

1 SENATE BILL 195

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Pat Woods

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10 AN ACT

11 RELATING TO UTILITIES; EXEMPTING FACILITIES THAT SOLELY PROVIDE
12 ELECTRICITY FOR ELECTRIC VEHICLES FROM THE DEFINITION OF
13 "PUBLIC UTILITY".

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "62-3-3. DEFINITIONS.--Unless otherwise specified, when
19 used in the Public Utility Act:

20 A. "affiliated interest" means a person who
21 directly or indirectly, through one or more intermediaries,
22 controls or is controlled by or is under common control with a
23 public utility. Control includes instances when:

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

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

4 (3) a person has a level of ownership of
5 securities other than voting securities that the commission
6 establishes as creating a presumption of control; and

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

11 B. "commission" means the public regulation
12 commission;

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

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

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

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

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

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

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

14 (1) any plant, property or facility for the
15 generation, transmission or distribution, sale or furnishing to
16 or for the public of electricity for light, heat or power or
17 other uses; but "public utility" or "utility" shall not include
18 any plant, property or facility used solely for or solely in
19 connection with the business of providing electricity for
20 electric vehicles;

21 (2) any plant, property or facility for the
22 manufacture, storage, distribution, sale or furnishing to or
23 for the public of natural or manufactured gas or mixed or
24 liquefied petroleum gas for light, heat or power or other uses;
25 but "public utility" or "utility" shall not include any plant,

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1 property or facility used for or in connection with the
2 business of the manufacture, storage, distribution, sale or
3 furnishing of liquefied petroleum gas in enclosed containers or
4 tank truck for use by others than consumers who receive their
5 supply through any pipeline system operating under municipal
6 authority or franchise and distributing to the public;

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

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

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

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1 (6) any plant, property or facility for the
2 sale or furnishing to or for the public of goods or services to
3 reduce the consumption of or demand for electricity or natural
4 gas, and is either a public utility under the definitions found
5 in Paragraph (1) or (2) of this subsection, or is an
6 alternative energy efficiency provider as described in Section
7 62-17-7 NMSA 1978;

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

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

22 J. "service" or "service regulation" means every
23 rule, regulation, practice, act or requirement relating to the
24 service or facility of a utility;

25 K. "Class I transaction" means the sale, lease or

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1 provision of real property, water rights or other goods or
2 services by an affiliated interest to a public utility with
3 which it is affiliated or by a public utility to its affiliated
4 interest;

5 L. "Class II transaction" means:

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

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

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

22 (4) the divestiture by a public utility of any
23 affiliated interest that is a corporate subsidiary of the
24 public utility;

25 M. "corporate subsidiary" means any person ten

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1 percent or more of whose voting securities or other ownership
2 interests are directly owned by a public utility;

3 N. "public utility holding company" means an
4 affiliated interest that controls a public utility through the
5 direct or indirect ownership of voting securities of that
6 public utility;

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

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