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HOUSE BILL 1088

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO PUBLIC UTILITIES; CLARIFYING THE DEFINITION OF  
"PUBLIC UTILITY" OR "UTILITY".

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

Section 1. Section 62-3-3 NMSA 1978 (being Laws 1967,  
Chapter 96, Section 3, as amended) is amended to read:

"62-3-3. DEFINITIONS.--Unless otherwise specified, when  
used in the Public Utility Act:

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

underscoring material = new  
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1 securities of a person;

2 B. "commission" means the public regulation  
3 commission;

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

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

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

11 "Person" does not mean a class A county as described in Section  
12 4-36-10 NMSA 1978 or a class B county as described in Section  
13 4-36-8 NMSA 1978. "Person" does not mean a municipality as  
14 defined in this section unless the municipality has elected to  
15 come within the terms of the Public Utility Act as provided in  
16 Section 62-6-5 NMSA 1978. In the absence of voluntary election  
17 by a municipality to come within the provisions of the Public  
18 Utility Act, the municipality shall be expressly excluded from  
19 the operation of that act and from the operation of all its  
20 provisions, and no such municipality shall for any purpose be  
21 considered a public utility;

22 F. "securities" means stock, stock certificates,  
23 bonds, notes, debentures, mortgages or deeds of trust or other  
24 evidences of indebtedness issued, executed or assumed by a  
25 utility;

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

5 (1) any plant, property or facility for the  
6 generation, transmission or distribution, sale or furnishing to  
7 or for the public of electricity for light, heat or power or  
8 other uses;

9 (2) any plant, property or facility for the  
10 manufacture, storage, distribution, sale or furnishing to or  
11 for the public of natural or manufactured gas or mixed or  
12 liquefied petroleum gas, propane or butane for light, heat or  
13 power or other uses; [~~but the term "public utility" or~~  
14 ~~"utility" shall not include any plant, property or facility~~  
15 ~~used for or in connection with the business of the manufacture,~~  
16 ~~storage, distribution, sale or furnishing of liquefied~~  
17 ~~petroleum gas in enclosed containers or tank truck for use by~~  
18 ~~others than consumers who receive their supply through any~~  
19 ~~pipeline system operating under municipal authority or~~  
20 ~~franchise and distributing to the public;~~]

21 (3) any plant, property or facility for the  
22 supplying, storage, distribution or furnishing to or for the  
23 public of water for manufacturing, municipal, domestic or other  
24 uses; provided, however, nothing contained in this paragraph  
25 shall be construed to apply to irrigation systems, the chief or

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1 principal business of which is to supply water for the purpose  
2 of irrigation;

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

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

15 H. "rate" means every rate, tariff, charge or other  
16 compensation for utility service rendered or to be rendered by  
17 a utility and every rule, regulation, practice, act,  
18 requirement or privilege in any way relating to such rate,  
19 tariff, charge or other compensation and any schedule or tariff  
20 or part of a schedule or tariff thereof;

21 I. "renewable energy" means electrical energy  
22 generated by means of a low- or zero-emission generation  
23 technology that has substantial long-term production potential  
24 and may include, without limitation, solar, wind, hydropower,  
25 geothermal, landfill gas, anaerobically digested waste biomass

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1 or fuel cells that are not fossil fueled. "Renewable energy"  
2 does not include fossil fuel or nuclear energy;

3 J. "service" or "service regulation" means every  
4 rule, regulation, practice, act or requirement relating to the  
5 service or facility of a utility;

6 K. "Class I transaction" means the sale, lease or  
7 provision of real property, water rights or other goods or  
8 services by an affiliated interest to a public utility with  
9 which it is affiliated or by a public utility to its affiliated  
10 interest;

11 L. "Class II transaction" means:

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

15 (2) the direct acquisition of the voting  
16 securities or other direct ownership interests of a person by a  
17 public utility if such acquisition would make the utility the  
18 owner of ten percent or more of the voting securities or other  
19 direct ownership interests of that person;

20 (3) the agreement by a public utility to  
21 purchase securities or other ownership interest of a person  
22 other than a nonprofit corporation, contribute additional  
23 equity to, acquire additional equity interest in or pay or  
24 guarantee any bonds, notes, debentures, deeds of trust or other  
25 evidence of indebtedness of any such person; provided, however,

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1 that a public utility may honor all agreements entered into by  
2 such utility prior to May 19, 1982; or

3 (4) the divestiture by a public utility of any  
4 affiliated interest that is a corporate subsidiary of the  
5 public utility;

6 M. "corporate subsidiary" means any person ten  
7 percent or more of whose voting securities or other ownership  
8 interests are directly owned by a public utility; and

9 N. "public utility holding company" means an  
10 affiliated interest that controls a public utility through the  
11 direct or indirect ownership of voting securities of that  
12 public utility."