

AN ACT

RELATING TO PUBLIC UTILITIES; ESTABLISHING THE RESTRUCTURE OF THE ELECTRIC UTILITY INDUSTRY; PROVIDING FOR CUSTOMER CHOICE IN THE SUPPLY OF ELECTRICITY; PROVIDING OPTIONS TO RURAL ELECTRIC COOPERATIVES AND MUNICIPAL UTILITIES; CREATING A FUND; PROVIDING PENALTIES; ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. SHORT TITLE.--This act may be cited as the "Electric Utility Industry Restructuring Act of 1999".

Section 2. FINDINGS AND PURPOSES.--

A. With respect to the Electric Utility Industry Restructuring Act of 1999, the legislature finds that:

(1) the generation and retail sale of electricity is becoming a competitive industry across the nation;

(2) retail electric customers in New Mexico should have the opportunity to benefit from competition in the electric generation markets and should have the choice to select their supplier of electricity;

(3) competition in the retail market for electricity is expected to provide long-term benefits for the economy of New Mexico, including the lowering of electricity prices, the creation of business opportunities, the improvement of energy efficiency and innovations in services and supply;

(4) to avoid burdening New Mexico streets, highways and landscapes with duplicate electric facilities,

the transmission and distribution of electricity should remain subject to the regulation of the public regulation commission, with public utilities obligated to deliver electricity from electric suppliers to customers in areas served;

(5) it is necessary and appropriate to allow distribution cooperative utilities and municipal utilities to participate in the restructured market in ways that differ from rules applicable to other participants that are not customer owned;

(6) public utilities currently provide and will provide in the future products and services in addition to electric supply, transmission and distribution service. To the greatest extent possible, products and services are and should be available from nonregulated providers in the competitive marketplace, including from nonregulated public utility affiliates;

(7) the public interest requires the continued protection of retail customers through the licensing of electric suppliers, the provision of information to customers regarding electric service, service reliability and quality and the availability of service for all retail customers;

(8) residential and small business customers are least likely to benefit from the restructuring of the electric industry and need special protection to help ensure their participation in any benefits of competition;

(9) electric public utilities have undertaken long-term investments in facilities in order to provide sufficient and reliable service to the public.

These actions may have created costs that will not be recoverable in a competitive market, and utilities should be permitted a reasonable opportunity to recover an appropriate amount of the costs incurred previously in providing electric service as well as costs that will be incurred in converting to the restructured scheme;

(10) protection of the state's environment and the promotion of renewable energy technologies are sensible endeavors that may be encouraged in the restructured electric industry; yet, after a reasonable period, assessment should be made to determine the usefulness, acceptability, benefits, including environmental and economic benefits, and the appropriateness of continuing financial promotion of renewable energy; and

(11) it is necessary to provide comprehensive implementing legislation to establish direction for all aspects of the restructuring of the electric utility industry in New Mexico.

B. The purposes of the Electric Utility Industry Restructuring Act of 1999 are to:

(1) provide a framework and time schedule for the restructuring of the electric industry to prepare for full competition in the energy supply and services segments of the electric industry;

(2) permit customer choice in the state on a phased basis to permit education of retail customers about choice and to permit utilities, suppliers and regulators to learn from their developing experiences in the competitive marketplace;

(3) state the policies of the legislature

regarding the recovery of stranded costs and transition costs;

(4) ensure that when customer choice of electric supply is offered that adequate safeguards and procedures are in place to maintain safe and reliable electric service;

(5) ensure that residential and small business customers are not unduly harmed by restructuring;

(6) require that customer information about customer choice be appropriate and adequate to ensure informed decisions by the state's citizens;

(7) ensure that all retail customers continue to be offered electric service; and

(8) protect the financial integrity of public electric utilities during the transition to a competitive marketplace.

Section 3. DEFINITIONS.--As used in the Electric Utility Industry Restructuring Act of 1999:

A. "ancillary services" means those services that are auxiliary to basic generation, transmission or distribution services, but are determined by the commission to be necessary for the provision of the basic generation, transmission or distribution service being provided;

B. "affiliate" means a person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, another person. Control includes the possession of the power to direct or cause the direction of the management and policies of a person, whether directly or indirectly, through the ownership, control or holding with the power to vote ten

percent or more of the person's voting securities;

C. "bundled service" means the combination of supply, distribution and transmission services provided to customers prior to customer choice;

D. "commission" means the public regulation commission or, before January 1, 1999, the New Mexico public utility commission;

E. "competitive power supplier" means any person offering competitive service to customers in the state, whether directly or as an intermediary or agent of the seller or purchaser;

F. "competitive service" means any supply service or energy-related service available to customers from multiple suppliers on an unregulated basis;

G. "customer" means a retail electric customer or consumer;

H. "customer choice" means the opportunity for an individual customer to purchase supply service or energy-related service from a competitive power supplier;

I. "distribution cooperative utility" means a utility with distribution facilities organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the Rural Electric Cooperative Act;

J. "distribution company" means a person who owns, operates, leases or controls distribution facilities for distribution of electricity to or for the public and is regulated by the commission;

K. "distribution facilities" means those facilities by and through which electricity is distributed to the customer and that are owned, operated, leased or

controlled by a distribution company;

L. "distribution service" means the regulated component of service provided by distribution facilities and includes ancillary services;

M. "energy-related service" means any competitive service that relates to or supports the provision of electric energy, but does not include supply service;

N. "generation and transmission cooperative" means a person with generation or transmission facilities either organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the Rural Electric Cooperative Act or organized in another state and providing sales of electric power to member cooperatives in this state;

O. "monopoly coercion" means any action by a public utility or affiliate of a public utility, including any action of employees, officers or directors of those companies that the company permits or condones, that causes a customer to reasonably believe that regulated or gas service will be impaired or diminished if that customer acquires competitive goods or services from a person other than an affiliate of the public utility, or causes a customer to reasonably believe that regulated service will be augmented or improved if that customer acquires competitive goods or services from an affiliate rather than from another person;

P. "municipal utility" means an electric utility owned or controlled by a municipal corporation organized pursuant to the laws of the state or a class A or an H class county;

Q. "non-discriminatory" means that no preference

or competitive advantage will be given to any person;

R. "open access" means non-discriminatory transmission and distribution services for the delivery of supply service by all competitive power suppliers to facilitate customer choice;

S. "person" means an individual, association, joint venture, organization, partnership, firm, syndicate, corporation, cooperative and any other legal entity;

T. "public utility" means any person or that person's lessee, trustee or receiver, not engaged solely in interstate business and except as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that now does or hereafter may own, operate, lease or control any plant, property or facility for regulated services to or for the public of electricity for light, heat or power or other uses , and includes a distribution company, a transmission company or both;

U. "regulated services" means bundled services prior to the date the involved class of service is granted customer choice pursuant to the Electric Utility Industry Restructuring Act of 1999; and, only standard offer, distribution and transmission services after customer choice begins, pursuant to that act, and in any event, after January 1, 2002;

V. "renewable energy" means electrical energy generated by means of a low- or zero-emissions generation technology that has substantial long-term production potential and may include, without limitation, solar, wind, hydropower, geothermal, landfill gas, anaerobically digested waste biomass or fuel cells that are not fossil fueled.

"Renewable energy" does not include fossil fuel or nuclear

energy;

W. "service customer" means a customer receiving supply service over a public utility's distribution cooperative utility's or municipal utility's distribution or transmission facilities in areas served by the utility;

X. "small business customer" means a customer that purchases less than two hundred thousand kilowatt-hours per year or at a demand level that does not exceed fifty kilowatts;

Y. "standard offer service" means supply service acquired and delivered by a public utility after December 31, 2000 to residential and small business customers that are eligible for customer choice after that date but do not elect to acquire their power supplies from the retail competitive marketplace; and as to a distribution cooperative utility, means supply service acquired and delivered by the distribution cooperative utility to residential and small business customers that either do not elect to acquire their supply service from a competitive power supplier or are not eligible to make such election pursuant to the terms of the Electric Utility Industry Restructuring Act of 1999;

Z. "stranded costs" means the net present value of the difference between:

(1) the regulated revenue requirements for all utility-generation-related functions, including purchased power, fuel contracts and lease and lease-related obligations, which as of the date of open access, were being recovered in rates, or if not previously recovered in rates, which the commission determines would be recoverable in



rates; and

(2) the revenues that could be earned from selling the same generation-related services as specified in Paragraph (1) of this subsection at competitive retail market rates pursuant to retail competition.

Regulated revenue requirements include all regulatory assets, net liabilities, deferred taxes, costs associated with construction, operation and decommissioning or removal from service of generation facilities, costs associated with purchased power, water and fuel contracts, lease and lease-related costs, gains or benefits to which ratepayers are entitled and all other accounting categories of costs and credits, including credit for taxes already recovered by the utility, recognized under cost-of-service regulation and attributable to the generation function of each utility. "Stranded costs" shall not include costs that are unreasonable, imprudent or mitigable or that have been determined to not be recoverable in rates. "Stranded costs" shall be calculated for the period ending when the useful lives for all generation assets or obligations of the particular utility existing on the effective date of the Electric Utility Industry Restructuring Act of 1999 are anticipated to expire. Retiring assets are presumed to be replaced at market prices;

AA. "supply service" means the unregulated electric energy or capacity component of electric service;

BB. "system benefits charges" means costs to benefit customers and the public that are collected and disbursed by a public utility or a distribution cooperative utility a municipal utility pursuant to law;

CC. "transition costs" means those prudent, reasonable and unmitigable costs other than stranded costs, not recoverable elsewhere under either federally approved rates or rates approved by the commission, that a public utility would not have incurred but for its compliance with the requirements of the Electric Utility Industry Restructuring Act of 1999 and regulations promulgated thereunder relating to the transition to open access, and the prudent cost of severance, early and enhanced retirement benefits, retraining, placement services, unemployment benefits and health care coverage to public utility nonmanagerial employees who are laid off on or before January 1, 2003, that are not otherwise recovered as a stranded salary and benefits cost. "Transition costs" shall not include costs that the public utility would have incurred notwithstanding the Electric Utility Industry Restructuring Act of 1999;

DD. "transition period" means that period of time during which a public utility is permitted to charge customers for stranded costs or transition costs;

EE. "transmission company" means a person who owns, operates, leases or controls transmission facilities for transmission of electricity to or for the public and is regulated by the commission;

FF. "transmission facilities" means those facilities that are used to provide transmission service as determined by the commission or the federal energy regulatory commission;

GG. "transmission service" means the regulated component of service provided by transmission facilities and

includes ancillary services; and

HH. "unbundled services" means the separation of electric power supply service into separate components, including supply, distribution and transmission services.

Section 4. IMPLEMENTATION OF CUSTOMER CHOICE--PRIOR PLANS AND APPROVALS--REVIEW BY COMMISSION.--

A. Except as provided in Sections 16 and 17 of the Electric Utility Industry Restructuring Act of 1999, customer choice service shall be available as follows:

(1) for public post-secondary educational institutions and public schools, as defined in Section 22-1-2 NMSA 1978, and for residential and small business customers on January 1, 2001; and

(2) for all other customers of electricity, on January 1, 2002.

B. A plan or approval for customer choice, disposition of stranded costs, preparation for open access or competitive supply service for a public utility granted by the commission between January 1, 1997 and December 31, 1998 may be reviewed by the commission, in conjunction with the Electric Utility Industry Restructuring Act of 1999. After notice and public hearing, the plan or approval shall be confirmed, rejected or modified by the commission on or before November 30, 1999. Modifications to a plan or an approval may be recommended by the commission, the public utility subject to the plan or approval or a party with standing.

C. A public utility having had a plan or approval granted by the commission after January 1, 1997 shall be subject to the requirements of the Electric Utility Industry

Restructuring Act of 1999 to the extent the requirements of that act are not inconsistent with the plan or approval, as confirmed, rejected or modified in accordance with Subsection B of this section.

D. The commission may delay customer choice and other dates established in the Electric Utility Industry Restructuring Act of 1999 by up to one year upon finding that an orderly implementation of customer choice cannot be accomplished without the delay.

Section 5. DELIVERY OF ELECTRIC SUPPLY.--A public utility or its successor in interest that provides electric service to a customer or a customer location before customer choice becomes available for that customer as provided in Section 4 of the Electric Utility Industry Restructuring Act of 1999 shall continue to provide distribution service or transmission service on a non-discriminatory basis to or for that customer or customer location.

Section 6. TRANSITION PLANS.--

A. A public utility shall file a transition plan that complies with the Electric Utility Industry Restructuring Act of 1999 with the commission no later than March 1, 2000 for commission approval on or before December 1, 2000. The transition plan shall include a detailed description of the public utility's:

(1) proposal and alternatives to separate its supply service and energy-related service assets from its distribution and transmission services assets pursuant to Section 8 of the Electric Utility Industry Restructuring Act of 1999;

(2) associated unbundled cost-of-service

studies and an explanation of all cost allocations made to the unbundled services;

(3) proposed methodologies to allow residential and small business customers to have customer choice without requiring additional end-use metering equipment;

(4) proposals to implement customer choice and open access;

(5) proposed standard offer service tariffs, exclusive of price terms that shall be incorporated prior to customer choice, for residential and small business customers that do not select a power supplier pursuant to customer choice eligibility;

(6) proposed competitive procurement process or other process for the selection of power supply for standard offer service tariffs, together with a proposed rate setting procedure. The initial procurement of power for standard offer service shall occur at least three months prior to customer choice, or earlier as determined by the commission, so that price terms can be the basis for determination of stranded costs;

(7) proposed tariffs for distribution service for customers and competitive power suppliers, and transmission service, either on file with a federal regulatory agency having jurisdiction or as proposed by the public utility;

(8) the projected amounts of stranded costs and transition costs sought to be recovered by the public utility;

(9) proposed non-bypassable wires charges

for recovery of transition costs and stranded costs allocated among customer classes;

(10) proposed system for the collection, recovery and accounting of the system benefits charge and stranded and transition costs through wires charges;

(11) proposed customer education programs, necessary computer hardware and software modifications and meter upgrades necessary to provide open access;

(12) proposed procedures for balancing, settlements and communications with competitive power suppliers; and

(13) any other information, documentation or justification requested by the commission.

B. The commission in making its determination of the amount of stranded costs to be recovered by a public utility in its transition plan filing shall order no less than fifty percent recovery of stranded costs. The commission may allow up to one hundred percent recovery of stranded costs only if it finds that recovery of more than fifty percent of stranded costs:

(1) is in the public interest;

(2) is necessary to maintain the financial integrity of the public utility;

(3) is necessary to continue adequate and reliable service by the public utility; and

(4) will not cause an increase in rates to residential or small business customers during the transition period.

C. The commission in quantifying stranded costs shall consider:

- (1) mitigation efforts and results;
- (2) reasonable methods for determining market valuations, including:
  - (a) the use of standard offer bid prices;
  - (b) appraisal by independent third-party professionals;
  - (c) a competitive bid sale for generation; and
  - (d) any other method designed to provide a reasonable valuation;
- (3) for residential and small business customers, that the standard offer bid price may reflect the current market value of supply service; and
- (4) that recoverable stranded costs must be fair and equitable to customers, utility investors and the public.

D. Before July 1, 2000, the commission shall approve the procurement procedure proposed by the public utility in its transition plan for the acquisition of supply service for standard offer service. On or before September 1, 2000, a public utility shall update its pending transition plan filing by providing the price of supply service procured for standard offer service pursuant to the procurement procedure approved by the commission. The approval of stranded costs to be recovered from the residential and small business classes shall be made after the public utility has contracted to procure power for the standard offer, but prior to December 1, 2000.

E. After notice and public hearing, the

commission shall issue a final order approving or modifying a public utility's transition plan, including tariffs for just and reasonable rates for distribution service, transmission service, subject to federal jurisdiction, and standard offer services. All interested parties shall be afforded an opportunity to participate and be heard on any matter contained in a transition plan filing. The commission may initiate an inquiry into an approved transition plan's implementation and operation, if the public interest requires.

Section 7. RECOVERY OF TRANSITION AND STRANDED COSTS--  
OPPORTUNITIES AND LIMITS.--

A. The commission shall determine the non-bypassable wires charges for the recovery of transition costs and stranded costs as described in Section 6 of the Electric Utility Industry Restructuring Act of 1999.

B. As to stranded cost recovery, the non-bypassable wires charge established shall:

(1) be calculated to begin on the eligibility date of customer choice for each customer class;

(2) not extend longer than five years thereafter, provided that the commission may separate nuclear decommissioning for recovery over a longer period of time through a separate wires charge if it determines that such recovery is in the public interest; and

(3) shall be equitably designed in a competitively neutral manner that ensures that the class pays no more than the stranded costs associated with that class.

C. In its approval of a transition plan provided



for in Section 6 of the Electric Utility Industry Restructuring Act of 1999, the commission shall determine a non-bypassable wires charge for recovery of transition costs through December 31, 2007, after which date further transition charges shall not be recoverable through a separate wires charge.

D. The commission or the public utility may seek to consider and modify or continue the wires charge established to achieve collection of the transition costs. If an over-collection of transition costs is determined by the commission to have occurred, a wires credit shall be applied to customers' bills to return the over-collection of transition costs in an amount and for such time as the commission may determine.

E. Nothing in the Electric Utility Industry Restructuring Act of 1999 is intended to affect the ability of a public utility to recover wholesale stranded costs, including stranded costs recovered from wholesale customers under contract.

F. Nothing in the Electric Utility Industry Restructuring Act of 1999 shall be interpreted to require the commission to make any order involving rates or wires charges that would result in a public utility losing its eligibility:

(1) for accelerated depreciation or other tax benefits for federal income tax purposes; or

(2) to exclusively use external sinking fund methods for decommissioning obligations pursuant to federal guidelines.

SEPARATION OF REGULATED FROM COMPETITIVE FUNCTIONS--  
PROHIBITIONS AGAINST CROSS-SUBSIDIES, DISCRIMINATION AND  
ANTI-COMPETITIVE ACTIONS--DECLARATION REGARDING ANTITRUST  
ACTIONS.--

A. The Electric Utility Industry Restructuring Act of 1999 does not require nor shall it be construed to require nor shall the commission require a public utility to divest itself of any of its assets owned, leased or in which an interest is held, owned or leased on the effective date of that act.

B. Before January 1, 2001, a public utility shall separate into at least two corporations, separating supply service and energy-related service consisting of generation and power supply facilities, operations and services and energy-related facilities, operations and services that are to be made available to the public pursuant to the Electric Utility Industry Restructuring Act of 1999 on a competitive unregulated basis from transmission and distribution services consisting of transmission facilities, operations and service, distribution facilities, operations and service and customer billing and metering that are to be made available to the public pursuant to that act on a regulated basis.

C. Corporate separation of regulated from unregulated services shall be accomplished by either the creation of separate affiliated companies that may be owned by a common holding company, through the creation of separate non-affiliated corporations or through the sale of assets to one or more third parties. A public utility may provide all competitive and ancillary services within a

single unregulated company and provide all non-competitive and ancillary services within a separate regulated company. Unregulated service shall not be provided by a regulated company.

D. Prior to customer choice pursuant to the Electric Utility Industry Restructuring Act of 1999, the commission shall adopt codes of conduct applicable to public utilities that shall contain provisions that:

(1) prevent undue discrimination in favor of affiliates;

(2) prevent any anti-competitive practices that could harm competition in any market for competitive services, including practices that unfairly impede a customer from self-generating a portion of his supply service requirements;

(3) grant customers and their competitive power suppliers access to a public utility's retail distribution and transmission facilities on a non-discriminatory basis at the same rates, terms and conditions of service of use by the public utility and its affiliates;

(4) prevent the disclosure of any individual customer information to any person, including an affiliate unless the customer provides written consent except as otherwise directed in a rulemaking by the commission;

(5) prevent the disclosure of any aggregated customer information to any person, including an affiliate, unless the same information is timely made available on the same basis to all competitors;

(6) require that any person, including an

affiliate, possessing customer information obtained in a manner contrary to Paragraphs (4) and (5) of this subsection shall make no commercial use of the information and either destroy the information or return it to the public utility;

(7) provide that transactions between a public utility and an affiliate do not involve any subsidies between them and do not jeopardize reliability of the electric system, including its interconnections; and

(8) prevent an affiliate from identifying its affiliation with the public utility unless the affiliate also discloses in a reasonable manner that it is neither the same company as the public utility nor is it regulated by the commission.

E. A public utility shall not subsidize competitive services provided by an affiliate. A public utility shall file with the commission a statement of policy and procedure, consistent with the commission's codes of conduct and subject to commission approval, to avoid any subsidy to an affiliate. The statement of policy and procedure shall:

(1) describe the separation of services made pursuant to Subsection B of this section; and

(2) describe the safeguards instituted to prevent the sharing with an affiliate of employees, goods, services or facilities, except that common costs for essential corporate-wide services shall be allocated between the public utility and affiliates to reflect the proportional benefit that the public utility receives from those services compared to the affiliates receiving the services, and provided that a public utility may purchase

goods, services or facilities from an affiliate if the items cannot be provided internally or obtained from an independent person at an equal or lower price or other factors such as quality or service that justify a higher purchase price. The commission may promulgate rules regarding the transfer of employees, provided that the commission shall not require or approve a policy or procedure that interferes with an employee's ability to apply for and be considered for a position of his choice.

F. A public utility shall not coerce or entice, either by act or omission, a customer to purchase the goods or services of an affiliated unregulated company over the goods or services of its competitors.

G. A public utility shall not engage in monopoly coercion. Complaints alleging monopoly coercion may be filed with the commission or district court and, if filed, shall be placed at the head of the docket; and after notice and hearing, shall be resolved expeditiously. Filing a complaint for monopoly coercion with the commission pursuant to this section neither precludes nor excludes other remedies available pursuant to law and is not a prerequisite for seeking relief otherwise available. The attorney general shall have standing on behalf of consumers to file a complaint initiating or to intervene in a case before the commission alleging monopoly coercion.

H. If the commission finds and orders that monopoly coercion has occurred, after notice and hearing, the commission may fine the public utility or its affiliate or issue such cease and desist orders as are deemed necessary in accordance with the Electric Utility Industry

Restructuring Act of 1999. Attorney fees and costs shall be awarded to a prevailing complainant. If the defendant prevails, attorney fees and costs shall be awarded upon a commission finding that the complaint was either frivolous or made in bad faith.

I. The state and all regulatory bodies and agencies acting pursuant to state policy do not supervise or condone any actions of a competitive power supplier or monopoly coercion activities of a public utility that are or would be unlawful pursuant to the Antitrust Act or any federal antitrust act. The provisions of Section 57-1-16 NMSA 1978 are not a defense to an antitrust violation or monopoly coercion charge against a competitive power supplier or monopoly coercion charge against a public utility.

J. Public utilities that provide both electricity and natural gas distribution services shall not be required to functionally separate their electric and gas transmission, transportation and distribution operations from each other, and any rule or order to the contrary is void and to no force and effect; and provided that any regulated natural gas distribution operations operated within the same legal entity as regulated electric operations shall be subject to Subsections E and G of this section; and provided further that nothing in this section shall prevent a combined gas and electric distribution company from selling the natural gas commodity to customers pursuant to tariffs approved by the commission.

K. Nothing in this section shall be construed to require any commission act or order prior to filing an

action pursuant to the Antitrust Act or any federal antitrust act or to limit the authority of the attorney general granted in the Antitrust Act.

Section 9. COMPETITIVE POWER SUPPLIERS--LICENSE APPLICATION AND REVOCATION.--

A. A competitive power supplier shall file an application with, and obtain a license from, the commission before offering competitive services for sale to customers in the state.

B. Prior to receiving a license in the state, a competitive power supplier shall file a report with the commission, with information and in a form prescribed by the commission, disclosing activities and operations and those of any affiliate related to its supply service in this state.

C. Any person applying for a competitive power supplier license shall:

(1) disclose its name, owners, business addresses and telephone numbers in the state, and if a corporation, its directors and officers;

(2) execute, by a person authorized to do so, an affidavit authorizing or reflecting the authorization of the competitive power supplier to a statutory agent of the competitive power supplier to accept service of process in the state, accompanied by an acceptance of such designation by the statutory agent;

(3) execute, by a person authorized to do so, an agreement to compensate the state for any applicable taxes for sales to customers in the state;

(4) execute, by a person authorized to do

so, an agreement that all electricity sold to a customer in the state shall be delivered to that customer;

(5) provide proof of financial integrity and a demonstration of adequate supply with reserve margins or the ability to obtain adequate reserve margins;

(6) post a bond, the financial security equivalent of a bond or other adequate financial assurances acceptable to the commission to cover system costs in the event the licensee fails to provide supply service in accordance with its obligations;

(7) execute, by a person authorized to do so, an agreement to comply with and be bound by the rules promulgated by the commission applicable to competitive power suppliers and supply service in the state;

(8) demonstrate capability to meet all obligations undertaken or assumed, for and on behalf of its customers, so that supply service is available, reliable and deliverable on a real-time basis;

(9) execute, by a person authorized to do so, an agreement to produce documents or other records to support any filings, reports or agreements required by the commission and to support any representations made to the commission or customers if required to do so by the commission;

(10) execute, by a person authorized to do so, an agreement to compensate a distribution or transmission company that provides open access for delivery of supply service to a customer of the competitive power supplier for shortfalls in supply service pursuant to rules promulgated by the commission; and



(11) submit a proposal for renewable energy supply service options to customers.

D. An application for a license is deemed approved within forty-five days of its filing with the commission, unless the commission, in its discretion, extends the approval period for thirty days or rejects the application before it is deemed approved. If rejected, the commission shall state its reasons for the rejection and may identify corrective measures to overcome the deficiencies causing the rejection.

E. Thirty days before offering any sales of competitive services in the state, a competitive power supplier shall:

(1) provide all public utilities with copies of its application and license; and

(2) publish a copy of its license in a newspaper of general circulation in each county of the state in which it intends to offer competitive service.

F. The commission shall promulgate rules governing competitive electric suppliers for the protection of customers, including:

(1) required disclosures to a potential customer of unbundled prices, generation sources and fuel mix, associated emissions, gross receipts taxes, franchise fees and any other charges;

(2) fair and reasonable marketing and sales practices, including truthful advertising and disclosure practices; and

(3) an expeditious procedure before the commission to resolve a dispute between a customer and a

competitive power supplier regarding compliance with commission rules applicable to competitive power suppliers.

G. After a hearing initiated on the commission's own investigation or upon the complaint of an affected party, the commission may revoke or suspend the license of or impose a penalty on a competitive power supplier, or both, if it is established that just cause for the revocation, suspension or penalty imposition exists because the competitive power supplier:

(1) knowingly provided false information to the commission;

(2) switched or caused to be switched the supply service of a customer without first obtaining the customer's informed written permission;

(3) failed to provide reasonably adequate supply service for its customers in the state;

(4) committed fraud or knowingly engaged in an unfair or deceptive trade practice;

(5) is a delinquent taxpayer as to any New Mexico tax;

(6) engaged in anti-competitive conduct; or

(7) violated any other law or commission rule or order.

H. Any person selling or offering to sell competitive services in this state in violation of any provision of the Electric Utility Industry Restructuring Act of 1999 is subject to license revocation or suspension in addition to any administrative, civil or criminal fines or penalties imposed pursuant to that act or pursuant to other law. Nothing in that act shall be construed to limit a

person's rights pursuant to the Unfair Practices Act or to require exhaustion of remedies before bringing an action pursuant to that act.

Section 10. DISTRIBUTION SERVICE--STANDARD OFFER SERVICES.--

A. Distribution service is subject to the jurisdiction and authority of the commission.

B. Each public utility providing distribution service shall:

(1) file and maintain tariffs providing rates and service conditions for distribution service available to competitive power suppliers, transmission companies and customers on a non-discriminatory basis;

(2) plan, build and maintain distribution facilities or ensure that facilities are planned, built and maintained;

(3) prudently acquire and deliver standard offer service in accordance with the transition plan filed and approved in accordance with Section 6 of the Electric Utility Industry Restructuring Act of 1999;

(4) at the discretion and direction of the commission, prudently arrange for back-up and emergency supply service; and

(5) provide billing and metering services and other ancillary services as approved by the commission to customers and competitive power suppliers pursuant to commission-regulated prices, terms and conditions of service.

C. Standard offer service is subject to the jurisdiction and authority of the commission.

Section 11. TRANSMISSION SERVICE.--

A. Transmission service is subject to the jurisdiction and authority of the commission and shall be provided in a non-discriminatory manner pursuant to transmission service tariffs approved by the commission to the extent permitted by federal law or the federal energy regulatory commission.

B. If transmission service is not operated in a manner that the commission determines to be in the public interest, the commission shall take all necessary actions within its jurisdiction to ensure that reliable and non-discriminatory transmission service is provided to and for customers.

Section 12. CUSTOMER EDUCATION AND PROTECTIONS.--

A. The commission shall conduct customer education efforts necessary to enable customers to make informed decisions about customer choice. The commission may require the inclusion of educational materials in bills or other mailings regularly made to service customers by a public utility.

B. It is unlawful pursuant to the Electric Utility Industry Restructuring Act of 1999 for any person to:

(1) change, direct another person to change or participate in processing a change in a customer's supply service provider without the customer's authorization; or

(2) charge, direct another person to charge or participate in processing a charge for any product or service through a customer's public utility bill for any unregulated service without the customer's authorization.

C. A person may file a complaint regarding a violation of Subsection B of this section with the commission. Complaints shall be placed at the head of the docket and shall be resolved expeditiously. Any person found to have violated any provision of Subsection B of this section shall be subject to imposition of fines in accordance with the Electric Utility Industry Restructuring Act of 1999 and to appropriate cease and desist orders. The commission may award attorney fees and costs to prevailing parties.

D. The commission shall not permit an action or transaction that results or could result in a violation of Subsection B of this section.

E. As used in this section, "authorization" means a letter of agency separate from any sales or solicitation material that contains, in clear and conspicuous language, a full and complete description of the change in supply service provider, and any product or service to be charged to the customer's bill. The letter of agency shall contain, in clear and conspicuous language, a full and complete description of the rates, fees and charges associated with the new supply service provider and the product or service to be charged to the bill. The letter of agency shall be signed by the customer before any change may be made in a customer's supply service provider, or any charge for any unregulated product or service may be placed on a customer's bill.

F. Any customer authorization that does not comply with the requirements of this section shall be void and without effect.

G. No person shall use any sweepstakes, contest or drawing of any kind to obtain a customer's authorization to change a customer's supply service provider or to charge for any product or service on a customer's bill.

H. The commission may adopt rules as necessary to provide further customer protections.

Section 13. SYSTEM BENEFITS CHARGE--RECOVERY.--A "system benefits charge" in the amount of three hundredths of one cent (\$.0003) per kilowatt-hour is created and imposed on all retail kilowatt-hour sales in the state billed by public utilities, municipal utilities and distribution cooperative utilities beginning January 1, 2002. On January 1, 2007, the system benefits charge shall increase to six-hundredths of one cent (\$.0006) per kilowatt-hour. The commission shall eliminate any portion of the system benefits charge that is not being used for the purposes specified in Section 15 of the Electric Utility Industry Restructuring Act of 1999. The system benefits charge shall be separately identified on bills rendered to customers beginning on January 1, 2002.

Section 14. WIRES CHARGES--COLLECTION--ACCOUNTING--PREPAYMENT.--

A. Wires charges assessed on a per kilowatt-hour basis for stranded costs, transition costs and the system benefits charge shall be paid by each customer to the public utility, and as to the system benefits charge only to the distribution cooperative utility or a municipal utility. Revenues collected as the system benefits charge shall be paid to the electric industry system benefits fund and distributed in accordance with the provisions of Section 15

of the Electric Utility Industry Restructuring Act of 1999.

B. Notwithstanding any other provision of the Electric Utility Industry Restructuring Act of 1999 and subject to the requirements of this subsection, a customer of a public utility shall be allowed to pay a fee equal to the net present value of stranded cost charges to be assessed to that customer. Any prepayment of stranded costs must be completed prior to the date of customer choice for that customer and shall take into account expected growth for that customer based upon historical usage. Disputes as to the amount of the payment required pursuant to this subsection shall be presented to the commission no later than ninety days prior to the applicable customer choice date and shall be resolved by the commission thirty days prior to that date. Prepayment of stranded costs shall be for the benefit of the service location for which the payment is determined and shall not transfer with a customer to a different or additional service location.

Section 15. ELECTRIC INDUSTRY SYSTEM BENEFITS FUND  
CREATED--SUPPORT FOR ADMINISTRATION AND CUSTOMER  
INFORMATION, LOW-INCOME CUSTOMERS AND RENEWABLE TECHNOLOGY.-

A. The "electric industry system benefits fund" is created and consists of money collected as a wires charge assessed on a three-hundredths-of-one-cent (\$.0003) per kilowatt-hour basis as the system benefits charge collected monthly and paid quarterly to the department of environment. No other money shall be deposited or paid in the electric industry system benefits fund. Interest or other earnings from investment or deposit of the fund shall be credited to

the fund. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall be transferred to the general fund.

B. Money in the electric industry system benefits fund is appropriated to the department of environment solely for the purpose of disbursing money to authorized recipients for authorized purposes as described in Subsection D of this section. Disbursements from the fund shall be made upon certification by the secretary of environment that the disbursement is for a payment authorized by Section 15 of the Electric Utility Industry Restructuring Act of 1999.

C. The department shall promulgate rules establishing the application procedure and required qualifications of projects, including a person or business that may attempt to participate, contract or join with an authorized recipient in applying for a disbursement from the fund. The department may periodically accept applications for disbursement from the fund and shall prioritize the acceptable applications considering:

(1) the contribution the project offers to the knowledge of and potential commercialization of the renewable energy;

(2) the geographic area of the state in which the project is to be conducted in relation to other projects;

(3) the cost of the project and the relative contribution of the disbursement sought from the fund to the total cost of the project; and

(4) in the case of a project of a school district, the number and involvement of students in the



project.

D. The department shall manage, administer and maintain the fund in the following manner and for the following purposes:

(1) no more than one hundred thousand dollars (\$100,000) annually to the department for administration of the fund;

(2) five hundred thousand dollars (\$500,000) annually to the commission for consumer education and information, and for administration of the Electric Utility Industry Restructuring Act of 1999;

(3) no less than five hundred thousand dollars (\$500,000) annually for low-income energy assistance through the federal low-income housing energy assistance project to be expended for that project's weatherization program administered by the New Mexico mortgage finance authority or for other low-income energy assistance authorized and administered by the state;

(4) no more than four million dollars (\$4,000,000) annually to encourage the use of renewable energy through the initiation, development and evaluation of renewable technology projects authorized and directed by public post-secondary educational institutions or a school district in conjunction with the education of its students or by the governing body of an incorporated city, town or village or a county, each in conjunction with the respective governing body's interest in protecting the environment and reducing the city's or county's utility costs; and

(5) no more than four million dollars (\$4,000,000) to the governing body of a community or Indian

nation, tribe or pueblo, where limited or no electric service is available, to develop electric service through the initiation and implementation of new projects, including those using renewable energy, to provide or extend electric service in low-income communities.

E. The department shall submit to the legislative finance committee prior to each regular legislative session a report on disbursements made from the fund to include, at a minimum:

- (1) a list of recipients receiving disbursements;
- (2) the amount of each disbursement;
- (3) the date of each disbursement;
- (4) a description of each project or expansion funded with a disbursement;
- (5) a description of each project's contribution to the state's knowledge and use of renewable energy and developing technologies; and
- (6) a description of the expansion of electric service in the state.

Section 16. DISTRIBUTION COOPERATIVE UTILITIES.--

A. Notwithstanding any other provisions of the Electric Utility Industry Restructuring Act of 1999, this section governs distribution cooperative utilities and generation and transmission cooperatives with respect to the Electric Utility Industry Restructuring Act of 1999.

B. A generation and transmission cooperative may provide power and energy to its members and shall be subject to regulation by the commission pursuant to the Public Utility Act. A generation and transmission cooperative

shall not provide supply service at retail unless it is a licensed competitive power supplier and provides open access in accordance with the Electric Utility Industry Restructuring Act of 1999.

C. A distribution cooperative utility is not a public utility for the purposes of the Electric Utility Industry Restructuring Act of 1999. A distribution cooperative utility, however, remains subject to the jurisdiction and authority of the commission to the same extent it was regulated by the commission prior to the effective date of that act.

D. To the extent that it elects a business method option pursuant to Subsection I of this section other than load aggregator, a distribution cooperative utility shall file a business method plan with the commission within sixty days of the election that shall include the following:

(1) the business method option elected, the method of election and other relevant authorizations and approvals of the option;

(2) the costs, liabilities and investments that the distribution cooperative utility seeks to recover from customers who choose supply service other than from the distribution cooperative utility;

(3) the amount of the costs, liabilities and investments and the methodologies used by the distribution cooperative utility to determine the amount of costs, liabilities and investments that the distribution cooperative utility reasonably expected to recover through rates if bundled service had continued, reduced by the results of appropriate mitigation efforts taken by the

distribution cooperative utility to offset the costs, liabilities and investments;

(4) the methodologies by which the distribution cooperative utility shall compute an exit fee or a non-bypassable non-discriminatory charge for customers choosing a competitive power supplier to provide supply services;

(5) a description of the implementation and operation of the business method option, the period during which it is estimated to be implemented, the customer information and notification that the distribution cooperative utility intends to provide to its service customers; and

(6) tariffs for service to its service customers, including either exit fees or non-bypassable non-discriminatory charges to seek to recover costs, liabilities and investments sought to be recovered due to the change from bundled to unbundled service.

E. The business method plan is deemed approved by the commission within six months after the date of its filing, unless after notice and hearing, the commission either rejects or modifies the business method plan filing.

F. Notwithstanding the business method option elected by the distribution cooperative utility, the distribution cooperative utility shall:

(1) make standard offer service, as approved by the commission, available to its residential and small business customers;

(2) provide distribution service to its service customers; and

(3) not provide or permit a competitive advantage to a competitive power supplier.

G. A distribution cooperative utility organized pursuant to the laws of another state and providing bundled services in this state on the effective date of the Electric Utility Industry Restructuring Act of 1999 to not more than twenty percent of its total customers may file an application with the commission seeking approval of its election to be governed by the laws related to electric restructuring of the state where organized. The commission shall approve the application if the distribution cooperative utility:

(1) does not provide supply service to other than its service customers in this state; and

(2) remains subject to the jurisdiction and authority of the commission for bundled service provided in this state.

H. On or before January 1, 2002, a distribution cooperative utility shall elect through its board of trustees a business method of providing supply service to its service customers from the options described in Subsection I of this section. The chosen business method may be implemented over a three-year period or less, after commission approval. The distribution cooperative utility shall not:

(1) transmit supply service over its facilities for competitive power suppliers to any service customer, except in accordance with provisions of a business method plan approved by the commission; or

(2) convert or permit the conversion of a

retail service delivery point on its system to a wholesale service delivery point without the approval of the commission.

I. A distribution cooperative utility may elect to provide service to its service customers using one of the following business methods of supply service:

(1) load aggregator method, pursuant to which the distribution cooperative utility:

(a) shall acquire and provide supply service;

(b) may aggregate its customers by class or otherwise;

(c) shall provide supply, transmission and distribution services; and

(d) shall remain subject to regulation by the commission to the same extent as it was regulated prior to the effective date of the Electric Utility Industry Restructuring Act of 1999 and its election;

(2) customer-directed supplier, pursuant to which a retail customer may select a competitive service provider from a list of competitive supply service proposals obtained by the distribution cooperative utility. The distribution cooperative utility shall determine the competitive supply service proposals that will be offered to customers by competitive power suppliers pursuant to non-discriminatory rules adopted by the distribution cooperative utility and approved by the commission;

(3) customer class direct access, pursuant to which one or more classes of retail customers satisfying criteria determined by the distribution cooperative utility

and approved by the commission may contract directly with a competitive power supplier. A criteria established for class eligibility may be expanded to permit greater eligibility for customer class direct access, subject to commission approval. The distribution cooperative utility shall not be obligated to supply service or identify potential supply services for customer class direct access customers; and

(4) direct access, pursuant to which all retail customers may contract with a competitive power supplier for supply service and the distribution cooperative utility distributes power from the competitive power supplier's delivery point on its system to the retail customer's premises. Direct access shall be provided in a non-discriminatory manner. The distribution cooperative utility shall not be obligated to supply service or identify potential supply services for direct access customers.

J. A distribution cooperative utility may set a reasonable exit fee or a non-bypassable non-discriminatory charge to recover costs, liabilities and investments that would have reasonably been recovered, if not mitigated, pursuant to cost-of-service ratemaking for bundled service. An exit fee or a non-bypassable non-discriminatory charge may be assessed to a customer eligible to select and selecting supply service other than from the distribution cooperative utility's standard offer service or otherwise.

K. Distribution cooperative utilities shall notify their customers within twelve months after the effective date of the Electric Utility Industry Restructuring Act of 1999 concerning the terms of this

section and other applicable terms of that act. A distribution cooperative utility electing an option of conducting its business other than as a load aggregator shall inform its service customers of the major impacts of the customer choices available pursuant to the elected option.

L. Nothing in the Electric Utility Industry Restructuring Act of 1999 shall be deemed:

(1) to require a distribution cooperative utility to do any act that might result in the loss of its exemption from income taxes; or

(2) to apply to, interfere with, abrogate or change the rights of a party under a wholesale power supply, mortgage or other financing agreement to which a distribution cooperative utility is a party.

Section 17. MUNICIPAL UTILITIES.--

A. This section governs municipal utilities in relation to the Electric Utility Industry Restructuring Act of 1999. Except as provided in Subsection E of this section, a municipal utility is neither a public utility, a distribution company nor a transmission company pursuant to the Electric Utility Industry Restructuring Act of 1999.

B. Except for a municipality authorized to condemn facilities pursuant to Subsections E and F of Section 3-24-1 NMSA 1978, which is deemed to have chosen to participate in customer choice for its service customers effective January 1, 2002, a municipal governing body is authorized to elect whether and when its municipal utility participates in customer choice and open access for competitive services to its service customers. A municipal



governing body is authorized to elect whether and when its municipal utility participates in customer choice and open access to offer supply service and competitive services to customers in addition to its service customers. A decision by a municipal governing body to participate in customer choice and open access for its service customers only or its service customers and other customers at any time after January 1, 2002 shall be made by the adoption of an appropriate ordinance or resolution, which decision once made is thereafter irrevocable. A municipal utility may not participate in customer choice or open access for customers other than its service customers unless and until its service customers are eligible for customer choice with open access available to fulfill a customer's choice of supply service.

C. If a municipal governing body elects not to participate in customer choice and open access, its municipal utility shall be regulated by the commission to the same extent as it was regulated prior to the effective date of the Electric Utility Industry Restructuring Act of 1999 and shall not offer any service to retail customers other than to its service customers.

D. A municipality deemed by the provisions of Subsections E and F of Section 3-24-1 NMSA 1978 to have elected to participate in customer choice for its service customers or any other municipality that elects by its governing body to participate in customer choice and open access for its service consumers, shall, by its municipal governing body:

(1) establish rates, terms and conditions

pursuant to which the municipal utility shall provide open access over its distribution facilities and unbundled services to its service customers, including standard offer service;

(2) provide open access on a non-discriminatory, competitively neutral basis pursuant to terms and conditions comparable to that applied to itself;

(3) establish procedures for complaint to and hearing by the municipal governing body by any person aggrieved by the terms and conditions and operation of open access to the distribution facilities of the municipal utility. Decisions of the municipal governing body may be appealed by an aggrieved person to the district court in the district where the municipal utility is located;

(4) not provide or permit a competitive advantage to a competitive power supplier; and

(5) regulate its operation and service to its service customers.

E. When a municipal governing body elects for its municipal utility to provide competitive service to a customer other than its service customers, the municipal utility becomes and shall be subject to the applicable provisions of the Electric Utility Industry Restructuring Act of 1999 to the extent competitive service is to be made available by the municipal utility to customers other than its service customers.

F. A municipal governing body shall notify the service customers of its municipal utility of the Electric Utility Industry Restructuring Act of 1999 and its specific terms applicable to municipal utilities.

G. Nothing in the Electric Utility Industry Restructuring Act of 1999 impairs the tax-exempt status of municipalities and municipal utilities.

H. For purposes of this section, "municipal governing body" means a commission, council or other entity vested with the power to control the management and operation of the municipal utility, in accordance with law.

Section 18. FRANCHISE FEES--GROSS RECEIPTS TAX--TAX REVENUES ANALYSIS.--

A. A franchise fee charge shall be stated as a separate line entry on a public utility's or distribution cooperative utility's bills and shall only be recovered from customers located within the jurisdiction of the government authority imposing the franchise fee.

B. Any gross receipts taxes collected on electric service received by retail customers in the state shall be stated as a separate line entry on a bill for electric service sent to the customer by a public utility or distribution cooperative utility.

C. The New Mexico legislative council shall annually through January 1, 2002, refer to the revenue stabilization and tax policy committee questions and issues related to the amount of state and local tax revenues derived from previously regulated electric utility service and property and report to the legislature annually on the changed impact to state and local government tax revenues resulting from restructuring and competition in the electric industry.

D. On or before January 1, 2003, the revenue stabilization and tax policy committee shall recommend

legislative changes, if any, to establish comparable state and local taxation burdens on all market participants in the supply of electricity considering the impacts and changes that have resulted from the restructure and competition in the electric industry in the state.

Section 19. COMMISSION EXAMINATIONS.--

A. To ensure an orderly and equitable restructuring of the electric utility industry in this state and to achieve the purposes outlined in Section 2 of the Electric Utility Industry Restructuring Act of 1999, the legislature hereby directs the commission to further examine:

- (1) standard offer;
- (2) consumer education and protection;
- (3) safety, reliability, quality and performance standards for competitive power suppliers and distribution and transmission facilities;
- (4) the presence of market power, its impacts on the restructure of the electric industry and methods available to limit or eliminate its adverse impacts;
- (5) alternative operations and regulations, including an independent system operator;
- (6) regional transmission and governance efforts, both public and private, and the advisability of regional cooperation by the state;
- (7) emergency and back-up service;
- (8) the advisability and desirability of requiring renewable energy portfolio standards in supply service offered to customers in the state; and
- (9) how power may be procured from on-site

generation facilities, including facilitating net metering.

B. The commission shall report on its examinations to the legislature by December 1 of each of the three years following the effective date of the Electric Utility Industry Restructuring Act of 1999 and thereafter as necessary and provide its recommendations for further legislative changes or direction.

Section 20. RULEMAKING.--The commission is authorized to promulgate rules necessary to implement its authority and the directives granted in the Electric Utility Industry Restructuring Act of 1999.

Section 21. ADMINISTRATIVE FINES.--

A. The commission may impose an administrative fine on any person subject to regulation or licensure pursuant to the Electric Utility Industry Restructuring Act of 1999 for any act or omission that the person knew or should have known was a violation of any provision of that act or rule or order of the commission.

B. An administrative fine of not less than one hundred dollars (\$100) nor more than two million dollars (\$2,000,000) may be imposed for each violation. Each day of a continuing violation shall be considered a separate violation.

C. The commission shall initiate a proceeding to impose an administrative fine by giving written notice to the person that the commission has facts as set forth in the notice that, if not rebutted, may lead to the imposition of an administrative fine under this section, and that the person has an opportunity for a hearing.

D. The commission may initiate a proceeding to

impose an administrative fine within two years from the date of the commission's discovery of the violation, but in no event shall a proceeding be initiated more than five years after the date of the violation. This limitation shall not run against any act or omission constituting a violation pursuant the Electric Utility Industry Restructuring Act of 1999 for any period during which the person has intentionally concealed the violation.

E. The commission shall consider mitigating and aggravating circumstances in determining the amount of administrative fine to impose. The amount of the fine shall bear a reasonable relationship to the nature and severity of the violation.

F. For purposes of establishing a violation, the act or omission of any officer, agent or employee of a person shall be deemed the act or omission of that person unless that person has a clear and actively enforced policy prohibiting such acts or omissions.

G. The commission shall issue rules as may be necessary to implement this section.

Section 22. COMMISSION REVIEW AND RECOMMENDATIONS.--The commission shall docket a proceeding to review the system benefits charge and the system benefits fund, their operation and effectiveness, and then to make recommendations to the legislature by January 10, 2004 for any repeal of or changes to these provisions.

Section 23. CONFLICTING PROVISIONS.--The provisions of the Electric Utility Industry Restructuring Act of 1999 shall supersede any conflicting provision of the Public Utility Act.

Section 24. EMERGENCY.--It is necessary for the public  
peace, health and safety that this act take effect  
immediately. \_\_\_\_\_

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