

1 AN ACT
2 RELATING TO ECONOMIC DEVELOPMENT; REVISING DEFINITIONS IN THE
3 NEW MEXICO FINANCE AUTHORITY ACT; AMENDING PERMITTED USES FOR
4 MONEY IN THE PUBLIC PROJECT REVOLVING FUND; REVISING ECONOMIC
5 DEVELOPMENT RATES FOR GAS AND ELECTRIC UTILITIES; PROVIDING
6 FOR EXPEDITED RATEMAKING ORDERS.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 SECTION 1. Section 6-21-3 NMSA 1978 (being Laws 1992,
10 Chapter 61, Section 3, as amended) is amended to read:

11 "6-21-3. DEFINITIONS.--As used in the New Mexico
12 Finance Authority Act:

13 A. "authority" means the New Mexico finance
14 authority;

15 B. "bond" means any bonds, notes, certificates
16 of participation or other evidence of indebtedness;

17 C. "bondholder" or "holder" means a person who
18 is the owner of a bond, whether registered or not;

19 D. "emergency public project" means a public
20 project:

21 (1) made necessary by an unforeseen
22 occurrence or circumstance threatening the public health,
23 safety or welfare; and

24 (2) requiring the immediate expenditure
25 of money that is not within the available financial resources

1 of the qualified entity as determined by the authority;

2 E. "public project" means the acquisition,
3 construction, improvement, alteration or reconstruction of
4 assets of a long-term capital nature by a qualified entity,
5 including land; buildings; water rights; water, sewerage and
6 waste disposal systems; streets; housing; airports; municipal
7 utilities; public recreational facilities; public
8 transportation systems; parking facilities; and machinery,
9 furniture and equipment. "Public project" includes all
10 proposed expenditures related to the entire undertaking.

11 "Public project" also includes the acquisition, construction
12 or improvement of real property, buildings, facilities and
13 other assets by the authority for the purpose of leasing the
14 property;

15 F. "qualified entity" means the state or an
16 agency or institution of the state or a county, municipality,
17 school district, two-year public post-secondary educational
18 institution, charter school, land grant corporation, acequia
19 association, public improvement district, federally chartered
20 college located in New Mexico, intercommunity water or
21 natural gas supply association or corporation, special water,
22 drainage, irrigation or conservancy district or other special
23 district created pursuant to law, rural electric cooperative
24 pursuant to the Rural Electric Cooperative Act, nonprofit
25 foundation or other support organization affiliated with a

1 public university, college or other higher educational
2 institution located in New Mexico, including a university
3 research park corporation, a nonprofit housing developer,
4 an Indian nation, tribe or pueblo located wholly or partially
5 in New Mexico, including a political subdivision or a wholly
6 owned enterprise of an Indian nation, tribe or pueblo or a
7 consortium of those Indian entities or a consortium of any
8 two or more qualified entities created pursuant to law; and

9 G. "security" or "securities", unless the context
10 indicates otherwise, means bonds, notes or other evidence of
11 indebtedness issued by a qualified entity or leases or
12 certificates or other evidence of participation in the
13 lessor's interest in and rights under a lease with a
14 qualified entity and that are payable from taxes, revenues,
15 rates, charges, assessments or user fees or from the proceeds
16 of funding or refunding bonds, notes or other evidence of
17 indebtedness of a qualified entity or from certificates or
18 evidence of participation in a lease with a qualified
19 entity."

20 SECTION 2. Section 6-21-6 NMSA 1978 (being Laws 1992,
21 Chapter 61, Section 6, as amended) is amended to read:

22 "6-21-6. PUBLIC PROJECT REVOLVING FUND--PURPOSE--
23 ADMINISTRATION.--

24 A. The "public project revolving fund" is created
25 within the authority. The fund shall be administered by the

1 authority as a separate account, but may consist of such
2 subaccounts as the authority deems necessary to carry out
3 the purposes of the fund. The authority may establish
4 procedures and adopt rules as required to administer the fund
5 in accordance with the New Mexico Finance Authority Act.

6 B. Except as otherwise provided in the New Mexico
7 Finance Authority Act, money from payments of principal of
8 and interest on loans and payments of principal of and
9 interest on securities held by the authority for public
10 projects shall be deposited in the public project revolving
11 fund. The fund shall also consist of any other money
12 appropriated, distributed or otherwise allocated to the fund
13 for the purpose of financing public projects.

14 C. Money appropriated to pay administrative costs,
15 money available for administrative costs from other sources
16 and money from payments of interest on loans or securities
17 held by the authority, including payments of interest on
18 loans and securities held by the authority for public
19 projects, that represents payments for administrative costs
20 shall not be deposited in the public project revolving fund
21 and shall be deposited in a separate account of the authority
22 and may be used by the authority to meet administrative costs
23 of the authority.

24 D. Except as otherwise provided in the New Mexico
25 Finance Authority Act, money in the public project revolving

1 fund is appropriated to the authority to pay the reasonably
2 necessary costs of originating and servicing loans, grants
3 or securities funded by the fund and to make loans or grants
4 and to purchase or sell securities to assist qualified
5 entities in financing public projects in accordance with
6 the New Mexico Finance Authority Act.

7 E. Money in the public project revolving fund
8 not needed for immediate disbursement, including money held
9 in reserve, may be deposited with the state treasurer for
10 short-term investment pursuant to Section 6-10-10.1 NMSA 1978
11 or may be invested in direct and general obligations of
12 or obligations fully and unconditionally guaranteed by
13 the United States, obligations issued by agencies of the
14 United States, obligations of this state or any political
15 subdivision of the state, interest-bearing time deposits,
16 commercial paper issued by corporations organized and
17 operating in the United States and rated "prime" quality
18 by a national rating service, other investments permitted
19 by Section 6-10-10 NMSA 1978 or as otherwise provided by the
20 trust indenture or bond resolution, if money is pledged for
21 or secures payment of bonds issued by the authority.

22 F. The authority shall establish fiscal controls
23 and accounting procedures that are sufficient to assure
24 proper accounting for public project revolving fund payments,
25 disbursements and balances.

1 G. Money on deposit in the public project
2 revolving fund may be used to make interim loans for a term
3 not exceeding two years to qualified entities for the purpose
4 of providing interim financing for any project approved or
5 funded by the legislature.

6 H. Money on deposit in the public project
7 revolving fund may be used to acquire securities or to make
8 loans to qualified entities in connection with the small loan
9 program. As used in this subsection, "small loan program"
10 means the program of the authority designed to provide
11 financing for public projects in amounts not to exceed one
12 million dollars (\$1,000,000) per project. A public project
13 financed pursuant to the small loan program shall not require
14 specific authorization by law.

15 I. Money on deposit in the public project
16 revolving fund may be designated as a reserve for any
17 bonds issued by the authority, including bonds payable from
18 sources other than the public project revolving fund, and the
19 authority may covenant in any bond resolution or trust
20 indenture to maintain and replenish the reserve from money
21 deposited in the public project revolving fund after
22 issuance of bonds by the authority.

23 J. Money on deposit in the public project
24 revolving fund may be used to purchase bonds issued by
25 the authority, which are payable from any designated source

1 of revenues or collateral. Purchasing and holding the bonds
2 in the public project revolving fund shall not, as a matter
3 of law, result in cancellation or merger of the bonds
4 notwithstanding the fact that the authority as the issuer of
5 the bonds is obligated to make the required debt service
6 payments and the public project revolving fund held by the
7 authority is entitled to receive the required debt service
8 payments.

9 K. Money on deposit in the public project
10 revolving fund may be used to capitalize other financing
11 programs of the authority authorized by law, either directly
12 or from proceeds of bonds issued by the authority and secured
13 by money in the public project revolving fund.

14 L. After June 30, 2028, only public projects
15 referenced in Subsection D of this section that are
16 specifically authorized by law shall be eligible for funding
17 from the public project revolving fund."

18 SECTION 3. Section 62-6-26 NMSA 1978 (being Laws 1989,
19 Chapter 5, Section 1, as amended) is amended to read:

20 "62-6-26. ECONOMIC DEVELOPMENT RATES FOR GAS AND
21 ELECTRIC UTILITIES--AUTHORIZATION.--

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

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

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

21 C. Except as provided in Subsection D of this
22 section, economic development rates shall be approved or
23 otherwise allowed to become effective for an electric utility
24 or persons subject to regulation pursuant to Subsection B of
25 Section 62-6-4 NMSA 1978 or filings by cooperative utilities

1 pursuant to Section 62-8-7 NMSA 1978 only when the utility or
2 the substantially full requirements supplier of the utility
3 has excess capacity. For purposes of this section,
4 "excess capacity" means the amount of electric generating
5 and purchased power capacity available to the utility or
6 such supplier that is greater than the utility's or such
7 supplier's peak load plus a fixed percentage reserve
8 margin set by the commission.

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

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

23 (2) an economic development rate approved
24 for any customer under this subsection shall last no longer
25 than four years, except that the commission may approve the

1 rate for up to twelve additional months if it finds that the
2 additional period is necessary to attract a particular
3 economic development rate customer to New Mexico.

4 E. Prior to July 1, 2035, the commission shall
5 allow public utilities to recover prudent and reasonable
6 costs incurred by a public utility for the ongoing
7 development, construction or maintenance of resources for
8 economic development projects that provide incremental
9 capacity, or serve incremental load growth, within the
10 economic development project's service area. For economic
11 development projects implemented after the effective date of
12 this 2025 act, the reasonable costs of economic development
13 projects shall be recoverable in rates through a rate rider,
14 base rates or a combination thereof, when the associated
15 equipment and facilities begin serving the new load
16 associated with the economic development project or the
17 utility demonstrates that the economic development project
18 provides benefits to existing customers. A public utility
19 shall be allowed to defer costs incurred for economic
20 development projects that are not included in rates to a
21 regulatory asset. Notwithstanding the time lines in
22 Subsection C of Section 62-9-1 NMSA 1978, the commission
23 shall review a public utility's application for an economic
24 development project and issue a final order approving,
25 modifying or denying the application within six months of the

1 application filing date; provided, however, that the
2 commission may extend the time for granting approval for an
3 additional three months for good cause shown. All projects
4 shall be certified by the economic development
5 department using industry standard guidelines for site
6 selection and approved by the commission. All certified and
7 approved projects shall be allowed to complete construction.

8 F. The economic development department shall
9 certify, using industry standard guidelines for site
10 selection, whether the economic development project will
11 support reasonably anticipated economic development within
12 the state. Prior to the certification, the department shall
13 provide an opportunity for public comment regarding whether
14 the proposed economic development project will support
15 reasonably anticipated economic development within the state.
16 The department shall issue a certification letter within
17 sixty days of a request from a public utility or project
18 developer, and the certification letter shall be included in
19 a public utility's application filed pursuant to Subsection E
20 of this section.

21 G. For purposes of this section:

22 (1) "economic development project" means
23 the construction or modification of new or existing electric
24 generation facilities, energy storage facilities,
25 transmission and distribution facilities, zero-carbon

resources as defined in Subsection K of Section 62-16-3
NMSA 1978, alternative fuel facilities, energy efficiency
programs, renewable energy and fuel cell facilities, recycled
energy or other technologies necessary to serve reasonably
anticipated new load and that have been certified by the
economic development department pursuant to Subsection F
of this section;

(2) "incremental capacity" means the
increase in capacity attributable to new or expanded
facilities up to ten percent of a public utility's total
system peak load per calendar year;

(3) "incremental cost" at a minimum shall
include all additional costs incurred to serve the economic
development rate customer that would not otherwise have been
incurred to serve other customers, 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. The commission shall not impute to the
electric utility revenues that would have been received from
the economic development rate or load retention customer if
they had been provided service under the corresponding rate
for which they would have otherwise qualified;

(4) "incremental load growth" means the
increase in forecasted load attributable to commercial and

1 industrial growth or electrification of utility customer
2 infrastructure; and

3 (5) "recycled energy" means energy
4 produced by a generation unit that converts the otherwise
5 lost energy from exhaust stacks or pipes to electricity
6 without combustion of additional fossil fuel."

7 SECTION 4. Section 62-9-1 NMSA 1978 (being Laws 1941,
8 Chapter 84, Section 46, as amended) is amended to read:

9 "62-9-1. NEW CONSTRUCTION--RATEMAKING PRINCIPLES.--

10 A. No public utility shall begin the construction
11 or operation of any public utility plant or system or of any
12 extension of any plant or system without first obtaining from
13 the commission a certificate that public convenience and
14 necessity require or will require such construction or
15 operation. This section does not require a public utility to
16 secure a certificate for an extension within any municipality
17 or district within which it lawfully commenced operations
18 before June 13, 1941 or for an extension within or to
19 territory already served by it, necessary in the ordinary
20 course of its business, or for an extension into territory
21 contiguous to that already occupied by it and that is not
22 receiving similar service from another utility. If any
23 public utility or mutual domestic water consumer association
24 in constructing or extending its line, plant or system
25 unreasonably interferes or is about to unreasonably interfere

1 with the service or system of any other public utility or
2 mutual domestic water consumer association rendering the same
3 type of service, the commission, on complaint of the public
4 utility or mutual domestic water consumer association
5 claiming to be injuriously affected, may, upon and pursuant
6 to the applicable procedure provided in Chapter 62,
7 Article 10 NMSA 1978, and after giving due regard to public
8 convenience and necessity, including reasonable service
9 agreements between the utilities, make an order and prescribe
10 just and reasonable terms and conditions in harmony with the
11 Public Utility Act to provide for the construction,
12 development and extension, without unnecessary duplication
13 and economic waste.

14 B. If a certificate of public convenience and
15 necessity is required pursuant to this section for the
16 construction or extension of a generating plant or
17 transmission lines and associated facilities, a public
18 utility may include in the application for the certificate
19 a request that the commission determine the ratemaking
20 principles and treatment that will be applicable for the
21 facilities that are the subject of the application for the
22 certificate. If such a request is made, the commission
23 shall, in the order granting the certificate, set forth the
24 ratemaking principles and treatment that will be applicable
25 to the public utility's stake in the certified facilities in

1 all ratemaking proceedings on and after such time as the
2 facilities are placed in service. The commission shall use
3 the ratemaking principles and treatment specified in the
4 order in all proceedings in which the cost of the public
5 utility's stake in the certified facilities is considered.
6 If the commission later decertifies the facilities, the
7 commission shall apply the ratemaking principles and
8 treatment specified in the original certification order to
9 the costs associated with the facilities that were incurred
10 by the public utility prior to decertification.

11 C. The commission may approve the application for
12 the certificate without a formal hearing if no protest is
13 filed within sixty days of the date that notice is given,
14 pursuant to commission order, that the application has been
15 filed. The commission shall issue its order granting or
16 denying the application within nine months from the date the
17 application is filed with the commission. Failure to issue
18 its order within nine months is deemed to be approval and
19 final disposition of the application; provided, however, that
20 the commission may extend the time for granting approval for
21 an additional six months for good cause shown.

22 D. Notwithstanding the time lines contained in
23 Subsection C of this section, for applications certified by
24 the economic development department pursuant to Subsection F
25 of Section 62-6-26 NMSA 1978, the commission shall issue an

1 order granting or denying the application within six months
2 from the date the application is filed with the commission.
3 Failure to issue the commission's order within six months
4 is deemed to be approval and final disposition of the
5 application; provided, however, that the commission may
6 extend the time for granting approval for an additional three
7 months for good cause shown.

8 E. In an application for a certificate of public
9 convenience and necessity for an energy storage system, the
10 commission shall approve energy storage systems that:

11 (1) reduce costs to ratepayers by avoiding
12 or deferring the need for investment in new generation and
13 for upgrades to systems for the transmission and distribution
14 of energy;

15 (2) reduce the use of fossil fuels for
16 meeting demand during peak load periods and for providing
17 ancillary services;

18 (3) assist with ensuring grid reliability,
19 including transmission and distribution system stability,
20 while integrating sources of renewable energy into the grid;

21 (4) support diversification of energy
22 resources and enhance grid security;

23 (5) reduce greenhouse gases and other air
24 pollutants resulting from power generation;

25 (6) provide the public utility with the

1 discretion, subject to applicable laws and rules, to operate,
2 maintain and control energy storage systems so as to ensure
3 reliable and efficient service to customers; and

4 (7) are the most cost effective among
5 feasible alternatives.

6 F. As used in this section:

7 (1) "energy storage system" means methods
8 and technologies used to store electricity; and

9 (2) "mutual domestic water consumer
10 association" means an association created and organized
11 pursuant to the provisions of:

12 (a) Laws 1947, Chapter 206; Laws 1949,
13 Chapter 79; or Laws 1951, Chapter 52; or

14 (b) the Sanitary Projects Act." SB 170
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