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HOUSE BILL 305

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO ENERGY; AMENDING SECTIONS OF THE NMSA 1978 TO PROVIDE FOR ENERGY EFFICIENCY AND LOAD MANAGEMENT FOR PUBLIC UTILITY CUSTOMERS; DECLARING AN EMERGENCY.

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

Section 1. Section 62-3-1 NMSA 1978 (being Laws 1967, Chapter 96, Section 2) is amended to read:

"62-3-1. DECLARATION OF POLICY.--

A. Public utilities, as defined in Section [~~68-3-2~~ New Mexico Statutes Annotated, 1953 Compilation] 62-3-3 NMSA 1978, are affected with the public interest in that, among other things:

(1) a substantial portion of [~~their~~] public utilities' business and activities involves the rendition of essential public services to a large number of the general

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1 public;

2 (2) [~~their~~] public utilities' financing  
3 involves the investment of large sums of money, including  
4 capital obtained from many members of the general public; and

5 (3) the development and extension of [~~their~~]  
6 public utilities' business directly affects the development,  
7 growth and expansion of the general welfare, business and  
8 industry of the state.

9 B. It is the declared policy of the state that the  
10 public interest, the interest of consumers and the interest of  
11 investors require the regulation and supervision of [~~such~~]  
12 public utilities to the end that reasonable and proper services  
13 shall be available at fair, just and reasonable rates and to  
14 the end that capital and investment may be encouraged and  
15 attracted so as to provide for the construction, development  
16 and extension, without unnecessary duplication and economic  
17 waste, of proper plants and facilities and demand-side  
18 resources for the rendition of service to the general public  
19 and to industry."

20 Section 2. Section 62-8-6 NMSA 1978 (being Laws 1941,  
21 Chapter 84, Section 42, as amended) is amended to read:

22 "62-8-6. DISCRIMINATION.--No public utility shall, as to  
23 rates or services, make or grant any unreasonable preference or  
24 advantage to any corporation or person within any  
25 classification or subject any corporation or person within any

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1 classification to any unreasonable prejudice or disadvantage.  
2 No public utility shall establish and maintain any unreasonable  
3 differences as to rates of service either as between localities  
4 or as between classes of service. Nothing shall prohibit,  
5 however, the commission from approving economic development  
6 rates and rates designed to retain load or from approving  
7 energy efficiency programs designed to reduce the burden of  
8 energy costs on low-income customers pursuant to the Efficient  
9 Use of Energy Act."

10 Section 3. Section 62-17-2 NMSA 1978 (being Laws 2005,  
11 Chapter 341, Section 2) is amended to read:

12 "62-17-2. FINDINGS.--The legislature finds that:

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

18 B. energy efficiency and load management in New  
19 Mexico are resources that are currently underutilized, and it  
20 is necessary and appropriate to provide rate treatment and  
21 financial incentives to public utilities to develop all cost-  
22 effective and achievable energy efficiency and load management  
23 resources;

24 C. public and municipal utility [~~investment in~~]  
25 energy efficiency and load management [~~presents~~] programs

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1 present opportunities to increase New Mexico's energy security,  
2 protect New Mexico energy consumers from price increases,  
3 preserve the state's natural resources and pursue an improved  
4 environment in New Mexico;

5 D. ~~[investment in]~~ energy efficiency and load  
6 management programs by public utilities ~~[subject to public~~  
7 ~~regulation commission oversight]~~ in accordance with the  
8 Efficient Use of Energy Act can bring significant economic  
9 benefits to New Mexico;

10 E. it serves the public interest to support public  
11 utility ~~[investments in]~~ development of all cost-effective  
12 energy efficiency and load management by removing ~~[any]~~, to the  
13 extent possible, regulatory disincentives ~~[that may exist]~~ and  
14 allowing recovery of costs for reasonable and prudently  
15 incurred expenses of energy efficiency and load management  
16 programs and also allowing public utilities the opportunity to  
17 earn a profit on cost-effective energy efficiency and load  
18 management resource development that, with satisfactory program  
19 performance, is financially more attractive than developing  
20 supply-side resources, while at the same time ensuring it is  
21 done in a manner that balances the public interest, consumers'  
22 interests and investors' interests;

23 F. ~~[investments in energy efficiency and~~  
24 ~~implementation of]~~ utility energy efficiency and load  
25 management programs for economically disadvantaged New

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1 Mexicans, in conjunction with low-income weatherization  
2 programs managed by the state of New Mexico, will reduce the  
3 burden of utility costs on low-income customers;

4 G. [~~public utility investments in~~] cost-effective  
5 energy efficiency and load management programs undertaken by  
6 public utilities can provide significant reductions in  
7 greenhouse gas emissions, regulated air emissions, water  
8 consumption and natural resource depletion, and can avoid or  
9 delay the need for more expensive generation, transmission and  
10 distribution infrastructure;

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

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

18 J. it is necessary and appropriate to allow  
19 distribution cooperative utilities to participate in the  
20 implementation of energy efficiency programs in ways that  
21 differ from rules applicable to public utilities that are not  
22 customer owned."

23 Section 4. Section 62-17-3 NMSA 1978 (being Laws 2005,  
24 Chapter 341, Section 3) is amended to read:

25 "62-17-3. POLICY.--It is the policy of the Efficient Use

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1 of Energy Act that public utilities, distribution cooperative  
2 utilities and municipal utilities include all cost-effective  
3 energy efficiency and load management [~~investments~~] programs in  
4 their energy resource portfolios, [~~and~~] that [~~any~~] regulatory  
5 disincentives [~~that may exist~~] to public utility [~~investments~~  
6 ~~in~~] development of cost-effective energy efficiency and load  
7 management [are eliminated] be removed in a manner that  
8 balances the public interest, consumers' interests and  
9 investors' interests and that the commission provide public  
10 utilities an opportunity to earn a profit on cost-effective  
11 energy efficiency and load management resources that, with  
12 satisfactory program performance, is financially more  
13 attractive to the utility than supply-side resources."

14 Section 5. Section 62-17-4 NMSA 1978 (being Laws 2005,  
15 Chapter 341, Section 4) is amended to read:

16 "62-17-4. DEFINITIONS.--As used in the Efficient Use of  
17 Energy Act:

18 A. "achievable" means those energy efficiency or  
19 load management resources available to the utility using its  
20 best efforts;

21 [~~A.~~] B. "commission" means the public regulation  
22 commission;

23 [~~B.~~] C. "cost-effective" means that the energy  
24 efficiency or load management program [being evaluated  
25 satisfies] meets the total resource cost test;

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1           D. "customer" means a utility customer at a single,  
2 contiguous field, location or facility, regardless of the  
3 number of meters at that field, location or facility;

4           [~~G.~~] E. "distribution cooperative utility" means a  
5 utility with distribution facilities organized as a rural  
6 electric cooperative pursuant to Laws 1937, Chapter 100 or the  
7 Rural Electric Cooperative Act or similarly organized in other  
8 states;

9           [~~D.~~] F. "energy efficiency" means measures,  
10 including energy conservation measures, or programs that target  
11 consumer behavior, equipment or devices to result in a decrease  
12 in consumption of electricity and natural gas without reducing  
13 the amount or quality of energy services;

14           [~~E.~~] G. "large customer" means a [~~utility~~] customer  
15 [~~at a single, contiguous field, location or facility,~~  
16 ~~regardless of the number of meters at that field, location or~~  
17 ~~facility~~] with electricity consumption greater than seven  
18 thousand megawatt-hours per year or natural gas use greater  
19 than three hundred sixty thousand decatherms per year;

20           [~~F.~~] H. "load management" means measures or  
21 programs that target equipment or devices to result in  
22 [~~decrease~~] decreased peak electricity demand or shift demand  
23 from peak to off-peak periods;

24           [~~G.~~] I. "public utility" means a public utility  
25 that is not also a distribution cooperative utility; and

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1           ~~[H.]~~ J. "total resource cost test" means a standard  
2 that is met if ~~[for an investment in]~~ the monetary costs that  
3 are borne by the utility and the participants and that are  
4 incurred to develop, acquire and operate energy efficiency or  
5 load management resources on a life-cycle basis are less than  
6 the avoided ~~[supply-side]~~ monetary costs ~~[are greater than the~~  
7 ~~monetary costs of the demand-side programs borne by both the~~  
8 ~~utility and the participants]~~ associated with developing,  
9 acquiring and operating the associated supply-side resources.  
10 In developing this test for energy efficiency and load  
11 management programs directed to low-income customers, the  
12 commission shall either quantify or assign a reasonable value  
13 to reductions in working capital, reduced collection costs,  
14 lower bad-debt expense, improved customer service effectiveness  
15 and other appropriate factors as utility system economic  
16 benefits."

17           Section 6. Section 62-17-5 NMSA 1978 (being Laws 2005,  
18 Chapter 341, Section 5, as amended) is amended to read:

19           "62-17-5. COMMISSION APPROVAL--ENERGY EFFICIENCY AND LOAD  
20 MANAGEMENT PROGRAMS--DISINCENTIVES.--

21           A. Pursuant to the findings and purpose of the  
22 Efficient Use of Energy Act, the commission shall consider  
23 public utility ~~[investments in]~~ acquisition of cost-effective  
24 energy efficiency and load management resources to be [an  
25 acceptable use of ratepayer money] in the public interest.

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1           B. The commission shall direct public utilities to  
2 evaluate and implement cost-effective programs that reduce  
3 energy demand and consumption.

4           C. Before the commission approves an energy  
5 efficiency and load management program for a public utility, it  
6 must find that the portfolio of programs is cost-effective and  
7 designed to provide every affected customer class with the  
8 opportunity to participate and benefit economically. The  
9 commission shall determine the cost-effectiveness of energy  
10 efficiency and load management measures using the total  
11 resource cost test.

12           D. The commission shall act expeditiously on public  
13 utility requests for approval of energy efficiency or load  
14 management programs.

15           E. Public utilities shall obtain commission  
16 approval of energy efficiency and load management programs  
17 before they are implemented. Public utilities proposing new  
18 energy efficiency and load management programs shall, before  
19 seeking commission approval, solicit nonbinding recommendations  
20 on the design [~~and~~], implementation [~~of~~] and use of third-  
21 party energy service contractors through competitive bidding on  
22 the programs from commission staff, the attorney general, the  
23 energy, minerals and natural resources department and other  
24 interested parties. The commission may for good cause require  
25 utilities to solicit competitive bids for energy efficiency and

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1 load management resources.

2 F. The commission shall, upon petition or its own  
3 motion, ~~[open a docket to]~~ identify ~~[any]~~ regulatory  
4 disincentives or barriers ~~[that may exist]~~ for public utility  
5 expenditures on energy efficiency and load management measures  
6 and ~~[if found]~~ ensure that they are ~~[eliminated and that an~~  
7 ~~appropriate ratemaking treatment and performance-based,~~  
8 ~~financial or other incentives are considered in order that~~  
9 ~~public utilities are financially neutral in their preference~~  
10 ~~for acquiring demand- or supply-side utility resources]~~ removed  
11 in a manner that balances the public interest, consumers'  
12 interests and investors' interests. The commission shall also  
13 provide public utilities an opportunity to earn a profit on  
14 cost-effective energy efficiency and load management resource  
15 development that, with satisfactory program performance, is  
16 financially more attractive to the utility than supply-side  
17 utility resources.

18 G. Public utilities ~~[shall set a goal of at least~~  
19 ~~five percent reduction by January 1, 2020 in total retail sales~~  
20 ~~to New Mexico customers, adjusted for load growth]~~ providing  
21 electricity and natural gas service to New Mexico customers  
22 shall, subject to commission approval, acquire all cost-  
23 effective and achievable energy efficiency and load management  
24 resources available in their service territories. This  
25 requirement, however, for public utilities providing

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1 electricity service, shall not be less than savings of five  
2 percent of 2005 total retail kilowatt-hour sales to New Mexico  
3 customers in calendar year 2014 and ten percent of 2005 total  
4 retail kilowatt-hour sales to New Mexico customers in 2020 as a  
5 result of energy efficiency and load management programs  
6 implemented starting in 2007.

7 H. A utility that determines it cannot achieve the  
8 minimum requirements established in Subsection G of this  
9 section shall report to the commission on why it cannot meet  
10 those requirements and shall propose alternative requirements  
11 based on acquiring all cost-effective and achievable energy  
12 efficiency and load management resources. If the commission  
13 determines, after hearing, that the minimum requirements of  
14 Subsection G of this section exceed the achievable amount of  
15 energy efficiency and load management available to the utility,  
16 the commission shall establish lower minimum energy savings  
17 requirements for the utility based on the maximum amount of  
18 energy efficiency and load management that it determines can be  
19 achieved."

20 Section 7. Section 62-17-6 NMSA 1978 (being Laws 2005,  
21 Chapter 341, Section 6, as amended) is amended to read:

22 "62-17-6. COST RECOVERY.--

23 A. A public utility that undertakes cost-effective  
24 energy efficiency and load management programs shall ~~[recover~~  
25 ~~the costs of all the]~~ have the option of recovering its prudent

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1 and reasonable costs along with commission-approved incentives  
2 for demand-side resources and load management programs  
3 implemented after the effective date of the Efficient Use of  
4 Energy Act through an approved tariff rider or in base rates,  
5 or by a combination of the two. Program costs and incentives  
6 may be deferred for future recovery through creation of a  
7 regulatory asset [~~provided that the deferred recovery does not~~  
8 ~~cause the tariff rider to exceed the limits imposed by this~~  
9 ~~section].~~ The only limit to the tariff rider or customer  
10 impact for any utility customer is that it shall not exceed  
11 [~~the lower of the commission's approved tariff for that~~  
12 ~~customer's bill or]~~ seventy-five thousand dollars (\$75,000) per  
13 year [~~except that, upon application by a public utility with~~  
14 ~~the advice and consent of the entity designated by law to~~  
15 ~~represent residential and commercial utility customers, the~~  
16 ~~commission may approve a tariff rider in excess of the~~  
17 ~~commission's approved tariff for customers other than large~~  
18 ~~customers and may approve a tariff rider in excess of the lower~~  
19 ~~of the commission's approved tariff or seventy-five thousand~~  
20 ~~dollars (\$75,000) per year for a large customer that consents~~  
21 ~~to such a rider. The commission shall approve such~~  
22 ~~applications upon finding that the proposed energy efficiency~~  
23 ~~and load management programs are cost-effective and that the~~  
24 ~~cost recovery proposal is just and reasonable]~~ without the  
25 customer's consent. Unless otherwise ordered by the

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1 commission, a tariff rider approved by the commission shall  
2 require language on customer bills explaining program benefits.

3 B. The tariff rider shall ~~[provide for the~~  
4 ~~recovery, on a monthly basis or otherwise, of all reasonable~~  
5 ~~costs of approved energy efficiency and load management~~  
6 ~~programs]~~ be applied on a monthly basis, unless otherwise  
7 allowed by the commission.

8 C. A tariff rider proposed by a public utility to  
9 fund approved energy efficiency and load management programs  
10 shall go into effect thirty days after filing, unless suspended  
11 by the commission for a period not to exceed one hundred eighty  
12 days. If the tariff rider is not approved or suspended within  
13 thirty days after filing, it shall be deemed approved as a  
14 matter of law. If the commission has not acted to approve or  
15 disapprove the tariff rider by the end of an ordered suspension  
16 period, it shall be deemed approved as a matter of law. The  
17 commission shall approve utility reconciliations of the tariff  
18 rider annually. ~~[based upon recovery of the reasonable costs~~  
19 ~~of the utility's programs.~~

20 ~~D. The commission shall ensure that there are no~~  
21 ~~cross-subsidies between a public utility's energy efficiency~~  
22 ~~and load management activities and the public utility's supply-~~  
23 ~~side activities and shall ensure that the existence of a tariff~~  
24 ~~rider does not permit a public utility to earn an excessive~~  
25 ~~rate of return.]"~~

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1           Section 8. Section 62-17-8 NMSA 1978 (being Laws 2005,  
2 Chapter 341, Section 8) is amended to read:

3           "62-17-8. MEASUREMENT AND VERIFICATION.--~~[The]~~

4           A. A public utility shall submit to the commission  
5 an annual report [prepared by an independent program evaluator]  
6 that provides information relating to the actions taken by the  
7 public utility to comply with the standards of the Efficient  
8 Use of Energy Act. The ~~[reports]~~ report shall include  
9 documentation of program expenditures, [measurement and  
10 verification of] customer participation levels, estimated  
11 energy savings, demand reductions and customer monetary savings  
12 resulting from programs, evaluation of the cost-effectiveness  
13 of expenditures, evaluation of the cost-effectiveness of [self-  
14 direct] self-directed programs, a qualitative assessment of  
15 program effectiveness and any other information the commission  
16 may require pursuant to its rulemaking authority.

17           B. At least every three years, a public utility  
18 shall submit to the commission a comprehensive measurement,  
19 verification and program evaluation report prepared by an  
20 independent program evaluator. In preparing the report, the  
21 independent program evaluator shall measure and verify energy  
22 and demand savings, determine cost-effectiveness of the  
23 programs, assess the performance of the public utility in  
24 implementing energy efficiency and load management programs  
25 and, as appropriate, provide recommendations on how program

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1 performance can be improved.

2           C. The commission may direct a public utility to  
3 modify or terminate a particular energy efficiency or load  
4 management program if, after an adequate period for  
5 implementation of the program, the commission determines the  
6 program is not sufficiently meeting its goals and purposes.  
7 Termination of a program or programs shall be accomplished in a  
8 manner that allows the utility to fully recover its reasonable  
9 and prudent program costs."

10           Section 9. Section 62-17-11 NMSA 1978 (being Laws 2005,  
11 Chapter 341, Section 11) is amended to read:

12           "62-17-11. DISTRIBUTION COOPERATIVE UTILITIES.--

13           A. Distribution cooperative utilities shall  
14 periodically examine the potential to assist their customers in  
15 reducing energy consumption or peak electricity demand in a  
16 cost-effective manner. Based on these studies, by January 1,  
17 2009, distribution cooperative utilities shall establish energy  
18 efficiency and load management targets and begin to implement  
19 cost-effective energy efficiency and load management programs  
20 that are economically feasible and practical for their members  
21 and customers. Approval for such programs shall reside with  
22 the governing body of each distribution cooperative utility and  
23 not with the commission.

24           B. Each distribution cooperative utility shall file  
25 with the commission concurrently with its annual report, a

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1 report that describes all of the distribution cooperative  
2 utility's programs or measures that promote energy efficiency,  
3 conservation or load management. The report shall set forth  
4 the costs of each of the programs or measures for the previous  
5 calendar year and the resulting effect on the consumption of  
6 electricity. In offering or implementing energy efficiency,  
7 conservation or load management programs, a distribution  
8 cooperative utility shall attempt to minimize any cross-  
9 subsidies between customer classes.

10 C. Each distribution cooperative utility shall  
11 include in the report required by Subsection B of this section  
12 a description of all programs or measures to promote energy  
13 efficiency, conservation or load management that are planned  
14 and the anticipated date for implementation.

15 D. Costs resulting from programs or measures to  
16 promote energy efficiency, conservation or load management may  
17 be recovered by the distribution cooperative utility through  
18 its general rates. In requesting approval to recover such  
19 costs in general rates, the distribution cooperative utility  
20 may elect to use the procedure set forth in Subsection G of  
21 Section 62-8-7 NMSA 1978."

22 Section 10. EMERGENCY.--It is necessary for the public  
23 peace, health and safety that this act take effect immediately.