AN ACT

RELATING TO UTILITIES; AMENDING A SECTION OF THE PUBLIC UTILITY ACT TO PROVIDE FOR ECONOMIC DEVELOPMENT RATES NO LOWER THAN THE INCREMENTAL COST OF PROVIDING SERVICE.

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 by cooperative utilities pursuant to [Subsection F of] Section 62-8-7 NMSA 1978, as appropriate, for special rates or tariffs.
in order to prevent the loss of customers, to encourage
customers to expand present facilities and operations in New
Mexico and to attract new customers where necessary or
appropriate to promote economic development in New Mexico. Any
such special rates or tariffs shall be designed so as to
recover at least the incremental cost of providing service to
such customers.

B. The commission may approve or otherwise allow to
become effective applications from utilities or persons subject
to regulation pursuant to Subsection B of Section 62-6-4 NMSA
1978 and filings by cooperative utilities pursuant to
[Subsection F of] Section 62-8-7 NMSA 1978 for economic
development rates and rates designed to retain load for gas and
electric utility customers. For purposes of this section and
Section 62-8-6 NMSA 1978, economic development rates and rates
designed to retain load are rates set at a level lower than the
corresponding service rate for which a customer would otherwise qualify.

C. Except as provided in Subsection D of this
section, economic development rates shall be approved or
otherwise allowed to become effective for an electric utility
or persons subject to regulation pursuant to Subsection B of
Section 62-6-4 NMSA 1978 or filings by cooperative utilities
pursuant to [Subsection F of] Section 62-8-7 NMSA 1978 only
when the utility or the substantially full requirements
supplier of the utility has excess capacity. For purposes of
this section, "excess capacity" means the amount of electric
generating and purchased power capacity available to the
utility or such supplier that is greater than the utility's or
such supplier's peak load plus a fixed percentage reserve
margin set by the commission.

D. Economic development rates may be approved or
otherwise allowed to become effective for electric utilities or
persons subject to regulation pursuant to Subsection B of
Section 62-6-4 NMSA 1978 or filings by cooperative utilities
pursuant to Section 62-8-7 NMSA 1978 that do not meet the
qualifications of Subsection C of this section; provided that
the following conditions are met:

(1) economic development rates approved under
this subsection shall not be lower than the incremental cost of
providing service to the economic development rate customer as
determined by the commission. As used in this subsection,
"economic development rate customer" means a customer that
directly benefits from the economic development rate
established pursuant to this subsection; and

(2) an economic development rate approved for
any customer under this subsection shall last no longer than
four years, except that the commission may approve the rate for
up to twelve additional months if it finds that the additional
period is necessary to attract a particular economic
development rate customer to New Mexico.

E. For purposes of this section, "incremental cost" at a minimum shall include fuel and purchased power costs, costs recoverable from customers pursuant to the Renewable Energy Act and the Efficient Use of Energy Act and the direct costs of facilities necessary to provide service to the customer."