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AN ACT

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RELATING TO UTILITIES; ESTABLISHING LIMITS ON RURAL ELECTRIC  
COOPERATIVES INVESTMENTS IN SUBSIDIARY BUSINESSES; REMOVING  
REQUIRED PUBLIC REGULATION COMMISSION APPROVAL ON CERTAIN FEDERAL  
LOANS ALREADY APPROVED BY A FEDERAL AGENCY; REPEALING THE REPEAL  
OF CERTAIN LAWS PERTAINING TO UTILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO: Section 1.

A new section of the Rural Electric Cooperative Act is enacted to read:

"SUBSIDIARY BUSINESS ACTIVITIES.--

A. Cooperatives may form, organize, acquire, hold, dispose of and  
operate any interest up to and including full controlling interest in separate business  
entities that provide energy services and products and telecommunications and  
communications services and products, including cable and satellite television and  
water and wastewater collection and treatment, without prior approval from the public  
regulation commission so long as those other business entities meet all of the following  
conditions:

(1) the subsidiary is not financed with loans from the federal  
rural utilities service of the United States department of agriculture or the United States  
department of agriculture or with similar financing from any successor agency. This  
limitation shall not apply to rural utilities service loans or United States department of  
agriculture loans, or loans from successor agencies, to the extent the loan is to be  
used for a purpose authorized by the lending agency;

(2) the subsidiary fully compensates the cooperative for the  
use of personnel, services, equipment, tangible property and the cooperative's fully  
distributed costs, including all direct and indirect costs and the cost of capital incurred  
in providing the personnel, services, equipment or tangible property in question;

1 (3) the total investments, loans, guarantees and pledges of  
2 assets of a cooperative in all of its subsidiaries shall not exceed twenty percent of the  
3 cooperative's assets; and

4 (4) the subsidiary agrees to not offer any service or product to  
5 the public until it has obtained federal and state regulatory approvals, if any, required  
6 to provide the service or product to the public.

7 B. A director, or spouse of a director, of a cooperative may not be  
8 employed or have any financial interest in a separate business entity formed,  
9 organized, acquired, held or operated by that cooperative pursuant to the provisions  
10 of this section.

11 C. Should the public regulation commission, upon complaint showing  
12 reasonable grounds for investigation, find after investigation and public hearing that  
13 the charges for the transactions between the cooperative and other business entity do  
14 not conform with the provisions of this section, the public regulation commission is  
15 authorized to direct the cooperative to adjust those charges to comply with the  
16 provisions of this section. If the cooperative does not comply with the public regulation  
17 commission's directive, the public regulation commission is authorized to direct the  
18 cooperative to divest its interest in the other business entity. For purposes of  
19 enforcing this section, members of the public regulation commission, and the public  
20 regulation commission staff, are authorized to inspect the books and records of such  
21 other business entities and the cooperatives, provided that proprietary or confidential  
22 data or information of the separate business entities shall not be disclosed to a third  
23 party. The public regulation commission shall adopt rules and reporting requirements  
24 to enforce the provisions of this section.

25 D. Nothing in this section grants the public regulation commission the  
power to regulate a generation and transmission cooperative referred to in Section 62-  
6-4 NMSA 1978."

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

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"62-6-6. ISSUANCE, ASSUMPTION OR GUARANTEE OF SECURITIES.--

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A. The power of a public utility to issue, assume or guarantee securities and to create liens on its property situated within this state is a special privilege subject to the supervision and control of the commission as set forth in the Public Utility Act.

B. Except as provided in Subsection E of this section, a public utility, when authorized by order of the commission and not otherwise, may issue stocks and stock certificates and may issue, assume or guarantee other securities payable at periods of more than eighteen months after the date thereof for the following purposes only:

- (1) making loans or grants from the proceeds of federal loans for economic development projects benefiting its service area;
- (2) the acquisition of property;
- (3) the construction, completion, extension or improvement of its facilities;
- (4) the improvement or maintenance of its service;
- (5) the discharge or lawful refunding of its obligations; or
- (6) the reimbursement of money actually expended for purposes set forth in this subsection from income or from any other money in the treasury not secured by or obtained from the issue, assumption or guarantee of securities, within five years next prior to the filing of an application with the commission for the required authorization.

C. Notwithstanding the provisions of Subsection B of this section, the commission may authorize issuance by a public utility of shares of stock of any class as a dividend on outstanding shares of stock of the public utility of any class and may authorize the issuance of the same or a different number of shares of stock of any class in exchange for outstanding shares of stock of any class of the public utility, and the public utility may issue the stock so authorized.

1 D. The commission shall not authorize a borrowing under the  
2 provisions of Paragraph (1) of Subsection B of this section unless the governing board  
3 has approved the borrowing by a two-thirds' majority vote of the members present at a  
4 special meeting called for that purpose. The commission shall review the terms of the  
5 economic development loan or grant to ascertain the adequacy of any collateral, to  
6 have the right to inspect books and review the level of co-participation by the borrower  
or grantee.

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7 E. Commission approval is not required for the issuance, assumption  
8 or guarantee of any security of a public utility whose securities are subject to oversight  
9 and approval by the federal government pursuant to the Rural Electrification Act of  
10 1936, as amended, or any successor law to that act."

11 Section 3. Section 62-6-8.1 NMSA 1978 (being Laws 1979, Chapter 50,  
Section 1) is amended to read:

12 "62-6-8.1. ADDITIONAL JURISDICTION.--Except as provided in Subsection E  
13 of Section 62-6-6 NMSA 1978 and notwithstanding any other provision of Sections 62-  
14 6-1 through 62-6-11 NMSA 1978, the commission shall have jurisdiction over and may  
15 regulate, by general order or regulation, securities of a public utility incorporated  
16 under the laws of this state that would otherwise be exempt from regulation by the  
17 commission pursuant to Section 62-6-6 NMSA 1978 or Subsection A of Section 62-6-8  
18 NMSA 1978 and that is subject to regulation pursuant to 16 USC 824."

19 Section 4. Section 62-8-7 NMSA 1978 (being Laws 1991, Chapter 251,  
Section 1, as amended) is amended to read:

20 "62-8-7. CHANGE IN RATES.--

21 A. At any hearing involving an increase in rates or charges sought by  
22 a public utility, the burden of proof to show that the increased rate or charge is just  
23 and reasonable shall be upon the utility.

24 B. Unless the commission otherwise orders, no public utility shall make  
25 any change in any rate that has been duly established except after thirty days' notice  
to the commission, which notice shall plainly state the changes proposed to be made

1 in the rates then in force and the time when the changed rates will go into effect and  
2 other information as the commission by rule requires. The utility shall also give notice  
3 of the proposed changes to other interested persons as the commission may direct.  
4 All proposed changes shall be shown by filing new schedules that shall be kept open  
5 to public inspection. The commission for good cause shown may allow changes in  
6 rates without requiring the thirty days' notice, under conditions that it may prescribe.

7 C. Whenever there is filed with the commission by any public utility a  
8 complete application as prescribed by commission rule proposing new rates, the  
9 commission may, upon complaint or upon its own initiative, except as otherwise  
10 provided by law, upon reasonable notice, enter upon a hearing concerning the  
11 reasonableness of the proposed rates. If the commission determines a hearing is  
12 necessary, it shall suspend the operation of the proposed rates before they become  
13 effective but not for a longer initial period than nine months beyond the time when the  
14 rates would otherwise go into effect, unless the commission finds that a longer time will  
15 be required, in which case the commission may extend the period for an additional  
16 three months. The commission shall hear and decide cases with reasonable  
17 promptness. The commission shall adopt rules identifying criteria for various rate and  
18 tariff filings to be eligible for suspension periods shorter than what is allowed by this  
19 subsection and to be eligible for summary approval without hearing.

20 D. If after a hearing the commission finds the proposed rates to be  
21 unjust, unreasonable or in any way in violation of law, the commission shall determine  
22 the just and reasonable rates to be charged or applied by the utility for the service in  
23 question and shall fix the rates by order to be served upon the utility or the  
24 commission by its order shall direct the utility to file new rates respecting such service  
25 that are designed to produce annual revenues no greater than those determined by  
the commission in its order to be just and reasonable. Those rates shall thereafter be  
observed until changed, as provided by the Public Utility Act.

E. Except as otherwise provided by law, any increase in rates or  
charges for the utility commodity based upon cost factors other than taxes or cost of

1 fuel, gas or purchased power, filed for after April 4, 1991, shall be permitted only after  
2 notice and hearing as provided by this section. The commission shall enact rules  
3 governing the use of tax, fuel, gas or purchased power adjustment clauses by utilities  
4 that enable the commission to consider periodically at least the following:

5 (1) whether the existence of a particular adjustment clause is  
6 consistent with the purposes of the Public Utility Act, including serving the goal of  
7 providing reasonable and proper service at fair, just and reasonable rates to all  
8 customer classes;

9 (2) the specific adjustment mechanism to recover tax, gas, fuel  
10 or purchased power costs;

11 (3) which costs should be included in an adjustment clause,  
12 procedures to avoid the inclusion of costs in an adjustment clause that should not be  
13 included and methods by which the propriety of costs that are included may be  
14 determined by the commission in a timely manner, including what informational filings  
15 are required to enable the commission to make such a determination; and

16 (4) the proper adjustment period to be employed.

17 F. The commission may eliminate or condition a particular adjustment  
18 clause if it finds such elimination or condition is consistent with the purposes of the  
19 Public Utility Act, including serving the goal of providing reasonable and proper service  
20 at fair, just and reasonable rates to all customer classes; provided, however, that no  
21 such elimination or condition shall be ordered unless such elimination or condition will  
22 not place the affected utility at a competitive disadvantage. The commission rules  
23 shall also provide for variances and may provide for separate examination of a utility's  
24 adjustment clause based upon that utility's particular operating characteristics.

25 G. Whenever there is filed with the commission a schedule proposing  
new rates by a rural electric cooperative organized under the Rural Electric  
Cooperative Act, the rates shall become effective as proposed by the rural electric  
cooperative without a hearing. However, the cooperative shall give written notice of  
the proposed rates to its affected patrons at least thirty days prior to the filing with the

1 commission, and the commission shall suspend the rates and conduct a hearing  
2 concerning the reasonableness of any proposed rates filed by a rural electric  
3 cooperative pursuant to Subsections C and D of this section upon the filing with the  
4 commission of a protest setting forth grounds for review of the proposed rates signed  
5 by one or more members of the rural electric cooperative and if the commission  
6 determines there is just cause for reviewing the proposed rates on one or more of the  
7 grounds of the protest. The protest shall be filed no later than twenty days after the  
8 filing with the commission of the schedule proposing the new rates. The hearing and  
9 review shall be limited to the issues set forth in the protest and for which the  
10 commission may find just cause for the review, which issues shall be contained in the  
11 notice of hearing. The provisions of this subsection shall not be construed to affect  
12 commission authority or procedure to regulate the sale, furnishing or delivery by  
13 wholesale suppliers of electricity to rural electric cooperatives pursuant to Section 62-  
14 6-4 NMSA 1978. In addition to the adjustments permitted by Subsections E and F of  
15 this section, the commission may authorize rate schedules of rural electric  
16 cooperatives to recover, without notice and hearing, changes in the cost of debt  
17 capital incurred pursuant to securities that are lawfully issued. For the purposes of  
18 this subsection, a member of a rural electric cooperative is a member as defined by  
19 the Rural Electric Cooperative Act."

20 Section 5. REPEAL.--Laws 1998, Chapter 108, Section 82, as amended by  
21 Laws 2000, Chapter 88, Section 3, is repealed.

22 Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act  
23 is July 1, 2003.  
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