

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 267

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO UTILITIES; REQUIRING PUBLIC UTILITIES TO ACQUIRE
AVAILABLE COST-EFFECTIVE AND ACHIEVABLE ENERGY EFFICIENCY AND
LOAD MANAGEMENT RESOURCES; LIMITING PUBLIC UTILITY COST
RECOVERY OPTIONS.

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) 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;

.193415.1

underscoring material = new
[bracketed material] = delete

1 C. "cost-effective" means that the energy
2 efficiency or load management program meets the ~~[total~~
3 ~~resource]~~ utility cost test;

4 D. "customer" means a utility customer at a single,
5 contiguous field, location or facility, regardless of the
6 number of meters at that field, location or facility;

7 E. "distribution cooperative utility" means a
8 utility with distribution facilities organized as a rural
9 electric cooperative pursuant to Laws 1937, Chapter 100 or the
10 Rural Electric Cooperative Act or similarly organized in other
11 states;

12 F. "energy efficiency" means measures, including
13 energy conservation measures, or programs that target consumer
14 behavior, equipment or devices to result in a decrease in
15 consumption of electricity and natural gas without reducing the
16 amount or quality of energy services;

17 G. "large customer" means a customer with
18 electricity consumption greater than seven thousand megawatt-
19 hours per year or natural gas use greater than three hundred
20 sixty thousand decatherms per year;

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

25 I. "program costs" means the prudent and reasonable

1 costs of developing and implementing energy efficiency and load
 2 management programs, but "program costs" does not include
 3 charges for incentives or the removal of regulatory
 4 disincentives;

5 ~~[F.]~~ J. "public utility" means a public utility
 6 that is not also a distribution cooperative utility; and

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

20 **SECTION 2.** Section 62-17-5 NMSA 1978 (being Laws 2005,
 21 Chapter 341, Section 5, as amended) is amended to read:

22 "62-17-5. COMMISSION APPROVAL--ENERGY EFFICIENCY AND LOAD
 23 MANAGEMENT PROGRAMS--DISINCENTIVES.--

24 A. Pursuant to the findings and purpose of the
 25 Efficient Use of Energy Act, the commission shall consider

.193415.1

1 public utility acquisition of cost-effective energy efficiency
2 and load management resources to be in the public interest.

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

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

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

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

.193415.1

1 parties. The commission may for good cause require public
2 utilities to solicit competitive bids for energy efficiency and
3 load management resources.

4 F. The commission shall, upon petition or its own
5 motion, identify regulatory disincentives or barriers for
6 public utility expenditures on energy efficiency and load
7 management measures and ensure that they are removed in a
8 manner that balances the public interest, consumers' interests
9 and investors' interests. The commission shall also provide
10 public utilities an opportunity to earn a profit on cost-
11 effective energy efficiency and load management resource
12 development that, with satisfactory program performance, is
13 financially more attractive to the utility than supply-side
14 utility resources.

15 G. Public utilities providing electricity and
16 natural gas service to New Mexico customers shall, subject to
17 commission approval, acquire [~~all~~] cost-effective and
18 achievable energy efficiency and load management resources
19 available in their service territories. This requirement,
20 however, for public utilities providing electricity service,
21 shall not be less than savings of five percent of 2005 total
22 retail kilowatt-hour sales to New Mexico customers in calendar
23 year 2014 and [~~ten~~] eight percent of 2005 total retail
24 kilowatt-hour sales to New Mexico customers in 2020 as a result
25 of energy efficiency and load management programs implemented

.193415.1

1 starting in 2007.

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

19 SECTION 3. Section 62-17-6 NMSA 1978 (being Laws 2005,
20 Chapter 341, Section 6, as amended) is amended to read:

21 "62-17-6. COST RECOVERY.--

22 A. A public utility that undertakes cost-effective
23 energy efficiency and load management programs shall have the
24 option of recovering its prudent and reasonable costs along
25 with commission-approved incentives for demand-side resources

.193415.1

1 and load management programs implemented after the effective
2 date of the Efficient Use of Energy Act through an approved
3 tariff rider or in base rates, or by a combination of the two.
4 Program costs and incentives may be deferred for future
5 recovery through creation of a regulatory asset. [~~The only~~
6 ~~limit to the tariff rider or customer impact for any utility~~
7 ~~customer is that it shall not exceed seventy-five thousand~~
8 ~~dollars (\$75,000) per year without the customer's consent]~~
9 Funding for program costs for investor-owned electric utilities
10 shall be three percent of customer bills, excluding gross
11 receipts taxes and franchise and right-of-way access fees, or
12 seventy-five thousand dollars (\$75,000) per customer per
13 calendar year, whichever is less, for customer classes with the
14 opportunity to participate. Funding for annual program costs
15 for gas utilities shall not exceed three percent of total
16 annual revenues, nor shall charges exceed seventy-five thousand
17 dollars (\$75,000) per customer per calendar year. Provided
18 that the public utility's total portfolio of programs remains
19 cost-effective, no less than five percent of the amount
20 received by the public utility for program costs shall be
21 specifically directed to energy-efficiency programs for low-
22 income customers. Unless otherwise ordered by the commission,
23 a tariff rider approved by the commission shall require
24 language on customer bills explaining program benefits.

25 B. The tariff rider shall be applied on a monthly

.193415.1

1 basis, unless otherwise allowed by the commission.

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

13 SECTION 4. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2013.