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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

1 the number of meters at that field, location or facility;

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

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

12 G. "large customer" means a customer with
13 electricity consumption greater than seven thousand megawatt-
14 hours per year or natural gas use greater than three hundred
15 sixty thousand decatherms per year;

16 H. "load management" means measures or programs
17 that target equipment or devices to result in decreased peak
18 electricity demand or shift demand from peak to off-peak
19 periods;

20 I. "program costs" means the prudent and
21 reasonable costs of developing and implementing energy
22 efficiency and load management programs, but "program costs"
23 does not include charges for incentives or the removal of
24 regulatory disincentives;

25 J. "public utility" means a public utility that is HB 291/a
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1 not also a distribution cooperative utility; and

2 K. "utility cost test" means a standard that is
3 met if the monetary costs that are borne by the public
4 utility and that are incurred to develop, acquire and operate
5 energy efficiency or load management resources on a life-
6 cycle basis are less than the avoided monetary costs
7 associated with developing, acquiring and operating the
8 associated supply-side resources."

9 SECTION 2. Section 62-17-5 NMSA 1978 (being Laws 2005,
10 Chapter 341, Section 5, as amended by Laws 2013, Chapter 124,
11 Section 2 and by Laws 2013, Chapter 220, Section 2) is
12 amended to read:

13 "62-17-5. COMMISSION APPROVAL--ENERGY EFFICIENCY AND
14 LOAD MANAGEMENT PROGRAMS--DISINCENTIVES.--

15 A. Pursuant to the findings and purpose of the
16 Efficient Use of Energy Act, the commission shall consider
17 public utility acquisition of cost-effective energy
18 efficiency and load management resources to be in the public
19 interest.

20 B. The commission shall direct public utilities to
21 evaluate and implement cost-effective programs that reduce
22 energy demand and consumption.

23 C. Before the commission approves an energy
24 efficiency and load management program for a public utility,
25 it shall find that the portfolio of programs is cost-

1 effective and designed to provide every affected customer
2 class with the opportunity to participate and benefit
3 economically. The commission shall determine the cost-
4 effectiveness of energy efficiency and load management
5 measures using the utility cost test. In determining life-
6 cycle costs and benefits of energy efficiency programs, the
7 commission shall not adjust for taxes when selecting a
8 discount rate. In determining life-cycle costs and benefits
9 for energy efficiency and load management programs directed
10 to low-income customers, the commission shall either quantify
11 or assign a reasonable value to:

- 12 (1) reductions in working capital;
- 13 (2) reduced collection costs;
- 14 (3) lower bad-debt expense;
- 15 (4) improved customer service effectiveness;

16 and

17 (5) other appropriate factors as utility
18 system economic benefits.

19 D. The commission shall act expeditiously on
20 public utility requests for approval of energy efficiency or
21 load management programs.

22 E. Public utilities shall obtain commission
23 approval of energy efficiency and load management programs
24 before they are implemented. Public utilities proposing new
25 energy efficiency and load management programs shall, before

1 seeking commission approval, solicit nonbinding
2 recommendations on the design, implementation and use of
3 third-party energy service contractors through competitive
4 bidding on the programs from commission staff, the attorney
5 general, the energy, minerals and natural resources
6 department and other interested parties. The commission may
7 for good cause require public utilities to solicit
8 competitive bids for energy efficiency and load management
9 resources.

10 F. The commission shall:

11 (1) upon petition or its own motion,
12 identify and remove regulatory disincentives or barriers for
13 public utility expenditures on energy efficiency and load
14 management measures in a manner that balances the public
15 interest, consumers' interests and investors' interests;

16 (2) upon petition by a public utility,
17 remove regulatory disincentives through the adoption of a
18 rate adjustment mechanism that ensures that the revenue per
19 customer approved by the commission in a general rate case
20 proceeding is recovered by the public utility without regard
21 to the quantity of electricity actually sold by the public
22 utility subsequent to the date the rate took effect.

23 Regulatory disincentives removed through a rate adjustment
24 mechanism shall be separately calculated for the rate class
25 or classes to which the mechanism applies and collected or

1 refunded by the utility through a separately identified
2 tariff rider that shall not be used to collect commission-
3 approved energy efficiency and load management program costs
4 and incentives;

5 (3) provide public utilities an opportunity
6 to earn a profit on cost-effective energy efficiency and load
7 management resource development that, with satisfactory
8 program performance, is financially more attractive to the
9 utility than supply-side utility resources; and

10 (4) not reduce a utility's return on equity
11 based on approval of a disincentive removal mechanism or
12 profit incentives pursuant to the Efficient Use of Energy
13 Act.

14 G. Public utilities providing electricity and
15 natural gas service to New Mexico customers shall, subject to
16 commission approval, acquire the cost-effective and
17 achievable energy efficiency and load management resources
18 available in their service territories. This requirement,
19 however, for public utilities providing electricity service,
20 shall not be less than savings of five percent of 2020 total
21 retail kilowatt-hour sales to New Mexico customer classes
22 that have the opportunity to participate in calendar year
23 2025 as a result of energy efficiency and load management
24 programs implemented in years 2021 through 2025. No later
25 than June 30, 2025, the commission shall adopt, through

1 rulemaking, energy savings targets for electric utilities for
2 years 2026 through 2030 based on cost-effective and
3 achievable energy savings and provide utility incentives
4 based on savings achieved.

5 H. A public utility that determines it cannot
6 achieve the minimum requirements established in Subsection G
7 of this section shall report to the commission on why it
8 cannot meet those requirements and shall propose alternative
9 requirements based on acquiring cost-effective and achievable
10 energy efficiency and load management resources. If the
11 commission determines, after hearing, that the minimum
12 requirements of Subsection G of this section exceed the
13 achievable amount of energy efficiency and load management
14 available to the public utility or that the program costs of
15 energy efficiency and load management to achieve the minimum
16 requirements of Subsection G of this section exceed the
17 program costs funding established in Subsection A of Section
18 62-17-6 NMSA 1978, the commission shall establish lower
19 minimum energy savings requirements for the utility based on
20 the maximum amount of energy efficiency and load management
21 that it determines can be achieved."

22 SECTION 3. Section 62-17-6 NMSA 1978 (being Laws 2005,
23 Chapter 341, Section 6, as amended by Laws 2013, Chapter 124,
24 Section 3 and by Laws 2013, Chapter 220, Section 3) is
25 amended to read:

1 "62-17-6. COST RECOVERY.--

2 A. A public utility that undertakes cost-effective
3 energy efficiency and load management programs shall have the
4 option of recovering its prudent and reasonable costs along
5 with commission-approved incentives for demand-side resources
6 and load management programs implemented after the effective
7 date of the Efficient Use of Energy Act through an approved
8 tariff rider or in base rates, or by a combination of the
9 two. Program costs and incentives may be deferred for future
10 recovery through creation of a regulatory asset. Funding for
11 program costs shall be as follows:

12 (1) for investor-owned electric utilities,
13 no less than three percent and no more than five percent of
14 customer bills, excluding gross receipts taxes and franchise
15 and right-of-way access fees, or seventy-five thousand
16 dollars (\$75,000) per customer per calendar year, whichever
17 is less, for customer classes with the opportunity to
18 participate; and

19 (2) for gas utilities, no more than five
20 percent of total annual revenues or seventy-five thousand
21 dollars (\$75,000) per customer per calendar year.

22 B. Provided that the public utility's total
23 portfolio of programs remains cost-effective, no less than
24 five percent of the amount received by the public utility for
25 program costs shall be specifically directed to energy-

1 efficiency programs for low-income customers.

2 C. Unless otherwise ordered by the commission, a
3 tariff rider approved by the commission shall:

4 (1) require language on customer bills
5 explaining program benefits; and

6 (2) be applied on a monthly basis.

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

18 SECTION 4. REPEAL.--Section 62-17-2 NMSA 1978 (being
19 Laws 2005, Chapter 341, Section 2, as amended) is repealed. HB 291/a
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