

AN ACT

RELATING TO UTILITIES; REQUIRING PUBLIC UTILITIES TO ACQUIRE AVAILABLE COST-EFFECTIVE AND ACHIEVABLE ENERGY EFFICIENCY AND LOAD MANAGEMENT RESOURCES; LIMITING PUBLIC UTILITY COST RECOVERY OPTIONS.

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

**SECTION 1.** Section 62-17-4 NMSA 1978 (being Laws 2005, Chapter 341, Section 4, as amended) is amended to read:

"62-17-4. DEFINITIONS.--As used in the Efficient Use of Energy Act:

A. "achievable" means those energy efficiency or load management resources available to the utility using its best efforts;

B. "commission" means the public regulation commission;

C. "cost-effective" means that the energy efficiency or load management program meets the utility cost test;

D. "customer" means a utility customer at a single, contiguous field, location or facility, regardless of the number of meters at that field, location or facility;

E. "distribution cooperative utility" means a utility with distribution facilities organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the

Rural Electric Cooperative Act or similarly organized in other states;

F. "energy efficiency" means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices to result in a decrease in consumption of electricity and natural gas without reducing the amount or quality of energy services;

G. "large customer" means a customer with electricity consumption greater than seven thousand megawatt-hours per year or natural gas use greater than three hundred sixty thousand decatherms per year;

H. "load management" means measures or programs that target equipment or devices to result in decreased peak electricity demand or shift demand from peak to off-peak periods;

I. "program costs" means the prudent and reasonable costs of developing and implementing energy efficiency and load management programs, but "program costs" does not include charges for incentives or the removal of regulatory disincentives;

J. "public utility" means a public utility that is not also a distribution cooperative utility; and

K. "utility cost test" means a standard that is met if the monetary costs that are borne by the public utility and that are incurred to develop, acquire and operate energy

efficiency or load management resources on a life-cycle basis are less than the avoided monetary costs associated with developing, acquiring and operating the associated supply-side resources. In developing this test for energy efficiency and load management programs directed to low-income customers, the commission shall either quantify or assign a reasonable value to reductions in working capital, reduced collection costs, lower bad-debt expense, improved customer service effectiveness and other appropriate factors as utility system economic benefits."

**SECTION 2.** Section 62-17-5 NMSA 1978 (being Laws 2005, Chapter 341, Section 5, as amended) is amended to read:

"62-17-5. COMMISSION APPROVAL--ENERGY EFFICIENCY AND LOAD MANAGEMENT PROGRAMS--DISINCENTIVES.--

A. Pursuant to the findings and purpose of the Efficient Use of Energy Act, the commission shall consider public utility acquisition of cost-effective energy efficiency and load management resources to be in the public interest.

B. The commission shall direct public utilities to evaluate and implement cost-effective programs that reduce energy demand and consumption.

C. Before the commission approves an energy efficiency and load management program for a public utility, it must find that the portfolio of programs is cost-effective and designed to provide every affected customer class with the

opportunity to participate and benefit economically. The commission shall determine the cost-effectiveness of energy efficiency and load management measures using the utility cost test.

D. The commission shall act expeditiously on public utility requests for approval of energy efficiency or load management programs.

E. Public utilities shall obtain commission approval of energy efficiency and load management programs before they are implemented. Public utilities proposing new energy efficiency and load management programs shall, before seeking commission approval, solicit nonbinding recommendations on the design, implementation and use of third-party energy service contractors through competitive bidding on the programs from commission staff, the attorney general, the energy, minerals and natural resources department and other interested parties. The commission may for good cause require public utilities to solicit competitive bids for energy efficiency and load management resources.

F. The commission shall, upon petition or its own motion, identify regulatory disincentives or barriers for public utility expenditures on energy efficiency and load management measures and ensure that they are removed in a manner that balances the public interest, consumers' interests and investors' interests. The commission shall also provide

public utilities an opportunity to earn a profit on cost-effective energy efficiency and load management resource development that, with satisfactory program performance, is financially more attractive to the utility than supply-side utility resources.

G. Public utilities providing electricity and natural gas service to New Mexico customers shall, subject to commission approval, acquire cost-effective and achievable energy efficiency and load management resources available in their service territories. This requirement, however, for public utilities providing electricity service, shall not be less than savings of five percent of 2005 total retail kilowatt-hour sales to New Mexico customers in calendar year 2014 and eight percent of 2005 total retail kilowatt-hour sales to New Mexico customers in 2020 as a result of energy efficiency and load management programs implemented starting in 2007.

H. A public utility that determines it cannot achieve the minimum requirements established in Subsection G of this section shall report to the commission on why it cannot meet those requirements and shall propose alternative requirements based on acquiring cost-effective and achievable energy efficiency and load management resources. If the commission determines, after hearing, that the minimum requirements of Subsection G of this section exceed the

achievable amount of energy efficiency and load management available to the public utility or that the program costs of energy efficiency and load management to achieve the minimum requirements of Subsection G of this section exceed the program costs funding established in Subsection A of Section 62-17-6 NMSA 1978, the commission shall establish lower minimum energy savings requirements for the utility based on the maximum amount of energy efficiency and load management that it determines can be achieved."

**SECTION 3.** Section 62-17-6 NMSA 1978 (being Laws 2005, Chapter 341, Section 6, as amended) is amended to read:

"62-17-6. COST RECOVERY.--

A. A public utility that undertakes cost-effective energy efficiency and load management programs shall have the option of recovering its prudent and reasonable costs along with commission-approved incentives for demand-side resources and load management programs implemented after the effective date of the Efficient Use of Energy Act through an approved tariff rider or in base rates, or by a combination of the two. Program costs and incentives may be deferred for future recovery through creation of a regulatory asset. Funding for program costs for investor-owned electric utilities shall be three percent of customer bills, excluding gross receipts taxes and franchise and right-of-way access fees, or seventy-five thousand dollars (\$75,000) per customer per calendar

year, whichever is less, for customer classes with the opportunity to participate. Funding for annual program costs for gas utilities shall not exceed three percent of total annual revenues, nor shall charges exceed seventy-five thousand dollars (\$75,000) per customer per calendar year. Provided that the public utility's total portfolio of programs remains cost-effective, no less than five percent of the amount received by the public utility for program costs shall be specifically directed to energy-efficiency programs for low-income customers. Unless otherwise ordered by the commission, a tariff rider approved by the commission shall require language on customer bills explaining program benefits.

B. The tariff rider shall be applied on a monthly basis, unless otherwise allowed by the commission.

C. A tariff rider proposed by a public utility to fund approved energy efficiency and load management programs shall go into effect thirty days after filing, unless suspended by the commission for a period not to exceed one hundred eighty days. If the tariff rider is not approved or suspended within thirty days after filing, it shall be deemed approved as a matter of law. If the commission has not acted to approve or disapprove the tariff rider by the end of an ordered suspension period, it shall be deemed approved as a matter of law. The commission shall approve utility

reconciliations of the tariff rider annually."

**SECTION 4. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2013. \_\_\_\_\_

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