

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 137

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO PUBLIC UTILITIES; PROVIDING FOR A RETAIL RATE FOR  
THE PURCHASE OF ELECTRIC POWER FROM CUSTOMER-GENERATORS;  
PROHIBITING ADDITIONAL RATES TO CUSTOMER-GENERATORS NOT CHARGED  
TO OTHER CUSTOMERS IN THE SAME RATE CLASS; PROVIDING FOR A  
TWELVE-MONTH BILLING CYCLE.

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

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

"62-3-3. DEFINITIONS.--Unless otherwise specified, when  
used in the Public Utility Act:

A. "affiliated interest" means a person who  
directly or indirectly, through one or more intermediaries,  
controls or is controlled by or is under common control with a  
public utility. Control includes instances when:

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

1 (1) a person is an officer, director, partner,  
2 trustee or person of similar status or function;

3 (2) a person owns directly or indirectly or  
4 has a beneficial interest in ten percent or more of voting  
5 securities of a person;

6 (3) a person has a level of ownership of  
7 securities other than voting securities that the commission  
8 establishes as creating a presumption of control; and

9 (4) the possession of the power to direct or  
10 cause the direction of the management and policies of a person  
11 exists in fact, notwithstanding the lack of ownership of ten  
12 percent or more of the person's voting securities;

13 B. "commission" means the public regulation  
14 commission;

15 C. "commissioner" means a member of the commission;

16 D. "municipality" means a municipal corporation  
17 organized under the laws of the state, and H-class counties;

18 E. "person" means an individual, firm, partnership,  
19 company, rural electric cooperative organized under Laws 1937,  
20 Chapter 100 or the Rural Electric Cooperative Act, corporation  
21 or lessee, trustee or receiver appointed by any court.

22 "Person" does not mean a class A county as described in Section  
23 4-36-10 NMSA 1978 or a class B county as described in Section  
24 4-36-8 NMSA 1978. "Person" does not mean a municipality as  
25 defined in this section unless the municipality has elected to

.183000.1

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

1 come within the terms of the Public Utility Act as provided in  
2 Section 62-6-5 NMSA 1978. In the absence of voluntary election  
3 by a municipality to come within the provisions of the Public  
4 Utility Act, the municipality shall be expressly excluded from  
5 the operation of that act and from the operation of all its  
6 provisions, and no such municipality shall for any purpose be  
7 considered a public utility;

8 F. "securities" means stock, stock certificates,  
9 bonds, notes, debentures, mortgages or deeds of trust or  
10 similar evidences of indebtedness issued, executed or assumed  
11 by a utility;

12 G. "public utility" or "utility" means every person  
13 not engaged solely in interstate business and, except as stated  
14 in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own,  
15 operate, lease or control:

16 (1) any plant, property or facility for the  
17 generation, transmission or distribution, sale or furnishing to  
18 or for the public of electricity for light, heat or power or  
19 other uses;

20 (2) any plant, property or facility for the  
21 manufacture, storage, distribution, sale or furnishing to or  
22 for the public of natural or manufactured gas or mixed or  
23 liquefied petroleum gas for light, heat or power or other uses;  
24 but "public utility" or "utility" shall not include any plant,  
25 property or facility used for or in connection with the

.183000.1

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

1 business of the manufacture, storage, distribution, sale or  
2 furnishing of liquefied petroleum gas in enclosed containers or  
3 tank truck for use by others than consumers who receive their  
4 supply through any pipeline system operating under municipal  
5 authority or franchise and distributing to the public;

6 (3) any plant, property or facility for the  
7 supplying, storage, distribution or furnishing to or for the  
8 public of water for manufacturing, municipal, domestic or other  
9 uses; provided, however, that nothing contained in this  
10 paragraph shall be construed to apply to irrigation systems,  
11 the chief or principal business of which is to supply water for  
12 the purpose of irrigation;

13 (4) any plant, property or facility for the  
14 production, transmission, conveyance, delivery or furnishing to  
15 or for the public of steam for heat or power or other uses;

16 (5) any plant, property or facility for the  
17 supplying and furnishing to or for the public of sanitary  
18 sewers for transmission and disposal of sewage produced by  
19 manufacturing, municipal, domestic or other uses; provided that  
20 "public utility" or "utility" as used in the Public Utility Act  
21 does not include any utility owned or operated by a class A  
22 county as described in Section 4-36-10 NMSA 1978 either  
23 directly or through a corporation owned by or under contract  
24 with such a county; or

25 (6) any plant, property or facility for the

.183000.1

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

1 sale or furnishing to or for the public of goods or services to  
2 reduce the consumption of or demand for electricity or natural  
3 gas, and is either a public utility under the definitions found  
4 in Paragraph (1) or (2) of this subsection, or is an  
5 alternative energy efficiency provider as described in Section  
6 62-17-7 NMSA 1978;

7 H. "rate" means every rate, tariff, charge or other  
8 compensation for utility service rendered or to be rendered by  
9 a utility and every rule, regulation, practice, act,  
10 requirement or privilege in any way relating to such rate,  
11 tariff, charge or other compensation and any schedule or tariff  
12 or part of a schedule or tariff thereof;

13 I. "renewable energy" means electrical energy  
14 generated by means of a low- or zero-emission generation  
15 technology that has substantial long-term production potential  
16 and may include, without limitation, the following energy  
17 sources: solar, wind, hydropower, geothermal, landfill gas,  
18 anaerobically digested waste biomass or fuel cells that are not  
19 fossil fueled. "Renewable energy" does not include fossil fuel  
20 or nuclear energy;

21 J. "service" or "service regulation" means every  
22 rule, regulation, practice, act or requirement relating to the  
23 service or facility of a utility;

24 K. "Class I transaction" means the sale, lease or  
25 provision of real property, water rights or other goods or

.183000.1

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

1 services by an affiliated interest to a public utility with  
2 which it is affiliated or by a public utility to its affiliated  
3 interest;

4 L. "Class II transaction" means:

5 (1) the formation after May 19, 1982 of a  
6 corporate subsidiary by a public utility or a public utility  
7 holding company by a public utility or its affiliated interest;

8 (2) the direct acquisition of the voting  
9 securities or other direct ownership interests of a person by a  
10 public utility if such acquisition would make the utility the  
11 owner of ten percent or more of the voting securities or other  
12 direct ownership interests of that person;

13 (3) the agreement by a public utility to  
14 purchase securities or other ownership interest of a person  
15 other than a nonprofit corporation, contribute additional  
16 equity to, acquire additional equity interest in or pay or  
17 guarantee any bonds, notes, debentures, deeds of trust or other  
18 evidence of indebtedness of any such person; provided, however,  
19 that a public utility may honor all agreements entered into by  
20 such utility prior to May 19, 1982; or

21 (4) the divestiture by a public utility of any  
22 affiliated interest that is a corporate subsidiary of the  
23 public utility;

24 M. "corporate subsidiary" means any person ten  
25 percent or more of whose voting securities or other ownership

.183000.1

underscored material = new  
[bracketed material] = delete

1 interests are directly owned by a public utility;

2 N. "public utility holding company" means an  
3 affiliated interest that controls a public utility through the  
4 direct or indirect ownership of voting securities of that  
5 public utility;

6 O. "voting securities" means securities that carry  
7 the present right to vote for the election of directors or  
8 other members of the governing body ultimately responsible for  
9 the management of the organization; ~~and~~

10 P. "future test period" means a twelve-month period  
11 beginning no later than the date a proposed rate change is  
12 expected to take effect;

13 Q. "clean generation source" means a facility that  
14 produces electrical energy:

15 (1) generated by the use of low- or zero-  
16 emission generation technology with substantial long-term  
17 production potential;

18 (2) generated by the use of a renewable energy  
19 resource that may include a solar, wind, hydropower or  
20 geothermal resource or by the use of a biomass resource such as  
21 agriculture or animal waste, small diameter timber, salt cedar  
22 and other phreatophyte or woody vegetation removed from a river  
23 basin or watershed in the state, landfill gas and anaerobically  
24 digested waste biomass or hydrogen produced from renewable  
25 sources used in fuel cells; and

.183000.1

underscored material = new  
[bracketed material] = delete

1                   (3) that is not generated by use of fossil  
2 fuel or nuclear energy;

3                   R. "customer-generator" means a retail customer of  
4 a public utility, or a rural electric cooperative organized  
5 pursuant to the Rural Electric Cooperative Act, who is also the  
6 operator of a clean generation source; and

7                   S. "net metering" means a measurement of the  
8 difference between the electricity supplied to a customer-  
9 generator by a public utility or a rural electric cooperative  
10 and the electricity that is generated by the customer-generator  
11 and delivered to a public utility or a rural electric  
12 cooperative at the same point of interconnection."

13                   SECTION 2. A new section of the Public Utility Act is  
14 enacted to read:

15                   "[NEW MATERIAL] NET METERING--RETAIL RATE FOR PURCHASES--  
16 NO ADDITIONAL RATES--TWELVE-MONTH BILLING CYCLE.--If a public  
17 utility or a rural electric cooperative organized pursuant to  
18 the Rural Electric Cooperative Act is required to make net  
19 metering services available to a customer-generator:

20                   A. the applicable rate for the purchase of  
21 electrical energy by a public utility or a rural electric  
22 cooperative from a customer-generator shall be based on the  
23 retail rate of the public utility or rural electric cooperative  
24 that is applicable to the customer-generator's customer class;

25                   B. rates from a public utility or a rural electric

.183000.1



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

1 cooperative for a customer-generator shall be the same as the  
2 rates applicable to customers in the same rate class who are  
3 not customer-generators. A public utility or a rural electric  
4 cooperative shall not charge any new or additional demand  
5 charge, standby charge, customer charge, minimum monthly  
6 charge, interconnection charge or any other rate that would  
7 increase a customer-generator's costs beyond those of other  
8 customers in the same rate class who are not customer-  
9 generators;

10 C. at the end of a billing cycle, which shall be a  
11 twelve-month period, where the electricity generated by a  
12 customer-generator exceeds the electricity supplied by a public  
13 utility or a rural electric cooperative, and upon an  
14 affirmative election by the customer-generator, the public  
15 utility or rural electric cooperative shall:

16 (1) purchase the excess electricity from the  
17 customer-generator pursuant to Subsection A of this section; or

18 (2) apply the excess electricity as a credit  
19 for electric service subsequently supplied to the customer-  
20 generator; and

21 D. a customer-generator who fails to make an  
22 affirmative election pursuant to Subsection C of this section  
23 shall not be owed compensation for the excess electricity  
24 generated by the customer-generator during the applicable  
25 billing cycle."

.183000.1