

<b>YELLOW HIGHLIGHT</b>	= CONSUMER PROTECTION
<b>BLUE HIGHLIGHT</b>	= PROTECTIONS AND SUPPORT FOR IMPACTED COMMUNITY IN THE EVENT OF CLOSURE OF SJGS OR FOUR CORNERS POWER PLANT
<b>GREEN FONT</b>	= PROPOSED OPT-OUT FOR LARGE USERS. IT ASSUMES THAT CAPPED AND EXEMPT CUSTOMERS SUPPORT THE BILL. (Pg 10)

AN ACT

RELATING TO PUBLIC UTILITIES; ENACTING THE ENERGY TRANSITION ACT;  
 AUTHORIZING CERTAIN UTILITIES TO ISSUE BONDS PURSUANT TO A  
 FINANCING ORDER ISSUED BY THE PUBLIC REGULATION COMMISSION;  
 PROVIDING PROCEDURES FOR REHEARING AND JUDICIAL REVIEW; PROVIDING  
 FOR THE TREATMENT OF ENERGY TRANSITION BONDS BY THE COMMISSION;  
 CREATING SECURITY INTERESTS IN CERTAIN PROPERTY; PROVIDING FOR  
 THE PERFECTION OF INTERESTS IN CERTAIN PROPERTY; EXEMPTING ENERGY  
 TRANSITION CHARGES FROM FRANCHISE AND CERTAIN OTHER GOVERNMENT  
 FEES; PROVIDING FOR NONIMPAIRMENT OF ENERGY TRANSITION CHARGES  
 AND BONDS; REQUIRING CERTAIN UTILITIES' TOTAL RETAIL SALES TO BE  
 COMPRISED OF CLEAN ENERGY RESOURCES; PROVIDING FOR CONFLICTS IN  
 LAW; PROVIDING THAT ACTIONS TAKEN PURSUANT TO THE ENERGY  
 TRANSITION ACT SHALL NOT BE INVALIDATED IF THE ACT IS HELD  
 INVALID.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1. [NEW MATERIAL] SHORT TITLE.** --This act may be cited as the "Energy Transition Act".

**SECTION 2. [NEW MATERIAL] DEFINITIONS.** --As used in the Energy Transition Act:

A. "commission" means the public regulation commission;

B. "energy transition bond" means a bond or other evidences of indebtedness or ownership that is issued by a qualifying utility or an assignee pursuant to a financing order, the proceeds of which are secured by or payable from energy transition property and that are non-recourse to the qualifying utility;

C. "energy transition charge" means a non-by-passable per kilowatt-hour charge paid by all customers of a qualifying utility for the recovery of energy transition costs and financing costs;

D. "energy transition costs" means the sum of:

1) reasonable and prudent preliminary and continuing costs associated with and required for the issuance of a financing order and subsequent financing, 2) financing costs, 3) up to \$30 million in reasonable and prudent costs of decommissioning and mine reclamation associated with an abandoned qualifying generating facility, 4) the undepreciated investment in a qualifying generating facility that is being

abandoned, as of the date of abandonment<sup>1</sup>, and 5) payments required pursuant to Section 4 of the Energy Transition Act<sup>2</sup>;

E. "energy transition property" means the rights and interests of a qualifying utility or an assignee under a financing order for full payment and recovery of all energy transition costs identified in the financing order, including all revenues or other proceeds arising from those rights and interests;

F. "energy transition revenues" means all revenues collected by a qualifying utility through an energy transition charge;

G. "financing cost" means the reasonable and prudent costs incurred by the qualifying utility or an assignee to issue and administer energy transition bonds, plus commission expenses not to exceed three-hundred-thousand dollars incurred for expert advisors, counsel and consulting services in connection with an application for a financing order;

H. "financing order" means an order of the commission that authorizes the issuance of energy transition bonds, authorizes the energy transition charge, and creates energy transition property;

I. "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 on or about the time of pricing of energy transition bonds and the structure and terms of energy transition bonds approved pursuant to the financing order;

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<sup>1</sup> Calculated to be approximately \$320M

<sup>2</sup> Amount proposed last year was approximately 5% of the bonding for SJGS (calculated to be approximately \$19M).

J. "non-bypassable" means that the payment of an energy transition charge may not be avoided by an electric service customer located within a utility service area;

K. "clean energy resources" means wind, solar and geothermal energy with renewable energy certificates that are retired by the qualifying utility;

L. "qualifying generating facility" means a coal fired generating facility, which 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; and

(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;

M. "qualifying utility" means a public utility pursuant to Paragraph (1) of Subsection G of Section 62-3-3 NMSA 1978 that owns or leases all or a portion of a qualifying generating facility and its successor or assignees;

N. "replacement resources" means up to four hundred fifty megawatts of needed nameplate capacity identified by the qualifying utility as replacement for a qualifying generating facility, and may include energy storage capacity;

O. "traditional utility financing" means a return on investment at the qualifying utility's weighted average cost of capital;

**SECTION 3. [NEW MATERIAL] LOCATION OF RESOURCE**

**DEVELOPMENT AFTER ABANDONMENT. --**

A. A qualifying utility shall, no later than one-year after approval of abandonment of a qualifying generating facility in New Mexico, apply for commission approval for competitively procured replacement resources that are located in the school district where the abandoned qualifying generating facility is located.

B. Replacement power resources must either be subject to local property taxes or a binding commitment to make an equivalent payment in lieu of taxes.

C. In determining whether to approve replacement resources, the commission shall prefer resources with the least environmental impacts, with higher ratios of capital costs to fuel costs, and those able to reduce the cost of reclamation and use for lands previously mined within the county of the qualifying facility.

D. The commission shall grant certificates of public convenience and necessity for replacement resources, except that the commission may determine that the particular resource proposed by the qualifying utility should not be approved and that, instead, an alternative replacement resource that meets the conditions of Subsection A of this section should be approved. The commission shall

not disallow recovery of reasonable costs necessary to comply with the locational directives provided in Subsection A of this section.

E. In considering responses to requests for proposals for replacement power resources pursuant to this section, a qualifying utility shall inform prospective contractors and subcontractors that [TBD: New Mexico worker preference inserted here looking at other state models for language] and shall take that use into consideration in evaluating proposals.

**SECTION 4. [NEW MATERIAL] LOCAL ECONOMIC TRANSITION FUND.**

Upon the closure and abandonment of a qualifying generating facility located in New Mexico, the qualifying utility shall transfer [x] percent of the proceeds of energy transition bonds<sup>3</sup> to the community. An equivalent amount will be proposed here] to [ENTITY]. The qualifying utility shall make the required payment to [ENTITY] within ninety days of receipt of the bond proceeds. [ENTITY] shall deposit the amount received into a separate local economic transition fund for the purpose of diversifying the local economy by [TO BE DETERMINED]. Expenditures from the local economic transition fund shall be made after completion of an economic diversification and development plan. All planning meetings and expenditures pursuant to this sub-section shall be subject to the Open Meetings Act, the Inspection of Public Records Act, applicable portions of the Local

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<sup>3</sup> Amount proposed last year was \$19M. It is anticipated that this will be calculated to provide the same amount.

Economic Development Act and other laws providing for appropriate use of public funds.

**SECTION 5. [NEW MATERIAL] LIMITATIONS ON OPERATION OF ABANDONED QUALIFYING GENERATING FACILITIES. --**

A. A qualifying utility that has received approval from the commission to abandon qualifying generating facilities that the qualifying utility operates and for which a financing order has been issued, and any subsequent owner or operator of all or any part of those qualifying generating facilities, may only continue to operate those qualifying generating facilities after the abandonment date approved by the commission if the qualifying generating facility emits into the atmosphere less than eight hundred forty-five pounds of carbon dioxide per megawatt-hour after abandonment.

**SECTION 6. [NEW MATERIAL] QUALIFYING UTILITY DUTIES.**

A. A qualifying utility shall use the proceeds of the issuance of energy transition funds only for purposes related to providing utility service to customers.

B. Energy transition revenues shall be applied solely to the repayment of energy transition bonds.

C. The failure of a qualifying utility to comply with any provision of the Energy Transition Act shall not invalidate, impair or affect a financing order, energy transition property, energy transition charge or energy transition bonds.

D. For a qualifying utility that receives approval of a financing order, at least forty percent by January 1, 2025, and fifty



percent by January 1, 2030, of the total energy used by the qualifying utility to serve its New Mexico retail customers shall be delivered to the qualifying utility from clean energy resources. Compliance shall be measured in 2026, 2031 and every three years thereafter. All renewable energy certificates associated with clean energy resources shall be retired by the qualifying utility. Renewable energy certificates from individual customers that have renewable energy specifically dedicated to the customer's usage shall not be used to meet the requirements of this section.

E. The qualifying utility shall file with the commission a procurement plan to meet the requirements of Subsection D of this section at the lowest reasonable cost by no later than July 1, 2023. Qualifying clean energy resources acquired pursuant to Subsection D of this section shall be identified and selected through a competitive bidding process. The qualifying utility shall demonstrate that the projects selected are reasonably priced with reference to publicly available comparable renewable energy project costs. Requests for proposals shall be issued periodically, but no less frequently than every three years prior to January 1, 2031.

F. If the commission finds that, in any given year, the costs at the generator of energy from clean energy resources to be used for compliance with Subsection D of this section would exceed six cents (\$.06) per kilowatt-hour, adjusted for inflation after 2022, on a levelized cost basis, the qualifying utility shall not be required to incur the excess cost associated with that incremental generation or procurement.

G. A qualifying utility that procures or generates electricity from qualifying clean energy resources pursuant to Subsection D of this section shall recover the costs of complying with that requirement through the qualifying utility's fuel and purchased power cost adjustment clause, or another appropriate rate adjustment mechanism.

H. A retail customer of a qualified utility that is provided a renewable energy cost limit or exemption under NMSA Sections 62-16-4 A (2) or (3) may, by submitting written notice to the qualifying utility and the commission on or before January 1, 2020, irrevocably opt out of the clean energy procurement requirements of subsection D. In establishing rates, the commission shall assign fuel costs reflecting that the electricity served to opt-out customers does not include clean energy resources procured pursuant to subsection D, and shall assign fuel costs to all other retail customers reflecting that the entirety of the clean energy resources are used to serve those other customers. This subsection shall not reduce the total amount of qualifying clean energy resources required by subsection D of this section.

I. For a qualifying utility that receives approval of a financing order and issues energy transition bonds, electric energy production or procurement to serve its retail customers shall not emit, on average, more than four-hundred (400) pounds of carbon-dioxide per megawatt-hour by January 1, 2023, and not more than two-hundred (200) pounds of carbon-dioxide per megawatt-hour by January 1, 2032 and thereafter. Compliance shall be measured and verified every

three years beginning with the period commencing on January 1, 2023.

The commission shall adopt rules to implement the requirements of this subsection.

J. A qualifying utility that abandons a qualifying generating facility and is authorized to issue energy transition bonds shall be relieved of any specific renewable energy procurement requirements, ordered by the commission prior to the effective date of the Energy Transition Act, that were contingent on continued operation of that qualifying generating facility.

**SECTION 7. [NEW MATERIAL] FINANCING ORDER—APPLICATION CONTENTS - TEMPORARY PROVISION - PENDING APPLICATIONS.**

A. A qualifying utility may apply to the commission for a financing order pursuant to this section to recover some or all of its energy transition costs. To obtain a financing order, a qualifying utility shall obtain approval to abandon a qualifying generating facility pursuant to Section 62-9-5 NMSA 1978. The application for the financing order may be filed as part of the application for approval to abandon a qualifying generating facility. The application may also include a request for the issuance of certificates of public convenience and necessity pursuant to Section 62-9-1 NMSA 1978 for new facilities necessitated by the proposed abandonment of qualifying generating facilities. The qualifying utility, or the commission, may defer an application for certificates of public convenience and necessity to a separate proceeding provided that the application

identifies adequate potential new resources sufficient to provide reasonable and proper service to retail customers.

B. If an application for approval to abandon a qualifying generating facility is pending before the commission on the effective date of this Act, the qualifying utility may file a separate application for a financing order and the commission shall join or consolidate the application for a financing order with the pending proceeding involving abandonment of the qualifying generating facility. On such joinder or consolidation, the time periods prescribed by the Energy Transition Act shall become applicable to the joined or consolidated case as of the date of the joinder or consolidation.

**SECTION 8. [NEW MATERIAL] FINANCING ORDER—ISSUANCE—TERMS OF BONDS—NON-UTILITY AFFILIATE REQUIREMENTS—REPORTS TO COMMISSION. --**

A. The commission shall issue an order granting or denying the application for the financing order, and an order on an accompanying application of the qualifying utility for approval to abandon the qualifying generating facility, within six months from the date the application for the financing order is filed with the commission. For good cause shown, the commission may extend the time for issuing the order for an additional three months.

B. Failure to issue an order within the time prescribed by Subsection A of this section shall be deemed approval of the application for a financing order, including approval to abandon the qualifying generating facility if abandonment approval was requested

as part of the application for the financing order pursuant to this subsection.

C. If an application for a financing order is accompanied by a request for issuance of a certificate of public convenience and necessity for replacement power resources, this section provides an alternative time frame to that provided in Subsection C of Section 62-9-1 NMSA 1978 and the time frame specified in this section shall govern, unless the request has been deferred to a separate proceeding pursuant to Section 7 of the Energy Transition Act.

D. The issuance of a financing order shall be the only approval required for the authority granted in the financing order.

E. The commission shall issue a financing order approving the utility's application if the commission finds that the:

(1) applicant is a qualifying utility and that the facility being abandoned is a qualifying generating facility;

(2) proposed issuance of energy transition bonds will result in at least forty percent (40%) cost savings to customers of the qualifying utility on a net present value basis over the projected term of the energy transition bonds compared to the use of traditional utility financing mechanisms for the entirety of energy transition costs; and

(3) approval is expected to satisfy the lowest cost objective.

F. If the commission determines that the findings specified in Subsection E of this section cannot be made, the commission shall determine what changes in the application would allow the findings to be made and provide the qualifying utility with the opportunity to amend the qualifying utility's application in the manner that allows the commission to make the findings.

G. A financing order may provide that the creation of energy transition property shall be simultaneous with the sale of the energy transition property to an assignee as provided in the application and the pledge of the energy transition property to secure energy transition bonds.

H. A financing order may authorize the qualifying utility to issue more than one series of energy transition bonds for a maximum term of no more than twenty-five years for each series. With such authorization, the qualifying utility shall not subsequently be required to secure a separate financing order prior to each issuance.

I. A financing order may require the qualifying utility to file with the commission a periodic report showing the receipt and disbursement of proceeds of energy transition bonds. A financing order may authorize the commission to review and audit the books and records of the qualifying utility, and an assignee that is a non-utility affiliate and issues energy transition bonds, relating to the receipt and disbursement of proceeds of energy transition bonds. The provisions of this subsection shall not be construed to limit the authority of the commission to investigate the practices of, or to audit the books and records of, the qualifying utility.

**SECTION 9. [NEW MATERIAL] ADJUSTMENT MECHANISM--REPORTS TO COMMISSION--HEARING PROCEDURES. --**

(A) If the commission issues a financing order, the commission shall periodically approve the use of the adjustment mechanism approved in the financing order to correct for any over-collection or under-collection of the energy transition charges and to provide for timely payment of scheduled principal of and interest on the energy transition bonds in accordance with the financing order. The qualifying utility shall file at least semiannually, or more frequently as provided in the financing order:

(1) a calculation estimating whether the existing energy transition charge is sufficient to provide for timely payment of scheduled principal of and interest on the energy transition bonds in accordance with the financing order or if either an over-collection or under-collection is projected; and

(2) a calculation showing the adjustment to the energy transition charge to correct for any over- collection or under-collection.

B. The adjustment mechanism shall remain available until the energy transition bonds have been fully paid and recovered and any over-collection is returned to customers.

C. On the same day the qualifying utility files with the commission its calculation of the adjustment to the energy transition charge, the qualifying utility shall cause notice of the filing to be

given to the parties of record in the case in which the financing order was issued.

D. An adjustment to the energy transition charge filed by the qualifying utility shall be deemed approved without hearing thirty days after filing the adjustment unless:

(1) no later than twenty days from the date the qualifying utility filed the calculation of the adjustment, the staff of the commission or another interested party notifies the commission of a potential error in the adjustment; provided that the notice identifies the error with specificity; and

(2) the commission determines, after due consideration of the notice, that good cause exists to suspend the operation of the adjustment, pending hearing limited to the issue of the error in the adjustment; provided that the suspension shall not exceed sixty days from the date the qualifying utility filed the calculation of the adjustment.

E. If, after hearing, the commission determines that the calculation of the adjustment is in error, the commission shall issue an order that rejects the adjustment and that determines the correct calculation. The qualifying utility shall be authorized to adjust the energy transition charge in accordance with the commission's calculation within five days from issuance of the order. If the commission does not issue an order rejecting the adjustment with a determination of the corrected calculation within sixty days from the date the qualifying utility filed the adjustment, the adjustment to the energy transition charge shall be deemed approved.



F. No adjustment pursuant to this section, and no proceeding held pursuant to this section, shall affect the irrevocability of the financing order pursuant to Section 10 of the Energy Transition Act.

**SECTION 10. [NEW MATERIAL] FINANCING ORDER-- IRREVOCABILITY-- AMENDMENTS. --**

A. A financing order is irrevocable and the commission shall not reduce, impair, postpone or terminate the energy transition charges approved in the financing order, the energy transition property or the collection or recovery of energy transition revenues.

B. A financing order may be amended at the request of the qualifying utility to commence a proceeding and issue an amended financing order that provides for refinancing, retiring or refunding all or a portion of an outstanding series of energy transition bonds issued pursuant to the original financing order.

**SECTION 11. [NEW MATERIAL] AGGRIEVED PARTIES--REQUEST FOR REHEARING--JUDICIAL REVIEW--PRECEDENCE OVER OTHER CASES.**

A. A financing order is a final order of the commission. A party aggrieved by the issuance of a financing order may apply to the commission for a rehearing in accordance with Section 62-10-16 NMSA 1978; provided that such application shall be due no later than ten calendar days after issuance of the financing order. An application for rehearing shall be deemed denied if not acted upon by the

commission within ten calendar days after the filing of the application.

B. An aggrieved party may file a notice of appeal with the Supreme Court in accordance with Section 62-11-1 NMSA 1978; provided that such notice shall be due no later than ten calendar days after denial of an application for rehearing or, if rehearing is not applied for, no later than ten calendar days after issuance of the financing order. The Supreme Court shall proceed to hear and determine the appeal as expeditiously as practicable.

**SECTION 12. [NEW MATERIAL] CONDITIONS THAT KEEP FINANCING ORDERS IN EFFECT AND ENERGY TRANSITION CHARGES IMPOSED. --**

A. A financing order shall remain in effect until the energy transition bonds issued pursuant to the financing order have been paid in full.

B. A financing order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization or insolvency of the qualifying utility or any non-utility affiliate or the commencement of any proceeding for bankruptcy or appointment of a receiver.

C. If energy transition bonds issued pursuant to a financing order are outstanding and the related energy transition costs have not been paid in full, the energy transition charges authorized by the financing order shall be collected by the qualifying utility or its successors or assignees, or a collection agent, in full through a non-bypassable charge that is a separate line item on

customer bills and not a part of the qualifying utility's base rates. The charge shall be paid by all customers:

(1) receiving transmission, distribution or any other service from the qualifying utility under commission-approved rate schedules or special contracts; and

(2) who acquire electricity from an alternative or subsequent electricity supplier in the utility service area, to the extent that such acquisition is permitted by New Mexico law.

**SECTION 13. [NEW MATERIAL] COMMISSION TREATMENT OF ENERGY TRANSITION BONDS. --**

A. If the commission issues a financing order, the commission shall not treat:

1) energy transition bonds issued pursuant to the financing order as debt of the qualifying utility;

2) the energy transition charges paid under the financing order as revenue of the qualifying utility; or

3) the energy transition costs to be financed by energy transition bonds as costs of the qualifying utility.

B. Reasonable actions taken by a qualifying utility to comply with the financing order shall be deemed to be just and reasonable for ratemaking purposes. **Nothing in the Energy Transition Act shall:**

**(1) prevent or preclude the commission from investigating the compliance of a qualifying utility with the terms**

and conditions of a financing order and requiring compliance therewith; or

(2) prevent or preclude the commission from imposing regulatory sanctions against a qualifying utility for failure to comply with the terms and conditions of a financing order or the requirements of the Energy Transition Act.

C. The commission shall not order or require a qualifying utility to issue energy transition bonds to finance any costs associated with abandonment of a qualifying generating facility. A utility's decision not to issue energy transition bonds shall not be a basis for the commission to refuse to allow a qualifying utility to recover energy transition costs in an otherwise permissible fashion, or as a basis to refuse or condition authorization to issue securities pursuant to Sections 62-6-6 and 62-6-7 NMSA 1978.

**SECTION 14. [NEW MATERIAL] ENERGY TRANSITION PROPERTY--ENERGY TRANSITION REVENUES. --**

A. Energy transition property that is created in a financing order shall constitute an existing, present property right, notwithstanding that the imposition and collection of energy transition charges depend on the qualifying utility continuing to provide electric energy or service, and on the level of future energy consumption. Energy transition property shall exist whether or not the energy transition revenues have been billed, have accrued or have been collected, and notwithstanding that the value or amount of the energy

transition property is dependent on the future provision of electric energy or service to customers by the qualifying utility.

B. All energy transition property created in a financing order shall continue to exist until the energy transition bonds issued pursuant to a financing order are paid in full.

C. All or any portion of energy transition property created in a financing order may be transferred, sold, conveyed or assigned to a non-utility affiliate that is:

(1) wholly owned, directly or indirectly, by the qualifying utility; and

(2) created for the limited purposes of acquiring, owning or administering energy transition property or issuing energy transition bonds under the financing order.

D. All or any portion of energy transition property may be pledged to secure the payment of energy transition bonds.

E. The formation by a qualifying utility of a non-utility affiliate for the limited purpose of acquiring, owning or administering energy transition property or issuing energy transition bonds pursuant to a financing order, and any transfer, sale, conveyance or assignment of energy transition property by a qualifying utility to a non-utility affiliate, to the extent previously authorized in a financing order, does not require any further approval of the commission.

F. If a qualifying utility defaults on any required payment of energy transition bonds, a court with jurisdiction in the matter, on application by an interested party and without limiting any other

remedies available to the applying party, shall order the sequestration and payment of the energy transition revenues for the benefit of bondholders or their assignee. The order shall remain in full force and effect notwithstanding any bankruptcy, reorganization or other insolvency or receivership proceedings with respect to the qualifying utility or any non-utility affiliate.

G. Energy transition property, energy transition revenues and the interests of an assignee or bondholder in energy transition property and energy transition revenues are not subject to set-off, counterclaim, surcharge or defense by the qualifying utility or any other person or in connection with the bankruptcy, reorganization or other insolvency or receivership proceeding of the qualifying utility, any non-utility affiliate or any other entity.

H. Any successor to a qualifying utility shall be bound by the requirements of the Energy Transition Act and shall perform and satisfy all obligations of, and have the same rights under a financing order as, the qualifying utility under the financing order in the same manner and to the same extent as the qualifying utility, including the obligation to collect and pay energy transition revenues to persons entitled to receive the revenues.

**SECTION 15. [NEW MATERIAL] SECURITY INTERESTS--APPLICABILITY OF OTHER ACTS--CREATION OF SECURITY INTEREST--ATTACHMENT ON FILING WITH SECRETARY OF STATE--PRIORITY OVER OTHER LIENS. --**

A. Except as otherwise provided in this section, the creation, perfection and enforcement of a security interest in energy

transition property to secure the repayment of the principal of and interest on energy transition bonds are governed by this section. This section shall be deemed to supersede the provisions of the Uniform Commercial Code and Chapter 62, Article 13 of the Public Utility Act to the extent those provisions are inconsistent with this section.

B. The description or reference to energy transition property in a transfer or security agreement and a financing statement is sufficient only if the description or reference refers to the Energy Transition Act and the financing order creating the energy transition property. This section applies to all purported transfers of, grants of liens on, or security interests in, energy transition property.

C. A security interest in energy transition property is created, valid and binding at the latest of when:

- (1) the financing order is issued;
- (2) a security agreement is executed and delivered; or
- (3) value is received for the energy transition bonds.

D. The security interest attaches without any physical delivery of collateral or other act, and the lien of the security interest shall be valid, binding and perfected against all parties having claims of any kind against the person granting the security interest, regardless of whether such parties have notice of the lien, on the filing of a financing statement with the secretary of state. The secretary of state shall maintain the financing statement in the

same manner and in the same recordkeeping system maintained for financing statements filed pursuant to, and governed by, Uniform Commercial Code-Secured Transactions; provided that financing statements filed pursuant to this section shall be effective until a termination statement is filed.

E. A security interest in energy transition property is a continuously perfected security interest and has priority over any other lien that may subsequently attach to the energy transition property unless the holder of the security interest has agreed in writing otherwise.

F. The priority of a security interest in energy transition property is not affected by the commingling of energy transition revenues with other funds. Any pledgee or secured party shall have a perfected security interest in the amount of all energy transition revenues that are deposited in any account of the qualifying utility and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party.

G. No order of the commission amending a financing order, and no application of the adjustment mechanism, will affect the validity, perfection or priority of a security interest in or transfer of energy transition property.

**SECTION 16. [NEW MATERIAL] SALE OF ENERGY TRANSITION  
PROPERTY--PERFECTING INTERESTS--ABSOLUTE TRANSFER AND TRUE SALE  
REQUIREMENTS. -**



A. Any sale, assignment or transfer of energy transition property shall be an absolute transfer and true sale of the seller's right, title and interest in, to and under the energy transition property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A transfer of an interest in energy transition property shall be created when:

(1) the financing order creating the energy transition property has become effective;

(2) the documents evidencing the transfer of energy transition property have been executed and delivered to the transferee; and

(3) value is received.

B. On the filing of a financing statement with the secretary of state pursuant to the Energy Transition Act, a transfer of an interest in energy transition property shall be perfected against all third persons except creditors holding a prior security interest, ownership interest or assignment in the energy transition property previously perfected in accordance the Energy Transition Act.

C. The characterization of the sale, assignment or transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser, shall not be affected or impaired by:

(1) commingling of energy transition revenues with other funds;

(2) the retention by the seller of:

(a) a partial or residual interest, including an equity interest, in the energy transition property, whether direct or indirect, or whether subordinate or otherwise; or

(b) the right to recover costs associated with taxes or license fees imposed on the collection of energy transition revenues;

(3) any recourse that the purchaser may have against the seller;

(4) any indemnification rights, obligations or repurchase rights made or provided by the seller;

(5) the obligation of the seller to collect energy transition revenues on behalf of an assignee;

(6) the treatment of the sale, assignment or transfer of energy transition property for tax, financial reporting or other purposes;

(7) any subsequent order of the commission amending a financing order pursuant to the Energy Transition Act; or

(8) any use of an adjustment mechanism approved in the financing order.

**SECTION 17. [NEW MATERIAL] EXEMPTION FROM FEE ASSESSMENTS. –**

The imposition, collection and receipt of an energy transition charge shall be exempt from an assessment of a franchise fee imposed by a municipality, county or other political subdivision of the state and inspection and supervision fees assessed pursuant to the Public Utility Act.

**SECTION 18. [NEW MATERIAL] ENERGY TRANSITION BONDS NOT PUBLIC**

**DEBT.** - Energy transition bonds issued pursuant to the Energy Transition Act shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state. Bondholders shall have no right to have taxes levied by the legislature or the taxing authority of any county, municipality or other political subdivision of this state for the payment of the principal of or interest on energy transition bonds. The issuance of energy transition bonds does not obligate the state or a political subdivision of the state to levy any tax or make any appropriation for payment of the principal of or interest on the bonds.

**SECTION 19. [NEW MATERIAL] ENERGY TRANSITION BONDS AS LEGAL**

**INVESTMENTS.** - Energy transition bonds shall be legal investments for all governmental units, permanent funds of the state, finance authorities, financial institutions, insurance companies, fiduciaries and other persons requiring statutory authority regarding legal investments.

**SECTION 20. [NEW MATERIAL] STATE PLEDGE NOT TO IMPAIR.--**

A. The state pledges that it shall not take or permit any action that impairs the value of energy transition property or, except as allowed pursuant to the Energy Transition Act, reduce, alter or impair energy transition charges that are imposed, collected and

remitted for the benefit of the bondholders until the entire principal of and interest on energy transition bonds is paid in full.

B. Any person who issues energy transition bonds is permitted to include the pledge specified in Subsection A of this section in the energy transition bonds, ancillary agreements and documentation related to the issuance and marketing of the energy transition bonds.

**SECTION 21. [NEW MATERIAL] CHOICE OF LAW.** - The laws of the State of New Mexico as set forth in the Energy Transition Act shall govern the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to a security interest in energy transition property, an energy transition charge or a financing order.

**SECTION 22. [NEW MATERIAL] CONFLICTS.** - In the event of any conflict between the Energy Transition Act and any other law regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any security interest in or transfer of energy transition property, the Energy Transition Act shall govern to the extent of the conflict.

**SECTION 23. [NEW MATERIAL] VALIDITY ON ACTIONS IF ACT HELD INVALID.**- Effective on the date that energy transition bonds are first issued under the Energy Transition Act, if any provision of that Act is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect the validity of any prior

action allowed pursuant to that Act that is taken by the commission, a qualifying utility, an assignee or any other person, and any such action shall remain in full force and effect with respect to all energy transition bonds issued or authorized in a financing order.

**SECTION 24. APPLICABILITY.** -- The provisions of this Act shall not apply to a qualifying utility that makes an initial application for a financing order more than eleven years after the effective date of this Act. This section shall not preclude a qualifying utility for which the commission has issued a financing order from applying to the commission for a subsequent order amending the financing order pursuant to the Energy Transition Act.