

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

AN ACT  
RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
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

1 electric cooperative pursuant to Laws 1937, Chapter 100 or  
2 the Rural Electric Cooperative Act or similarly organized in  
3 other states;

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

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

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

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

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

24 K. "utility cost test" means a standard that is  
25 met if the monetary costs that are borne by the public

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

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

14 "62-17-5. COMMISSION APPROVAL--ENERGY EFFICIENCY AND  
15 LOAD MANAGEMENT PROGRAMS--DISINCENTIVES.--

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

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

24 C. Before the commission approves an energy  
25 efficiency and load management program for a public utility,

1 it must find that the portfolio of programs is cost-effective  
2 and designed to provide every affected customer class with  
3 the opportunity to participate and benefit economically. The  
4 commission shall determine the cost-effectiveness of energy  
5 efficiency and load management measures using the utility  
6 cost test.

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

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

23 F. The commission shall, upon petition or its own  
24 motion, identify regulatory disincentives or barriers for  
25 public utility expenditures on energy efficiency and load

1 management measures and ensure that they are removed in a  
2 manner that balances the public interest, consumers'  
3 interests and investors' interests. The commission shall  
4 also provide public utilities an opportunity to earn a profit  
5 on cost-effective energy efficiency and load management  
6 resource development that, with satisfactory program  
7 performance, is financially more attractive to the utility  
8 than supply-side utility resources.

9 G. Public utilities providing electricity and  
10 natural gas service to New Mexico customers shall, subject to  
11 commission approval, acquire cost-effective and achievable  
12 energy efficiency and load management resources available in  
13 their service territories. This requirement, however, for  
14 public utilities providing electricity service, shall not be  
15 less than savings of five percent of 2005 total retail  
16 kilowatt-hour sales to New Mexico customers in calendar year  
17 2014 and eight percent of 2005 total retail kilowatt-hour  
18 sales to New Mexico customers in 2020 as a result of energy  
19 efficiency and load management programs implemented starting  
20 in 2007.

21 H. A public utility that determines it cannot  
22 achieve the minimum requirements established in Subsection G  
23 of this section shall report to the commission on why it  
24 cannot meet those requirements and shall propose alternative  
25 requirements based on acquiring cost-effective and achievable

1 energy efficiency and load management resources. If the  
2 commission determines, after hearing, that the minimum  
3 requirements of Subsection G of this section exceed the  
4 achievable amount of energy efficiency and load management  
5 available to the public utility or that the program costs of  
6 energy efficiency and load management to achieve the minimum  
7 requirements of Subsection G of this section exceed the  
8 program costs funding established in Subsection A of Section  
9 62-17-6 NMSA 1978, the commission shall establish lower  
10 minimum energy savings requirements for the utility based on  
11 the maximum amount of energy efficiency and load management  
12 that it determines can be achieved."

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

15 "62-17-6. COST RECOVERY.--

16 A. A public utility that undertakes cost-effective  
17 energy efficiency and load management programs shall have the  
18 option of recovering its prudent and reasonable costs along  
19 with commission-approved incentives for demand-side resources  
20 and load management programs implemented after the effective  
21 date of the Efficient Use of Energy Act through an approved  
22 tariff rider or in base rates, or by a combination of the  
23 two. Program costs and incentives may be deferred for future  
24 recovery through creation of a regulatory asset. Funding for  
25 program costs for investor-owned electric utilities shall be

1 three percent of customer bills, excluding gross receipts  
2 taxes and franchise and right-of-way access fees, or  
3 seventy-five thousand dollars (\$75,000) per customer per  
4 calendar year, whichever is less, for customer classes with  
5 the opportunity to participate. Funding for annual program  
6 costs for gas utilities shall not exceed three percent of  
7 total annual revenues, nor shall charges exceed seventy-five  
8 thousand dollars (\$75,000) per customer per calendar year.  
9 Provided that the public utility's total portfolio of  
10 programs remains cost-effective, no less than five percent of  
11 the amount received by the public utility for program costs  
12 shall be specifically directed to energy-efficiency programs  
13 for low-income customers. Unless otherwise ordered by the  
14 commission, a tariff rider approved by the commission shall  
15 require language on customer bills explaining program  
16 benefits.

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

19 C. A tariff rider proposed by a public utility to  
20 fund approved energy efficiency and load management programs  
21 shall go into effect thirty days after filing, unless  
22 suspended by the commission for a period not to exceed one  
23 hundred eighty days. If the tariff rider is not approved or  
24 suspended within thirty days after filing, it shall be deemed  
25 approved as a matter of law. If the commission has not acted

1 to approve or disapprove the tariff rider by the end of an  
2 ordered suspension period, it shall be deemed approved as a  
3 matter of law. The commission shall approve utility  
4 reconciliations of the tariff rider annually."

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

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25