

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 865

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

. INTRODUCED BY

R. David Pederson

AN ACT

RELATING TO PUBLIC UTILITIES; RESTRUCTURING 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; AMENDING AND 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. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 22 of this act may be cited as the "Electric Utility
Industry Restructuring Act".

Section 2. [NEW MATERIAL] FINDINGS AND PURPOSES. --

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

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

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 nation;

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

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

12 (4) to avoid burdening New Mexico streets,
13 highways and landscapes with duplicate electric facilities,
14 the transmission and distribution of electricity should remain
15 subject to the regulation of the public regulation commission,
16 with public utilities obligated to deliver electricity from
17 electric suppliers to customers in areas served;

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

23 (6) public utilities currently provide and
24 will provide in the future products and services in addition
25 to electric supply, transmission and distribution service. To

underscored material = new
[bracketed material] = delete

1 the greatest extent possible, products and services are and
2 should be available from nonregulated providers in the
3 competitive marketplace, including from nonregulated public
4 utility affiliates;

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

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

15 (9) electric public utilities have undertaken
16 long-term investments in facilities in order to provide
17 sufficient and reliable service to the public. These actions
18 may have created costs that will not be recoverable in a
19 competitive market, and utilities should be permitted a
20 reasonable opportunity to recover an appropriate amount of the
21 costs incurred previously in providing electric service as
22 well as costs that will be incurred in converting to the
23 restructured scheme;

24 (10) protection of the state's environment
25 and the promotion of renewable energy technologies are

underscored material = new
[bracketed material] = delete

1 sensible endeavors that shall be encouraged in the
2 restructured electric industry; and

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

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

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

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

18 (3) state the policies of the legislature
19 regarding the recovery of stranded costs and transition costs;

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

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

underscored material = new
[bracketed material] = delete

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

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

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

9 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
10 Electric Utility Industry Restructuring Act:

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

16 B. "affiliate" means a person who directly or
17 indirectly, through one or more intermediaries, controls or is
18 controlled by, or is under common control, with another
19 person. Control includes the possession of the power to
20 direct or cause the direction of the management and policies
21 of a person, whether directly or indirectly, through the
22 ownership, control or holding with the power to vote ten
23 percent or more of the person's voting securities;

24 C. "anti-competitive conduct" means willful
25 conduct that inures, destroys or prevents competition;

. 127433. 2

underscored material = new
[bracketed material] = delete

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

4 E. "commission" means the public regulation
5 commission or, before January 1, 1999, the New Mexico public
6 utility commission;

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

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

14 H. "customer" means a retail electric customer or
15 consumer;

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

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

23 K. "distribution company" means a person who owns,
24 operates, leases or controls distribution facilities for
25 distribution of electricity to or for the public and is

underscored material = new
[bracketed material] = delete

1 regulated by the commission;

2 L. "distribution facilities" means those
3 facilities by and through which electricity is distributed to
4 the customer and that are owned, operated, leased or
5 controlled by a distribution company;

6 M. "distribution service" means the regulated
7 component of service provided by distribution facilities and
8 includes ancillary services;

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

12 O. "generation and transmission cooperative" means
13 a person with generation or transmission facilities organized
14 as a rural electric cooperative pursuant to Laws 1937, Chapter
15 100 or the Rural Electric Cooperative Act;

16 P. "monopoly coercion" means any action by a
17 public utility or affiliate of a public utility, including any
18 action of employees, officers or directors of those companies
19 that the company permits or condones, that causes a customer
20 to reasonably believe that regulated service will be impaired
21 or diminished if that customer obtains competitive goods or
22 services from a person other than an affiliate of the public
23 utility, or causes a customer to reasonably believe that
24 regulated service will be augmented or improved if that
25 customer obtains competitive goods or services from an

. 127433. 2

underscored material = new
[bracketed material] = delete

1 affiliate rather than from another person;

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

6 R. "non-discriminatory" means that no preference
7 or competitive advantage will be given to any person;

8 S. "open access" means non-discriminatory
9 transmission and distribution services for the delivery of
10 supply service to all competitive power suppliers to
11 facilitate customer choice;

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

15 U. "public utility" means any person or that
16 person's lessee, trustee or receiver, not engaged solely in
17 interstate business and except as stated in Sections 62-3-4
18 and 62-3.4.1 NMSA 1978, that now does or hereafter may own,
19 operate, lease or control any plant, property or facility for
20 regulated services to or for the public of electricity for
21 light, heat or power or other uses, and includes a
22 distribution company, a transmission company or both;

23 V. "regulated services" means electric power
24 supply services prior to the date the involved class of
25 service is granted customer choice pursuant to the Electric

. 127433. 2

underscored material = new
[bracketed material] = delete

1 Utility Industry Restructuring Act; and, only standard offer,
2 distribution and transmission services after customer choice
3 begins, pursuant to that act, and in any event, after July 1,
4 2001;

5 W. "renewable energy" means electrical energy
6 generated by means of a low- or zero-emissions generation
7 technology that has substantial long-term production potential
8 and shall include solar, wind, binary cycle geothermal,
9 landfill gas, anaerobically digested waste biomass or fuel
10 cells that are not fossil fueled. "Renewable energy" does not
11 include fossil fuel, hydroelectric power or nuclear energy;

12 X. "service customer" means a customer receiving
13 supply service over a public utility's distribution or
14 transmission facilities in areas served by the utility;

15 Y. "small business customer" means a commercial
16 customer who purchases less than two hundred thousand
17 kilowatt-hours per year at a demand level that does not exceed
18 fifty kilowatts;

19 Z. "standard offer service" means supply service
20 acquired and delivered by a public utility after December 31,
21 2000 to customers that are eligible for customer choice after
22 that date but do not elect to acquire their power supplies
23 from the retail competitive marketplace; and as to a
24 distribution cooperative utility, means supply service
25 acquired and delivered by the distribution cooperative utility

underscored material = new
[bracketed material] = delete

1 to customers that either do not elect to acquire their supply
2 service from a competitive power supplier or are not eligible
3 to make such election pursuant to the terms of the Electric
4 Utility Industry Restructuring Act;

5 AA. "stranded costs" means the lower of:

6 (1) the net present value of the difference
7 between:

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

15 (b) the revenues that could be earned
16 from selling the same generation-related services as specified
17 in Subparagraph (a) of this paragraph at competitive retail
18 market rates pursuant to retail competition.

19 Regulated revenue requirements include all regulatory
20 assets, net liabilities, deferred taxes, costs associated with
21 construction, operation and decommissioning or removal from
22 service of generation facilities, costs associated with
23 purchased power, water and fuel contracts, lease and lease-
24 related costs, gains or benefits to which ratepayers are
25 entitled and all other accounting categories of costs and

underscored material = new
[bracketed material] = delete

1 credits, including credit for taxes already recovered by the
2 utility, recognized under cost-of-service regulation and
3 attributable to the generation function of each utility.

4 "Stranded costs" shall be calculated for the period ending
5 when the useful lives for all generation assets or obligations
6 of the particular utility existing on the effective date of
7 the Electric Utility Industry Restructuring Act are
8 anticipated to expire. Retiring assets are presumed to be
9 replaced at market prices; or

10 (2) the net present value of the difference
11 between:

12 (a) the book value of all generation-
13 related assets that have been determined by the commission to
14 be recovered in rates or, if not previously recovered in
15 rates, that the commission determines are recoverable in
16 rates; and

17 (b) the market value of all generation-
18 related assets in the market that will bring the highest
19 price. "Stranded costs" shall not include costs that are
20 unreasonable, imprudent or mitigable or that have been
21 determined to not be recoverable in rates;

22 BB. "supply service" means the unregulated
23 electric energy or capacity component of electric service;

24 CC. "system benefits charges" means costs to
25 benefit customers and the public that are collected and

underscored material = new
[bracketed material] = del ete

1 disbursed by a public utility or a distribution cooperative
2 utility pursuant to law;

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

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

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

underscored material = new
[bracketed material] = delete

1 GG. "transmission facilities" means those
2 facilities that are used to provide transmission service as
3 determined by the commission or the federal energy regulatory
4 commi ssi on;

5 HH. "transmission service" means the regulated
6 component of service provided by transmission facilities and
7 includes ancillary services; and

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

11 Section 4. [NEW MATERIAL] IMPLEMENTATION OF CUSTOMER
12 CHOICE--PRIOR PLANS AND APPROVALS--REVIEW BY COMMISSION. --

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

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

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

22 B. A plan or approval for customer choice,
23 disposition of stranded costs, preparation for open access or
24 competitive supply service for a public utility granted by the
25 commi ssi on between January 1, 1997 and December 31, 1998 shall

underscored material = new
[bracketed material] = delete

1 be reviewed by the commission, in conjunction with the
2 Electric Utility Industry Restructuring Act and otherwise,
3 providing notice and public hearing, and may be confirmed,
4 rejected or modified by the commission. Modifications to a
5 plan or an approval may be recommended by the commission, the
6 public utility subject to the plan or approval or a party with
7 standing.

8 C. A public utility having had a plan or approval
9 granted by the commission after January 1, 1997 shall be
10 subject to the requirements of the Electric Utility Industry
11 Restructuring Act to the extent the requirements of that act
12 are not inconsistent with the plan or approval, as confirmed,
13 rejected or modified in accordance with Subsection B of this
14 section.

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

20 Section 5. [NEW MATERIAL] DELIVERY OF ELECTRIC SUPPLY. --
21 A public utility or its successor in interest that provides
22 electric service to a customer or a customer location before
23 customer choice becomes available for that customer as
24 provided in Section 4 of the Electric Utility Industry
25 Restructuring Act shall continue to provide distribution

underscored material = new
[bracketed material] = delete

1 service or transmission service on a non-discriminatory basis
2 to or for that customer or customer location.

3 Section 6. [NEW MATERIAL] TRANSITION PLANS. --

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

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

14 (2) associated unbundled cost-of-service
15 studies and an explanation of all cost allocations made to the
16 unbundled services;

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

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

23 (5) proposed standard offer service tariffs,
24 exclusive of price terms that shall be incorporated prior to
25 customer choice, for customers that do not select a power

underscored material = new
[bracketed material] = delete

1 supplier pursuant to customer choice eligibility;

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

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

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

18 (9) proposed non-bypassable wires charges for
19 recovery of transition costs and stranded costs allocated
20 among customer classes;

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

24 (11) for customers with service contracts
25 with the utility prior to open access, tariffs obligating the

. 127433. 2

underscored material = new
[bracketed material] = delete

1 utility to continue offering the customer distribution and
2 transmission service and allowing the customer to terminate
3 its obligation to purchase electricity from the utility after
4 open access eligibility, upon thirty days' prior written
5 notice to the utility;

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

9 (13) proposed procedures for balancing,
10 settlements and communications with competitive power
11 suppliers; and

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

14 B. Upon request of a public utility and approval
15 of the commission or upon order of the commission, the
16 commission's review of plans and approvals granted between
17 January 1, 1997 and December 31, 1998, pursuant to Section 4
18 of the Electric Utility Industry Restructuring Act, may be
19 consolidated and heard in conjunction with consideration of a
20 public utility's transition plan pursuant to this section.

21 C. The commission in making its determination of
22 the amount of stranded costs to be recovered by a public
23 utility in its transition plan filing shall order no less than
24 fifty percent recovery of stranded costs. The commission may
25 allow up to one hundred percent recovery of stranded costs

underscored material = new
[bracketed material] = delete

1 only if it finds that recovery of more than fifty percent of
2 stranded costs:

- 3 (1) is in the public interest;
- 4 (2) fair and equitable to customers, utility
5 investors and the public;
- 6 (3) is necessary to maintain the financial
7 integrity of the public utility;
- 8 (4) is necessary to continue adequate and
9 reliable service by the public utility; and
- 10 (5) will not cause an increase in rates to
11 residential or small business customers during the transition
12 period.

13 D. The commission in quantifying stranded costs
14 shall consider:

- 15 (1) reasonable methods for determining market
16 valuations, including:
 - 17 (a) the use of standard offer bid
18 prices;
 - 19 (b) appraisal by independent third-
20 party professionals;
 - 21 (c) a competitive bid sale for
22 generation; and
 - 23 (d) any other method designed to
24 provide a reasonable valuation; and
- 25 (2) for residential and small business

underscored material = new
[bracketed material] = delete

1 customers, that the standard offer bid price reflects the
2 market value of supply service.

3 E. Before July 1, 2000, the commission shall
4 approve the procurement procedure proposed by the public
5 utility in its transition plan for the acquisition of supply
6 service for standard offer service. On or before September 1,
7 2000, a public utility shall update its pending transition
8 plan filing by providing the price of supply service procured
9 for standard offer service pursuant to the procurement
10 procedure approved by the commission. The approval of
11 stranded costs to be recovered from the residential and small
12 business classes shall be made after the public utility has
13 contracted to procure power for the standard offer, but prior
14 to December 1, 2000.

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

25 Section 7. [NEW MATERIAL] RECOVERY OF TRANSITION AND

underscored material = new
[bracketed material] = delete

1 STRANDED COSTS-- OPPORTUNITIES AND LIMITS. --

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

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

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

10 (2) not extend longer than four years
11 thereafter; and

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

15 C. In its approval of a transition plan provided
16 for in Section 6 of the Electric Utility Industry
17 Restructuring Act, the commission shall determine a non-
18 bypassable wires charge for recovery of transition costs
19 through December 31, 2007, after which date further transition
20 charges shall not be recoverable through a separate wires
21 charge.

22 D. The commission, interested parties or the
23 public utility may seek to consider and modify the wires
24 charge established to achieve collection of the transition
25 costs. The commission shall hold a hearing to reconcile a

underscored material = new
[bracketed material] = delete

1 utility's transition cost with its collections and, if an
2 over-collection of transition costs is determined by the
3 commission to have occurred, a wires credit shall be applied
4 to customers' bills to return the over-collection of
5 transition costs in an amount and for such time as the
6 commission may determine.

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

12 Section 8. [NEW MATERIAL] DIVESTITURE NOT REQUIRED--
13 AFFILIATES--SEPARATION OF REGULATED FROM COMPETITIVE
14 FUNCTIONS--PROHIBITIONS AGAINST CROSS-SUBSIDIES, DISCRIMINATION
15 AND ANTI-COMPETITIVE ACTIONS--DECLARATION REGARDING ANTITRUST
16 ACTIONS. --

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

22 B. Before January 1, 2001, a public utility shall
23 separate into at least two corporations, separating supply
24 service and energy-related service consisting of generation and
25 power supply facilities, operations and services and energy-

underscored material = new
[bracketed material] = del ete

1 related facilities, operations and services that are to be made
2 available to the public pursuant to the Electric Utility
3 Industry Restructuring Act on a competitive unregulated basis
4 from transmission and distribution services consisting of
5 transmission facilities, operations and service, distribution
6 facilities, operations and service that are to be made
7 available to the public pursuant to that act on a regulated
8 basis.

9 C. Corporate separation of regulated from
10 unregulated services shall be accomplished by either the
11 creation of separate affiliated companies that may be owned by
12 a common holding company, through the creation of separate non-
13 affiliated corporations or through the sale of assets to one or
14 more third parties. A public utility may provide all
15 competitive and ancillary services within a single unregulated
16 company and provide all non-competitive and ancillary services
17 within a separate regulated company. Unregulated service shall
18 not be provided by a regulated company.

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

- 23 (1) prevent undue discrimination in favor of
24 affiliates;
- 25 (2) prevent any anti-competitive practices

underscored material = new
[bracketed material] = delete

1 that could harm competition in any market for competitive
2 services;

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

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

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

16 (6) require that any person, including an
17 affiliate, possessing customer information obtained in a manner
18 contrary to Paragraphs (4) and (5) of this subsection shall
19 make no commercial use of the information and either destroy
20 the information or return it to the public utility;

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

25 (8) prevent an affiliate from identifying its

underscored material = new
[bracketed material] = delete

1 affiliation with the public utility unless the affiliate also
2 discloses in a reasonable manner that it is neither the same
3 company as the public utility nor is it regulated by the
4 commission.

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

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

13 (2) describe the safeguards instituted to
14 prevent the sharing with an affiliate of employees, goods,
15 services or facilities, except that common costs for essential
16 corporate-wide services shall be allocated between the public
17 utility and affiliates to reflect the proportional benefit that
18 the public utility receives from those services compared to the
19 affiliates receiving the services, and provided that a public
20 utility may purchase goods, services or facilities from an
21 affiliate if the items cannot be provided internally or
22 obtained from an independent person at an equal or lower price
23 or other factors such as quality or service that justify a
24 higher purchase price. The commission may promulgate rules
25 regarding the transfer of employees, provided that the

. 127433. 2

underscored material = new
[bracketed material] = delete

1 commission shall not require or approve a policy or procedure
2 that interferes with an employee's ability to apply for and be
3 considered for a position of his choice.

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

8 G. Monopoly coercion is unlawful. Two or more
9 incidents of monopoly coercion demonstrating a pattern of
10 conduct is hereby declared to be an attempt to monopolize in
11 violation of Section 57-1-2 NMSA 1978, and may be prosecuted
12 according to the Antitrust Act. A public utility shall not
13 engage in monopoly coercion. Complaints alleging monopoly
14 coercion may be filed with the commission or state district
15 court and, if filed, shall be placed at the head of the
16 commission docket; and after notice and hearing, shall be
17 resolved expeditiously. Filing a complaint for monopoly
18 coercion with the commission pursuant to this section neither
19 precludes nor excludes other remedies available pursuant to law
20 and is not a prerequisite for seeking relief otherwise
21 available. The attorney general shall have standing on behalf
22 of consumers to file a complaint initiating or to intervene in
23 a case before the commission alleging monopoly coercion. The
24 attorney general shall have the duty to proactively
25 investigate, monitor and enforce the provisions of the Electric

underscored material = new
[bracketed material] = delete

1 Utility Industry Restructuring Act prohibiting anti-competitive
2 and unfair trade practices to protect against potential
3 monopoly coercion, market power abuses and other unfair trade
4 practices and antitrust law violations relating to the electric
5 industry.

6 H. If the commission finds and orders that monopoly
7 coercion has occurred, after notice and hearing, the commission
8 may fine the public utility or its affiliate or issue such
9 cease and desist orders as are deemed necessary in accordance
10 with the Electric Utility Industry Restructuring Act. Any
11 public utility or affiliate found to have committed monopoly
12 coercion in a complaint filed in district court shall be
13 subject to an injunction and liable for three times the damages
14 sustained. If the trier of fact find that the facts justify a
15 reduced damage award, damages may be awarded in an amount less
16 than three times the damages but not less than the damages
17 actually sustained. Attorney fees and costs shall be awarded
18 to a prevailing complainant. If the defendant prevails,
19 attorney fees and costs shall be awarded upon a commission
20 finding that the complaint was either frivolous or made in bad
21 faith.

22 I. The state and all regulatory bodies and agencies
23 acting pursuant to state policy shall not supervise or condone
24 any actions of an affiliate of a public utility, monopoly
25 coercion activity of a public utility or activities of a public

underscored material = new
[bracketed material] = del ete

1 utility that cause an affiliate to engage in activities that
2 would otherwise be unlawful under the Antitrust Act or the
3 federal Sherman Anti-trust Act. Affiliates of public utilities
4 charged with any antitrust violations that cause an affiliate
5 to engage in activities that would otherwise be unlawful under
6 the Antitrust Act shall not have a defense pursuant to the
7 provisions of Section 57-1-16 NMSA 1978.

8 J. Public utilities that provide both electricity
9 and natural gas distribution services shall not be required to
10 functionally separate their electric and gas transmission,
11 transportation and distribution operations from each other, and
12 any rule or order to the contrary is void and to no force and
13 effect; and provided that any regulated natural gas
14 distribution operations operated within the same legal entity
15 as regulated electric operations shall be subject to the
16 provisions of the Electric Utility Industry Restructuring Act
17 regarding codes of conduct, monopoly coercion prohibition,
18 antitrust laws and rules dealing with anti-competitive conduct.
19 For purposes of the codes of conduct and monopoly coercion,
20 provisions applying to public utilities providing electric
21 service shall also apply to public utilities providing both gas
22 and electric services. Rules applying to the provision of
23 electric service shall apply also to the provision of natural
24 gas service. Nothing in this section shall prevent a combined
25 gas and electric distribution company from selling the natural

underscored material = new
[bracketed material] = delete

1 gas commodity to customers pursuant to tariffs approved by the
2 commission.

3 K. Nothing in this section requires any commission
4 act or order prior to filing an action pursuant to the
5 Antitrust Act or any federal antitrust act or to limit the
6 authority of the attorney general granted in the Antitrust Act.

7 Section 9. [NEW MATERIAL] COMPETITIVE POWER SUPPLIERS--
8 LICENSE APPLICATION AND REVOCATION. --

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

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

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

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

23 (2) execute, by a person authorized to do so,
24 an affidavit authorizing or reflecting the authorization of the
25 competitive power supplier to a statutory agent of the

underscored material = new
[bracketed material] = delete

1 competitive power supplier to accept service of process in the
2 state, accompanied by an acceptance of such designation by the
3 statutory agent;

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

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

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

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

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

23 (8) execute, by a person authorized to do so,
24 an agreement to produce documents or other records to support
25 any filings, reports or agreements required by the commission

underscored material = new
[bracketed material] = delete

1 and to support any representations made to the commission or
2 customers if required to do so by the commission;

3 (9) execute, by a person authorized to do so,
4 an agreement to compensate a distribution or transmission
5 company that provides open access for delivery of supply
6 service to a customer of the competitive power supplier for
7 shortfalls in supply service pursuant to rules promulgated by
8 the commission. A distribution or transmission company is not
9 required to purchase any reserve supply of electricity in
10 mitigation or anticipation of a competitive power supplier's
11 shortfalls in supply service; and

12 (10) submit a proposal for renewable energy
13 supply service options to customers.

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

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

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

underscored material = new
[bracketed material] = delete

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

4 F. The commission shall promulgate rules governing
5 competitive power suppliers for the protection of customers,
6 including:

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

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

14 (3) an expeditious procedure before the
15 commission to resolve a dispute between a customer and a
16 competitive power supplier regarding compliance with commission
17 rules applicable to competitive power suppliers.

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

25 (1) knowingly provided false information to

underscored material = new
[bracketed material] = delete

1 the commission;

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

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

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

9 (5) engaged in anti-competitive conduct; or

10 (6) violated any other law or commission rule
11 or order.

12 H. Any person selling or offering to sell
13 competitive services in this state in violation of any
14 provision of the Electric Utility Industry Restructuring Act is
15 subject to license revocation or suspension in addition to any
16 administrative, civil or criminal fines or penalties imposed
17 pursuant to that act or pursuant to other law. Nothing in that
18 act limits a person's rights pursuant to the Unfair Practices
19 Act or any other provisions of law or requires exhaustion of
20 remedies before bringing an action pursuant to the Electric
21 Utility Industry Restructuring Act.

22 Section 10. [NEW MATERIAL] DISTRIBUTION SERVICE-- STANDARD
23 OFFER SERVICES. --

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

. 127433. 2

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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, companies providing transmission service 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;

(4) shall, 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 until the commission determines that there will be effective competition for those services, in which case those services shall be provided competitively according to terms determined by the commission.

C. Standard offer service is subject to the

underscored material = new
[bracketed material] = delete

1 jurisdiction and authority of the commission.

2 D. On January 1, 2001, all public utilities shall
3 provide a standard offer to serve all customers at a rate no
4 higher than the rates at which those utilities provided
5 electric service on the effective date of the Electric Utility
6 Industry Restructuring Act. That standard offer rate cap shall
7 continue until December 31, 2004 and shall be inclusive of all
8 transmission and distribution charges, stranded costs,
9 transition costs and system benefits charge, as well as all
10 other charges reflected in a customer's rates on the effective
11 date of the Electric Utility Industry Restructuring Act. After
12 December 31, 2004, the standard offer shall continue, without a
13 rate cap, only for residential and small business customers.

14 E. Notwithstanding Subsection D of this section, a
15 public utility that has not adjusted its general rates pursuant
16 to a commission order since 1996 shall provide as of the
17 effective date of the Electric Utility Industry Restructuring
18 Act a standard offer with a rate cap through December 31, 2004
19 no higher than the rates established by the commission in a
20 general rate proceeding to be concluded no later than January
21 1, 2001.

22 F. The commission shall have continuing authority
23 to determine the manner, method and provider of standard offer
24 service.

25 Section 11. [NEW MATERIAL] TRANSMISSION SERVICE. --

underscored material = new
[bracketed material] = delete

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

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

13 Section 12. [NEW MATERIAL] CUSTOMER EDUCATION AND
14 PROTECTIONS. --

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

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

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

underscored material = new
[bracketed material] = delete

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

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

14 D. A person may file a complaint in district court
15 for violations of the Electric Utility Industry Restructuring
16 Act pursuant to the provisions of the Unfair Practices Act.

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

20 F. As used in this section, "authorization" means a
21 letter of agency separate from any sales or solicitation
22 material that contains, in clear and conspicuous language, a
23 full and complete description of the change in supply service
24 provider, and any product or service to be charged to the
25 customer's bill. The letter of agency shall contain, in clear

underscored material = new
[bracketed material] = delete

1 and conspicuous language, a full and complete description of
2 the rates, fees and charges associated with the new supply
3 service provider and the product or service to be charged to
4 the bill. The letter of agency shall be signed by the customer
5 before any change may be made in a customer's supply service
6 provider, or any charge for any unregulated product or service
7 may be placed on a customer's bill.

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

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

15 I. The commission may adopt rules as necessary to
16 provide further customer protections.

17 Section 13. [NEW MATERIAL] SYSTEM BENEFITS CHARGE--
18 RECOVERY. --

19 A. A "system benefits charge" shall be imposed
20 statewide on the following classes of customers during the
21 following time periods:

22 (1) from the effective date of the Electric
23 Utility Industry Restructuring Act until December 31, 2004:

24 (a) for residential customers, a system
25 benefits charge of seventy-six hundredths percent; and

underscored material = new
[bracketed material] = delete

1 (b) for nonresidential customers that are
2 eligible to choose a competitive power supplier or public
3 utility, a system benefits charge of one and one hundredth
4 percent;

5 (2) from January 1, 2002 until December 31,
6 2004, for nonresidential customers that are eligible to choose,
7 a system benefits charge of one and one hundredth percent; and

8 (3) beginning on January 1, 2005:

9 (a) for residential customers, a system
10 benefits charge of one and fifty-one hundredths percent; and

11 (b) for all nonresidential customers, a
12 system benefits charge of one and seventy-six hundredths
13 percent.

14 B. The system benefits charge shall be calculated
15 as a uniform percentage of each customer's bill within the
16 class for each of the three periods specified in Subsection A
17 of this section.

18 C. The system benefits charge shall be assessed on
19 all energy supply services and transmission, distribution and
20 customer services sold to a customer.

21 D. The system benefits charge shall be separately
22 identified on distribution service bills rendered to customers
23 beginning on January 1, 2001.

24 E. Revenue from the system benefits charge shall be
25 credited to the system benefits fund.

underscored material = new
[bracketed material] = delete

1 Section 14. [NEW MATERIAL] WIRES CHARGES-- COLLECTION--
2 ACCOUNTING-- PREPAYMENT. --

3 A. Wires charges assessed on a per kilowatt-hour
4 basis for stranded costs, transition costs and the system
5 benefits charge shall be paid by each customer to the public
6 utility, and as to the system benefits charge only to the
7 distribution cooperative utility, supplying the customer's
8 distribution service. Revenues collected as the system
9 benefits charge shall be paid to the system benefits fund and
10 distributed in accordance with the provisions of Section 15 of
11 the Electric Utility Industry Restructuring Act.

12 B. Notwithstanding any other provision of the
13 Electric Utility Industry Restructuring Act and subject to the
14 requirements of this subsection, a customer of a public utility
15 shall be allowed to pay a fee equal to the net present value of
16 stranded cost charges to be assessed to that customer. Any
17 prepayment of stranded costs must be completed prior to the
18 date of customer choice for that customer and shall take into
19 account expected growth for that customer based upon historical
20 usage. Disputes as to the amount of the payment required
21 pursuant to this subsection shall be presented to the
22 commission no later than ninety days prior to the applicable
23 customer choice date and shall be resolved by the commission
24 prior to that date. Prepayment of stranded costs shall be for
25 the benefit of the service location for which the payment is

underscored material = new
[bracketed material] = delete

1 determined and shall not transfer with a customer to a
2 different or additional service location.

3 Section 15. [NEW MATERIAL] SYSTEM BENEFITS FUND CREATED--
4 RENEWABLE PORTFOLIO STANDARDS--SUPPORT FOR ADMINISTRATION AND
5 CUSTOMER INFORMATION, LOW-INCOME CUSTOMERS AND RENEWABLE
6 TECHNOLOGY.--

7 A. The "system benefits fund" is created in the
8 state treasury. The money collected from the system benefits
9 charge paid by each public utility customer and each
10 distribution cooperative utility customer in the state and
11 collected monthly by the public utility or the distribution
12 cooperative utility billing the customer shall be paid
13 quarterly to the state treasurer by the public utility and the
14 distribution cooperative utility for credit to the system
15 benefits fund. Interest or other earnings from investment or
16 deposit of the fund shall be credited to the fund. Penalty
17 assessments imposed by the commission for failure by a
18 competitive power supplier to meet the renewable portfolio
19 standards shall be credited to the fund. Any unexpended or
20 unencumbered balance remaining in the fund at the end of any
21 fiscal year shall be retained for future expenditure from the
22 fund.

23 B. Money in the system benefits fund is
24 appropriated to the department of environment solely for the
25 purpose of distributing money to authorized recipients for

underscored material = new
[bracketed material] = delete

1 authorized purposes as described in Subsection D of this
2 section. Disbursements from the fund shall be made upon
3 certification by the secretary of environment that the
4 disbursement is for a payment authorized by Section 15 of the
5 Electric Utility Industry Restructuring Act.

6 C. The department shall promulgate rules
7 establishing the application procedure and required
8 qualifications of projects, including a person or business that
9 may attempt to participate, contract or join with an authorized
10 recipient in applying for a disbursement from the fund. The
11 department shall accept applications for distributions from the
12 fund at least biannually and shall prioritize the acceptable
13 applications considering:

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

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

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

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

25 (5) the amount of energy to be generated or

underscored material = new
[bracketed material] = delete

1 saved over the life of the project.

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

5 (1) no more than two hundred thousand dollars
6 (\$200,000) annually to the department for administration of the
7 fund;

8 (2) two hundred thousand dollars (\$200,000)
9 annually to the commission for consumer education and
10 information, and for administration of the Electric Utility
11 Industry Restructuring Act;

12 (3) no less than five hundred thousand dollars
13 (\$500,000) or more than twenty percent annually for low-income
14 energy assistance through the federal low-income housing energy
15 assistance project to be expended for that project's
16 weatherization program administered by the New Mexico mortgage
17 finance authority or for other low-income energy assistance
18 authorized and administered by the state;

19 (4) no more than five percent of the money
20 available in the fund or less than five hundred thousand
21 dollars (\$500,000) annually of the money available in the fund
22 to the office of the attorney general for the purpose of
23 augmenting the consumer protection division of the office of
24 the attorney general to proactively investigate and prosecute
25 antitrust and anti-competitive conduct, including monopoly

. 127433. 2

underscored material = new
[bracketed material] = delete

1 coercion and unfair trade practices, with respect to the
2 electric industry;

3 (5) no more than fifty percent annually of the
4 money available in the fund to contract with electric power
5 suppliers with generation assets in New Mexico for provision of
6 emissions reductions over and above that required by law or
7 rule, of sulfur dioxide, nitrogen oxides, carbon dioxide,
8 mercury and particulates in order to improve the natural
9 environment of the state; and

10 (6) no more than fifty percent annually to
11 encourage the use of renewable energy or energy efficiency
12 through the initiation, development and evaluation of renewable
13 technology projects authorized and directed by a state post-
14 secondary educational institution or a school district in
15 conjunction with the education of its students or by the
16 governing body of an incorporated city, town or village or a
17 county, each in conjunction with the respective governing
18 body's interest in protecting the environment and reducing the
19 city's or county's utility costs.

20 E. The department shall submit to the legislative
21 finance committee prior to each regular legislative session a
22 list of recipients receiving money pursuant to Paragraph (6) of
23 Subsection D of this section. The list shall describe the
24 project for which the disbursement was made and the project's
25 contribution to the state's knowledge of renewable energy and

. 127433. 2

underscored material = new
[bracketed material] = delete

1 developing technologies.

2 F. The commission shall adopt rules establishing
3 renewable energy portfolio standards applicable to all
4 competitive power suppliers. The renewable energy portfolio
5 standards shall conform to the following:

6 (1) the minimum percentage of renewable
7 energy, other than renewable energy voluntarily purchased by
8 customers, that must be contained in each competitive power
9 supplier's New Mexico portfolio from July 1, 2000 until
10 December 31, 2004, and not credited to renewable energy sales
11 to customers of any other state, calculated on an energy basis
12 according to the number of megawatt-hours of power sold in New
13 Mexico, is seventy-five hundredths of one percent. After
14 December 31, 2004, this percentage shall be increased to two
15 percent; after December 31, 2006, this percentage shall be
16 increased to four percent; and after December 31, 2008, this
17 percentage shall be increased to five percent. For purposes of
18 calculating the amount of renewable energy provided, in-state
19 solar renewable resources shall be assigned two times the
20 energy actually provided. The commission may increase the
21 minimum percentage by an amount equal to two additional
22 percentage points only if it finds, after an evidentiary
23 hearing, that the cost of the most effective renewable energy
24 available in New Mexico has declined to the extent that it is
25 in the public interest to increase the percentage;

. 127433. 2

underscored material = new
[bracketed material] = delete

1 (2) nothing in the renewable energy portfolio
2 standards requires a competitive power supplier to construct or
3 own renewable energy generation facilities. The renewable
4 energy portfolio standards requirements may be met through the
5 acquisition of appropriate verifiable renewable energy credits;

6 (3) each competitive power supplier supplying
7 power in New Mexico shall file annually with the commission a
8 certification, with supporting affidavits, that its renewable
9 power supply portfolio meets the renewable energy portfolio
10 standards. The commission shall review the filed
11 certifications and approve them if the commission is satisfied
12 that the certifications are accurate and that the renewable
13 energy used to satisfy the renewable energy portfolio standards
14 has not been used for any other sale of renewable energy. The
15 commission may, if it deems it necessary, provide an
16 opportunity for a hearing to resolve questions arising from a
17 competitive power supplier's certification;

18 (4) competitive power suppliers who fail to
19 meet the renewable energy portfolio standards may be assessed a
20 penalty by the commission in an amount not to exceed thirty
21 cents (\$.30) per kilowatt-hour for the amount of renewable
22 energy not provided as part of its portfolio. The penalty
23 assessment shall be credited to the system benefits fund;

24 (5) The commission shall adopt rules as
25 necessary to implement and verify that the renewable portfolio

underscored material = new
[bracketed material] = delete

1 standards are being met.

2 G. As used in this section "portfolio" means a
3 record of the combination of sources the competitive power
4 supplier used to supply power in New Mexico.

5 Section 16. [NEW MATERIAL] DISTRIBUTION COOPERATIVE
6 UTILITIES. --

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

12 B. A generation and transmission cooperative may
13 continue to provide power and energy to its members and shall
14 remain subject to regulation by the commission to the same
15 extent as it was regulated prior to the effective date of the
16 Electric Utility Industry Restructuring Act. A generation and
17 transmission cooperative shall not provide supply service at
18 retail unless it is a licensed competitive power supplier and
19 provides open access in accordance with the Electric Utility
20 Industry Restructuring Act.

21 C. A distribution cooperative utility is not a
22 public utility for the purposes of the Electric Utility
23 Industry Restructuring Act. A distribution cooperative
24 utility, however, remains subject to the jurisdiction and
25 authority of the commission to the same extent it was regulated

underscored material = new
[bracketed material] = delete

1 by the commission prior to the effective date of that act.
2 D. To the extent that it elects a business method
3 option pursuant to Subsection I of this section other than load
4 aggregator, a distribution cooperative utility shall file a
5 business method plan with the commission within sixty days of
6 the election that shall include the following:
7 (1) the business method option elected, the
8 method of election and other relevant authorizations and
9 approvals of the option;
10 (2) the costs, liabilities and investments
11 that the distribution cooperative utility seeks to recover from
12 customers who choose supply service other than from the
13 distribution cooperative;
14 (3) the amount of the costs, liabilities and
15 investments and the methodologies used by the distribution
16 cooperative utility to determine the amount of costs,
17 liabilities and investments that the distribution cooperative
18 utility reasonably expected to recover through rates if bundled
19 service had continued, reduced by the results of appropriate
20 mitigation efforts taken by the distribution cooperative
21 utility to offset the costs, liabilities and investments;
22 (4) the methodologies by which the
23 distribution cooperative utility shall compute an exit fee or a
24 non-bypassable non-discriminatory charge for customers choosing
25 a competitive power supplier to provide supply services;

underscored material = new
[bracketed material] = delete

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

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

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

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

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

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

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

25 G. A distribution cooperative utility organized

underscored material = new
[bracketed material] = delete

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

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

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

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

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

25 (2) convert or permit the conversion of a

underscored material = new
[bracketed material] = delete

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

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

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

8 (a) shall acquire and provide supply
9 service;

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

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

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

18 (2) customer-directed supplier, pursuant to
19 which a retail customer may select a competitive service
20 provider from a list of competitive supply service proposals
21 obtained by the distribution cooperative utility. The
22 distribution cooperative utility shall determine the
23 competitive supply service proposals that will be offered to
24 customers by competitive power suppliers pursuant to non-
25 discriminatory rules adopted by the distribution cooperative

underscored material = new
[bracketed material] = delete

1 utility and approved by the commission;

2 (3) customer class direct access, pursuant to
3 which one or more classes of retail customers satisfying
4 criteria determined by the distribution cooperative utility and
5 approved by the commission may contract directly with a
6 competitive power supplier. A criteria established for class
7 eligibility may be expanded to permit greater eligibility for
8 customer class direct access, subject to commission approval.
9 The distribution cooperative utility shall not be obligated to
10 supply service or identify potential supply services for
11 customer class direct access customers; and

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

21 J. A distribution cooperative utility may set a
22 reasonable exit fee or a non-bypassable non-discriminatory
23 charge to recover costs, liabilities and investments that would
24 have reasonably been recovered, if not mitigated, pursuant to
25 cost-of-service ratemaking for bundled service. An exit fee or

underscored material = new
[bracketed material] = del ete

1 a non-bypassable non-discriminatory charge may be assessed to a
2 customer eligible to select and selecting supply service other
3 than from the distribution cooperative utility's standard offer
4 service or otherwise.

5 K. Distribution cooperative utilities shall notify
6 their customers within twelve months after the effective date
7 of the Electric Utility Industry Restructuring Act concerning
8 the terms of this section and other applicable terms of that
9 act. A distribution cooperative utility electing an option of
10 conducting its business other than as a load aggregator shall
11 inform its service customers of the major impacts of the
12 customer choices available pursuant to the elected option.

13 L. Nothing in the Electric Utility Industry
14 Restructuring Act shall be deemed:

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

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

22 Section 17. [NEW MATERIAL] MUNICIPAL UTILITIES. --

23 A. This section governs municipal utilities in
24 relation to the Electric Utility Industry Restructuring Act.
25 Except as provided in Subsection E of this section, a municipal

underscored material = new
[bracketed material] = delete

1 utility is neither a public utility, a distribution company nor
2 a transmission company pursuant to the Electric Utility
3 Industry Restructuring Act.

4 B. Except for a municipality authorized to condemn
5 facilities pursuant to Subsections E and F of Section 3-24-1
6 NMSA 1978, which is deemed to have chosen to participate in
7 customer choice for its service customers effective January 1,
8 2001, a municipal governing body is authorized to elect whether
9 and when its municipal utility participates in customer choice
10 and open access for competitive services to its service
11 customers. A municipal governing body is authorized to elect
12 whether and when its municipal utility participates in customer
13 choice and open access to offer supply service and competitive
14 services to customers in addition to its service customers. A
15 decision by a municipal governing body to participate in
16 customer choice and open access for its service customers only
17 or its service customers and other customers at any time after
18 January 1, 2001 shall be made by the adoption of an appropriate
19 ordinance or resolution, which decision once made is thereafter
20 irrevocable. A municipal utility may not participate in
21 customer choice or open access for customers other than its
22 service customers unless and until its service customers are
23 eligible for customer choice with open access available to
24 fulfill a customer's choice of supply service.

25 C. If a municipal governing body elects not to

underscored material = new
[bracketed material] = delete

1 participate in customer choice and open access, its municipal
2 utility shall be regulated by the commission to the same extent
3 as it was regulated prior to the effective date of the Electric
4 Utility Industry Restructuring Act and shall not offer any
5 service to retail customers other than to its service
6 customers.

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

13 (1) establish rates, terms and conditions
14 pursuant to which the municipal utility shall provide open
15 access over its distribution facilities and unbundled services
16 to its service customers, including standard offer service;

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

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

underscored material = new
[bracketed material] = del ete

1 utility is located;

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

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

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

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

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

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

24 Section 18. [NEW MATERIAL] FRANCHISE FEES--GROSS RECEIPTS
25 TAX--TAX REVENUES ANALYSIS. --

underscored material = new
[bracketed material] = delete

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

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

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

19 D. On or before January 1, 2003, the revenue
20 stabilization and tax policy committee shall recommend
21 legislative changes, if any, to establish comparable state and
22 local taxation burdens on all market participants in the supply
23 of electricity considering the impacts and changes that have
24 resulted from the restructure and competition in the electric
25 industry in the state.

1 Section 19. [NEW MATERIAL] COMMISSION EXAMINATIONS. --

2 A. To ensure an orderly and equitable restructuring
3 of the electric utility industry in this state and to achieve
4 the purposes outlined in Section 2 of the Electric Utility
5 Industry Restructuring Act, the legislature hereby directs the
6 commission to further examine and take those actions falling
7 within the jurisdiction the commission that it deems appropriate
8 and within the public interest regarding:

9 (1) standard offer;

10 (2) consumer education and protection;

11 (3) safety, reliability, quality and
12 performance standards for generation, distribution and
13 transmission facilities, including imposition of automatic
14 penalties paid to customers from public utilities for
15 noncompliance with quantifiable standards for generation,
16 distribution and transmission facilities;

17 (4) the presence of market power, its impacts
18 on the restructure of the electric industry and methods
19 available to limit or eliminate its adverse impacts;

20 (5) alternative means of public utility
21 operations and regulations, including an independent system
22 operator;

23 (6) regional transmission and governance
24 efforts, both public and private, and the advisability of
25 regional cooperation by the state;

. 127433. 2

underscored material = new
[bracketed material] = delete

1 (7) how power may be purchased from qualifying
2 facilities, including facilitating net metering;

3 (8) emergency and back-up service; and

4 (9) non-cost based rate regulation for public
5 electric utilities in order to remove incentives to subsidize
6 unregulated business.

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

12 Section 20. [NEW MATERIAL] RULEMAKING. --The commission is
13 authorized to promulgate rules necessary to implement its
14 authority and the directives granted in the Electric Utility
15 Industry Restructuring Act.

16 Section 21. [NEW MATERIAL] ADMINISTRATIVE FINES. --

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

23 B. An administrative fine of not less than one
24 hundred dollars (\$100) nor more than one million five hundred
25 thousand dollars (\$1,500,000) may be imposed for each violation.

underscored material = new
[bracketed material] = delete

1 Each day of a continuing violation shall be considered a
2 separate violation unless the conduct involves anti-competitive
3 conduct in which case the maximum fine shall be one percent of
4 the total assets of the violator plus one percent of the assets
5 of each of the violator's affiliates.

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

12 D. The commission may initiate a proceeding to impose
13 an administrative fine within two years from the date of the
14 commission's discovery of the violation, but in no event shall a
15 proceeding be initiated more than five years after the date of
16 the violation. This limitation shall not run against any act or
17 omission constituting a violation pursuant the Electric Utility
18 Industry Restructuring Act for any period during which the
19 person has intentionally concealed the violation.

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

25 F. For purposes of establishing a violation, the act

underscored material = new
[bracketed material] = delete

1 or omission of any officer, agent or employee of a person shall
2 be deemed the act or omission of that person unless that person
3 has a clear and actively enforced policy prohibiting such acts
4 of omission.

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

7 Section 22. [NEW MATERIAL] CONFLICTING PROVISIONS. --The
8 provisions of the Electric Utility Industry Restructuring Act
9 shall supersede any conflicting provision of the Public Utility
10 Act.

11 Section 23. Section 57-1-3 NMSA 1978 (being Laws 1891,
12 Chapter 10, Section 3, as amended) is amended to read:

13 "57-1-3. CONTRACTS FOR RESTRAINT OF TRADE OR MONOPOLY
14 VOID--CIVIL LIABILITY OF PARTICIPANTS--INJUNCTIVE RELIEF--
15 PURCHASERS RELIEVED FROM PAYMENT. --

16 A. All contracts and agreements in violation of
17 Section 57-1-1 or 57-1-2 NMSA 1978 shall be void, and any person
18 threatened with injury or injured in his business or property,
19 directly or indirectly, by a violation of Section 57-1-1 or
20 57-1-2 NMSA 1978 may bring an action for appropriate injunctive
21 relief, up to threefold the damages sustained and costs and
22 reasonable [~~attorneys'~~] attorney fees. If the trier of fact
23 finds that the facts so justify, damages may be awarded in an
24 amount less than that requested, but not less than the damages
25 actually sustained.

underscored material = new
[bracketed material] = delete

1 B. The attorney general may bring an action under
2 Subsection A of this section and pursuant to the prohibitions on
3 anti-competitive actions or conduct in the Electric Utility
4 Industry Restructuring Act on behalf of the state, a political
5 subdivision thereof or any public agency.

6 C. In any action under this section, any defendant,
7 as a partial or complete defense against a damage claim, may, in
8 order to avoid duplicative liability, be entitled to prove that
9 the plaintiff purchaser or seller in the chain of manufacture,
10 production or distribution who paid any overcharge or received
11 any underpayment passed on all or any part of [~~such~~] the
12 overcharge or underpayment to another purchaser or seller in
13 [~~such~~] the chain.

14 D. For the purposes of this section, "business or
15 property" includes business or nonbusiness purchases and
16 business and nonbusiness injuries. "

17 Section 24. Section 57-12-2 NMSA 1978 (being Laws 1967,
18 Chapter 268, Section 2, as amended) is amended to read:

19 "57-12-2. DEFINITIONS. --As used in the Unfair Practices
20 Act:

21 A. "person" includes, where applicable, natural
22 persons, corporations, trusts, partnerships, associations,
23 cooperative associations, clubs, companies, firms, joint
24 ventures or syndicates;

25 B. "seller-initiated telephone sale" means a sale,

underscored material = new
[bracketed material] = del ete

1 lease or rental of goods or services in which the seller or his
2 representative solicits the sale by telephoning the prospective
3 purchaser and in which the sale is consummated entirely by
4 telephone or mail, but does not include a transaction:

5 (1) in which a person solicits a sale from a
6 prospective purchaser who has previously made an authorized
7 purchase from the seller's business; or

8 (2) in which the purchaser is accorded the
9 right of rescission by the provisions of the Consumer Credit
10 Protection Act, 15 U.S.C. 1635 or regulations issued pursuant
11 thereto;

12 C. "trade" or "commerce" includes the advertising,
13 offering for sale, sale or distribution of any services and any
14 property and any other article, commodity or thing of value,
15 including any trade or commerce directly or indirectly affecting
16 the people of this state;

17 D. "unfair or deceptive trade practice" means any
18 false or misleading oral or written statement, visual
19 description or other representation of any kind knowingly made
20 in connection with the sale, lease, rental or loan of goods or
21 services or in the extension of credit or in the collection of
22 debts by any person in the regular course of his trade or
23 commerce, which may, tends to or does deceive or mislead any
24 person and includes but is not limited to:

25 (1) representing goods or services as those of

1 another when the goods or services are not the goods or services
2 of another;

3 (2) causing confusion or misunderstanding as to
4 the source, sponsorship, approval or certification of goods or
5 services;

6 (3) causing confusion or misunderstanding as to
7 affiliation, connection or association with or certification by
8 another;

9 (4) using deceptive representations or
10 designations of geographic origin in connection with goods or
11 services;

12 (5) representing that goods or services have
13 sponsorship, approval, characteristics, ingredients, uses,
14 benefits or quantities that they do not have or that a person
15 has a sponsorship, approval, status, affiliation or connection
16 that he does not have;

17 (6) representing that goods are original or new
18 if they are deteriorated, altered, reconditioned, reclaimed,
19 used or secondhand;

20 (7) representing that goods or services are of
21 a particular standard, quality or grade or that goods are of a
22 particular style or model if they are of another;

23 (8) disparaging the goods, services or business
24 of another by false or misleading representations;

25 (9) offering goods or services with intent not

underscored material = new
[bracketed material] = delete

1 to supply them in the quantity requested by the prospective
2 buyer to the extent of the stock available, unless the purchaser
3 is purchasing for resale;

4 (10) offering goods or services with intent not
5 to supply reasonable expectable public demand;

6 (11) making false or misleading statements of
7 fact concerning the price of goods or services, the prices of
8 competitors or one's own price at a past or future time or the
9 reasons for, existence of or amounts of price reduction;

10 (12) making false or misleading statements of
11 fact for the purpose of obtaining appointments for the
12 demonstration, exhibition or other sales presentation of goods
13 or services;

14 (13) packaging goods for sale in a container
15 that bears a trademark or trade name identified with goods
16 formerly packaged in the container, without authorization,
17 unless the container is labeled or marked to disclaim a
18 connection between the contents and the trademark or trade name;

19 (14) using exaggeration, innuendo or ambiguity
20 as to a material fact or failing to state a material fact if
21 doing so deceives or tends to deceive;

22 (15) stating that a transaction involves
23 rights, remedies or obligations that it does not involve;

24 (16) stating that services, replacements or
25 repairs are needed if they are not needed; [or]

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(17) failure to deliver the quality or quantity of goods or services contracted for; [~~and~~] or

(18) monopoly coercion pursuant to the Electric Utility Industry Restructuring Act; and

E. "unconscionable trade practice" means any act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services or in the extension of credit or in the collection of debts which to a person's detriment:

(1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or

(2) results in a gross disparity between the value received by a person and the price paid. "

Section 25. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.