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SENATE BILL 428

**44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO PUBLIC UTILITIES; ESTABLISHING THE RESTRUCTURE OF THE ELECTRIC UTILITY INDUSTRY; PROVIDING FOR CUSTOMER CHOICE IN THE SUPPLY OF ELECTRICITY; PROVIDING OPTIONS TO RURAL ELECTRIC COOPERATIVES AND MUNICIPAL UTILITIES; CREATING A FUND; PROVIDING PENALTIES; ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. SHORT TITLE. -- This act may be cited as the "Electric Utility Industry Restructuring Act of 1999".

Section 2. FINDINGS AND PURPOSES. --

A. With respect to the Electric Utility Industry Restructuring Act of 1999, the legislature finds that:

(1) the generation and retail sale of electricity is becoming a competitive industry across the

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1 nation;

2 (2) retail electric customers in New Mexico  
3 should have the opportunity to benefit from competition in the  
4 electric generation markets and should have the choice to  
5 select their supplier of electricity;

6 (3) competition in the retail market for  
7 electricity is expected to provide long-term benefits for the  
8 economy of New Mexico, including the lowering of electricity  
9 prices, the creation of business opportunities, the  
10 improvement of energy efficiency and innovations in services  
11 and supply;

12 (4) to avoid burdening New Mexico streets,  
13 highways and landscapes with duplicate electric facilities,  
14 the transmission and distribution of electricity should remain  
15 subject to the regulation of the public regulation commission,  
16 with public utilities obligated to deliver electricity from  
17 electric suppliers to customers in areas served;

18 (5) it is necessary and appropriate to allow  
19 distribution cooperative utilities and municipal utilities to  
20 participate in the restructured market in ways that differ  
21 from rules applicable to other participants that are not  
22 customer owned;

23 (6) public utilities currently provide and  
24 will provide in the future products and services in addition  
25 to electric supply, transmission and distribution service. To

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1 the greatest extent possible, products and services are and  
2 should be available from nonregulated providers in the  
3 competitive marketplace, including from nonregulated public  
4 utility affiliates;

5 (7) the public interest requires the  
6 continued protection of retail customers through the licensing  
7 of electric suppliers, the provision of information to  
8 customers regarding electric service, service reliability and  
9 quality and the availability of service for all retail  
10 customers;

11 (8) residential and small business customers  
12 are least likely to benefit from the restructuring of the  
13 electric industry and need special protection to help ensure  
14 their participation in any benefits of competition;

15 (9) electric public utilities have undertaken  
16 long-term investments in facilities in order to provide  
17 sufficient and reliable service to the public. These actions  
18 may have created costs that will not be recoverable in a  
19 competitive market, and utilities should be permitted a  
20 reasonable opportunity to recover an appropriate amount of the  
21 costs incurred previously in providing electric service as  
22 well as costs that will be incurred in converting to the  
23 restructured scheme;

24 (10) protection of the state's environment  
25 and the promotion of renewable energy technologies are

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1 sensible endeavors that may be encouraged in the restructured  
2 electric industry; yet, after a reasonable period, assessment  
3 should be made to determine the usefulness, acceptability,  
4 benefits, including environmental and economic benefits, and  
5 the appropriateness of continuing financial promotion of  
6 renewable energy; and

7 (11) it is necessary to provide comprehensive  
8 implementing legislation to establish direction for all  
9 aspects of the restructuring of the electric utility industry  
10 in New Mexico.

11 B. The purposes of the Electric Utility Industry  
12 Restructuring Act of 1999 are to:

13 (1) provide a framework and time schedule for  
14 the restructuring of the electric industry to prepare for full  
15 competition in the energy supply and services segments of the  
16 electric industry;

17 (2) permit customer choice in the state on a  
18 phased basis to permit education of retail customers about  
19 choice and to permit utilities, suppliers and regulators to  
20 learn from their developing experiences in the competitive  
21 marketplace;

22 (3) state the policies of the legislature  
23 regarding the recovery of stranded costs and transition costs;

24 (4) ensure that when customer choice of  
25 electric supply is offered that adequate safeguards and

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1 procedures are in place to maintain safe and reliable electric  
2 service;

3 (5) ensure that residential and small  
4 business customers are not unduly harmed by restructuring;

5 (6) require that customer information about  
6 customer choice be appropriate and adequate to ensure informed  
7 decisions by the state's citizens;

8 (7) ensure that all retail customers continue  
9 to be offered electric service; and

10 (8) protect the financial integrity of public  
11 electric utilities during the transition to a competitive  
12 marketplace.

13 Section 3. DEFINITIONS. --As used in the Electric Utility  
14 Industry Restructuring Act of 1999:

15 A. "ancillary services" means those services that  
16 are auxiliary to basic generation, transmission or  
17 distribution services, but are determined by the commission to  
18 be necessary for the provision of the basic generation,  
19 transmission or distribution service being provided;

20 B. "affiliate" means a person who directly or  
21 indirectly, through one or more intermediaries, controls or is  
22 controlled by, or is under common control, with another  
23 person. Control includes the possession of the power to  
24 direct or cause the direction of the management and policies  
25 of a person, whether directly or indirectly, through the

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1 ownership, control or holding with the power to vote ten  
2 percent or more of the person's voting securities;

3 C. "bundled service" means the combination of  
4 supply, distribution and transmission services provided to  
5 customers prior to customer choice;

6 D. "commission" means the public regulation  
7 commission or, before January 1, 1999, the New Mexico public  
8 utility commission;

9 E. "competitive power supplier" means any person  
10 offering competitive service to customers in the state,  
11 whether directly or as an intermediary or agent of the seller  
12 or purchaser;

13 F. "competitive service" means any supply service  
14 or energy-related service available to customers from multiple  
15 suppliers on an unregulated basis;

16 G. "customer" means a retail electric customer or  
17 consumer;

18 H. "customer choice" means the opportunity for an  
19 individual customer to purchase supply service or energy-  
20 related service from a competitive power supplier;

21 I. "distribution cooperative utility" means a  
22 utility with distribution facilities organized as a rural  
23 electric cooperative pursuant to Laws 1937, Chapter 100 or the  
24 Rural Electric Cooperative Act;

25 J. "distribution company" means a person who owns,

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1 operates, leases or controls distribution facilities for  
2 distribution of electricity to or for the public and is  
3 regulated by the commission;

4 K. "distribution facilities" means those  
5 facilities by and through which electricity is distributed to  
6 the customer and that are owned, operated, leased or  
7 controlled by a distribution company;

8 L. "distribution service" means the regulated  
9 component of service provided by distribution facilities and  
10 includes ancillary services;

11 M. "energy-related service" means any competitive  
12 service that relates to or supports the provision of electric  
13 energy, but does not include supply service;

14 N. "generation and transmission cooperative" means  
15 a person with generation or transmission facilities organized  
16 as a rural electric cooperative pursuant to Laws 1937, Chapter  
17 100 or the Rural Electric Cooperative Act;

18 O. "monopoly coercion" means any action by a  
19 public utility or affiliate of a public utility, including any  
20 action of employees, officers or directors of those companies  
21 that the company permits or condones, that is intended to  
22 cause a customer to reasonably believe that regulated service  
23 will be impaired or diminished if that customer purchases  
24 competitive goods or services from a person other than an  
25 affiliate of the public utility, or is intended to cause a

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1 customer to reasonably believe that regulated service will be  
2 augmented or improved if that customer purchases competitive  
3 goods or services from an affiliate rather than from another  
4 person;

5 P. "municipal utility" means an electric utility  
6 owned or controlled by a municipal corporation organized  
7 pursuant to the laws of the state or a class A or an H class  
8 county;

9 Q. "non-discriminatory" means that no preference  
10 or competitive advantage will be given to any person;

11 R. "open access" means non-discriminatory  
12 transmission and distribution services for the delivery of  
13 supply service to all competitive power suppliers to  
14 facilitate customer choice;

15 S. "person" means an individual, association,  
16 joint venture, organization, partnership, firm, syndicate,  
17 corporation, cooperative and any other legal entity;

18 T. "public utility" means any person or that  
19 person's lessee, trustee or receiver, not engaged solely in  
20 interstate business and except as stated in Sections 62-3-4  
21 and 62-3.4.1 NMSA 1978, that now does or hereafter may own,  
22 operate, lease or control any plant, property or facility for  
23 regulated services to or for the public of electricity for  
24 light, heat or power or other uses, and includes a  
25 distribution company, a transmission company or both;

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1 U. "regulated services" means electric power  
2 supply services prior to the date the involved class of  
3 service is granted customer choice pursuant to the Electric  
4 Utility Industry Restructuring Act of 1999; and, only standard  
5 offer, distribution and transmission services after customer  
6 choice begins, pursuant to that act, and in any event, after  
7 January 1, 2002;

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

15 W. "service customer" means a customer receiving  
16 supply service over a public utility's distribution or  
17 transmission facilities in areas served by the utility;

18 X. "small business customer" means a commercial  
19 customer who purchases less than two hundred thousand  
20 kilowatt-hours per year at a demand level that does not exceed  
21 fifty kilowatts;

22 Y. "standard offer service" means supply service  
23 acquired and delivered by a public utility after December 31,  
24 2000 to residential and small business customers that are  
25 eligible for customer choice after that date but do not elect

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1 to acquire their power supplies from the retail competitive  
2 marketplace; and as to a distribution cooperative utility,  
3 means supply service acquired and delivered by the  
4 distribution cooperative utility to residential and small  
5 business customers that either do not elect to acquire their  
6 supply service from a competitive power supplier or are not  
7 eligible to make such election pursuant to the terms of the  
8 Electric Utility Industry Restructuring Act of 1999;

9 Z. "stranded costs" means the net present value of  
10 the difference between:

11 (1) the regulated revenue requirements for  
12 all utility-generation-related functions, including purchased  
13 power, fuel contracts and lease and lease-related obligations,  
14 which as of the date of open access, were being recovered in  
15 rates, or if not previously recovered in rates, which the  
16 commission determines would be recoverable in rates; and

17 (2) the revenues that could be earned from  
18 selling the same generation-related services as specified in  
19 Paragraph (1) of this subsection at competitive retail market  
20 rates pursuant to retail competition.

21 Regulated revenue requirements include all regulatory  
22 assets, net liabilities, deferred taxes, costs associated with  
23 construction, operation and decommissioning or removal from  
24 service of generation facilities, costs associated with  
25 purchased power, water and fuel contracts, lease and lease-

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1 related costs, gains or benefits to which ratepayers are  
2 entitled and all other accounting categories of costs and  
3 credits, including credit for taxes already recovered by the  
4 utility, recognized under cost-of-service regulation and  
5 attributable to the generation function of each utility.

6 "Stranded costs" shall not include costs that are  
7 unreasonable, imprudent or mitigable or that have been  
8 determined to not be recoverable in rates. "Stranded costs"  
9 shall be calculated for the period ending when the useful  
10 lives for all generation assets or obligations of the  
11 particular utility existing on the effective date of the  
12 Electric Utility Industry Restructuring Act of 1999 are  
13 anticipated to expire. Retiring assets are presumed to be  
14 replaced at market prices;

15 AA. "supply service" means the unregulated  
16 electric energy or capacity component of electric service;

17 BB. "system benefits charges" means costs to  
18 benefit customers and the public that are collected and  
19 disbursed by a public utility or a distribution cooperative  
20 utility pursuant to law;

21 CC. "transition costs" means those prudent,  
22 reasonable and unmitigable costs other than stranded costs,  
23 not recoverable elsewhere under either federally approved  
24 rates or rates approved by the commission, that a public  
25 utility would not have incurred but for its compliance with

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1 the requirements of the Electric Utility Industry  
2 Restructuring Act of 1999 and regulations promulgated  
3 thereunder relating to the transition to open access, and the  
4 prudent cost of severance, early and enhanced retirement  
5 benefits, retraining, placement services, unemployment  
6 benefits and health care coverage to public utility  
7 nonmanagerial employees who are laid off on or before January  
8 1, 2003, that are not otherwise recovered as a stranded salary  
9 and benefits cost. "Transition costs" shall not include costs  
10 that the public utility would have incurred notwithstanding  
11 the Electric Utility Industry Restructuring Act of 1999;

12 DD. "transition period" means that period of time  
13 during which a public utility is permitted to charge customers  
14 for stranded costs or transition costs;

15 EE. "transmission company" means a person who  
16 owns, operates, leases or controls transmission facilities for  
17 transmission of electricity to or for the public and is  
18 regulated by the commission;

19 FF. "transmission facilities" means those  
20 facilities that are used to provide transmission service as  
21 determined by the commission or the federal energy regulatory  
22 commission;

23 GG. "transmission service" means the regulated  
24 component of service provided by transmission facilities and  
25 includes ancillary services; and

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1           HH. "unbundled services" means the separation of  
2 electric power supply service into separate components,  
3 including supply, distribution and transmission services.

4           Section 4. IMPLEMENTATION OF CUSTOMER CHOICE--PRIOR  
5 PLANS AND APPROVALS--REVIEW BY COMMISSION. --

6           A. Except as provided in Sections 16 and 17 of the  
7 Electric Utility Industry Restructuring Act of 1999, customer  
8 choice service shall be available as follows:

9                   (1) for public post-secondary educational  
10 institutions and public schools, as defined in Section 22-1-2  
11 NMSA 1978, and for residential and small business customers on  
12 January 1, 2001; and

13                   (2) for all other customers of electricity,  
14 on January 1, 2002.

15           B. A plan or approval for customer choice,  
16 disposition of stranded costs, preparation for open access or  
17 competitive supply service for a public utility granted by the  
18 commission between January 1, 1997 and December 31, 1998 shall  
19 be reviewed by the commission, in conjunction with the  
20 Electric Utility Industry Restructuring Act of 1999 and  
21 otherwise, providing notice and public hearing, and may be  
22 confirmed, rejected or modified by the commission.  
23 Modifications to a plan or an approval may be recommended by  
24 the commission, the public utility subject to the plan or  
25 approval or a party with standing.

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1           C. A public utility having had a plan or approval  
2 granted by the commission after January 1, 1997 shall be  
3 subject to the requirements of the Electric Utility Industry  
4 Restructuring Act of 1999 to the extent the requirements of  
5 that act are not inconsistent with the plan or approval, as  
6 confirmed, rejected or modified in accordance with Subsection  
7 B of this section.

8           D. The commission may delay customer choice and  
9 other dates established in the Electric Utility Industry  
10 Restructuring Act of 1999 by up to one year upon finding that  
11 an orderly implementation of customer choice cannot be  
12 accomplished without the delay.

13           Section 5. DELIVERY OF ELECTRIC SUPPLY.--A public  
14 utility or its successor in interest that provides electric  
15 service to a customer or a customer location before customer  
16 choice becomes available for that customer as provided in  
17 Section 4 of the Electric Utility Industry Restructuring Act  
18 of 1999 shall continue to provide distribution service or  
19 transmission service on a non-discriminatory basis to or for  
20 that customer or customer location.

21           Section 6. TRANSITION PLANS.--

22           A. A public utility shall file a transition plan  
23 that complies with the Electric Utility Industry Restructuring  
24 Act of 1999 with the commission no later than March 1, 2000  
25 for commission approval on or before December 1, 2000. The

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1 transition plan shall include a detailed description of the  
2 public utility's:

3 (1) proposal and alternatives to separate its  
4 supply service and energy-related service assets from its  
5 distribution and transmission services assets pursuant to  
6 Section 8 of the Electric Utility Industry Restructuring Act  
7 of 1999;

8 (2) associated unbundled cost-of-service  
9 studies and an explanation of all cost allocations made to the  
10 unbundled services;

11 (3) proposed methodologies to allow  
12 residential and small business customers to have customer  
13 choice without requiring additional end-use metering  
14 equipment;

15 (4) proposals to implement customer choice  
16 and open access;

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

22 (6) proposed competitive procurement process  
23 or other process for the selection of power supply for  
24 standard offer service tariffs, together with a proposed rate  
25 setting procedure. The initial procurement of power for

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1 standard offer service shall occur at least three months prior  
2 to customer choice, or earlier as determined by the  
3 commission, so that price terms can be the basis for  
4 determination of stranded costs;

5 (7) proposed tariffs for distribution service  
6 for customers and competitive power suppliers, and  
7 transmission service, either on file with a federal regulatory  
8 agency having jurisdiction or as proposed by the public  
9 utility;

10 (8) the projected amounts of stranded costs  
11 and transition costs sought to be recovered by the public  
12 utility;

13 (9) proposed non-bypassable wires charges for  
14 recovery of transition costs and stranded costs allocated  
15 among customer classes;

16 (10) proposed system for the collection,  
17 recovery and accounting of the system benefits charge and  
18 stranded and transition costs through wires charges;

19 (11) proposed customer education programs,  
20 necessary computer hardware and software modifications and  
21 meter upgrades necessary to provide open access;

22 (12) proposed procedures for balancing,  
23 settlements and communications with competitive power  
24 suppliers; and

25 (13) any other information, documentation or



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1 justification requested by the commission.

2 B. Upon request of a public utility and approval  
3 of the commission or upon order of the commission, the  
4 commission's review of plans and approvals granted between  
5 January 1, 1997 and December 31, 1998, pursuant to Section 4  
6 of the Electric Utility Industry Restructuring Act of 1999,  
7 may be consolidated and heard in conjunction with  
8 consideration of a public utility's transition plan pursuant  
9 to this section.

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

17 (1) is in the public interest;

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

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

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

25 D. The commission in quantifying stranded costs

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1 shall consider:

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

- 5 (a) the use of standard offer bid  
6 prices;
- 7 (b) appraisal by independent third-  
8 party professionals;
- 9 (c) a competitive bid sale for  
10 generation; and
- 11 (d) any other method designed to  
12 provide a reasonable valuation;

13 (3) for residential and small business  
14 customers, that the standard offer bid price reflects the  
15 market value of supply service; and

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

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

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

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

17 Section 7. RECOVERY OF TRANSITION AND STRANDED COSTS--  
18 OPPORTUNITIES AND LIMITS. --

19 A. The commission shall determine the non-  
20 bypassable wires charges for the recovery of transition costs  
21 and stranded costs as described in Section 6 of the Electric  
22 Utility Industry Restructuring Act of 1999.

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

- 25 (1) be calculated to begin on the eligibility

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1 date of customer choice for each customer class;

2 (2) not extend longer than four years  
3 thereafter; and

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

7 C. In its approval of a transition plan provided  
8 for in Section 6 of the Electric Utility Industry  
9 Restructuring Act of 1999, the commission shall determine a  
10 non-bypassable wires charge for recovery of transition costs  
11 through December 31, 2007, after which date further transition  
12 charges shall not be recoverable through a separate wires  
13 charge.

14 D. The commission or the public utility may seek  
15 to consider and modify or continue the wires charge  
16 established to achieve collection of the transition costs. If  
17 an over-collection of transition costs is determined by the  
18 commission to have occurred, a wires credit shall be applied  
19 to customers' bills to return the over-collection of  
20 transition costs in an amount and for such time as the  
21 commission may determine.

22 E. Nothing in the Electric Utility Industry  
23 Restructuring Act of 1999 is intended to affect the ability of  
24 a public utility to recover wholesale stranded costs,  
25 including stranded costs recovered from wholesale customers

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1 under contract.

2 Section 8. DIVESTITURE NOT REQUIRED--AFFILIATES--  
3 SEPARATION OF REGULATED FROM COMPETITIVE FUNCTIONS--  
4 PROHIBITIONS AGAINST CROSS-SUBSIDIES, DISCRIMINATION AND ANTI-  
5 COMPETITIVE ACTIONS--DECLARATION REGARDING ANTITRUST ACTIONS.--

6 A. The Electric Utility Industry Restructuring Act  
7 of 1999 does not require nor shall it be construed to require  
8 nor shall the commission require a public utility to divest  
9 itself of any of its assets owned, leased or in which an  
10 interest is held, owned or leased on the effective date of that  
11 act.

12 B. Before January 1, 2001, a public utility shall  
13 separate into at least two corporations, separating supply  
14 service and energy-related service consisting of generation and  
15 power supply facilities, operations and services and energy-  
16 related facilities, operations and services that are to be made  
17 available to the public pursuant to the Electric Utility  
18 Industry Restructuring Act of 1999 on a competitive unregulated  
19 basis from transmission and distribution services consisting of  
20 transmission facilities, operations and service, distribution  
21 facilities, operations and service and customer billing and  
22 metering that are to be made available to the public pursuant  
23 to that act on a regulated basis.

24 C. Corporate separation of regulated from  
25 unregulated services shall be accomplished by either the

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1 creation of separate affiliated companies that may be owned by  
2 a common holding company, through the creation of separate non-  
3 affiliated corporations or through the sale of assets to one or  
4 more third parties. A public utility may provide all  
5 competitive and ancillary services within a single unregulated  
6 company and provide all non-competitive and ancillary services  
7 within a separate regulated company. Unregulated service shall  
8 not be provided by a regulated company.

9 D. Prior to customer choice pursuant to the  
10 Electric Utility Industry Restructuring Act of 1999, the  
11 commission shall adopt codes of conduct applicable to public  
12 utilities that shall contain provisions that:

13 (1) prevent undue discrimination in favor of  
14 affiliates;

15 (2) prevent any anti-competitive practices  
16 that could harm competition in any market for competitive  
17 services;

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

23 (4) prevent the disclosure of any individual  
24 customer information to any person, including an affiliate  
25 unless the customer provides written consent except as

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1 otherwise directed in a rulemaking by the commission;

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

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

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

15 (8) prevent an affiliate from identifying its  
16 affiliation with the public utility unless the affiliate also  
17 discloses in a reasonable manner that it is neither the same  
18 company as the public utility nor is it regulated by the  
19 commission.

20 E. A public utility shall not subsidize competitive  
21 services provided by an affiliate. A public utility shall file  
22 with the commission a statement of policy and procedure,  
23 consistent with the commission's codes of conduct and subject  
24 to commission approval, to avoid any subsidy to an affiliate.  
25 The statement of policy and procedure shall:

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

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

19 F. A public utility shall not coerce or entice,  
20 either by act or omission, a customer to purchase the goods or  
21 services of an affiliated unregulated company over the goods or  
22 services of its competitors.

23 G. A public utility shall not engage in monopoly  
24 coercion. Complaints alleging monopoly coercion may be filed  
25 with the commission and, if filed, shall be placed at the head



1 of the commission docket; and after notice and hearing, shall  
2 be resolved expeditiously. Filing a complaint for monopoly  
3 coercion with the commission pursuant to this section neither  
4 precludes nor excludes other remedies available pursuant to law  
5 and is not a prerequisite for seeking relief otherwise  
6 available. The attorney general shall have standing on behalf  
7 of residential and small business consumers to file a complaint  
8 initiating or to intervene in a case before the commission  
9 alleging monopoly coercion.

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

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

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1           J. Public utilities that provide both electricity  
2 and natural gas distribution services shall not be required to  
3 functionally separate their electric and gas transmission,  
4 transportation and distribution operations from each other, and  
5 any rule or order to the contrary is void and to no force and  
6 effect; and provided that any regulated natural gas  
7 distribution operations operated within the same legal entity  
8 as regulated electric operations shall be subject to  
9 Subsections E and G of this section; and provided further that  
10 nothing in this section shall prevent a combined gas and  
11 electric distribution company from selling the natural gas  
12 commodity to customers pursuant to tariffs approved by the  
13 commission.

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

19           Section 9. COMPETITIVE POWER SUPPLIERS-- LICENSE  
20 APPLICATION AND REVOCATION. --

21           A. A competitive power supplier shall file an  
22 application with, and obtain a license from, the commission  
23 before offering competitive services for sale to customers in  
24 the state.

25           B. Prior to receiving a license in the state, a

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1 competitive power supplier shall file a report with the  
2 commission, with information and in a form prescribed by the  
3 commission, disclosing activities and operations and those of  
4 any affiliate related to its supply service in this state.

5 C. Any person applying for a competitive power  
6 supplier license shall:

7 (1) disclose its name, owners, business  
8 addresses and telephone numbers in the state, and if a  
9 corporation, its directors and officers;

10 (2) execute, by a person authorized to do so,  
11 an affidavit authorizing or reflecting the authorization of the  
12 competitive power supplier to a statutory agent of the  
13 competitive power supplier to accept service of process in the  
14 state, accompanied by an acceptance of such designation by the  
15 statutory agent;

16 (3) execute, by a person authorized to do so,  
17 an agreement to compensate the state for any applicable taxes  
18 for sales to customers in the state;

19 (4) provide proof of financial integrity and a  
20 demonstration of adequate supply with reserve margins or the  
21 ability to obtain adequate reserve margins;

22 (5) post a bond, the financial security  
23 equivalent of a bond or other adequate financial assurances  
24 acceptable to the commission to cover system costs in the event  
25 the licensee fails to provide supply service in accordance with

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1 its obligations;

2 (6) execute, by a person authorized to do so,  
3 an agreement to comply with and be bound by the rules  
4 promulgated by the commission applicable to competitive power  
5 suppliers and supply service in the state;

6 (7) demonstrate capability to meet all  
7 obligations undertaken or assumed, for and on behalf of its  
8 customers, so that supply service is available, reliable and  
9 deliverable on a real-time basis;

10 (8) execute, by a person authorized to do so,  
11 an agreement to produce documents or other records to support  
12 any filings, reports or agreements required by the commission  
13 and to support any representations made to the commission or  
14 customers if required to do so by the commission;

15 (9) execute, by a person authorized to do so,  
16 an agreement to compensate a distribution or transmission  
17 company that provides open access for delivery of supply  
18 service to a customer of the competitive power supplier for  
19 shortfalls in supply service pursuant to rules promulgated by  
20 the commission. A distribution or transmission company is not  
21 required to purchase any reserve supply of electricity in  
22 mitigation or anticipation of a competitive power supplier's  
23 shortfalls in supply service; and

24 (10) submit a proposal for renewable energy  
25 supply service options to customers.

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1           D. An application for a license is deemed approved  
2 within forty-five days of its filing with the commission,  
3 unless the commission, in its discretion, extends the approval  
4 period for thirty days or rejects the application before it is  
5 deemed approved. If rejected, the commission shall state its  
6 reasons for the rejection and may identify corrective measures  
7 to overcome the deficiencies causing the rejection.

8           E. Thirty days before offering any sales of  
9 competitive services in the state, a competitive power supplier  
10 shall:

11                   (1) provide all public utilities with copies  
12 of its application and license; and

13                   (2) publish a copy of its license in a  
14 newspaper of general circulation in each county of the state in  
15 which it intends to offer competitive service.

16           F. The commission shall promulgate rules governing  
17 competitive electric suppliers for the protection of customers,  
18 including:

19                   (1) required disclosures to a potential  
20 customer of unbundled prices, generation sources and fuel mix,  
21 associated emissions, gross receipts taxes, franchise fees and  
22 any other charges;

23                   (2) fair and reasonable marketing and sales  
24 practices, including truthful advertising and disclosure  
25 practices; and

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1 (3) an expeditious procedure before the  
2 commission to resolve a dispute between a customer and a  
3 competitive power supplier regarding compliance with commission  
4 rules applicable to competitive power suppliers.

5 G. After a hearing initiated on the commission's  
6 own investigation or upon the complaint of an affected party,  
7 the commission may revoke or suspend the license of or impose a  
8 penalty on a competitive power supplier, or both, if it is  
9 established that just cause for the revocation, suspension or  
10 penalty imposition exists because the competitive power  
11 supplier:

12 (1) knowingly provided false information to  
13 the commission;

14 (2) switched or caused to be switched the  
15 supply service of a customer without first obtaining the  
16 customer's informed written permission;

17 (3) failed to provide reasonably adequate  
18 supply service for its customers in the state;

19 (4) committed fraud or knowingly engaged in an  
20 unfair or deceptive trade practice;

21 (5) engaged in anti-competitive conduct; or

22 (6) violated any other law or commission rule  
23 or order.

24 H. Any person selling or offering to sell  
25 competitive services in this state in violation of any

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1 provision or the Electric Utility Industry Restructuring Act of  
2 1999 is subject to license revocation or suspension in addition  
3 to any administrative, civil or criminal fines or penalties  
4 imposed pursuant to that act or pursuant to other law. Nothing  
5 in that act shall be construed to limit a person's rights  
6 pursuant to the Unfair Practices Act or to require exhaustion  
7 of remedies before bringing an action pursuant to that act.

8 Section 10. DISTRIBUTION SERVICE--STANDARD OFFER  
9 SERVICES. --

10 A. Distribution service is subject to the  
11 jurisdiction and authority of the commission.

12 B. Each public utility providing distribution  
13 service shall:

14 (1) file and maintain tariffs providing rates  
15 and service conditions for distribution service available to  
16 competitive power suppliers, companies providing transmission  
17 service and customers on a non-discriminatory basis;

18 (2) plan, build and maintain distribution  
19 facilities or ensure that facilities are planned, built and  
20 maintained;

21 (3) prudently acquire and deliver standard  
22 offer service in accordance with the transition plan filed and  
23 approved in accordance with Section 6 of the Electric Utility  
24 Industry Restructuring Act of 1999;

25 (4) shall, at the discretion and direction of

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1 the commission, prudently arrange for back-up and emergency  
2 supply service; and

3 (5) provide billing and metering services and  
4 other ancillary services as approved by the commission to  
5 customers and competitive power suppliers pursuant to  
6 commission-regulated prices, terms and conditions of service.

7 C. Standard offer service is subject to the  
8 jurisdiction and authority of the commission.

9 Section 11. TRANSMISSION SERVICE. --

10 A. Transmission service is subject to the  
11 jurisdiction and authority of the commission and shall be  
12 provided in a non-discriminatory manner pursuant to  
13 transmission service tariffs approved by the commission to the  
14 extent permitted by federal law or the federal energy  
15 regulatory commission.

16 B. If transmission service is not operated in a  
17 manner that the commission determines to be in the public  
18 interest, the commission shall take all necessary actions  
19 within its jurisdiction to ensure that reliable and non-  
20 discriminatory transmission service is provided to and for  
21 customers.

22 Section 12. CUSTOMER EDUCATION AND PROTECTIONS. --

23 A. The commission shall conduct customer education  
24 efforts necessary to enable customers to make informed  
25 decisions about customer choice. The commission may require



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1 the inclusion of educational materials in bills or other  
2 mailings regularly made to service customers by a public  
3 utility.

4 B. It is unlawful pursuant to the Electric Utility  
5 Industry Restructuring Act of 1999 for any person to:

6 (1) change, direct another person to change or  
7 participate in processing a change in a customer's supply  
8 service provider without the customer's authorization; or

9 (2) charge, direct another person to charge or  
10 participate in processing a charge for any product or service  
11 through a customer's public utility bill for any unregulated  
12 service without the customer's authorization.

13 C. A person may file a complaint regarding a  
14 violation of Subsection B of this section with the commission.  
15 Complaints shall be placed at the head of the docket and shall  
16 be resolved expeditiously. Any person found to have violated  
17 any provision of Subsection B of this section shall be subject  
18 to imposition of fines in accordance with the Electric Utility  
19 Industry Restructuring Act of 1999 and to appropriate cease and  
20 desist orders. The commission may award attorney fees and  
21 costs to prevailing parties.

22 D. The commission shall not permit an action or  
23 transaction that results or could result in a violation of  
24 Subsection B of this section.

25 E. As used in this section, "authorization" means a

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1 letter of agency separate from any sales or solicitation  
2 material that contains, in clear and conspicuous language, a  
3 full and complete description of the change in supply service  
4 provider, and any product or service to be charged to the  
5 customer's bill. The letter of agency shall contain, in clear  
6 and conspicuous language, a full and complete description of  
7 the rates, fees and charges associated with the new supply  
8 service provider and the product or service to be charged to  
9 the bill. The letter of agency shall be signed by the customer  
10 before any change may be made in a customer's supply service  
11 provider, or any charge for any unregulated product or service  
12 may be placed on a customer's bill.

13 F. Any customer authorization that does not comply  
14 with the requirements of this section shall be void and without  
15 effect.

16 G. No person shall use any sweepstakes, contest or  
17 drawing of any kind to obtain a customer's authorization to  
18 change a customer's supply service provider or to charge for  
19 any product or service on a customer's bill.

20 H. The commission may adopt rules as necessary to  
21 provide further customer protections.

22 Section 13. SYSTEM BENEFITS CHARGE--RECOVERY. --A "system  
23 benefits charge" in the amount of three hundredths of one cent  
24 (\$.0003) per kilowatt-hour is created and imposed on  
25 distribution service provided by public utilities and

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1 distribution cooperative utilities in the state. The  
2 commission shall eliminate any portion of the system benefits  
3 charge that is not being used for the purposes specified in  
4 Section 15 of the Electric Utility Industry Restructuring Act  
5 of 1999. The system benefits charge shall be separately  
6 identified on distribution service bills rendered to customers  
7 beginning on January 1, 2001.

8 Section 14. WIRES CHARGES-- COLLECTION-- ACCOUNTING--  
9 PREPAYMENT. --

10 A. Wires charges assessed on a per kilowatt-hour  
11 basis for stranded costs, transition costs and the system  
12 benefits charge shall be paid by each customer to the public  
13 utility, and as to the system benefits charge only to the  
14 distribution cooperative utility, supplying the customer's  
15 distribution service. Revenues collected as the system  
16 benefits charge shall be paid to the electric industry system  
17 benefits fund and distributed in accordance with the provisions  
18 of Section 15 of the Electric Utility Industry Restructuring  
19 Act of 1999.

20 B. Notwithstanding any other provision of the  
21 Electric Utility Industry Restructuring Act of 1999 and subject  
22 to the requirements of this subsection, a customer of a public  
23 utility shall be allowed to pay a fee equal to the net present  
24 value of stranded cost charges to be assessed to that customer.  
25 Any prepayment of stranded costs must be completed prior to the

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1 date of customer choice for that customer and shall take into  
2 account expected growth for that customer based upon historical  
3 usage. Disputes as to the amount of the payment required  
4 pursuant to this subsection shall be presented to the  
5 commission no later than ninety days prior to the applicable  
6 customer choice date and shall be resolved by the commission  
7 prior to that date. Prepayment of stranded costs shall be for  
8 the benefit of the service location for which the payment is  
9 determined and shall not transfer with a customer to a  
10 different or additional service location.

11 Section 15. ELECTRIC INDUSTRY SYSTEM BENEFITS TRUST FUND  
12 CREATED--SUPPORT FOR ADMINISTRATION AND CUSTOMER INFORMATION,  
13 LOW-INCOME CUSTOMERS AND RENEWABLE TECHNOLOGY.--

14 A. The "electric industry system benefits fund" is  
15 created and consists of money collected as a wires charge  
16 assessed on a three-hundredths-of-one-cent (\$.0003) per  
17 kilowatt-hour basis as the system benefits charge and paid by  
18 each public utility customer and each distribution cooperative  
19 utility customer in the state on distribution service,  
20 collected monthly by the public utility or the distribution  
21 cooperative utility billing the customer and paid quarterly to  
22 the department of environment by the public utility and the  
23 distribution cooperative utility. No other money shall be  
24 deposited or paid in the electric industry system benefits  
25 fund. Interest or other earnings from investment or deposit of

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1 the fund shall be credited to the fund. Any unexpended or  
2 unencumbered balance remaining in the fund at the end of any  
3 fiscal year shall be transferred to the general fund.

4 B. Money in the electric industry system benefits  
5 fund is appropriated to the department of environment solely  
6 for the purpose of disbursing money to authorized recipients  
7 for authorized purposes as described in Subsection D of this  
8 section. Disbursements from the fund shall be made upon  
9 certification by the secretary of environment that the  
10 disbursement is for a payment authorized by Section 15 of the  
11 Electric Utility Industry Restructuring Act of 1999.

12 C. The department shall promulgate rules  
13 establishing the application procedure and required  
14 qualifications of projects, including a person or business that  
15 may attempt to participate, contract or join with an authorized  
16 recipient in applying for a disbursement from the fund. The  
17 department may periodically accept applications for  
18 disbursement from the fund and shall prioritize the acceptable  
19 applications considering:

20 (1) the contribution the project offers to the  
21 knowledge of and potential commercialization of the renewable  
22 energy;

23 (2) the geographic area of the state in which  
24 the project is to be conducted in relation to other projects;

25 (3) the cost of the project and the relative

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1 contribution of the disbursement sought from the fund to the  
2 total cost of the project; and

3 (4) in the case of a project of a school  
4 district, the number and involvement of students in the  
5 project.

6 D. The department shall manage, administer and  
7 maintain the fund in the following manner and for the following  
8 purposes:

9 (1) no more than one hundred thousand dollars  
10 (\$100,000) annually to the department for administration of the  
11 fund;

12 (2) five hundred thousand dollars (\$500,000)  
13 annually to the public regulation commission for consumer  
14 education and information, and for administration of the  
15 Electric Utility Industry Restructuring Act of 1999;

16 (3) no less than five hundred thousand dollars  
17 (\$500,000) annually for low-income energy assistance through  
18 the federal low-income housing energy assistance project to be  
19 expended for that project's weatherization program administered  
20 by the New Mexico mortgage finance authority or for other low-  
21 income energy assistance authorized and administered by the  
22 state; and

23 (4) no more than four million dollars  
24 (\$4,000,000) annually to encourage the use of renewable energy  
25 through the initiation, development and evaluation of renewable

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1 technology projects authorized and directed by a school  
2 district in conjunction with the education of its students or  
3 by the governing body of an incorporated city, town or village  
4 or a county, each in conjunction with the respective governing  
5 body's interest in protecting the environment and reducing the  
6 city's or county's utility costs.

7 E. The department shall submit to the legislative  
8 finance committee prior to each regular legislative session a  
9 list of recipients receiving money pursuant to Paragraph (4) of  
10 Subsection D of this section. The list shall describe the  
11 project for which the disbursement was made and the project's  
12 contribution to the state's knowledge of renewable energy and  
13 developing technologies.

14 Section 16. DISTRIBUTION COOPERATIVE UTILITIES. --

15 A. Notwithstanding any other provisions of the  
16 Electric Utility Industry Restructuring Act of 1999, this  
17 section governs distribution cooperative utilities and  
18 generation and transmission cooperatives with respect to the  
19 Electric Utility Industry Restructuring Act of 1999.

20 B. A generation and transmission cooperative may  
21 continue to provide power and energy to its members and shall  
22 remain subject to regulation by the commission to the same  
23 extent as it was regulated prior to the effective date of the  
24 Electric Utility Industry Restructuring Act of 1999. A  
25 generation and transmission cooperative shall not provide

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1 supply service at retail unless it is a licensed competitive  
2 power supplier and provides open access in accordance with the  
3 Electric Utility Industry Restructuring Act of 1999.

4 C. A distribution cooperative utility is not a  
5 public utility pursuant to the Electric Utility Industry  
6 Restructuring Act of 1999. A distribution cooperative utility,  
7 however, remains subject to the jurisdiction and authority of  
8 the commission to the same extent it was regulated by the  
9 commission prior to the effective date of that act.

10 D. To the extent that it elects a business method  
11 option pursuant to Subsection I of this section other than load  
12 aggregator, a distribution cooperative utility shall file a  
13 business method plan with the commission within sixty days of  
14 the election that shall include the following:

15 (1) the business method option elected, the  
16 method of election and other relevant authorizations and  
17 approvals of the option;

18 (2) the costs, liabilities and investments  
19 that the distribution cooperative utility seeks to recover from  
20 customers who choose supply service other than from the  
21 distribution cooperative;

22 (3) the amount of the costs, liabilities and  
23 investments and the methodologies used by the distribution  
24 cooperative utility to determine the amount of costs,  
25 liabilities and investments that the distribution cooperative



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1 utility reasonably expected to recover through rates if bundled  
2 service had continued, reduced by the results of appropriate  
3 mitigation efforts taken by the distribution cooperative  
4 utility to offset the costs, liabilities and investments;

5 (4) the methodologies by which the  
6 distribution cooperative utility shall compute an exit fee or a  
7 non-bypassable non-discriminatory charge for customers choosing  
8 a competitive power supplier to provide supply services;

9 (5) a description of the implementation and  
10 operation of the business method option, the period during  
11 which it is estimated to be implemented, the customer  
12 information and notification that the distribution cooperative  
13 intends to provide to its service customers; and

14 (6) tariffs for service to its service  
15 customers, including either exit fees or non-bypassable non-  
16 discriminatory charges to seek to recover costs, liabilities  
17 and investments sought to be recovered due to the change from  
18 bundled to unbundled service.

19 E. The business method plan is deemed approved by  
20 the commission within six months after the date of its filing,  
21 unless after notice and hearing, the commission either rejects  
22 or modifies the business method plan filing.

23 F. Notwithstanding the business method option  
24 elected by the distribution cooperative utility, the  
25 distribution cooperative utility shall:

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

4 (2) provide distribution service to its  
5 service customers; and

6 (3) not provide or permit a competitive  
7 advantage to a competitive power supplier.

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

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

19 (2) remains subject to the jurisdiction and  
20 authority of the commission for bundled service provided in  
21 this state.

22 H. On or before January 1, 2002, a distribution  
23 cooperative utility shall elect through its board of trustees  
24 a business method of providing supply service to its service  
25 customers from the options described in Subsection I of this

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1 section. The chosen business method may be implemented over a  
2 three-year period or less, after commission approval. The  
3 distribution cooperative utility shall not:

4 (1) transmit supply service over its  
5 facilities for competitive power suppliers to any service  
6 customer, except in accordance with provisions of a business  
7 method plan approved by the commission; or

8 (2) convert or permit the conversion of a  
9 retail service delivery point on its system to a wholesale  
10 service delivery point without the prior written consent of the  
11 distribution cooperative utility and the approval of the  
12 commission.

13 I. A distribution cooperative utility may elect to  
14 provide service to its service customers using one of the  
15 following business methods of supply service:

16 (1) load aggregator method, pursuant to which  
17 the distribution cooperative utility:

18 (a) shall acquire and provide supply  
19 service;

20 (b) may aggregate its customers by class  
21 or otherwise;

22 (c) shall provide supply, transmission  
23 and distribution services; and

24 (d) shall remain subject to regulation by  
25 the public regulation commission to the same extent as it was

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1 regulated prior to the effective date of the Electric Utility  
2 Industry Restructuring Act of 1999 and its election;

3 (2) customer-directed supplier, pursuant to  
4 which a retail customer may select a competitive service  
5 provider from a list of competitive supply service proposals  
6 obtained by the distribution cooperative utility. The  
7 distribution cooperative utility shall determine the  
8 competitive supply service proposals that will be offered to  
9 customers by competitive power suppliers pursuant to non-  
10 discriminatory rules adopted by the distribution cooperative  
11 utility and approved by the commission;

12 (3) customer class direct access, pursuant to  
13 which one or more classes of retail customers satisfying  
14 criteria determined by the distribution cooperative utility and  
15 approved by the commission may contract directly with a  
16 competitive power supplier. A criteria established for class  
17 eligibility may be expanded to permit greater eligibility for  
18 customer class direct access, subject to commission approval.  
19 The distribution cooperative utility shall not be obligated to  
20 supply service or identify potential supply services for  
21 customer class direct access customers; and

22 (4) direct access, pursuant to which all  
23 retail customers may contract with a competitive power supplier  
24 for supply service and the distribution cooperative utility  
25 distributes power from the competitive power supplier's

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1 delivery point on its system to the retail customer's premises.  
2 Direct access shall be provided in a non-discriminatory manner.  
3 The distribution cooperative utility shall not be obligated to  
4 supply service or identify potential supply services for direct  
5 access customers.

6 J. A distribution cooperative utility may set a  
7 reasonable exit fee or a non-bypassable non-discriminatory  
8 charge to recover costs, liabilities and investments that would  
9 have reasonably been recovered, if not mitigated, pursuant to  
10 cost-of-service ratemaking for bundled service. An exit fee or  
11 a non-bypassable non-discriminatory charge may be assessed to a  
12 customer eligible to select and selecting supply service other  
13 than from the distribution cooperative utility's standard offer  
14 service or otherwise.

15 K. Distribution cooperative utilities shall notify  
16 their customers within twelve months after the effective date  
17 of the Electric Utility Industry Restructuring Act of 1999  
18 concerning the terms of this section and other applicable terms  
19 of that act. A distribution cooperative utility electing an  
20 option of conducting its business other than as a load  
21 aggregator shall inform its service customers of the major  
22 impacts of the customer choices available pursuant to the  
23 elected option.

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

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

4 (2) to apply to, interfere with, abrogate or  
5 change the rights of a party under a wholesale power supply,  
6 mortgage or other financing agreement to which a distribution  
7 cooperative utility is a party.

8 Section 17. MUNICIPAL UTILITIES. --

9 A. This section governs municipal utilities in  
10 relation to the Electric Utility Industry Restructuring Act of  
11 1999. Except as provided in Subsection E of this section, a  
12 municipal utility is neither a public utility, a distribution  
13 company nor a transmission company pursuant to the Electric  
14 Utility Industry Restructuring Act of 1999.

15 B. Except for a municipality authorized to condemn  
16 facilities pursuant to Subsections E and F of Section 3-24-1  
17 NMSA 1978, which is deemed to have chosen to participate in  
18 customer choice for its service customers effective January 1,  
19 2002, a municipal governing body is authorized to elect whether  
20 and when its municipal utility participates in customer choice  
21 and open access for competitive services to its service  
22 customers. A municipal governing body is authorized to elect  
23 whether and when its municipal utility participates in customer  
24 choice and open access to offer supply service and competitive  
25 services to customers in addition to its service customers. A

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1 decision by a municipal governing body to participate in  
2 customer choice and open access for its service customers only  
3 or its service customers and other customers at any time after  
4 January 1, 2002 shall be made by the adoption of an appropriate  
5 ordinance or resolution, which decision once made is thereafter  
6 irrevocable. A municipal utility may not participate in  
7 customer choice or open access for customers other than its  
8 service customers unless and until its service customers are  
9 eligible for customer choice with open access available to  
10 fulfill a customer's choice of supply service.

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

18 D. A municipality deemed by the provisions of  
19 Subsections E and F of Section 3-24-1 NMSA 1978 to have elected  
20 to participate in customer choice for its service customers or  
21 any other municipality that elects by its governing body to  
22 participate in customer choice and open access for its service  
23 consumers, shall, by its municipal governing body:

24 (1) establish rates, terms and conditions  
25 pursuant to which the municipal utility shall provide open

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1 access over its distribution facilities and unbundled services  
2 to its service customers, including standard offer service;

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

6 (3) establish procedures for complaint to and  
7 hearing by the municipal governing body by any person aggrieved  
8 by the terms and conditions and operation of open access to the  
9 distribution facilities of the municipal utility. Decisions of  
10 the municipal governing body may be appealed by an aggrieved  
11 person to the district court in the district where the municipal  
12 utility is located;

13 (4) not provide or permit a competitive  
14 advantage to a competitive power supplier; and

15 (5) regulate its operation and service to its  
16 service customers.

17 E. When a municipal governing body elects for its  
18 municipal utility to provide competitive service to a customer  
19 other than its service customers, the municipal utility becomes  
20 and shall be subject to the applicable provisions of the  
21 Electric Utility Industry Restructuring Act of 1999 to the  
22 extent competitive service is to be made available by the  
23 municipal utility to customers other than its service customers.

24 F. A municipal governing body shall notify the  
25 service customers of its municipal utility of the Electric



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1 Utility Industry Restructuring Act of 1999 and its specific  
2 terms applicable to municipal utilities.

3 G. Nothing in the Electric Utility Industry  
4 Restructuring Act of 1999 impairs the tax-exempt status of  
5 municipalities and municipal utilities.

6 H. For purposes of this section, "municipal governing  
7 body" means commission, council or other entity vested with the  
8 power to control the management and operation of the municipal  
9 utility, in accordance with law.

10 Section 18. FRANCHISE FEES--GROSS RECEIPTS TAX--TAX  
11 REVENUES ANALYSIS.--

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

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

22 C. The New Mexico legislative council shall annually  
23 through January 1, 2002, refer to the revenue stabilization and  
24 tax policy committee questions and issues related to the amount  
25 of state and local tax revenues derived from previously

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1 regulated electric utility service and property and report to  
2 the legislature annually on the changed impact to state and  
3 local government tax revenues resulting from restructuring and  
4 competition in the electric industry.

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

12 Section 19. COMMISSION EXAMINATIONS. --

13 A. To ensure an orderly and equitable restructuring  
14 of the electric utility industry in this state and to achieve  
15 the purposes outlined in Section 2 of the Electric Utility  
16 Industry Restructuring Act of 1999, the legislature hereby  
17 directs the commission to further examine:

- 18 (1) standard offer;
- 19 (2) consumer education and protection;
- 20 (3) safety, reliability, quality and  
21 performance standards for generation, distribution and  
22 transmission facilities;
- 23 (4) the presence of market power, its impacts  
24 on the restructure of the electric industry and methods  
25 available to limit or eliminate its adverse impacts;

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1 (5) alternative operations and regulations,  
2 including an independent system operator; and

3 (6) regional transmission and governance  
4 efforts, both public and private, and the advisability of  
5 regional cooperation by the state;

6 (7) emergency and back-up service; and

7 (8) the advisability and desirability of  
8 requiring renewable energy portfolio standards in supply service  
9 offered to customers in the state.

10 B. The commission shall report on its examinations to  
11 the legislature by December 1 of each of the three years  
12 following the effective date of the Electric Utility Industry  
13 Restructuring Act of 1999 and thereafter as necessary and  
14 provide its recommendations for further legislative changes or  
15 direction.

16 Section 20. RULEMAKING. -- The commission is authorized to  
17 promulgate rules necessary to implement its authority and the  
18 directives granted in the Electric Utility Industry  
19 Restructuring Act of 1999.

20 Section 21. ADMINISTRATIVE FINES. --

21 A. The commission may impose an administrative fine  
22 on any person subject to regulation or licensure pursuant to the  
23 Electric Utility Industry Restructuring Act of 1999 for any act  
24 or omission that the person knew or should have known was a  
25 violation of any provision of that act or rule or order of the

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1 commi ssi on.

2 B. An administrative fine of not less than one  
3 hundred dollars (\$100) nor more than one million five hundred  
4 thousand dollars (\$1,500,000) may be imposed for each violation.  
5 Each day of a continuing violation shall be considered a  
6 separate violation.

7 C. The commission shall initiate a proceeding to  
8 impose an administrative fine by giving written notice to the  
9 person that the commission has facts as set forth in the notice  
10 that, if not rebutted, may lead to the imposition of an  
11 administrative fine under this section, and that the person has  
12 an opportunity for a hearing.

13 D. The commission may initiate a proceeding to impose  
14 an administrative fine within two years from the date of the  
15 commission's discovery of the violation, but in no event shall a  
16 proceeding be initiated more than five years after the date of  
17 the violation. This limitation shall not run against any act or  
18 omission constituting a violation pursuant the Electric Utility  
19 Industry Restructuring Act of 1999 for any period during which  
20 the person has intentionally concealed the violation.

21 E. The commission shall consider mitigating and  
22 aggravating circumstances in determining the amount of  
23 administrative fine to impose. The amount of the fine shall  
24 bear a reasonable relationship to the nature and severity of the  
25 violation.

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F. For purposes of establishing a violation, the act or omission of any officer, agent or employee of a person shall be deemed the act or omission of that person unless that person has a clear and actively enforced policy prohibiting such acts of omission.

G. The commission shall issue rules as may be necessary to implement this section.

Section 22. DELAYED REPEAL. -- Section 15 of this act is repealed effective June 30, 2004.

Section 23. CONFLICTING PROVISIONS. --The provisions of the Electric Utility Industry Restructuring Act shall supersede any conflicting provision of the Public Utility Act.

Section 24. EMERGENCY. --It is necessary for the public peace, health and safety that this act take effect immediately.

1 FORTY- FOURTH LEGI SLATURE

SB 428/a

2 FIRST SESSION, 1999

3  
4  
5  
6 February 13, 1999

7  
8 Mr. President:

9  
10 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to  
11 whom has been referred

12  
13 SENATE BILL 428

14  
15 has had it under consideration and reports same with  
16 recommendation that it DO PASS, amended as follows:

- 17  
18  
19 1. On page 7, line 21, strike "is intended to".  
20  
21 2. On page 7, line 22, strike "cause" and insert in lieu  
22 thereof "causes".  
23  
24 3. On page 7, line 25, strike "is intended to cause" and  
25 insert in lieu thereof "causes".

. 126281. 3

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SCORC/SB 428

Page 55

4. On page 19, line 15, strike "after notice and hearing".

5. On page 34, line 25, strike "distribution service provided  
by public utilities and" and insert in lieu thereof:

"all retail kilowatt-hour sales in the state billed by public  
utilities, municipal utilities and distribution cooperative  
utilities."

6. On page 35, line 1, strike "distribution cooperative  
utilities in the state."

7. On page 36, line 17, strike "and paid by" and strike lines  
18 and 19.

. 126281. 3

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SCORC/SB 428

Page 56

8. On page 36, line 20, strike "by the public utility or the distribution" and on line 21, strike "cooperative utility billing the customer".

9. On page 36, line 22, strike "by the public utility and the" and on line 23, strike "distribution cooperative utility".

10. On page 40, line 5, strike "pursuant to" and insert in lieu thereof "for the purposes of".

11. On page 42, line 9, strike "unbundled" and insert in lieu thereof "bundled".

12. On page 43, line 10, strike "prior written consent of the" and on line 11, strike "distribution cooperative utility and the".

13. On page 51, line 6, strike "and".

14. On page 51, line 9, strike the period and insert in lieu

. 126281. 3

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FORTY- FOURTH LEGI SLATURE  
FIRST SESSI ON, 1999

SCORC/SB 428

Page 57

thereof "; and".

15. On page 51, between lines 9 and 10, insert the following  
new paragraph:

"(9) how power may be purchased from qualifying  
facilities, including facilitating net metering.".,

and thence referred to the JUDI CIARY COMMI TTEE.

Respectfully submit ted,

---

Roman M. Maes, Chai rman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

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Date \_\_\_\_\_

The roll call vote was 4 For 2 Against

Yes: 4

No: Macias, McKibben

Excused: Aragon, Kidd, Rawson, Robinson

Absent: None

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1 FORTY- FOURTH LEGI SLATURE

2 FIRST SESSION, 1999

3 SB 428/a

4  
5  
6 February 22, 1999

7  
8 Mr. President:

9  
10 Your JUDICIARY COMMI TTEE, to whom has been referred

11  
12 SENATE BILL 428, as amended

13  
14 has had it under consideration and reports same with  
15 recommendation that it DO PASS, amended as follows:

16  
17  
18 1. On page 5, line 22, strike the comma after "control" and  
19 insert a comma after "with".

20  
21 2. On page 7, line 15, after "facilities" insert "either".

22  
23 3. On page 7, line 17, before the semicolon, insert "or  
24 organized in another state and providing sales of electric power  
25 to member cooperatives in this state."

. 126281. 3

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/SB 428

Page 60

4. On page 8, line 13, strike the first "to" and insert in lieu thereof "by".

5. On page 9, line 1, strike "electric power" and insert in lieu thereof "bundled".

6. On page 9, line 2, strike "supply".

7. On page 9, line 16, after "utility's" insert ", distribution utility's or municipal utility's".

8. On page 10, line 16, after "rates" insert "or that have been determined by the commission to be prudent, used and useful or otherwise recoverable in rates".

9. On page 13, line 20, insert a period after "1999".

10. On page 13, line 20, strike "and".

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/SB 428

Page 61

11. On page 13, line 21, strike "otherwise, providing" and insert in lieu thereof "After".

12. On page 13, line 21, strike "and may be" and insert in lieu thereof "the plan or approval shall be".

13. On page 13, line 22, before the period insert "on or before November 30, 1999".

14. On page 17, strike Subsection B and reletter the succeeding subsections accordingly.

15. On page 18, line 14, strike "reflects the" and insert in lieu thereof "may reflect the current".

16. On page 20, line 2, strike "four" and insert in lieu thereof "five".

. 126281. 3

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/SB 428

Page 62

17. On page 20, line 3, after "thereafter" insert:

", provided that the commission may separate nuclear decommissioning for recovery over a longer period of time through a separate wires charge if it determines that such recovery is in the public interest".

18. On page 21, between lines 1 and 2, insert a new subsection:

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

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/SB 428

Page 63

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

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

19. On page 27, between lines 18 and 19, insert the following paragraph:

"(4) execute, by a person authorized to do so, an agreement that all electricity sold to a customer in the state shall be delivered to that customer;".

20. Renumber succeeding paragraphs accordingly.

21. On page 28, line 20, strike the period and "A distribution or transmission company is not" and all of lines 21 and 22 and on line 23, strike "shortfalls in supply service".

22. On page 30, between lines 20 and 21, insert:

. 126281. 3

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/SB 428

Page 64

"(5) is a delinquent taxpayer as to any New Mexico tax;" and renumber the succeeding paragraphs accordingly.

23. On page 31, line 1, strike "or" and insert in lieu thereof "of".

24. On page 31, line 16, after the comma insert "transmission".

25. On page 31, line 16, strike "providing transmission" and on line 17, strike "service".

26. On page 31, line 25, strike "shall,".

27. On page 35, line 6, strike "distribution service".

. 126281. 3

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/SB 428

Page 65

28. On page 35, lines 14 and 15, strike ", supplying the customer's distribution service" and insert in lieu thereof "or a municipal utility".

29. On page 39, line 21, strike "continue to".

30. On page 39, line 22, strike "remain" and insert in lieu thereof "be".

31. On page 39, line 22, strike "to the same", strike all of line 23 and strike line 24 through the period and insert in lieu thereof "pursuant to the Public Utility Act."

32. On page 43, line 25, strike "public regulation".

33. On page 50, line 21, strike "generation," and insert in lieu thereof "competitive power suppliers and".

34. On page 53, line 5, strike "of omission" and insert in lieu thereof "or omissions".

. 126281. 3

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/SB 428

Page 66

35. On page 53, line 8, strike "Section 15" and insert in lieu thereof "Sections 13 and 15".

36. On page 53, line 8, strike "is" and insert in lieu thereof "are".,

and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

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Michael S. Sanchez, Chairman

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/SB 428

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 5 For 1 Against

Yes: 5

No: McSorley

Excused: Davis, Tsosie

Absent: None

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FORTY- FOURTH LEGISLATURE

FIRST SESSION

February 26, 1999

SENATE FLOOR AMENDMENT number \_\_\_\_\_ to SENATE BILL 428, as amended

Amendment sponsored by Senator Michael S. Sanchez

1. Strike Senate Corporations and Transportation Committee

Amendment 15.

2. Strike Senate Judiciary Committee Amendments 7 and 8.

3. On page 7, line 22, after "regulated" insert "or gas".

4. On page 7, line 23, strike "purchases" and insert in lieu thereof "acquires".

5. On page 8, line 2, strike "purchases" and insert in lieu

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

SF1/SB 428, aa

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thereof "acquires".

6. On page 9, line 16, after "utility's" insert "distribution cooperative utility's or municipal utility's".

7. On page 9, line 18, strike "commercial".

8. On page 9, line 19, strike "who" and insert in lieu thereof "that".

9. On page 9, line 20, after "year" insert "or".

10. On page 11, line 20, after "utility" insert "a municipal utility".

11. On page 24, line 25, after "commission" insert "or district court".

12. On page 25, line 1, strike "commission".

13. On page 25, line 7, strike "residential and small

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

SF1/SB 428, aa

Page 70

business".

14. On page 25, line 21, after "supplier" insert "or monopoly coercion activities of a public utility".

15. On page 25, line 25, before the period insert "or monopoly coercion charge against a public utility".

16. On page 36, line 7, before "prior" insert "thirty days".

17. On page 36, line 11, strike "TRUST".

18. On page 38, line 13, strike "public regulation".

19. On page 39, line 1, after "by" insert "public post-secondary educational institutions or".

20. On page 40, line 21, before the semicolon insert "utility".

21. On page 41, line 12, after "cooperative" insert

128341. 1

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

SF1/SB 428, aa

Page 71

"utility".

22. On page 49, line 7, after "means" insert "a".

23. On page 51, line 2, strike "and".

24. On page 51, between lines 9 and 10, insert the following  
new paragraph:

"(9) how power may be procured from on-site  
generation facilities, including facilitating net metering."

25. On page 52, lines 3 and 4, strike "one million five  
hundred thousand dollars (\$1,500,000)" and insert in lieu thereof  
"two million dollars (\$2,000,000)".

26. On page 53, line 11, after "Act" insert "of 1999".

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

SF1 /SB 428, aa

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Michael S. Sanchez

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

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FORTY- FOURTH LEGISLATURE

FIRST SESSION

February 26, 1999

SENATE FLOOR AMENDMENT number \_\_\_\_\_ to SENATE BILL 428, as amended

Amendment sponsored by Senator Leonard Tsosie

1. Strike Senate Corporations and Transportation Committee

Amendment 5.

2. On page 34, strike line 25 in its entirety and insert in

lieu thereof:

"all retail kilowatt-hour sales in the state billed by public utilities, municipal utilities and distribution cooperative utilities until December 31, 2004. Beginning January 1, 2005 the system benefits charge shall increase to seven hundredths of one cent (\$.0007) per kilowatt-hour. "

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

SF1/SB 428, aa

Page 74

3. On page 36, line 24, strike "in" and insert "into".

4. On page 38, line 22, strike "and".

5. On page 38, line 24, after "energy" insert "statewide".

6. On page 39, line 3, after "an" insert "Indian nation,  
tribe or pueblo,", on line 6, before "city's" insert "tribal  
government's," and after "costs", strike the period and insert  
"; and".

7. On page 39, between lines 6 and 7, insert the following:

"(5) no less than six million dollars (\$6,000,000)  
annually in underserved, low-income communities where little or no  
electrical service is available, to develop renewable energy  
supplies and service through initiation and implementation of  
renewable technology projects or to extend power transmission  
lines."

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

SF1 /SB 428, aa

Page 75

Leonard Tsosie

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

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FORTY- FOURTH LEGISLATURE

FIRST SESSION

February 26, 1999

SENATE FLOOR AMENDMENT number \_\_\_\_\_ to SENATE BILL 428, as amended

Amendment sponsored by Senator Leonard Tsosie

1. Strike Senate Corporations and Transportation Committee

Amendment 5.

2. On page 34, strike line 25 in its entirety and insert in lieu thereof:

"all retail kilowatt-hour sales in the state billed by public utilities, municipal utilities and distribution cooperative utilities until December 31, 2004. Beginning January 1, 2005 the system benefits charge shall increase to seven hundredths of one cent (\$.0007) per kilowatt-hour. "

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. 128331. 1

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

SF1/SB 428, aa

Page 77

3. On page 36, line 24, strike "in" and insert "into".

4. On page 38, line 22, strike "and".

5. On page 38, line 24, after "energy" insert "statewide".

6. On page 39, line 3, after "an" insert "Indian nation,  
tribe or pueblo,", on line 6, before "city's" insert "tribal  
government's," and after "costs", strike the period and insert  
"; and".

7. On page 39, between lines 6 and 7, insert the following:

"(5) no less than six million dollars (\$6,000,000)  
annually in underserved, low-income communities where little or no  
electrical service is available, to develop renewable energy  
supplies and service through initiation and implementation of  
renewable technology projects or to extend power transmission  
lines."

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

SF1 /SB 428, aa

Page 78

Leonard Tsosie

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

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1 **FORTY- FOURTH LEGISLATURE**

2 **FIRST SESSION, 1999**

3  
4  
5  
6 **March 10, 1999**

7  
8 **Mr. Speaker:**

9  
10 **Your BUSINESS AND INDUSTRY COMMITTEE, to whom has**  
11 **been referred**

12  
13 **SENATE BILL 428, as amended**

14  
15 **has had it under consideration and reports same with**  
16 **recommendation that it DO PASS, amended as follows:**

17 **1. Strike Items 10, 17, 18 and 19 of Senate Floor**  
18 **Amendment 1.**

19  
20 **2. Strike Senate Floor Amendment 2.**

21  
22 **3. Strike Senate Corporations and Transportation**  
23 **Committee Amendments 5, 6, 7, 8 and 9.**

24  
25 **4. Strike Senate Judiciary Committee Amendments 27, 28,**  
**35 and 36.**

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

3 HBIC/SB 428/a

Page 80

4 5. On page 1, line 14, strike "CREATING A" and on line  
5 15, strike "FUND;".

6  
7 6. On page 1, line 16, strike "MAKING AN APPROPRIATION;".

8  
9 7. On page 11, strike lines 17 through 20 in their  
10 entirety.

11 8. Reletter the succeeding subsections accordingly.

12  
13 9. On page 13, line 18, strike "shall" and insert in lieu  
14 thereof "may".

15  
16 10. On page 16, line 17, strike "system benefits charge  
17 and".

18  
19 11. On pages 34 and 35, strike Section 13 in its  
20 entirety.

21  
22  
23  
24 12. Renumber the succeeding sections accordingly.

25 13. On page 35, line 11, after the first occurrence of



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4 "costs" strike the comma and insert in lieu thereof "and".

6 14. On page 35, line 11, strike "and the system".

8 15. On page 35, line 12, strike "benefits charge".

10 16. On page 35, line 13, after "utility" strike the  
11 remainder of the line and insert in lieu thereof a period.

12 17. On page 35, strike lines 14 through 19 in their  
13 entirety.

15 18. On page 36, strike lines 11 through 25, strike pages  
16 37 and 38 in their entirety and on page 39, strike lines 1  
17 through 13.

18 19. Renumber the succeeding sections accordingly.

20 20. On page 53, strike lines 8 and 9 in their entirety.

22 21. Renumber the succeeding sections accordingly.

24 22. Adjust cross-references to correspond with these  
25 amendments.,

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and thence referred to the APPROPRIATIONS AND FINANCE  
COMMITTEE.

Respectfully submitted,

\_\_\_\_\_  
Fred Luna, Chairman

Adopted \_\_\_\_\_  
(Chief Clerk)

Not Adopted \_\_\_\_\_  
(Chief Clerk)

Date \_\_\_\_\_

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1 The roll call vote was 11 For 0 Against

2 Yes: 11

3 Excused: None

4 Absent: J. G. Taylor

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1 FORTY- FOURTH LEGISLATURE  
2 FIRST SESSION, 1999

3  
4 March 19, 1999

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7 Mr. Speaker:

8  
9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to whom  
10 has been referred

11 SENATE BILL 428, as amended

12  
13 has had it under consideration and reports same with  
14 recommendation that it DO PASS, amended as follows:

15  
16 1. Strike House Business and Industry Committee  
17 Amendments 1, 3 through 8, and 10 through 22.

18  
19 2. Strike Senate Judiciary Committee Amendments 35 and  
20 36.

21 3. On page 22, line 17, before the semicolon insert "  
22 including practices that unfairly impede a customer from self-  
23 generating a portion of his supply service requirements".

24  
25 4. On page 34, strike line 25 in its entirety and on page  
35, strike line 1 through the period and insert in lieu

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thereof:

"all retail kilowatt-hour sales in the state billed by public utilities, municipal utilities and distribution cooperative utilities beginning January 1, 2002. On January 1, 2007, the system benefits charge shall increase to six-hundredths of one cent (\$.0006) per kilowatt-hour."

5. On page 35, line 7, strike "2001" and insert in lieu thereof "2002".

6. On page 38, line 22, strike "and".

7. On page 39, line 6, strike the period and insert in lieu thereof "; and".

8. On page 39, between lines 6 and 7, insert the following new paragraph:

"(5) no more than four million dollars (\$4,000,000) to the governing body of a community, where limited or no electric service is available, to develop electric service through the initiation and implementation of new projects, including those using renewable energy, to

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provide or extend electric service in these communities."

9. On page 39, strike lines 9 through 13 and insert in lieu thereof:

"report on disbursements made from the fund to include, at a minimum:

(1) a list of recipients receiving disbursements;

(2) the amount of each disbursement;

(3) the date of each disbursement;

(4) a description of each project or expansion funded with a disbursement;

(5) a description of each project's contribution to the state's knowledge and use of renewable energy and developing technologies; and

(6) a description of the expansion of electric service in the state."

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10. On page 53, strike Section 22 in its entirety and insert in lieu thereof the following new section:

"Section 22. COMMISSION REVIEW AND RECOMMENDATIONS. -- The commission shall docket a proceeding to review the system benefits charge and the system benefits fund, their operation and effectiveness, and then to make recommendations to the legislature by January 10, 2004 for any repeal of or changes to these provisions."

Respectfully submitted,

\_\_\_\_\_  
Max Coll, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

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4 The roll call vote was 16 For 0 Against

5 Yes: 16

6 Excused: Abeyta

7 Absent: None

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FIRST SESSION

March 19, 1999

HOUSE FLOOR AMENDMENT number \_\_\_\_\_ to SENATE BILL 428, as amended

Amendment sponsored by Representative

1. Strike House Appropriations and Finance Committee Amendment

8.

2. On page 39, between lines 6 and 7, insert the following:

"(5) no more than four million dollars (\$4,000,000) to the governing body of a community or Indian nation, tribe or pueblo, where limited or no electric service is available, to develop electric service through the initiation and implementation of new projects, including those using renewable energy, to provide or extend electric service in low-income communities."

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

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