

**SAN JUAN COUNTY, NEW MEXICO  
COAL-FIRED ELECTRICITY GENERATING FACILITY  
DEMOLITION AND REMEDIATION ORDINANCE  
ORDINANCE NO. 121**

**AN ORDINANCE REQUIRING DEMOLITION AND REMEDIATION OF  
COAL-FIRED ELECTRICITY GENERATING FACILITIES UPON  
RETIREMENT.**

**WHEREAS**, the Energy Transition Act, NMSA 1978, Sections 62-18-1 to 62-18-23 (2019) (“ETA”) applies to a Qualifying Generating Facility, which is a coal-fired generating facility in New Mexico composed of multiple generating units that 1) has been granted a certificate of public convenience for which abandonment authority is granted after December 31, 2018, 2) is owned or leased, in whole or in part, by a qualifying entity, 3) if operated by a qualifying utility prior to the date of the ETA, is to be abandoned prior to January 1, 2023, 4) and if not operated by a qualifying utility prior to the effective date of the ETA, is to be abandoned prior to January 1, 2032; and

**WHEREAS**, pursuant to the ETA, one or more Qualifying Generating Facilities may be abandoned in San Juan County, which if not properly demolished and removed may lead to the facilities being left in place to deteriorate, contaminating groundwater and posing other risks to public health, safety and welfare; and

**WHEREAS**, prudent environmental decommissioning can only be achieved through full demolition of Qualifying Generating Facilities; and

**WHEREAS**, the ETA provides a funding mechanism for plant decommissioning; and

**WHEREAS**, NMSA 1978, Section 4-37-1 (1975) grants counties those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the county and its inhabitants; and

**WHEREAS**, to provide for the safety, health and welfare of its inhabitants, San Juan County should enact an Ordinance requiring owners and operators of Qualifying Generating Facilities to plan for and fully fund demolition and remediation of affected properties of retired Qualified Generating Facilities upon complete and permanent closure.

**NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF  
SAN JUAN COUNTY, NEW MEXICO:**

**SECTION 1. DEFINITIONS**



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San Juan County, NM TANYA SHELBY



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- A. **AFFECTED PROPERTY** means the property owned by or under the control of an owner that is affected by a Qualifying Generating Facility, including:
1. land, surface water, or ground water directly affected by the Qualifying Generating Facility, associated impoundments, disposal and waste operations, buildings, structures, or other improvements or operations infrastructure; and
  2. areas affected by activities necessary to the closure and dismantling of the Qualifying Generating Facility.
- B. **COUNTY** means the area lying within the corporate boundaries of the County of San Juan and outside the boundaries of any incorporated municipality or American Indian reservation.
- C. **FULL DEMOLITION DECOMMISSIONING** means demolition and removal of all above ground equipment associated with a Qualifying Generating Facility at the prevailing grade at the Qualifying Generating Facilities. Such above ground equipment shall include, but is not limited to, turbines and turbine hall, cooling towers, baghouses, absorbers, coal handling equipment, buildings, common facilities (excluding switchyards and transmission, distribution and water conveyance systems), pollution control equipment and any other associated equipment or buildings on the site of the Qualifying Generating Facility at the same time as permanent cessation of operations. Any remaining sub-surface equipment, as described in this section, shall be back-filled or otherwise rendered non-hazardous in the opinion of a registered Professional Engineer licensed in the State of New Mexico. For the purposes of this section, the term “water conveyance systems” includes any assets associated with the potential transfer of assets to the United States Bureau of Reclamation related to the Navajo Gallup Water Supply Project.
- D. **OPERATOR** means the person engaged in operating or undertaking demolition and remediation actions at a Qualifying Generating Facility. An operator may or may not be an owner.
- E. **OWNER** means a person who has a legal or equitable ownership interest in a Qualifying Generating Facility subject to this part or the person’s legal representative.
- F. **PERSON** means a partnership, corporation, association, or other legal entity or any political subdivision of the state or federal government.
- G. **QUALIFYING GENERATING FACILITY** means a coal-fired electricity generating facility in San Juan County, New Mexico that may be composed of multiple generating units that 1) has been granted a certificate of public convenience by the New Mexico Public Regulation Commission (“PRC”) and for which abandonment authority has been granted by the PRC; and 2) which is



owned or leased, in whole or in part, by a qualifying utility as of the effective date of this Ordinance.

- H. **QUALIFYING UTILITY** means a public utility that meets the requirements of NMSA 1978, Section 62-3-3(G)(1) and owns or leases all or a portion of a Qualifying Generating Facility as of the effective date of this Ordinance.
- I. **REMEDIATION** means all actions required by an applicable legal obligation directed exclusively toward achieving a degree of cleanup required in accordance with Section 4 of this Ordinance.
- J. **RETIRE, RETIRED, or RETIREMENT** means the complete and permanent closure of a Qualifying Generating Facility. Retirement occurs on the date that the Qualifying Generating Facility ceases combustion of fuel and permanently ceases to generate electricity. As used in this Ordinance, “complete and permanent closure” does not include non-permanent plant shutdowns or other outages by the current and/or successor owners of a Qualifying Generating Facility for maintenance, repair, upgrade, capital improvements including, but not limited to, the addition of carbon capture facilities and equipment or any other environmental facilities and equipment. In addition, “retire” or “retired” does not include switchyards and transmission, distribution and water conveyance systems.

## **SECTION 2. DEMOLITION AND REMEDIATION PLAN**

- A. No later than three (3) months after a Qualifying Generating Facility is retired and no earlier than five (5) years prior to a Qualifying Generating Facility’s planned retirement, an owner shall submit a proposed demolition and remediation plan that contains:
  - 1. the name of the operator of the Qualifying Generating Facility and the names and addresses of all owners of the Qualifying Generating Facility;
  - 2. a general overview of the site where the facility is located, the facility itself, and the Affected Property;
  - 3. the current and reasonably anticipated future uses of the Affected Property; and
  - 4. demolition and remediation information, including:
    - (i) a list of reports, studies, or other evaluations related to demolition and remediation and specific demolition and remediation measures already completed or under way pursuant to any applicable legal obligation; and
    - (ii) the manner in which the demolition and remediation measures satisfy the requirements of Section 4 of this Ordinance and a description of how the owner will comply; and
    - (iii) the manner in which retirement of the Qualifying Generating Facility will be funded, including the monetary funding amounts to be contributed by each Owner.



- B. If a Qualifying Generating Facility has more than one owner, the owners may jointly submit a demolition and remediation plan in accordance with this part. If the owners are unable to submit a joint plan, then each owner of the Qualifying Generating Facility that is being retired or is retired is responsible for meeting the requirements of this part. If separate plans are filed, the County shall ensure that the plans detail legal obligations. If there is a conflict in the plans, the County shall reconcile the conflict to ensure that the plans are consistent with existing law and legal obligations.
- C. A plan required pursuant to subsection (A) may consist of a plan for more than one unit that is retired at the same time and planned for simultaneous demolition / remediation.
- D. The filing of a plan is not a commitment to retire a Qualifying Generating Facility on any particular date that is not otherwise required by an applicable legal obligation.

**SECTION 3. APPROVAL OF PLAN, TIME LIMITS, CONTENTS AND EXPIRATION**

- A. The County shall review for completeness a demolition and remediation plan and provide an initial written completeness notice to an owner within sixty (60) days of receipt of the demolition and remediation plan. The initial completeness notice must include all deficiencies identified in the information submitted. The County shall issue a second written completeness notice within thirty (30) days of receipt of responses to notices of deficiencies contained in the initial written completeness notice.
- B. The County shall hire a qualified engineer to assist it in preparation of the completeness notices and for evaluation of the demolition and remediation plan.
- C. The County or its agents may access the site where the Qualifying Generating Facility is located, the Qualifying Generating Facility itself, and affected property, at reasonable times and after reasonable notice to the owner, during review of the plan to confirm information provided by the owner and is consistent with the proposed demolition and remediation plan.
- D. A demolition and remediation plan must demonstrate that it will meet the requirements of Section 4, giving consideration to reasonably anticipated future uses of the Affected Property.
- E. The County Commission shall approve a remediation plan if the County concludes that the plan reasonably meets the requirements of this Ordinance.
- F. The County shall provide formal written notification of approval or denial within 120 days of receipt of a proposed remediation plan unless the Owner(s) and the



County agree to an extension of the review to a date certain. If a demolition and remediation plan is denied, the Owner(s) shall resubmit a revised remediation plan within ninety (90) days. The County shall then have ninety (90) days to evaluate the revised plan. If the Owner(s) and County cannot agree on a demolition and remediation plan, then the plan shall be submitted to a mutually agreed upon mediator.

#### **SECTION 4. DEGREE OF DEMOLITION AND REMEDIATION REQUIRED**

- A. A Qualifying Generating Facility must undergo Full Demolition Decommissioning (as said term is defined above) upon being retired irrespective of ownership or regulatory status. Demolition shall comply with all state, federal, local and tribal laws and regulations.
- B. When contracting for the performance of construction, alteration, demolition, installation, repair, or maintenance work to implement a demolition and remediation plan, an owner shall require that its contractors and any subcontractors use a skilled and trained workforce to perform all demolition and remediation.

#### **SECTION 5. FUNDING FOR FULL DEMOLITION DECOMMISSIONING**

- A. Each owner of a Qualifying Generating Facility is responsible for funding Full Demolition Decommissioning and reporting on said funding pursuant to this Ordinance. Funding allocations shall be made according to the terms of agreements between the owners. Funding status reports and current decommissioning estimates shall be delivered to the County semiannually.
- B. In the event of an ownership change of a Qualifying Generating Facility, funding requirements are triggered in the new owner on the date of the ownership change. Ownership changes shall be formally communicated to the County in writing within fifteen (15) days of the ownership change by both the transferor and transferee of ownership.

#### **SECTION 6. DEMOLITION AND REMEDIATION PLAN – APPEAL -- VENUE**

- A. An owner whose interests are or may be materially adversely affected by a final decision of the County to approve or modify a demolition and remediation plan under this Ordinance may file for judicial review of the County's decision. The request for judicial review and a statement of the basis for the review must be filed with the court within thirty (30) days of the County's decision.
- B. In order for an Owner to file a request for review under subsection A, an Owner must have submitted comments to the County on a demolition and remediation



plan, or the Owner must be challenging a change made by the County between the draft and final plan.

- C. In considering a request for review under this part, the court shall uphold the decision made by the County unless the objecting person can demonstrate, on the administrative record, that the County's decision was arbitrary and capricious or otherwise not in accordance with the law.
- D. A petition for judicial review under this section must be brought in the Eleventh Judicial District, San Juan County.

#### **SECTION 7. ENFORCEMENT OF PLAN**

- A. If the County finds that an Owner has failed to file a plan or implement an approved plan, it may serve written notice of the violation, by certified mail, on the Owner. The notice must specify the provisions of this part and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date of mailing.
- B. Any violation of this Ordinance may be enforced in a court of competent jurisdiction. The maximum criminal penalty per violation shall be \$300 unless a greater amount is allowed by statute. Each day during the time in which a violation occurs shall be deemed a separate violation. A San Juan County Code Compliance Officer or a certified San Juan County Sheriff's Deputy may issue citations for violation of this Ordinance.
- C. Appropriate legal or administrative action may be taken to restrain, correct, or abate violation of this Ordinance, and the County may institute any appropriate action or proceeding as provided for herein. The remedies provided in this section are not exclusive, and the County may proceed in any manner authorized by law.

#### **SECTION 8. RELEASE BY COUNTY**

The parties shall be released from the provisions of this Ordinance upon satisfactory proof of completion of Full Demolition Decommissioning of a Qualifying Generating Facility. Such proof shall include, but is not limited to, post decommissioning site inspections by the County, reports from an independent third-party engineering firm, and reports of state or federal environmental agencies. Upon satisfaction of proof of completion, the County will issue a formal notification of release within thirty (30) days.



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**SECTION 9. SAVING CLAUSE**

Should any portion of this Ordinance be declared unenforceable after a final, non-appealable decision of a court of competent jurisdiction, the remaining provisions of this Ordinance shall, to the extent feasible, remain in full force and effect.

**PASSED, APPROVED AND ADOPTED** this 9th day of November, 2021.

**BOARD OF COUNTY COMMISSIONERS  
OF SAN JUAN COUNTY, NEW MEXICO**

By:   
John T. Beckstead, Chairman



**ATTEST:**

  
Tanya Shelby, County Clerk



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