

1 SENATE BILL 47

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO PUBLIC UTILITIES; ENACTING THE ENERGY REDEVELOPMENT  
12 BOND ACT; AUTHORIZING CERTAIN UTILITIES TO ISSUE BONDS PURSUANT  
13 TO A FINANCING ORDER ISSUED BY THE PUBLIC REGULATION  
14 COMMISSION; PROVIDING PROCEDURES FOR REHEARING AND JUDICIAL  
15 REVIEW; PROVIDING LIMITS ON THE JURISDICTION OF THE COMMISSION;  
16 CREATING SECURITY INTERESTS IN CERTAIN PROPERTY; PROVIDING FOR  
17 THE PERFECTION OF INTERESTS IN CERTAIN PROPERTY; EXEMPTING  
18 ENERGY REDEVELOPMENT CHARGES FROM FRANCHISE AND CERTAIN OTHER  
19 GOVERNMENT FEES; PROVIDING FOR NONIMPAIRMENT OF ENERGY  
20 REDEVELOPMENT CHARGES AND BONDS; PROVIDING FOR CONFLICTS IN  
21 LAW; PROVIDING THAT ACTIONS TAKEN PURSUANT TO THE ENERGY  
22 REDEVELOPMENT BOND ACT SHALL NOT BE INVALIDATED IF THE ACT IS  
23 HELD INVALID.

24  
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

5           A.   "adjustment mechanism" means a formula-based  
6   calculation used to make adjustments to the amount of the  
7   energy redevelopment charges that are necessary to correct for  
8   any over-collection or under-collection of the energy  
9   redevelopment charges and to provide for the timely and  
10   complete payment of scheduled principal and interest on the  
11   energy redevelopment bonds and the payment and recovery of  
12   other financing costs in accordance with the financing order;

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

15 (c) costs that have not been determined  
16 to be unrecoverable from customers by the time of filing the  
17 application for a financing order; and

18 (d) preliminary costs associated with  
19 activities that are incurred prior to the issuance of a  
20 financing order and that are to be reimbursed from the proceeds  
21 of energy redevelopment bonds; and

22 (2) does not include:

23 (a) the costs of investing in  
24 replacement power resources; or

25 (b) any monetary penalty, fine or

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1 forfeiture assessed against a qualifying utility by a  
2 government agency or court under a federal or state  
3 environmental statute, rule or regulation;

4 J. "energy redevelopment property" means:

5 (1) the rights and interests of a qualifying  
6 utility or an assignee under a financing order, including the  
7 right to impose, charge, collect and receive energy  
8 redevelopment charges in the amount necessary to provide for  
9 the full payment and recovery of all energy redevelopment costs  
10 and financing costs identified in the financing order as costs  
11 to be financed by energy redevelopment bonds and to obtain  
12 adjustments to the charges as provided in Section 5 of the  
13 Energy Redevelopment Bond Act, and any interest in such rights  
14 and interests; and

15 (2) all revenues, receipts, collections,  
16 rights to payment, payments, money, claims or other proceeds  
17 arising from the rights and interests specified in Paragraph  
18 (1) of this subsection;

19 K. "energy redevelopment revenues" means all  
20 revenues, receipts, collections, claims, rights to payments,  
21 payments, money or other proceeds arising from energy  
22 redevelopment property and collected by a qualifying utility or  
23 other collection agent that is attributable to an energy  
24 redevelopment charge;

25 L. "financing cost" means the costs incurred by the

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1 qualifying utility or an assignee to issue, service, repay or  
2 refinance energy redevelopment bonds, whether incurred or paid  
3 on issuance of the bonds or over the life of the bonds, and  
4 approved for recovery by the commission in a financing order.

5 "Financing cost" includes:

6 (1) principal, interest, acquisition,  
7 defeasance and redemption premiums that are payable on energy  
8 redevelopment bonds;

9 (2) any payment required under an ancillary  
10 agreement and any amount required to fund or replenish a  
11 reserve account or other account established under any  
12 indenture, ancillary agreement or other financing document  
13 relating to the energy redevelopment bonds;

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

24 (4) any costs incurred to obtain modifications  
25 of or amendments to any indenture, financing agreement,

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1 security agreement or similar agreement or instrument relating  
2 to any existing secured or unsecured obligation of a qualifying  
3 utility or an affiliate of a qualifying utility, or any costs  
4 incurred by or allocated to a qualifying utility to obtain any  
5 consent, release, waiver or approval from any holder of such an  
6 obligation, that are necessary to be incurred to permit a  
7 qualifying utility to issue or cause the issuance of energy  
8 redevelopment bonds;

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

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

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

16 M. "financing order" means an order of the  
17 commission that:

18 (1) authorizes the issuance of energy  
19 redevelopment bonds;

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

22 (3) creates energy redevelopment property;

23 N. "financing parties" means:

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

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1 (2) a party to an ancillary agreement or the  
2 energy redevelopment bonds, the rights and obligations of which  
3 relate to or depend upon the existence of energy redevelopment  
4 property, the enforcement and priority of a security interest  
5 in energy redevelopment property or the timely collection and  
6 payment of energy redevelopment revenues;

7 O. "financing statement" means "financing  
8 statement" as defined in the Uniform Commercial Code-Secured  
9 Transactions;

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

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

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

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

25 R. "qualifying generating facility" means a coal-



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1 fired electric generating facility that:

2 (1) has been granted a certificate of public  
3 convenience and necessity and has generated electric energy for  
4 ultimate sale to utility customers in the state before the  
5 effective date of this section and for which abandonment  
6 authority is granted after December 31, 2017; and

7 (2) is owned or leased, in whole or in part,  
8 by a qualifying utility;

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

13 T. "termination statement" means "termination  
14 statement" as defined in the Uniform Commercial Code-Secured  
15 Transactions;

16 U. "traditional utility financing mechanism" means  
17 a return on investment at the qualifying utility's weighted  
18 average cost of capital; and

19 V. "utility service area" means:

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

23 (2) for as long as energy redevelopment bonds  
24 issued pursuant to a financing order are outstanding and the  
25 related energy redevelopment costs and financing costs have not

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1 been recovered in full, any additions to or enlargements of the  
2 geographic area, whether or not approved by the commission in a  
3 formal proceeding.

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

5 A. A qualifying utility may apply to the commission  
6 for a financing order pursuant to this section. To obtain a  
7 financing order, a qualifying utility shall obtain approval to  
8 abandon a qualifying generating facility pursuant to Section  
9 62-9-5 NMSA 1978. The application for the financing order may  
10 be filed as part of the application for approval to abandon a  
11 qualifying generating facility. The application may include a  
12 request for the issuance of certificates of public convenience  
13 and necessity pursuant to Section 62-9-1 NMSA 1978 for some or  
14 all of any power supply resources that may be needed to replace  
15 the power supplied by the qualifying generating facilities for  
16 which abandonment authority is requested. The qualifying  
17 utility may defer an application for certificates of public  
18 convenience and necessity to a separate proceeding provided  
19 that the application identifies potential adequate replacement  
20 power resources that would be available at the time the  
21 replacement power is needed to serve customers.

22 B. An application for a financing order shall  
23 include:

24 (1) evidence that the applicant is a  
25 qualifying utility;

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1 (2) a description of the qualifying generating  
2 facility that the qualifying utility proposes to abandon or for  
3 which abandonment authority was granted after December 31,  
4 2017;

5 (3) an estimate of the energy redevelopment  
6 costs associated with the abandonment of the qualifying  
7 generating facility described in the application;

8 (4) the amount of the energy redevelopment  
9 costs the qualifying utility proposes to finance through the  
10 issuance of one or more series of energy redevelopment bonds;

11 (5) an estimate of the financing costs  
12 associated with each series of energy redevelopment bonds  
13 proposed to be issued;

14 (6) an estimate of the amount of the energy  
15 redevelopment charges necessary to recover the energy  
16 redevelopment costs and financing costs the qualifying utility  
17 proposes to finance through the issuance of energy  
18 redevelopment bonds and the proposed calculation thereof, which  
19 estimate and calculation should take into account the estimated  
20 date of issuance and estimated principal amount of each series  
21 of energy redevelopment bonds proposed to be issued;

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

24 (8) a description of the proposed adjustment  
25 mechanism;

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1 (9) an estimate, based on current market  
2 conditions, of the cost savings on a net present value basis  
3 over the proposed term of the energy redevelopment bonds to the  
4 customers of the qualifying utility expected to result from the  
5 financing of the energy redevelopment costs with energy  
6 redevelopment bonds as compared to the use of traditional  
7 utility financing mechanisms;

8 (10) an estimate of the date on which the  
9 energy redevelopment bonds are expected to be issued and the  
10 expected term over which the financing costs associated with  
11 the issuance are expected to be recovered or, if the bonds are  
12 expected to be issued in more than one series, the estimated  
13 issuance date and expected term for each bond issuance;  
14 provided that the maximum term for each bond issuance shall be  
15 no longer than twenty-five years;

16 (11) identification of plans to sell, assign,  
17 transfer or convey, other than as a security, interest in  
18 energy redevelopment property, including identification of  
19 assignees;

20 (12) identification of ancillary agreements  
21 that may be necessary or appropriate;

22 (13) a description of a proposed ratemaking  
23 process to reconcile any difference between the projected  
24 pretax costs included in the amount of energy redevelopment  
25 costs financed by energy redevelopment bonds and the final

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1 pretax energy redevelopment costs incurred by the qualifying  
2 utility; and

3 (14) any other information reasonably required  
4 by the commission to determine if approval to abandon a  
5 qualifying generating facility or if any requests for  
6 certificates of public convenience and necessity should be  
7 granted.

8 C. Notice of an application for a financing order  
9 shall be given to the parties of record in the qualifying  
10 utility's most recent general rate case and published in  
11 newspapers of general circulation in the qualifying utility's  
12 service area in the state and in the county in the state in  
13 which the qualifying generating facility proposed to be  
14 abandoned is located and as otherwise may be ordered by the  
15 commission.

16 SECTION 4. [NEW MATERIAL] FINANCING ORDER--ISSUANCE--  
17 TERMS OF BONDS--NON-UTILITY AFFILIATE REQUIREMENTS--REPORTS TO  
18 COMMISSION.--

19 A. The commission may approve an application for a  
20 financing order without a formal hearing if no protest  
21 establishing good cause for a formal hearing is filed within  
22 thirty days of the date when notice is given of the filing of  
23 the application for the financing order. The commission shall  
24 issue an order granting or denying the application and the  
25 final order on an accompanying application of the qualifying

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1 utility for approval to abandon the qualifying generating  
2 facility within six months from the date the application for  
3 the financing order is filed with the commission. For good  
4 cause shown, the commission may extend the time for issuing the  
5 order for an additional three months.

6 B. Failure to issue an order within the time  
7 prescribed by Subsection A of this section shall be deemed  
8 approval of the application as filed, including approval to  
9 abandon the qualifying generating facility, if abandonment  
10 approval was requested in, consolidated or joined with the  
11 application for the financing order pursuant to Subsection B of  
12 Section 3 of the Energy Redevelopment Bond Act, and approval of  
13 the acquisition of any needed replacement power resources for  
14 which a specific certificate of public convenience and  
15 necessity was requested in the application. The commission  
16 chair or the chair's designee shall, within two days after  
17 expiration of the time prescribed by this subsection, issue an  
18 order declaring that the application has been approved by  
19 operation of law.

20 C. If an application for a financing order is  
21 accompanied by a request for issuance of a certificate of  
22 public convenience and necessity for replacement power  
23 resources, this section provides an alternative time frame to  
24 the time frame provided in Subsection C of Section 62-9-1 NMSA  
25 1978 and the time frame specified in this section shall govern.

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

4           E. The commission shall issue a financing order if  
5 the commission finds that the:

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

9                   (2) proposed issuance of energy redevelopment  
10 bonds will result in cost savings to customers of the  
11 qualifying utility on a net present value basis over the  
12 projected term of the energy redevelopment bonds compared to  
13 the use of traditional utility financing mechanisms; provided  
14 that, in calculating the comparison, the commission shall not  
15 exclude recovery of any energy redevelopment costs in  
16 estimating the amount of costs to customers associated with  
17 traditional utility financing mechanisms;

18                   (3) estimate of the energy redevelopment  
19 charges necessary to recover the energy redevelopment costs and  
20 the financing costs the qualifying utility proposes to be  
21 financed by energy redevelopment bonds and the proposed  
22 calculation thereof are reasonable;

23                   (4) proposed methodology for allocating the  
24 energy redevelopment costs among customer classes is  
25 reasonable;

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1 (5) proposed adjustment mechanism is  
2 reasonable and complies with Section 5 of the Energy  
3 Redevelopment Bond Act; and

4 (6) proposed ratemaking process to reconcile  
5 any difference between the projected pretax costs included in  
6 the amount of energy redevelopment costs financed by energy  
7 redevelopment bonds and the final pretax energy redevelopment  
8 costs incurred by the qualifying utility is reasonable and does  
9 not affect the amount of the energy redevelopment bonds  
10 proposed to be issued or the proposed energy redevelopment  
11 charges.

12 F. A financing order shall include the following  
13 provisions:

14 (1) approval for the qualifying utility to  
15 issue energy redevelopment bonds as requested in the  
16 application, to use energy redevelopment bonds to finance the  
17 maximum amount of the energy redevelopment costs as requested  
18 in the application and to use the proceeds thereof as provided  
19 in Subsection A of Section 10 of the Energy Redevelopment Bond  
20 Act;

21 (2) approval for the qualifying utility to  
22 recover the financing costs requested in the application  
23 through energy redevelopment charges, subject to the  
24 application of the adjustment mechanism as provided in Section  
25 5 of the Energy Redevelopment Bond Act, until the energy

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1 redevelopment bonds issued pursuant to the financing order and  
2 the financing costs related to those bonds are paid in full;

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

6 (4) approval of the adjustment mechanism;

7 (5) a description of the energy redevelopment  
8 property that is created by the financing order and that may be  
9 used to pay, and secure the payment of, the energy  
10 redevelopment bonds and financing costs authorized to be issued  
11 in the financing order;

12 (6) approval of the energy redevelopment  
13 charges necessary to recover the energy redevelopment costs and  
14 the financing costs the qualifying utility proposes to be  
15 financed by energy redevelopment bonds and the proposed  
16 calculation thereof;

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

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

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

24 (10) approval of a proposed ratemaking process  
25 to reconcile any difference between the projected pretax costs

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1 included in the amount of energy redevelopment costs financed  
2 by energy redevelopment bonds and the final pretax energy  
3 redevelopment costs incurred by the qualifying utility, which  
4 shall not affect the amount of the energy redevelopment bonds  
5 proposed to be issued or the proposed energy redevelopment  
6 charges.

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

12 H. A financing order may authorize the qualifying  
13 utility to issue more than one series of energy redevelopment  
14 bonds for a maximum term of no more than twenty-five years for  
15 each series. With such authorization, the qualifying utility  
16 shall not subsequently be required to secure a separate  
17 financing order for each issuance of energy redevelopment bonds  
18 or for each scheduled activity associated with abandonment of  
19 the qualifying generating facility, such as decommissioning  
20 activities.

21 I. The commission may require, as a condition to  
22 the effectiveness of the financing order and in every  
23 circumstance subject to the limitations set forth in Subsection  
24 A of Section 6 of the Energy Redevelopment Bond Act, that,  
25 during any period in which energy redevelopment bonds issued

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1 pursuant to the financing order are outstanding, an assignee  
2 that is a non-utility affiliate and issues energy redevelopment  
3 bonds will provide in the affiliate's articles of  
4 incorporation, partnership agreement or operating agreement, as  
5 applicable, that in order for a person to file a voluntary  
6 bankruptcy petition on behalf of that assignee, the prior  
7 unanimous consent of the directors, partners or managers, as  
8 applicable, shall be required. Any such provision shall  
9 constitute a legal, valid and binding agreement of the  
10 shareholders, partners or members, as applicable, of the  
11 assignee and is enforceable against such shareholders, partners  
12 or members.

13 J. A financing order may require the qualifying  
14 utility to file with the commission a periodic report showing  
15 the receipt and disbursement of proceeds of energy  
16 redevelopment bonds. A financing order may authorize the staff  
17 of the commission to review and audit the books and records of  
18 the qualifying utility relating to the receipt and disbursement  
19 of proceeds of energy redevelopment bonds. The provisions of  
20 this subsection shall not be construed to limit the authority  
21 of the commission to investigate the practices of the  
22 qualifying utility or to audit the books and records of the  
23 qualifying utility.

24 SECTION 5. [NEW MATERIAL] ADJUSTMENT MECHANISM--REPORTS  
25 TO COMMISSION--HEARING PROCEDURES.--

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1           A. If the commission issues a financing order, the  
2 commission shall periodically approve the use of the adjustment  
3 mechanism approved in the financing order to correct for any  
4 over-collection or under-collection of the energy redevelopment  
5 charges and to provide for timely payment of scheduled  
6 principal of and interest on the energy redevelopment bonds and  
7 the payment and recovery of other financing costs in accordance  
8 with the financing order. Except as provided in Subsection B  
9 of this section, the qualifying utility shall file at least  
10 semiannually, or more frequently as provided in the financing  
11 order:

12                   (1) a calculation estimating whether the  
13 existing energy redevelopment charge is sufficient to provide  
14 for timely payment of scheduled principal of and interest on  
15 the energy redevelopment bonds and the payment and recovery of  
16 other financing costs in accordance with the financing order or  
17 if either an over-collection or under-collection is projected;  
18 and

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

22           B. The qualifying utility shall file the  
23 calculations described in Subsection A of this section at least  
24 quarterly during the two-year period preceding the final  
25 maturity date of the energy redevelopment bonds.

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1           C. The adjustment mechanism shall remain available  
2 until the energy redevelopment bonds and all financing costs  
3 have been fully paid and recovered.

4           D. On the same day the qualifying utility files  
5 with the commission its calculation of the adjustment to the  
6 energy redevelopment charge, the qualifying utility shall cause  
7 notice of the filing to be given to the parties of record in  
8 the case in which the financing order was issued.

9           E. An adjustment to the energy redevelopment charge  
10 filed by the qualifying utility shall be deemed approved  
11 without hearing thirty days after filing the adjustment unless:

12                   (1) a party of record in the case in which the  
13 financing order was issued files a challenge to the  
14 mathematical accuracy of the adjustment no later than twenty  
15 days from the date the qualifying utility filed the calculation  
16 of the adjustment; provided that challenge identifies the  
17 mathematical inaccuracy with specificity; and

18                   (2) the commission determines that the  
19 challenge demonstrates good cause to suspend the operation of  
20 the adjustment; provided that the suspension shall not exceed  
21 sixty days from the date the qualifying utility filed the  
22 adjustment pursuant to Subsection F of this section.

23           F. If the commission determines that a hearing is  
24 necessary, the commission shall hold a hearing on the challenge  
25 within forty days of the date the qualifying utility filed the

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1 calculation of the adjustment. The hearing shall be limited to  
2 determining whether there is any mathematical error in the  
3 calculation of the adjustment. If the commission determines  
4 that the calculation of the adjustment is mathematically  
5 inaccurate, the commission shall issue an order that rejects  
6 the adjustment and that determines the mathematically accurate  
7 calculation. The qualifying utility shall be authorized to  
8 adjust the energy redevelopment charge in accordance with the  
9 commission's calculation within five days from issuance of the  
10 order. If the commission does not issue an order rejecting the  
11 adjustment with a determination of the mathematically accurate  
12 calculation within sixty days from the date the qualifying  
13 utility filed the adjustment, the adjustment to the energy  
14 redevelopment charge shall be deemed approved.

15 G. No adjustment pursuant to this section, and no  
16 proceeding held pursuant to this section, shall affect the  
17 irrevocability of the financing order pursuant to Section 6 of  
18 the Energy Redevelopment Bond Act.

19 SECTION 6. [NEW MATERIAL] FINANCING ORDER--  
20 IRREVOCABILITY--AMENDMENTS.--

21 A. A financing order is irrevocable and the  
22 commission shall not reduce, impair, postpone or terminate the  
23 energy redevelopment charges approved in the financing order,  
24 the energy redevelopment property or the collection or recovery  
25 of energy redevelopment revenues.

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1           B. A financing order may be amended on or after the  
2 date of issuance of energy redevelopment bonds authorized by  
3 the financing order at the request of the qualifying utility to  
4 commence a proceeding and issue an amended financing order  
5 that:

6                   (1) provides for refinancing, retiring or  
7 refunding all or a portion of an outstanding series of energy  
8 redevelopment bonds issued pursuant to the original financing  
9 order if the commission includes in the amended financing order  
10 the findings and requirements specified in Subsections E and F  
11 of Section 4 of the Energy Redevelopment Bond Act;

12                   (2) adjusts the amount of energy redevelopment  
13 costs to be financed by energy redevelopment bonds that have  
14 not yet been issued to reflect updated estimated or actual  
15 costs that differ from costs estimated at the time of the  
16 initial financing order; and

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

19           C. No change in the credit rating of a qualifying  
20 utility from the credit rating at the time of issuance of a  
21 financing order shall impair the irrevocability of a financing  
22 order.

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

25           A. A financing order is a final order of the

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

8 B. An aggrieved party may file a notice of appeal  
9 with the supreme court in accordance with Section 62-11-1 NMSA  
10 1978; provided that such notice shall be due no later than ten  
11 calendar days after denial of an application for rehearing or,  
12 if rehearing is not applied for, no later than ten calendar  
13 days after issuance of the financing order. The supreme court  
14 shall proceed to hear and determine the appeal as expeditiously  
15 as practicable and give the action precedence over all other  
16 civil cases.

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

19 A. A financing order shall remain in effect until  
20 the energy redevelopment bonds issued pursuant to the financing  
21 order have been paid in full and all financing costs relating  
22 to the energy redevelopment bonds have been paid in full.

23 B. A financing order shall remain in effect and  
24 unabated notwithstanding the bankruptcy, reorganization or  
25 insolvency of the qualifying utility or any non-utility

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1 affiliate or the commencement of any judicial or non-judicial  
2 proceeding for bankruptcy or for appointment of a receiver.

3 C. If energy redevelopment bonds issued pursuant to  
4 a financing order are outstanding and the related energy  
5 redevelopment costs and financing costs have not been paid in  
6 full, the energy redevelopment charges authorized to be imposed  
7 in the financing order shall be a part of all customer bills  
8 and be collected by the qualifying utility or its successors or  
9 assignees, or a collection agent, in full through a non-  
10 bypassable charge that is a separate line item on customer  
11 bills and separate and apart from the qualifying utility's base  
12 rates. The charge shall be paid by all customers:

13 (1) receiving transmission or distribution  
14 service from the qualifying utility or its successor or  
15 assignees under commission-approved rate schedules or special  
16 contracts; and

17 (2) who purchase electricity, including  
18 electricity received from distributed generation facilities  
19 owned or controlled by the customer or another non-utility,  
20 from an alternative or subsequent electricity supplier in the  
21 utility service area, to the extent that those purchases are  
22 permitted by New Mexico law.

23 SECTION 9. [NEW MATERIAL] LIMITATIONS ON JURISDICTION OF  
24 COMMISSION.--

25 A. If the commission issues a financing order, the

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

14 (1) affect the authority of the commission to  
15 apply the adjustment mechanism as provided in Section 5 of the  
16 Energy Redevelopment Bond Act;

17 (2) prevent or preclude the commission from  
18 investigating the compliance of a qualifying utility with the  
19 terms and conditions of a financing order and requiring  
20 compliance therewith;

21 (3) prevent or preclude the commission from  
22 imposing regulatory sanctions against a qualifying utility for  
23 failure to comply with the terms and conditions of a financing  
24 order or the requirements of the Energy Redevelopment Bond Act;  
25 or

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1 (4) prevent or preclude the commission from  
2 including the qualifying utility's investment in replacement  
3 power resources in the qualifying utility's cost of service.

4 B. The commission shall not order or otherwise  
5 require, directly or indirectly, a qualifying utility to issue  
6 energy redevelopment bonds to finance any costs associated with  
7 abandonment of a qualifying generating facility. A qualifying  
8 utility's election not to use energy redevelopment bonds shall  
9 not affect its right to recover the prudent and reasonable  
10 costs associated with the abandonment of a qualifying  
11 generating facility by the qualifying utility, including full  
12 recovery of undepreciated investment at the time of  
13 abandonment.

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

15 A. A qualifying utility shall use the proceeds of  
16 the issuance of energy redevelopment bonds for paying energy  
17 redevelopment costs and financing costs and to acquire  
18 utility-owned replacement resources and investments in other  
19 public utility property for inclusion in the rate base.

20 B. A qualifying utility for which a financing order  
21 has been issued shall annually provide to its customers a  
22 concise explanation of the energy redevelopment charges  
23 approved in a financing order, as modified by subsequent  
24 issuances of energy redevelopment bonds authorized under a  
25 financing order, if any, and by the adjustment mechanism as

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1 provided in Section 5 of the Energy Redevelopment Bond Act.  
2 The explanations may be made by bill inserts, website  
3 information or other appropriate means.

4 C. Energy redevelopment revenues shall be applied  
5 solely to the repayment of energy redevelopment bonds and  
6 financing costs.

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

20 SECTION 11. [NEW MATERIAL] ENERGY REDEVELOPMENT  
21 PROPERTY--ENERGY REDEVELOPMENT REVENUES.--

22 A. Energy redevelopment property that is created in  
23 a financing order shall constitute an existing, present  
24 property right, notwithstanding the fact that the imposition  
25 and collection of energy redevelopment charges depend on the

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1 qualifying utility continuing to provide electric energy or  
2 continuing to perform its servicing functions relating to the  
3 collection of energy redevelopment charges or on the level of  
4 future energy consumption. Energy redevelopment property shall  
5 exist whether or not the energy redevelopment revenues have  
6 been billed, have accrued or have been collected and  
7 notwithstanding the fact that the value or amount of the energy  
8 redevelopment property is dependent on the future provision of  
9 service to customers by the qualifying utility.

10 B. All energy redevelopment property created in a  
11 financing order shall continue to exist until the energy  
12 redevelopment bonds issued pursuant to a financing order are  
13 paid in full and the financing costs relating to the bonds have  
14 been paid in full.

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

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

20 (2) created for the limited purposes of  
21 acquiring, owning or administering energy redevelopment  
22 property or issuing energy redevelopment bonds under the  
23 financing order; or

24 (3) a combination of these purposes.

25 D. All or any portion of energy redevelopment

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1 property may be pledged to secure the payment of energy  
2 redevelopment bonds, amounts payable to financing parties and  
3 bondholders, amounts payable under any ancillary agreement and  
4 other financing costs.

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

17 F. If a qualifying utility defaults on any required  
18 payment of energy redevelopment revenues, a court with  
19 jurisdiction in the matter, on application by an interested  
20 party and without limiting any other remedies available to the  
21 applying party, shall order the sequestration and payment of  
22 the energy redevelopment revenues for the benefit of  
23 bondholders, any assignee and any financing parties. The order  
24 shall remain in full force and effect notwithstanding any  
25 bankruptcy, reorganization or other insolvency or receivership

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1 proceedings with respect to the qualifying utility or any non-  
2 utility affiliate.

3 G. Energy redevelopment property, energy  
4 redevelopment revenues and the interests of an assignee,  
5 bondholder or financing party in energy redevelopment property  
6 and energy redevelopment revenues are not subject to set-off,  
7 counterclaim, surcharge or defense by the qualifying utility or  
8 any other person or in connection with the bankruptcy,  
9 reorganization or other insolvency or receivership proceeding  
10 of the qualifying utility, any non-utility affiliate or any  
11 other entity.

12 H. Any successor to a qualifying utility shall be  
13 bound by the requirements of the Energy Redevelopment Bond Act  
14 and shall perform and satisfy all obligations of, and have the  
15 same rights under a financing order as, the qualifying utility  
16 under the financing order in the same manner and to the same  
17 extent as the qualifying utility, including the obligation to  
18 collect and pay energy redevelopment revenues to the person  
19 entitled to receive the revenues.

20 SECTION 12. [NEW MATERIAL] SECURITY INTERESTS--  
21 APPLICABILITY OF OTHER ACTS--CREATION OF SECURITY INTEREST--  
22 ATTACHMENT ON FILING WITH SECRETARY OF STATE--PRIORITY OVER  
23 OTHER LIENS.--

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

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1 in energy redevelopment property to secure the repayment of the  
2 principal of and interest on energy redevelopment bonds,  
3 amounts payable pursuant to an ancillary agreement and other  
4 financing costs are governed by this section. This section  
5 shall be deemed to provide alternatives to the provisions of  
6 the Uniform Commercial Code and Chapter 62, Article 13 of the  
7 Public Utility Act, which, to the extent the Uniform Commercial  
8 Code or that article is inconsistent with this section, are  
9 declared to be inapplicable to the Energy Redevelopment Bond  
10 Act.

11 B. The description or indication of energy  
12 redevelopment property in a transfer or security agreement and  
13 a financing statement is sufficient only if the description or  
14 indication refers to the Energy Redevelopment Bond Act and the  
15 financing order creating the energy redevelopment property.  
16 This section applies to all purported transfers of, and all  
17 purported grants of liens on or security interests in, energy  
18 redevelopment property, regardless of whether the related  
19 transfer or security agreement was entered into, or the related  
20 financing statement was filed, before or after the effective  
21 date of the Energy Redevelopment Bond Act.

22 C. A security interest in energy redevelopment  
23 property is created, valid and binding at the later of the time  
24 when:

- 25 (1) the financing order is issued;

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

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

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

21 E. A security interest in energy redevelopment  
22 property is a continuously perfected security interest and has  
23 priority over any other lien, created by operation of law or  
24 otherwise, that may subsequently attach to the energy  
25 redevelopment property unless the holder of the security

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1 interest has agreed in writing otherwise.

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

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

18 SECTION 13. [NEW MATERIAL] SALE OF ENERGY REDEVELOPMENT  
19 PROPERTY--PERFECTING INTERESTS--ABSOLUTE TRANSFER AND TRUE SALE  
20 REQUIREMENTS.--

21 A. Any sale, assignment or transfer of energy  
22 redevelopment property shall be an absolute transfer and true  
23 sale of, and not a pledge of or secured transaction relating  
24 to, the seller's right, title and interest in, to and under the  
25 energy redevelopment property if the documents governing the

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1 transaction expressly state that the transaction is a sale or  
2 other absolute transfer. A transfer of an interest in energy  
3 redevelopment property shall be created when:

4 (1) the financing order creating the energy  
5 redevelopment property has become effective;

6 (2) the documents evidencing the transfer of  
7 energy redevelopment property have been executed and delivered  
8 to the assignee; and

9 (3) value is received.

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

20 C. The characterization of the sale, assignment or  
21 transfer as an absolute transfer and true sale and the  
22 corresponding characterization of the property interest of the  
23 purchaser, shall not be affected or impaired by, among other  
24 things, the occurrence of any of the following factors:

25 (1) commingling of energy redevelopment

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1 revenues with other funds;

2 (2) the retention by the seller of:

3 (a) a partial or residual interest,  
4 including an equity interest, in the energy redevelopment  
5 property, whether direct or indirect, or whether subordinate or  
6 otherwise; or

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

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

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

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

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

18 (7) any subsequent order of the commission  
19 amending a financing order pursuant to Subsection B of Section  
20 6 of the Energy Redevelopment Bond Act; or

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

23 SECTION 14. [NEW MATERIAL] EXEMPTION FROM FEE

24 ASSESSMENTS.--The imposition, collection and receipt of an  
25 energy redevelopment charge shall be exempt from an assessment

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1 of a franchise fee imposed by a municipality, county or other  
2 political subdivision of the state and inspection and  
3 supervision fees assessed pursuant to the Public Utility Act.

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

18 SECTION 16. [NEW MATERIAL] ENERGY REDEVELOPMENT BONDS AS  
19 LEGAL INVESTMENTS.--Energy redevelopment bonds shall be legal  
20 investments for all governmental units, permanent funds of the  
21 state, finance authorities, financial institutions, insurance  
22 companies, fiduciaries and other persons requiring statutory  
23 authority regarding legal investments.

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

25 A. The state pledges to and agrees with the

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

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

17 SECTION 18. [NEW MATERIAL] LOCATION OF RESOURCE  
18 REDEVELOPMENT AFTER ABANDONMENT.--

19 A. A qualifying utility shall, within five years  
20 after abandonment of a qualifying generating facility, select  
21 sites for needed utility-owned replacement power resources that  
22 are located in the county in New Mexico where the abandoned  
23 qualifying generating facility is located if:

24 (1) replacement power resources located there  
25 maintain adequate system reliability; and

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1                   (2) the costs of locating replacement power  
2 resources there are less than the costs of locating them  
3 elsewhere plus the amount of the cost savings attributable to  
4 the use of energy redevelopment bonds.

5                   B. The commission shall grant certificates of  
6 public convenience and necessity for replacement power  
7 resources at those sites and allow full cost recovery in rates,  
8 except that the commission may determine that the particular  
9 resource proposed by the qualifying utility should not be  
10 approved and that, instead, an alternative utility-owned  
11 resource that meets the conditions of Subsection A of this  
12 section should be approved.

13                   C. In considering responses to requests for  
14 proposals for utility-owned replacement power resources  
15 pursuant to this section, a qualifying utility shall inform  
16 prospective contractors and subcontractors that it promotes and  
17 encourages the use of workers residing in New Mexico to the  
18 greatest extent practicable and shall take that use into  
19 consideration in evaluating proposals.

20                   SECTION 19. [NEW MATERIAL] CHOICE OF LAW.--The law  
21 governing the validity, enforceability, attachment, perfection,  
22 priority and exercise of remedies with respect to the transfer  
23 of an interest or right or creation of a security interest in  
24 any energy redevelopment property, energy redevelopment charge  
25 or financing order shall be the laws of the state of New Mexico

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1 as set forth in the Energy Redevelopment Bond Act.

2 SECTION 20. [NEW MATERIAL] CONFLICTS.--In the event of  
3 conflict between the Energy Redevelopment Bond Act and any  
4 other law regarding the attachment, assignment or perfection,  
5 or the effect of perfection, or priority of any security  
6 interest in or transfer of energy redevelopment property, the  
7 Energy Redevelopment Bond Act shall govern to the extent of the  
8 conflict.

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

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1           **SECTION 22. 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 23. 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.