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SENATE BILL 266

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO ELECTRIC UTILITIES; DELAYING CUSTOMER CHOICE
PROVISIONS AND IMPLEMENTATION OF THE ELECTRIC UTILITY INDUSTRY
RESTRUCTURING ACT OF 1999.

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

Section 1. Section 62-3A-4 NMSA 1978 (being Laws 1999,
Chapter 294, Section 4) is amended to read:

"62-3A-4. IMPLEMENTATION OF CUSTOMER CHOICE--PRIOR PLANS
AND APPROVALS--REVIEW BY COMMISSION. --

A. Except as provided in Sections [~~16 and 17 of~~
~~the Electric Utility Industry Restructuring Act of 1999]~~
62-3A-16 and 62-3A-17 NMSA 1978, customer choice service shall
be available as follows:

(1) for public post-secondary educational
institutions and public schools [~~as defined in Section 22-1-2~~

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1 ~~NMSA-1978~~] and for residential and small business customers,
2 on January 1, [~~2001~~] 2007; and

3 (2) for all other customers of electricity,
4 on [~~January 1, 2002~~] July 1, 2008.

5 B. A plan or approval for customer choice,
6 disposition of stranded costs, preparation for open access or
7 competitive supply service for a public utility granted by the
8 commission between January 1, 1997 and December 31, 1998 may
9 be reviewed by the commission, in conjunction with the
10 Electric Utility Industry Restructuring Act of 1999. After
11 notice and public hearing, the plan or approval shall be
12 confirmed, rejected or modified by the commission on or before
13 November 30, 1999. Modifications to a plan or an approval may
14 be recommended by the commission, the public utility subject
15 to the plan or approval or a party with standing.

16 C. A public utility having had a plan or approval
17 granted by the commission after January 1, 1997 shall be
18 subject to the requirements of the Electric Utility Industry
19 Restructuring Act of 1999 to the extent the requirements of
20 that act are not inconsistent with the plan or approval, as
21 confirmed, rejected or modified in accordance with Subsection
22 B of this section.

23 D. The commission may delay customer choice and
24 other dates established in the Electric Utility Industry
25 Restructuring Act of 1999 by up to one year upon finding that

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1 an orderly implementation of customer choice cannot be
2 accomplished without the delay. "

3 Section 2. Section 62-3A-6 NMSA 1978 (being Laws 1999,
4 Chapter 294, Section 6) is amended to read:

5 "62-3A-6. TRANSITION PLANS. --

6 A. A public utility shall file a transition plan
7 that complies with the Electric Utility Industry Restructuring
8 Act of 1999 with the commission no later than [~~March 1, 2000~~
9 January 1, 2005 for commission approval on or before [~~December~~
10 1, 2000] October 1, 2006. The transition plan shall include a
11 detailed description of the public utility's:

12 (1) proposal and alternatives to separate its
13 supply service and energy-related service assets from its
14 distribution and transmission services assets pursuant to
15 Section [~~8 of the Electric Utility Industry Restructuring Act~~
16 of 1999] 62-3A-8 NMSA 1978;

17 (2) associated unbundled cost-of-service
18 studies and an explanation of all cost allocations made to the
19 unbundled services;

20 (3) proposed methodologies to allow
21 residential and small business customers to have customer
22 choice without requiring additional end-use metering
23 equipment;

24 (4) proposals to implement customer choice
25 and open access;

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1 (5) proposed standard offer service tariffs,
2 exclusive of price terms that shall be incorporated prior to
3 customer choice, for residential and small business customers
4 that do not select a power supplier pursuant to customer
5 choice eligibility;

6 (6) proposed competitive procurement process
7 or other process for the selection of power supply for
8 standard offer service tariffs, together with a proposed rate
9 setting procedure. The initial procurement of power for
10 standard offer service shall occur at least three months prior
11 to customer choice, or earlier as determined by the
12 commission, so that price terms can be the basis for
13 determination of stranded costs;

14 (7) proposed tariffs for distribution service
15 for customers and competitive power suppliers, and
16 transmission service, either on file with a federal regulatory
17 agency having jurisdiction or as proposed by the public
18 utility;

19 (8) the projected amounts of stranded costs
20 and transition costs sought to be recovered by the public
21 utility;

22 (9) proposed non-bypassable wires charges for
23 recovery of transition costs and stranded costs allocated
24 among customer classes;

25 (10) proposed system for the collection,

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1 recovery and accounting of the system benefits charge and
2 stranded and transition costs through wires charges;

3 (11) proposed customer education programs,
4 necessary computer hardware and software modifications and
5 meter upgrades necessary to provide open access;

6 (12) proposed procedures for balancing,
7 settlements and communications with competitive power
8 suppliers; and

9 (13) any other information, documentation or
10 justification requested by the commission.

11 B. The commission in making its determination of
12 the amount of stranded costs to be recovered by a public
13 utility in its transition plan filing shall order no less than
14 fifty percent recovery of stranded costs. The commission may
15 allow up to one hundred percent recovery of stranded costs
16 only if it finds that recovery of more than fifty percent of
17 stranded costs:

18 (1) is in the public interest;

19 (2) is necessary to maintain the financial
20 integrity of the public utility;

21 (3) is necessary to continue adequate and
22 reliable service by the public utility; and

23 (4) will not cause an increase in rates to
24 residential or small business customers during the transition
25 period.

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1 C. The commission in quantifying stranded costs
2 shall consider:

3 (1) mitigation efforts and results;
4 (2) reasonable methods for determining market
5 valuations, including:

6 (a) the use of standard offer bid
7 prices;

8 (b) appraisal by independent third-
9 party professionals;

10 (c) a competitive bid sale for
11 generation; and

12 (d) any other method designed to
13 provide a reasonable valuation;

14 (3) for residential and small business
15 customers, that the standard offer bid price may ~~reflect~~
16 reflect the current market value of supply service; and

17 (4) that recoverable stranded costs must be
18 fair and equitable to customers, utility investors and the
19 public.

20 D. Before July 1, ~~2000~~ 2005, the commission
21 shall approve the procurement procedure proposed by the public
22 utility in its transition plan for the acquisition of supply
23 service for standard offer service. On or before September 1,
24 ~~2000~~ 2006, a public utility shall update its pending
25 transition plan filing by providing the price of supply

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1 service procured for standard offer service pursuant to the
2 procurement procedure approved by the commission. The
3 approval of stranded costs to be recovered from the
4 residential and small business classes shall be made after the
5 public utility has contracted to procure power for the
6 standard offer, but prior to December 1, ~~[2000]~~ 2006.

7 E. After notice and public hearing, the commission
8 shall issue a final order approving or modifying a public
9 utility's transition plan, including tariffs for just and
10 reasonable rates for distribution service, transmission
11 service, subject to federal jurisdiction, and standard offer
12 services. All interested parties shall be afforded an
13 opportunity to participate and be heard on any matter
14 contained in a transition plan filing. The commission may
15 initiate an inquiry into an approved transition plan's
16 implementation and operation, if the public interest
17 requires. "

18 Section 3. Section 62-3A-7 NMSA 1978 (being Laws 1999,
19 Chapter 294, Section 7) is amended to read:

20 "62-3A-7. RECOVERY OF TRANSITION AND STRANDED COSTS--
21 OPPORTUNITIES AND LIMITS. --

22 A. The commission shall determine the non-
23 bypassable wires charges for the recovery of transition costs
24 and stranded costs as described in Section ~~[6 of the Electric~~
25 ~~Utility Industry Restructuring Act of 1999]~~ 62-3A-6 NMSA 1978.

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1 B. As to stranded cost recovery, the non-
2 bypassable wires charge established shall:

3 (1) be calculated to begin on the eligibility
4 date of customer choice for each customer class;

5 (2) not extend longer than five years
6 thereafter, provided that the commission may separate nuclear
7 decommissioning for recovery over a longer period of time
8 through a separate wires charge if it determines that such
9 recovery is in the public interest; and

10 (3) shall be equitably designed in a
11 competitively neutral manner that ensures that the class pays
12 no more than the stranded costs associated with that class.

13 C. In its approval of a transition plan provided
14 for in Section [~~6 of the Electric Utility Industry~~
15 ~~Restructuring Act of 1999~~] 62-3A-6 NMSA 1978, the commission
16 shall determine a non-bypassable wires charge for recovery of
17 transition costs through December 31, [~~2007~~] 2012, after which
18 date further transition charges shall not be recoverable
19 through a separate wires charge.

20 D. The commission or the public utility may seek
21 to consider and modify or continue the wires charge
22 established to achieve collection of the transition costs. If
23 an over-collection of transition costs is determined by the
24 commission to have occurred, a wires credit shall be applied
25 to customers' bills to return the over-collection of

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1 transition costs in an amount and for such time as the
2 commission may determine.

3 E. Nothing in the Electric Utility Industry
4 Restructuring Act of 1999 is intended to affect the ability of
5 a public utility to recover wholesale stranded costs,
6 including stranded costs recovered from wholesale customers
7 under contract.

8 F. Nothing in the Electric Utility Industry
9 Restructuring Act of 1999 shall be interpreted to require the
10 commission to make any order involving rates or wires charges
11 that would result in a public utility losing its eligibility:

12 (1) for accelerated depreciation or other tax
13 benefits for federal income tax purposes; or

14 (2) to exclusively use external sinking fund
15 methods for decommissioning obligations pursuant to federal
16 guidelines. "

17 Section 4. Section 62-3A-8 NMSA 1978 (being Laws 1999,
18 Chapter 294, Section 8) is amended to read:

19 "62-3A-8. DIVESTITURE NOT REQUIRED--AFFILIATES--
20 SEPARATION OF REGULATED FROM COMPETITIVE FUNCTIONS--
21 PROHIBITIONS AGAINST CROSS-SUBSIDIES, DISCRIMINATION AND ANTI-
22 COMPETITIVE ACTIONS--DECLARATION REGARDING ANTITRUST ACTIONS.--

23 A. The Electric Utility Industry Restructuring Act
24 of 1999 does not require nor shall it be construed to require
25 nor shall the commission require a public utility to divest

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1 itself of any of its assets owned, leased or in which an
2 interest is held, owned or leased on the effective date of that
3 act.

4 B. Before [~~January 1, 2001~~] July 2, 2006, a public
5 utility shall separate into at least two corporations,
6 separating supply service and energy-related service consisting
7 of generation and power supply facilities, operations and
8 services and energy-related facilities, operations and services
9 that are to be made available to the public pursuant to the
10 Electric Utility Industry Restructuring Act of 1999 on a
11 competitive unregulated basis from transmission and
12 distribution services consisting of transmission facilities,
13 operations and service, distribution facilities, operations and
14 service and customer billing and metering that are to be made
15 available to the public pursuant to that act on a regulated
16 basis.

17 C. Corporate separation of regulated from
18 unregulated services shall be accomplished by either the
19 creation of separate affiliated companies that may be owned by
20 a common holding company, through the creation of separate non-
21 affiliated corporations or through the sale of assets to one or
22 more third parties. A public utility may provide all
23 competitive and ancillary services within a single unregulated
24 company and provide all non-competitive and ancillary services
25 within a separate regulated company. Unregulated service shall

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1 not be provided by a regulated company.

2 D. Prior to customer choice pursuant to the
3 Electric Utility Industry Restructuring Act of 1999, the
4 commission shall adopt codes of conduct applicable to public
5 utilities that shall contain provisions that:

6 (1) prevent undue discrimination in favor of
7 affiliates;

8 (2) prevent any anti-competitive practices
9 that could harm competition in any market for competitive
10 services, including practices that unfairly impede a customer
11 from self-generating a portion of his supply service
12 requirements;

13 (3) grant customers and their competitive
14 power suppliers access to a public utility's retail
15 distribution and transmission facilities on a non-
16 discriminatory basis at the same rates, terms and conditions of
17 service of use by the public utility and its affiliates;

18 (4) prevent the disclosure of any individual
19 customer information to any person, including an affiliate,
20 unless the customer provides written consent except as
21 otherwise directed in a rulemaking by the commission;

22 (5) prevent the disclosure of any aggregated
23 customer information to any person, including an affiliate,
24 unless the same information is timely made available on the
25 same basis to all competitors;

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1 (6) require that any person, including an
2 affiliate, possessing customer information obtained in a manner
3 contrary to Paragraphs (4) and (5) of this subsection shall
4 make no commercial use of the information and either destroy
5 the information or return it to the public utility;

6 (7) provide that transactions between a public
7 utility and an affiliate do not involve any subsidies between
8 them and do not jeopardize reliability of the electric system,
9 including its interconnections; and

10 (8) prevent an affiliate from identifying its
11 affiliation with the public utility unless the affiliate also
12 discloses in a reasonable manner that it is neither the same
13 company as the public utility nor is it regulated by the
14 commission.

15 E. A public utility shall not subsidize competitive
16 services provided by an affiliate. A public utility shall file
17 with the commission a statement of policy and procedure,
18 consistent with the commission's codes of conduct and subject
19 to commission approval, to avoid any subsidy to an affiliate.
20 The statement of policy and procedure shall:

21 (1) describe the separation of services made
22 pursuant to Subsection B of this section; and

23 (2) describe the safeguards instituted to
24 prevent the sharing with an affiliate of employees, goods,
25 services or facilities, except that common costs for essential

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1 corporate-wide services shall be allocated between the public
2 utility and affiliates to reflect the proportional benefit that
3 the public utility receives from those services compared to the
4 affiliates receiving the services, and provided that a public
5 utility may purchase goods, services or facilities from an
6 affiliate if the items cannot be provided internally or
7 obtained from an independent person at an equal or lower price
8 or other factors such as quality or service that justify a
9 higher purchase price. The commission may promulgate rules
10 regarding the transfer of employees, provided that the
11 commission shall not require or approve a policy or procedure
12 that interferes with an employee's ability to apply for and be
13 considered for a position of his choice.

14 F. A public utility shall not coerce or entice,
15 either by act or omission, a customer to purchase the goods or
16 services of an affiliated unregulated company over the goods or
17 services of its competitors.

18 G. A public utility shall not engage in monopoly
19 coercion. Complaints alleging monopoly coercion may be filed
20 with the commission or district court and, if filed, shall be
21 placed at the head of the docket; and after notice and hearing,
22 shall be resolved expeditiously. Filing a complaint for
23 monopoly coercion with the commission pursuant to this section
24 neither precludes nor excludes other remedies available
25 pursuant to law and is not a prerequisite for seeking relief

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1 otherwise available. The attorney general shall have standing
2 on behalf of consumers to file a complaint initiating or to
3 intervene in a case before the commission alleging monopoly
4 coercion.

5 H. If the commission finds and orders that monopoly
6 coercion has occurred, after notice and hearing, the commission
7 may fine the public utility or its affiliate or issue such
8 cease and desist orders as are deemed necessary in accordance
9 with the Electric Utility Industry Restructuring Act of 1999.
10 Attorney fees and costs shall be awarded to a prevailing
11 complainant. If the defendant prevails, attorney fees and
12 costs shall be awarded upon a commission finding that the
13 complaint was either frivolous or made in bad faith.

14 I. The state and all regulatory bodies and agencies
15 acting pursuant to state policy do not supervise or condone any
16 actions of a competitive power supplier or monopoly coercion
17 activities of a public utility that are or would be unlawful
18 pursuant to the Antitrust Act or any federal antitrust act.
19 The provisions of Section 57-1-16 NMSA 1978 are not a defense
20 to an antitrust violation or monopoly coercion charge against a
21 competitive power supplier or monopoly coercion charge against
22 a public utility.

23 J. Public utilities that provide both electricity
24 and natural gas distribution services shall not be required to
25 functionally separate their electric and gas transmission,

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1 transportation and distribution operations from each other, and
2 any rule or order to the contrary is void [~~and to no force and~~
3 ~~effect~~]; and provided that any regulated natural gas
4 distribution operations operated within the same legal entity
5 as regulated electric operations shall be subject to
6 Subsections E and G of this section; and provided further that
7 nothing in this section shall prevent a combined gas and
8 electric distribution company from selling the natural gas
9 commodity to customers pursuant to tariffs approved by the
10 commission.

11 K. Nothing in this section shall be construed to
12 require any commission act or order prior to filing an action
13 pursuant to the Antitrust Act or any federal antitrust act or
14 to limit the authority of the attorney general granted in the
15 Antitrust Act. "

16 Section 5. Section 62-3A-13 NMSA 1978 (being Laws 1999,
17 Chapter 294, Section 13) is amended to read:

18 "62-3A-13. SYSTEM BENEFITS CHARGE--RECOVERY.--A "system
19 benefits charge" in the amount of three hundredths of one cent
20 (\$.0003) per kilowatt-hour is created and imposed on all retail
21 kilowatt-hour sales in the state billed by public utilities,
22 municipal utilities and distribution cooperative utilities
23 beginning January 1, [~~2002~~] 2007. On January 1, [~~2007~~] 2012,
24 the system benefits charge shall increase to six hundredths of
25 one cent (\$.0006) per kilowatt-hour. The commission shall

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1 eliminate any portion of the system benefits charge that is not
2 being used for the purposes specified in Section [~~15 of the~~
3 ~~Electric Utility Industry Restructuring Act of 1999~~] 62-3A-15
4 NMSA 1978. The system benefits charge shall be separately
5 identified on bills rendered to customers beginning on January
6 1, [~~2002~~] 2007. "

7 Section 6. Section 62-3A-16 NMSA 1978 (being Laws 1999,
8 Chapter 294, Section 16) is amended to read:

9 "62-3A-16. DISTRIBUTION COOPERATIVE UTILITIES. --

10 A. Notwithstanding any other provisions of the
11 Electric Utility Industry Restructuring Act of 1999, this
12 section governs distribution cooperative utilities and
13 generation and transmission cooperatives with respect to [~~the~~
14 ~~Electric Utility Industry Restructuring Act of 1999~~] that act.

15 B. A generation and transmission cooperative may
16 provide power and energy to its members and shall be subject to
17 regulation by the commission pursuant to the Public Utility
18 Act. A generation and transmission cooperative shall not
19 provide supply service at retail unless it is a licensed
20 competitive power supplier and provides open access in
21 accordance with the Electric Utility Industry Restructuring Act
22 of 1999.

23 C. A distribution cooperative utility is not a
24 public utility for the purposes of the Electric Utility
25 Industry Restructuring Act of 1999. A distribution cooperative

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1 utility, however, remains subject to the jurisdiction and
2 authority of the commission to the same extent it was regulated
3 by the commission prior to the effective date of that act.

4 D. To the extent that it elects a business method
5 option pursuant to Subsection I of this section other than load
6 aggregator, a distribution cooperative utility shall file a
7 business method plan with the commission within sixty days of
8 the election that shall include the following:

9 (1) the business method option elected, the
10 method of election and other relevant authorizations and
11 approvals of the option;

12 (2) the costs, liabilities and investments
13 that the distribution cooperative utility seeks to recover from
14 customers who choose supply service other than from the
15 distribution cooperative utility;

16 (3) the amount of the costs, liabilities and
17 investments and the methodologies used by the distribution
18 cooperative utility to determine the amount of costs,
19 liabilities and investments that the distribution cooperative
20 utility reasonably expected to recover through rates if bundled
21 service had continued, reduced by the results of appropriate
22 mitigation efforts taken by the distribution cooperative
23 utility to offset the costs, liabilities and investments;

24 (4) the methodologies by which the
25 distribution cooperative utility shall compute an exit fee or a

1 non-bypassable non-discriminatory charge for customers choosing
2 a competitive power supplier to provide supply services;

3 (5) a description of the implementation and
4 operation of the business method option, the period during
5 which it is estimated to be implemented, the customer
6 information and notification that the distribution cooperative
7 utility intends to provide to its service customers; and

8 (6) tariffs for service to its service
9 customers, including either exit fees or non-bypassable non-
10 discriminatory charges to seek to recover costs, liabilities
11 and investments sought to be recovered due to the change from
12 bundled to unbundled service.

13 E. The business method plan is deemed approved by
14 the commission within six months after the date of its filing,
15 unless after notice and hearing the commission either rejects
16 or modifies the business method plan filing.

17 F. Notwithstanding the business method option
18 elected by the distribution cooperative utility, the
19 distribution cooperative utility shall:

20 (1) make standard offer service, as approved
21 by the commission, available to its residential and small
22 business customers;

23 (2) provide distribution service to its
24 service customers; and

25 (3) not provide or permit a competitive

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1 advantage to a competitive power supplier.

2 G. A distribution cooperative utility organized
3 pursuant to the laws of another state and providing bundled
4 services in this state on the effective date of the Electric
5 Utility Industry Restructuring Act of 1999 to not more than
6 twenty percent of its total customers may file an application
7 with the commission seeking approval of its election to be
8 governed by the laws related to electric restructuring of the
9 state where organized. The commission shall approve the
10 application if the distribution cooperative utility:

11 (1) does not provide supply service to other
12 than its service customers in this state; and

13 (2) remains subject to the jurisdiction and
14 authority of the commission for bundled service provided in
15 this state.

16 H. On or before January 1, ~~[2002]~~ 2007, a
17 distribution cooperative utility shall elect through its board
18 of trustees a business method of providing supply service to
19 its service customers from the options described in Subsection
20 I of this section. The chosen business method may be
21 implemented over a three-year period or less, after commission
22 approval. The distribution cooperative utility shall not:

23 (1) transmit supply service over its
24 facilities for competitive power suppliers to any service
25 customer, except in accordance with provisions of a business

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1 method plan approved by the commission; or

2 (2) convert or permit the conversion of a
3 retail service delivery point on its system to a wholesale
4 service delivery point without the approval of the commission.

5 I. A distribution cooperative utility may elect to
6 provide service to its service customers using one of the
7 following business methods of supply service:

8 (1) load aggregator method, pursuant to which
9 the distribution cooperative utility:

10 (a) shall acquire and provide supply
11 service;

12 (b) may aggregate its customers by class
13 or otherwise;

14 (c) shall provide supply, transmission
15 and distribution services; and

16 (d) shall remain subject to regulation
17 by the commission to the same extent as it was regulated prior
18 to the effective date of the Electric Utility Industry
19 Restructuring Act of 1999 and its election;

20 (2) customer-directed supplier, pursuant to
21 which a retail customer may select a competitive service
22 provider from a list of competitive supply service proposals
23 obtained by the distribution cooperative utility. The
24 distribution cooperative utility shall determine the
25 competitive supply service proposals that will be offered to

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1 customers by competitive power suppliers pursuant to non-
2 discriminatory rules adopted by the distribution cooperative
3 utility and approved by the commission;

4 (3) customer class direct access, pursuant to
5 which one or more classes of retail customers satisfying
6 criteria determined by the distribution cooperative utility and
7 approved by the commission may contract directly with a
8 competitive power supplier. [A] The criteria established for
9 class eligibility may be expanded to permit greater eligibility
10 for customer class direct access, subject to commission
11 approval. The distribution cooperative utility shall not be
12 obligated to supply service or identify potential supply
13 services for customer class direct access customers; and

14 (4) direct access, pursuant to which all
15 retail customers may contract with a competitive power supplier
16 for supply service and the distribution cooperative utility
17 distributes power from the competitive power supplier's
18 delivery point on its system to the retail customer's premises.
19 Direct access shall be provided in a non-discriminatory manner.
20 The distribution cooperative utility shall not be obligated to
21 supply service or identify potential supply services for direct
22 access customers.

23 J. A distribution cooperative utility may set a
24 reasonable exit fee or a non-bypassable non-discriminatory
25 charge to recover costs, liabilities and investments that would

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1 have reasonably been recovered, if not mitigated, pursuant to
2 cost-of-service ratemaking for bundled service. An exit fee or
3 a non-bypassable non-discriminatory charge may be assessed to a
4 customer eligible to select and selecting supply service other
5 than from the distribution cooperative utility's standard offer
6 service or otherwise.

7 K. Distribution cooperative utilities shall notify
8 their customers within twelve months after the effective date
9 of the Electric Utility Industry Restructuring Act of 1999
10 concerning the terms of this section and other applicable terms
11 of that act. A distribution cooperative utility electing an
12 option of conducting its business other than as a load
13 aggregator shall inform its service customers of the major
14 impacts of the customer choices available pursuant to the
15 elected option.

16 L. Nothing in the Electric Utility Industry
17 Restructuring Act of 1999 shall be deemed:

18 (1) to require a distribution cooperative
19 utility to do any act that might result in the loss of its
20 exemption from income taxes; or

21 (2) to apply to, interfere with, abrogate or
22 change the rights of a party under a wholesale power supply,
23 mortgage or other financing agreement to which a distribution
24 cooperative utility is a party. "

25 Section 7. Section 62-3A-17 NMSA 1978 (being Laws 1999,

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1 Chapter 294, Section 17) is amended to read:

2 "62- 3A- 17. MUNICIPAL UTILITIES. --

3 A. This section governs municipal utilities in
4 relation to the Electric Utility Industry Restructuring Act of
5 1999. Except as provided in Subsection E of this section, a
6 municipal utility is neither a public utility, a distribution
7 company nor a transmission company pursuant to [~~the Electric~~
8 ~~Utility Industry Restructuring Act of 1999~~] that act.

9 B. Except for a municipality authorized to condemn
10 facilities pursuant to Subsections E and F of Section 3-24-1
11 NMSA 1978, which is deemed to have chosen to participate in
12 customer choice for its service customers effective January 1,
13 [~~2002~~] 2007, a municipal governing body is authorized to elect
14 whether and when its municipal utility participates in customer
15 choice and open access for competitive services to its service
16 customers. A municipal governing body is authorized to elect
17 whether and when its municipal utility participates in customer
18 choice and open access to offer supply service and competitive
19 services to customers in addition to its service customers. A
20 decision by a municipal governing body to participate in
21 customer choice and open access for its service customers only
22 or its service customers and other customers at any time after
23 January 1, [~~2002~~] 2007 shall be made by the adoption of an
24 appropriate ordinance or resolution, which decision once made
25 is thereafter irrevocable. A municipal utility may not

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1 participate in customer choice or open access for customers
2 other than its service customers unless and until its service
3 customers are eligible for customer choice with open access
4 available to fulfill a customer's choice of supply service.

5 C. If a municipal governing body elects not to
6 participate in customer choice and open access, its municipal
7 utility shall be regulated by the commission to the same extent
8 as it was regulated prior to the effective date of the Electric
9 Utility Industry Restructuring Act of 1999 and shall not offer
10 any service to retail customers other than to its service
11 customers.

12 D. A municipality deemed by the provisions of
13 Subsections E and F of Section 3-24-1 NMSA 1978 to have elected
14 to participate in customer choice for its service customers or
15 any other municipality that elects by its governing body to
16 participate in customer choice and open access for its service
17 [~~consumers~~] customers, shall, by its municipal governing body:

18 (1) establish rates, terms and conditions
19 pursuant to which the municipal utility shall provide open
20 access over its distribution facilities and unbundled services
21 to its service customers, including standard offer service;

22 (2) provide open access on a non-
23 discriminatory, competitively neutral basis pursuant to terms
24 and conditions comparable to that applied to itself;

25 (3) establish procedures for complaint to and

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1 hearing by the municipal governing body by any person aggrieved
2 by the terms and conditions and operation of open access to the
3 distribution facilities of the municipal utility. Decisions of
4 the municipal governing body may be appealed by an aggrieved
5 person to the district court in the district where the
6 municipal utility is located;

7 (4) not provide or permit a competitive
8 advantage to a competitive power supplier; and

9 (5) regulate its operation and service to its
10 service customers.

11 E. When a municipal governing body elects for its
12 municipal utility to provide competitive service to a customer
13 other than its service customers, the municipal utility becomes
14 and shall be subject to the applicable provisions of the
15 Electric Utility Industry Restructuring Act of 1999 to the
16 extent competitive service is to be made available by the
17 municipal utility to customers other than its service
18 customers.

19 F. A municipal governing body shall notify the
20 service customers of its municipal utility of the Electric
21 Utility Industry Restructuring Act of 1999 and its specific
22 terms applicable to municipal utilities.

23 G. Nothing in the Electric Utility Industry
24 Restructuring Act of 1999 impairs the tax-exempt status of
25 municipalities and municipal utilities.

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1 H. For purposes of this section, "municipal
2 governing body" means a commission, council or other entity
3 vested with the power to control the management and operation
4 of the municipal utility, in accordance with law. "

5 Section 8. Section 62-3A-18 NMSA 1978 (being Laws 1999,
6 Chapter 294, Section 18) is amended to read:

7 "62-3A-18. FRANCHISE FEES--GROSS RECEIPTS TAX--TAX
8 REVENUES ANALYSIS.--

9 A. A franchise fee charge shall be stated as a
10 separate line entry on a public utility's or distribution
11 cooperative utility's bills and shall only be recovered from
12 customers located within the jurisdiction of the government
13 authority imposing the franchise fee.

14 B. Any gross receipts taxes collected on electric
15 service received by retail customers in the state shall be
16 stated as a separate line entry on a bill for electric service
17 sent to the customer by a public utility or distribution
18 cooperative utility.

19 C. The New Mexico legislative council shall
20 [~~annually through January 1, 2002~~] refer to the revenue
21 stabilization and tax policy committee questions and issues
22 related to the amount of state and local tax revenues derived
23 from previously regulated electric utility service and property
24 and report to the legislature [~~annually~~] on the changed impact
25 to state and local government tax revenues resulting from

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1 restructuring and competition in the electric industry.

2 D. [~~On or before January 1, 2003~~] The revenue
3 stabilization and tax policy committee shall recommend
4 legislative changes, if any, to establish comparable state and
5 local taxation burdens on all market participants in the supply
6 of electricity considering the impacts and changes that have
7 resulted from the restructure and competition in the electric
8 industry in the state. "

9 Section 9. Section 62-3A-22 NMSA 1978 (being Laws 1999,
10 Chapter 294, Section 22) is amended to read:

11 "62-3A-22. COMMISSION REVIEW AND RECOMMENDATIONS. --The
12 commission shall docket a proceeding to review the system
13 benefits charge and the system benefits fund, their operation
14 and effectiveness, and then to make recommendations to the
15 legislature by January 10, [~~2004~~] 2009 for any repeal of or
16 changes to these provisions. "