The Electric Company
El Paso Electric

ORIGINAL

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LR-N________
LCR ________
Docket No. 50-528, 50-529, and 50-530

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington DC 20555

Re: Palo Verde Nuclear Generating Station, Unit 1, Facility Operating License No. NPF-41 Palo Verde Nuclear Generating Station, Unit 2, Facility Operating License No. NPF-51 Palo Verde Nuclear Generating Station, Unit 3, Facility Operating License No. NPF-74

Application of El Paso Electric Company for Consent to Indirect Transfers of Control and Conforming License Amendments Supporting Reorganization

Dear Sir or Madam:

In accordance with Section 184 of the Atomic Energy Act, 22 U.S.C. §2234, and 10 C.F.R. § 50.80, El Paso Electric Company ("EPE") submits this application for Nuclear Regulatory Commission consent to the indirect transfer of control of EPE's minority, non-operating ownership interest in Facility Operating License Nos. NPF-41, NPF-51, and NPF-74, for the Palo Verde Nuclear Generating Station, Units 1, 2, and 3 ("PVNGS"), to a new holding company ("EPE Holdco") that will own all of EPE's common stock. This corporate restructuring of EPE is being undertaken to implement the restructuring requirements of the New Mexico Electric Utility Industry Restructuring Act of 1999, SB 428, NMSA 1978, §§ 62-3A-1 through 23 (1999) (the "Restructuring Act").[1]

The reorganization of EPE into a holding company structure will result in an indirect transfer of control of the PVNGS licenses held by EPE. The corporation that is the current license holder for PVNGS, EPE, will continue to hold the license after the proposed reorganization, except that this corporation will become a direct subsidiary of EPE's "Holdco" and will change its name.[2]

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[1] A copy of the Restructuring Act is included as Attachment 2 to this Application.

[2] The new name for EPE has not yet been chosen, and therefore the name "EPE Genco" is being used for purposes of this Application. The actual name of the Company

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Following the reorganization, EPE Genco will possess (own, but not operate) the PVNGS licenses under the same conditions and authorizations that are included in the currently existing licenses.

The details of EPE's proposed reorganization are described in Attachment 1 hereto, which is titled: "Information Submittal in Support of Application for Consent to Indirect Transfers of Control and Conforming License Amendments Supporting Reorganization of El Paso Electric Company". Additional information pertaining to the proposed reorganization, including the information required under 10 C.F.R. § 50.80 and NRC Administrative Letter 96-02, is also included in Attachment 1 and the Exhibits thereto. As Attachment 1 demonstrates, EPE's corporate reorganization will not (1) have any adverse impact on the ownership or operation of PVNGS; (2) affect the managerial, technical, or financial qualifications of the licensed owners and operators of these nuclear plants; (3) affect assurance of decommissioning funding for the PVNGS units; (4) result in foreign ownership, control or domination over any of the licenses or licensees; or (5) require any additional NRC antitrust review.

In summary, the proposed reorganization will not be inimical to the common defense and security or result in any undue risk to public health and safety, and the indirect transfer of the NRC licenses associated with EPE's reorganization will be consistent with the requirements and guidelines set forth in the Atomic Energy Act, the NRC regulations, and relevant NRC Standard Review Plans and other guidance.

Attachment 1 (and the Exhibits thereto) includes confidential business and financial information. Accordingly, EPE is submitting herein a redacted version of Attachment 1 and an affidavit formally requesting, pursuant to 10 C.F.R. § 2.790, that this proprietary information be withheld from public disclosure.

In order to fully comply with the Restructuring Act, EPE respectfully requests that the NRC review this Application on a schedule that will permit the issuance of NRC's consent to the indirect transfer of control of the PVNGS licenses on a timetable that will permit EPE to complete its corporate restructuring by December 1, 2000. EPE further requests that the NRC consent to the indirect transfer of control allow up to one year from the date of NRC approval for implementation.

There are certain regulatory approvals beyond that of the NRC that must be obtained prior to the completion of EPE's proposed reorganization. These include approvals by the Federal Energy Regulatory Commission ("FERC"), the New Mexico Public Regulation Commission ("NMPRC"), and the Texas Public Utilities Commission ("Texas PUC"). EPE must also make certain filings with the

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will be set forth in the 10 CFR §50.90 filing that will be made by Arizona Public Service Company as the licensed operator of PVNGS.

Securities and Exchange Commission. EPE will keep the NRC informed of any significant changes in the status of the other required approvals or other significant developments that could have an impact on the schedule for implementation of EPE's restructuring proposal.

In the event the NRC has any questions about EPE's proposed reorganization or requires further information concerning this application, please contact one of the below-named counsel for EPE:

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Service upon the applicant of comments, hearing requests, intervention petitions, or other docket entries should be made upon the same counsel.

Gary R. Hedrick
Vice President, Treasurer and
Chief Financial Officer

AFFIDAVIT

State of Texas)
) ss
County of El Paso)

Gary R. Hedrick, being duly sworn according to law, under oath, deposes and says:

I am Vice President, Treasurer and Chief Financial Officer for El Paso Electric Company, and as such have reviewed the Attachment accompanying this correspondence (LR-N_____) entitled "Information Submittal in Support of Application for Consent to Indirect Transfers of Control and Conforming License Amendments Supporting Reorganization of El Paso Electric Company" and find the information therein true and correct to the best of my knowledge and belief.

Certain of the Exhibits to Attachment 1, specifically Exhibits A, B, C, and D, contain commercial and financial information that is confidential and privileged. Other than El Paso Electric Company's ("EPE") disclosure as required under 10 C.F.R. § 50.80, the information therein has been held in confidence and not disclosed to the public. Internal distribution of this information has likewise been limited to essential EPE personnel.

RHONDA M PYLE
NOTARY PUBLIC
State of Texas
Comm. Exp. 06-10-2003

Gary R Hedrick

Subscribed and Sworn to before me

this 5th day of July, 2000

Rhonda M. Pyle

Notary Public for the State of Texas

My Commission expires 6/10/2003.

Attachment 1

Docket No. _______

**Information Submittal
in Support of Application for Consent
to Indirect Transfers of Control and
Conforming License Amendments
Supporting Reorganization of
El Paso Electric Company**

I. Introduction.

El Paso Electric Company ("EPE") submits the following information and requests, pursuant to 10 C.F.R. § 50.80, NRC consent to the indirect transfer of control of EPE's 15.8% non-operating ownership interest in Facility Operating License Nos. NPF-41, NPR-51, and NPF-74 for the Palo Verde Nuclear Generating Station, Units 1, 2, and 3 ("PVNGS"). Specifically, the indirect transfer is being sought as a result of the reorganization of EPE to implement the restructuring requirements of the New Mexico Electric Utility Industry Restructuring Act of 1999, SB 428, NMSA 1978, §§ 62-3A-1 through 23 (1999) (the "Restructuring Act"). Under the reorganization, the corporation that is now EPE will continue to be the licensee for the PVNGS, authorized to own, but not operate, a portion of the units under essentially the same conditions and authorizations included in the currently existing NRC licenses. However, EPE will become a direct subsidiary of a holding company, EPE Holdco, and will change its name.[3]

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74, for PVNGS are held by the following co-licensees: Arizona Public Service Company ("APS"), owner or lessee of a 29.1% share of each of the three units and operator of the three units; Salt River Project Agricultural Improvement and Power District, owner of a 17.49% share; Southern California Edison Company, owner of a 15.8% share; EPE, owner of a 15.8% share; Public Service Company of New Mexico, owner or lessee of a 10.2% share; Southern California Public Power Authority, owner of a 5.91% share; and Los Angeles Department of Water and Power, owner of a 5.7% share. APS is the licensed operator of all three units. The remaining co-licensees, including EPE, are licensed only to own and possess their respective interests.

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[3] The new name for EPE has not yet been chosen, and therefore the name "EPE Genco" is being used for purposes of this Application. The actual name of the Company will be set forth in the 10 CFR §50.90 filing that will be made by Arizona Public Service Company as the licensed operator of PVNGS.

II. Purpose of Transfer and Nature of the Transaction Making the Indirect Transfer Necessary or Desirable.

A. Overview of EPE

EPE is a Texas corporation. It is an "electric utility" as defined in 10 C.F.R. § 50.2 and is engaged in the generation, transmission, distribution, and sale of electric energy in Texas and New Mexico. EPE provides retail electric service to approximately 207,200 residential and 23,400 industrial and commercial customers in Texas, and approximately 62,200 residential and 8,300 industrial and commercial customers in New Mexico.[4] In addition, EPE makes wholesale electric sales and provides transmission services to customers located in Texas, New Mexico, Arizona, California, and Mexico, through various wholesale contracts and tariffs on file with the FERC.

As described below, EPE is subject to restructuring legislation in Texas and New Mexico, the two states where it provides retail electric service. In New Mexico, EPE must restructure before the end of this year so that it can participate in competitive procurement processes in early 2001 for standard offer and default services that will have to be provided following the implementation of retail competition. Retail competition is expected to begin on January 1, 2002. In EPE's Texas service territory, where most of EPE's retail electric load is located, retail competition will not begin until August 2005.

B. Restructuring In New Mexico

The Restructuring Act became law in New Mexico on April 8, 1999. It provides the framework for the transition to and implementation of retail electric service competition in the State. The Restructuring Act requires each New Mexico electric utility to reorganize its present corporate structure. Section 8(B) of the Act provides that:

> Before January 1, 2001, a public utility shall separate into at least two corporations, separating supply service and energy-related service consisting of generation and power supply facilities, operations and services and energy-related facilities, operations and services that are to be made available to the public pursuant to the Electric Utility Industry Restructuring Act of 1999 on a competitive basis from transmission and distribution services consisting of transmission facilities, operations and service, distribution facilities, operations

[4] Approximately 75 percent of EPE's electrical load is retail load located in Texas. In accordance with Texas legislation, retail choice will not commence in EPE's Texas service territory until August, 2005. Approximately 16 percent of EPE's electrical load is retail load in New Mexico. Under the most recent orders of the NMPRC, retail choice will commence in New Mexico on January 1, 2002, and must be available for all customer classes six months thereafter. The remaining portion of EPE's electrical load is wholesale load, which will continue to be served by EPE Genco after the restructuring under the existing FERC-regulated contracts.

and service and customer billing and metering that are to be made available to the public pursuant to that act on a regulated basis.

The Restructuring Act specifically sets out how the required corporate separation must occur. Section 8(C) of the Act provides that:

> Corporate separation of regulated from unregulated services shall be accomplished by either the creation of separated affiliated companies that may be owned by a common holding company, through the creation of separate non-affiliated corporations, or through the sale of assets to one or more third parties. A public utility may provide all competitive and ancillary services within a single unregulated company and provide all non-competitive and ancillary services within a separate regulated company. Unregulated service shall not be provided by a regulated company.[5]

In Section 6.A.(1), the Restructuring Act requires that, among other things, a public utility's Transition Plan include a detailed description of its "proposal and alternatives to separate its supply service and energy-related service assets from its distribution and transmission services assets pursuant to Section 8 of the [Act]."

On March 1, EPE submitted to the NMPRC an initial portion (Phase 1) of its Transition Plan setting forth its proposal to restructure in accordance with the Restructuring Act. On May 2, 2000, EPE filed an amendment to Phase I to reflect the formation of a shared services subsidiary, and supplemental testimony on certain financing and contractual issues. On June 1, 2000, EPE submitted the remainder of its Transition Plan filing setting forth the details for implementation of retail choice in New Mexico. Under the Transition Plan, EPE proposes to form a holding company, EPE Holdco, which will have four wholly-owned subsidiaries. [6]

1. EPE, the current vertically-integrated electric utility company, will become EPE Genco and will own and operate all of EPE's generating plants, including retaining EPE's non-operating ownership interest in the three PVNGS units. EPE Genco will also engage in wholesale marketing activities in support of its activities as owner of the various generating units. EPE Genco has requested authorizations from the NMPRC and the Texas PUC that will allow EPE Genco to be designated as an Exempt Wholesale Generator ("EWG").

2. EPE will transfer its transmission and distribution assets to a new transmission and distribution company ("T&D Utility"), which will operate as a regulated company and will be responsible for providing bundled retail electric service to EPE's existing native load

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[5] The Restructuring Act specifically does <u>not</u> require "nor shall it be construed" to require "nor shall the commission require" a public utility to divest itself of any of its assets. NMSA 1978, Section 62-3A-8(A) (1999).

[6] EPE Holdco will be an exempt public utility holding company pursuant to Section 3(a)(1) of the Public Utility Holding Company Act.

customers until the full implementation of retail choice in New Mexico and Texas. The T&D Utility will purchase all of the power required to serve retail load prior to the implementation of retail choice from EPE Genco pursuant to a FERC-jurisdictional wholesale requirements contract with cost-based rates. Following retail choice, T&D Utility will provide regulated transmission and distribution services to customers served from its facilities. EPE's current name and logo will be transferred to this regulated utility company.

3. Another new wholly-owned subsidiary of EPE Holdco will be formed as an Energy Services Company or ESCO. The ESCO will operate as an unregulated retail energy marketer and energy services provider. It will not acquire any of EPE's existing production, transmission or distribution assets.

4. A fourth wholly-owned subsidiary of EPE Holdco will be formed as the Services Company for the EPE Holdco system. The Services Company will provide accounting, billing and other administrative services to the other companies in the EPE Holdco system.

C. Texas Restructuring

On September 1, 1999, Senate Bill 7 ("SB 7") became law in Texas. Like its counterpart restructuring law in New Mexico, SB 7 provides for the introduction of retail choice for customers of public utilities and for the corporate reorganization of public utilities along functional lines. Under the terms of SB 7, public utilities in Texas must separate their business activities into a power generation company, a retail electric provider, and a transmission and distribution utility.

For most utilities in Texas, the requirement to restructure and the implementation of retail choice are scheduled to begin on or before January 1, 2002.[7] However, under SB 7, an electric utility that had an approved system-wide rate freeze in effect for residential and commercial customers on September 1, 1997, and extending beyond December 31, 2001, is not subject to the restructuring provisions of the SB 7 until the expiration of the rate freeze. On August 30, 1995, the Texas PUC approved a rate freeze for EPE in Docket No. 12700, beginning on August 2, 1995, for a ten-year period. As a result, EPE is not required to restructure in accordance with SB 7 or implement retail choice in its Texas service territory until August 1, 2005. Until that time, EPE's obligation to provide bundled retail service in its Texas service territory will remain in place.

Because EPE is unbundling its corporate structure into separate affiliates to comply with the requirements of the New Mexico Restructuring Act,[8] and because it will retain the obligation

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[7] Section 39.051(b) (1999).

[8] On March 14, 2000, EPE filed an application with the Texas PUC seeking approvals related to its New Mexico Transition filing, including approval of its proposed corporate restructuring and certain determinations under PUHCA that are required for EPE Genco to obtain EWG status.

(Continued ...)

to provide bundled retail electric service to customers located in its service area in Texas through August 1, 2005, certain structural and contractual changes are necessary for EPE to meet its Texas obligations. Those are described immediately below.

D. Wholesale Requirements Contracts

1. Texas Requirements Contract

As discussed above, EPE will continue to have a certificated retail service territory in Texas for at least five more years, until August 2005. It will provide bundled retail electric service to the retail customers in this service territory until that time pursuant to the same rates that are currently in effect under the ten-year rate freeze approved by the Texas PUC.

In order to accomplish this continuing obligation to provide bundled retail service following the restructuring required by the New Mexico Restructuring Act, EPE Genco will enter into a full requirements contract with the regulated T&D Company under which EPE Genco will supply the capacity, energy and ancillary services necessary for the regulated T&D company to satisfy its retail service obligations. This Texas Requirements Contract, which is attached hereto as Exhibit E, will be subject to approval by the Texas PUC and the FERC.[9] The rates set forth in the Texas Requirements Contract are equal to the generation component of the fixed retail rates currently approved through August 2005 in Texas, including fuel and purchased power costs approved for recovery by the Texas PUC. The Texas Requirements Contract will remain in effect until the commencement of retail choice in August 2005.

The bottom line is that, for purposes of its Texas retail load -- which represents the vast majority of EPE's electric customer base -- EPE Genco will have a FERC-regulated, cost-based requirements contract in effect through August 2005, under which it will recover the generation component of the same bundled rates that it currently recovers under retail regulation in Texas. Those retail rates include the recovery of the Texas share of EPE's cost responsibility as a part-owner of the PVNGS, including the Texas portion of EPE's share of decommissioning costs associated with PVNGS.

2. New Mexico Requirements Contract

EPE similarly must continue to provide bundled retail service to retail customers in its New Mexico service territory until the commencement of retail competition, and thereafter to those retail customers that are not yet eligible for retail competition under the New Mexico phase-in for retail choice. Retail competition will begin for residential and small commercial

[9] Under Section 32(k) of PUHCA, each State commission must approve a wholesale contract between an EWG and an affiliated utility company. Accordingly, unlike most wholesale contracts that are exclusively subject to FERC's jurisdiction, the Texas Requirements Contract will require approval of both the Texas PUC and the FERC.

customers on January 1, 2002. Retail competition will be in effect for all customers six months later. EPE's New Mexico retail load equals approximately 16 percent of its total electric load at this time.

To accomplish the provision of bundled service prior to retail competition, EPE Genco will enter into a New Mexico Requirements Contract under which it will sell capacity, energy and ancillary services to the T&D Company so that the latter can satisfy its bundled retail service obligations (Exhibit F). The rates in this New Mexico Requirements Contract are based on the generation component of the fixed retail rates that have been established by the NMPRC for the period through at least April 2001. EPE expects that those rates will be allowed to remain in effect until all of its New Mexico customers are eligible for retail competition in July 2002.

The New Mexico Requirements Contract is subject to approval by the NMPRC and the FERC.[10] Until January 1, 2002, EPE Genco expects to recover the generation component of the same cost-based rates that have been established by the NMPRC for retail service that is currently provided by EPE.

3. Reliability Must Run Contract

Even after retail competition begins in New Mexico in 2002, EPE Genco will continue to supply a significant portion -- approximately fifty percent -- of the electric power requirements of its former bundled retail service customers. The reasons for this are that (1) the transmission capacity into the EPE service territory is limited and is not sufficient to allow for the importation of sufficient power to supply the EPE-area load, (2) it is necessary for voltage support reasons that generation internal to the EPE system operate to supply vars to the system, and (3) local generation owned by EPE Genco will be necessary for load-following purposes.

Accordingly, EPE's New Mexico restructuring plan will include a proposed Reliability Must Run Contract under which the control area operator for the EPE control area (which initially will be the T&D Company and later the Regional Transmission Organization for the Southwest) can call upon EPE Genco's generation assets within the EPE service territory to meet load requirements that cannot be met from outside generation, and to provide voltage support and load balancing services.

Because EPE Genco's generating assets providing reliability must-run services will not initially be subject to competition, the Reliability Must Run Contract will contain regulated, cost-based rates that will be subject to approval by the NMPRC and the FERC. Thus, even for the portion of EPE's New Mexico electrical load that will be subject to retail choice, EPE Genco will have to supply a significant portion of the power to that load pursuant to cost-based rates.

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[10] Under Section 32(k) of PUHCA, each State commission must approve a wholesale contract between an EWG and an affiliated utility company. Accordingly, unlike most wholesale contracts that are exclusively subject to FERC's jurisdiction, the New Mexico Requirements Contract will require approval of both the NMPRC and the FERC.

III. General Corporate Information Regarding New License Applicant.

A. Name of New Licensee.

The actual name for the Company that will be EPE Genco has not yet been established. The actual name for that Company will be included in the Section 50.90 filing to amend the PVNGS license that will be made shortly by APS.

B. Address.

EPE Genco's principal place of business will be at:

123 West Mills Street
El Paso, TX 79901

C. Description of Business.

EPE Genco will be a wholly-owned subsidiary of EPE Holdco. It will own and operate all of EPE's interests in its generating plants, including retaining EPE's non-operating ownership interest in the three PVNGS units. EPE Genco will also engage in wholesale marketing activities in support of its activities as owner of the various generating units. EPE Genco has requested authorizations from the NMPRC and the Texas PUC that will allow EPE Genco to be designated as an Exempt Wholesale Generator ("EWG").

D. Organization and Management.

As discussed above, EPE is reorganizing into a holding company structure. EPE Holdco will be a publicly traded corporation organized under the laws of the State of Texas. It will have four wholly-owned subsidiaries: EPE Genco (which will be the PVNGS licensee), T&D Company, EPE Esco, and Servco. All of the Directors and principal officers of EPE are citizens of the United States, and all of the Directors of EPE Holdco and EPE Genco are also expected to be citizens of the United States. The only persons currently known to own beneficially more than 5% of EPE's common stock are Westport Asset Management, Inc., 253 Riverside Avenue, Westport, CT 06880; Highfields Capital Management LP, 200 Clarendon Street – 51st Floor, Boston, MA 02117; and Merrill Lynch & Co., Inc., World Financial Center, North Tower, 250 Vesey Street, New York, NY 10381. All three of these are domestic, American companies. Therefore, neither EPE Holdco nor EPE Genco will be owned, controlled, or dominated by any alien, foreign corporation, or foreign government.

The El Paso Electric Company Board of Directors are:

Wilson K. Cadman
James A. Cardwell
James W. Cicconi

George W. Edwards, Jr.
Ramiro Guzman
James Haines
James W. Harris
Kenneth Heitz
Patricia Zangwill Holland-Branch
Michael K. Parks
Eric B. Siegel
Stephen Wertheimer
Charles Yamarone

The principal officers for El Paso Electric Company are:

Terry Bassham
Jules F. Bates, Jr.
Michael L. Blough
James Haines
Gary R. Hedrick
John C. Horne
Helen Knopp
Earnest A. Lehman
Robert C. McNeil
Eduardo A. Rodriguez
Guillermo Silva, Jr.

The El Paso Electric Company Board of Directors will become the Board of Directors of EPE HoldCo. EPE has not finalized who will be the officers of HoldCo or the officers and directors of EPE Genco. The officers and directors of EPE Genco will be chosen from EPE's officers and directors listed above.

E. NRC Licenses Involved.

NRC Facility Operating Licenses NPF-41, NPF-51, and NPF-74.

IV. Technical Qualifications.

Pursuant to the Arizona Nuclear Power Project Participation Agreement, APS serves as operating agent for all Palo Verde Nuclear Generating Station participants in the management, operation, maintenance and improvement of Palo Verde Units 1, 2, and 3. Further, APS is solely licensed to operate the Palo Verde units. Therefore, EPE's restructuring will not effect any change to either the management or the technical organization or staff responsible for operating the Units. EPE's restructuring will require no change in the numbers and qualifications of APS personnel who operate the Units.

V. Financial Qualifications.

EPE Genco will qualify as an electric utility as defined in 10 CFR §50.2, because it will, for an extended period of time, continue to provide electric service pursuant to cost-based rates that are subject to regulatory review by the FERC and the State Commissions.

As discussed in Section II.D.1. above, EPE Genco will provide the power supply that will be used by the T&D Utility to continue to provide bundled retail service in EPE's Texas service territory under a FERC-regulated, cost-based requirements contract. The rates in that contract have been designed to provide EPE Genco the entire production component of the current retail electric rates that are in effect in Texas. By Order of the Texas PUC, those retail rates will be in effect until August 2005. The Texas Requirements Contract will similarly be in effect until August 2005, when retail competition will begin in EPE's Texas service territory.

EPE's Texas service territory includes approximately 75 percent of EPE's total electric load and revenues. For at least the next five years, the only difference between the current situation, in which EPE provides bundled retail electric service, and the situation that will exist after the proposed restructuring, is that the generation component of bundled retail service will be supplied by EPE Genco to the T&D Utility pursuant to a FERC-regulated wholesale contract with cost-based rates. The T&D Utility will supply bundled retail service subject to Texas PUC regulation and will use the revenues it receives from this regulated service to compensate EPE Genco.

In EPE's New Mexico service territory, EPE Genco will provide the power supply for bundled retail electric service to the approximately 16 percent of EPE's total electric load that is located in New Mexico pursuant to a similar requirements contract that has cost-based rates and is subject to FERC regulation. This New Mexico Requirements Contract will be in effect for the entire New Mexico service territory load until January 1, 2002, and will be in effect for large commercial and industrial customers until July 1, 2002. The rates in the New Mexico Requirements Contract have been designed to recover the entire generation component of the existing bundled retail rates approved by the NMPRC. As in Texas, T&D Utility will provide bundled retail service subject to NMPRC regulation and will use the revenues its receives from this regulated service to compensate EPE Genco.

Even after the implementation of retail choice in New Mexico (after January 1, 2002), EPE Genco will be required to continue to provide a significant amount of power (approximately fifty percent of total demand) to serve the New Mexico retail load pursuant to the Reliability Must Run Contract discussed in Section II.D.3. above, which will contain cost-based prices that will be submitted for approval by the NMPRC and the FERC.

In addition, EPE has contracts to supply firm wholesale power service pursuant to FERC-regulated rates to the Rio Grand Electric Cooperative, Texas-New Mexico Power Company and the Imperial Irrigation District. These wholesale contracts will remain with EPE Genco until their termination. These contracts constitute approximately 4 percent of EPE's total load.

This combination of regulated, cost-based contracts for EPE's entire Texas service territory retail load for five years, for the approximately 16 percent of the EPE's electrical load for almost two years in New Mexico, plus the remaining obligation to supply a regulated service under the Reliability Must Run Contract, make EPE Genco an "electric utility" under this Commission's regulations.

Notwithstanding the fact that EPE Genco will qualify as an electric utility, EPE is supplying the following information to demonstrate EPE Genco's financial qualifications to carry out its responsibilities as a licensee. This information includes:

1. A pro forma five-year income statement for EPE Genco for its first five years of operation. (Exhibit A).

2. A pro forma opening balance sheet for EPE Genco. (Exhibit B).

3. A pro forma five-year estimate of EPE Genco's cash flow and availability of funds to cover operating costs. (Exhibit C). This exhibit includes EPE Genco's projected share of PVNGS costs and the availability of funds to defray those costs.

4. Information showing that EPE Genco meets the criteria for obtaining an investment grade rating from the major rating agencies upon its formation (Exhibit D).

The information supplied above shows that EPE Genco is currently projected to have over $957 million in assets. EPE Genco's operations are projected to account for approximately 58% of EPE's pre-restructuring total assets, 64% of EPE's pre-restructuring operating revenues, and 65% of EPE's pre-restructuring net income.

The revenues from EPE Genco's sales under the Texas and New Mexico Requirements Contracts alone are projected to be more than $340 million per year, which far exceeds EPE Genco's projected cost responsibility as a licensee for PVNGS.

VI. Decommissioning Funding Assurance.

This Commission's regulations require information showing "reasonable assurance . . . that funds will be available to decommission" EPE Genco's share of PVNGS. 10 C.F.R. § 50.33(k). EPE uses an external sinking fund to provide financial assurance for the decommissioning of its ownership interests in the PVNGS. Under the trust agreements for these sinking funds, EPE makes monthly deposits into the fund.[11] After the restructuring, EPE Genco will continue to own the existing nuclear decommissioning trusts presently maintained by EPE.

[11] See the Decommissioning Funding Status Report for the PVNGS Units ("Decommissioning Funding Report") for the year ended December 31, 1998, letter 102-04266-JML/SAB/RKB, dated March 30, 1999 from James M. Levine (APS) to the NRC, and attachments thereto.

Therefore, EPE Genco will remain responsible for the decommissioning obligations associated with its ownership interests in the PVNGS and will continue to fund the decommissioning trusts in accordance with NRC regulations and contractual commitments.

EPE Genco will continue to utilize an external sinking fund method to provide financial assurance for decommissioning of the PVNGS. For the next five years in Texas, and up to two years in New Mexico, EPE Genco will recover the costs to meet its decommissioning funding responsibilities under the Texas and New Mexico Requirements Contracts, which, as discussed above, provide for the flow-through to EPE Genco of the entire production component of the fixed retail rates set by the Texas PUC and NMPRC. Both Requirements Contracts obligate EPE Genco to use the revenues received under those contracts to fund the decommissioning trust. (See Article VII of the Requirements Contracts).

For the period beginning after August 2005, when retail competition begins in Texas, SB-7, the Texas restructuring legislation, provides for the establishment of a mandatory non-bypassable charge to cover the cost of decommissioning by all nuclear plant owning electric utilities in the State. SB7, Section 39.205, "Regulation of Costs Following Freeze Period," provides that "any remaining costs associated with nuclear decommissioning obligations continue to be subject to cost of service regulation and shall be included included as a nonbypassable charge to retail customers." Accordingly, for purposes of its Texas service area (which is approximately 75 percent of EPE's total load) EPE Genco can satisfy the requirements of the NRC's regulations with respect to the use of an external sinking fund for decommissioning through the combination of the Texas Requirements Contract through August 2005, and the statutory guarantee of a non-bypassable charge for decommissioning after retail competition begins.

After the New Mexico Requirements Contract terminates, EPE Genco should recover the New Mexico portion (approximately 16 percent) of its decommissioning funds through a non-bypassable charge provided for under the New Mexico Restructuring Act. As contemplated by the Restructuring Act, § 62-3A-6.A(9), EPE has submitted a proposal for the use of a non-bypassable wires charge that will be collected by the T&D Utility on behalf of EPE Genco. [12] In accordance with the Restructuring Act, EPE has filed to have nuclear decommissioning costs covered by a separately-stated charge to be collected over a period in excess of five years. By the time the next biennial report to the NRC is made in March 2001 in accordance with 10 C.F.R. § 50.75(f)(1), the precise method for collecting decommissioning costs via the New Mexico non-bypassable wires charge should be known and will be reported to the Commission.

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[12] PVNGS Unit 3 has been excluded from the New Mexico rate base for several years. Therefore, EPE has not had rates in effect in New Mexico to cover this component of its decommissioning obligation, and no provision is expected to be made by the NMPRC to provide recovery of its decommissioning expenses through non-bypassable wires charges. See Decommissioning Funding Report at 4-5. EPE intends to meet its Unit 3 decommissioning funding obligations from cash generated by the Requirements Contracts and stranded cost recoveries. The T&D Utility, under agreement with EPE Genco, will deposit the required amounts directly into the Unit 3 decommissioning trust.

Payments into the decommissioning trusts will continue to be made by EPE until the restructuring is approved.

The New Mexico Restructuring Act provides explicit assurance that the NMPRC will act to protect the integrity of the existing decommissioning trust, and to permit the continued use of external funding method for decommissioning in the future. Section 7F(2) of the Restructuring Act provides as follows:

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

This provision evidences the intent of the New Mexico legislature that no action be taken that would undermine EPE's continued ability to use a non-bypassable wires charge to fund the PVNGS decommissioning trusts, and thereby provides added confidence that regulatory sources of decommissioning funding will remain available after the restructuring is completed. As noted above, SB 7, the Texas restructuring legislation, provides explicitly for the recovery of decommissioning funds through a non-bypassable charge after retail choice begins.

VII. Antitrust Considerations.

The Atomic Energy Act only provides for an antitrust review in connection with a construction permit application and, where there have been "significant changes" from the time of the construction permit, in connection with the initial operating license. 42 U.S.C. § 2135(c). As the NRC recently decided, antitrust reviews of post-operating license transfer applications are neither required nor authorized by the Atomic Energy Act.[13] Accordingly, no antitrust review is required with respect to the indirect transfers of control that are the subject of this Application.

VIII. Restricted Data.

This indirect license transfer application does not involve any Restricted Data or classified National Security Information, and it is not expected that any such information will become involved in the licensed activities. However, in the event that such information does become involved, EPE and EPE Genco agree that they will appropriately safeguard such information and will not permit any individual to have access to such information until the

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[13] *Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1),* CLI-99-19, 49 NRC 441, 468 (1999). *See also* the proposed amendments to 10 C.F.R. § 50.80, 64 Fed.Reg. 59671 (November 3, 1999).

Federal Office of Personnel Management has made an investigation and reported to the NRC on the character, associations and loyalty of such individual, and the NRC shall have determined that permitting such person to have access to such information will not endanger the common defense and security of the United States.

IX. Environmental Considerations.

The requested approvals are exempt from environmental review, because they fall within the categorical exclusion in 10 C.F.R. § 51.22(a)(1) for which neither an Environmental Impact Statement nor an Environmental Assessment is required. *See* 10 C.F.R. § 51.22(c)(21). The proposed indirect license transfers do not involve any amendment to the licenses or other changes that would directly affect the actual operation of the Nuclear Plants. In brief, the proposed indirect transfer and license changes have no environmental impact.

X. Other Required Approvals.

In order to accomplish the restructuring transaction described in this application, EPE and/or EPE Genco will require approvals from the NMPRC, the Texas PUC, the FERC and the SEC. EPE shareholder approvals will also be required.

XI. No Significant Hazards Consideration

The instant restructuring will require only a change in the name of one of the licensees under the PVNGS license. Accordingly, pursuant to 10 CFR §2.1315(a), the requested license amendment involves "no significant hazards consideration."

EXHIBIT A

This Exhibit has been redacted because it contains confidential, proprietary, financial information.

EXHIBIT B

This Exhibit has been redacted because it contains confidential, proprietary, financial information.

EXHIBIT C

This Exhibit has been redacted because it contains confidential, proprietary, financial information.

EXHIBIT D

This Exhibit has been redacted because it contains confidential, proprietary, financial information.

EXHIBIT E

FERC ELECTRIC RATE SCHEDULE NO. 1

WHOLESALE POWER CONTRACT
BETWEEN
EL PASO ELECTRIC GENERATING COMPANY
AND
EL PASO ELECTRIC COMPANY

WHOLESALE POWER CONTRACT

THIS WHOLESALE POWER CONTRACT ("Agreement") made and entered into as of this ____________ day of ______________________, 2000, by and between El Paso Generating Company ("Seller"), a corporation organized under the laws of the State of Delaware, and El Paso Electric Company ("Buyer"), a corporation organized under the laws of the State of Texas. The Seller and Buyer will be wholly-owned subsidiaries of EPE Holding Company during the Delivery Term of this Agreement.

WITNESSETH

WHEREAS, El Paso Electric Company is currently a vertically integrated electric utility company providing bundled electric service to retail customers located in its franchised service territories in New Mexico and Texas;

WHEREAS, on April 8, 1999, the Electric Utility Industry Restructuring Act of 1999 ("Restructuring Act") became law in New Mexico, mandating that El Paso Electric Company reorganize its corporate structure to separate its generation and power supply function from its transmission and distribution functions;

WHEREAS, the Restructuring Act also mandated that customer choice electric service begin on January 1, 2001, for certain educational, residential, and small business customers, with all other retail customers becoming eligible for customer choice electric service on January 1, 2002, with NMPRC discretion to delay dates up to one year;

WHEREAS, in order to comply with the Restructuring Act, El Paso Electric Company is forming a holding company that will be the parent corporation of Seller and Buyer, transferring its transmission and distribution assets to the Buyer, and forming an energy services company affiliate and a shared corporate services company affiliate;

WHEREAS, Buyer will be responsible for the supply of bundled retail electric service to those retail customers within its franchised service territory in New Mexico that are not eligible for customer choice electric service during the Delivery Term;

WHEREAS, to ensure a reliable supply of electric power for bundled retail electric service provided by Buyer to those retail customers in its franchised service territory in New Mexico that are not eligible for customer choice electric service, Buyer is entering into this Agreement to purchase wholesale power and related products as defined in this Agreement from its affiliate, Seller, as needed by Buyer to supply bundled retail electric service during the Delivery Term.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein, the Parties agree as follows:

ARTICLE I

DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings.

1.1. **"Adjustment Interest Rate"** means the prime interest rate for currency as published from time to time under "Money Rates" by The Wall Street Journal, or its successor, as of the payment due date and/or default date, plus two (2) percent, but in no event shall the Adjustment Interest Rate exceed the maximum interest rate permitted by law.

1.2. **"Agreement"** means this Wholesale Power Contract, including attachments, and any amendments thereto executed by Seller and Buyer.

1.3. **"Ancillary Services"** means those ancillary services as defined in Buyer's OATT.

1.4. **"Automatic Generation Control"** means the automatic regulation from a central location within predetermined limits of the power output of electric generators within the EPE Control Area in response to changes in system frequency, tie-line load, or the relation of those to each other, so as to maintain the scheduled system frequency and/or the established interchange with other control areas.

1.5. **"BRS"** means the bundled retail electric service provided by Buyer to those retail customers located within Buyer's franchised service territory in New Mexico that are not eligible for customer choice electric service during the Delivery Term.

1.6. **"Business Day"** means any day on which the Federal Reserve member banks are open for business. A Business Day shall commence at 8:00 a.m. and close at 5:00 p.m., local time, at the location of each Party's principal place of business, or at such other location as the context may require.

1.7. **"Consumption Points"** means the points where Energy is delivered to and metered at the premises of Buyer's retail customers that comprise the Retail Customer Load.

1.8. **"Contingency Reserves"** means Contingency Reserves as defined by the WSCC, which consists of both Spinning and Non-Spinning Reserves with at least fifty percent (50%) of the Contingency Reserves being Spinning Reserves.

1.9. **"Day"** means a period of twenty-four (24) consecutive hours, beginning at 12:01 a.m., local time, at the Delivery Point(s); provided, however, that on the Day on which Mountain Daylight Savings Time becomes effective, the period shall be twenty-three (23) consecutive hours, and on the Day on which Mountain Standard Time becomes effective, the period shall be twenty-five (25) consecutive hours.

1.10. **"Delivery Point"** means the point of interconnection between Seller's facilities and Buyer's facilities as defined in the Interconnection Agreement with respect to each of the Seller's generating stations; provided, however, that with respect to Seller's ownership interest in the Palo Verde Nuclear Generating Station, Seller shall be responsible for obtaining delivery of Energy associated with Seller's interest in that generating facility to Buyer's transmission system; and provided further that with respect to Seller's ownership in the Four Corners Project, Buyer shall be responsible for obtaining delivery of Energy associated with Seller's interest in that generating facility to Buyer's transmission system. For purposes of Energy supplied from third party purchases, the Delivery Points shall be the points where Energy from the third party supplier is delivered to Buyer's transmission facilities.

1.11. **"Delivery Service"** means the delivery of Requirements Generation Service from the Delivery Points to the Consumption Points pursuant to Buyer's OATT and applicable retail service tariffs.

1.12. **"Delivery Term"** means the period commencing on the date of closing of the transfer of El Paso Electric Company's transmission and distribution assets to the Buyer, and ending on January 1, 2002, or such other date resulting from a decision of the NMPRC to delay the implementation of customer choice electric service and to require Buyer to continue to provide BRS, during which time Seller will be obligated to sell and Buyer will be obligated to purchase Requirements Generation Service under this Agreement.

1.13. **"EPE Control Area"** means the power system where Buyer is responsible for matching generation within the control area and net transactions with other control areas to the prevailing electrical load, for maintaining within limits generally accepted as Good Utility Practice scheduled interchange with neighboring control areas, and for maintaining frequency within reasonable limits in accordance with Good Utility Practice.

1.14. **"Emergency"** means (i) any abnormal system condition which requires immediate manual or automatic action to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of Buyer's electric system, and (ii) any existing or potential system condition on Buyer's electric system which Buyer determines, in the exercise of reasonable discretion, is not or will not be in conformance with applicable SRSG, NERC, or WSCC criteria.

1.15. **"Energy"** means the electric energy supplied under this Agreement, which shall be in the form of three phase, alternating current at a frequency of 60 Hertz, with reasonable variations of frequency and voltage allowed consistent with Good Utility Practice.

1.16. **"FERC"** means the Federal Energy Regulatory Commission or any successor federal agency having regulatory jurisdiction over this Agreement.

1.17. **"Firm"** means Requirements Generation Service supplied on a firm and uninterruptible basis to serve the Retail Customer Load at all times throughout the Delivery Term, except for interruptions or curtailments resulting from Force Majeure events.

1.18. **"Good Utility Practice"** means any of the practices, methods, and acts required, approved, or engaged in by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act; rather, it is intended to be a spectrum of acceptable practices, methods, and acts.

1.19. **"Interconnection Agreements"** means the Interconnection Agreements between Seller and Buyer, providing for the interconnection of Seller's generating stations to Buyer's transmission and/or distribution facilities.

1.20. **"Losses"** means Energy losses incurred between the Delivery Points and the Consumption Points, the percentage of which shall be calculated by Buyer and supplied to Seller. The transmission component of losses shall be determined in accordance with Buyer's OATT.

1.21. **"Miscellaneous Energy"** means any additional Energy provided by Seller to Buyer to provide for the electrical requirements at Buyer's facilities and/or theft of Energy by Buyer's customers which is not included in Losses or known Consumption Points. The amount of Miscellaneous Energy shall be determined initially based on historical patterns and may be updated from time to time upon mutual agreement of the Parties.

1.22. **"Month"** means the period beginning at 12:01 a.m., local time, on the first Day of each calendar month and ending at the same hour of the next succeeding calendar month.

1.23. **"NERC"** means the North American Electric Reliability Council, or any successor organization thereto.

1.24. **"NMPRC"** means the New Mexico Public Regulation Commission or any successor New Mexico state agency having authority to approve this Agreement pursuant to Section 32(k) of the Public Utility Holding Company Act.

1.25. **"OATT"** means Buyer's Open Access Transmission Tariff filed with FERC in accordance with FERC's Order No. 888, and any successor transmission service tariff thereto, including any such successor tariff of a Regional Transmission Organization to which Buyer transfers operating control or authority over its transmission facilities.

1.26. **"Parties"** means Seller and Buyer or the assignee or successor of either of their rights and obligations under this Agreement. **"Party"** means one of the Parties.

1.27. **"Requirements Generation Service"** means the supply of (1) sufficient Energy to serve the Retail Customer Load on a Firm basis, plus (2) the supply of Energy to compensate for Losses incurred between the Delivery Points and the Consumption Points, plus (3) the maintenance of sufficient Contingency Reserves to satisfy applicable SRSG, NERC, and WSCC guidelines, standards, and requirements, plus (4) Miscellaneous Energy, plus (5) the provision of Ancillary Services as required by Buyer to reliably serve the Retail Customer Load and perform its obligations as control area operator.

1.28. **"Restructuring Act"** means the New Mexico Electric Industry Utility Restructuring Act of 1999, which became law on April 8, 1999.

1.29. **"Retail Customer Load"** means the aggregate coincident electrical consumption of all retail customers located within Buyer's franchised service territory in New Mexico that are not eligible for customer choice electric service under the Restructuring Act, as measured by such customers' meters at the Consumption Points.

1.30. **"SRSG"** means the Southwest Reserve Sharing Group Agreement executed by Buyer, as amended from time to time.

1.31. **"WSCC"** means the Western Systems Coordinating Council, or any successor organization thereto.

ARTICLE II

DELIVERY AND RECEIPT OBLIGATIONS

2.1. **Sales and Purchases.** Seller agrees to provide and Buyer agrees to receive and pay for Requirements Generation Service to meet the full electric power requirements of Buyer's Retail Customer Load on a Firm basis during the Delivery Term.

2.2. **Delivery.** Seller shall make available Energy, applicable Ancillary Services, Miscellaneous Energy, and Contingency Reserves in the amounts required for Requirements Generation Service at the Delivery Points and shall have responsibility for the delivery of such Energy, Ancillary Services, Miscellaneous Energy, and Contingency Reserves to the Delivery Points. Buyer shall receive Energy, Ancillary Services, Miscellaneous Energy, and Contingency Reserves supplied by Seller for Requirements Generation Service at the Delivery Points and shall have responsibility for all Delivery Services between the Delivery Points and the Consumption Points; provided that Seller shall be responsible for the supply of Energy to compensate for Losses between the Delivery Points and the Consumption Points. Title to Energy associated with Requirements Generation Service shall pass from Seller to Buyer at the Delivery Points.

2.3. **Power Supply Resources; Lowest Cost Requirement.** Seller shall have the sole discretion to select power supply resources used to provide Requirements Generation Service to Buyer; provided, however, that Seller shall endeavor to satisfy its obligation to provide Requirements Generation Service under this Agreement utilizing the lowest cost combination of power supply resources reasonably available to it, which can be supplied consistent with applicable reliability requirements and Good Utility Practice.

2.4. **Emergency.** In order to prevent an Emergency or to recover from an Emergency, Buyer shall have the right to purchase Energy, Ancillary Services, Miscellaneous Energy, and/or Contingency Reserves from any third party to the extent required to prevent or recover from such Emergency.

2.5. **Load Information.** No later than October 1 of each year, Buyer shall prepare a load forecast of the electric power requirements of the Retail Customer Load for the next calendar year period, which shall include hourly estimated coincident Retail Customer Load requirements, hourly estimated losses between Seller's Delivery Points and the Consumption Points, and hourly estimated reserve requirements of Buyer to the SRSG. Buyer shall update such twelve month forecast on a monthly basis by the fifteenth day of each Month and whenever forecast assumptions materially change. Subject to satisfying the requirements of applicable affiliate codes of conduct, Buyer shall provide Seller with the information contained in such periodic load forecasts and such other customer information that Seller reasonably requires in order to efficiently and reliably satisfy its obligation to supply Requirements Generation Service hereunder. Prior to the commencement of the Delivery Term, the Parties shall agree on the load forecast and other information that will be supplied under this section, including weekly forecasts for pre-scheduling Energy and daily forecasts that Buyer must provide by 6:30 a.m. at least two days prior to the scheduled delivery date.

ARTICLE III

CONTROL AREA OPERATIONS

3.1. **Control Area Operations.** Buyer shall be the control area operator for the EPE Control Area. Seller shall schedule all transactions from its generating units, and all transactions with third parties, which involve deliveries into, through or out of the EPE Control Area with Buyer's system operations personnel. Prior to the commencement of the Delivery Term, Seller and Buyer shall adopt operating procedures to accomplish all such scheduling in accordance with Buyer's reasonable requirements and applicable NERC and WSCC operating requirements and guidelines.

3.2. **Unit Commitment and Dispatch.** Prior to the commencement of the Delivery Term, the Parties shall agree on such rules and procedures as the Parties reasonably require in order for the Buyer to reliably and efficiently dispatch Seller's generating resources and obtain Ancillary Services that permit Buyer to meet its responsibilities as the control area operator for the EPE Control Area and its obligations under the OATT. Such procedures shall include providing Buyer the right, as control area operator, to access Seller's generating facilities that are under Automatic Generation Control, up to the operating limits of the applicable generating facilities.

3.3. **Telecommunications and Metering Facilities.** Seller and Buyer shall keep in place, and shall maintain in good operating condition, all existing telecommunications and metering equipment and facilities that exist as of the date of this Agreement to provide information to Buyer's system operators for purposes of performing their system operations responsibilities, unless the Parties mutually agree that any such facilities and equipment are no longer required. Each Party shall be responsible for the maintenance and repair of the telecommunications and metering facilities and equipment located on its own premises, and each shall bear the cost of operating and maintaining the equipment and facilities that it owns. If either Party reasonably believes that it needs to install new or modified telecommunications or metering equipment or facilities, it shall have the right to do so, provided that it bears the cost of such new or modified equipment or facilities and affords the other Party reasonable advance notice of its requirements. Nothing herein should be construed to prevent the Parties from agreeing on a fair sharing of the costs of any such new or modified facilities or equipment.

3.4. **Operating Instructions.** Seller shall comply with all operating instructions issued by Buyer's system operators, consistent with Good Utility Practice.

3.5. **Generator Outage Schedules.** No later than June 1 of each year, Seller shall supply the Buyer with a schedule of planned outages of its generating units, setting forth the commencement date and anticipated duration of the outages. Seller shall promptly notify Buyer of any changes to such schedules. Buyer shall accept such schedules prepared by Seller, except in circumstances where Seller's proposed schedule, including any changes thereto, pose a reasonable threat to the safe and reliable operation of the EPE Control Area.

3.6. **Regional Transmission Organization.** The Parties shall participate cooperatively in efforts to create a Regional Transmission Organization in accordance with FERC Order No. 2000 and Order No. 2000-A. At such time as a Regional Transmission Organization is established for the region encompassing the EPE Control Area, the Parties shall enter into negotiations to amend this Agreement to the extent required to conform with the requirements of such Regional Transmission Organization.

ARTICLE IV

OPERATIONS AND DISPUTE RESOLUTION COMMITTEE

4.1. **Committee Responsibilities.** Prior to the commencement of the Delivery Term, the Parties each shall designate two persons to serve on an Operations and Dispute Resolution Committee, which shall meet periodically for the purpose of addressing operational issues and resolving any disputes that may arise between the Parties in connection with this Agreement. If the Operations and Dispute Resolution Committee is unable to reach agreement on any dispute within thirty days, the matter shall be referred to the Chief Operating Officers of Buyer and Seller for resolution in the manner that such individuals shall deem appropriate. The procedures set forth in this Section 4.1 shall be the exclusive means for resolving disputes arising under this Agreement, and neither Party shall have the right to bring any dispute for resolution by a court, agency, or other entity having jurisdiction over this Agreement, unless both Parties agree in writing to such alternative dispute mechanism.

ARTICLE V

PRICING

5.1. **Price for Requirements Generation Service.** The price for Requirements Generation Service shall be $0.05526 per kWh, which includes decommissioning costs associated with Seller's interest in Palo Verde Nuclear Generating Station Unit Nos. 1 and 2. The price set forth above shall compensate Seller for providing Requirements Generation Service, except for taxes which are incurred by Seller and are the responsibility of Buyer as set forth in Section 5.2.

5.2. **Taxes.** Seller shall pay for all excise, severance, production, sales, occupation, and other taxes of a similar nature levied in respect to the production or sale of Requirements Generation Service prior to the Delivery Point(s); provided that the Buyer shall reimburse Seller for any such taxes to the extent that such taxes are not included in the price for Requirements Generation Service and to the extent that the Buyer is able to recover any such taxes in the rates and charges for BRS from its New Mexico retail customers that are not eligible for customer choice electric service. Buyer shall pay for all excise, severance, production, sales, occupation, and other taxes of a similar nature levied in respect to the purchase, delivery and resale thereof at and from the Delivery Point(s).

5.3. **FERC Fees.** Seller shall be responsible for any fees charged by FERC on the basis of sales of capacity or energy at wholesale in interstate commerce. Buyer shall be responsible for any fees charged by FERC on the basis of the provision of transmission services in interstate commerce.

5.4. **Price Change Due to New Retail Rates.** If the NMPRC approves a new retail rate for BRS provided by Buyer during the Delivery Term, the Parties agree that Seller shall make a rate change filing under Section 205 of the Federal Power Act to reflect changes in the price for Requirements Generation Service resulting from the NMPRC's approval of new retail rates for BRS. Nothing in this Agreement shall be construed as affecting in any way Seller's right to unilaterally make application to FERC for a change in rates as contemplated in this Article 5.4 under Section 205 of the Federal Power Act and pursuant to FERC's rules and regulations promulgated thereunder.

ARTICLE VI

BILLING AND PAYMENT

6.1. **Billing Determinants.** The billing determinants used to charge for Requirements Generation Service shall be based on the metered quantities of Energy delivered to Buyer's retail customers that are not eligible for customer choice electric service at the Consumption Points, plus an amount of Energy required to compensate Seller for Losses. The amount of Energy for such Losses shall be calculated by multiplying the metered quantities by the applicable Losses percentage amount. The percentage amount for compensation for such Losses shall be calculated by Buyer.

6.2. **Billing Procedure.**

6.2.1. **Best Estimate of Usage.** On or before the tenth Day of each Month, Buyer shall submit to Seller its best estimate of the billing determinants for Requirements Generation Service during the immediately preceding Month.

6.2.2. **Invoice.** On or before the twentieth Day of the Month, Seller shall render to Buyer an initial invoice for amounts due and payable for Requirements

Generation Service based on Buyer's best estimate of usage for such preceding Month.

6.2.3. **Metered Loads.** Within ten calendar Days after the end of each Month, Buyer shall update its estimate of the billing determinants based on actual meter readings for the retail customers at the Consumption Points. After receiving the billing determinants based on metered usage, Seller shall before the twentieth Day of the Month adjust Buyer's invoice based on Buyer's meter report for amounts due and payable for Requirements Generation Service provided during the Month covered by the invoice.

6.3. **Payment.** Payment of the amounts set forth on the invoice is due from Buyer within ten calendar Days after receipt of the invoice, unless otherwise agreed to by the Parties in writing. To the extent that the adjusted invoice amount exceeds the amount stated on the initial invoice for any Month, Buyer shall pay the difference to Seller within ten calendar Days after receipt of the adjustment, with interest calculated on that difference at the Adjustment Interest Rate from the payment due date of the initial invoice. To the extent that the amount stated on the initial invoice exceeds the adjusted invoice amount, Seller shall credit that difference on the monthly statement to the Buyer for the immediately succeeding Month, with interest calculated on that difference at the Adjustment Interest Rate from the date the amount being refunded was received.

6.4. **Billing Dispute.** Buyer may, in good faith, challenge the correctness of any bill rendered under this Agreement no later than twelve months after the date the bill was rendered. In the event that a bill or portion thereof is challenged, Buyer shall nevertheless pay the entire amount of the bill when due, with notice given to Seller at that time. Any challenge to a bill shall be in writing and shall state the specific basis for the challenge. If it is subsequently determined or agreed that an adjustment to the bill is appropriate, Seller shall prepare a revised bill and submit such revised bill to Buyer.

6.5. **Billing Adjustments.** Seller shall have the right to adjust any bill rendered under this Agreement for any arithmetic, computational, estimation, meter reading, billing, or other errors no later than twelve (12) Months after the date that the bill was rendered. Any billing adjustment shall be in writing and shall state the specific basis for the adjustment.

ARTICLE VII

TRANSFER OF DECOMMISSIONING REVENUES

7.1. **Transfer of Revenues.** Buyer shall separately identify and transfer to Seller all revenues collected in Buyer's retail rates for BRS associated with the decommissioning of Seller's undivided 15.8% interest in the Palo Verde Nuclear Generating Station Unit Nos. 1 and 2 for deposit in the Decommissioning Trust Funds for Palo Verde Nuclear Generating Station Unit Nos. 1 and 2, and Seller shall promptly deposit all such revenues in the Decommissioning Trust Fund upon receipt thereof from Buyer.

ARTICLE VIII

METERING

8.1. **Metering**. The Buyer shall maintain meters capable of accurately measuring the Energy use of its retail customers taking BRS at the Consumption Points. Buyer shall be responsible for the maintenance and accurate operation of all such meters. Such meters shall be kept under seal, and such seals shall be broken only when the meters are tested or adjusted. Buyer shall test meters in accordance with its normal practices and Good Utility Practice. Buyer shall apply the same design and accuracy standards and testing practices for its meters as it applies as of the date of this Agreement.

ARTICLE IX

INTERRUPTION AND CURTAILMENTS

9.1. **Firm**. Energy, Ancillary Services, Miscellaneous Energy, and Contingency Reserves supplied as Requirements Generation Service shall be Firm; provided, however, that Seller shall not be responsible for any deficiencies in power quality of the supply, if such deficiency is not the result of negligence on Seller's part.

9.2. **Restoration of Service**. In the event that Seller is prevented from delivering Energy in the amounts required to supply Requirements Generation Service, Seller shall use Good Utility Practices to restore deliveries as soon as possible.

ARTICLE X

FORCE MAJEURE

10.1. **Definition**. As used in this Agreement, the term "Force Majeure" means any cause that is beyond the reasonable control of, and without the fault or negligence of, the Party claiming Force Majeure. Force Majeure includes sabotage, strikes or other labor difficulties, riots, civil disturbances, acts of God, acts of public enemies, drought, earthquake, flood, explosion, fire, lightning, landslides, or similar cataclysmic event, or appropriation, diversion, or interruption of Requirements Generation Service by any court of governmental authority having jurisdiction thereof, or any other cause, whether of the kind enumerated herein or otherwise, not within the control of the Party claiming Force Majeure and which by the exercise of due diligence such Party is unable to prevent or overcome. Economic hardship of either Party shall not constitute a Force Majeure event under this Agreement, including (a) the loss of Buyer's markets or an inability to economically use or resell Requirements Generation Service, and (b) the loss or failure of Seller's ability to sell Requirements Generation Service to a market at a more advantageous price.

10.2. **Performance Excused.** If either Party is rendered wholly or partially unable to perform under this Agreement because of a Force Majeure event, that Party shall be excused from such obligations to the extent that the occurrence of the Force Majeure event prevents such Party's performance, provided that: (a) the non-performing Party promptly, but in no case longer than three (3) Business Days after the occurrence of the Force Majeure event, gives the other Party written notice describing in reasonable detail the nature of the Force Majeure event; (b) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure event; and (c) the non-performing Party used Good Utility Practice to remedy its inability to perform.

10.3. **Strike Issues.** Neither Party to this Agreement shall be required to settle a strike affecting it, except when, in its best judgment, such a settlement appears advisable.

10.4. **Payments Not Excused.** Nothing in this Article 10 shall excuse Buyer from making payments when due for services provided pursuant to the terms of this Agreement.

ARTICLE XI

INDEMNIFICATION

11.1. **Responsibilities.** Each Party shall indemnify and hold harmless the other Party and its owners, officers, directors, employers, representatives, and agents for, against, and from any claim, liability, damage, loss, or expenses of any kind or nature (including reasonable attorneys' fees) for any claims, suits, judgments, demands, actions, or liabilities, in each such instance to the extent determined to be attributed to the negligence, gross negligence, willful misconduct, or strict liability in tort or breach of this Agreement by the indemnitor or its owners, officers, directors, employers, representatives, and agents (it being the intention of the Parties that each Party is entitled to reciprocal and comparative indemnity). The provisions of this Section 11.1 shall survive the expiration or termination of this Agreement.

ARTICLE XII

TERM

12.1. **Term.** This Agreement shall be binding on the Parties hereto on the date that it is executed by the Parties; provided however, that the commencement of service hereunder shall be subject to and contingent on obtaining all required regulatory approvals; and provided further that such service shall commence no earlier than the beginning of the Delivery Term and shall terminate at the end of the Delivery Term.

ARTICLE XIII

REGULATORY REQUIREMENTS

13.1. **Required Regulatory Approvals and Actions.** This Agreement is subject to the acceptance or approval of the FERC pursuant to Section 205 of the Federal Power Act, and of the NMPRC pursuant to Section 32(k) of the Public Utility Holding Company Act. In the event that all required regulatory approvals for this Agreement have not been received by December 31, 2000, then either Party may terminate this Agreement by providing written notice of termination to the other Party. Such notice of termination shall be effective immediately upon receipt, and neither Party shall have any further liability or obligation under this Agreement to the other Party.

13.2. **Regulatory Review.** If, during review of this Agreement, the FERC or the NMPRC modifies any term or condition, alters any charge(s), or in any way conditions its acceptance of this Agreement, and either Party determines that it is adversely affected in a material manner by such action or decision, the Parties shall have the option either to negotiate modified terms and conditions mutually agreeable to the Parties that are consistent with such regulatory action or decision or to terminate this Agreement based on such regulatory action or decision.

ARTICLE XIV

BOOKS AND RECORDS

14.1. **Books and Records.** Each Party shall keep such books and records with respect to its performance under this Agreement as shall be required (1) to allow the other Party to verify the accuracy of billing statements, and (2) to comply with FERC and NMPRC requirements.

14.2. **Audits.** Each Party has the right, at its sole expense, upon reasonable notice and during normal Business Day hours, to examine the books and records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge, or computation made pursuant to this Agreement, for a period of up to one year after such statement, charge or computation has been supplied to the examining Party.

14.3. **Cooperation in Connection with Regulatory and Judicial Proceedings.** To the extent that either Party requires relevant information in the possession of the other Party for regulatory or judicial purposes, the Party possessing such information shall cooperate with the other Party to provide the information required to satisfy the inquiry; provided, however, that a Party may deem any information in its possession to be privileged or confidential, and to this extent, the Party seeking such information for regulatory or judicial purposes shall put forth its best efforts to protect the privileged or confidential status of such information, including promptly notifying the other Party that the information has been requested, and petitioning the applicable regulatory or judicial body for a protective order protecting the privileged or confidential status of the information.

ARTICLE XV

MISCELLANEOUS

15.1. **Partial Invalidity**. Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision contained herein shall be found to be invalid, illegal, or unenforceable in any respect and for any reason, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality, or unenforceability without invalidating the remainder of the provision or any provision of this Agreement, unless such a construction would be unreasonable. If such a construction would be unreasonable or would deprive a party of a material benefit under this Agreement, the Parties shall seek to amend this Agreement to remove the invalid portion and otherwise provide the benefit, unless prohibited by law.

15.2. **Assignment**. Neither Party shall assign this Agreement or any part thereof without the prior written consent of the other Party. Any transfer or assignment in violation of this provision shall be null and void and of no legal effect.

15.3. **Successors Included**. Reference to any individual, corporation, or other entity shall be deemed a reference to such individual, corporation, or other entity together with its successors and permitted assigns from time to time.

15.4. **Applicable Laws, Regulations, Orders, Approvals, and Permits**. This Agreement is made subject to all existing and future applicable federal, state, and local laws and to all existing and future duly promulgated orders or other duly authorized actions of governmental authorities having jurisdiction over the matters set forth in this Agreement.

15.5. **Choice of Law and Jurisdiction**. The interpretation and performance of this Agreement shall be in accordance with the laws of the State of Texas, excluding conflicts of law principles that would require the application of the laws of a different jurisdiction.

15.6. **Entire Agreement**. This Agreement supersedes all previous representations, understandings, negotiations, and agreements either written or oral between the Parties or their representatives with respect to the subject matter hereof, and constitutes the entire agreement of the Parties with respect to the subject matter hereof.

15.7. **Counterparts to this Agreement**. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

15.8. **Amendments**. No amendments or changes to this Agreement shall be binding unless made in writing and duly executed by both Parties and accepted or approved by the FERC and the NMPRC. This Agreement shall not be subject to change pursuant to Section 206 of the Federal Power Act, except where the FERC determines pursuant to Section 206 of the Federal Power Act that such change is required by the public interest.

15.9. **Amendments Included**. Reference to, and the definition of, any document (including this Agreement) shall be deemed a reference to such document as it may be amended, amended and restated, supplemented, or modified from time to time.

15.10. **Notices.** Unless otherwise provided in this Agreement, any notice, consent, or other communication required to be made under this Agreement shall be in writing and shall be delivered in person, by certified mail (postage prepaid, return receipt requested), or by nationally recognized overnight courier (charges prepaid), in each case properly addressed to such Party as shown below, or sent by facsimile transmission to the facsimile number indicated below. Either Party may from time to time change its address for the purposes of notices, consents, or other communications to that Party by a similar notice specifying a new address, but no such change shall become effective until it is actually received by the Party sought to be charged with its contents. All notices, consents, or other communications required or permitted under this Agreement that are addressed as provided in this Article 15.10 shall be deemed to have been given (a) upon delivery if given by overnight courier or regular mail or (b) upon automatically generated confirmation if given by facsimile.

Buyer:

[insert address; fax number]

Seller

[insert address; fax number]

15.11. **Waivers.** The failure of either Party to enforce at any time any provision of this Agreement shall not be construed as a waiver of such provision. Nor shall such Party's failure to enforce a provision affect in any way the validity of this Agreement or any portion thereof or the right of a Party thereafter to enforce each and every provision of this Agreement. To be effective, a waiver under this Agreement must be in writing and specifically state that it is a waiver. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

15.12. **No Third Party Beneficiaries.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties and their respective permitted successors and assigns. Nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either Party or give any third person any right of subrogation or action against either Party.

15.13. **Further Assurances.** If either Party determines in its reasonable discretion that any further instruments, assurances, or other things are necessary or desirable to carry out the terms of this Agreement, the other Party shall execute and deliver all such instruments or assurances, and do all things reasonably necessary or desirable to carry out the terms of this Agreement.

15.14. **Headings.** The headings contained in this Agreement are solely for the convenience of the Parties and should not be used or relied upon in any manner in the construction or interpretation of this Agreement.

15.15. **Articles.** Unless otherwise specified, all references in this Agreement to numbered articles shall be to numbered articles in this Agreement.

15.16. **Number, Gender, and Inclusion.** Defined terms in the singular shall include the plural and vice versa, and the masculine, feminine, or neuter gender shall include all genders.

Whenever the words "include," "includes," or "including" are used in this Agreement, they are not limiting, and have the meaning as if followed by the words "without limitation."

15.17. **Joint Preparation**. This Agreement shall be deemed to have been jointly prepared by the Parties, and no ambiguity herein shall be construed for or against either Party based upon the identity of the author of this Agreement or any portion thereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth at the beginning of this Agreement.

BUYER

By: ______________________________

SELLER

By: ______________________________

EXHIBIT F

FERC ELECTRIC RATE SCHEDULE NO. 2

WHOLESALE POWER CONTRACT
BETWEEN
EL PASO GENERATING COMPANY
AND
EL PASO ELECTRIC COMPANY

WHOLESALE POWER CONTRACT

THIS WHOLESALE POWER CONTRACT ("Agreement") made and entered into as of this ____________ day of ____________________, 2000, by and between El Paso Generating Company ("Seller"), a corporation organized under the laws of the State of Delaware, and El Paso Electric Company ("Buyer"), a corporation organized under the laws of the State of Texas. The Seller and Buyer will be wholly-owned subsidiaries of EPE Holding Company during the Delivery Term of this Agreement.

WITNESSETH

WHEREAS, El Paso Electric Company is currently a vertically integrated electric utility company providing bundled electric service to retail customers located in its franchised service territories in Texas and New Mexico;

WHEREAS, on April 8, 1999, the Electric Utility Industry Restructuring Act of 1999 became law in New Mexico, mandating that El Paso Electric Company reorganize its corporate structure to separate its generation and power supply function from its transmission and distribution functions;

WHEREAS, on September 1, 1999, Senate Bill 7 ("S.B. 7") became law in Texas, mandating that electric utilities separate their business activities into a power generation company, a retail electric provider, and a transmission and distribution utility at or before the commencement of retail customer choice;

WHEREAS, S.B. 7 provides that an electric utility that has a system-wide rate freeze for residential and commercial customers in effect on September 1, 1997, and extending beyond December 31, 2001, that had been found to be in the public interest, is not subject to the restructuring provisions of S.B. 7 until the expiration of the utility's rate freeze period;

WHEREAS, on August 30, 1995, the Public Utility Commission of Texas ("PUCT") approved a rate freeze for El Paso Electric Company for a ten-year period beginning August 2, 1995, which under S.B. 7 defers the commencement of retail customer choice in El Paso Electric Company's franchise service area in Texas until August 1, 2005;

WHEREAS, in order to comply with the New Mexico Electric Utility Industry Restructuring Act of 1999, El Paso Electric Company is forming a holding company that will be the parent corporation of Seller and Buyer, transferring its transmission and distribution assets to the Buyer, and forming an energy services company affiliate and a shared corporate services affiliate;

WHEREAS, prior to the implementation of retail choice under S.B. 7, Buyer will be responsible for the supply of bundled retail electric service to retail customers within its certificated service territory in Texas during the Delivery Term;

WHEREAS, to ensure a reliable supply of electric power for bundled retail electric service provided by Buyer to retail customers in Texas, Buyer is entering into this Agreement to purchase wholesale power and related products as defined in this Agreement from its affiliate, Seller, as needed by Buyer to supply bundled retail electric service during the Delivery Term.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein, the Parties agree as follows:

Article I

DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings.

1.1. **"Adjustment Interest Rate"** means the prime interest rate for currency as published from time to time under "Money Rates" by The Wall Street Journal, or its successor, as of the payment due date and/or default date, plus two (2) percent, but in no event shall the Adjustment Interest Rate exceed the maximum interest rate permitted by law.

1.2. **"Agreement"** means this Wholesale Power Contract, including attachments, and any amendments thereto executed by Seller and Buyer.

1.3. **"Ancillary Services"** means those ancillary services as defined in Buyer's OATT.

1.4. **"Automatic Generation Control"** means the automatic regulation from a central location within predetermined limits of the power output of electric generators within the EPE Control Area in response to changes in system frequency, tie-line load, or the relation of those to each other, so as to maintain the scheduled system frequency and/or the established interchange with other control areas.

1.5. **"BRS"** means the bundled retail electric service provided by Buyer to the retail customers located within Buyer's certificated service area in Texas during the Delivery Term.

1.6. **"Base Rate"** means the rate paid by Buyer to Seller for Requirements Generation Service under this Agreement, excluding Fuel Costs.

1.7. **"Business Day"** means any day on which the Federal Reserve member banks are open for business. A Business Day shall commence at 8:00 a.m. and close at 5:00 p.m., local time, at the location of each Party's principal place of business, or at such other location as the context may require.

1.8. **"Consumption Points"** means the points where Energy is delivered to and metered at the premises of Buyer's retail customers that comprise the Retail Customer Load.

1.9. **"Contingency Reserves"** means Contingency Reserves as defined by the WSCC, which consists of both Spinning and Non-Spinning Reserves with at least fifty percent (50%) of the Contingency Reserves being Spinning Reserves.

1.10. **"Day"** means a period of twenty-four (24) consecutive hours, beginning at 12:01 a.m., local time, at the Delivery Point(s); provided, however, that on the Day on which Daylight Savings Time becomes effective, the period shall be twenty-three (23) consecutive hours, and on the Day on which Standard Time becomes effective, the period shall be twenty-five (25) consecutive hours.

1.11. **"Delivery Point"** means the point of interconnection between Seller's facilities and Buyer's facilities as defined in the Interconnection Agreement with respect to each of Seller's generating stations; provided, however, that with respect to Seller's ownership interest in the Palo Verde Nuclear Generating Station, Seller shall be responsible for obtaining delivery of Energy associated with Seller's interest in that generating facility to Buyer's transmission system; and provided further that with respect to Seller's ownership interest in the Four Corners Project, Buyer shall be responsible for obtaining delivery of Energy associated with Seller's interest in that generating facility to Buyer's transmission system. For purposes of Energy supplied from third party purchases, the Delivery Points shall be the points where Energy from the third party supplier is delivered to Buyer's transmission facilities.

1.12. **"Delivery Service"** means the delivery of Requirements Generation Service from the Delivery Points to the Consumption Points pursuant to Buyer's OATT and Buyer's applicable retail distribution service tariff on file with the PUCT.

1.13. **"Delivery Term"** means the period commencing on the date of closing of the transfer of El Paso Electric Company's transmission and distribution assets to the Buyer, and ending on August 1, 2005, or such other date that the PUCT may order as the commencement date for retail customer choice in El Paso Electric Company's Texas service area, during which time Seller will be obligated to sell and Buyer will be obligated to purchase Requirements Generation Service under this Agreement.

"EPE Control Area" means the power system where Buyer is responsible for matching generation within the control area and net transactions with other control areas to the prevailing electrical load, for maintaining within limits generally accepted as Good Utility Practice scheduled interchange with neighboring control areas, and for maintaining frequency within reasonable limits in accordance with Good Utility Practice.

1.14. **"Emergency"** means (i) any abnormal system condition which requires immediate manual or automatic action to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of Buyer's electric system, and (ii) any existing or potential system condition on Buyer's electric system which Buyer determines, in the exercise of reasonable discretion, is not or will not be in conformance with applicable SRSG, NERC, or WSCC criteria

1.15. **"Energy"** means the electric energy supplied under this Agreement, which shall be in the form of three phase, alternating current at a frequency of 60 Hertz, with reasonable variations of frequency and voltage allowed consistent with Good Utility Practice.

1.16. **"FERC"** means the Federal Energy Regulatory Commission or any successor federal agency having regulatory jurisdiction over this Agreement.

1.17. **"Firm"** means Requirements Generation Service supplied on a firm and uninterruptible basis to serve the Retail Customer Load at all times throughout the Delivery Term, except for interruptions or curtailments resulting from Force Majeure events.

1.18. **"Fuel Costs"** means those eligible fuel and fuel-related expenses, as defined by PUCT rule and modified by the Agreed Order and Stipulation in PUCT Docket No. 12700, incurred by Seller to provide Requirements Generation Service under this Agreement.

1.19. **"Good Utility Practice"** means any of the practices, methods, and acts required, approved, or engaged in by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act; rather, it is intended to be a spectrum of acceptable practices, methods, and acts.

1.20. **"Interconnection Agreements"** means the Interconnection Agreements between Seller and Buyer providing for the interconnection of Seller's generating stations to Buyer's transmission and/or distribution facilities.

1.21. **"Losses"** means Energy losses incurred between the Delivery Points and the Consumption Points, the percentage of which shall be calculated by Buyer. The transmission component of Losses shall be determined in accordance with Buyer's OATT.

1.22. **"Miscellaneous Energy"** means any additional Energy provided by Seller to Buyer to provide for the electrical requirements at Buyer's facilities and/or theft of Energy by Buyer's customers which is not included in Losses or known Consumption Points. The amount of Miscellaneous Energy shall be determined initially based on historical patterns and may be updated from time to time upon mutual agreement of the Parties.

1.23. **"Month"** means the period beginning at 12:01 a.m., local time, on the first Day of each calendar month and ending at the same hour of the next succeeding calendar month.

1.24. **"NERC"** means the North American Electric Reliability Council, or any successor organization thereto.

1.25. **"OATT"** means Buyer's Open Access Transmission Tariff filed with FERC in accordance with FERC's Order No. 888, and any successor transmission service tariff thereto, including any such successor tariff of a Regional Transmission Organization to which Buyer transfers operating control or authority over its transmission facilities.

1.26. **"Parties"** means Seller and Buyer or the assignee or successor of either of their rights and obligations under this Agreement. **"Party"** means one of the Parties.

1.27. **"PUCT"** means the Public Utility Commission of Texas or any successor Texas state agency having authority to approve this Agreement pursuant to Section 32(k) of the Public Utility Holding Company Act.

1.28. **"Requirements Generation Service"** means the supply of (1) sufficient Energy to serve the Retail Customer Load on a Firm basis, plus (2) the supply of Energy to compensate for Losses incurred between the Delivery Points and the Consumption Points, plus (3) the maintenance of sufficient Contingency Reserves to satisfy applicable SRSG, NERC, and WSCC guidelines, standards, and requirements, plus (4) Miscellaneous Energy, plus (5) the provision of Ancillary Services as required by Buyer to reliably serve the Retail Customer Load and perform its obligations as control area operator.

1.29. **"Retail Customer Load"** means the aggregate coincident electrical consumption of all the retail customers located within Buyer's certificated service area in Texas, as measured by the retail customers' meters at the Consumption Points.

1.30. **"S.B. 7"** means Senate Bill 7, the electric utility industry restructuring legislation enacted by the Texas Legislature, effective September 1, 1999.

1.31. **"SRSG"** means the Southwest Reserve Sharing Group Agreement executed by Buyer, as amended from time to time.

1.32. **"WSCC"** means the Western Systems Coordinating Council, or any successor organization thereto.

Article II

DELIVERY AND RECEIPT OBLIGATIONS

2.1. **Sales and Purchases.** Seller agrees to provide and Buyer agrees to receive and pay for Requirements Generation Service to meet the electric power requirements of Buyer's Retail Customer Load on a Firm basis during the Delivery Term.

2.2. **Delivery.** Seller shall make available Energy, applicable Ancillary Services, Miscellaneous Energy, and Contingency Reserves in the amounts required for Requirements Generation Service at the Delivery Points and shall have responsibility for the delivery of such

Energy, Ancillary Services, Miscellaneous Energy, and Contingency Reserves to the Delivery Points. Buyer shall receive Energy, Ancillary Services, Miscellaneous Energy, and Contingency Reserves supplied by Seller for Requirements Generation Service at the Delivery Points and shall have responsibility for all Delivery Services between the Delivery Points and the Consumption Points; provided that Seller shall be responsible for the supply of Energy to compensate for Losses between the Delivery Points and the Consumption Points. Title to Energy associated with Requirements Generation Service shall pass from Seller to Buyer at the Delivery Points.

2.3. **Power Supply Resources; Lowest Cost Requirement.** Seller shall have the sole discretion to select power supply resources used to provide Requirements Generation Service to Buyer; provided, however, that Seller shall endeavor to satisfy its obligation to provide Requirements Generation Service under this Agreement utilizing the lowest cost combination of power supply resources reasonably available to it, which can be supplied consistent with applicable reliability requirements and Good Utility Practice.

2.4. **Losses.** Seller shall supply sufficient Energy at all times to meet the electric power requirements of Buyer's Retail Customer Load plus Losses.

2.5. **Emergency.** In order to prevent an Emergency or to recover from an Emergency, Buyer shall have the right to purchase Energy, Ancillary Services, Miscellaneous Energy, and/or Contingency Reserves from any third party to the extent required to prevent or recover from such Emergency. Any costs incurred by Buyer under this section to prevent or recover from an Emergency shall be included by Buyer in its retail fuel adjustment clause.

2.6. **Load Information.** No later than October 1 of each year, Buyer shall prepare a load forecast of the electric power requirements of the Retail Customer Load for the next calendar year period, which shall include hourly estimated coincident Retail Customer Load requirements, hourly estimated losses between Seller's Delivery Points and the Consumption Points, and hourly estimated reserve requirements of Buyer to the SRSG. Buyer shall update such twelve month forecast on a monthly basis by the 15th day of each month and whenever forecast assumptions materially change. Subject to satisfying the requirements of applicable affiliate codes of conduct, Buyer shall provide Seller with the information contained in such periodic load forecasts and such other customer information that Seller reasonably requires in order to efficiently and reliably satisfy its obligation to supply Requirements Generation Service hereunder. Prior to the commencement of the Delivery Term, the Parties shall agree on the load forecast and other information that will be supplied under this section including weekly forecasts for pre-scheduling energy, and daily forecasts that Buyer must provide by 6:30 a.m. at least 2 days prior to the scheduled delivery date.

Article III

CONTROL AREA OPERATIONS

3.1. **Control Area Operations.** Buyer shall be the control area operator for the EPE Control Area. Seller shall schedule all transactions from its generating units, and all transactions with third parties, which involve deliveries into, through or out of the EPE Control Area with Buyer's system operations personnel. Prior to the commencement of the Delivery Term, Seller and Buyer shall adopt operating procedures to accomplish all such scheduling in accordance with Buyer's reasonable requirements and applicable NERC and WSCC operating requirements and guidelines.

3.2. **Unit Commitment and Dispatch.** Prior to the commencement of the Delivery Term, the Parties shall agree on such rules and procedures as the Parties reasonably require in order for Buyer to reliably and efficiently dispatch Seller's generating resources and obtain Ancillary Services that permit Buyer to meet its responsibilities as the control area operator for the EPE

Control Area and its obligations under the OATT. Such procedures shall include providing Buyer the right, as control area operator, to access Seller's generating facilities that are under Automatic Generation Control, up to the operating limits of the applicable generating facilities.

3.3. **Telecommunications and Metering Facilities.** Seller and Buyer shall keep in place, and shall maintain in good operating condition, all existing telecommunications and metering equipment and facilities that exist as of the date of this Agreement to provide information to Buyer's system operators for purposes of performing their system operations responsibilities, unless the Parties mutually agree that any such facilities and equipment are no longer required. Each Party shall be responsible for the maintenance and repair of the telecommunications and metering facilities and equipment located on its own premises, and each shall bear the cost of operating and maintaining the equipment and facilities that it owns. If either Party reasonably believes that it needs to install new or modified telecommunications or metering equipment or facilities, it shall have the right to do so, provided that it bears the cost of such new or modified equipment or facilities and affords the other Party reasonable advance notice of its requirements. Nothing herein should be construed to prevent the Parties from agreeing on a fair sharing of the costs of any such new or modified facilities or equipment.

3.4. **Operating Instructions.** Seller shall comply with all operating instructions issued by Buyer's system operators consistent with Good Utility Practice.

3.5. **Generator Outage Schedules.** No later than June 1 of each year, Seller shall supply Buyer with a schedule of planned outages of its generating units, setting forth the commencement date and anticipated duration of the outages. Seller shall promptly notify Buyer of any changes to such schedules. Buyer shall accept such schedules prepared by Seller, except in circumstances where Seller's proposed schedule, including any changes thereto, pose a reasonable threat to the safe and reliable operation of the EPE Control Area.

3.6. **Regional Transmission Organization.** The Parties shall participate cooperatively in efforts to create a Regional Transmission Organization in accordance with FERC Order No. 2000 and Order No. 2000-A. At such time as a Regional Transmission Organization is established for the region encompassing the EPE Control Area, the Parties shall enter into negotiations to amend this Agreement to the extent required to conform with the requirements of such Regional Transmission Organization.

Article IV

OPERATIONS AND DISPUTE RESOLUTION COMMITTEE

4.1. **Committee Responsibilities.** Prior to the commencement of the Delivery Term, the Parties each shall designate two persons to serve on an Operations and Dispute Resolution Committee, which shall meet periodically for the purpose of addressing operational issues and resolving any disputes that may arise between the Parties in connection with this Agreement. If the Operations and Dispute Resolution Committee is unable to reach agreement on any dispute within thirty days, the matter shall be referred to the Chief Operating Officers of Buyer and Seller for resolution in a manner that such individuals shall deem appropriate. The procedures set forth in this Section 4.1 shall be the exclusive means for resolving disputes arising under this Agreement, and neither Party shall have the right to bring any dispute for resolution by a court, agency, or other entity with jurisdiction over this Agreement, unless both Parties agree in writing to such alternative dispute resolution mechanism.

Article V

PRICING

5.1. **Base Rate for Requirements Generation Service.** The Base Rate for Requirements Generation Service shall be $0.05309 per kWh, which includes decommissioning costs associated with Seller's interest in Palo Verde Nuclear Generating Station Unit Nos. 1, 2 and 3. The Base Rate set forth above shall compensate Seller for providing Requirements Generation Service, except for Fuel Costs and taxes which are incurred by Seller and are the responsibility of Buyer as set forth in Sections 5.2 and 5.3.

5.2. **Fuel Costs.** In addition to the Base Rate, Seller shall be compensated for Fuel Costs in an amount equal to the fuel and fuel-related expenses that Buyer is permitted to recover from BRS customers during the Delivery Term pursuant to Buyer's Texas Fixed Fuel Factor, Tariff Schedule No. 98-FFF (attached as Appendix A), as adjusted from time to time by the PUCT in accordance with the procedures set forth in Appendix B and as adjusted pursuant to Sections 5.2.1 – 5.2.4. Buyer shall use its best efforts to obtain regulatory approval of the Fuel Costs incurred by the Seller in connection with providing Requirements Generation Service under this Agreement.

5.2.1. **Participation in Regulatory Review Proceedings.** Seller shall cooperate fully with Buyer in filing all generation-related reports required by the PUCT and in seeking to obtain PUCT approval of Seller's Fuel Costs, including, but not limited to: (a) providing Buyer and the PUCT with all information and documentation (including access to all applicable books, records, and accounts) collected and maintained in accordance with all applicable PUCT rules related to the Fuel Costs under review, or deemed relevant thereunder; (b) participating in regulatory proceedings, including discovery and hearings; and (c) making witnesses available to support the Fuel Costs during any hearings, if required.

5.2.2. **Adjustments for Disallowances.** In the event that the PUCT determines that a portion of Buyer's fuel and fuel-related expenses may not be recovered from BRS customers and orders a disallowance of such costs, Buyer shall promptly notify Seller of such disallowance. If requested by Seller, Buyer shall seek reconsideration or appeal of any such disallowance and shall cooperate with Seller in prosecuting such further proceedings. Seller shall make any necessary adjustments to Buyer's account to reflect such disallowance, which shall include interest calculated in accordance with the PUCT-approved interest rate, subject to reinstatement of the disallowed Fuel Costs following reconsideration or appeal of the PUCT's decision.

5.2.3. **Payment of Rewards and Penalties.** Buyer shall pay to Seller any and all amounts over fifty percent of the accrued amounts of any rewards approved and allowed to be recovered from BRS customers by the PUCT for the operation of Palo Verde Nuclear Generating Station. Any penalty imposed by the PUCT for the operation of the Palo Verde Nuclear Generating Station shall be treated as a disallowance pursuant to Section 5.2.2 of this Agreement.

5.2.4. **Off-System Sales Margins.** Seller shall credit to Buyer the share of margins on off-system sales that are shared with BRS customers pursuant to the terms of the Agreed Order and Stipulation in PUCT Docket No. 12700. Seller shall credit the appropriate amounts to Buyer's account on a monthly basis.

5.3. **Taxes.** Seller shall pay for all excise, severance, production, sales, occupation, and other taxes of a similar nature levied in respect to the production or sale of Requirements Generation Service prior to the Delivery Point(s); provided, however, that Buyer shall reimburse Seller for any such taxes that Buyer recovers from its Texas retail customers in the rates and charges for BRS. Buyer shall pay for all excise, severance, production, sales, occupation, and other taxes of a similar nature levied in respect to the purchase, delivery and resale thereof at and from the Delivery Point(s).

5.4. **FERC Review.** Nothing in this Agreement is intended to limit or impair FERC's authority to review the justness and reasonableness of the Base Rate and the Fuel Costs charged by Seller to Buyer for Requirements Generation Service.

5.5. **FERC Fees.** Seller shall be responsible for any fees charged by the FERC on the basis of sales of capacity or energy at wholesale in interstate commerce. Buyer shall be responsible for any fees charged by the FERC on the basis of the provision of transmission services in interstate commerce.

Article VI

BILLING AND PAYMENT

6.1. **Billing Determinants.** The billing determinants used to charge for Requirements Generation Service shall be based on the metered quantities of Energy delivered to Buyer's retail customers at the Consumption Points, plus an amount of Energy required to compensate Seller for Losses. The amount of Energy for such Losses shall be calculated by multiplying the metered quantities by the applicable Losses percentage amount. The percentage amount for compensation for such Losses shall be calculated by Buyer.

6.2. **Billing Procedure.**

6.2.1. **Best Estimate of Usage.** On or before the tenth Day of each Month, Buyer shall submit to Seller its best estimate of the billing determinants for Requirements Generation Service during the immediately preceding Month.

6.2.2. **Invoice.** On or before the twentieth Day of the Month, Seller shall render to Buyer an initial invoice for amounts due and payable for Requirements Generation Service based on Buyer's best estimate of usage for such preceding Month. On the invoice, Seller shall separate the amounts owed into Base Rate and Fuel Cost components.

6.2.3. **Metered Loads.** Within ten calendar Days after the end of each Month, Buyer shall update its estimate of the billing determinants based on actual meter readings for the retail customers at the Consumption Points. After receiving the billing determinants based on metered usage, Seller shall before the twentieth Day of the month adjust Buyer's invoice based on Buyer's meter report for amounts due and payable for Requirements Generation Service provided during the Month covered by the invoice.

6.3. **Payment.** Payment of the amounts set forth on the invoice is due from Buyer within ten calendar Days after receipt of the invoice, unless otherwise agreed to by the Parties in writing. To the extent that the adjusted invoice amount exceeds the initial invoice amount for any Month, Buyer shall pay the difference to Seller within ten calendar Days after receipt of the adjustment, with interest calculated on that difference at the Adjustment Interest Rate from the payment due date of the initial invoice. To the extent that the initial invoice amount exceeds the adjusted invoice amount for any Month, Seller shall credit that difference on the monthly statement to the Buyer for the immediately succeeding Month, with interest calculated on that difference at the Adjustment Interest Rate from the date the amount being refunded was received.

6.4. **Billing Dispute.** Buyer may, in good faith, challenge the correctness of any bill rendered under this Agreement no later than twelve months after the date the bill was rendered. In the event that a bill or portion thereof is challenged, Buyer shall nevertheless pay the entire amount of the bill when due, with notice given to Seller at that time. Any challenge to a bill shall be in writing and shall state the specific basis for the challenge. If it is subsequently determined or agreed that an adjustment to the bill is appropriate, Seller shall prepare a revised bill and submit such revised bill to Buyer.

6.5. **Billing Adjustments.** Seller shall have the right to adjust any bill rendered under this Agreement for any arithmetic, computational, estimation, meter reading, billing, or other errors associated with Base Rates for a period of up to twelve months after the bill was rendered. Seller shall have the right to adjust any bill rendered under this Agreement for any arithmetic, computational, estimation, meter reading, billing, or other errors associated with Fuel Costs for as long as such Fuel Costs are subject to reconciliation pursuant to PUCT regulations. Any billing adjustment shall be in writing and shall state the specific basis for the adjustment.

Article VII

TRANSFER OF DECOMMISSIONING REVENUES

7.1. **Transfer of Revenues.** Buyer shall separately identify and transfer to Seller all revenues collected in Buyer's retail rates for BRS associated with the decommissioning of Seller's undivided 15.8% interest in the Palo Verde Nuclear Generating Station Unit Nos. 1, 2, and 3 for deposit in the Decommissioning Trust Funds for Palo Verde Nuclear Generating Station Unit Nos. 1, 2, and 3, and Seller shall promptly deposit all such revenues in the Decommissioning Trust Fund upon receipt thereof from Buyer.

Article VIII

METERING

8.1. **Metering.** The Buyer shall maintain meters capable of accurately measuring the Energy use of its retail customers taking BRS at the Consumption Points. Buyer shall be responsible for the maintenance and accurate operation of all such meters. Such meters shall be kept under seal, and such seals shall be broken only when the meters are tested or adjusted. Buyer shall test meters in accordance with its normal practices and Good Utility Practice. Buyer shall apply the same design and accuracy standards and testing practices for its meters as it applies as of the date of this Agreement.

Article IX

INTERRUPTION AND CURTAILMENTS

9.1. **Firm.** Energy, Ancillary Services, Miscellaneous Energy, and Contingency Reserves supplied as Requirements Generation Service shall be Firm; provided, however, that Seller shall not be responsible for any deficiencies in power quality of the supply, if such deficiency is not the result of negligence on Seller's part.

9.2. **Restoration of Service.** In the event that Seller is prevented from delivering Energy in the amounts required to supply Requirements Generation Service, Seller shall use Good Utility Practices to restore deliveries as soon as possible.

Article X

FORCE MAJEURE

10.1. **Definition.** As used in this Agreement, the term "Force Majeure" means any cause that is beyond the reasonable control of, and without the fault or negligence of, the Party claiming Force Majeure. Force Majeure includes sabotage, strikes or other labor difficulties, riots, civil disturbances, acts of God, acts of public enemies, drought, earthquake, flood, explosion, fire, lightning, landslides, or similar cataclysmic event, or appropriation, diversion, or interruption of Requirements Generation Service by any court of governmental authority having jurisdiction thereof, or any other cause, whether of the kind enumerated herein or otherwise, not within the control of the Party claiming Force Majeure and which by the exercise of due diligence such Party is unable to prevent or overcome. Economic hardship of either Party shall not constitute a Force Majeure event under this Agreement, including (a) the loss of Buyer's markets or an inability to economically use or resell Requirements Generation Service, and (b) the loss or failure of Seller's ability to sell Requirements Generation Service to a market at a more advantageous price.

10.2. **Performance Excused.** If either Party is rendered wholly or partially unable to perform under this Agreement because of a Force Majeure event, that Party shall be excused from such obligations to the extent that the occurrence of the Force Majeure event prevents such Party's performance, provided that: (a) the non-performing Party promptly, but in no case longer than three (3) Business Days after the occurrence of the Force Majeure event, gives the other Party written notice describing in reasonable detail the nature of the Force Majeure event; (b) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure event; and (c) the non-performing Party used Good Utility Practice to remedy its inability to perform.

10.3. **Strike Issues.** Neither Party to this Agreement shall be required to settle a strike affecting it, except when, in its best judgment, such a settlement appears advisable.

10.4. **Payments Not Excused.** Nothing in this Article 10 shall excuse Buyer from making payments when due for services provided pursuant to the terms of this Agreement.

Article XI

INDEMNIFICATION

11.1. **Responsibilities.** Each Party shall indemnify and hold harmless the other Party and its owners, officers, directors, employers, representatives, and agents for, against, and from any claim, liability, damage, loss, or expenses of any kind or nature (including reasonable attorneys' fees) for any claims, suits, judgments, demands, actions, or liabilities, in each such instance to the extent determined to be attributed to the negligence, gross negligence, willful misconduct, or strict liability in tort or breach of this Agreement by the indemnitor or its owners, officers, directors, employers, representatives, and agents (it being the intention of the Parties that each Party is entitled to reciprocal and comparative indemnity). The provisions of this Section 11.1 shall survive the expiration or termination of this Agreement.

Article XII

TERM

12.1. **Term.** This Agreement shall be binding on the Parties hereto on the date that it is executed by the Parties; provided however, that the commencement of service hereunder shall be subject to and contingent on obtaining all required regulatory approvals; and provided further that such service shall commence no earlier than the beginning of the Delivery Term and shall terminate at the end of the Delivery Term.

Article XIII

REGULATORY REQUIREMENTS

13.1. **Required Regulatory Approvals and Actions.** This Agreement is subject to the acceptance or approval of the FERC pursuant to Section 205 of the Federal Power Act, and of the PUCT pursuant to Section 32(k) of the Public Utility Holding Company Act. In the event that all required regulatory approvals for this Agreement have not been received by December 31, 2000, then either Party may terminate this Agreement by providing written notice of termination to the other Party. Such notice of termination shall be effective immediately upon receipt, and neither Party shall have any further liability or obligation under this Agreement to the other Party.

13.2. **Regulatory Review.** If, during review of this Agreement, the FERC or the PUCT modifies any term or condition, alters any charge(s), or in any way conditions its acceptance of this Agreement, and either Party determines that it is adversely affected in a material manner by such action or decision, the Parties shall have the option either to negotiate modified terms and conditions mutually agreeable to the Parties that are consistent with such regulatory action or decision or to terminate this Agreement based on such regulatory action or decision.

Article XIV

BOOKS AND RECORDS

14.1. **Books and Records.** Each Party shall keep such books and records with respect to its performance under this Agreement as shall be required (1) to allow the other Party to verify the accuracy of billing statements, and (2) to comply with FERC and PUCT requirements.

14.2. **Audits.** Each Party has the right, at its sole expense, upon reasonable notice and during normal Business Day hours, to examine the books and records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge, or computation made pursuant to this Agreement, for a period of up to one year after such statement, charge or computation has been supplied to the examining Party.

14.3. **Cooperation in Connection with Regulatory Proceedings.** To the extent that either Party requires relevant information in the possession of the other Party for regulatory or judicial purposes, the Party possessing such information shall cooperate with the other Party to provide the information required to satisfy the inquiry. Provided, however, that a Party may deem any information in its possession to be privileged or confidential, and to this extent, the Party seeking such information for regulatory or judicial purposes shall put forth its best efforts to protect the privileged or confidential status of such information, including promptly notifying the other Party that the information has been requested, and petitioning the applicable regulatory or judicial body for a protective order protecting the privileged or confidential status of the information.

Article XV

MISCELLANEOUS

15.1. **Partial Invalidity.** Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision contained herein shall be found to be invalid, illegal, or unenforceable in any respect and for any reason, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality, or unenforceability without invalidating the remainder of the provision or any provision of this Agreement, unless such a construction would be unreasonable. If such a construction would be unreasonable or would deprive a party of a material benefit under this Agreement, the Parties shall seek to amend this Agreement to remove the invalid portion and otherwise provide the benefit, unless prohibited by law.

15.2. **Assignment.** Neither Party shall assign this Agreement or any part thereof without the prior written consent of the other Party. Any transfer or assignment in violation of this provision shall be null and void and of no legal effect.

15.3. **Successors Included.** Reference to any individual, corporation, or other entity shall be deemed a reference to such individual, corporation, or other entity together with its successors and permitted assigns from time to time.

15.4. **Applicable Laws, Regulations, Orders, Approvals, and Permits.** This Agreement is made subject to all existing and future applicable federal, state, and local laws and to all existing and future duly promulgated orders or other duly authorized actions of governmental authorities having jurisdiction over the matters set forth in this Agreement.

15.5. **Choice of Law and Jurisdiction.** The interpretation and performance of this Agreement shall be in accordance with the laws of the State of Texas, excluding conflicts of law principles that would require the application of the laws of a different jurisdiction.

15.6. **Entire Agreement.** This Agreement supersedes all previous representations, understandings, negotiations, and agreements either written or oral between the Parties or their representatives with respect to the subject matter hereof, and constitutes the entire agreement of the Parties with respect to the subject matter hereof.

15.7. **Counterparts to this Agreement.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

15.8. **Amendments.** No amendments or changes to this Agreement shall be binding unless made in writing and duly executed by both Parties and accepted or approved by the FERC and the PUCT. This Agreement shall not be subject to change pursuant to section 206 of the Federal Power Act, except where the FERC determines pursuant to section 206 of the Federal Power Act that such change is required by the public interest.

15.9. **Amendments Included.** Reference to, and the definition of, any document (including this Agreement) shall be deemed a reference to such document as it may be amended, amended and restated, supplemented, or modified from time to time.

15.10. **Notices.** Unless otherwise provided in this Agreement, any notice, consent, or other communication required to be made under this Agreement shall be in writing and shall be delivered in person, by certified mail (postage prepaid, return receipt requested), or by nationally recognized overnight courier (charges prepaid), in each case properly addressed to such Party as shown below, or sent by facsimile transmission to the facsimile number indicated below. Either Party may from time to time change its address for the purposes of notices, consents, or other communications to that Party by a similar notice specifying a new address, but no such change shall become effective until it is actually received by the Party sought to be charged with its contents. All notices, consents, or other communications required or permitted under this Agreement that are addressed as provided in this Article 15.10 shall be deemed to have been given (a) upon delivery if given by overnight courier or regular mail or (b) upon automatically generated confirmation if given by facsimile.

Buyer:

[insert address; fax number]

Seller

[insert address; fax number]

15.11. **Waivers.** The failure of either Party to enforce at any time any provision of this Agreement shall not be construed as a waiver of such provision. Nor shall such Party's failure to enforce a provision affect in any way the validity of this Agreement or any portion thereof or the right of a Party thereafter to enforce each and every provision of this Agreement. To be effective, a waiver under this Agreement must be in writing and specifically state that it is a waiver. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

15.12. **No Third Party Beneficiaries.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties and their respective permitted successors and assigns. Nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either Party or give any third person any right of subrogation or action against either Party.

15.13. **Further Assurances.** If either Party determines in its reasonable discretion that any further instruments, assurances, or other things are necessary or desirable to carry out the terms of this Agreement, the other Party shall execute and deliver all such instruments or assurances, and do all things reasonably necessary or desirable to carry out the terms of this Agreement.

15.14. **Headings.** The headings contained in this Agreement are solely for the convenience of the Parties and should not be used or relied upon in any manner in the construction or interpretation of this Agreement.

15.15. **Articles.** Unless otherwise specified, all references in this Agreement to numbered articles shall be to numbered articles in this Agreement.

15.16. **Number, Gender, and Inclusion.** Defined terms in the singular shall include the plural and vice versa, and the masculine, feminine, or neuter gender shall include all genders. Whenever the words "include," "includes," or "including" are used in this Agreement, they are not limiting, and have the meaning as if followed by the words "without limitation."

15.17. **Joint Preparation**. This Agreement shall be deemed to have been jointly prepared by the Parties, and no ambiguity herein shall be construed for or against either Party based upon the identity of the author of this Agreement or any portion thereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth at the beginning of this Agreement.

BUYER

By: ______________________________

SELLER

By: ______________________________

APPENDIX A

EL PASO ELECTRIC COMPANY

SCHEDULE NO. 98 - FFF
FIXED FUEL FACTOR

APPLICABILITY

Electric service billed under rate schedules having a Fixed Fuel Factor Clause shall be subject to a Fixed Fuel Factor.

TERRITORY

Texas Service Area

FORMULA

The Fixed Fuel Factors recognize loss adjustments due to different voltage levels of service:

	Energy Loss Factor	Fixed Fuel Factor ($/KWH)	
A. Texas System	1.00000	0.01435	(I)
B. Transmission Voltage (If customer is not specified below and takes service and is metered at 69,000 volts and higher)			
Schedule No. 15	0.95727	0.01374	(I)
Schedule No. 24	0.95727	0.01374	(N)
Schedule No. 25	0.95727	0.01374	(N)
Schedule No. 26	0.94870	0.01361	(I)
Schedule No. 29	0.95125	0.01365	(I)
Schedule No. 30	0.94884	0.01362	(I)
Schedule No. 31	0.94870	0.01361	(I)
C. Primary Voltage (If customer takes service and is metered at 2,400 volts or higher but less than 69,000 volts)	0.96716	0.01388	(I)
D. Secondary Voltage (If customer takes service and is metered at 480 volts and below)	1.01660	0.01459	(I)

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
APR 01 '98 DOCKET 18629
CONTROL # ______
TARIFF CLERK

Section Number 1
Sheet Number 30
Page 1 of 1

Revision Number 16
Effective with bills rendered after

APPENDIX B

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

§25.235. Fuel Costs — General.

(a) Purpose. The commission will set an electric utility's rates at a level that will permit the electric utility a reasonable opportunity to earn a reasonable return on its invested capital and to recover its reasonable and necessary expenses, including the cost of fuel and purchased power. The commission recognizes in this connection that it is in the interests of both electric utilities and their ratepayers to adjust charges in a timely manner to account for changes in certain fuel and purchased-power costs. Pursuant to the Public Utility Regulatory Act (PURA) §36.203 this section establishes a procedure for setting and revising fuel factors and a procedure for regularly reviewing the reasonableness of the fuel expenses recovered through fuel factors.

(b) Notice of fuel proceedings. In addition to the notice required by the Administrative Procedure Act (APA) to be given by the commission, the electric utility is required to give notice of a fuel proceeding at the time the petition is filed.

(1) Method of notice. Notice of fuel proceedings will be given by the electric utility as follows:

(A) Notice in all proceedings involving refunds, surcharges, or a proposal to change the fuel factor, shall be by one-time publication in a newspaper having general circulation in each county of the service area of the electric utility or by individual notice to each customer and by individual notice to parties that participated in the electric utility's prior fuel reconciliation proceeding;

(B) Notice in all reconciliation proceedings shall be by publication once each week for two consecutive weeks in a newspaper having general circulation in each county of the service area of the electric utility and by individual notice to each customer and to parties that participated in the electric utility's prior fuel reconciliation proceeding.

(2) Contents of notice.

(A) All notices required by this section shall provide the following information:

(i) the date the petition was filed;

(ii) a general description of the customers, customer classes, and territories affected by the petition;

(iii) the relief requested;

(iv) the statement, "Persons with questions or who want more information on this petition may contact (utility name) at (utility address) or call (utility toll-free telephone number) during normal business hours. A complete copy of this petition is available for inspection at the address listed above"; and

(v) the statement, "Persons who wish to formally participate in this proceeding, or who wish to express their comments concerning this petition should contact the Public Utility Commission of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326, or call (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may call (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989."

(B) Notices to revise fuel factors must also state the proposed fuel factors by type of voltage and the period for which the proposed fuel factors are expected to be in effect.

(C) Notices to revise fuel factors, to refund, or to surcharge must contain the statement that, "these changes will be subject to final review by the commission in the electric utility's next reconciliation," unless, in the case of refunds or surcharges, the change is a result of a reconciliation proceeding.

(D) Notices to reconcile fuel expenses must also state the period for which final reconciliation is sought.

§25.235(b) continued

(3) Proof of notice may be demonstrated by appropriate affidavit. In fuel proceedings initiated by a person other than an electric utility, the notice required in this subsection must be provided in accordance with a schedule ordered by the presiding officer.

(c) Reports; confidentiality of information. Matters related to submitting reports and confidential information will be handled as follows:

(1) The commission will monitor each electric utility's actual and projected fuel-related costs and revenues on a monthly basis. Each electric utility shall maintain and provide to the commission, in a format specified by the commission, monthly reports containing all information required to monitor monthly fuel-related costs and revenues, including generation mix, fuel consumption, fuel costs, purchased power quantities and costs, and system and off-system sales revenues.

(2) Contracts for the purchase of fuel, fuel storage, fuel transportation, fuel processing, or power are discoverable in fuel proceedings, subject to appropriate confidentiality agreements or protective orders.

(3) The electric utility shall prepare a confidentiality disclosure agreement to be included as part of the fuel reconciliation petition. The format for the agreement shall be the same as that contained in the commission approved rate filing package. In addition to the agreement itself, Attachment 1 of the agreement shall present a complete listing of the information required to be filed which the electric utility alleges is confidential. Upon request and execution of the confidentiality agreement, the electric utility shall provide any information which it alleges is confidential. If the electric utility fails to file a confidentiality agreement, the deadline for a commission final order in the case is tolled until a protective order is entered or a confidentiality agreement is filed. Use of the confidentiality disclosure agreement does not constitute a finding that any information is proprietary and/or confidential under law, or alter the burden of proof on that issue. The form of agreement contained in the commission approved rate filing package does not bind the examiner or the commission to accept the language of the agreement in the consideration of any subsequent protective order that may be entered.

(4) A party that cannot view a confidential document without receiving advantage as a competitor or bidder may hire outside counsel and consultants to view the document subject to a protective order.

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

§25.236. Recovery of Fuel Costs.

(a) Eligible fuel expenses. Eligible fuel expenses include expenses properly recorded in the Federal Energy Regulatory Commission Uniform System of Accounts, numbers 501, 503, 518, 536, 547, 555, and 565, as modified in this subsection, as of April 1, 1997, and the items specified in paragraph (7) of this subsection. Any later amendments to the System of Accounts are not incorporated into this subsection. Subject to the commission finding special circumstances under paragraph (6) of this subsection, eligible fuel expenses are limited to:

(1) For any account, the electric utility may not recover, as part of eligible fuel expense, costs incurred after fuel is delivered to the generating plant site, for example, but not limited to, operation and maintenance expenses at generating plants, costs of maintaining and storing inventories of fuel at the generating plant site, unloading and fuel handling costs at the generating plant, and expenses associated with the disposal of fuel combustion residuals. Further, the electric utility may not recover maintenance expenses and taxes on rail cars owned or leased by the electric utility, regardless of whether the expenses and taxes are incurred or charged before or after the fuel is delivered to the generating plant site. The electric utility may not recover an equity return or profit for an affiliate of the electric utility, regardless of whether the affiliate incurs or charges the equity return or profit before or after the fuel is delivered to the generating plant site. In addition, all affiliate payments must satisfy the Public Utility Regulatory Act (PURA) §36.058.

(2) For Accounts 501 and 547, the only eligible fuel expenses are the delivered cost of fuel to the generating plant site excluding fuel brokerage fees. For Account 501, revenues associated with the disposal of fuel combustion residuals will also be excluded.

(3) For Accounts 518 and 536, the only eligible fuel expenses are the expenses properly recorded in the Account excluding brokerage fees. For Account 503, the only eligible fuel expenses are the expenses properly recorded in the Account, excluding brokerage fees, return, non-fuel operation and maintenance expenses, depreciation costs and taxes.

(4) For Account 555, the electric utility may not recover demand or capacity costs.

(5) For Account 565, an electric utility may not recover transmission expenses paid to affiliated companies for the purpose of equalizing or balancing the financial responsibility of differing levels of investment and operating costs associated with transmission assets. A non-ERCOT electric utility may not recover expenses for wheeling transactions. An ERCOT electric utility may recover only the expenses properly recorded in Account 565 for ISO fees related to planned and unplanned transmission service and for payments to parties related to unplanned transmission service, such as losses and re-dispatch fees.

(6) Upon demonstration that such treatment is justified by special circumstances, an electric utility may recover as eligible fuel expenses fuel or fuel related expenses otherwise excluded in paragraphs (1) - (5) of this subsection. In determining whether special circumstances exist, the commission shall consider, in addition to other factors developed in the record of the reconciliation proceeding, whether the fuel expense or transaction giving rise to the ineligible fuel expense resulted in, or is reasonably expected to result in, increased reliability of supply or lower fuel expenses than would otherwise be the case, and that such benefits received or expected to be received by ratepayers exceed the costs that ratepayers otherwise would have paid or otherwise would reasonably expect to pay.

(7) Eligible fuel expenses shall not be offset by revenues by affiliated companies for the purpose of equalizing or balancing the financial responsibility of differing levels of investment and operation costs associated with transmission assets. In addition to the expenses designated in paragraphs (1) - (6) of this subsection, unless otherwise specified by the commission, eligible fuel expenses shall be offset by:

§25.236(a)(7) continued

(A) revenues from steam sales included in Accounts 504 and 456 to the extent expenses incurred to produce that steam are included in Account 503; and
(B) revenues from wheeling transactions except for non-ERCOT electric utilities; and
(C) revenues from off-system sales in their entirety, except as permitted in paragraph (8) of this subsection.
(D) For electric utilities in ERCOT, revenues from third parties for unplanned transmission service, such as ISO fees, losses, and re-dispatch fees.

(8) **Shared margins from off-system sales.** An electric utility may retain 10% of the margins from an off-system energy sales transaction if the following criteria are met:
(A) the electric utility participates in a transmission region governed by an independent system operator or a functionally equivalent independent organization;
(B) a generally-applicable tariff for firm and non-firm transmission service is offered in the transmission region in which the electric utility operates; and
(C) the transaction is not found to be to the detriment of its retail customers.

(b) **Reconciliation of fuel expenses.** Electric utilities shall file petitions for reconciliation on a periodic basis so that any petition for reconciliation shall contain a maximum of three years and a minimum of one year of reconcilable data and will be filed no later than six months after the end of the period to be reconciled. However, notwithstanding the previous sentence, a reconciliation shall be requested in any general rate proceeding under the PURA, Chapter 36, Subchapters C and E and may be performed in any general rate proceeding under the PURA, Chapter 36, Subchapter D. Upon motion and showing of good cause, a fuel reconciliation proceeding may be severed from or consolidated with other proceedings.

(c) **Petitions to reconcile fuel expenses.** In addition to the commission prescribed reconciliation application, a fuel reconciliation petition filed by an electric utility must be accompanied by a summary and supporting testimony that includes the following information:
(1) a summary of significant, atypical events that occurred during the reconciliation period that affected the economic dispatch of the electric utility's generating units, including but not limited to transmission line constraints, fuel use or deliverability constraints, unit operational constraints, and system reliability constraints;
(2) a general description of typical constraints that limit the economic dispatch of the electric utility's generating units, including but not limited to transmission line constraints, fuel use or deliverability constraints, unit operational constraints, and system reliability constraints;
(3) the reasonableness and necessity of the electric utility's eligible fuel expenses and its mix of fuel used during the reconciliation period;
(4) a summary table that lists all the fuel cost elements which are covered in the electric utility's fuel cost recovery request, the dollars associated with each item, and where to find the item in the prefiled testimony;
(5) tables and graphs which show generation (MWh), capacity factor, fuel cost (cents per kWh and cents per MMBtu), variable cost and heat rate by plant and fuel type, on a monthly basis; and
(6) a summary and narrative of the next-day and intra-day surveys of the electricity markets and a comparison of those surveys to the electric utility's marginal generating costs.

(d) **Fuel reconciliation proceedings.** Burden of proof and scope of proceeding are as follows:
(1) In a proceeding to reconcile fuel factor revenues and expenses, an electric utility has the burden of showing that:

§25.236(d)(1) continued

(A) its eligible fuel expenses during the reconciliation period were reasonable and necessary expenses incurred to provide reliable electric service to retail customers;

(B) if its eligible fuel expenses for the reconciliation period included an item or class of items supplied by an affiliate of the electric utility, the prices charged by the supplying affiliate to the electric utility were reasonable and necessary and no higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons or corporations for the same item or class of items; and

(C) it has properly accounted for the amount of fuel-related revenues collected pursuant to the fuel factor during the reconciliation period.

(2) The scope of a fuel reconciliation proceeding includes any issue related to determining the reasonableness of the electric utility's fuel expenses during the reconciliation period and whether the electric utility has over- or under-recovered its reasonable fuel expenses.

(e) **Refunds.** All fuel refunds and surcharges shall be made using the following methods.

(1) Interest shall be calculated on the cumulative monthly ending under- or over-recovery balance at the rate established annually by the commission for overbilling and underbilling in §25.28 (c) and (d) of this title (relating to Bill Payment and Adjustments). Interest shall be calculated based on principles set out in subparagraphs (A) - (E) of this paragraph.

(A) Interest shall be compounded annually by using an effective monthly interest factor.

(B) The effective monthly interest factor shall be determined by using the algebraic calculation $x = (1 + i)^{(1/12)} - 1$; where i = commission-approved annual interest rate, and x = effective monthly interest factor.

(C) Interest shall accrue monthly. The monthly interest amount shall be calculated by applying the effective monthly interest factor to the previous month's ending cumulative under/over recovery fuel and interest balance.

(D) The monthly interest amount shall be added to the cumulative principal and interest under/over recovery balance.

(E) Interest shall be calculated through the end of the month of the refund or surcharge.

(2) Rate class as used in this subparagraph shall mean all customers taking service under the same tariffed rate schedule, or a group of seasonal agricultural customers as identified by the electric utility.

(3) Interclass allocations of refunds and surcharges, including associated interest, shall be developed on a month-by-month basis and shall be based on the historical kilowatt-hour usage of each rate class for each month during the period in which the cumulative under- or over-recovery occurred, adjusted for line losses using the same commission-approved loss factors that were used in the electric utility's applicable fixed or interim fuel factor.

(4) Intraclass allocations of refunds and surcharges shall depend on the voltage level at which the customer receives service from the electric utility. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the electric utility shall be given refunds or assessed surcharges based on their individual actual historical usage recorded during each month of the period in which the cumulative under- or over-recovery occurred, adjusted for line losses if necessary. All other customers shall be given refunds or assessed surcharges based on the historical kilowatt-hour usage of their rate class.

(5) Unless otherwise ordered by the commission, all refunds shall be made through a one-time bill credit and all surcharges shall be made on a monthly basis over a period not to exceed 12 months through a bill charge. However, refunds may be made by check to municipally-owned electric utility systems if so requested. Retail customers who receive service at

§25.236(e)(5) continued

transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the electric utility shall be given a one-time credit or assessed a surcharge made on a monthly basis over a period not to exceed 12 months through a bill charge. All other customers shall be given a credit or assessed a surcharge based on a factor which will be applied to their kilowatt-hour usage over the refund or surcharge period. This factor will be determined by dividing the amount of refund or surcharge allocated to each rate class by forecasted kilowatt-hour usage for the class during the period in which the refund or surcharge will be made.

(6) A petition to surcharge or refund a fuel under- or over-recovery balance not associated with a proceeding under subsection (d) of this section shall be processed in accordance with the filing schedules in §25.237(d) of this title (relating to Fuel factors) and the deadlines in §25.237(e) of this title.

(f) **Procedural schedule.** Upon the filing of a petition to reconcile fuel expenses in a separate proceeding, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding within one year after a materially complete petition was filed. However, if the deadlines result in a number of electric utilities filing cases within 45 days of each other, the presiding officers shall schedule the cases in a manner to allow the commission to accommodate the workload of the cases irrespective of whether such procedural schedule enables the commission to issue a final order in each of the cases within one year after a materially complete petition is filed.

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

§25.237. **Fuel Factors.**

(a) **Use and calculation of fuel factors.** An electric utility's fuel costs will be recovered from the electric utility's customers by the use of a fuel factor that will be charged for each kilowatt-hour (kWh) consumed by the customer.

(1) Fuel factors are determined by dividing the electric utility's projected net eligible fuel expenses, as defined in §25.236(a) of this title (relating to Recovery of Fuel Costs), by the corresponding projected kilowatt-hour sales for the period in which the fuel factors are expected to be in effect. Fuel factors must account for system losses and for the difference in line losses corresponding to the type of voltage at which the electric service is provided. An electric utility may have different fuel factors for different times of the year to account for seasonal variations. A different method of calculation may be allowed upon a showing of good cause by the electric utility.

(2) An electric utility may initiate a change to its fuel factor as follows:

(A) An electric utility may petition to adjust its fuel factor as often as once every six months according to the schedule set out in subsection (d) of this section.

(B) An electric utility may petition to change its fuel factor at times other than provided in the schedule if an emergency exists as described in subsection (f) of this section.

(C) An electric utility's fuel factor may be changed in any general rate proceeding.

(3) Fuel factors are temporary rates, and the electric utility's collection of revenues by fuel factors is subject to the following adjustments:

(A) The reasonableness of the fuel costs that an electric utility has incurred will be periodically reviewed in a reconciliation proceeding, as described in §25.236 of this title, and any unreasonable costs incurred will be refunded to the electric utility's customers.

(B) To the extent that there are variations between the fuel costs incurred and the revenues collected, it may be necessary or convenient to refund overcollections or surcharge undercollections. Refunds or surcharges may be made without changing an electric utility's fuel factor, but requests by the electric utility to make refunds or surcharges may only be made at the times allowed by this paragraph. An electric utility may petition to make refunds or surcharges at the specified times that these rules allow an electric utility to change its fuel factor irrespective of whether the electric utility actually petitions to change its fuel factor at that time. An electric utility shall petition for a surcharge at the next date allowed for setting a fuel factor by the schedule set out in subsection (d) of this section when it has materially undercollected its fuel costs and projects that it will continue to be in a state of material undercollection. An electric utility shall petition to make a refund at any time that it has materially overcollected its fuel costs and projects that it will continue to be in a state of material overcollection. "Materially" or "material," as used in this section, shall mean that the cumulative amount of over- or under-recovery, including interest, is greater than or equal to 4.0% of the annual estimated fuel cost figure most recently adopted by the commission, as shown by the electric utility's fuel filings with the commission.

(b) **Petitions to revise fuel factors.** During the first five business days of the months specified in subsection (d) of this section, each electric utility using one or more fuel factors may file a petition requesting revised fuel factors. A copy of the filing shall also be delivered to the Office of Regulatory Affairs and the Office of Public Utility Counsel. Each petition must be accompanied by the commission prescribed fuel factor application and supporting testimony that includes the following information:

§25.237(b) continued

(1) For each month of the period in which the fuel-factor has been in effect up to the most recent month for which information is available,
 (A) the revenues collected pursuant to fuel factors by customer class;
 (B) any other items that to the knowledge of the electric utility have affected fuel factor revenues and eligible fuel expenses; and
 (C) the difference, by customer class, between the revenues collected pursuant to fuel factors and the eligible fuel expenses incurred.

(2) For each month of the period for which the revised fuel factors are expected to be in effect, provide system energy input and sales, accompanied by the calculations underlying any differentiation of fuel factors to account for differences in line losses corresponding to the type of voltage at which the electric service is provided.

(c) **Fuel factor revision proceeding.** Burden of proof and scope of proceeding are as follows:
 (1) In a proceeding to revise fuel factors, an electric utility has the burden of proving that:
  (A) the expenses proposed to be recovered through the fuel factors are reasonable estimates of the electric utility's eligible fuel expenses during the period that the fuel factors are expected to be in effect;
  (B) the electric utility's estimated monthly kilowatt-hour system sales and off-system sales are reasonable estimates for the period that the fuel factors are expected to be in effect; and
  (C) the proposed fuel factors are reasonably differentiated to account for line losses corresponding to the type of voltage at which the electric service is provided.
 (2) The scope of a fuel factor revision proceeding is limited to the issue of whether the petitioning electric utility has appropriately calculated its estimated eligible fuel expenses and load.

(d) **Schedule for filing petitions to revise fuel factors.** A petition to revise fuel factors may be filed with any general rate proceeding. Otherwise, except as provided by subsection (f) of this section which addresses emergencies, petitions by an electric utility to revise fuel factors may only be filed during the first five business days of the month in accordance with the following schedule:
 (1) January and July: El Paso Electric Company and Central Power and Light Company;
 (2) February and August: Texas Utilities Electric Company;
 (3) March and September: West Texas Utilities Company and Entergy Gulf States, Inc.;
 (4) April and October: Houston Lighting & Power Company;
 (5) May and November: Southwestern Electric Power Company, Southwestern Public Service Company, and Lower Colorado River Authority; and
 (6) June and December: Texas-New Mexico Power Company, and any other electric utility not named in this subsection that uses one or more fuel factors.

(e) **Procedural schedule.** Upon the filing of a petition to revise fuel factors in a separate proceeding, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding as follows:
 (1) within 60 days after the petition was filed, if no hearing is requested within 30 days of the petition; and
 (2) within 90 days after the petition was filed, if a hearing is requested within 30 days of the petition. If a hearing is requested, the hearing will be held no earlier than the first business day after the 45th day after the application was filed.

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

(f) **Emergency revisions to the fuel factor.** If fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have caused a material under-recovery of eligible fuel costs, the electric utility may file a petition with the commission requesting an emergency interim fuel factor. Such emergency requests shall state the nature of the emergency, the magnitude of change in fuel costs resulting from the emergency circumstances, and other information required to support the emergency interim fuel factor. The commission shall issue an interim order within 30 days after such petition is filed to establish an interim emergency fuel factor. If within 120 days after implementation, the emergency interim factor is found by the commission to have been excessive, the electric utility shall refund all excessive collections with interest calculated on the cumulative monthly ending under- or overrecovery balance in the manner and at the rate established by the commission for overbilling and underbilling in §25.28(c) and (d) of this title (relating to Bill Payment and Adjustments Billing). If, after full investigation, the commission determines that no emergency condition existed, a penalty of up to 10% of such over-collections may also be imposed on investor-owned electric utilities.

ATTACHMENT 2

The Legislature

of the

State of New Mexico

44th Legislature, 1st Session

LAWS 1999

CHAPTER 294

SENATE BILL 428, as amended,

with emergency clause and with certificate of correction

Introduced by

SENATOR MICHAEL S. SANCHEZ
SENATOR CARLOS R. CISNEROS
SENATOR DEDE FELDMAN
SENATOR STUART INGLE
SENATOR ROMAN M. MAES III
SENATOR WILLIAM H. PAYNE

EMERGENCY CLAUSE

State of New Mexico
Senate

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

March 20, 1999

CERTIFICATE OF CORRECTION

I certify that the following error was found in

SENATE BILL 428, as amended

and has been corrected in enrolling and engrossing:

1. On page 8, line 21 of the introduced bill "62-3-4.1" changed to correct a typographical error.

Respectfully submitted,

Margaret Larragoite

Margaret Larragoite, Chief Clerk

Chapter 294

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 nation;

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

(3) competition in the retail market for electricity is expected to provide long-term benefits for the economy of New Mexico, including the lowering of electricity prices, the creation of business opportunities, the

improvement of energy efficiency and innovations in services and supply;

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

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

(6) public utilities currently provide and will provide in the future products and services in addition to electric supply, transmission and distribution service. To the greatest extent possible, products and services are and should be available from nonregulated providers in the competitive marketplace, including from nonregulated public utility affiliates;

(7) the public interest requires the continued protection of retail customers through the licensing of electric suppliers, the provision of information to customers regarding electric service, service reliability

and quality and the availability of service for all retail customers;

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

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

(10) protection of the state's environment and the promotion of renewable energy technologies are sensible endeavors that may be encouraged in the restructured electric industry; yet, after a reasonable period, assessment should be made to determine the usefulness, acceptability, benefits, including environmental and economic benefits, and the appropriateness of continuing financial promotion of renewable energy; and

(11) it is necessary to provide comprehensive implementing legislation to establish direction

for all aspects of the restructuring of the electric utility industry in New Mexico.

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

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

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

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

(4) ensure that when customer choice of electric supply is offered that adequate safeguards and procedures are in place to maintain safe and reliable electric service;

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

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

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

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

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

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

B. "affiliate" means a person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, another person. Control includes the possession of the power to direct or cause the direction of the management and policies of a person, whether directly or indirectly, through the ownership, control or holding with the power to vote ten percent or more of the person's voting securities;

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

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

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

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

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

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

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

J. "distribution company" means a person who owns, operates, leases or controls distribution facilities for distribution of electricity to or for the public and is regulated by the commission;

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

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

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

N. "generation and transmission cooperative" means a person with generation or transmission facilities either organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the Rural Electric Cooperative Act or organized in another state and providing sales of electric power to member cooperatives in this state;

O. "monopoly coercion" means any action by a public utility or affiliate of a public utility, including any action of employees, officers or directors of those companies that the company permits or condones, that causes a customer to reasonably believe that regulated or gas service will be impaired or diminished if that customer acquires competitive goods or services from a person other than an affiliate of the public utility, or causes a customer to reasonably believe that regulated service will be augmented or improved if that customer acquires competitive goods or services from an affiliate rather than from another person;

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

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

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

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

T. "public utility" means any person or that person's lessee, trustee or receiver, not engaged solely in interstate business and except as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that now does or hereafter may own, operate, lease or control any plant, property or facility for regulated services to or for the public of electricity for light, heat or power or other uses, and includes a distribution company, a transmission company or both;

U. "regulated services" means bundled services prior to the date the involved class of service is granted customer choice pursuant to the Electric Utility Industry Restructuring Act of 1999; and, only standard offer, distribution and transmission services after customer choice begins, pursuant to that act, and in any event, after

January 1, 2002;

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

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

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

Y. "standard offer service" means supply service acquired and delivered by a public utility after December 31, 2000 to residential and small business customers that are eligible for customer choice after that date but do not elect to acquire their power supplies from the retail competitive marketplace; and as to a distribution cooperative utility, means supply service acquired and delivered by the distribution cooperative utility to residential and small business customers that either do not elect to acquire their supply service from a competitive power supplier or are not eligible to make such election pursuant to the terms of the Electric Utility Industry Restructuring Act of 1999;

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

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

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

Regulated revenue requirements include all regulatory assets, net liabilities, deferred taxes, costs associated with construction, operation and decommissioning or removal from service of generation facilities, costs associated with purchased power, water and fuel contracts, lease and lease-related costs, gains or benefits to which ratepayers are entitled and all other accounting categories of costs and credits, including credit for taxes already recovered by the utility, recognized under cost-of-service regulation and attributable to the generation function of each utility. "Stranded costs" shall not include costs that are unreasonable, imprudent or mitigable or that have been determined to not be recoverable in rates. "Stranded costs" shall be calculated for the period ending when the useful lives for all generation assets or obligations of the particular utility existing on the effective date of the Electric Utility Industry Restructuring Act of 1999 are anticipated to expire. Retiring assets are presumed to be replaced at market prices;

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

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

CC. "transition costs" means those prudent, reasonable and unmitigable costs other than stranded costs, not recoverable elsewhere under either federally approved rates or rates approved by the commission, that a public utility would not have incurred but for its compliance with the requirements of the Electric Utility Industry Restructuring Act of 1999 and regulations promulgated thereunder relating to the transition to open access, and the prudent cost of severance, early and enhanced retirement benefits, retraining, placement services, unemployment benefits and health care coverage to public utility nonmanagerial employees who are laid off on or before January 1, 2003, that are not otherwise recovered as a stranded salary and benefits cost. "Transition costs" shall not include costs that the public utility would have incurred notwithstanding the Electric Utility Industry Restructuring Act of 1999;

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. TRANSITION PLANS.--

A. A public utility shall file a transition plan that complies with the Electric Utility Industry Restructuring Act of 1999 with the commission no later than March 1, 2000 for commission approval on or before December 1, 2000. The transition plan shall include a detailed description of the public utility's:

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

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

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

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

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

(6) proposed competitive procurement process or other process for the selection of power supply for standard offer service tariffs, together with a proposed rate setting procedure. The initial procurement of power for standard offer service shall occur at least three months

prior to customer choice, or earlier as determined by the commission, so that price terms can be the basis for determination of stranded costs;

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

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

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

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

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

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

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

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

(1) is in the public interest;

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

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

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

C. The commission in quantifying stranded costs shall consider:

(1) mitigation efforts and results;

(2) reasonable methods for determining market valuations, including:

(a) the use of standard offer bid prices;

(b) appraisal by independent third-party professionals;

(c) a competitive bid sale for

generation; and

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

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

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

D. Before July 1, 2000, the commission shall approve the procurement procedure proposed by the public utility in its transition plan for the acquisition of supply service for standard offer service. On or before September 1, 2000, a public utility shall update its pending transition plan filing by providing the price of supply service procured for standard offer service pursuant to the procurement procedure approved by the commission. The approval of stranded costs to be recovered from the residential and small business classes shall be made after the public utility has contracted to procure power for the standard offer, but prior to December 1, 2000.

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

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

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

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

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

(2) not extend longer than five years thereafter, 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; and

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

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

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

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

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:

(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.

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

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

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

C. Corporate separation of regulated from unregulated services shall be accomplished by either the creation of separate affiliated companies that may be owned by a common holding company, through the creation of separate non-affiliated corporations or through the sale of assets to one or more third parties. A public utility may provide all competitive and ancillary services within a single unregulated company and provide all non-competitive and ancillary services within a separate regulated company. Unregulated service shall not be provided by a regulated company.

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

(1) prevent undue discrimination in favor of affiliates;

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

(3) grant customers and their competitive

power suppliers access to a public utility's retail distribution and transmission facilities on a non-discriminatory basis at the same rates, terms and conditions of service of use by the public utility and its affiliates;

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

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

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

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

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

commission.

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

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

(2) describe the safeguards instituted to prevent the sharing with an affiliate of employees, goods, services or facilities, except that common costs for essential corporate-wide services shall be allocated between the public utility and affiliates to reflect the proportional benefit that the public utility receives from those services compared to the affiliates receiving the services, and provided that a public utility may purchase goods, services or facilities from an affiliate if the items cannot be provided internally or obtained from an independent person at an equal or lower price or other factors such as quality or service that justify a higher purchase price. The commission may promulgate rules regarding the transfer of employees, provided that the commission shall not require or approve a policy or procedure that interferes with an employee's

ability to apply for and be considered for a position of his choice.

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

G. A public utility shall not engage in monopoly coercion. Complaints alleging monopoly coercion may be filed with the commission or district court and, if filed, shall be placed at the head of the docket; and after notice and hearing, shall be resolved expeditiously. Filing a complaint for monopoly coercion with the commission pursuant to this section neither precludes nor excludes other remedies available pursuant to law and is not a prerequisite for seeking relief otherwise available. The attorney general shall have standing on behalf of consumers to file a complaint initiating or to intervene in a case before the commission alleging monopoly coercion.

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

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

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

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

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

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

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

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

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

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

by the statutory agent;

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

(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;

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

(6) post a bond, the financial security equivalent of a bond or other adequate financial assurances acceptable to the commission to cover system costs in the event the licensee fails to provide supply service in accordance with its obligations;

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

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

(9) execute, by a person authorized to do so, an agreement to produce documents or other records to

support any filings, reports or agreements required by the commission and to support any representations made to the commission or customers if required to do so by the commission;

(10) execute, by a person authorized to do so, an agreement to compensate a distribution or transmission company that provides open access for delivery of supply service to a customer of the competitive power supplier for shortfalls in supply service pursuant to rules promulgated by the commission; and

(11) submit a proposal for renewable energy supply service options to customers.

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

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

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

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

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

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

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

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

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

(1) knowingly provided false information to

the commission;

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

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

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

(5) is a delinquent taxpayer as to any New Mexico tax;

(6) engaged in anti-competitive conduct; or

(7) violated any other law or commission rule or order.

H. Any person selling or offering to sell competitive services in this state in violation of any provision of the Electric Utility Industry Restructuring Act of 1999 is subject to license revocation or suspension in addition to any administrative, civil or criminal fines or penalties imposed pursuant to that act or pursuant to other law. Nothing in that act shall be construed to limit a person's rights pursuant to the Unfair Practices Act or to require exhaustion of remedies before bringing an action pursuant to that act.

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

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

B. Each public utility providing distribution service shall:

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

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

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

(4) at the discretion and direction of the commission, prudently arrange for back-up and emergency supply service; and

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

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

Section 11. TRANSMISSION SERVICE.--

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

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

Section 12. CUSTOMER EDUCATION AND PROTECTIONS.--

A. The commission shall conduct customer education efforts necessary to enable customers to make informed decisions about customer choice. The commission may require the inclusion of educational materials in bills or other mailings regularly made to service customers by a public utility.

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

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

(2) charge, direct another person to charge

or participate in processing a charge for any product or service through a customer's public utility bill for any unregulated service without the customer's authorization.

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

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

E. As used in this section, "authorization" means a letter of agency separate from any sales or solicitation material that contains, in clear and conspicuous language, a full and complete description of the change in supply service provider, and any product or service to be charged to the customer's bill. The letter of agency shall contain, in clear and conspicuous language, a full and complete description of the rates, fees and charges associated with the new supply service provider and the product or service to be charged to the bill. The letter of agency shall be signed by the customer before any change may be made in a customer's supply service provider, or any charge for any unregulated product or service may be placed on a customer's bill.

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

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

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

Section 13. SYSTEM BENEFITS CHARGE--RECOVERY.--A "system benefits charge" in the amount of three hundredths of one cent ($.0003) per kilowatt-hour is created and imposed on all retail kilowatt-hour sales in the state billed by public utilities, municipal utilities and distribution cooperative utilities beginning January 1, 2002. On January 1, 2007, the system benefits charge shall increase to six-hundredths of one cent ($.0006) per kilowatt-hour. The commission shall eliminate any portion of the system benefits charge that is not being used for the purposes specified in Section 15 of the Electric Utility Industry Restructuring Act of 1999. The system benefits charge shall be separately identified on bills rendered to customers beginning on January 1, 2002.

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

A. Wires charges assessed on a per kilowatt-hour basis for stranded costs, transition costs and the system benefits charge shall be paid by each customer to the public utility, and as to the system benefits charge only to the distribution cooperative utility or a municipal utility. Revenues collected as the system benefits charge shall be paid to the electric industry system benefits fund and distributed in accordance with the provisions of Section 15 of the Electric Utility Industry Restructuring Act of 1999.

B. Notwithstanding any other provision of the Electric Utility Industry Restructuring Act of 1999 and subject to the requirements of this subsection, a customer of a public utility shall be allowed to pay a fee equal to the net present value of stranded cost charges to be assessed to that customer. Any prepayment of stranded costs must be completed prior to the date of customer choice for that customer and shall take into account expected growth for that customer based upon historical usage. Disputes as to the amount of the payment required pursuant to this subsection shall be presented to the commission no later than ninety days prior to the applicable customer choice date and shall be resolved by the commission thirty days prior to that date. Prepayment of stranded costs shall be for the benefit of the service location for which the payment is determined and shall not transfer with a customer to a different or additional service location.

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

A. The "electric industry system benefits fund" is created and consists of money collected as a wires charge assessed on a three-hundredths-of-one-cent ($.0003) per kilowatt-hour basis as the system benefits charge collected monthly and paid quarterly to the department of environment. No other money shall be deposited or paid in the electric industry system benefits fund. Interest or other earnings from investment or deposit of the fund shall be credited to the fund. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall be transferred to the general fund.

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

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

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

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

(3) the cost of the project and the relative contribution of the disbursement sought from the fund to the total cost of the project; and

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

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

(1) no more than one hundred thousand dollars ($100,000) annually to the department for

administration of the fund;

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

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

(4) no more than four million dollars ($4,000,000) annually to encourage the use of renewable energy through the initiation, development and evaluation of renewable technology projects authorized and directed by public post-secondary educational institutions or a school district in conjunction with the education of its students or by the governing body of an incorporated city, town or village or a county, each in conjunction with the respective governing body's interest in protecting the environment and reducing the city's or county's utility costs; and

(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.

E. The department shall submit to the legislative finance committee prior to each regular legislative session a 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.

Section 16. DISTRIBUTION COOPERATIVE UTILITIES.--

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

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

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

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

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

(2) the costs, liabilities and investments that the distribution cooperative utility seeks to recover

from customers who choose supply service other than from the distribution cooperative utility;

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

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

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

(6) tariffs for service to its service customers, including either exit fees or non-bypassable non-discriminatory charges to seek to recover costs, liabilities

and investments sought to be recovered due to the change from bundled to unbundled service.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) shall acquire and provide supply service;

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

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

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

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

(3) customer class direct access, pursuant to which one or more classes of retail customers satisfying criteria determined by the distribution cooperative utility and approved by the commission may contract directly with a competitive power supplier. A criteria established for class eligibility may be expanded to permit greater eligibility for

customer class direct access, subject to commission approval. The distribution cooperative utility shall not be obligated to supply service or identify potential supply services for customer class direct access customers; and

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

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

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

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

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

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

Section 17. MUNICIPAL UTILITIES.--

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

B. Except for a municipality authorized to condemn facilities pursuant to Subsections E and F of Section 3-24-1 NMSA 1978, which is deemed to have chosen to participate in customer choice for its service customers effective January 1, 2002, a municipal governing body is authorized to elect whether and when its municipal utility participates in customer choice and open access for competitive services to its service customers. A municipal governing body is authorized to elect whether and when its municipal utility participates in customer choice and open access to offer supply service and competitive services to customers in addition to its service customers. A decision by a municipal governing body to participate in customer choice and open access for its service customers only or its service customers and other customers at any time after January 1, 2002 shall be made by the adoption of an appropriate ordinance or resolution, which decision once made is thereafter irrevocable. A municipal utility may not participate in customer choice or open access for customers other than its service customers unless and until its service customers are eligible for customer choice with open access available to fulfill a customer's choice of supply service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. The New Mexico legislative council shall annually through January 1, 2002, refer to the revenue stabilization and tax policy committee questions and issues related to the amount of state and local tax revenues derived from previously regulated electric utility service and property and report to the legislature annually on the changed impact to state and local government tax revenues resulting from restructuring and competition in the electric industry.

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

Section 19. COMMISSION EXAMINATIONS.--

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

(1) standard offer;

(2) consumer education and protection;

(3) safety, reliability, quality and performance standards for competitive power suppliers and distribution and transmission facilities;

(4) the presence of market power, its impacts on the restructure of the electric industry and methods available to limit or eliminate its adverse impacts;

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

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

(7) emergency and back-up service;

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

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

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

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

Section 21. ADMINISTRATIVE FINES.--

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

B. An administrative fine of not less than one hundred dollars ($100) nor more than two million dollars ($2,000,000) may be imposed for each violation. Each day of a continuing violation shall be considered a separate violation.

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

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

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

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 or omissions.

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

Section 23. CONFLICTING PROVISIONS.--The provisions of the Electric Utility Industry Restructuring Act of 1999 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.

Walter D. Bradley
Walter D. Bradley, President
Senate

Margaret Larragoite
Margaret Larragoite, Chief Clerk
Senate

Raymond Sanchez
Raymond G. Sanchez, Speaker
House of Representatives

Stephen Arias
Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this 8 day of April, 1999

Gary E. Johnson
Governor Gary E. Johnson
State of New Mexico