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HOUSE BILL 296

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO PUBLIC UTILITIES; AMENDING A SECTION OF THE PUBLIC UTILITY ACT TO PROVIDE FOR ECONOMIC DEVELOPMENT RATES TO CERTAIN CUSTOMERS CERTIFIED BY THE ECONOMIC DEVELOPMENT DEPARTMENT TO ASSIST IN JOB CREATION AND ADDITIONAL INVESTMENT IN THE STATE; DECLARING AN EMERGENCY.

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

SECTION 1. Section 62-6-26 NMSA 1978 (being Laws 1989, Chapter 5, Section 1, as amended) is amended to read:

"62-6-26. ECONOMIC DEVELOPMENT RATES FOR GAS AND ELECTRIC UTILITIES--AUTHORIZATION.--

A. The commission may approve or otherwise allow to become effective, as provided in Subsection B of this section, applications from utilities or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 or filings

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1 by cooperative utilities pursuant to Subsection F of Section
2 62-8-7 NMSA 1978, as appropriate, for special rates or tariffs
3 in order to prevent the loss of customers, to encourage
4 customers to expand present facilities and operations in New
5 Mexico and to attract new customers where necessary or
6 appropriate to promote economic development in New Mexico; ~~[Any~~
7 ~~such special rates or tariffs shall be designed so as to~~
8 ~~recover at least the incremental cost of providing service to~~
9 ~~such customers]~~ provided, however, that the commission shall
10 approve or otherwise allow to become effective an economic
11 development rate pursuant to a contract that meets the
12 requirements of Subsection C of this section.

13 B. The commission may approve or otherwise allow to
14 become effective applications from utilities or persons subject
15 to regulation pursuant to Subsection B of Section 62-6-4 NMSA
16 1978 and filings by cooperative utilities pursuant to
17 Subsection F of Section 62-8-7 NMSA 1978 for economic
18 development rates and rates designed to retain load for gas and
19 electric utility customers; provided, however, that the
20 commission shall approve or otherwise allow to become effective
21 an economic development rate pursuant to a contract that meets
22 the requirements of Subsection C of this section. For purposes
23 of this section and Section 62-8-6 NMSA 1978, economic
24 development rates and rates designed to retain load are rates
25 set at a level lower than the corresponding service rate for

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1 which a customer would otherwise qualify.

2 C. ~~[Economic development rates shall be approved or~~
3 ~~otherwise allowed to become effective for an electric utility~~
4 ~~or persons subject to regulation pursuant to Subsection B of~~
5 ~~Section 62-6-4 NMSA 1978 or filings by cooperative utilities~~
6 ~~pursuant to Subsection F of Section 62-8-7 NMSA 1978 only when~~
7 ~~the utility or the substantially full requirements supplier of~~
8 ~~the utility has excess capacity. For purposes of this section,~~
9 ~~"excess capacity" means the amount of electric generating and~~
10 ~~purchased power capacity available to the utility or such~~
11 ~~supplier that is greater than the utility's or such supplier's~~
12 ~~peak load plus a fixed percentage reserve margin set by the~~
13 ~~commission.] An electric utility may enter into a contract with~~
14 ~~an eligible customer to provide an economic development rate~~
15 ~~that fixes a rate for no more than seven years that recovers at~~
16 ~~least the incremental cost of providing service to the~~
17 ~~customer. The commission shall allow the economic development~~
18 ~~contract rate to go into effect without hearing no later than~~
19 ~~thirty days after the contract has been filed with the~~
20 ~~commission, unless the commission finds that there is probable~~
21 ~~cause to believe that the contract rate may not meet the~~
22 ~~requirements of this subsection. If the commission determines~~
23 ~~that probable cause does exist, to assure that the requirements~~
24 ~~of this subsection are met, it shall, after notice and hearing,~~
25 ~~render a decision no later than ninety days after the date on~~

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1 which the contract was filed. If the commission does not act
2 by that date, the contract shall go into effect. As used in
3 this subsection, "incremental cost" means fuel and purchased
4 power costs, costs recoverable from customers pursuant to the
5 Renewable Energy Act and the Efficient Use of Energy Act, and
6 the direct costs of transmission and distribution facilities
7 necessary to provide service to the customer, but "incremental
8 cost" does not include system-wide or system expansion costs
9 that provide additional transmission or distribution capacity,
10 system reliability or other benefits to other customers.

11 D. An existing or prospective customer is an
12 eligible customer if:

13 (1) the existing or prospective customer
14 provides evidence satisfactory to the utility that:

15 (a) the availability of the economic
16 development rate is a critical contributing factor in the
17 existing or prospective customer's decision to add new or
18 additional load or in retaining existing load that would
19 otherwise be lost;

20 (b) in the case of an existing customer
21 that is seeking an economic development rate to retain load,
22 the customer has a contract demand at a single location of at
23 least four thousand kilowatts of electric power at its New
24 Mexico facilities under normal operating conditions;

25 (c) in the case of an existing or

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1 prospective customer seeking an economic development rate to
2 add new or additional load, the customer will have a contract
3 demand or an additional contract demand at a single location of
4 at least one thousand kilowatts of electric power at its New
5 Mexico facilities under normal operating conditions;

6 (d) the existing or prospective customer
7 intends to operate its facilities in New Mexico for at least
8 ten years;

9 (e) the operation or continued operation
10 of the existing or prospective customer's facility or
11 facilities in New Mexico for the ten-year period is
12 economically viable under reasonable assumptions and
13 projections; and

14 (f) the existing or prospective customer
15 that is or will be located in New Mexico has or will have sales
16 revenue at least fifty percent of which is for sales outside
17 the state of New Mexico; or

18 (2) the existing or prospective customer
19 receives a certificate of eligibility from the economic
20 development department. The economic development department
21 shall issue a certificate of eligibility within fifteen days of
22 the filing of an application by an existing or prospective
23 utility customer if the customer demonstrates to the reasonable
24 satisfaction of the economic development department that, in
25 addition to the conditions provided in Paragraph (1) of this

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1 subsection:

2 (a) in the case of an existing customer
3 seeking an economic development rate to retain load, the
4 customer will retain at least twenty full-time jobs in New
5 Mexico with a minimum annual salary of forty thousand dollars
6 (\$40,000), and in the case of an existing or prospective
7 customer that is seeking an economic development rate to add
8 additional or new load, the customer will create at least
9 twenty full-time jobs in New Mexico with a minimum annual
10 salary of forty thousand dollars (\$40,000);

11 (b) in the case of an existing customer
12 seeking an economic development rate to retain load, the
13 customer has invested not less than five million dollars
14 (\$5,000,000) in fixed assets, including machinery and equipment
15 in New Mexico, and in the case of an existing or prospective
16 customer that is seeking an economic development rate to add
17 additional or new load, the customer will invest not less than
18 five million dollars (\$5,000,000) in fixed assets, including
19 machinery and equipment, in New Mexico; and

20 (c) the existing or prospective customer
21 that is or will be located in New Mexico has sales revenue at
22 least fifty percent of which is for sales outside the state of
23 New Mexico.

24 E. In issuing a certificate of eligibility, the
25 economic development department shall prescribe reasonable

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1 terms and conditions necessary to assure that the contract
2 demand, job creation or retention and investment requirements
3 for a certificate of eligibility are achieved, including
4 establishing reasonable development milestones and requiring
5 the customer to demonstrate through progress reports, or
6 otherwise, its achievement of the milestones.

7 F. A customer that accepts the terms and conditions
8 for eligibility in Subsection D of this section by paying
9 economic development rates lower than would otherwise be
10 applicable to the customer, but does not in fact fulfill the
11 commitments necessary for eligibility, shall be liable to the
12 utility for the difference between the economic development
13 rate and the rate otherwise applicable to the customer. The
14 customer shall provide reasonable assurances to the utility
15 that it will fulfill the commitments necessary for eligibility
16 specified in Subsection D of this section, including deposits
17 or bonds to guarantee payment to the utility of the difference
18 between the economic development rate and the rate that would
19 have otherwise been applicable to the customer's service.

20 G. The commission shall allow a utility to recover,
21 through the ratemaking process, the full amount of the
22 difference between the revenue recovered under the contract
23 economic development rate and the revenue the utility would
24 have recovered under the rate the customer would have paid if
25 the customer were not on the economic development rate.

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