

1 SENATE BILL 47

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO PUBLIC UTILITIES; ENACTING THE ENERGY REDEVELOPMENT
12 BOND ACT; AUTHORIZING CERTAIN UTILITIES TO ISSUE BONDS PURSUANT
13 TO A FINANCING ORDER ISSUED BY THE PUBLIC REGULATION
14 COMMISSION; PROVIDING PROCEDURES FOR REHEARING AND JUDICIAL
15 REVIEW; PROVIDING LIMITS ON THE JURISDICTION OF THE COMMISSION;
16 CREATING SECURITY INTERESTS IN CERTAIN PROPERTY; PROVIDING FOR
17 THE PERFECTION OF INTERESTS IN CERTAIN PROPERTY; EXEMPTING
18 ENERGY REDEVELOPMENT CHARGES FROM FRANCHISE AND CERTAIN OTHER
19 GOVERNMENT FEES; PROVIDING FOR NONIMPAIRMENT OF ENERGY
20 REDEVELOPMENT CHARGES AND BONDS; PROVIDING FOR CONFLICTS IN
21 LAW; PROVIDING THAT ACTIONS TAKEN PURSUANT TO THE ENERGY
22 REDEVELOPMENT BOND ACT SHALL NOT BE INVALIDATED IF THE ACT IS
23 HELD INVALID.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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1 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
2 cited as the "Energy Redevelopment Bond Act".

3 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
4 Energy Redevelopment Bond Act:

5 A. "adjustment mechanism" means a formula-based
6 calculation used to make adjustments to the amount of the
7 energy redevelopment charges that are necessary to correct for
8 any over-collection or under-collection of the energy
9 redevelopment charges and to provide for the timely and
10 complete payment of scheduled principal and interest on the
11 energy redevelopment bonds and the payment and recovery of
12 other financing costs in accordance with the financing order;

13 B. "ancillary agreement" means a bond, insurance
14 policy, letter of credit, reserve account, surety bond,
15 interest rate lock or swap arrangement, hedging arrangement,
16 liquidity or credit support arrangement or other similar
17 agreement or arrangement entered into in connection with the
18 issuance of an energy redevelopment bond that is designed to
19 promote the credit quality and marketability of the bond or to
20 mitigate the risk of an increase in interest rates;

21 C. "assignee" means a person or legal entity to
22 which an interest in energy redevelopment property is sold,
23 assigned, transferred or conveyed, other than as security, and
24 any successor to or subsequent assignee of such a person or
25 legal entity;

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1 D. "bondholder" means a holder or owner of an
2 energy redevelopment bond;

3 E. "commission" means the public regulation
4 commission;

5 F. "credit rating" means the investment rating for
6 the unsecured debt obligations of a qualifying utility as
7 published by at least one nationally recognized statistical
8 rating organization as recognized by the United States
9 securities and exchange commission;

10 G. "energy redevelopment bond" means a bond,
11 debenture, note, certificate of participation, certificate of
12 beneficial interest, certificate of ownership or other
13 evidences of indebtedness or ownership that is issued by a
14 qualifying utility or an assignee pursuant to a financing
15 order, the proceeds of which are used directly or indirectly to
16 recover, finance or refinance energy redevelopment costs and
17 financing costs that are secured by or payable from energy
18 redevelopment property and that are non-recourse to the
19 qualifying utility;

20 H. "energy redevelopment charge" means a non-
21 bypassable charge paid by all customers of a qualifying utility
22 for the recovery of energy redevelopment costs and financing
23 costs and collected by a qualifying utility or a collection
24 agent;

25 I. "energy redevelopment costs" means costs

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1 incurred or expected to be incurred by a qualifying utility
2 that are caused by the abandonment of or associated with
3 qualifying generating facilities, that:

4 (1) includes:

5 (a) costs relating to regulatory assets
6 and costs associated with decommissioning, reclamation of mines
7 that provide coal to qualifying generating facilities, contract
8 termination fees, engineering work, severance pay, job training
9 and the undepreciated investment of property that is abandoned;

10 (b) any demolition or similar cost that
11 exceeds the salvage value of the property and any other cost
12 that has been incurred or will be incurred by the qualifying
13 utility relating to the qualifying generating facilities that
14 have not been fully recovered at the time of abandonment;

15 (c) costs that have not been determined
16 to be unrecoverable from customers by the time of filing the
17 application for a financing order; and

18 (d) preliminary costs associated with
19 activities that are incurred prior to the issuance of a
20 financing order and that are to be reimbursed from the proceeds
21 of energy redevelopment bonds; and

22 (2) does not include:

23 (a) the costs of investing in
24 replacement power resources; or

25 (b) any monetary penalty, fine or

1 forfeiture assessed against a qualifying utility by a
2 government agency or court under a federal or state
3 environmental statute, rule or regulation;

4 J. "energy redevelopment property" means:

5 (1) the rights and interests of a qualifying
6 utility or an assignee under a financing order, including the
7 right to impose, charge, collect and receive energy
8 redevelopment charges in the amount necessary to provide for
9 the full payment and recovery of all energy redevelopment costs
10 and financing costs identified in the financing order as costs
11 to be financed by energy redevelopment bonds and to obtain
12 adjustments to the charges as provided in Section 5 of the
13 Energy Redevelopment Bond Act, and any interest in such rights
14 and interests; and

15 (2) all revenues, receipts, collections,
16 rights to payment, payments, money, claims or other proceeds
17 arising from the rights and interests specified in Paragraph
18 (1) of this subsection;

19 K. "energy redevelopment revenues" means all
20 revenues, receipts, collections, claims, rights to payments,
21 payments, money or other proceeds arising from energy
22 redevelopment property and collected by a qualifying utility or
23 other collection agent that is attributable to an energy
24 redevelopment charge;

25 L. "financing cost" means the costs incurred by the

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1 qualifying utility or an assignee to issue, service, repay or
2 refinance energy redevelopment bonds, whether incurred or paid
3 on issuance of the bonds or over the life of the bonds, and
4 approved for recovery by the commission in a financing order.

5 "Financing cost" includes:

6 (1) principal, interest, acquisition,
7 defeasance and redemption premiums that are payable on energy
8 redevelopment bonds;

9 (2) any payment required under an ancillary
10 agreement and any amount required to fund or replenish a
11 reserve account or other account established under any
12 indenture, ancillary agreement or other financing document
13 relating to the energy redevelopment bonds;

14 (3) any costs related to issuing, supporting,
15 repaying, servicing and refunding energy redevelopment bonds or
16 the application for a financing order, including servicing fees
17 and expenses, accounting and auditing fees and expenses,
18 trustee fees and expenses, legal fees and expenses,
19 administrative fees and expenses, consulting fees and expenses,
20 placement and underwriting fees and expenses, printing and
21 edgarizing fees, capitalized interest, rating agency fees,
22 government registration fees and stock exchange listing and
23 compliance and filing fees;

24 (4) any costs incurred to obtain modifications
25 of or amendments to any indenture, financing agreement,

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1 security agreement or similar agreement or instrument relating
2 to any existing secured or unsecured obligation of a qualifying
3 utility or an affiliate of a qualifying utility, or any costs
4 incurred by or allocated to a qualifying utility to obtain any
5 consent, release, waiver or approval from any holder of such an
6 obligation, that are necessary to be incurred to permit a
7 qualifying utility to issue or cause the issuance of energy
8 redevelopment bonds;

9 (5) any taxes, fees, charges or other
10 assessments imposed on energy redevelopment revenues;

11 (6) any other costs and charges approved by
12 the commission for inclusion in an energy redevelopment charge;
13 and

14 (7) any other related costs that are approved
15 for recovery in the financing order;

16 M. "financing order" means an order of the
17 commission that:

18 (1) authorizes the issuance of energy
19 redevelopment bonds;

20 (2) authorizes the imposition, collection and
21 periodic adjustments of the energy redevelopment charge; and

22 (3) creates energy redevelopment property;

23 N. "financing parties" means:

24 (1) a trustee, collateral agent or other
25 person acting for the benefit of a bondholder; and

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1 (2) a party to an ancillary agreement or the
2 energy redevelopment bonds, the rights and obligations of which
3 relate to or depend upon the existence of energy redevelopment
4 property, the enforcement and priority of a security interest
5 in energy redevelopment property or the timely collection and
6 payment of energy redevelopment revenues;

7 O. "financing statement" means "financing
8 statement" as defined in the Uniform Commercial Code-Secured
9 Transactions;

10 P. "non-bypassable" means that the payment of an
11 energy redevelopment charge may not be avoided by an electric
12 service customer located within a utility service area and
13 shall be paid by the customer that receives electric delivery
14 service from the qualifying utility imposing the charge for as
15 long as the energy redevelopment bonds secured by the charge
16 are outstanding and the related financing costs have not been
17 recovered in full;

18 Q. "non-utility affiliate" means, with respect to
19 any qualifying utility, a person that:

20 (1) is an "affiliated interest", as that term
21 is used in the Public Utility Act, of a qualifying utility; and

22 (2) is not a "public utility", as that term is
23 used in the Public Utility Act, that provides retail utility
24 service to customers in the state;

25 R. "qualifying generating facility" means a coal-

1 fired electric generating facility that:

2 (1) has been granted a certificate of public
3 convenience and necessity and has generated electric energy for
4 ultimate sale to utility customers in the state before the
5 effective date of this section and for which abandonment
6 authority is granted after December 31, 2017; and

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

9 S. "qualifying utility" means a public utility
10 pursuant to Paragraph (1) of Subsection G of Section 62-3-3
11 NMSA 1978 that owns or leases all or a portion of a qualifying
12 generating facility and its successor or assignees;

13 T. "termination statement" means "termination
14 statement" as defined in the Uniform Commercial Code-Secured
15 Transactions;

16 U. "traditional utility financing mechanism" means
17 a return on investment at the qualifying utility's weighted
18 average cost of capital; and

19 V. "utility service area" means:

20 (1) the geographic area of the state in which
21 a qualifying utility provides electric delivery service to
22 customers at the time of issuance of a financing order; and

23 (2) for as long as energy redevelopment bonds
24 issued pursuant to a financing order are outstanding and the
25 related energy redevelopment costs and financing costs have not

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1 been recovered in full, any additions to or enlargements of the
2 geographic area, whether or not approved by the commission in a
3 formal proceeding.

4 SECTION 3. [NEW MATERIAL] FINANCING ORDER--APPLICATION.--

5 A. A qualifying utility may apply to the commission
6 for a financing order pursuant to this section. To obtain a
7 financing order, a qualifying utility shall obtain approval to
8 abandon a qualifying generating facility pursuant to Section
9 62-9-5 NMSA 1978. The application for the financing order may
10 be filed as part of the application for approval to abandon a
11 qualifying generating facility. The application may include a
12 request for the issuance of certificates of public convenience
13 and necessity pursuant to Section 62-9-1 NMSA 1978 for some or
14 all of any power supply resources that may be needed to replace
15 the power supplied by the qualifying generating facilities for
16 which abandonment authority is requested. The qualifying
17 utility may defer an application for certificates of public
18 convenience and necessity to a separate proceeding provided
19 that the application identifies potential adequate replacement
20 power resources that would be available at the time the
21 replacement power is needed to serve customers.

22 B. An application for a financing order shall
23 include:

24 (1) evidence that the applicant is a
25 qualifying utility;

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1 (2) a description of the qualifying generating
2 facility that the qualifying utility proposes to abandon or for
3 which abandonment authority was granted after December 31,
4 2017;

5 (3) an estimate of the energy redevelopment
6 costs associated with the abandonment of the qualifying
7 generating facility described in the application;

8 (4) the amount of the energy redevelopment
9 costs the qualifying utility proposes to finance through the
10 issuance of one or more series of energy redevelopment bonds;

11 (5) an estimate of the financing costs
12 associated with each series of energy redevelopment bonds
13 proposed to be issued;

14 (6) an estimate of the amount of the energy
15 redevelopment charges necessary to recover the energy
16 redevelopment costs and financing costs the qualifying utility
17 proposes to finance through the issuance of energy
18 redevelopment bonds and the proposed calculation thereof, which
19 estimate and calculation should take into account the estimated
20 date of issuance and estimated principal amount of each series
21 of energy redevelopment bonds proposed to be issued;

22 (7) a proposed methodology for allocating the
23 energy redevelopment costs among customer classes;

24 (8) a description of the proposed adjustment
25 mechanism;

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1 (9) an estimate, based on current market
2 conditions, of the cost savings on a net present value basis
3 over the proposed term of the energy redevelopment bonds to the
4 customers of the qualifying utility expected to result from the
5 financing of the energy redevelopment costs with energy
6 redevelopment bonds as compared to the use of traditional
7 utility financing mechanisms;

8 (10) an estimate of the date on which the
9 energy redevelopment bonds are expected to be issued and the
10 expected term over which the financing costs associated with
11 the issuance are expected to be recovered or, if the bonds are
12 expected to be issued in more than one series, the estimated
13 issuance date and expected term for each bond issuance;
14 provided that the maximum term for each bond issuance shall be
15 no longer than twenty-five years;

16 (11) identification of plans to sell, assign,
17 transfer or convey, other than as a security, interest in
18 energy redevelopment property, including identification of
19 assignees;

20 (12) identification of ancillary agreements
21 that may be necessary or appropriate;

22 (13) a description of a proposed ratemaking
23 process to reconcile any difference between the projected
24 pretax costs included in the amount of energy redevelopment
25 costs financed by energy redevelopment bonds and the final

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1 pretax energy redevelopment costs incurred by the qualifying
2 utility; and

3 (14) any other information reasonably required
4 by the commission to determine if approval to abandon a
5 qualifying generating facility or if any requests for
6 certificates of public convenience and necessity should be
7 granted.

8 C. Notice of an application for a financing order
9 shall be given to the parties of record in the qualifying
10 utility's most recent general rate case and published in
11 newspapers of general circulation in the qualifying utility's
12 service area in the state and in the county in the state in
13 which the qualifying generating facility proposed to be
14 abandoned is located and as otherwise may be ordered by the
15 commission.

16 SECTION 4. [NEW MATERIAL] FINANCING ORDER--ISSUANCE--
17 TERMS OF BONDS--NON-UTILITY AFFILIATE REQUIREMENTS--REPORTS TO
18 COMMISSION.--

19 A. The commission may approve an application for a
20 financing order without a formal hearing if no protest
21 establishing good cause for a formal hearing is filed within
22 thirty days of the date when notice is given of the filing of
23 the application for the financing order. The commission shall
24 issue an order granting or denying the application and the
25 final order on an accompanying application of the qualifying

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1 utility for approval to abandon the qualifying generating
2 facility within six months from the date the application for
3 the financing order is filed with the commission. For good
4 cause shown, the commission may extend the time for issuing the
5 order for an additional three months.

6 B. Failure to issue an order within the time
7 prescribed by Subsection A of this section shall be deemed
8 approval of the application as filed, including approval to
9 abandon the qualifying generating facility, if abandonment
10 approval was requested in, consolidated or joined with the
11 application for the financing order pursuant to Subsection B of
12 Section 3 of the Energy Redevelopment Bond Act, and approval of
13 the acquisition of any needed replacement power resources for
14 which a specific certificate of public convenience and
15 necessity was requested in the application. The commission
16 chair or the chair's designee shall, within two days after
17 expiration of the time prescribed by this subsection, issue an
18 order declaring that the application has been approved by
19 operation of law.

20 C. If an application for a financing order is
21 accompanied by a request for issuance of a certificate of
22 public convenience and necessity for replacement power
23 resources, this section provides an alternative time frame to
24 the time frame provided in Subsection C of Section 62-9-1 NMSA
25 1978 and the time frame specified in this section shall govern.

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1 D. The issuance of a financing order shall be the
2 only approval required for the authority granted in the
3 financing order.

4 E. The commission shall issue a financing order if
5 the commission finds that the:

6 (1) applicant is a qualifying utility and that
7 the facility being abandoned is a qualifying generating
8 facility;

9 (2) proposed issuance of energy redevelopment
10 bonds will result in cost savings to customers of the
11 qualifying utility on a net present value basis over the
12 projected term of the energy redevelopment bonds compared to
13 the use of traditional utility financing mechanisms; provided
14 that, in calculating the comparison, the commission shall not
15 exclude recovery of any energy redevelopment costs in
16 estimating the amount of costs to customers associated with
17 traditional utility financing mechanisms;

18 (3) estimate of the energy redevelopment
19 charges necessary to recover the energy redevelopment costs and
20 the financing costs the qualifying utility proposes to be
21 financed by energy redevelopment bonds and the proposed
22 calculation thereof are reasonable;

23 (4) proposed methodology for allocating the
24 energy redevelopment costs among customer classes is
25 reasonable;

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1 (5) proposed adjustment mechanism is
2 reasonable and complies with Section 5 of the Energy
3 Redevelopment Bond Act; and

4 (6) proposed ratemaking process to reconcile
5 any difference between the projected pretax costs included in
6 the amount of energy redevelopment costs financed by energy
7 redevelopment bonds and the final pretax energy redevelopment
8 costs incurred by the qualifying utility is reasonable and does
9 not affect the amount of the energy redevelopment bonds
10 proposed to be issued or the proposed energy redevelopment
11 charges.

12 F. A financing order shall include the following
13 provisions:

14 (1) approval for the qualifying utility to
15 issue energy redevelopment bonds as requested in the
16 application, to use energy redevelopment bonds to finance the
17 maximum amount of the energy redevelopment costs as requested
18 in the application and to use the proceeds thereof as provided
19 in Subsection A of Section 10 of the Energy Redevelopment Bond
20 Act;

21 (2) approval for the qualifying utility to
22 recover the financing costs requested in the application
23 through energy redevelopment charges, subject to the
24 application of the adjustment mechanism as provided in Section
25 5 of the Energy Redevelopment Bond Act, until the energy

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1 redevelopment bonds issued pursuant to the financing order and
2 the financing costs related to those bonds are paid in full;

3 (3) approval for the qualifying utility to
4 impose a non-bypassable energy redevelopment charge as a
5 separate line item on its customer bills;

6 (4) approval of the adjustment mechanism;

7 (5) a description of the energy redevelopment
8 property that is created by the financing order and that may be
9 used to pay, and secure the payment of, the energy
10 redevelopment bonds and financing costs authorized to be issued
11 in the financing order;

12 (6) approval of the energy redevelopment
13 charges necessary to recover the energy redevelopment costs and
14 the financing costs the qualifying utility proposes to be
15 financed by energy redevelopment bonds and the proposed
16 calculation thereof;

17 (7) approval of the allocation of the energy
18 redevelopment costs among customer classes;

19 (8) approval to enter into ancillary
20 agreements as necessary or appropriate;

21 (9) approval of any plans for selling,
22 assigning, transferring or conveying, other than as a security,
23 an interest in energy redevelopment property; and

24 (10) approval of a proposed ratemaking process
25 to reconcile any difference between the projected pretax costs

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1 included in the amount of energy redevelopment costs financed
2 by energy redevelopment bonds and the final pretax energy
3 redevelopment costs incurred by the qualifying utility, which
4 shall not affect the amount of the energy redevelopment bonds
5 proposed to be issued or the proposed energy redevelopment
6 charges.

7 G. A financing order may provide that the creation
8 of energy redevelopment property shall be simultaneous with the
9 sale of the energy redevelopment property to an assignee as
10 provided in the application and the pledge of the energy
11 redevelopment property to secure energy redevelopment bonds.

12 H. A financing order may authorize the qualifying
13 utility to issue more than one series of energy redevelopment
14 bonds for a maximum term of no more than twenty-five years for
15 each series. With such authorization, the qualifying utility
16 shall not subsequently be required to secure a separate
17 financing order for each issuance of energy redevelopment bonds
18 or for each scheduled activity associated with abandonment of
19 the qualifying generating facility, such as decommissioning
20 activities.

21 I. The commission may require, as a condition to
22 the effectiveness of the financing order and in every
23 circumstance subject to the limitations set forth in Subsection
24 A of Section 6 of the Energy Redevelopment Bond Act, that,
25 during any period in which energy redevelopment bonds issued

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1 pursuant to the financing order are outstanding, an assignee
2 that is a non-utility affiliate and issues energy redevelopment
3 bonds will provide in the affiliate's articles of
4 incorporation, partnership agreement or operating agreement, as
5 applicable, that in order for a person to file a voluntary
6 bankruptcy petition on behalf of that assignee, the prior
7 unanimous consent of the directors, partners or managers, as
8 applicable, shall be required. Any such provision shall
9 constitute a legal, valid and binding agreement of the
10 shareholders, partners or members, as applicable, of the
11 assignee and is enforceable against such shareholders, partners
12 or members.

13 J. A financing order may require the qualifying
14 utility to file with the commission a periodic report showing
15 the receipt and disbursement of proceeds of energy
16 redevelopment bonds. A financing order may authorize the staff
17 of the commission to review and audit the books and records of
18 the qualifying utility relating to the receipt and disbursement
19 of proceeds of energy redevelopment bonds. The provisions of
20 this subsection shall not be construed to limit the authority
21 of the commission to investigate the practices of the
22 qualifying utility or to audit the books and records of the
23 qualifying utility.

24 SECTION 5. [NEW MATERIAL] ADJUSTMENT MECHANISM--REPORTS
25 TO COMMISSION--HEARING PROCEDURES.--

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1 A. If the commission issues a financing order, the
2 commission shall periodically approve the use of the adjustment
3 mechanism approved in the financing order to correct for any
4 over-collection or under-collection of the energy redevelopment
5 charges and to provide for timely payment of scheduled
6 principal of and interest on the energy redevelopment bonds and
7 the payment and recovery of other financing costs in accordance
8 with the financing order. Except as provided in Subsection B
9 of this section, the qualifying utility shall file at least
10 semiannually, or more frequently as provided in the financing
11 order:

12 (1) a calculation estimating whether the
13 existing energy redevelopment charge is sufficient to provide
14 for timely payment of scheduled principal of and interest on
15 the energy redevelopment bonds and the payment and recovery of
16 other financing costs in accordance with the financing order or
17 if either an over-collection or under-collection is projected;
18 and

19 (2) a calculation showing the adjustment to
20 the energy redevelopment charge to correct for any over-
21 collection or under-collection.

22 B. The qualifying utility shall file the
23 calculations described in Subsection A of this section at least
24 quarterly during the two-year period preceding the final
25 maturity date of the energy redevelopment bonds.

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1 C. The adjustment mechanism shall remain available
2 until the energy redevelopment bonds and all financing costs
3 have been fully paid and recovered.

4 D. On the same day the qualifying utility files
5 with the commission its calculation of the adjustment to the
6 energy redevelopment charge, the qualifying utility shall cause
7 notice of the filing to be given to the parties of record in
8 the case in which the financing order was issued.

9 E. An adjustment to the energy redevelopment charge
10 filed by the qualifying utility shall be deemed approved
11 without hearing thirty days after filing the adjustment unless:

12 (1) a party of record in the case in which the
13 financing order was issued files a challenge to the
14 mathematical accuracy of the adjustment no later than twenty
15 days from the date the qualifying utility filed the calculation
16 of the adjustment; provided that challenge identifies the
17 mathematical inaccuracy with specificity; and

18 (2) the commission determines that the
19 challenge demonstrates good cause to suspend the operation of
20 the adjustment; provided that the suspension shall not exceed
21 sixty days from the date the qualifying utility filed the
22 adjustment pursuant to Subsection F of this section.

23 F. If the commission determines that a hearing is
24 necessary, the commission shall hold a hearing on the challenge
25 within forty days of the date the qualifying utility filed the

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1 calculation of the adjustment. The hearing shall be limited to
2 determining whether there is any mathematical error in the
3 calculation of the adjustment. If the commission determines
4 that the calculation of the adjustment is mathematically
5 inaccurate, the commission shall issue an order that rejects
6 the adjustment and that determines the mathematically accurate
7 calculation. The qualifying utility shall be authorized to
8 adjust the energy redevelopment charge in accordance with the
9 commission's calculation within five days from issuance of the
10 order. If the commission does not issue an order rejecting the
11 adjustment with a determination of the mathematically accurate
12 calculation within sixty days from the date the qualifying
13 utility filed the adjustment, the adjustment to the energy
14 redevelopment charge shall be deemed approved.

15 G. No adjustment pursuant to this section, and no
16 proceeding held pursuant to this section, shall affect the
17 irrevocability of the financing order pursuant to Section 6 of
18 the Energy Redevelopment Bond Act.

19 SECTION 6. [NEW MATERIAL] FINANCING ORDER--
20 IRREVOCABILITY--AMENDMENTS.--

21 A. A financing order is irrevocable and the
22 commission shall not reduce, impair, postpone or terminate the
23 energy redevelopment charges approved in the financing order,
24 the energy redevelopment property or the collection or recovery
25 of energy redevelopment revenues.

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1 B. A financing order may be amended on or after the
2 date of issuance of energy redevelopment bonds authorized by
3 the financing order at the request of the qualifying utility to
4 commence a proceeding and issue an amended financing order
5 that:

6 (1) provides for refinancing, retiring or
7 refunding all or a portion of an outstanding series of energy
8 redevelopment bonds issued pursuant to the original financing
9 order if the commission includes in the amended financing order
10 the findings and requirements specified in Subsections E and F
11 of Section 4 of the Energy Redevelopment Bond Act;

12 (2) adjusts the amount of energy redevelopment
13 costs to be financed by energy redevelopment bonds that have
14 not yet been issued to reflect updated estimated or actual
15 costs that differ from costs estimated at the time of the
16 initial financing order; and

17 (3) is subject to the limitations set forth in
18 Subsection A of this section.

19 C. No change in the credit rating of a qualifying
20 utility from the credit rating at the time of issuance of a
21 financing order shall impair the irrevocability of a financing
22 order.

23 SECTION 7. [NEW MATERIAL] AGGRIEVED PARTIES--REQUEST FOR
24 REHEARING--JUDICIAL REVIEW--PRECEDENCE OVER OTHER CASES.--

25 A. A financing order is a final order of the

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1 commission. A party aggrieved by the issuance of a financing
2 order may apply to the commission for a rehearing in accordance
3 with Section 62-10-16 NMSA 1978; provided that such application
4 shall be due no later than ten calendar days after issuance of
5 the financing order. An application for rehearing shall be
6 deemed denied if not acted upon by the commission within ten
7 calendar days after the filing of the application.

8 B. An aggrieved party may file a notice of appeal
9 with the supreme court in accordance with Section 62-11-1 NMSA
10 1978; provided that such notice shall be due no later than ten
11 calendar days after denial of an application for rehearing or,
12 if rehearing is not applied for, no later than ten calendar
13 days after issuance of the financing order. The supreme court
14 shall proceed to hear and determine the appeal as expeditiously
15 as practicable and give the action precedence over all other
16 civil cases.

17 SECTION 8. [NEW MATERIAL] CONDITIONS THAT KEEP FINANCING
18 ORDERS IN EFFECT AND ENERGY REDEVELOPMENT CHARGES IMPOSED.--

19 A. A financing order shall remain in effect until
20 the energy redevelopment bonds issued pursuant to the financing
21 order have been paid in full and all financing costs relating
22 to the energy redevelopment bonds have been paid in full.

23 B. A financing order shall remain in effect and
24 unabated notwithstanding the bankruptcy, reorganization or
25 insolvency of the qualifying utility or any non-utility

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1 affiliate or the commencement of any judicial or non-judicial
2 proceeding for bankruptcy or for appointment of a receiver.

3 C. If energy redevelopment bonds issued pursuant to
4 a financing order are outstanding and the related energy
5 redevelopment costs and financing costs have not been paid in
6 full, the energy redevelopment charges authorized to be imposed
7 in the financing order shall be a part of all customer bills
8 and be collected by the qualifying utility or its successors or
9 assignees, or a collection agent, in full through a non-
10 bypassable charge that is a separate line item on customer
11 bills and separate and apart from the qualifying utility's base
12 rates. The charge shall be paid by all customers:

13 (1) receiving transmission or distribution
14 service from the qualifying utility or its successor or
15 assignees under commission-approved rate schedules or special
16 contracts; and

17 (2) who purchase electricity, including
18 electricity received from distributed generation facilities
19 owned or controlled by the customer or another non-utility,
20 from an alternative or subsequent electricity supplier in the
21 utility service area, to the extent that those purchases are
22 permitted by New Mexico law.

23 SECTION 9. [NEW MATERIAL] LIMITATIONS ON JURISDICTION OF
24 COMMISSION.--

25 A. If the commission issues a financing order, the

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1 commission shall not, in exercising its powers and carrying out
2 its duties regarding regulation and ratemaking, consider energy
3 redevelopment bonds issued pursuant to the financing order to
4 be the debt of the qualifying utility; the energy redevelopment
5 charges paid under the financing order to be revenue of the
6 qualifying utility; or the energy redevelopment costs to be
7 financed by energy redevelopment bonds or financing costs
8 specified in the financing order to be the costs of the
9 qualifying utility. An action taken by a qualifying utility
10 that is consistent with the financing order shall be deemed to
11 be just and reasonable; provided that, subject to the
12 limitations set forth in Section 6 of the Energy Redevelopment
13 Bond Act, nothing in this subsection shall:

14 (1) affect the authority of the commission to
15 apply the adjustment mechanism as provided in Section 5 of the
16 Energy Redevelopment Bond Act;

17 (2) prevent or preclude the commission from
18 investigating the compliance of a qualifying utility with the
19 terms and conditions of a financing order and requiring
20 compliance therewith;

21 (3) prevent or preclude the commission from
22 imposing regulatory sanctions against a qualifying utility for
23 failure to comply with the terms and conditions of a financing
24 order or the requirements of the Energy Redevelopment Bond Act;
25 or

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1 (4) prevent or preclude the commission from
2 including the qualifying utility's investment in replacement
3 power resources in the qualifying utility's cost of service.

4 B. The commission shall not order or otherwise
5 require, directly or indirectly, a qualifying utility to issue
6 energy redevelopment bonds to finance any costs associated with
7 abandonment of a qualifying generating facility. A qualifying
8 utility's election not to use energy redevelopment bonds shall
9 not affect its right to recover the prudent and reasonable
10 costs associated with the abandonment of a qualifying
11 generating facility by the qualifying utility, including full
12 recovery of undepreciated investment at the time of
13 abandonment.

14 SECTION 10. [NEW MATERIAL] QUALIFYING UTILITY--DUTIES.--

15 A. A qualifying utility shall use the proceeds of
16 the issuance of energy redevelopment bonds for paying energy
17 redevelopment costs and financing costs and to acquire
18 utility-owned replacement resources and investments in other
19 public utility property for inclusion in the rate base.

20 B. A qualifying utility for which a financing order
21 has been issued shall annually provide to its customers a
22 concise explanation of the energy redevelopment charges
23 approved in a financing order, as modified by subsequent
24 issuances of energy redevelopment bonds authorized under a
25 financing order, if any, and by the adjustment mechanism as

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1 provided in Section 5 of the Energy Redevelopment Bond Act.
2 The explanations may be made by bill inserts, website
3 information or other appropriate means.

4 C. Energy redevelopment revenues shall be applied
5 solely to the repayment of energy redevelopment bonds and
6 financing costs.

7 D. The failure of a qualifying utility to apply the
8 proceeds of an issuance of energy redevelopment bonds in a
9 reasonable, prudent and appropriate manner, or otherwise comply
10 with any provision of the Energy Redevelopment Bond Act, shall
11 not invalidate, impair or affect a financing order, energy
12 redevelopment property, energy redevelopment charge or energy
13 redevelopment bonds; provided that, subject to the limitations
14 set forth in Section 6 of the Energy Redevelopment Bond Act,
15 nothing in this subsection shall prevent or preclude the
16 commission from imposing regulatory sanctions against a
17 qualifying utility for failure to comply with the terms and
18 conditions of a financing order or the requirements of the
19 Energy Redevelopment Bond Act.

20 SECTION 11. [NEW MATERIAL] ENERGY REDEVELOPMENT
21 PROPERTY--ENERGY REDEVELOPMENT REVENUES.--

22 A. Energy redevelopment property that is created in
23 a financing order shall constitute an existing, present
24 property right, notwithstanding the fact that the imposition
25 and collection of energy redevelopment charges depend on the

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1 qualifying utility continuing to provide electric energy or
2 continuing to perform its servicing functions relating to the
3 collection of energy redevelopment charges or on the level of
4 future energy consumption. Energy redevelopment property shall
5 exist whether or not the energy redevelopment revenues have
6 been billed, have accrued or have been collected and
7 notwithstanding the fact that the value or amount of the energy
8 redevelopment property is dependent on the future provision of
9 service to customers by the qualifying utility.

10 B. All energy redevelopment property created in a
11 financing order shall continue to exist until the energy
12 redevelopment bonds issued pursuant to a financing order are
13 paid in full and the financing costs relating to the bonds have
14 been paid in full.

15 C. All or any portion of energy redevelopment
16 property may be transferred, sold, conveyed or assigned to a
17 non-utility affiliate that is:

18 (1) wholly owned, directly or indirectly, by
19 the qualifying utility;

20 (2) created for the limited purposes of
21 acquiring, owning or administering energy redevelopment
22 property or issuing energy redevelopment bonds under the
23 financing order; or

24 (3) a combination of these purposes.

25 D. All or any portion of energy redevelopment

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1 property may be pledged to secure the payment of energy
2 redevelopment bonds, amounts payable to financing parties and
3 bondholders, amounts payable under any ancillary agreement and
4 other financing costs.

5 E. The formation by a qualifying utility of a non-
6 utility affiliate for the limited purpose of acquiring, owning
7 or administering energy redevelopment property or issuing
8 energy redevelopment bonds pursuant to a financing order, or a
9 combination of these purposes, and any transfer, sale,
10 conveyance, assignment, grant of a security interest in or
11 pledge of energy redevelopment property by a qualifying utility
12 to a non-utility affiliate, to the extent previously authorized
13 in a financing order, does not require any further approval of
14 the commission and shall not otherwise be subject to the rules
15 of the commission regarding class II transactions as defined by
16 Subsection L of Section 62-3-3 NMSA 1978.

17 F. If a qualifying utility defaults on any required
18 payment of energy redevelopment revenues, a court with
19 jurisdiction in the matter, on application by an interested
20 party and without limiting any other remedies available to the
21 applying party, shall order the sequestration and payment of
22 the energy redevelopment revenues for the benefit of
23 bondholders, any assignee and any financing parties. The order
24 shall remain in full force and effect notwithstanding any
25 bankruptcy, reorganization or other insolvency or receivership

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1 proceedings with respect to the qualifying utility or any non-
2 utility affiliate.

3 G. Energy redevelopment property, energy
4 redevelopment revenues and the interests of an assignee,
5 bondholder or financing party in energy redevelopment property
6 and energy redevelopment revenues are not subject to set-off,
7 counterclaim, surcharge or defense by the qualifying utility or
8 any other person or in connection with the bankruptcy,
9 reorganization or other insolvency or receivership proceeding
10 of the qualifying utility, any non-utility affiliate or any
11 other entity.

12 H. Any successor to a qualifying utility shall be
13 bound by the requirements of the Energy Redevelopment Bond Act
14 and shall perform and satisfy all obligations of, and have the
15 same rights under a financing order as, the qualifying utility
16 under the financing order in the same manner and to the same
17 extent as the qualifying utility, including the obligation to
18 collect and pay energy redevelopment revenues to the person
19 entitled to receive the revenues.

20 SECTION 12. [NEW MATERIAL] SECURITY INTERESTS--
21 APPLICABILITY OF OTHER ACTS--CREATION OF SECURITY INTEREST--
22 ATTACHMENT ON FILING WITH SECRETARY OF STATE--PRIORITY OVER
23 OTHER LIENS.--

24 A. Except as otherwise provided in this section,
25 the creation, perfection and enforcement of a security interest

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1 in energy redevelopment property to secure the repayment of the
2 principal of and interest on energy redevelopment bonds,
3 amounts payable pursuant to an ancillary agreement and other
4 financing costs are governed by this section. This section
5 shall be deemed to provide alternatives to the provisions of
6 the Uniform Commercial Code and Chapter 62, Article 13 of the
7 Public Utility Act, which, to the extent the Uniform Commercial
8 Code or that article is inconsistent with this section, are
9 declared to be inapplicable to the Energy Redevelopment Bond
10 Act.

11 B. The description or indication of energy
12 redevelopment property in a transfer or security agreement and
13 a financing statement is sufficient only if the description or
14 indication refers to the Energy Redevelopment Bond Act and the
15 financing order creating the energy redevelopment property.
16 This section applies to all purported transfers of, and all
17 purported grants of liens on or security interests in, energy
18 redevelopment property, regardless of whether the related
19 transfer or security agreement was entered into, or the related
20 financing statement was filed, before or after the effective
21 date of the Energy Redevelopment Bond Act.

22 C. A security interest in energy redevelopment
23 property is created, valid and binding at the later of the time
24 when:

- 25 (1) the financing order is issued;

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

3 (3) value is received for the energy
4 redevelopment bonds.

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

21 E. A security interest in energy redevelopment
22 property is a continuously perfected security interest and has
23 priority over any other lien, created by operation of law or
24 otherwise, that may subsequently attach to the energy
25 redevelopment property unless the holder of the security

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1 interest has agreed in writing otherwise.

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

12 G. No order of the commission amending a financing
13 order pursuant to Subsection B of Section 6 of the Energy
14 Redevelopment Bond Act, and no application of the adjustment
15 mechanism as provided in Section 5 of that act, will affect the
16 validity, perfection or priority of a security interest in or
17 transfer of energy redevelopment property.

18 SECTION 13. [NEW MATERIAL] SALE OF ENERGY REDEVELOPMENT
19 PROPERTY--PERFECTING INTERESTS--ABSOLUTE TRANSFER AND TRUE SALE
20 REQUIREMENTS.--

21 A. Any sale, assignment or transfer of energy
22 redevelopment property shall be an absolute transfer and true
23 sale of, and not a pledge of or secured transaction relating
24 to, the seller's right, title and interest in, to and under the
25 energy redevelopment property if the documents governing the

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1 transaction expressly state that the transaction is a sale or
2 other absolute transfer. A transfer of an interest in energy
3 redevelopment property shall be created when:

4 (1) the financing order creating the energy
5 redevelopment property has become effective;

6 (2) the documents evidencing the transfer of
7 energy redevelopment property have been executed and delivered
8 to the assignee; and

9 (3) value is received.

10 B. On the filing of a financing statement with the
11 secretary of state pursuant to Section 12 of the Energy
12 Redevelopment Bond Act, a transfer of an interest in energy
13 redevelopment property shall be perfected against all third
14 persons, including any judicial lien or other lien creditors or
15 any claims of the seller or creditors of the seller, other than
16 creditors holding a prior security interest, ownership interest
17 or assignment in the energy redevelopment property previously
18 perfected in accordance with this section or Section 12 of the
19 Energy Redevelopment Bond Act.

20 C. The characterization of the sale, assignment or
21 transfer as an absolute transfer and true sale and the
22 corresponding characterization of the property interest of the
23 purchaser, shall not be affected or impaired by, among other
24 things, the occurrence of any of the following factors:

25 (1) commingling of energy redevelopment

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1 revenues with other funds;

2 (2) the retention by the seller of:

3 (a) a partial or residual interest,
4 including an equity interest, in the energy redevelopment
5 property, whether direct or indirect, or whether subordinate or
6 otherwise; or

7 (b) the right to recover costs
8 associated with taxes or license fees imposed on the collection
9 of energy redevelopment revenues;

10 (3) any recourse that the purchaser may have
11 against the seller;

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

14 (5) the obligation of the seller to collect
15 energy redevelopment revenues on behalf of an assignee;

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

18 (7) any subsequent order of the commission
19 amending a financing order pursuant to Subsection B of Section
20 6 of the Energy Redevelopment Bond Act; or

21 (8) any use of an adjustment mechanism
22 approved in the financing order.

23 SECTION 14. [NEW MATERIAL] EXEMPTION FROM FEE

24 ASSESSMENTS.--The imposition, collection and receipt of an
25 energy redevelopment charge shall be exempt from an assessment

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1 of a franchise fee imposed by a municipality, county or other
2 political subdivision of the state and inspection and
3 supervision fees assessed pursuant to the Public Utility Act.

4 SECTION 15. [NEW MATERIAL] ENERGY REDEVELOPMENT BONDS NOT
5 PUBLIC DEBT.--Energy redevelopment bonds issued pursuant to the
6 Energy Redevelopment Bond Act shall not constitute a debt or a
7 pledge of the faith and credit or taxing power of this state or
8 of any county, municipality or any other political subdivision
9 of this state. Bondholders shall have no right to have taxes
10 levied by the legislature or the taxing authority of any
11 county, municipality or other political subdivision of this
12 state for the payment of the principal of or interest on energy
13 redevelopment bonds. The issuance of energy redevelopment
14 bonds does not, directly or indirectly or contingently,
15 obligate the state or a political subdivision of the state to
16 levy any tax or make any appropriation for payment of the
17 principal of or interest on the bonds.

18 SECTION 16. [NEW MATERIAL] ENERGY REDEVELOPMENT BONDS AS
19 LEGAL INVESTMENTS.--Energy redevelopment bonds shall be legal
20 investments for all governmental units, permanent funds of the
21 state, finance authorities, financial institutions, insurance
22 companies, fiduciaries and other persons requiring statutory
23 authority regarding legal investments.

24 SECTION 17. [NEW MATERIAL] STATE PLEDGE NOT TO IMPAIR.--

25 A. The state pledges to and agrees with the

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1 bondholders, any assignee and any financing parties that the
2 state will not take or permit any action that impairs the value
3 of energy redevelopment property or, except as allowed pursuant
4 to Section 5 of the Energy Redevelopment Bond Act, reduce,
5 alter or impair energy redevelopment charges that are imposed,
6 collected and remitted for the benefit of the bondholders, any
7 assignee and any financing parties, until any principal,
8 interest and redemption premium in respect of energy
9 redevelopment bonds, all financing costs and all amounts to be
10 paid to an assignee or financing party under an ancillary
11 agreement are paid and performed in full.

12 B. Any person who issues energy redevelopment bonds
13 is permitted to include the pledge specified in Subsection A of
14 this section in the energy redevelopment bonds, ancillary
15 agreements and documentation related to the issuance and
16 marketing of the energy redevelopment bonds.

17 SECTION 18. [NEW MATERIAL] LOCATION OF RESOURCE
18 REDEVELOPMENT AFTER ABANDONMENT.--

19 A. A qualifying utility shall, within five years
20 after abandonment of a qualifying generating facility, select
21 sites for needed utility-owned replacement power resources that
22 are located in the county in New Mexico where the abandoned
23 qualifying generating facility is located if:

24 (1) replacement power resources located there
25 maintain adequate system reliability; and

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1 (2) the costs of locating replacement power
2 resources there are less than the costs of locating them
3 elsewhere plus the amount of the cost savings attributable to
4 the use of energy redevelopment bonds.

5 B. The commission shall grant certificates of
6 public convenience and necessity for replacement power
7 resources at those sites and allow full cost recovery in rates,
8 except that the commission may determine that the particular
9 resource proposed by the qualifying utility should not be
10 approved and that, instead, an alternative utility-owned
11 resource that meets the conditions of Subsection A of this
12 section should be approved.

13 C. In considering responses to requests for
14 proposals for utility-owned replacement power resources
15 pursuant to this section, a qualifying utility shall inform
16 prospective contractors and subcontractors that it promotes and
17 encourages the use of workers residing in New Mexico to the
18 greatest extent practicable and shall take that use into
19 consideration in evaluating proposals.

20 SECTION 19. [NEW MATERIAL] CHOICE OF LAW.--The law
21 governing the validity, enforceability, attachment, perfection,
22 priority and exercise of remedies with respect to the transfer
23 of an interest or right or creation of a security interest in
24 any energy redevelopment property, energy redevelopment charge
25 or financing order shall be the laws of the state of New Mexico

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1 as set forth in the Energy Redevelopment Bond Act.

2 SECTION 20. [NEW MATERIAL] CONFLICTS.--In the event of
3 conflict between the Energy Redevelopment Bond Act and any
4 other law regarding the attachment, assignment or perfection,
5 or the effect of perfection, or priority of any security
6 interest in or transfer of energy redevelopment property, the
7 Energy Redevelopment Bond Act shall govern to the extent of the
8 conflict.

9 SECTION 21. [NEW MATERIAL] VALIDITY ON ACTIONS IF ACT
10 HELD INVALID.--Effective on the date that energy redevelopment
11 bonds are first issued under the Energy Redevelopment Bond Act,
12 if any provision of that act is held to be invalid or is
13 invalidated, superseded, replaced, repealed or expires for any
14 reason, that occurrence shall not affect the validity of any
15 action allowed pursuant to that act that is taken by the
16 commission, a qualifying utility, an assignee, a collection
17 agent, a financing party, a bondholder or a party to an
18 ancillary agreement and, to prevent the impairment of energy
19 redevelopment bonds issued or authorized in a financing order
20 issued pursuant to that act, any such action shall remain in
21 full force and effect with respect to all energy redevelopment
22 bonds issued or authorized in a financing order issued pursuant
23 to that act before the date that such provision is held to be
24 invalid or is invalidated, superseded, replaced, repealed or
25 expires for any reason.

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1 **SECTION 22. TEMPORARY PROVISION--PENDING APPLICATIONS.--**

2 If an application for approval to abandon a qualifying
3 generating facility is pending before the public regulation
4 commission on the effective date of this act, the qualifying
5 utility may file a separate application for a financing order
6 and the commission shall join or consolidate the application
7 for a financing order with the pending proceeding involving
8 abandonment of the qualifying generating facility. On such
9 joinder or consolidation, the time periods prescribed by
10 Subsection B of Section 3 of the Energy Redevelopment Bond Act
11 shall become applicable to the joined or consolidated case.

12 **SECTION 23. APPLICABILITY.--**The provisions of this act
13 shall not apply to a qualifying utility that makes an initial
14 application for a financing order more than twenty years after
15 the effective date of this act. This section shall not
16 preclude a qualifying utility for which the public regulation
17 commission has issued a financing order from applying to the
18 commission for a subsequent order amending the financing order
19 pursuant to Section 6 of the Energy Redevelopment Bond Act.