

1 SENATE BILL 492

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

3 INTRODUCED BY

4 William P. Soules

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10 AN ACT

11 RELATING TO PUBLIC UTILITIES; ENACTING THE RATEPAYER RELIEF
12 ACT; PROVIDING FOR THE USE OF SECURITIZATION FINANCING UPON THE
13 ABANDONMENT OF GENERATION FACILITIES OPERATED OR LEASED BY AN
14 ELECTRICAL UTILITY; AUTHORIZING A CHARGE TO PAY INTEREST AND
15 PRINCIPAL ON SECURITIZATION BONDS; PROVIDING A PLEDGE THAT THE
16 STATE WILL NOT IMPAIR CHARGES OR THE RIGHTS OF BONDHOLDERS;
17 PROVIDING DUTIES AND POWERS OF THE PUBLIC REGULATION COMMISSION
18 REGARDING SECURITIZATION FINANCING.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

21 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
22 cited as the "Ratepayer Relief Act".

23 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
24 Ratepayer Relief Act:

25 A. "ancillary agreement" means a bond, insurance

1 policy, letter of credit, reserve account, surety bond,
2 interest rate lock or swap arrangement, hedging arrangement,
3 liquidity or credit support arrangement or other financial
4 arrangement entered into in connection with securitization
5 bonds that is designed to promote the credit quality and
6 marketability of the securitization bonds or to mitigate the
7 risk of an increase in interest rates;

8 B. "assignee" means a person who receives an
9 interest in property when the property is sold, assigned,
10 transferred or conveyed, other than as security, and any
11 successor to the person;

12 C. "bondholder" means the holder or owner of
13 securitization bonds;

14 D. "charge" means a non-bypassable charge, separate
15 and apart from a qualifying utility's base rates, that is paid
16 by all customers of the qualifying utility for the recovery of
17 securitization costs;

18 E. "commission" means the public regulation
19 commission;

20 F. "customer" means a person that takes electric
21 distribution or electric transmission service from a qualifying
22 utility, or its successor, for consumption of electricity in
23 the state;

24 G. "financing costs" means the reasonable and
25 prudent costs incurred to issue and administer securitization

1 bonds as approved by the commission in a financing order;

2 H. "financing order" means an order of the
3 commission that authorizes the issuance of securitization
4 bonds, authorizes the charge and creates property;

5 I. "financing party" means a holder of
6 securitization bonds and a trustee, collateral agent, a party
7 under an ancillary agreement or any other person acting for the
8 benefit of holders of securitization bonds;

9 J. "non-bypassable" means that the payment of
10 charges by any existing or future customer located within a
11 qualifying utility's certificated service territory may not be
12 avoided;

13 K. "property" means the rights and interests of an
14 assignee under a financing order:

15 (1) for full payment and recovery of all
16 securitization costs identified in the financing order,
17 including all revenue or other proceeds arising from those
18 rights and interests; and

19 (2) to impose, bill, collect and receive
20 revenue;

21 L. "qualifying generating facility" means an
22 electric generating facility composed of one or more generating
23 units that:

24 (1) has been granted a certificate of public
25 convenience and for which abandonment authority is granted by

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1 the commission after December 31, 2019; and

2 (2) is owned or leased, in whole or in part,
3 by a qualifying utility;

4 M. "qualifying utility" means a public utility, as
5 defined in Section 62-3-3 NMSA 1978, that owns, operates,
6 leases or controls any plant, property or facility for the
7 generation, transmission or distribution of electricity to or
8 for the public in the state;

9 N. "securitization bonds" means corporate
10 securities, including senior secured bonds, debentures, notes,
11 certificates of participation, certificates of beneficial
12 interest, certificates of ownership or other evidences of
13 indebtedness or ownership, that are issued by a qualifying
14 utility or an assignee under a financing order, the proceeds of
15 which are used to recover, finance or refinance commission-
16 approved securitization costs and financing costs;

17 O. "securitization costs":

18 (1) include:

19 (a) the undepreciated investment in a
20 qualifying generating facility that is being abandoned, as of
21 the date of abandonment, deemed by the commission to be the
22 financial obligation of the utility's ratepayers;

23 (b) other costs associated with the
24 abandonment of a qualifying generating facility that are deemed
25 reasonable and prudent by the commission;

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1 (c) reasonable and prudent preliminary
2 and continuing costs associated with and required for the
3 issuance of a financing order and subsequent financing; and

4 (d) financing costs; and

5 (2) do not include any monetary penalty, fine
6 or forfeiture assessed against a qualifying utility by a
7 government agency or court under a federal or state
8 environmental statute, rule or regulation;

9 P. "securitization revenue" means all revenue
10 collected by a qualifying utility through a charge;

11 Q. "stranded asset" means the portion of the
12 undepreciated investment in a qualifying generating facility
13 that is being abandoned, deemed by the commission to be the
14 financial obligation of the utility's ratepayers who will not
15 be provided electricity for that obligation; and

16 R. "successor" means a legal entity that succeeds
17 by operation of law to the rights and obligations of another
18 legal entity under a bankruptcy, reorganization, restructuring,
19 other insolvency proceeding, merger, acquisition, consolidation
20 or sale or transfer of assets.

21 SECTION 3. [NEW MATERIAL] ABANDONMENT.--

22 A. A qualifying utility may apply to the commission
23 to abandon a generating facility in accordance with the
24 provisions of Section 62-9-5 NMSA 1978. In its application,
25 the utility may also apply for a financing order under the

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1 Ratepayer Relief Act to recover securitization costs.

2 B. Regardless of whether the utility applies for a
3 financing order upon application for abandonment, the
4 commission, on its own motion, may require the use of
5 securitization bonds and thereby issue a financing order.

6 C. The commission may issue a financing order if it
7 determines that the:

- 8 (1) abandonment should be granted;
9 (2) abandonment creates a stranded asset; and
10 (3) use of securitization bonds results in
11 lower costs for ratepayers while allowing the qualifying
12 utility to recover approved securitization costs.

13 D. If an application for approval to abandon a
14 qualifying generating facility is pending before the commission
15 on the effective date of the Ratepayer Relief Act, the
16 qualifying utility may file a separate application for a
17 financing order and the commission shall consolidate the
18 application for a financing order with the pending application
19 for abandonment. The commission may also, on its own motion,
20 consolidate the requirement for a financing order with the
21 pending application for abandonment. If consolidation as
22 described in this subsection occurs, the time periods
23 prescribed by the Ratepayer Relief Act shall apply to the
24 consolidated case as of the date of the consolidation.

25 SECTION 4. [NEW MATERIAL] FINANCING ORDER--APPLICATION--

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1 CONTENTS.--

2 A. A qualifying utility may apply to the commission
3 for a financing order. In its application, the qualifying
4 utility shall seek commission approval to issue securitization
5 bonds in one or more series; to impose, charge and collect
6 charges; and to create property related to the abandonment of a
7 qualifying generating facility that was previously approved by
8 the commission. The commission shall take final action to
9 approve, deny or modify an application for a financing order
10 within one hundred twenty days from the date the application
11 was submitted or within one hundred twenty days from the date
12 of final approval of the related abandonment application,
13 whichever is later.

14 B. In addition to any other information required by
15 the commission, an application for a financing order shall
16 include the following:

17 (1) an estimated schedule for the abandonment
18 of any facility for which the costs are to be financed by the
19 securitization bond financing;

20 (2) an estimate of the net present value of
21 the qualifying utility's customer savings expected to result if
22 the financing order is issued as determined by a net present
23 value comparison between the costs to customers that are
24 expected to result from the financing with securitization bonds
25 and the costs that would result from the application of

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1 traditional utility rate financing mechanisms for the same
2 purposes;

3 (3) one or more alternative financing
4 scenarios in addition to the preferred scenario contained in
5 the application;

6 (4) a description of the non-bypassable
7 charges required to be paid by customers within the qualifying
8 utility's certificated service territory for recovery of
9 securitization costs; and

10 (5) a proposed methodology for allocating the
11 revenue requirement for the charges among customer classes.

12 SECTION 5. [NEW MATERIAL] FINANCING ORDER--ISSUANCE--
13 TERMS OF BONDS--NOTICE AND HEARING--STANDARD OF REVIEW--
14 MANDATORY FINDINGS--RATE REDUCTION--IRREVOCABILITY--
15 REFINANCING--NONIMPAIRMENT.--

16 A. After a hearing on an application for a
17 financing order and upon notice, if the hearing and notice are
18 required by the commission, the commission may issue a
19 financing order if the commission finds that:

20 (1) the securitization costs described in the
21 application are reasonable;

22 (2) the proposed issuance of securitization
23 bonds and the imposition and collection of charges:

24 (a) are just and reasonable;

25 (b) are consistent with the public

1 interest; and

2 (c) constitute a reasonable and prudent
3 mechanism for the financing of the securitization costs
4 described in the application; and

5 (3) the proposed structuring, marketing and
6 pricing of the securitization bonds are reasonably expected to
7 lower net present value costs to customers and mitigate rate
8 impacts to customers relative to traditional utility rate
9 financing mechanisms.

10 B. The financing order shall:

11 (1) determine the maximum amount of
12 securitization costs that may be financed from proceeds of
13 securitization bonds authorized by the financing order;

14 (2) describe the proposed customer billing
15 mechanism for charges and include a finding that the mechanism
16 is just and reasonable;

17 (3) describe the financing costs that may be
18 recovered through charges and the period over which the costs
19 may be recovered, which period shall end no earlier than the
20 date of final legal maturity of the securitization bonds;

21 (4) describe the property that is created and
22 that may be used to pay, and secure the payment of, the
23 securitization bonds and financing costs authorized in the
24 financing order;

25 (5) authorize the qualifying utility to

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1 finance securitization costs through the issuance of one or
2 more series of securitization bonds; provided that a qualifying
3 utility shall not be required to secure a separate financing
4 order for each issuance of securitization bonds or for each
5 scheduled phase of the previously approved abandonment of
6 qualifying generating facility approved in the financing order;

7 (6) include a mechanism for making expeditious
8 periodic adjustments in the charges that customers are required
9 to pay under the financing order and for making any adjustments
10 that are necessary to correct for any over- or under-collection
11 of the charges in past periods, or to otherwise guarantee the
12 timely payment of securitization bonds and financing costs and
13 other required amounts and charges payable in connection with
14 securitization bonds;

15 (7) specify the degree of flexibility afforded
16 to the qualifying utility in establishing the terms and
17 conditions of the securitization bonds, including repayment
18 schedules, expected interest rates and other financing costs;
19 provided that the scheduled final maturity of the
20 securitization bonds shall be no longer than thirty years from
21 the first issue date of the securitization bonds;

22 (8) specify the timing of actions required by
23 the order so that:

24 (a) the securitization bonds are issued
25 as soon as feasible following the issuance of the financing

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1 order, independent of the schedule of closing and
2 decommissioning of any qualifying generating facility; and
3 (b) the qualifying utility files to
4 adjust its rates as required in Subsection D of this section
5 simultaneously with the inception of the charges and
6 independently of the schedule of closing and decommissioning of
7 any qualifying generating facility;

8 (9) specify a future ratemaking process to
9 reconcile any difference between the projected costs included
10 in the amount financed by securitization bonds and the final
11 actual securitization costs approved by the financing order.
12 The reconciliation may affect the qualifying utility's base
13 rates or any rider but shall not affect the amount of the
14 securitization bonds or the associated charges to be paid by
15 customers;

16 (10) ensure that the structuring and pricing
17 of the securitization bonds result in the lowest securitization
18 bond charges consistent with market conditions and the terms of
19 the financing order;

20 (11) specify the purposes related to providing
21 utility service to customers for which the proceeds from the
22 issuance of securitization bonds may be used, including any
23 specific directions for the use of the proceeds; and

24 (12) include any additional findings or
25 conclusions deemed appropriate by the commission.

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1 C. A financing order shall allow, and may require,
2 the creation of a qualifying utility's property to be
3 conditioned upon, and simultaneous with, the sale or other
4 transfer of the property to an assignee and the pledge of the
5 property to secure securitization bonds.

6 D. A financing order shall require the qualifying
7 utility, simultaneously with the imposition of charges, to
8 reduce its rates through a reduction in base rates or by a
9 negative rider on customer bills in an amount equal to the
10 revenue requirement associated with the qualifying utility's
11 assets being financed by securitization bonds.

12 E. The commission shall ensure that securitization
13 bonds receive the broadest possible distribution, and that the
14 securitization bonds are offered to New Mexico residents and
15 investment funds for the benefit of New Mexico residents.

16 F. A financing order shall remain in effect until
17 the securitization bonds issued, as authorized by the financing
18 order, have been paid in full and all financing costs relating
19 to the securitization bonds have been paid in full. A
20 financing order shall also remain in effect and unabated
21 notwithstanding the bankruptcy, reorganization or insolvency of
22 the qualifying utility to which the financing order applies, or
23 of any affiliate, successor or assignee of the qualifying
24 utility. A financing order shall be irrevocable, and the
25 commission shall not reduce, impair, postpone or terminate

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1 charges approved in a financing order or impair property or the
2 collection or recovery of securitization revenue.

3 G. Notwithstanding the provisions of Subsection A
4 of this section, upon its own motion or at the request of a
5 qualifying utility or any other person, the commission may
6 commence a proceeding and issue a subsequent financing order
7 that provides for refinancing, retiring or refunding
8 securitization bonds issued under the original financing order
9 if:

10 (1) the commission determines that the
11 subsequent financing order meets the same criteria as specified
12 in the original financing order; and

13 (2) the modification provided for in the
14 subsequent financing order does not impair in any way the
15 covenants and terms of the securitization bonds to be
16 refinanced, retired or refunded.

17 SECTION 6. [NEW MATERIAL] POWERS AND DUTIES OF THE
18 COMMISSION.--

19 A. Except as otherwise provided in Subsection B of
20 this section, if the commission issues a financing order to a
21 qualifying utility, the commission shall not, in exercising its
22 powers and carrying out its duties:

23 (1) consider the securitization bonds issued
24 under the financing order to be debt of the qualifying utility;

25 (2) consider the charges paid under the

1 financing order to be revenue of the qualifying utility;

2 (3) consider the securitization costs or
3 financing costs specified in the financing order to be the
4 regulated costs or to give rise to assets of the qualifying
5 utility; or

6 (4) determine any prudent action taken by a
7 qualifying utility that is consistent with the financing order
8 to be unjust or unreasonable.

9 B. Nothing in Subsection A of this section shall:

10 (1) affect the authority of the commission to
11 apply or modify any billing mechanism designed to recover
12 charges;

13 (2) prevent or preclude the commission from
14 investigating the compliance of a qualifying utility with the
15 terms and conditions of a financing order and requiring
16 compliance with the financing order; or

17 (3) prevent or preclude the commission from
18 imposing regulatory sanctions against a qualifying utility for
19 failure to comply with the terms and conditions of a financing
20 order or the requirements of the Ratepayer Relief Act.

21 C. In addition to any other power and duties of the
22 commission:

23 (1) the commission shall perform comprehensive
24 due diligence in its evaluation of an application for a
25 financing order and shall oversee the process used to

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1 structure, market and price securitization bonds;

2 (2) the commission may attach such conditions
3 to the approval of a financing order as the commission deems
4 appropriate to optimize the financial benefits or minimize the
5 financial risks of the transaction to customers;

6 (3) the commission may specify details of the
7 process used to structure, market and price securitization
8 bonds, including the selection of the underwriter or
9 underwriters;

10 (4) the commission shall review and determine
11 the reasonableness of all proposed up-front and ongoing
12 financing costs; and

13 (5) the commission shall ensure that the
14 structuring, marketing and pricing of securitization bonds
15 optimizes net present value customer savings, consistent with
16 market conditions and the terms of the financing order.

17 D. Within one hundred twenty days after the
18 issuance of securitization bonds, the applicant qualifying
19 utility shall file with the commission information regarding
20 the actual up-front and ongoing financing costs of the
21 securitization bonds. The commission shall review the prudence
22 of the qualifying utility's action to determine whether the
23 financing costs resulted in the lowest overall costs that were
24 reasonably consistent with both market conditions at the time
25 of the sale of the securitization bonds and the terms of the

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1 financing order. If the commission determines that the
2 utility's actions were not prudent, were not designed to result
3 in the lowest overall costs that were reasonably consistent
4 with both market conditions at the time of the sale of the
5 securitization bonds and the terms of the financing order or
6 were inconsistent with the financing order, the commission may
7 apply any remedies that the commission determines are necessary
8 to achieve the intent of this section and the intent of the
9 terms of the financing order, except that the commission shall
10 not apply any remedy that has the effect, directly or
11 indirectly, of impairing the security for the securitization
12 bonds.

13 E. In performing its responsibilities under the
14 Ratepayer Relief Act, the commission may engage outside
15 financial advisors and other consultants and counsel with
16 substantial experience representing regulatory bodies in
17 securitized investor-owned electric utility ratepayer-backed
18 bond financing similar to securitization bonds. The expenses
19 associated with such engagement shall be included as financing
20 costs and included in charges, shall not be an obligation of
21 the state and shall be assigned solely to the financing
22 transaction.

23 F. If a qualifying utility's application for a
24 financing order is denied or withdrawn, or if for any reason
25 securitization bonds are not issued, the commission's costs of

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1 retaining expert consultants and counsel, as authorized in
2 Subsection E of this section, shall be paid by the qualifying
3 utility and shall be considered by the commission as a prudent
4 deferred expense for recovery in the qualifying utility's next
5 general rate case.

6 SECTION 7. [NEW MATERIAL] AGGRIEVED PARTIES--REHEARING--
7 JUDICIAL REVIEW.--

8 A. A financing order is a final order of the
9 commission. A party aggrieved by the issuance of a financing
10 order may apply to the commission for a rehearing in accordance
11 with Section 62-10-16 NMSA 1978; provided that the party shall
12 apply no later than ten calendar days after issuance of the
13 financing order. An application for rehearing shall be deemed
14 denied if not acted upon by the commission within ten calendar
15 days after the filing of the application.

16 B. Following a rehearing as provided for in
17 Subsection A of this section, an aggrieved party may file a
18 notice of appeal with the supreme court in accordance with
19 Section 62-11-1 NMSA 1978.

20 SECTION 8. [NEW MATERIAL] PROPERTY.--

21 A. Property that is described in a financing order
22 shall constitute an existing present property right or interest
23 even though the imposition and collection of charges depend on
24 whether the qualifying utility to which the financing order is
25 issued, or its successor, is performing its servicing functions

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1 relating to the collection of the charges and on future
2 electricity consumption. The property right or interest exists
3 regardless of whether the revenues or proceeds arising from the
4 property have been billed, have accrued or have been collected
5 and notwithstanding the fact that the value or amount of the
6 property right or interest is dependent on the future provision
7 of service to customers by the qualifying utility or its
8 successor or assignee.

9 B. Property described in a financing order shall
10 exist until all securitization bonds issued under the financing
11 order are paid in full and all financing costs and other
12 authorized costs of the securitization bonds have been
13 recovered in full.

14 C. All or any portion of property described in a
15 financing order issued to a qualifying utility may be
16 transferred, sold, conveyed or assigned to a successor or
17 assignee that is wholly owned, directly or indirectly, by the
18 qualifying utility and that is created for the limited purpose
19 of acquiring, owning or administering property or issuing
20 securitization bonds as authorized by the financing order. All
21 or any portion of property may be pledged to secure
22 securitization bonds issued under a financing order, amounts
23 payable to financing parties and to counterparties under any
24 ancillary agreements and other financing costs. Each transfer,
25 sale, conveyance, assignment or pledge by a qualifying utility,

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1 or an affiliate of a qualifying utility, is a transaction in
2 the ordinary course of business.

3 D. If a qualifying utility defaults on any required
4 remittance of charges arising from property described in a
5 financing order, a court, upon application by an interested
6 party and without limiting any other remedies available to the
7 applying party, shall order the sequestration and payment of
8 the revenues arising from the property to the financing
9 parties. Any such financing order remains in full force and
10 effect notwithstanding any reorganization, bankruptcy or other
11 insolvency proceedings with respect to the qualifying utility
12 or its successors or assignees.

13 E. The interest of a transferee, purchaser,
14 acquirer, assignee or pledgee in property specified in a
15 financing order issued to a qualifying utility, and in the
16 revenue and collections arising from that property, is not
17 subject to setoff, counterclaim, surcharge or defense by the
18 qualifying utility or any other person or in connection with
19 the reorganization, bankruptcy or other insolvency of the
20 qualifying utility or any other entity.

21 F. A successor to a qualifying utility, whether
22 pursuant to a reorganization, bankruptcy or other insolvency
23 proceeding or to a merger or acquisition, sale, other business
24 combination or transfer by operation of law, as a result of
25 electric utility restructuring or otherwise, shall perform and

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1 satisfy all obligations of, and have the same duties and rights
2 under a financing order as, the qualifying utility to which the
3 financing order applies, and shall perform the duties and
4 exercise the rights in the same manner and to the same extent
5 as the qualifying utility, including collecting and paying to
6 any person entitled to receive them the revenues, collections,
7 payments or proceeds of property described in the financing
8 order.

9 SECTION 9. [NEW MATERIAL] SECURITIZATION BONDS--LEGAL
10 INVESTMENTS.--

11 A. Banks, trust companies, savings and loan
12 associations, insurance companies, executors, administrators,
13 guardians, trustees and other fiduciaries may legally invest
14 any money within their control in securitization bonds.

15 Political subdivisions may invest public funds in
16 securitization bonds.

17 B. Securitization bonds issued under a financing
18 order are not debt of, or a pledge of, the faith and credit or
19 taxing power of the state, any agency of the state or any
20 political subdivision of the state. Holders of securitization
21 bonds have no right to have taxes levied by the state or by any
22 political subdivision of the state for the payment of the
23 principal or interest on securitization bonds. The issuance of
24 securitization bonds shall not directly, indirectly or
25 contingently obligate the state or a political subdivision of

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1 the state to levy any tax or make any appropriation for payment
2 of principal or interest on the securitization bonds.

3 SECTION 10. [NEW MATERIAL] STATE PLEDGE NOT TO IMPAIR.--

4 A. The state pledges that it shall not take or
5 allow any action that impairs the value of property or, except
6 as allowed pursuant to the Ratepayer Relief Act, reduce, alter
7 or impair charges that are imposed, collected and remitted for
8 the benefit of the bondholders until the entire principal of
9 and interest on securitization bonds is paid in full.

10 B. A person who issues securitization bonds is
11 permitted to include the pledge specified in Subsection A of
12 this section in the securitization bonds, ancillary agreements
13 and documentation related to the issuance and marketing of the
14 securitization bonds.

15 SECTION 11. [NEW MATERIAL] FINANCING PARTIES NOT PUBLIC
16 UTILITIES.--An assignee or financing party that is not
17 regulated by the commission shall not become subject to
18 commission regulation solely as a result of engaging in any
19 transaction authorized by or described in the Ratepayer Relief
20 Act.

21 SECTION 12. [NEW MATERIAL] CONFLICTS.--

22 A. If any provision of the Ratepayer Relief Act
23 conflicts with any other law regarding the attachment,
24 assignment, perfection, effect of perfection or priority of any
25 security interest in or transfer of property, that act shall

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1 govern to the extent of the conflict.

2 B. Nothing in the Ratepayer Relief Act precludes a
3 qualifying utility, to which the commission has initially
4 issued a financing order, from applying to the commission for:

5 (1) a subsequent financing order amending an
6 existing financing order; or

7 (2) an order approving the issuance of
8 securitization bonds to refund all or a portion of an
9 outstanding series of securitization bonds.

10 SECTION 13. [NEW MATERIAL] SECURITY INTERESTS--
11 APPLICABILITY OF OTHER ACTS--CREATION OF SECURITY
12 INTEREST--ATTACHMENT ON FILING--PRIORITY OVER OTHER LIENS.--

13 A. Except as otherwise provided in this section,
14 the creation, perfection and enforcement of a security interest
15 in property to secure the repayment of the principal of and
16 interest on securitization bonds, amounts payable pursuant to
17 an ancillary agreement and other financing costs are governed
18 by this section. This section shall be deemed to supersede the
19 provisions of the Uniform Commercial Code and the Public
20 Utility Act to the extent those provisions are inconsistent
21 with this section.

22 B. The description or reference to property in a
23 transfer or security agreement and a financing statement is
24 sufficient only if the description or reference refers to the
25 Ratepayer Relief Act and the financing order creating the

1 property. This section applies to all purported transfers of,
2 grants of liens on, or security interests in, property.

3 C. A security interest in property is created,
4 valid and binding at the latest of when:

5 (1) the financing order is issued;

6 (2) a security agreement is executed and
7 delivered; or

8 (3) value is received for the securitization
9 bonds.

10 D. The security interest attaches without any
11 physical delivery of collateral or other act, and the lien of
12 the security interest shall be valid, binding and perfected
13 against all parties having claims of any kind against the
14 person granting the security interest, regardless of whether
15 the parties have notice of the lien, on the filing of a
16 financing statement with the secretary of state. The secretary
17 of state shall maintain the financing statement in the same
18 manner and in the same recordkeeping system maintained for
19 financing statements filed pursuant to Chapter 55, Article 9
20 NMSA 1978; provided that financing statements filed pursuant to
21 this section shall be effective until a termination statement
22 is filed.

23 E. A security interest in property is a
24 continuously perfected security interest and has priority over
25 any other lien that may subsequently attach to the property

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1 unless the holder of the security interest has agreed in
2 writing otherwise.

3 F. The priority of a security interest in property
4 is not affected by the commingling of securitization revenues
5 with other money. Any pledgee or secured party shall have a
6 perfected security interest in the amount of all securitization
7 revenues that are deposited in any account of the qualifying
8 utility and any other security interest that may apply to those
9 funds shall be terminated when they are transferred to a
10 segregated account for the assignee or a financing party.

11 G. No order of the commission and no application of
12 the adjustment mechanism will affect the validity, perfection
13 or priority of a security interest in or transfer of property.

14 SECTION 14. [NEW MATERIAL] SALE OF PROPERTY--PERFECTING
15 INTERESTS--ABSOLUTE TRANSFER AND TRUE SALE REQUIREMENTS.--

16 A. A sale, assignment or transfer of property is an
17 absolute transfer and true sale of, and not a pledge of or
18 secured transaction relating to, the seller's right, title and
19 interest in, to and under the property if the documents
20 governing the transaction expressly state that the transaction
21 is a sale or other absolute transfer. A transfer of an
22 interest in property may be created only when all of the
23 following have occurred:

24 (1) the financing order creating and
25 describing the property has become effective;

1 (2) the documents evidencing the transfer of
2 the property have been executed and delivered to the assignee;
3 and

4 (3) value has been received.

5 B. Upon the filing of a financing statement with
6 the secretary of state, a transfer of an interest in property
7 is perfected against all third persons, including any judicial
8 lien or other lien creditors or any claims of the seller or
9 creditors of the seller, other than creditors holding a prior
10 security interest, ownership interest or assignment in the
11 property previously perfected.

12 C. The characterization of a sale, assignment or
13 transfer as an absolute transfer and true sale and the
14 corresponding characterization of the property interest of the
15 assignee shall not be affected or impaired by the existence or
16 occurrence of any of the following:

17 (1) commingling of securitization revenue with
18 other money;

19 (2) the retention by the seller of a partial
20 or residual interest, including an equity interest, in the
21 property, whether direct or indirect, or whether subordinate or
22 otherwise; or the right to recover costs associated with taxes,
23 franchise fees or license fees imposed on the collection of
24 securitization revenue;

25 (3) any recourse that the purchaser may have

underscoring material = new
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1 against the seller;

2 (4) any indemnification rights, obligations or
3 repurchase rights made or provided by the seller;

4 (5) an obligation of the seller to collect
5 securitization revenues on behalf of an assignee;

6 (6) the treatment of the sale, assignment or
7 transfer for tax, financial reporting or other purposes;

8 (7) any subsequent financing order amending a
9 financing order; or

10 (8) any application of an adjustment mechanism
11 as authorized by the financing order.

12 SECTION 15. [NEW MATERIAL] EXPENDITURE OF SECURITIZATION
13 BOND PROCEEDS.--A qualifying utility shall use the proceeds
14 from the issuance of securitization bonds only for purposes
15 related to providing utility service to customers.

16 SECTION 16. [NEW MATERIAL] COMMISSION AUTHORIZED TO
17 PROMULGATE RULES.--The commission shall have the authority to
18 promulgate rules to implement the provisions of the Ratepayer
19 Relief Act. Any rule or portion of a rule promulgated under
20 the authority delegated in this section shall become effective
21 only if it complies with and is subject to all of the
22 provisions of the Ratepayer Relief Act.

23 SECTION 17. [NEW MATERIAL] CHOICE OF LAW.--The laws of
24 New Mexico as set forth in the Ratepayer Relief Act shall
25 govern the validity, enforceability, attachment, perfection,

.210978.2ms

underscoring material = new
~~[bracketed material] = delete~~

1 priority and exercise of remedies with respect to a security
2 interest in property, a charge or a financing order.

3 SECTION 18. [NEW MATERIAL] VALIDITY ON ACTIONS IF ACT
4 HELD INVALID.--

5 A. Effective on the date that securitization bonds
6 are first issued under the Ratepayer Relief Act, if any
7 provision of that act is invalidated, superseded, replaced,
8 repealed or expires for any reason, that occurrence shall not
9 affect the validity of any prior action allowed pursuant to the
10 Ratepayer Relief Act that is taken by the commission, a
11 qualifying utility, an assignee or any other person, and any
12 such action shall remain in full force and effect with respect
13 to all securitization bonds issued or authorized in a financing
14 order.

15 B. Except as otherwise expressly provided in the
16 Ratepayer Relief Act, the provisions of that act are severable.
17 If any provision of the Ratepayer Relief Act or its application
18 is held invalid, that invalidity shall not affect other
19 provisions or applications that can be given effect without the
20 invalid provision or application.