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A Law Partnership Including Professional Corporations

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March 20, 2001

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, D.C. 20555

Re: Palo Verde Nuclear Generating Station, Units 1, 2 and 3 (Docket Nos. STN 50-528/529/530, Facility Operating License Nos. NPF-41, NPF-51, NPF-74)--Application By Public Service Company of New Mexico for Consent to Indirect Transfers of Control and Approval of License Amendments to Reflect Licensee's Name Change

Ladies and Gentlemen:

On March 3, 2000 Public Service Company of New Mexico ("PNM") submitted an application under Section 184 of the Atomic Energy Act as amended, 22 U.S.C. § 2234, and 10 C.F.R. § 50.80 ("Application") for NRC's consent to the indirect transfer of control of PNM's licenses to hold minority interests (both owned and leased) in the Palo Verde Nuclear Generating Station, Units 1, 2 and 3 ("PVNGS") to a holding company created to implement the public utility restructuring requirements of the New Mexico Electric Utility Industry Restructuring Act of 1999, NMSA 1978, §§ 62-3A-1 through 23 (1999) ("the Restructuring Act"). The NRC granted its consent to the transfer, subject to specified conditions, on September 29, 2000. 65 F.R. 60222 (October 10, 2000).

The indirect transfer for which NRC consent was obtained included the formation of a holding company that would have indirect control over PNM's licenses, to be followed by the separation of PNM into a generation company and a transmission and distribution company. This separation was ordained by the Restructuring Act, which directed the opening of New Mexico's retail electric power market to customer choice beginning on January 1, 2001. Pursuant to authority granted under the Restructuring Act, the New Mexico Public Regulation Commission ("NMPRC") delayed the start of customer choice by one year, to January 1, 2002.

Earlier this month, the New Mexico legislature enacted, and the Governor of the state signed into law, Senate Bill 266 ("An Act Relating to Electric Utilities; Delaying Customer Choice Provisions and Implementation of the Electric Utility Industry Restructuring Act of 1999") ("SB 266"). SB 266 requires the NMPRC to approve by July 1, 2001 any application for the creation of a holding company for an electric utility operating in the state pending in

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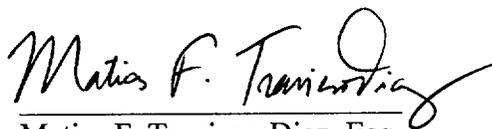
its filed transition plan, subject to terms and conditions in the public interest. In addition, SB 266 delays by five years, until January 1, 2007, the start of the opening of New Mexico's retail electric power market to customer choice. A copy of SB 266, as enacted, is enclosed.

The effect of this new legislation on PNM's restructuring is as follows. First, PNM had filed with the NMPRC an application for the creation of a holding company. PNM will be filing a revision to reflect the effect of SB 266. SB 266 states that such applications will be approved by the NMPRC by no later than July 1, 2001 and PNM intends to proceed with the establishment of such a holding company upon NMPRC approval. On the other hand, the proposed separation of PNM that was described in the Application will need to be refiled no later than January 1, 2005, for NMPRC approval on or before June 1, 2006.

We believe no action is necessary by the NRC in connection with these developments, since it has already consented to the indirect transfer of control of PNM's licenses to a holding company. Moreover, since a separate transmission and distribution utility is not to be created for at least five years, PNM does not intend to change its name, thus no conforming amendments to the PVNGS operating licenses are required at this time.

We will advise the NRC when the holding company has been established, and will likewise advise of any other relevant developments. If the NRC requires additional information concerning this Application, please contact the undersigned or Terry R. Horn, Vice President and Treasurer, (505) 241-2119.

Very truly yours,



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Enclosure

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cc: Ellis W. Merschoff, Regional Administrator, NRC Region IV
Mel B. Fields, NRC Project Manager, PVNGS
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Robert S. Wood, NRC Division of Licensing and Program Mgm't
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The Legislature
of the
State of New Mexico

45th Legislature, First Session

LAWS 2001

CHAPTER 5

SENATE BILL 266, as amended

Introduced by

SENATOR MICHAEL S. SANCHEZ
SENATOR STUART INGLE
SENATOR TIMOTHY Z. JENNINGS
SENATOR RICHARD M. ROMERO



Chapter 5

AN ACT

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

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

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

"62-3A-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

1 customers prior to customer choice;

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

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

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

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

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

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

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

25 K. "distribution facilities" means those

1 facilities by and through which electricity is distributed to
2 the customer and that are owned, operated, leased or
3 controlled by a distribution company;

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

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

10 N. "generation and transmission cooperative" means
11 a person with generation or transmission facilities either
12 organized as a rural electric cooperative pursuant to Laws
13 1937, Chapter 100 or the Rural Electric Cooperative Act or
14 organized in another state and providing sales of electric
15 power to member cooperatives in this state;

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

1 services from an affiliate rather than from another person;

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

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

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

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

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

23 U. "regulated services" means bundled services
24 prior to the date the involved class of service is granted
25 customer choice pursuant to the Electric Utility Industry

1 Restructuring Act of 1999; and, only standard offer,
2 distribution and transmission services after customer choice
3 begins, pursuant to that act and in any event, after July 1,
4 2007;

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

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

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

21 Y. "standard offer service" means supply service
22 acquired and delivered by a public utility after the date
23 customer choice begins to residential and small business
24 customers that are eligible for customer choice after that
25 date but do not elect to acquire their power supplies from

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

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

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

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

22 Regulated revenue requirements include all regulatory
23 assets, net liabilities, deferred taxes, costs associated
24 with construction, operation and decommissioning or removal
25 from service of generation facilities, costs associated with

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

7 "Stranded costs" shall not include costs that are
8 unreasonable, imprudent or mitigable or that have been
9 determined to not be recoverable in rates. "Stranded costs"
10 shall be calculated for the period ending when the useful
11 lives for all generation assets or obligations of the
12 particular utility as described in Paragraph (1) of this
13 subsection are anticipated to expire. Retiring assets are
14 presumed to be replaced at market prices;

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

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

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

1 the requirements of the Electric Utility Industry
2 Restructuring Act of 1999 and rules promulgated in accordance
3 with that act relating to the transition to open access, and
4 the prudent cost of severance, early and enhanced retirement
5 benefits, retraining, placement services, unemployment
6 benefits and health care coverage to public utility
7 nonmanagerial employees who are laid off on or before January
8 1, 2009, that are not otherwise recovered as a stranded
9 salary and benefits cost. "Transition costs" shall not
10 include costs that the public utility would have incurred
11 notwithstanding the Electric Utility Industry Restructuring
12 Act of 1999;

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

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

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

24 GG. "transmission service" means the regulated
25 component of service provided by transmission facilities and

1 includes ancillary services; and

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

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

7 "62-3A-4. IMPLEMENTATION OF CUSTOMER CHOICE--PRIOR
8 PLANS AND APPROVALS--REVIEW BY COMMISSION.--

9 A. Except as provided in Sections 62-3A-16 and
10 62-3A-17 NMSA 1978, customer choice service shall be
11 available as follows:

12 (1) for public post-secondary educational
13 institutions and public schools and for residential and small
14 business customers, on January 1, 2007; and

15 (2) for all other customers of electricity,
16 on July 1, 2007.

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

1 approval may be recommended by the commission, the public
2 utility subject to the plan or approval or a party with
3 standing.

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

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

16 E. No later than July 1, 2001, the commission
17 shall approve an application for creation of a holding
18 company filed by a public utility prior to January 1, 2001,
19 as part of a transition plan, subject to such terms and
20 conditions as are in the public interest. The formation of a
21 holding company under this subsection shall not result in any
22 loss of commission jurisdiction over corporate allocations or
23 over any costs that are charged to ratepayers. This
24 subsection is not subject to Subsection D of Section 62-3A-4
25 NMSA 1978."

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

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

4 A. A public utility shall file a transition plan
5 that complies with the Electric Utility Industry
6 Restructuring Act of 1999 with the commission no later than
7 January 1, 2005 for commission approval on or before June 1,
8 2006. The transition plan shall include a detailed
9 description of the public utility's:

10 (1) proposal and alternatives to separate
11 its supply service and energy-related service assets from its
12 distribution and transmission services assets pursuant to
13 Section 62-3A-8 NMSA 1978;

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

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

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

23 (5) proposed standard offer service tariffs,
24 exclusive of price terms that shall be incorporated prior to
25 customer choice, for residential and small business customers

1 that do not select a power supplier pursuant to customer
2 choice eligibility;

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

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

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

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

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

25 (11) proposed customer education programs,

1 necessary computer hardware and software modifications and
2 meter upgrades necessary to provide open access;

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

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

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

15 (1) is in the public interest;

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

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

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

23 C. The commission in quantifying stranded costs
24 shall consider:

25 (1) mitigation efforts and results;

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

3 (a) the use of standard offer bid
4 prices;

5 (b) appraisal by independent third-
6 party professionals;

7 (c) a competitive bid sale for
8 generation; and

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

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

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

17 D. Before July 1, 2005, the commission shall
18 approve the procurement procedure proposed by the public
19 utility in its transition plan for the acquisition of supply
20 service for standard offer service. On or before January 1,
21 2005, a public utility shall update its pending transition
22 plan filing by providing the price of supply service procured
23 for standard offer service pursuant to the procurement
24 procedure approved by the commission. The approval of
25 stranded costs to be recovered from the residential and small

1 business classes shall be made after the public utility has
2 contracted to procure power for the standard offer, but prior
3 to December 1, 2006.

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

15 Section 4. Section 62-3A-7 NMSA 1978 (being Laws 1999,
16 Chapter 294, Section 7) is amended to read:

17 "62-3A-7. RECOVERY OF TRANSITION AND STRANDED COSTS--
18 OPPORTUNITIES AND LIMITS.--

19 A. The commission shall determine the non-
20 bypassable wires charges for the recovery of transition costs
21 and stranded costs as described in Section 62-3A-6 NMSA 1978.

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

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

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

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

9 C. In its approval of a transition plan provided
10 for in Section 62-3A-6 NMSA 1978, the commission shall
11 determine a non-bypassable wires charge for recovery of
12 transition costs through December 31, 2012, after which date
13 further transition charges shall not be recoverable through a
14 separate wires charge.

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

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

1 including stranded costs recovered from wholesale customers
2 under contract.

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

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

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

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

14 "62-3A-8. DIVESTITURE NOT REQUIRED--AFFILIATES--
15 SEPARATION OF REGULATED FROM COMPETITIVE FUNCTIONS--
16 PROHIBITIONS AGAINST CROSS-SUBSIDIES, DISCRIMINATION AND
17 ANTI-COMPETITIVE ACTIONS--DECLARATION REGARDING ANTITRUST
18 ACTIONS.--

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

25 B. Not before September 1, 2005, but before

1 January 1, 2006, a public utility shall separate into at
2 least two corporations, separating supply service and energy-
3 related service consisting of generation and power supply
4 facilities, operations and services and energy-related
5 facilities, operations and services that are to be made
6 available to the public pursuant to the Electric Utility
7 Industry Restructuring Act of 1999 on a competitive
8 unregulated basis from transmission and distribution services
9 consisting of transmission facilities, operations and
10 service, distribution facilities, operations and service and
11 customer billing and metering that are to be made available
12 to the public pursuant to that act on a regulated basis. If
13 a public utility is indebted on pollution control revenue or
14 revenue refunding bonds issued prior to January 1, 2001 and
15 maturing after October 1, 2016, all of the corporations
16 surviving or created by the separation which retained or
17 acquired generation and power supply facilities or
18 transmission or distribution facilities shall be liable for
19 payment of the interest and principal of the bonds, either by
20 direct obligation or by guarantee of that obligation. The
21 commission shall impute a cost of capital and capital
22 structure to the transmission and distribution utility that
23 reflects the direct obligation or guarantee of the
24 transmission and distribution utility. If the utility is
25 directly obligated, one hundred percent of the bonds will be

1 imputed. If the utility guarantees the obligation, fifty
2 percent of the bonds shall be imputed.

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

14 Until corporate separation is implemented, a public
15 utility may invest in, construct, acquire or operate a
16 generating plant that is not intended to provide retail
17 electric service to New Mexico customers, the cost of which
18 is not included in retail rates and which business activities
19 shall not be subject to regulation by the commission pursuant
20 to the Public Utility Act, except as provided by Section
21 62-9-3 NMSA 1978. Nothing herein shall diminish a public
22 utility's obligation, by the prudent acquisition of
23 resources, to serve its retail load at a cost of service no
24 higher than the average book cost plus fuel, other operating
25 and maintenance costs and the utility's authorized rate of

1 return on investment of the utility's unregulated generation
2 constructed or acquired after January 1, 2001; provided that
3 this provision does not apply to any public utility that does
4 not acquire unregulated generation after January 1, 2001.
5 The commission shall assure that the regulated business is
6 appropriately credited for any off-system sales made from
7 regulated assets.

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

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

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

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

24 (4) prevent the disclosure of any individual
25 customer information to any person, including an affiliate,

1 unless the customer provides written consent except as
2 otherwise directed in a rulemaking by the commission;

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

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

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

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

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

1 subsidy to an affiliate. The statement of policy and
2 procedure shall:

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

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

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

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

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

22 I. The state and all regulatory bodies and
23 agencies acting pursuant to state policy do not supervise or
24 condone any actions of a competitive power supplier or
25 monopoly coercion activities of a public utility that are or

1 would be unlawful pursuant to the Antitrust Act or any
2 federal antitrust act. The provisions of Section 57-1-16
3 NMSA 1978 are not a defense to an antitrust violation or
4 monopoly coercion charge against a competitive power supplier
5 or monopoly coercion charge against a public utility.

6 J. Public utilities that provide both electricity
7 and natural gas distribution services shall not be required
8 to functionally separate their electric and gas transmission,
9 transportation and distribution operations from each other,
10 and any rule or order to the contrary is void; and provided
11 that any regulated natural gas distribution operations
12 operated within the same legal entity as regulated electric
13 operations shall be subject to Subsections E and G of this
14 section; and provided further that nothing in this section
15 shall prevent a combined gas and electric distribution
16 company from selling the natural gas commodity to customers
17 pursuant to tariffs approved by the commission.

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

23 Section 6. Section 62-3A-13 NMSA 1978 (being Laws 1999,
24 Chapter 294, Section 13) is amended to read:

25 "62-3A-13. SYSTEM BENEFITS CHARGE--RECOVERY.--A "system

1 benefits charge" in the amount of three hundredths of one
2 cent (\$.0003) per kilowatt-hour is created and imposed on all
3 retail kilowatt-hour sales in the state billed by public
4 utilities, municipal utilities and distribution cooperative
5 utilities beginning January 1, 2007. On January 1, 2012, the
6 system benefits charge shall increase to six hundredths of
7 one cent (\$.0006) per kilowatt-hour. The commission shall
8 eliminate any portion of the system benefits charge that is
9 not being used for the purposes specified in Section 62-3A-15
10 NMSA 1978. The system benefits charge shall be separately
11 identified on bills rendered to customers beginning on
12 January 1, 2007."

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

15 "62-3A-16. DISTRIBUTION COOPERATIVE UTILITIES.--

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

21 B. A generation and transmission cooperative may
22 provide power and energy to its members and shall be subject
23 to regulation by the commission pursuant to the Public
24 Utility Act. A generation and transmission cooperative shall
25 not provide supply service at retail unless it is a licensed

1 competitive power supplier and provides open access in
2 accordance with the Electric Utility Industry Restructuring
3 Act of 1999.

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

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

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

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

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

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

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

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

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

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

1 rejects or modifies the business method plan filing.

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

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

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

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

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

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

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

1 H. On or before January 1, 2007, a distribution
2 cooperative utility shall elect through its board of trustees
3 a business method of providing supply service to its service
4 customers from the options described in Subsection I of this
5 section. The chosen business method may be implemented over
6 a three-year period or less, after commission approval. The
7 distribution cooperative utility shall not:

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

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

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

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

21 (a) shall acquire and provide supply
22 service;

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

25 (c) shall provide supply, transmission

1 and distribution services; and

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

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

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

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

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

19 K. Distribution cooperative utilities shall notify
20 their customers within twelve months after the effective date
21 of the Electric Utility Industry Restructuring Act of 1999
22 concerning the terms of this section and other applicable
23 terms of that act. A distribution cooperative utility
24 electing an option of conducting its business other than as a
25 load aggregator shall inform its service customers of the

1 major impacts of the customer choices available pursuant to
2 the elected option.

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

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

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

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

14 "62-3A-17. MUNICIPAL UTILITIES.--

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

21 B. Except for a municipality authorized to condemn
22 facilities pursuant to Subsections E and F of Section 3-24-1
23 NMSA 1978, which is deemed to have chosen to participate in
24 customer choice for its service customers effective January
25 1, 2007, a municipal governing body is authorized to elect

1 whether and when its municipal utility participates in
2 customer choice and open access for competitive services to
3 its service customers. A municipal governing body is
4 authorized to elect whether and when its municipal utility
5 participates in customer choice and open access to offer
6 supply service and competitive services to customers in
7 addition to its service customers. A decision by a municipal
8 governing body to participate in customer choice and open
9 access for its service customers only or its service
10 customers and other customers at any time after January 1,
11 2007 shall be made by the adoption of an appropriate
12 ordinance or resolution, which decision once made is
13 thereafter irrevocable. A municipal utility may not
14 participate in customer choice or open access for customers
15 other than its service customers unless and until its service
16 customers are eligible for customer choice with open access
17 available to fulfill a customer's choice of supply service.

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

25 D. A municipality deemed by the provisions of

1 Subsections E and F of Section 3-24-1 NMSA 1978 to have
2 elected to participate in customer choice for its service
3 customers or any other municipality that elects by its
4 governing body to participate in customer choice and open
5 access for its service customers, shall, by its municipal
6 governing body:

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

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

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

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

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

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

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

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

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

20 Section 9. Section 62-3A-18 NMSA 1978 (being Laws 1999,
21 Chapter 294, Section 18) is amended to read:

22 "62-3A-18. FRANCHISE FEES--GROSS RECEIPTS TAX--COAL
23 DECOMMISSIONING--TAX REVENUES ANALYSIS.--

24 A. A franchise fee charge shall be stated as a
25 separate line entry on a public utility's or distribution

1 cooperative utility's bills and shall only be recovered from
2 customers located within the jurisdiction of the government
3 authority imposing the franchise fee.

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

9 C. Upon application by a public utility, the
10 commission shall authorize the public utility to begin
11 amortizing over five years the unrecovered costs of
12 decommissioning mines serving coal-fired generating plants,
13 with amortization beginning on January 1, 2002. The
14 commission's order authorizing the amortization shall
15 establish a separate nonbypassable wires charge for the
16 decommissioning cost in the public utility's tariffs, which
17 does not have to be separately shown on customer bills, and
18 which shall not change the total rates for electric service
19 paid by any customer in effect at the time of the order.
20 Nothing in this subsection shall prevent the commission from
21 determining stranded costs in accordance with the Electric
22 Utility Industry Restructuring Act of 1999 or the appropriate
23 manner or duration of recovery of the reasonable unamortized
24 portion of these decommissioning costs in any rate proceeding
25 subsequent to the application.

1 D. The New Mexico legislative council shall refer
2 to the revenue stabilization and tax policy committee
3 questions and issues related to the amount of state and local
4 tax revenues derived from previously regulated electric
5 utility service and property and report to the legislature on
6 the changed impact to state and local government tax revenues
7 resulting from restructuring and competition in the electric
8 industry.

9 E. The revenue stabilization and tax policy
10 committee shall recommend legislative changes, if any, to
11 establish comparable state and local taxation burdens on all
12 market participants in the supply of electricity considering
13 the impacts and changes that have resulted from the
14 restructure and competition in the electric industry in the
15 state."

16 Section 10. Section 62-3A-22 NMSA 1978 (being Laws
17 1999, Chapter 294, Section 22) is amended to read:

18 "62-3A-22. COMMISSION REVIEW AND RECOMMENDATIONS.--The
19 commission shall docket a proceeding to review the system
20 benefits charge and the system benefits fund, their operation
21 and effectiveness, and then to make recommendations to the
22 legislature by January 10, 2009 for any repeal of or changes
23 to these provisions."

24 Section 11. COMMISSION REPORT.--No later than
25 December 15, 2002, the commission shall report to the



Walter D. Bradley, President
Senate



Margaret Larragoite, Chief Clerk
Senate



Ben Lujan, Speaker
House of Representatives



Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this 8th day of March, 2001



Governor Gary E. Johnson
State of New Mexico