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; REPEALING SECTION 62-17-2 NMSA 1978
(being Laws 2005, Chapter 341, Section 2, as amended); MAKING
TECHNICAL CHANGES.

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 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 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."

SECTION 2. 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 efficiency and load management program for a public utility, it 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 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 in a manner that balances the public interest, consumers' interests and investors' interests;

   (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 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 the 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 2020 total
retail kilowatt-hour sales to New Mexico customer classes
that have the opportunity to participate in calendar year
2025 as a result of energy efficiency and load management
programs implemented in years 2021 through 2025. No later
than June 30, 2025, the commission shall adopt, through
rulemaking, energy savings targets for electric utilities for years 2026 through 2030 based on cost-effective and achievable energy savings and provide utility incentives based on savings achieved.

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 by Laws 2013, Chapter 124, Section 3 and by Laws 2013, Chapter 220, Section 3) 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 shall be 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; and

(2) for gas utilities, no more than five percent of total annual revenues or seventy-five thousand dollars ($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

(2) be applied on a monthly basis.

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."

SECTION 4. REPEAL.--Section 62-17-2 NMSA 1978 (being Laws 2005, Chapter 341, Section 2, as amended) is repealed.