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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC UTILITIES; ENACTING THE ENERGY REDEVELOPMENT BOND 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 LIMITS ON THE JURISDICTION OF THE COMMISSION; CREATING SECURITY INTERESTS IN CERTAIN PROPERTY; PROVIDING FOR THE PERFECTION OF INTERESTS IN CERTAIN PROPERTY; EXEMPTING ENERGY REDEVELOPMENT CHARGES FROM THE GROSS RECEIPTS TAX AND FRANCHISE AND CERTAIN OTHER LOCAL GOVERNMENT FEES; PROVIDING FOR NONIMPAIRMENT OF ENERGY REDEVELOPMENT CHARGES OR BONDS; PROVIDING FOR CONFLICTS IN LAW; PROVIDING THAT ACTIONS TAKEN PURSUANT TO THE ENERGY REDEVELOPMENT BOND ACT SHALL NOT BE INVALIDATED IF THE ACT IS HELD INVALID.

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

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1 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
2 through 21 of this act may be cited as the "Energy
3 Redevelopment Bond Act".

4 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
5 Energy Redevelopment Bond Act:

6 A. "adjustment mechanism" means a formula-based
7 calculation used to make adjustments to the amount of the
8 energy redevelopment charges that are necessary to correct for
9 any over-collection or under-collection of the energy
10 redevelopment charges or otherwise to ensure the timely and
11 complete payment and recovery of energy redevelopment costs and
12 financing costs;

13 B. "ancillary agreement" means a bond, insurance
14 policy, letter of credit, reserve account, surety bond,
15 interest rate lock or swap arrangement, hedging arrangement,
16 liquidity or credit support arrangement or other similar
17 agreement or arrangement entered into in connection with the
18 issuance of an energy redevelopment bond that is designed to
19 promote the credit quality and marketability of the bond or to
20 mitigate the risk of an increase in interest rates;

21 C. "assignee" means a person or legal entity to
22 which an interest in energy redevelopment property is sold,
23 assigned, transferred or conveyed, other than as security, and
24 any successor to or subsequent assignee of such a person or
25 legal entity;

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1 D. "bondholder" means a holder or owner of an
2 energy redevelopment bond;

3 E. "commission" means the public regulation
4 commission;

5 F. "credit rating" means the investment rating for
6 the unsecured debt obligations of a qualifying utility as
7 published by at least one nationally recognized statistical
8 rating organization as recognized by the United States
9 securities and exchange commission;

10 G. "energy redevelopment bond" means a bond,
11 debenture, note, certificate of participation, certificate of
12 beneficial interest, certificate of ownership or other
13 evidences of indebtedness or ownership that is issued by a
14 qualifying utility or an assignee pursuant to a financing
15 order, the proceeds of which are used directly or indirectly to
16 recover, finance or refinance energy redevelopment costs and
17 financing costs that are secured by or payable from energy
18 redevelopment property and that are non-recourse to the
19 qualifying utility;

20 H. "energy redevelopment charge" means a
21 non-bypassable charge paid by all customers of a qualifying
22 utility for the recovery of energy redevelopment costs and
23 financing costs and collected by a qualifying utility or a
24 collection agent;

25 I. "energy redevelopment costs" means costs

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1 incurred or expected to be incurred by a qualifying utility
2 that are caused by the abandonment of or associated with
3 qualifying generating facilities, that:

4 (1) includes:

5 (a) costs relating to regulatory assets
6 and costs associated with decommissioning, reclamation of mines
7 that provide coal to qualifying generating facilities, contract
8 termination fees, engineering work, severance pay, job training
9 and the undepreciated investment of property that is abandoned;

10 (b) any demolition or similar cost that
11 exceeds the salvage value of the property and any other cost
12 that has been incurred or will be incurred by the qualifying
13 utility relating to the qualifying generating facilities that
14 have not been fully recovered at the time of abandonment; and

15 (c) preliminary costs associated with
16 activities that are incurred prior to the issuance of a
17 financing order and that are to be reimbursed from the proceeds
18 of energy redevelopment bonds; and

19 (2) does not include any monetary penalty,
20 fine or forfeiture assessed against a qualifying utility by a
21 government agency or court under a federal or state
22 environmental statute, rule or regulation;

23 J. "energy redevelopment property" means:

24 (1) the rights and interests of a qualifying
25 utility or an assignee under a financing order, including the

1 right to impose, charge, collect and receive energy
2 redevelopment charges in the amount necessary to provide for
3 the full payment and recovery of all energy redevelopment costs
4 and financing costs identified in the financing order as costs
5 to be financed by energy redevelopment bonds and to obtain
6 adjustments to the charges as provided in Section 5 of the
7 Energy Redevelopment Bond Act, and any interest in such rights
8 and interests; and

9 (2) all revenues, receipts, collections,
10 rights to payment, payments, money, claims or other proceeds
11 arising from the rights and interests specified in Paragraph
12 (1) of this subsection;

13 K. "energy redevelopment revenues" means all
14 revenues, receipts, collections, claims, rights to payments,
15 payments, money or other proceeds arising from energy
16 redevelopment property and collected by a qualifying utility or
17 other collection agent that is attributable to an energy
18 redevelopment charge;

19 L. "financing cost" means the costs incurred by the
20 qualifying utility or an assignee to issue, service, repay or
21 refinance energy redevelopment bonds, whether incurred or paid
22 on issuance of the bonds or over the life of the bonds, and
23 approved for recovery by the commission in a financing order.

24 "Financing cost" includes:

25 (1) principal, interest, acquisition,

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1 defeasance and redemption premiums that are payable on energy
2 redevelopment bonds;

3 (2) any payment required under an ancillary
4 agreement and any amount required to fund or replenish a
5 reserve account or other account established under any
6 indenture, ancillary agreement or other financing document
7 relating to the energy redevelopment bonds;

8 (3) any costs related to issuing, supporting,
9 repaying, servicing and refunding energy redevelopment bonds or
10 the application for a financing order, including servicing fees
11 and expenses, accounting and auditing fees and expenses,
12 trustee fees and expenses, legal fees and expenses,
13 administrative fees and expenses, consulting fees and expenses,
14 placement and underwriting fees and expenses, printing and
15 edgarizing fees, capitalized interest, rating agency fees,
16 government registration fees and stock exchange listing and
17 compliance and filing fees;

18 (4) any costs incurred to obtain modifications
19 of or amendments to any indenture, financing agreement,
20 security agreement or similar agreement or instrument relating
21 to any existing secured or unsecured obligation of a qualifying
22 utility or an affiliate of a qualifying utility, or any costs
23 incurred by or allocated to a qualifying utility to obtain any
24 consent, release, waiver or approval from any holder of such an
25 obligation, that are necessary to be incurred to permit a

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1 qualifying utility to issue or cause the issuance of energy
2 redevelopment bonds;

3 (5) any taxes, fees, charges or other
4 assessments imposed on energy redevelopment revenues;

5 (6) any other costs and charges approved by
6 the commission for inclusion in an energy redevelopment charge;
7 and

8 (7) any other related costs that are approved
9 for recovery in the financing order;

10 M. "financing order" means an order of the
11 commission that:

12 (1) authorizes the issuance of energy
13 redevelopment bonds;

14 (2) authorizes the imposition, collection and
15 periodic adjustments of the energy redevelopment charge; and

16 (3) creates energy redevelopment property;

17 N. "financing parties" means:

18 (1) a trustee, collateral agent or other
19 person acting for the benefit of a bondholder; and

20 (2) a party to an ancillary agreement or the
21 energy redevelopment bonds, the rights and obligations of which
22 relate to or depend upon the existence of energy redevelopment
23 property, the enforcement and priority of a security interest
24 in energy redevelopment property or the timely collection and
25 payment of energy redevelopment revenues;

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1 O. "financing statement" means "financing
2 statement" as defined in the Uniform Commercial Code-Secured
3 Transactions;

4 P. "non-bypassable" means that the payment of an
5 energy redevelopment charge may not be avoided by an electric
6 service customer located within a utility service area and
7 shall be paid by the customer that receives electric delivery
8 service from the qualifying utility imposing the charge for as
9 long as the energy redevelopment bonds secured by the charge
10 are outstanding and the related financing costs have not been
11 recovered in full;

12 Q. "non-utility affiliate" means, with respect to
13 any qualifying utility, a person that:

14 (1) is an "affiliated interest", as that term
15 is used in the Public Utility Act, of a qualifying utility; and

16 (2) is not a "public utility", as that term is
17 used in the Public Utility Act, that provides retail utility
18 service to customers in the state;

19 R. "qualifying generating facility" means a
20 coal-fired electric generating facility that:

21 (1) has generated electric energy for ultimate
22 sale to utility customers in the state before the effective
23 date of this section and for which abandonment authority is
24 granted after December 31, 2017; and

25 (2) is owned, in whole or in part, by a

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1 qualifying utility;

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

6 T. "traditional utility financing mechanism" means
7 a return on investment at the qualifying utility's weighted
8 average cost of capital; and

9 U. "utility service area" means:

10 (1) the geographic area of the state in which
11 a qualifying utility provides electric delivery service to
12 customers at the time of issuance of a financing order; and

13 (2) for as long as energy redevelopment bonds
14 issued pursuant to a financing order are outstanding and the
15 related energy redevelopment costs and financing costs have not
16 been recovered in full, any additions to or enlargements of the
17 geographic area, whether or not approved by the commission in a
18 formal proceeding.

19 SECTION 3. [NEW MATERIAL] FINANCING ORDER--APPLICATION.--

20 A. A qualifying utility may apply to the commission
21 for a financing order pursuant to this section. To obtain a
22 financing order, a qualifying utility shall obtain approval to
23 abandon a qualifying generating facility pursuant to Section
24 62-9-5 NMSA 1978. The application for the financing order may
25 be filed as part of the application for approval to abandon a

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1 qualifying generating facility. The application may include a
2 request for the issuance of certificates of public convenience
3 and necessity pursuant to Section 62-9-1 NMSA 1978 for some or
4 all of any power supply resources that may be needed to replace
5 the power supplied by the qualifying generating facilities for
6 which abandonment authority is requested. The qualifying
7 utility may defer an application for certificates of public
8 convenience and necessity to a separate proceeding provided
9 that the application identifies potential adequate replacement
10 power resources that would be available at the time the
11 replacement power is needed to serve customers.

12 B. An application for a financing order shall
13 include:

14 (1) evidence that the applicant is a
15 qualifying utility;

16 (2) a description of the qualifying generating
17 facility that the qualifying utility proposes to abandon or for
18 which abandonment authority was granted after December 31,
19 2017;

20 (3) an estimate of the energy redevelopment
21 costs associated with the abandonment of the qualifying
22 generating facility described in the application;

23 (4) the amount of the energy redevelopment
24 costs the qualifying utility proposes to finance through the
25 issuance of one or more series of energy redevelopment bonds;

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1 (5) an estimate of the financing costs
2 associated with each series of energy redevelopment bonds
3 proposed to be issued;

4 (6) an estimate of the amount of the energy
5 redevelopment charges necessary to recover the energy
6 redevelopment costs and financing costs the qualifying utility
7 proposes to finance through the issuance of energy
8 redevelopment bonds and the proposed calculation thereof, which
9 estimate and calculation should take into account the estimated
10 date of issuance and estimated principal amount of each series
11 of energy redevelopment bonds proposed to be issued;

12 (7) a proposed methodology for allocating the
13 energy redevelopment costs among customer classes;

14 (8) a description of the proposed adjustment
15 mechanism;

16 (9) an estimate, based on current market
17 conditions, of the cost savings on a net present value basis
18 over the proposed term of the energy redevelopment bonds to the
19 customers of the qualifying utility expected to result from the
20 financing of the energy redevelopment costs with energy
21 redevelopment bonds as compared to the use of traditional
22 utility financing mechanisms;

23 (10) an estimate of the date on which the
24 energy redevelopment bonds are expected to be issued and the
25 expected term over which the financing costs associated with

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1 the issuance are expected to be recovered, or if the bonds are
2 expected to be issued in more than one series, the estimated
3 issuance date and expected term for each bond issuance;
4 provided that the maximum term for each bond issuance shall be
5 no longer than twenty-five years;

6 (11) identification of plans to sell, assign,
7 transfer or convey, other than as a security, interest in
8 energy redevelopment property, including identification of
9 assignees;

10 (12) identification of ancillary agreements
11 that may be necessary or appropriate;

12 (13) a description of a proposed ratemaking
13 process to reconcile any difference between the projected
14 pretax costs included in the amount of energy redevelopment
15 costs financed by energy redevelopment bonds and the final
16 pretax energy redevelopment costs incurred by the qualifying
17 utility; and

18 (14) any other information reasonably required
19 by the commission to determine if approval to abandon a
20 qualifying generating facility or if any requests for
21 certificates of public convenience and necessity should be
22 granted.

23 C. Notice of an application for a financing order
24 shall be given to the parties of record in the qualifying
25 utility's most recent general rate case and published in

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1 newspapers of general circulation in the qualifying utility's
2 service area in the state and in the county in the state in
3 which the qualifying generating facility proposed to be
4 abandoned is located and as otherwise may be ordered by the
5 commission.

6 SECTION 4. [NEW MATERIAL] FINANCING ORDER--ISSUANCE--
7 TERMS OF BONDS--NON-UTILITY AFFILIATE REQUIREMENTS--REPORTS TO
8 COMMISSION.--

9 A. The commission may approve an application for a
10 financing order without a formal hearing if no protest
11 establishing good cause for a formal hearing is filed within
12 thirty days of the date when notice is given of the filing of
13 the application for the financing order. The commission shall
14 issue an order granting or denying the application and the
15 final order on an accompanying application of the qualifying
16 utility for approval to abandon the qualifying generating
17 facility within six months from the date the application for
18 the financing order is filed with the commission. For good
19 cause shown, the commission may extend the time for issuing the
20 order for an additional three months.

21 B. Failure to issue an order within the time
22 prescribed by Subsection A of this section shall be deemed
23 approval of the application as filed, including approval to
24 abandon the qualifying generating facility, if abandonment
25 approval was requested in, consolidated or joined with the

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1 application for the financing order pursuant to Subsection B of
2 Section 3 of the Energy Redevelopment Bond Act, and approval of
3 the acquisition of any needed replacement power resources for
4 which a specific certificate of public convenience and
5 necessity was requested in the application. The commission
6 chair or the chair's designee shall, within two days after
7 expiration of the time prescribed by this subsection, issue an
8 order declaring that the application has been approved by
9 operation of law.

10 C. If an application for a financing order is
11 accompanied by a request for issuance of a certificate of
12 public convenience and necessity for replacement power
13 resources, this section provides an alternative time frame to
14 the time frame provided in Subsection C of Section 62-9-1 NMSA
15 1978 and the time frame specified in this section shall govern.

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

19 E. The commission shall issue a financing order if
20 the commission finds that the:

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

24 (2) proposed issuance of energy redevelopment
25 bonds will result in cost savings to customers of the

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1 qualifying utility on a net present value basis over the
2 projected term of the energy redevelopment bonds compared to
3 the use of traditional utility financing mechanisms; provided
4 that, in calculating the comparison, the commission shall not
5 exclude recovery of any energy redevelopment costs in
6 estimating the amount of costs to customers associated with
7 traditional utility financing mechanisms;

8 (3) estimate of the energy redevelopment
9 charges necessary to recover the energy redevelopment costs and
10 the financing costs the qualifying utility proposes to be
11 financed by energy redevelopment bonds and the proposed
12 calculation thereof are reasonable;

13 (4) proposed methodology for allocating the
14 energy redevelopment costs among customer classes is
15 reasonable;

16 (5) proposed adjustment mechanism is
17 reasonable and complies with Section 5 of the Energy
18 Redevelopment Bond Act; and

19 (6) proposed ratemaking process to reconcile
20 any difference between the projected pretax costs included in
21 the amount of energy redevelopment costs financed by energy
22 redevelopment bonds and the final pretax energy redevelopment
23 costs incurred by the qualifying utility is reasonable and does
24 not affect the amount of the energy redevelopment bonds
25 proposed to be issued or the proposed energy redevelopment

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1 charges.

2 F. A financing order shall include the following
3 provisions:

4 (1) approval for the qualifying utility to
5 issue energy redevelopment bonds as requested in the
6 application, to use energy redevelopment bonds to finance the
7 maximum amount of the energy redevelopment costs as requested
8 in the application and to use the proceeds thereof as provided
9 in Subsection A of Section 10 of the Energy Redevelopment Bond
10 Act;

11 (2) approval for the qualifying utility to
12 recover the financing costs requested in the application
13 through energy redevelopment charges and the period over which
14 the costs may be recovered, not to exceed twenty-five years,
15 subject to the application of the adjustment mechanism as
16 provided in Section 5 of the Energy Redevelopment Bond Act;

17 (3) approval for the qualifying utility to
18 impose a non-bypassable energy redevelopment charge as a
19 separate line item on its customer bills;

20 (4) approval of the adjustment mechanism;

21 (5) a description of the energy redevelopment
22 property that is created by the financing order and that may be
23 used to pay, and secure the payment of, the energy
24 redevelopment bonds and financing costs authorized to be issued
25 in the financing order;

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1 (6) approval of the energy redevelopment
2 charges necessary to recover the energy redevelopment costs and
3 the financing costs the qualifying utility proposes to be
4 financed by energy redevelopment bonds and the proposed
5 calculation thereof;

6 (7) approval of the allocation of the energy
7 redevelopment costs among customer classes;

8 (8) approval to enter into ancillary
9 agreements as necessary or appropriate;

10 (9) approval of any plans for selling,
11 assigning, transferring or conveying, other than as a security,
12 an interest in energy redevelopment property; and

13 (10) approval of a proposed ratemaking process
14 to reconcile any difference between the projected pretax costs
15 included in the amount of energy redevelopment costs financed
16 by energy redevelopment bonds and the final pretax energy
17 redevelopment costs incurred by the qualifying utility, which
18 shall not affect the amount of the energy redevelopment bonds
19 proposed to be issued or the proposed energy redevelopment
20 charges.

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

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1 H. A financing order may authorize the qualifying
2 utility to issue more than one series of energy redevelopment
3 bonds for a maximum term of no more than twenty-five years for
4 each series. With such authorization, the qualifying utility
5 shall not subsequently be required to secure a separate
6 financing order for each issuance of energy redevelopment bonds
7 or for each scheduled activity associated with abandonment of
8 the qualifying generating facility, such as decommissioning
9 activities.

10 I. The commission may require, as a condition to
11 the effectiveness of the financing order and in every
12 circumstance subject to the limitations set forth in Subsection
13 A of Section 6 of the Energy Redevelopment Bond Act, that,
14 during any period in which energy redevelopment bonds issued
15 pursuant to the financing order are outstanding, an assignee
16 that is a non-utility affiliate and issues energy redevelopment
17 bonds will provide in the affiliate's articles of
18 incorporation, partnership agreement or operating agreement, as
19 applicable, that in order for a person to file a voluntary
20 bankruptcy petition on behalf of that assignee, the prior
21 unanimous consent of the directors, partners or managers, as
22 applicable, shall be required. Any such provision shall
23 constitute a legal, valid and binding agreement of the
24 shareholders, partners or members, as applicable, of the
25 assignee and is enforceable against such shareholders, partners

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1 or members.

2 J. A financing order may require the qualifying
3 utility to file with the commission a periodic report showing
4 the receipt and disbursement of proceeds of energy
5 redevelopment bonds. A financing order may authorize the staff
6 of the commission to review and audit the books and records of
7 the qualifying utility relating to the receipt and disbursement
8 of proceeds of energy redevelopment bonds. The provisions of
9 this subsection shall not be construed to limit the authority
10 of the commission to investigate the practices of the
11 qualifying utility or to audit the books and records of the
12 qualifying utility.

13 SECTION 5. [NEW MATERIAL] ADJUSTMENT MECHANISM--REPORTS
14 TO COMMISSION--HEARING PROCEDURES.--

15 A. If the commission issues a financing order, the
16 commission shall periodically approve the use of the adjustment
17 mechanism approved in the financing order to correct for any
18 over-collection or under-collection of the energy redevelopment
19 charges and to provide for timely payment of scheduled
20 principal of and interest on the energy redevelopment bonds and
21 the payment and recovery of other financing costs in accordance
22 with the financing order. Except as provided in Subsection B
23 of this section, the qualifying utility shall file at least
24 semiannually, or more frequently as provided in the financing
25 order:

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1 (1) a calculation estimating whether the
2 existing energy redevelopment charge is sufficient to provide
3 for timely payment of scheduled principal of and interest on
4 the energy redevelopment bonds and the payment and recovery of
5 other financing costs in accordance with the financing order or
6 if either an over-collection or under-collection is projected;
7 and

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

11 B. The qualifying utility shall file the
12 calculations described in Subsection A of this section at least
13 quarterly during the two-year period preceding the final
14 maturity date of the energy redevelopment bonds.

15 C. The adjustment mechanism shall remain available
16 until the energy redevelopment bonds and all financing costs
17 have been fully paid and recovered.

18 D. On the same day the qualifying utility files
19 with the commission its calculation of the adjustment to the
20 energy redevelopment charge, the qualifying utility shall cause
21 notice of the filing to be given to the parties of record in
22 the case in which the financing order was issued.

23 E. An adjustment to the energy redevelopment charge
24 filed by the qualifying utility shall be deemed approved
25 without hearing unless:

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1 (1) a party of record in the case in which the
2 financing order was issued files a challenge to the
3 mathematical accuracy of the adjustment no later than thirty
4 days from the date the qualifying utility filed the calculation
5 of the adjustment; provided that challenge identifies the
6 mathematical inaccuracy with specificity; and

7 (2) the commission determines that good cause
8 exists; provided that the suspension shall not exceed sixty
9 days from the date of the filing.

10 F. If the commission determines that a hearing is
11 necessary, the commission shall hold a hearing on the challenge
12 within forty days of the date the qualifying utility filed the
13 calculation of the adjustment. If the commission determines
14 that the calculation of the adjustment is mathematically
15 inaccurate, the commission shall issue an order that rejects
16 the adjustment and that determines the mathematically accurate
17 calculation. The qualifying utility shall be authorized to
18 adjust the energy redevelopment charge in accordance with the
19 commission's calculation within five days from issuance of the
20 order. If the commission does not issue an order rejecting the
21 adjustment with a determination of the mathematically accurate
22 calculation within sixty days from the date the qualifying
23 utility filed the adjustment, the adjustment to the energy
24 redevelopment charge shall be deemed approved.

25 G. No adjustment pursuant to this section, and no

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1 proceeding held pursuant to this section, shall affect the
2 irrevocability of the financing order pursuant to Section 6 of
3 the Energy Redevelopment Bond Act.

4 SECTION 6. [NEW MATERIAL] FINANCING ORDER--
5 IRREVOCABILITY--AMENDMENTS.--

6 A. A financing order is irrevocable and the
7 commission shall not reduce, impair, postpone or terminate the
8 energy redevelopment charges approved in the financing order,
9 the energy redevelopment property or the collection or recovery
10 of energy redevelopment revenues.

11 B. A financing order may be amended on or after the
12 date of issuance of energy redevelopment bonds authorized by
13 the financing order at the request of the qualifying utility to
14 commence a proceeding and issue an amended financing order
15 that:

16 (1) provides for refinancing, retiring or
17 refunding all or a portion of an outstanding series of energy
18 redevelopment bonds issued pursuant to the original financing
19 order if the commission includes in the amended financing order
20 the findings and requirements specified in Subsections E and F
21 of Section 4 of the Energy Redevelopment Bond Act;

22 (2) adjusts the amount of energy redevelopment
23 costs to be financed by energy redevelopment bonds that have
24 not yet been issued to reflect updated estimated or actual
25 costs that differ from costs estimated at the time of the

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1 initial financing order; and

2 (3) is subject to the limitations set forth in
3 Subsection A of this section.

4 C. No change in the credit rating of a qualifying
5 utility from the credit rating at the time of issuance of a
6 financing order shall impair the irrevocability of a financing
7 order.

8 SECTION 7. [NEW MATERIAL] AGGRIEVED PARTIES--REQUEST FOR
9 REHEARING--JUDICIAL REVIEW--PRECEDENCE OVER OTHER CASES.--

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

18 B. An aggrieved party may file a notice of appeal
19 with the supreme court in accordance with Section 62-11-1 NMSA
20 1978; provided that such notice shall be due no later than ten
21 calendar days after denial of an application for rehearing or,
22 if rehearing is not applied for, no later than ten calendar
23 days after issuance of the financing order. The supreme court
24 shall proceed to hear and determine the appeal as expeditiously
25 as practicable and give the action precedence over all other

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1 civil cases.

2 SECTION 8. [NEW MATERIAL] CONDITIONS THAT KEEP FINANCING
3 ORDERS IN EFFECT AND ENERGY REDEVELOPMENT CHARGES IMPOSED.--

4 A. A financing order shall remain in effect until
5 the energy redevelopment bonds issued pursuant to the financing
6 order have been paid in full and all financing costs relating
7 to the energy redevelopment bonds have been paid in full.

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

13 C. If energy redevelopment bonds issued pursuant to
14 a financing order are outstanding and the related energy
15 redevelopment costs and financing costs have not been paid in
16 full, the energy redevelopment charges authorized to be imposed
17 in the financing order shall be a part of all customer bills
18 and be collected by the qualifying utility or its successors or
19 assignees, or a collection agent, in full through a
20 non-bypassable charge that is a separate line item on customer
21 bills and separate and apart from the qualifying utility's base
22 rates, which charge shall be paid by all customers receiving
23 transmission or distribution service from the qualifying
24 utility or its successor or assignees under commission-approved
25 rate schedules or under special contracts, even if a customer

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1 elects to purchase electricity from an alternative electricity
2 supplier to the extent permitted by New Mexico law, including
3 electricity received from distributed generation facilities
4 owned or controlled by the customer or another non-utility.

5 SECTION 9. [NEW MATERIAL] LIMITATIONS ON JURISDICTION OF
6 COMMISSION.--

7 A. If the commission issues a financing order, the
8 commission shall not, in exercising its powers and carrying out
9 its duties regarding regulation and ratemaking, consider energy
10 redevelopment bonds issued pursuant to the financing order to
11 be the debt of the qualifying utility; the energy redevelopment
12 charges paid under the financing order to be revenue of the
13 qualifying utility; or the energy redevelopment costs to be
14 financed by energy redevelopment bonds or financing costs
15 specified in the financing order to be the costs of the
16 qualifying utility. An action taken by a qualifying utility
17 that is consistent with the financing order shall be deemed to
18 be just and reasonable; provided that, subject to the
19 limitations set forth in Section 6 of the Energy Redevelopment
20 Bond Act, nothing in this subsection shall:

21 (1) affect the authority of the commission to
22 apply the adjustment mechanism as provided in Section 5 of the
23 Energy Redevelopment Bond Act;

24 (2) prevent or preclude the commission from
25 investigating the compliance of a qualifying utility with the

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1 terms and conditions of a financing order and requiring
2 compliance therewith;

3 (3) prevent or preclude the commission from
4 imposing regulatory sanctions against a qualifying utility for
5 failure to comply with the terms and conditions of a financing
6 order or the requirements of the Energy Redevelopment Bond Act;
7 or

8 (4) prevent or preclude the commission from
9 including the qualifying utility's investment in replacement
10 power resources in the qualifying utility's cost of service.

11 B. The commission shall not order or otherwise
12 require, directly or indirectly, a qualifying utility to issue
13 energy redevelopment bonds to finance any costs associated with
14 abandonment of a qualifying generating facility. A qualifying
15 utility's election not to use energy redevelopment bonds shall
16 not affect its right to recover the prudent and reasonable
17 costs associated with the abandonment of a qualifying
18 generating facility by the qualifying utility, including full
19 recovery of undepreciated investment at the time of
20 abandonment.

21 SECTION 10. [NEW MATERIAL] QUALIFYING UTILITY--DUTIES.--

22 A. A qualifying utility shall use the proceeds of
23 the issuance of energy redevelopment bonds for paying energy
24 redevelopment costs and financing costs and to acquire
25 utility-owned replacement resources and investments in other

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1 public utility property for inclusion in the rate base.

2 B. A qualifying utility for which a financing order
3 has been issued shall annually provide to its customers a
4 concise explanation of the energy redevelopment charges
5 approved in a financing order, as modified by subsequent
6 issuances of energy redevelopment bonds authorized under a
7 financing order, if any, and by the adjustment mechanism as
8 provided in Section 5 of the Energy Redevelopment Bond Act.
9 The explanations may be made by bill inserts, website
10 information or other appropriate means.

11 C. Energy redevelopment revenues shall be applied
12 solely to the repayment of energy redevelopment bonds and
13 financing costs.

14 D. The failure of a qualifying utility to apply the
15 proceeds of an issuance of energy redevelopment bonds in a
16 reasonable, prudent and appropriate manner, or otherwise comply
17 with any provision of the Energy Redevelopment Bond Act, shall
18 not invalidate, impair or affect a financing order, energy
19 redevelopment property, energy redevelopment charge or energy
20 redevelopment bonds; provided that, subject to the limitations
21 set forth in Section 6 of the Energy Redevelopment Bond Act,
22 nothing in this subsection shall prevent or preclude the
23 commission from imposing regulatory sanctions against a
24 qualifying utility for failure to comply with the terms and
25 conditions of a financing order or the requirements of the

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1 Energy Redevelopment Bond Act.

2 SECTION 11. [NEW MATERIAL] ENERGY REDEVELOPMENT
3 PROPERTY--ENERGY REDEVELOPMENT REVENUES.--

4 A. Energy redevelopment property that is created in
5 a financing order shall constitute an existing, present
6 property right, notwithstanding the fact that the imposition
7 and collection of energy redevelopment charges depend on the
8 qualifying utility continuing to provide electric energy or
9 continuing to perform its servicing functions relating to the
10 collection of energy redevelopment charges or on the level of
11 future energy consumption. Energy redevelopment property shall
12 exist whether or not the energy redevelopment revenues have
13 been billed, have accrued or have been collected and
14 notwithstanding the fact that the value or amount of the energy
15 redevelopment property is dependent on the future provision of
16 service to customers by the qualifying utility.

17 B. All energy redevelopment property created in a
18 financing order shall continue to exist until the energy
19 redevelopment bonds issued pursuant to a financing order are
20 paid in full and the financing costs relating to the bonds have
21 been paid in full.

22 C. All or any portion of energy redevelopment
23 property may be transferred, sold, conveyed or assigned to a
24 non-utility affiliate that is:

- 25 (1) wholly owned, directly or indirectly, by

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1 the qualifying utility;

2 (2) created for the limited purposes of
3 acquiring, owning or administering energy redevelopment
4 property or issuing energy redevelopment bonds under the
5 financing order; or

6 (3) a combination of these purposes.

7 D. All or any portion of energy redevelopment
8 property may be pledged to secure the payment of energy
9 redevelopment bonds, amounts payable to financing parties and
10 bondholders, amounts payable under any ancillary agreement and
11 other financing costs.

12 E. The formation by a qualifying utility of a
13 non-utility affiliate for the limited purpose of acquiring,
14 owning or administering energy redevelopment property or
15 issuing energy redevelopment bonds pursuant to a financing
16 order, or a combination of these purposes, and any transfer,
17 sale, conveyance, assignment, grant of a security interest in
18 or pledge of energy redevelopment property by a qualifying
19 utility to a non-utility affiliate, to the extent previously
20 authorized in a financing order, does not require any further
21 approval of the commission and shall not otherwise be subject
22 to the rules of the commission regarding class II transactions
23 as defined by Subsection L of Section 62-3-3 NMSA 1978.

24 F. If a qualifying utility defaults on any required
25 payment of energy redevelopment revenues, a court with

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1 jurisdiction in the matter, on application by an interested
2 party and without limiting any other remedies available to the
3 applying party, shall order the sequestration and payment of
4 the energy redevelopment revenues for the benefit of
5 bondholders, any assignee and any financing parties. The order
6 shall remain in full force and effect notwithstanding any
7 bankruptcy, reorganization or other insolvency or receivership
8 proceedings with respect to the qualifying utility or any
9 non-utility affiliate.

10 G. Energy redevelopment property, energy
11 redevelopment revenues and the interests of an assignee,
12 bondholder or financing party in energy redevelopment property
13 and energy redevelopment revenues are not subject to set-off,
14 counterclaim, surcharge or defense by the qualifying utility or
15 any other person or in connection with the bankruptcy,
16 reorganization or other insolvency or receivership proceeding
17 of the qualifying utility, any non-utility affiliate or any
18 other entity.

19 H. Any successor to a qualifying utility shall be
20 bound by the requirements of the Energy Redevelopment Bond Act
21 and shall perform and satisfy all obligations of, and have the
22 same rights under a financing order as, the qualifying utility
23 under the financing order in the same manner and to the same
24 extent as the qualifying utility, including the obligation to
25 collect and pay energy redevelopment revenues to the person

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1 entitled to receive the revenues.

2 SECTION 12. [NEW MATERIAL] SECURITY INTERESTS--
3 APPLICABILITY OF OTHER ACTS--CREATION OF SECURITY INTEREST--
4 ATTACHMENT ON FILING WITH SECRETARY OF STATE--PRIORITY OVER
5 OTHER LIENS.--

6 A. Except as otherwise provided in this section,
7 the creation, perfection and enforcement of a security interest
8 in energy redevelopment property to secure the repayment of the
9 principal of and interest on energy redevelopment bonds,
10 amounts payable pursuant to an ancillary agreement and other
11 financing costs are governed by this section. This section
12 shall be deemed to provide alternatives to the provisions of
13 the Uniform Commercial Code and Chapter 62, Article 13 of the
14 Public Utility Act, which, to the extent the Uniform Commercial
15 Code or that article is inconsistent with this section, are
16 declared to be inapplicable to the Energy Redevelopment Bond
17 Act.

18 B. The description or indication of energy
19 redevelopment property in a transfer or security agreement and
20 a financing statement is sufficient only if the description or
21 indication refers to the Energy Redevelopment Bond Act and the
22 financing order creating the energy redevelopment property.
23 This section applies to all purported transfers of, and all
24 purported grants of liens on or security interests in, energy
25 redevelopment property, regardless of whether the related

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1 transfer or security agreement was entered into, or the related
2 financing statement was filed, before or after the effective
3 date of the Energy Redevelopment Bond Act.

4 C. A security interest in energy redevelopment
5 property is created, valid and binding at the later of the time
6 when:

7 (1) the financing order is issued;

8 (2) a security agreement is executed and
9 delivered; or

10 (3) value is received for the energy
11 redevelopment bonds.

12 D. The security interest attaches without any
13 physical delivery of collateral or other act and the lien of
14 the security interest shall be valid, binding and perfected
15 against all parties having claims of any kind in tort, contract
16 or otherwise against the person granting the security interest,
17 regardless of whether such parties have notice of the lien, on
18 the filing of a financing statement with the secretary of
19 state. The secretary of state shall maintain the financing
20 statement in the same manner and in the same recordkeeping
21 system maintained for financing statements filed pursuant to
22 Chapter 55, Article 9 NMSA 1978. The filing of a financing
23 statement pursuant to this subsection shall be governed by the
24 provisions regarding the filing of financing statements in that
25 article.

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1 E. A security interest in energy redevelopment
2 property is a continuously perfected security interest and has
3 priority over any other lien, created by operation of law or
4 otherwise, that may subsequently attach to the energy
5 redevelopment property unless the holder of any such lien has
6 agreed in writing otherwise.

7 F. The priority of a security interest in energy
8 redevelopment property is not affected by the commingling of
9 energy redevelopment revenues with other funds. Any pledgee or
10 secured party shall have a perfected security interest in the
11 amount of all energy redevelopment revenues that are deposited
12 in any cash or deposit account of the qualifying utility in
13 which energy redevelopment revenues have been commingled with
14 other funds and any other security interest that may apply to
15 those funds shall be terminated when they are transferred to a
16 segregated account for the assignee or a financing party.

17 G. No order of the commission amending a financing
18 order pursuant to Subsection B of Section 6 of the Energy
19 Redevelopment Bond Act, and no application of the adjustment
20 mechanism as provided in Section 5 of that act, will affect the
21 validity, perfection or priority of a security interest in or
22 transfer of energy redevelopment property.

23 SECTION 13. [NEW MATERIAL] SALE OF ENERGY REDEVELOPMENT
24 PROPERTY--PERFECTING INTERESTS--ABSOLUTE TRANSFER AND TRUE SALE
25 REQUIREMENTS.--

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1 A. Any sale, assignment or transfer of energy
2 redevelopment property shall be an absolute transfer and true
3 sale of, and not a pledge of or secured transaction relating
4 to, the seller's right, title and interest in, to and under the
5 energy redevelopment property if the documents governing the
6 transaction expressly state that the transaction is a sale or
7 other absolute transfer. A transfer of an interest in energy
8 redevelopment property shall be created when:

9 (1) the financing order creating the energy
10 redevelopment property has become effective;

11 (2) the documents evidencing the transfer of
12 energy redevelopment property have been executed and delivered
13 to the assignee; and

14 (3) value is received.

15 B. On the filing of a financing statement with the
16 secretary of state pursuant to Section 12 of the Energy
17 Redevelopment Bond Act, a transfer of an interest in energy
18 redevelopment property shall be perfected against all third
19 persons, including any judicial lien or other lien creditors or
20 any claims of the seller or creditors of the seller, other than
21 creditors holding a prior security interest, ownership interest
22 or assignment in the energy redevelopment property previously
23 perfected in accordance with this section or Section 12 of the
24 Energy Redevelopment Bond Act.

25 C. The characterization of the sale, assignment or

1 transfer as an absolute transfer and true sale and the
2 corresponding characterization of the property interest of the
3 purchaser, shall not be affected or impaired by, among other
4 things, the occurrence of any of the following factors:

5 (1) commingling of energy redevelopment
6 revenues with other funds;

7 (2) the retention by the seller of:

8 (a) a partial or residual interest,
9 including an equity interest, in the energy redevelopment
10 property, whether direct or indirect, or whether subordinate or
11 otherwise; or

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

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

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

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

21 (6) the treatment of the sale, assignment or
22 transfer for tax, financial reporting or other purposes;

23 (7) any subsequent order of the commission
24 amending a financing order pursuant to Subsection B of Section
25 6 of the Energy Redevelopment Bond Act; or

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

3 SECTION 14. [NEW MATERIAL] EXEMPTION FROM FEE
4 ASSESSMENTS.--The imposition, collection and receipt of an
5 energy redevelopment charge shall be exempt from an assessment
6 of a franchise, inspection or supervision fee imposed by a
7 municipality, county or other political subdivision of the
8 state.

9 SECTION 15. [NEW MATERIAL] ENERGY REDEVELOPMENT BONDS NOT
10 PUBLIC DEBT.--Energy redevelopment bonds issued pursuant to the
11 Energy Redevelopment Bond Act shall not constitute a debt or a
12 pledge of the faith and credit or taxing power of this state or
13 of any county, municipality or any other political subdivision
14 of this state. Bondholders shall have no right to have taxes
15 levied by the legislature or the taxing authority of any
16 county, municipality or other political subdivision of this
17 state for the payment of the principal of or interest on energy
18 redevelopment bonds. The issuance of energy redevelopment
19 bonds does not, directly or indirectly or contingently,
20 obligate the state or a political subdivision of the state to
21 levy any tax or make any appropriation for payment of the
22 principal of or interest on the bonds.

23 SECTION 16. [NEW MATERIAL] ENERGY REDEVELOPMENT BONDS AS
24 LEGAL INVESTMENTS.--Energy redevelopment bonds shall be legal
25 investments for all governmental units, permanent funds of the

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1 state, finance authorities, financial institutions, insurance
2 companies, fiduciaries and other persons requiring statutory
3 authority regarding legal investments.

4 SECTION 17. [NEW MATERIAL] STATE PLEDGE NOT TO IMPAIR.--

5 A. The state pledges to and agrees with the
6 bondholders, any assignee and any financing parties that the
7 state will not take or permit any action that impairs the value
8 of energy redevelopment property or, except as allowed pursuant
9 to Section 5 of the Energy Redevelopment Bond Act, reduce,
10 alter or impair energy redevelopment charges that are imposed,
11 collected and remitted for the benefit of the bondholders, any
12 assignee and any financing parties, until any principal,
13 interest and redemption premium in respect of energy
14 redevelopment bonds, all financing costs and all amounts to be
15 paid to an assignee or financing party under an ancillary
16 agreement are paid or performed in full.

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

22 SECTION 18. [NEW MATERIAL] RESOURCE REDEVELOPMENT AFTER
23 ABANDONMENT TO BE LOCATED IN COMMUNITY WHERE ABANDONED FACILITY
24 IS LOCATED--EXCEPTIONS.--A qualifying utility shall, for five
25 years after abandonment of a qualifying generating facility,

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1 select sites for utility-owned replacement power resources that
2 are located within or near the community in New Mexico where
3 the qualifying generating facility being abandoned is located;
4 provided that the replacement power resource so located
5 maintains adequate system reliability and the commission grants
6 certificates of public convenience and necessity for such
7 replacement power resources and allows full cost recovery in
8 rates; provided further that the costs of so locating
9 replacement power resources shall not exceed the costs of
10 locating replacement power resources elsewhere in an amount
11 that exceeds the cost savings attributable to the use of energy
12 redevelopment bonds.

13 SECTION 19. [NEW MATERIAL] CHOICE OF LAW.--The law
14 governing the validity, enforceability, attachment, perfection,
15 priority and exercise of remedies with respect to the transfer
16 of an interest or right or creation of a security interest in
17 any energy redevelopment property, energy redevelopment charge
18 or financing order shall be the laws of the state of New Mexico
19 as set forth in the Energy Redevelopment Bond Act.

20 SECTION 20. [NEW MATERIAL] CONFLICTS.--In the event of
21 conflict between the Energy Redevelopment Bond Act and any
22 other law regarding the attachment, assignment or perfection,
23 or the effect of perfection, or priority of any security
24 interest in or transfer of energy redevelopment property, the
25 Energy Redevelopment Bond Act shall govern to the extent of the

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1 conflict.

2 SECTION 21. [NEW MATERIAL] VALIDITY ON ACTIONS IF ACT
3 HELD INVALID.--Effective on the date that energy redevelopment
4 bonds are first issued under the Energy Redevelopment Bond Act,
5 if any provision of that act is held to be invalid or is
6 invalidated, superseded, replaced, repealed or expires for any
7 reason, that occurrence shall not affect the validity of any
8 action allowed pursuant to that act that is taken by the
9 commission, a qualifying utility, an assignee, a collection
10 agent, a financing party, a bondholder or a party to an
11 ancillary agreement, and to prevent the impairment of energy
12 redevelopment bonds issued or authorized in a financing order
13 issued pursuant to that act, any such action shall remain in
14 full force and effect with respect to all energy redevelopment
15 bonds issued or authorized in a financing order issued pursuant
16 to that act before the date that such provision is held to be
17 invalid or is invalidated, superseded, replaced, repealed or
18 expires for any reason.

19 SECTION 22. A new section of the Gross Receipts and
20 Compensating Tax Act is enacted to read:

21 "[NEW MATERIAL] EXEMPTION--ENERGY REDEVELOPMENT CHARGE.--
22 Exempted from the gross receipts tax are receipts from an
23 energy redevelopment charge imposed and collected by a
24 qualifying utility pursuant to the Energy Redevelopment Bond
25 Act."

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1 **SECTION 23. TEMPORARY PROVISION--PENDING APPLICATIONS.--**

2 If an application for approval to abandon a qualifying
3 generating facility is pending before the public regulation
4 commission on the effective date of this act, the qualifying
5 utility may file a separate application for a financing order
6 and the commission shall join or consolidate the application
7 for a financing order with the pending proceeding involving
8 abandonment of the qualifying generating facility. On such
9 joinder or consolidation, the time periods prescribed by
10 Subsection B of Section 3 of the Energy Redevelopment Bond Act
11 shall become applicable to the joined or consolidated case.

12 **SECTION 24. APPLICABILITY.--**The provisions of this act
13 shall not apply to a qualifying utility that makes an initial
14 application for a financing order more than twenty years after
15 the effective date of this act. This section shall not
16 preclude a qualifying utility for which the public regulation
17 commission has issued a financing order from applying to the
18 commission for a subsequent order amending the financing order
19 pursuant to Section 6 of the Energy Redevelopment Bond Act.