F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	02/05/14		
SPONSOR	Maestas	**LAST UPDATED**	02/15/14	**HB**	296/aHBIC/aHFl#1
SHORT TITLE	Economic Development Utility Rates			**SB**	
				ANALYST	Clark

REVENUE (dollars in thousands)

Estimated Revenue			**Recurring or Nonrecurring**	**Fund Affected**
FY14	**FY15**	**FY16**		
	NFI	NFI		

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB 283
Conflicts with HB 183

SOURCES OF INFORMATION
LFC Files

Responses Received From
Attorney General's Office (AGO)
Economic Development Department (EDD)
Public Regulation Commission (PRC)

SUMMARY

Synopsis of HFl#1 Amendment

The House Floor Amendment #1 makes four changes: 1) it inserts a provision prohibiting a utility from entering into an economic development rate contract after June 30, 2028, in effect creating a sunset provision; 2) it requires the Economic Development Department to report annually to the appropriate legislative committees the contract demand, job creation or retention, and investment requirements for certificates of eligibility; 3) it performs minor language clean-up; and 4) it states the Public Regulation Commission shall not allow a utility to recover revenues lost through economic development rates that exceed in any year 5 percent of the utility's annual gross revenues from retail sales in New Mexico, and it require the utility to show the revenues recovered on a separate line item on customer bills.

Synopsis of HBIC Amendment

The House Business and Industry Committee Amendment makes two changes: 1) it enables smaller existing New Mexico companies to qualify for economic development utility rates by reducing the minimum contract demand for such a customer from at least 4,000 kilowatts of electric power to at least 2,000 kilowatts of electric power, and 2) it clarifies language relating to the customer or prospective customer's sales outside New Mexico.

Synopsis of Original Bill

House Bill 296 would amend Section 62-6-26 NMSA 1978 of the Public Utility Act to provide for economic development rates to certain customers certified by the Economic Development Department (EDD) to assist in job creation and additional investment in the state. The bill makes the following substantive changes.

1. The bill allows for an electric utility to enter into a contract with an eligible customer to provide an economic development rate that fixes a rate for no more than seven years that recovers at least the incremental cost of providing service to the customer. The bill requires the Public Regulation Commission (PRC) allow the economic development rate go into effect without a hearing no later than 30 days after the contract has been filed with the commission, unless PRC finds that there is probable cause to believe the rate may not meet the requirements as specified in the bill. If the commission determines that probable cause exists to ensure that the requirements are met, it shall, after notice and hearing, render a decision no later than 90 days after the date on which the contract was filed. If the commission does not act by that date, the contract shall go into effect. The bill defines "incremental cost" as the fuel and purchased power costs, costs recoverable from customers pursuant to the Renewable Energy Act and the Efficient Use of Energy Act, and direct costs of transmission and distribution necessary to provide service to the customer but does not include system-wide or system expansion costs that provide additional transmission or distribution capacity, system reliability, or other benefits to other customers.

2. The bill provides a customer is eligible for an economic development rate if:

    a. The existing or prospective customer provides evidence satisfactory to the utility that:

        i. the availability of the economic development rate is a critical contributing factor in the existing or prospective customer's decision to add new or additional load or in retaining existing load that would otherwise be lost;
        ii. in the case of an existing customer seeking to retain load, the customer has a contract demand at a single location of at least 4,000 kilowatts of electric power;
        iii. in the case of an existing or prospective customer seeking to add new or additional load, the customer will have a contract demand or an additional contract demand at a single location of at least 1,000 kilowatts of electric power;
        iv. the customer intends to operate New Mexico facilities in for at least 10 years;

v. the operation of the customer's facilities for the 10-year period is economically viable under reasonable assumptions and projections; and
vi. the customer that is or will be located in New Mexico has or will have sales revenue at least 50 percent of which is from sales outside the state.

b. The customer receives a certificate of eligibility from EDD. The bill tasks the department to provide a certificate of eligibility to the customer benefiting from the economic development rate and must issue the certificate within 15 days of an application filing if the utility customer or prospective customer demonstrates to the reasonable satisfaction of EDD that, in addition to the satisfactory evidence provided to the utility:

i. the customer will retain or create at least 20 full-time jobs in New Mexico with a minimum annual salary of $40 thousand;
ii. the customer has invested or will invest not less than $5 million in fixed assets, including machinery and equipment in New Mexico; and
iii. the customer that is or will be located in New Mexico has or will have sales revenue at least 50 percent of which is from sales outside the state.

3. The bill requires the certificate of eligibility issued by EDD contain terms and conditions that are reasonably necessary to ensure the contract demand, job creation or retention, and investment requirements are achieved, including establishing reasonable development milestones and requires the customer to demonstrate through progress reports or otherwise its achievement of the milestones.

4. The bill states a customer who receives a certificate of eligibility and pays rates lower than would otherwise be applicable to the customer, but does not in fact fulfill the commitments necessary to qualify, shall be liable to the utility for the difference between the economic development rate and the rate otherwise applicable to the customer. The customer or prospective customer shall provide reasonable assurances to the utility it will meet the eligibility requirements, including deposits or bonds to guarantee payment to the utility of the difference between the economic development rate and the rate that would have otherwise been applicable to the customer's service.

5. The bill requires PRC to allow the utility to fully recover in a general rate case from all other customers the full amount of the difference, if any, between the revenue recovered pursuant to the contract economic development rate and the utility's cost to provide service to that customer.

6. The bill defines "electric utility" and "utility" to be a public utility but does not include a member of a regional transmission organization regulated by the Federal Energy Regulatory Commission and does not include rural electric cooperatives.

The bill contains an emergency clause.

FISCAL IMPLICATIONS

There is no direct fiscal impact; however, enactment of the bill would allow utilities to offer economic development rates, which could help to recruit new businesses into New Mexico or retain businesses that might otherwise leave the state. This potential economic growth would presumably result in a larger tax base.

SIGNIFICANT ISSUES

EDD analysis shows reliable and competitive rates are key site selection criteria for most manufacturers, and New Mexico is not keeping up with its neighboring states in terms of the economic recovery. More specifically, the state is losing population and manufacturing jobs. The U.S. Bureau of Labor Statistics reports the state lost 425 manufacturing jobs in the first quarter of 2013 and lost manufacturing jobs in each of the three preceding quarters. Utility rates are uncompetitive for new, private investment. At least 44 utilities in 29 states currently offer some form of electric incentive rates, including Texas, Oklahoma, and California.

The amendment to existing statute eliminates the requirement that the economic development rate be provided only when the utility or supplier of the utility has excess capacity. AGO notes the effect of this bill would be to raise rates for the residential and small business customers of utilities. Although the economic development rate reduces utility costs for qualifying customers, it shifts the burden of paying for those utilities to residential and small business customers.

ADMINISTRATIVE IMPLICATIONS

This bill would require additional EDD staff time to review and grant certificates of eligibility to utility customers and prospective customers.

CONFLICT, DUPLICATION

SB 283 duplicates HB 296. HB 183 also amends the Public Utility Act to alter economic development rate provisions but contains language conflicting with this bill’s amendments to the same section of law. The primary differences are that this bill provides a limited definition of a utility and requires the customer or prospective customer to provide evidence to the utility as described in 2(a) of the “Summary” section of this document.

TECHNICAL ISSUES

AGO reports the bill contains no guidance as to how to determine the direct costs of transmission and distribution to a specific customer. Since the bill allows the utility to recover the cost difference of the economic development rate in a general rate case from the rest of the customers, it creates a significant problem as to how to determine what the direct cost of transmission and distribution is to the economic development rate customer.

ALTERNATIVES

AGO suggests that rather than shifting the full burden of paying the difference of rates to customers who do not qualify for a lesser rate, the bill could allow a portion of the rate difference to be borne by these customers. For example, rather than allowing the utility to recover the full rate difference in a general rate case, the utility could be allowed to recover 50 percent of the difference in a general rate case. As it currently reads, the bill places the full burden of this economic development rate differential on other customers who do not qualify for a lesser rate. It could be appropriate to split the burden of the differential between rate payers and the utilities.

Utilities and general rate payers share the benefits of a stronger economy, and by allowing the utility to recover only 50 percent of the difference through a general rate case, the utility would be sharing the burden of the lesser economic development rate.

JC/ds:svb