HOUSE BILL 291

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Andrea Romero

AN ACT

RELATING TO UTILITIES; AMENDING THE EFFICIENT USE OF ENERGY ACT; PROVIDING UPDATED GOALS AND COST RECOVERY PERCENTAGES; ALLOWING THE ADOPTION OF RATE ADJUSTMENT MECHANISMS TO ADDRESS DISINCENTIVES; MAKING TECHNICAL CHANGES.

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

**SECTION 1.** Section 62-17-2 NMSA 1978 (being Laws 2005, Chapter 341, Section 2, as amended) is amended to read:

"62-17-2. FINDINGS.--The legislature finds that:

A. energy efficiency and load management are cost-effective resources that are an essential component of the balanced resource portfolio that public utilities must achieve to provide affordable and reliable energy to public utility consumers;

B. energy efficiency and load management in New

underscored material = new
[bracketed material] = delete

Mexico are resources that are currently underutilized and, because regulatory disincentives create barriers to public utilities that inhibit the development of these resources, it is necessary and appropriate to provide rate treatment and financial incentives to public utilities to develop all cost-effective and achievable energy efficiency and load management resources;

C. public and municipal utility energy efficiency and load management programs present opportunities to increase New Mexico's energy security, protect New Mexico energy consumers from price increases, preserve the state's natural resources and pursue an improved environment in New Mexico;

D. energy efficiency and load management programs by public utilities in accordance with the Efficient Use of Energy Act can bring significant economic benefits to New Mexico;

E. it serves the public interest to support public utility development of all cost-effective energy efficiency and load management by removing, to the extent possible, regulatory disincentives and allowing recovery of costs for reasonable and prudently incurred expenses of energy efficiency and load management programs and also allowing public utilities the opportunity to earn a profit on cost-effective energy efficiency and load management resource development that, with satisfactory program performance, is financially more

underscored material = new
[bracketed material] = delete

attractive than developing supply-side resources, while at the same time ensuring it is done in a manner that balances the public interest, consumers' interests and investors' interests;

F. utility energy efficiency and load management programs for economically disadvantaged New Mexicans, in conjunction with low-income weatherization programs managed by the state of New Mexico, will reduce the burden of utility costs on low-income customers;

G. cost-effective energy efficiency and load management programs undertaken by public utilities can provide significant reductions in greenhouse gas emissions, regulated air emissions, water consumption and natural resource depletion, and can avoid or delay the need for more expensive generation, transmission and distribution infrastructure;

H. New Mexico should participate in regional efforts to reduce energy consumption by twenty percent by 2020 through programs to reduce energy consumption;

I. public utility resource planning to meet New Mexico's energy service needs should be identified and evaluated on an ongoing basis in accordance with the principles of integrated resource planning; [~~and~~]

J. it is necessary and appropriate to allow distribution cooperative utilities to participate in the implementation of energy efficiency programs in ways that differ from rules applicable to public utilities that are not

underscored material = new
[~~bracketed material~~] = delete

customer owned; and

K. maintenance of fair returns on common equity is vital to investor-owned public utilities' incentive to efficiently invest in energy efficiency and to provide for the ability of utilities to prudently invest in electric service in New Mexico."

**SECTION 2.** Section 62-17-4 NMSA 1978 (being Laws 2005, Chapter 341, Section 4, as amended by Laws 2013, Chapter 124, Section 1 and by Laws 2013, Chapter 220, Section 1) 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

underscored material = new
[bracketed material] = delete

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

underscored material = new
[bracketed material] = delete

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 3.** Section 62-17-5 NMSA 1978 (being Laws 2005, Chapter 341, Section 5, as amended by Laws 2013, Chapter 124, Section 2 and by Laws 2013, Chapter 220, Section 2) 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

underscored material = new
[~~bracketed material~~] = delete

efficiency and load management program for a public utility, it [~~must~~] shall 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. In determining life-cycle costs and benefits of energy efficiency programs, the commission shall not adjust for taxes when selecting a discount rate. In determining life-cycle costs and benefits for energy efficiency and load management programs directed to low-income customers, the commission shall either quantify or assign a reasonable value to:

(1) reductions in working capital;

(2) reduced collection costs;

(3) lower bad-debt expense;

(4) improved customer service effectiveness; and

(5) other appropriate factors as utility system economic benefits.

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

underscored material = new
[~~bracketed material~~] = delete

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:

(1) upon petition or its own motion, identify and remove 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~~]

(2) upon petition by a public utility, remove regulatory disincentives through the adoption of a rate adjustment mechanism that ensures that the revenue per customer approved by the commission in a general rate case proceeding is recovered by the public utility without regard to the quantity of electricity actually sold by the public utility subsequent to the date the rate took effect. Regulatory disincentives removed through a rate adjustment mechanism shall be separately calculated for the rate class or classes to which the mechanism

underscored material = new
[~~bracketed material~~] = delete

applies and collected or refunded by the utility through a separately identified tariff rider that shall not be used to collect commission-approved energy efficiency and load management program costs and incentives;

(3) 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; and

(4) not reduce a utility's return on equity based on approval of a disincentive removal mechanism or profit incentives pursuant to the Efficient Use of Energy Act.

G. Public utilities providing electricity and natural gas service to New Mexico customers shall, subject to commission approval, acquire maximum 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~~] 2020 total retail kilowatt-hour sales to New Mexico [~~customers~~] customer classes that have the opportunity to participate in calendar year [~~2014 and eight percent of 2005 total retail kilowatt-hour sales to New Mexico customers in 2020~~] 2025 as a result of energy efficiency and load management programs implemented [~~starting in 2007~~] in years 2021 through 2025. No

underscored material = new
[~~bracketed material~~] = delete

later than June 30, 2025, the commission shall adopt, through rulemaking, minimum energy savings targets for electric utilities for years 2026 through 2030 based on maximum cost-effective and achievable energy savings.

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 maximum 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 4.** Section 62-17-6 NMSA 1978 (being Laws 2005, Chapter 341, Section 6, as amended by Laws 2013, Chapter 124, Section 3 and by Laws 2013, Chapter 220, Section 3) is amended to read:

underscored material = new
[~~bracketed material~~] = delete

"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~~] as follows:

(1) for investor-owned electric utilities, no less than three percent and no more than five 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~~] The commission shall approve funding greater than three percent if requested by a utility and may consider funding greater than three percent if requested by an intervenor in an energy-efficiency filing; and

(2) for gas utilities, [~~shall not exceed three~~] no more than five percent of total annual revenues [~~nor shall charges exceed~~] or seventy-five thousand dollars

underscored material = new
[~~bracketed material~~] = delete

($75,000) per customer per calendar year.

B. 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.

C. Unless otherwise ordered by the commission, a tariff rider approved by the commission shall:

(1) require language on customer bills explaining program benefits; and

[~~B. The tariff rider shall~~] (2) be applied on a monthly basis. [~~unless otherwise allowed by the commission.~~

~~C.~~] D. 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."