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SENATE BILL 190

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

William H. Payne

AN ACT

RELATING TO PUBLIC UTILITIES; DECLARING THAT OWNERS OF CERTAIN
RENEWABLE ENERGY DISTRIBUTED GENERATION FACILITIES ARE NOT
PUBLIC UTILITIES; PROVIDING FOR THE CREATION OF HOLDING
COMPANIES; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING FOR
PUBLIC UTILITY COST RECOVERY.

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

Section 1. A new section of the Public Utility Act is
enacted to read:

"[NEW MATERIAL] RENEWABLE ENERGY DISTRIBUTED GENERATION
FACILITIES--OWNERS AND OPERATORS NOT PUBLIC UTILITIES.--

A. Notwithstanding any other provision of the
Public Utility Act to the contrary, a person not otherwise a
public utility shall not be deemed to be a public utility
subject to the jurisdiction, control or regulation of the

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1 commission and the provisions of the Public Utility Act solely
2 because the person owns or controls all or any part of any
3 renewable energy distributed generation facility that:

4 (1) is located on the host's site;

5 (2) produces electric energy used at the
6 host's site and sold to the host or the host's tenants or
7 employees located at the host's site; and

8 (3) shares a common point of connection with
9 the electric utility serving the area and the host or the
10 host's tenants and employees served by the renewable energy
11 distributed generation facility.

12 B. Nothing contained in this section shall be
13 interpreted to prohibit the sale of energy produced by the
14 renewable energy distributed generation facility to the
15 electric utility serving the area in which the renewable energy
16 distributed generation facility is located.

17 C. As used in this section:

18 (1) "host" means the customer of a public
19 utility who uses the electric energy produced by a renewable
20 energy distributed generation facility and occupies the site
21 upon which the renewable energy distributed generation facility
22 is located;

23 (2) "renewable energy distributed generation
24 facility" means a facility that produces electric energy by the
25 use of renewable energy and that is sized to supply no more

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1 than one hundred twenty percent of the average annual
2 consumption of electricity by the host at the site of the
3 renewable energy distributed generation facility in accordance
4 with applicable interconnection rules; and

5 (3) "site" means all the contiguous property
6 owned or leased by the host, without regard to interruptions in
7 contiguity caused by easements, public thoroughfares,
8 transportation rights of way or utility rights of way."

9 Section 2. A new section of the Public Utility Act is
10 enacted to read:

11 "[NEW MATERIAL] INTERCONNECTED CUSTOMERS--UTILITY COST
12 RECOVERY.--

13 A. Upon request of an investor-owned utility in any
14 general rate case, the commission shall approve interconnected
15 customer rate riders to recover the costs of ancillary and
16 standby services pursuant to this section only for new
17 interconnected customers, except that a utility may seek
18 approval of interconnected customer rate riders in the
19 utility's renewable energy procurement plan filing before
20 January 1, 2011, to be in effect until the conclusion of the
21 utility's next general rate case. In establishing
22 interconnected customer rate riders, the commission shall
23 assure that costs to be recovered through the rate riders are
24 not duplicative of costs to be recovered in underlying rates
25 and shall give due consideration to the reasonably determinable

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1 embedded and incremental costs of the utility to serve new
2 interconnected customers and the reasonably determinable
3 benefits to the utility system provided by new interconnected
4 customers during each three-year period after which new
5 interconnected customer rate riders go into effect. The
6 benefits to the utility system, as applicable, include avoided
7 renewable energy certificate procurement costs, reduced capital
8 investment costs resulting from the avoidance or deferral of
9 capital expenditures, reduced energy and capacity costs and
10 line loss reductions.

11 B. In a filing made pursuant to Subsection G of
12 Section 62-8-7 NMSA 1978, a rural electric cooperative may
13 implement rates or rate riders by customer class, giving due
14 consideration to reasonably determinable costs and benefits of
15 interconnected systems, that are specifically designed to
16 recover from interconnected customers the fixed costs of
17 providing electric services to those customers.

18 C. Nothing in this section shall be interpreted as
19 preventing the utility from charging rates designed to recover
20 all of its reasonable costs of providing service to customers.

21 D. As used in this section:

22 (1) "ancillary and standby services" means
23 services that are essential to maintain electric system
24 reliability and are required by or are a consequence of
25 interconnecting distributed generation facilities to a

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1 utility's system and may include, among other services,
2 regulation and frequency response, regulation and voltage
3 support, spinning reserves and supplemental reserves;

4 (2) "interconnected customer" means a utility
5 customer that is also interconnected to non-utility distributed
6 generation facilities; and

7 (3) "new interconnected customer" means a
8 customer that became an interconnected customer after December
9 31, 2010 or a customer whose renewable energy certificate
10 purchase agreement entered into prior to January 1, 2011 is no
11 longer in effect."

12 Section 3. A new section of the Public Utility Act is
13 enacted to read:

14 "[NEW MATERIAL] RENEWABLE ENERGY-RELATED SERVICES--POWERS
15 AND DUTIES OF COMMISSION.--

16 A. No later than July 1, 2011, the commission shall
17 approve any new application for creation of a holding company
18 filed by a public utility prior to January 1, 2011, as part of
19 that utility's plan to offer renewable energy-related services
20 for the residents of New Mexico; provided that the creation of
21 the holding company shall be subject to such terms and
22 conditions as are in the public interest. The creation of a
23 holding company under this subsection shall not result in any
24 loss of the commission's jurisdiction over corporate
25 allocations to the utility or over costs that are charged to

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1 ratepayers.

2 B. Any order of the commission entered prior to
3 January 1, 2011 declaring the public utility status of a person
4 who owns or controls all or any part of any distributed
5 generation facility and sells the electricity produced by the
6 facility to other persons shall have no force or effect on or
7 after May 19, 2010.

8 C. By December 31, 2012, the commission shall
9 submit a report to the legislature that describes the
10 effectiveness of the state's renewable energy distributed
11 generation program in supporting the development of new
12 renewable energy resources and that identifies any recommended
13 changes to improve the program's effectiveness, consistent with
14 the public policies declared in the Public Utility Act. This
15 report shall be no more than ten pages in length."

16 Section 4. EFFECTIVE DATE.--The effective date of the
17 provisions of Section 1 this act is January 1, 2011.