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SENATE BILL 718

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO PUBLIC UTILITIES; PROVIDING FOR TRANSITION COST RECOVERY; PERMITTING INVESTMENT IN OR CONSTRUCTION, ACQUISITION OR OPERATION OF CERTAIN GENERATING PLANTS; PERMITTING COMBINED GAS AND ELECTRIC DISTRIBUTION UTILITIES TO FUNCTION WITHOUT SEPARATION; SETTING BILLING REQUIREMENTS; PROVIDING APPLICATION AND APPROVAL PROCEDURES FOR DISTRIBUTION COOPERATIVE UTILITIES; ELIMINATING THE PUBLIC UTILITY ACT FROM A DELAYED REPEAL; REPEALING THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999.

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

Section 1. A new section of the Public Utility Act is enacted to read:

" [NEW MATERIAL] TRANSITION COST RECOVERY. --

A. Notwithstanding repeal of the Electric Utility

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1 Industry Restructuring Act of 1999, unless otherwise waived, a  
2 public utility shall be entitled to an opportunity to recover  
3 its transition costs. Utilities may retain these transition  
4 costs as a regulatory asset on their books pending recovery,  
5 which shall be completed by January 1, 2010.

6 B. For purposes of this section, "transition costs"  
7 means the prudent, reasonable and unmitigable costs other than  
8 stranded costs, not recoverable elsewhere under either  
9 federally approved rates or rates approved by the commission,  
10 that a public utility would not have incurred but for its  
11 compliance with the requirements of the Electric Utility  
12 Industry Restructuring Act of 1999 and rules promulgated  
13 pursuant to that act relating to the transition to open access,  
14 and the prudent cost of severance, early and enhanced  
15 retirement benefits, retraining, placement services,  
16 unemployment benefits and health care coverage to public  
17 utility nonmanagerial employees who are laid off on or before  
18 January 1, 2003, that are not otherwise recovered as a stranded  
19 salary and benefits cost. Transition costs shall not include  
20 costs that the public utility would have incurred  
21 notwithstanding the Electric Utility Industry Restructuring Act  
22 of 1999."

23 Section 2. A new section of the Public Utility Act is  
24 enacted to read:

25 "[NEW MATERIAL] PUBLIC UTILITIES--GENERATING PLANT

. 144779. 2

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1 INVESTMENT, CONSTRUCTION, ACQUISITION AND OPERATION. --

2 A. A public utility may invest in, construct,  
3 acquire or operate a generating plant that is not intended to  
4 provide retail electric service to New Mexico customers, the  
5 cost of which is not included in retail rates and which  
6 business activities shall not be subject to regulation by the  
7 commission pursuant to the Public Utility Act, except as  
8 provided by Section 62-9-3 NMSA 1978. This section shall not  
9 diminish a public utility's obligation, by the prudent  
10 acquisition of resources, to serve its retail load at a cost of  
11 service no higher than the average book cost plus fuel, other  
12 operating and maintenance costs and the utility's authorized  
13 rate of return on investment of the utility's unregulated  
14 generation constructed or acquired after January 1, 2001;  
15 provided that this provision does not apply to a public utility  
16 that does not acquire unregulated generation after January 1,  
17 2001. The commission shall assure that the regulated business  
18 is appropriately credited for any off-system sales made from  
19 regulated assets.

20 B. This section shall apply only to a public  
21 utility that began investing in, constructing or acquiring  
22 generating plant pursuant to this section before July 1, 2004.  
23 This section shall continue to apply until the latest of:

- 24 (1) January 1, 2015;  
25 (2) the date the public utility divests its

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1 interest in generating plant acquired or constructed pursuant  
2 to the provisions of this section; or

3 (3) the date the plant receives a certificate  
4 of convenience and necessity in accordance with Section 62-9-1  
5 NMSA 1978. "

6 Section 3. A new section of the Public Utility Act is  
7 enacted to read:

8 "[NEW MATERIAL] GAS AND ELECTRIC UTILITIES--COMBINED  
9 SERVICE.--A public utility that provides both electricity and  
10 natural gas distribution services shall not be required to  
11 functionally separate its electric and gas transmission,  
12 transportation and distribution operations from each other.  
13 Any rule or order to the contrary is void. Nothing in this  
14 section shall prevent a combined gas and electric distribution  
15 company from selling the natural gas commodity to customers  
16 pursuant to tariffs approved by the commission. "

17 Section 4. A new section of the Public Utility Act is  
18 enacted to read:

19 "[NEW MATERIAL] BILLING--FRANCHISE FEES--GROSS RECEIPTS  
20 TAXES.--

21 A. A franchise fee charge shall be stated as a  
22 separate line entry on a bill sent by a public utility or a  
23 distribution cooperative utility to a customer and shall only  
24 be recovered from a customer located within the jurisdiction of  
25 the government authority imposing the franchise fee.

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

6           Section 5. A new section of the Rural Electric  
7 Cooperative Act is enacted to read:

8           "[NEW MATERIAL] DISTRIBUTION COOPERATIVE UTILITIES  
9 ORGANIZED IN OTHER STATES--APPLICATION. --A distribution  
10 cooperative utility organized pursuant to the laws of another  
11 state and providing bundled services in this state on April 1,  
12 1999 to not more than twenty percent of its total customers may  
13 file an application with the commission seeking approval of its  
14 election to be governed by the laws related to electric  
15 restructuring of the state where the utility was organized.  
16 The commission shall approve the application if the  
17 distribution cooperative utility:

18           A. does not provide supply service to other than  
19 its service customers in this state; and

20           B. remains subject to the jurisdiction and  
21 authority of the commission for bundled service provided in  
22 this state. "

23           Section 6. Section 62-3-3 NMSA 1978 (being Laws 1967,  
24 Chapter 96, Section 3, as amended) is amended to read:

25           "62-3-3. DEFINITIONS. --Unless otherwise specified, when  
. 144779. 2

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1 used in the Public Utility Act:

2 A. "affiliated interest" means a person who  
3 directly or indirectly, through one or more intermediaries,  
4 controls or is controlled by or is under common control with a  
5 public utility. Control includes instances where a person is  
6 an officer, director, partner, trustee or person of similar  
7 status or function or owns directly or indirectly or has a  
8 beneficial interest in ten percent or more of any class of  
9 securities of a person;

10 B. "commission" means the public regulation  
11 commi ssi on;

12 C. "commissioner" means a member of the commission;

13 D. "municipality" means a municipal corporation  
14 organized under the laws of the state, and H-class counties;

15 E. "person" means an individual, firm, partnership,  
16 company, rural electric cooperative organized under Laws 1937,  
17 Chapter 100 or the Rural Electric Cooperative Act, corporation  
18 or lessee, trustee or receiver appointed by any court.

19 "Person" does not mean a class A county as described in Section  
20 4-36-10 NMSA 1978 or a class B county as described in Section  
21 4-36-8 NMSA 1978. "Person" does not mean a municipality as  
22 defined in this section unless the municipality has elected to  
23 come within the terms of the Public Utility Act as provided in  
24 Section 62-6-5 NMSA 1978. In the absence of voluntary election  
25 by a municipality to come within the provisions of the Public

. 144779. 2

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1 Utility Act, the municipality shall be expressly excluded from  
2 the operation of that act and from the operation of all its  
3 provisions, and no such municipality shall for any purpose be  
4 considered a public utility;

5 F. "securities" means stock, stock certificates,  
6 bonds, notes, debentures, mortgages or deeds of trust or other  
7 evidences of indebtedness issued, executed or assumed by a  
8 utility;

9 G. "public utility" or "utility" means every person  
10 not engaged solely in interstate business and, except as stated  
11 in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own,  
12 operate, lease or control:

13 (1) any plant, property or facility for the  
14 generation, transmission or distribution, sale or furnishing to  
15 or for the public of electricity for light, heat or power or  
16 other uses;

17 (2) any plant, property or facility for the  
18 manufacture, storage, distribution, sale or furnishing to or  
19 for the public of natural or manufactured gas or mixed or  
20 liquefied petroleum gas for light, heat or power or other uses;  
21 but the term "public utility" or "utility" shall not include  
22 any plant, property or facility used for or in connection with  
23 the business of the manufacture, storage, distribution, sale or  
24 furnishing of liquefied petroleum gas in enclosed containers or  
25 tank truck for use by others than consumers who receive their

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1 supply through any pipeline system operating under municipal  
2 authority or franchise and distributing to the public;

3 (3) any plant, property or facility for the  
4 supplying, storage, distribution or furnishing to or for the  
5 public of water for manufacturing, municipal, domestic or other  
6 uses; provided, however, nothing contained in this paragraph  
7 shall be construed to apply to irrigation systems, the chief or  
8 principal business of which is to supply water for the purpose  
9 of irrigation;

10 (4) any plant, property or facility for the  
11 production, transmission, conveyance, delivery or furnishing to  
12 or for the public of steam for heat or power or other uses; or

13 (5) any plant, property or facility for the  
14 supplying and furnishing to or for the public of sanitary  
15 sewers for transmission and disposal of sewage produced by  
16 manufacturing, municipal, domestic or other uses; provided that  
17 the terms "public utility" or "utility" as used in the Public  
18 Utility Act do not include any utility owned or operated by a  
19 class A county as described in Section 4-36-10 NMSA 1978 either  
20 directly or through a corporation owned by or under contract  
21 with such a county;

22 H. "rate" means every rate, tariff, charge or other  
23 compensation for utility service rendered or to be rendered by  
24 a utility and every rule, regulation, practice, act,  
25 requirement or privilege in any way relating to such rate,

. 144779. 2



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1 tariff, charge or other compensation and any schedule or tariff  
2 or part of a schedule or tariff thereof;

3 I. "renewable energy" means electrical energy  
4 generated by means of a low- or zero-emission generation  
5 technology that has substantial long-term production potential  
6 and may include, without limitation, solar, wind, hydropower,  
7 geothermal, landfill gas, anaerobically digested waste biomass  
8 or fuel cells that are not fossil fueled. "Renewable energy"  
9 does not include fossil fuel or nuclear energy;

10 [~~I.~~] J. "service" or "service regulation" means  
11 every rule, regulation, practice, act or requirement relating  
12 to the service or facility of a utility;

13 [~~J.~~] K. "Class I transaction" means the sale, lease  
14 or provision of real property, water rights or other goods or  
15 services by an affiliated interest to a public utility with  
16 which it is affiliated or by a public utility to its affiliated  
17 interest;

18 [~~K.~~] L. "Class II transaction" means:

19 (1) the formation after May 19, 1982 of a  
20 corporate subsidiary by a public utility or a public utility  
21 holding company by a public utility or its affiliated interest;

22 (2) the direct acquisition of the voting  
23 securities or other direct ownership interests of a person by a  
24 public utility if such acquisition would make the utility the  
25 owner of ten percent or more of the voting securities or other

. 144779. 2

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1 direct ownership interests of that person;

2 (3) the agreement by a public utility to  
3 purchase securities or other ownership interest of a person  
4 other than a nonprofit corporation, contribute additional  
5 equity to, acquire additional equity interest in or pay or  
6 guarantee any bonds, notes, debentures, deeds of trust or other  
7 evidence of indebtedness of any such person; provided, however,  
8 that a public utility may honor all agreements entered into by  
9 such utility prior to May 19, 1982; or

10 (4) the divestiture by a public utility of any  
11 affiliated interest that is a corporate subsidiary of the  
12 public utility;

13 [~~E.~~] M. "corporate subsidiary" means any person ten  
14 percent or more of whose voting securities or other ownership  
15 interests are directly owned by a public utility; and

16 [~~M.~~] N. "public utility holding company" means an  
17 affiliated interest that controls a public utility through the  
18 direct or indirect ownership of voting securities of that  
19 public utility."

20 Section 7. Section 62-15-32 NMSA 1978 (being Laws 1939,  
21 Chapter 47, Section 32, as amended) is amended to read:

22 "62-15-32. CONSTRUCTION OF ACT--INCONSISTENCY. --The Rural  
23 Electric Cooperative Act [~~as amended~~] shall be construed  
24 liberally. The enumeration of any object, purpose, power,  
25 manner, method or thing shall not be deemed to exclude like or

. 144779. 2

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1 similar objects, purposes, powers, manners, methods [of] or  
2 things. Nothing contained in the Rural Electric Cooperative  
3 Act [~~as amended~~] shall be construed, however, to conflict with  
4 any duty to which a cooperative is subject or with any benefit  
5 to which a cooperative is entitled under the Public Utility Act  
6 [~~as now or hereafter amended and~~]. In the event any provision  
7 of the Rural Electric Cooperative Act [~~as now or hereafter~~  
8 ~~amended shall be~~] is held to be repugnant to any provision of  
9 the Public Utility Act [~~as now or hereafter amended~~] or to a  
10 cooperative's inclusion as a public utility thereunder, the  
11 latter shall be controlling and the former shall be held  
12 repealed to the extent of the repugnancy. Nothing in the  
13 Public Utility Act shall be deemed to authorize interference  
14 with, abrogation or change of the rights or obligations of a  
15 party under a wholesale power supply agreement, mortgage or  
16 financing agreement to which a distribution cooperative utility  
17 is a party."

18 Section 8. Laws 1998, Chapter 108, Section 82, as  
19 amended, is amended to read:

20 "Section 82. DELAYED REPEAL. -- The following are repealed  
21 effective July 1, 2003:

22 [~~A. the Public Utility Act, except for Section~~  
23 ~~62-8-10 NMSA 1978;~~

24 [~~B.]~~ A. Chapter 63, Article 7 NMSA 1978;

25 [~~C.]~~ B. the Telephone and Telegraph Company

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Certification Act;

~~[D-]~~ C. the New Mexico Telecommunications Act; and

~~[E-]~~ D. the Cellular Telephone Services Act. "

Section 9. REPEAL. -- Sections 62-3A-1 through 62-3A-23  
NMSA 1978 (being Laws 1999, Chapter 294, Sections 1 through 8,  
Laws 2000, Chapter 88, Section 1 and Laws 1999, Chapter 294,  
Sections 9 through 23, as amended) are repealed.

- 12 -