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AN ACT

RELATING TO PUBLIC UTILITIES; PROVIDING FOR FUTURE TEST PERIODS; PROVIDING FOR THE CONSIDERATION OF FUTURE TEST PERIODS AND CONSTRUCTION WORK IN PROGRESS IN DETERMINING RATES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

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 by Laws 2005, Chapter 339, Section 2 and by Laws 2005, Chapter 341, Section 12) 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 when:

(1) a person is an officer, director, partner, trustee or person of similar status or function;

(2) a person owns directly or indirectly or has a beneficial interest in ten percent or more of voting securities of a person;

(3) a person has a level of ownership of securities other than voting securities that the commission

1 establishes as creating a presumption of control; and

2 (4) the possession of the power to direct or
3 cause the direction of the management and policies of a
4 person exists in fact, notwithstanding the lack of ownership
5 of ten percent or more of the person's voting securities;

6 B. "commission" means the public regulation
7 commission;

8 C. "commissioner" means a member of the
9 commission;

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

12 E. "person" means an individual, firm,
13 partnership, company, rural electric cooperative organized
14 under Laws 1937, Chapter 100 or the Rural Electric
15 Cooperative Act, corporation or lessee, trustee or receiver
16 appointed by any court. "Person" does not mean a class A
17 county as described in Section 4-36-10 NMSA 1978 or a class B
18 county as described in Section 4-36-8 NMSA 1978. "Person"
19 does not mean a municipality as defined in this section
20 unless the municipality has elected to come within the terms
21 of the Public Utility Act as provided in Section 62-6-5 NMSA
22 1978. In the absence of voluntary election by a municipality
23 to come within the provisions of the Public Utility Act, the
24 municipality shall be expressly excluded from the operation
25 of that act and from the operation of all its provisions, and

1 no such municipality shall for any purpose be considered a
2 public utility;

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

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

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

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

1 the public;

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

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

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
17 that "public utility" or "utility" as used in the Public
18 Utility Act does not include any utility owned or operated by
19 a class A county as described in Section 4-36-10 NMSA 1978
20 either directly or through a corporation owned by or under
21 contract with such a county; or

22 (6) any plant, property or facility for the
23 sale or furnishing to or for the public of goods or services
24 to reduce the consumption of or demand for electricity or
25 natural gas, and is either a public utility under the

1 definitions found in Paragraph (1) or (2) of this subsection,
2 or is an alternative energy efficiency provider as described
3 in Section 62-17-7 NMSA 1978;

4 H. "rate" means every rate, tariff, charge or
5 other compensation for utility service rendered or to be
6 rendered by a utility and every rule, regulation, practice,
7 act, requirement or privilege in any way relating to such
8 rate, tariff, charge or other compensation and any schedule
9 or tariff or part of a schedule or tariff thereof;

10 I. "renewable energy" means electrical energy
11 generated by means of a low- or zero-emission generation
12 technology that has substantial long-term production
13 potential and may include, without limitation, the following
14 energy sources: solar, wind, hydropower, geothermal,
15 landfill gas, anaerobically digested waste biomass or fuel
16 cells that are not fossil fueled. "Renewable energy" does
17 not include fossil fuel or nuclear energy;

18 J. "service" or "service regulation" means every
19 rule, regulation, practice, act or requirement relating to
20 the service or facility of a utility;

21 K. "Class I transaction" means the sale, lease or
22 provision of real property, water rights or other goods or
23 services by an affiliated interest to a public utility with
24 which it is affiliated or by a public utility to its
25 affiliated interest;

1 L. "Class II transaction" means:

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

6 (2) the direct acquisition of the voting
7 securities or other direct ownership interests of a person by
8 a public utility if such acquisition would make the utility
9 the owner of ten percent or more of the voting securities or
10 other direct ownership interests of that person;

11 (3) the agreement by a public utility to
12 purchase securities or other ownership interest of a person
13 other than a nonprofit corporation, contribute additional
14 equity to, acquire additional equity interest in or pay or
15 guarantee any bonds, notes, debentures, deeds of trust or
16 other evidence of indebtedness of any such person; provided,
17 however, that a public utility may honor all agreements
18 entered into by such utility prior to May 19, 1982; or

19 (4) the divestiture by a public utility of
20 any affiliated interest that is a corporate subsidiary of the
21 public utility;

22 M. "corporate subsidiary" means any person ten
23 percent or more of whose voting securities or other ownership
24 interests are directly owned by a public utility;

25 N. "public utility holding company" means an

1 affiliated interest that controls a public utility through
2 the direct or indirect ownership of voting securities of that
3 public utility;

4 O. "voting securities" means securities that carry
5 the present right to vote for the election of directors or
6 other members of the governing body ultimately responsible
7 for the management of the organization; and

8 P. "future test period" means a twelve-month
9 period beginning no later than the date a proposed rate
10 change is expected to take effect."

11 Section 2. Section 62-6-14 NMSA 1978 (being Laws 1941,
12 Chapter 84, Section 26, as amended) is amended to read:

13 "62-6-14. VALUATION BY THE COMMISSION.--

14 A. When in the exercise of its powers and
15 jurisdiction it is necessary for the commission to consider
16 or ascertain the valuation of the properties or business of a
17 public utility, or make any other determination involved in
18 the fixing or setting of rates for a utility, the commission
19 shall give due consideration to the history and development
20 of the property and business of the particular public
21 utility, to the original cost thereof, to the cost of
22 reproduction as a going concern, to the revenues, investment
23 and expenses of the utility in this state and otherwise
24 subject to the commission's jurisdiction, to construction
25 work in progress and to other elements of value and

1 rate-making formulae and methods recognized by the laws of
2 the land for rate-making purposes.

3 B. For the purpose of making such valuation or
4 determinations, the members of the commission and its duly
5 authorized agents and employees shall at all reasonable times
6 have free access to the property, accounts, records and
7 memoranda of the utility whose property and rights are being
8 valued, and the utility shall aid and cooperate with the
9 commission and its duly authorized agents and employees to
10 the fullest degree for the purpose of facilitating the
11 investigation.

12 C. In making any determination involving the rates
13 or service of a utility, the commission may change its past
14 practices or procedures, provided that substantial evidence
15 on the record justifies such a change.

16 D. The commission shall set rates based on a test
17 period that the commission determines best reflects the
18 conditions to be experienced during the period when the rates
19 determined by the commission take effect. If a future test
20 period is proposed, the commission shall give due
21 consideration that the future test period may best reflect
22 those conditions.

23 E. Upon a request to include construction work in
24 progress in the rate base, the commission shall grant the
25 request only upon a finding that a project's costs are

1 reasonable. The commission shall not include the associated
2 allowance for funds used during construction in income. The
3 projects for which the commission shall grant a request
4 include environmental improvement projects and generation and
5 transmission investments for which the utility has obtained a
6 certificate of public convenience and necessity; provided that
7 the projects are anticipated to be in service no later than
8 five months after the end of a utility's test period, but in
9 no event later than twenty-four months after the filing date
10 of a utility's rate proceeding."

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