 and SB 492 include an audit-and-verification process to ensure the lowest-cost standard for the bonds and commercially reasonable procedures for their issuance have been met and followed; provisions for a post issuance review of the bonds; and a requirement that there be separate financial advisors for utilities and regulators. Such legislative elements have emerged as beneficial to ratepayers, Fichera, Klein and Criddle agreed. SB 492 includes these elements while SB 489 does not, they said.

Additionally, while all parties are assured of access to legal and financial advisory representation in both bills, SB 489 imposes a cap on the amount regulators can spend on such consultation, something the panel said they have not seen in other legislation. Without an equal limit for both parties, utilities can “keep throwing resources at it to their benefit,” Criddle explained. The securitization experts told the commission they had prepared amendments to SB 489 based on their comparison of the bill to SB 492, incorporating the positive attributes of both bills.

“We want the coal plant closure to go well, and we want to take care of San Juan County,” Commissioner Steve Fischmann said at the meeting. “We just need to be sure all voices get fair consideration in the legislation.” Colorado’s [HB 1037](#), like New Mexico’s SB 492, would authorize the general use of securitization for retiring generating stations—not exclusively coal—in that state. **It conforms to the best practices suggested by Fichera, Klein and Criddle at the NMPRC meeting, they said.** A similar bill is also under consideration in Missouri. *—Abigail Sawyer*