SENATE BILL 418

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO ELECTRIC UTILITIES; ENACTING SECTIONS OF THE RURAL ELECTRIC COOPERATIVE ACT; AMENDING AND ENACTING SECTIONS OF THE RENEWABLE ENERGY ACT; AMENDING AND ENACTING SECTIONS OF THE EFFICIENT USE OF ENERGY ACT; PROVIDING FOR INCREASES IN THE RENEWABLE ENERGY PORTFOLIO OF PUBLIC UTILITIES AND RURAL ELECTRIC COOPERATIVES.

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

Section 1. A new section of the Rural Electric Cooperative Act is enacted to read:

"[NEW MATERIAL] RENEWABLE PORTFOLIO STANDARDS.--

A. Each distribution cooperative organized under the Rural Electric Cooperative Act shall meet the renewable portfolio standard requirements, as provided in this section, to include renewable energy in its electric energy supply

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portfolio. Requirements of the renewable portfolio standard are:

(1) no later than January 1, 2015, renewable energy shall comprise no less than five percent of each distribution cooperative's total retail sales to New Mexico customers;

(2) the renewable portfolio standard shall increase to one percent per year thereafter until January 1, 2020, at which time the renewable portfolio standard shall be ten percent of the distribution cooperative's total retail sales to New Mexico customers;

(3) the renewable portfolio standard of each distribution cooperative shall be diversified as to the type of renewable energy resource, taking into consideration the overall reliability, availability, dispatch flexibility and the cost of the various renewable energy resources made available to the distribution cooperative by its suppliers of electric power; and

(4) renewable energy resources that are in a distribution cooperative's energy supply portfolio on January 1, 2008 shall be counted in determining compliance with this section.

B. If a distribution cooperative determines that, in any given year, the cost of renewable energy that would need to be procured or generated for purposes of compliance with

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this renewable portfolio standard would be greater than the reasonable cost threshold, the distribution cooperative shall not be required to incur that cost; provided that the existence of this condition excusing performance in any given year shall not operate to delay any renewable portfolio standard in subsequent years. For purposes of the Rural Electric Cooperative Act, "reasonable cost threshold" means an amount that shall be no greater than one percent of the distribution cooperative's gross receipts from business transacted in New Mexico for the preceding calendar year.

C. By March 1 of each year, a distribution cooperative shall file with the public regulation commission a report on its purchases of renewable energy during the preceding calendar year. The report shall include the cost of the renewable energy resources purchased by the distribution cooperative to meet the renewable portfolio standard."

Section 2. A new section of the of the Rural Electric Cooperative Act is enacted to read:

"[NEW MATERIAL] RENEWABLE ENERGY CERTIFICATES--COMMISSION DUTIES.--The public regulation commission shall establish:

A. a system of renewable energy certificates that can be used by a rural electric cooperative to establish compliance with the renewable portfolio standard and that may include certificates that are monitored, accounted for or transferred by or through a regional system or trading program

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for any region in which a rural electric cooperative is located. The kilowatt-hour value of renewable energy certificates may be varied by renewable energy resource or technology; provided that each renewable energy certificate shall have a minimum value of one kilowatt-hour for purposes of compliance with the renewable portfolio standard; and

B. requirements and procedures concerning renewable energy certificates that include the provisions that:

(1) renewable energy certificates:

(a) are owned by the generator of the renewable energy unless: 1) the renewable energy certificates are transferred to the purchaser of the energy through specific agreement with the generator; 2) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the public utility purchaser of the renewable energy unless retained by the generator through specific agreement with the public utility purchaser of the energy; or 3) a contract for the purchase of renewable energy is in effect prior to January 1, 2004, in which case the renewable energy certificates are owned by the purchaser of the energy for the term of such contract;

(b) may be traded, sold or otherwise transferred by their owner to any other party; provided that the transfers and use of the certificate by a public utility

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for compliance with the renewable energy portfolio standard shall require the electric energy represented by the certificate to be contracted for delivery or consumed by an end-use customer of the public utility in New Mexico unless the commission determines that the public utility is participating in a national or regional market for exchanging renewable energy certificates;

(c) that are used for the purpose of meeting the renewable portfolio standard shall be registered, beginning January 1, 2008, with a renewable energy generation information system that is designed to create and track ownership of renewable energy certificates and that, through the use of independently audited generation data, verifies the generation and delivery of electricity associated with each renewable energy certificate and protects against multiple counting of the same renewable energy certificate;

(d) that are used once by a public utility to satisfy the renewable portfolio standard and are retired or that are traded, sold or otherwise transferred by the public utility shall not be further used by the public utility; and

(e) that are not used by a public utility to satisfy the renewable portfolio standard or that are not traded, sold or otherwise transferred by the public utility may be carried forward for up to four years from the date of

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issuance and, if not used by that time, shall be retired by the public utility; and

(2) a rural electric cooperative shall be responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources and has not been retired, traded, sold or otherwise transferred to another party."

Section 3. A new section of the Rural Electric Cooperative Act is enacted to read:

"[NEW MATERIAL] RENEWABLE ENERGY AND CONSERVATION FEE.--

A. A distribution cooperative may collect from its customers a renewable energy and conservation fee of no more than one percent of the customer's bill. In no event shall a distribution cooperative collect more than seventy-five thousand dollars ($75,000) annually through the renewable energy and conservation fee from any single customer. Money collected through the renewable energy and conservation fee shall be segregated in a separate renewable energy and conservation account from other distribution cooperative funds and shall be and expended only on programs or projects to promote the use of renewable energy, load management or energy efficiency. A distribution cooperative that collects a renewable energy and conservation fee from its customers shall report to the public regulation commission by March 1 of the

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following year the following information:

(1) the amount of money collected through the renewable energy and conservation fee in the previous calendar year;

(2) the programs or projects on which the funds collected were expended; and

(3) the determination of the distribution cooperative as to whether and in what amount to assess a renewable energy and conservation fee in the next calendar year.

B. Each distribution cooperative that collects a renewable energy and conservation fee from its customers shall deduct from the fees paid to the state pursuant to Section 62-8-8 NMSA 1978 an amount equal to fifty percent of the amount of money collected through the renewable energy and conservation fee during the preceding calendar year. The money shall be included in the account with other money from the renewable energy and conservation fee and expended only on programs or projects to promote the use of renewable energy, load management or energy efficiency. Money collected from the energy and conservation fee shall be expended only on energy-efficient projects once the renewable portfolio standard has been met."

Section 4. A new section of the Rural Electric Cooperative Act is enacted to read:

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"[NEW MATERIAL] DEFINITIONS--ENERGY EFFICIENCY--RENEWABLE ENERGY.--As used in the Rural Electric Cooperative Act:

A. "energy efficiency" means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices to result in a decrease in consumption of electricity without reducing the amount or quality of energy services; and

B. "renewable energy" means electric energy:

(1) generated by use of low- or zero-emissions generation technology with substantial long-term production potential; and

(2) generated by use of renewable energy resources that may include:

(a) solar, wind, hydropower and geothermal resources;

(b) fuel cells that are not fossil fueled; and

(c) biomass resources, such as agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas and anaerobically digested waste biomass; but

(3) does not include electric energy generated by use of fossil fuel or nuclear energy."

Section 5. Section 62-16-1 NMSA 1978 (being Laws 2004,

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Chapter 65, Section 1) is amended to read:

"62-16-1. SHORT TITLE.--[~~This act~~] Chapter 62, Article 16 NMSA 1978 may be cited as the "Renewable Energy Act"."

Section 6. Section 62-16-2 NMSA 1978 (being Laws 2004, Chapter 65, Section 2) is amended to read:

"62-16-2. FINDINGS AND PURPOSES.--

A. The legislature finds that:

(1) the generation of electricity through the use of renewable energy [~~presents~~] and the implementation of energy efficiency measures present opportunities to promote energy self-sufficiency, preserve the state's natural resources and pursue an improved environment in New Mexico;

(2) the use of renewable energy by public utilities subject to commission oversight in accordance with the Renewable Energy Act can bring significant economic benefits to New Mexico;

(3) public utilities should be required to include prescribed amounts of renewable energy in their electric energy supply portfolios for sales to retail customers in New Mexico by prescribed dates;

(4) public utilities should be able to recover their reasonable costs incurred plus a reasonable rate of return to procure or generate energy from renewable energy resources used to meet the requirements of the Renewable Energy Act; [~~and~~]

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(5) public utilities should not be required to acquire energy generated from renewable energy resources that could result in costs above a reasonable cost threshold; and

(6) it serves the public interest for public utilities to participate in national or regional renewable energy trading.

B. The purposes of the Renewable Energy Act are to:

(1) prescribe the amounts of renewable energy resources that public utilities shall include in their electric energy supply portfolios for sales to retail customers in New Mexico by prescribed dates;

(2) allow public utilities to recover costs through the rate-making process incurred for procuring or generating renewable energy used to comply with the prescribed amount; and

(3) protect public utilities and their ratepayers from renewable energy costs that are above a reasonable cost threshold."

Section 7. Section 62-16-3 NMSA 1978 (being Laws 2004, Chapter 65, Section 3) is amended to read:

"62-16-3. DEFINITIONS.--As used in the Renewable Energy Act:

A. "commission" means the public regulation commission;

B. "energy efficiency" means measures, including

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energy conservation measures, or programs that target consumer behavior, equipment or devices to result in a decrease in consumption of electricity without reducing the amount or quality of energy services;

C. "energy efficiency certificate" means a document or other record, in a format approved by the commission, that represents the number of kilowatt-hours saved during the stated calendar year under a public utility's energy efficiency programs approved by the commission or under a large customer's self-directed energy efficiency programs approved by the public utility or self-directed program administrator, and all such programs shall be measured and verified consistent with the Efficient Use of Energy Act;

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

[~~B.~~] E. "public utility" means an entity certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act; [~~but does not include rural electric cooperatives~~

~~C.~~] F. "reasonable cost threshold" means the cost established by the commission above which a public utility shall not be required to add renewable energy to its electric energy supply portfolio pursuant to the renewable portfolio standard;

[~~D.~~] G. "renewable energy" means electric energy:

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(1) generated by use of low- or zero-emissions generation technology with substantial long-term production potential; and

(2) generated by use of renewable energy resources that may include:

(a) solar, wind, hydropower and geothermal resources;

(b) fuel cells that are not fossil fueled; and

(c) biomass resources, such as agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas and anaerobically digested waste biomass; but

(3) does not include electric energy generated by use of fossil fuel or nuclear energy; [~~and~~]

H. "renewable energy certificate" means a certificate or other record, in a format approved by the commission, that represents all the environmental attributes from one kilowatt-hour of electricity generation from a renewable energy resource;

[~~E.~~] I. "renewable portfolio standard" means the percentage of retail sales by a public utility to electric consumers in New Mexico that is required by the Renewable Energy Act to be supplied by renewable energy; and

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J. "renewable purchased power agreement" means an agreement that binds an entity generating power from renewable energy resources to provide power at a specified price and binds a public utility to purchase the power at that price."

Section 8. Section 62-16-4 NMSA 1978 (being Laws 2004, Chapter 65, Section 4) is amended to read:

"62-16-4. RENEWABLE PORTFOLIO STANDARD.--

A. A public utility shall meet the renewable portfolio standard requirements, as provided in this section, to include renewable energy in its electric energy supply portfolio. Requirements of the renewable portfolio standard are:

(1) for public utilities other than rural electric cooperatives and municipalities:

(a) no later than January 1, 2006, renewable energy shall comprise no less than five percent of each public utility's total retail sales to New Mexico customers;

[~~(2)~~] (b) the renewable portfolio standard shall increase by one percent per year thereafter until January 1, 2011, when the renewable portfolio standard shall reach a level of ten percent of a public utility's annual retail sales in New Mexico [~~and shall remain fixed at ten percent for each year thereafter~~]; and

(c) the renewable portfolio standard

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shall increase by one and one-half percent per year until January 1, 2021, when the renewable portfolio standard shall reach a level of twenty-five percent of a public utility's total retail sales in New Mexico, and the renewable portfolio standard shall remain fixed at twenty-five percent for each year thereafter;

[~~(3)~~] (2) the renewable portfolio standard established by this section shall be reduced, as necessary, to provide for the following specific procurement requirements for nongovernmental customers at a single location or facility, regardless of the number of meters at that location or facility, with consumption exceeding ten million kilowatt-hours per year. On and after January 1, 2006, the kilowatt-hours of renewable energy procured for these customers shall be limited so that the additional cost of the renewable portfolio standard to each customer does not exceed the lower of one percent of that customer's annual electric charges or forty-nine thousand dollars ($49,000). This procurement limit criteria shall increase by one-fifth percent or ten thousand dollars ($10,000) per year until January 1, 2011, when the procurement limit criteria shall remain fixed at the lower of two percent of that customer's annual electric charges or ninety-nine thousand dollars ($99,000). After January 1, 2012, the commission may adjust the ninety-nine-thousand-dollar ($99,000) limit for inflation. Nothing contained in this paragraph shall be

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construed as affecting a public utility's right to recover all reasonable costs of complying with the renewable portfolio standard, pursuant to Section [~~6 of the Renewable Energy Act~~] 62-16-6 NMSA 1978. The commission may authorize deferred recovery of the costs of complying with the renewable portfolio standard, including carrying charges;

[~~(4)~~] (3) the renewable portfolio shall be diversified as to the type of renewable energy resource, taking into consideration the overall reliability, availability, dispatch flexibility and cost of the various renewable energy resources made available by suppliers and generators; [~~and~~]

(4) beginning January 1, 2007, a public utility that procures a new renewable resource shall be entitled to financial incentives for the procurement of renewable energy under renewable purchased power agreements, or for its investment in renewable energy generation facilities, as set forth in Section 62-16-6 NMSA 1978; and

(5) renewable energy resources that are in a public utility's electric energy supply portfolio on July 1, 2004 shall be counted in determining compliance with this section.

B. If a public utility finds that, in any given year, the cost of renewable energy that would need to be procured or generated for purposes of compliance with the renewable portfolio standard would be greater than the

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reasonable cost threshold as established by the commission pursuant to this section, the public utility shall not be required to incur that cost; provided that the existence of this condition excusing performance in any given year shall not operate to delay the annual increases in the renewable portfolio standard in subsequent years. When a public utility can generate or procure renewable energy at or below the reasonable cost threshold, it shall be required to add renewable energy resources to meet the renewable portfolio standard applicable in the year when the renewable energy resources are being added.

C. By December 31, 2004, the commission shall establish, after notice and hearing, the reasonable cost threshold above which level a public utility shall not be required to add renewable energy to its electric energy supply portfolio pursuant to the renewable portfolio standard. The commission may thereafter modify the reasonable cost threshold as changing circumstances warrant, after notice and hearing. In establishing and modifying the reasonable cost threshold, the commission shall take into account:

(1) the price of renewable energy at the point of sale to the public utility;

(2) the transmission and interconnection costs required for the delivery of renewable energy to retail customers;

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(3) the impact of the cost for renewable energy on overall retail customer rates;

(4) the overall diversity, reliability, availability, dispatch flexibility, cost per kilowatt-hour and life-cycle cost on a net present value basis of renewable energy resources available from suppliers; and

(5) other factors, including public benefits, that the commission deems relevant; provided that nothing in the Renewable Energy Act shall be construed to permit regulation by the commission of the production or sale price at the point of production of the renewable energy.

D. By September 1 of each year until [~~2012~~] 2022, and thereafter as determined necessary by the commission, a public utility shall file a report to the commission on its [~~purchases~~] procurement and generation of renewable energy during the prior calendar year and a procurement plan that includes:

(1) the cost of procurement for any new renewable energy resource in the next calendar year required to comply with the renewable portfolio standard; and

(2) testimony and exhibits that demonstrate that the proposed procurement is reasonable as to its terms and conditions considering price, availability, dispatchability, any renewable energy certificate values and diversity of the renewable energy resource; or

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(3) demonstration that the plan is otherwise in the public interest.

E. The commission shall approve or modify a public utility's procurement or transitional procurement plan within sixty days and may approve the plan without a hearing, unless a protest is filed that demonstrates to the commission's reasonable satisfaction that a hearing is necessary. The commission may modify a plan after notice and hearing. The commission may, for good cause, extend the time to approve a procurement plan for an additional sixty days. If the commission does not act within the sixty-day period, the procurement plan is deemed approved.

F. The commission may reject a procurement or transitional procurement plan if it finds that the plan does not contain the required information and, upon the rejection, may suspend the public utility's obligation to procure additional resources for the time necessary to file a revised plan; provided that the total amount of renewable energy to be procured by the public utility shall not change.

G. A public utility may file a transitional procurement plan requesting that the commission determine that the costs of renewable energy resources that the public utility has committed to, or may commit to, prior to the commission's establishing a reasonable cost threshold, are reasonable and recoverable pursuant to Section [~~6 of the Renewable Energy Act~~]

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62-16-6 NMSA 1978. The requirements of annual procurement plan filings shall be applicable to any transitional procurement plan filing pursuant to this section."

Section 9. Section 62-16-5 NMSA 1978 (being Laws 2004, Chapter 65, Section 5) is amended to read:

"62-16-5. RENEWABLE ENERGY CERTIFICATES--COMMISSION DUTIES.--The commission shall establish:

A. a system of renewable energy certificates that can be used by a public utility to establish compliance with the renewable portfolio standard and that may include certificates that are monitored, accounted for or transferred by or through a regional system or trading program for any region in which a public utility is located. The kilowatt-hour value of renewable energy certificates may be varied by renewable energy resource or technology; provided that each renewable energy certificate shall have a minimum value of one kilowatt-hour of renewable energy represented by the certificate for purposes of compliance with the renewable portfolio standard; and

B. requirements and procedures concerning renewable energy certificates that include the provisions that:

(1) renewable energy certificates:

(a) are owned by the generator of the renewable energy unless: 1) the renewable energy certificates are transferred to the purchaser of the energy through specific

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agreement with the generator; 2) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the public utility purchaser of the renewable energy unless retained by the generator through specific agreement with the public utility purchaser of the energy; or 3) a contract for the purchase of renewable energy is in effect prior to January 1, 2004, in which case the renewable energy certificates are owned by the purchaser of the energy for the term of such contract;

(b) may be traded, sold or otherwise transferred by their owner to any other party; provided that the transfers and use of the certificate by a public utility for compliance with the renewable energy portfolio standard shall require the electric energy represented by the certificate to be contracted for delivery or consumed by an end-use customer of the public utility in New Mexico unless the commission determines that [~~there is a~~] the public utility is participating in a national or regional market for exchanging renewable energy certificates;

(c) that are used for the purpose of meeting the renewable portfolio standard shall be registered, beginning January 1, 2008, with a renewable energy generation information system that is designed to create and track ownership of renewable energy certificates and that, through

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the use of independently audited generation data, verifies the generation and delivery of electricity associated with each renewable energy certificate and protects against multiple counting of the same renewable energy certificate;

[~~(c)~~] (d) that are used once by a public utility to satisfy the renewable portfolio standard and are retired or that are traded, sold or otherwise transferred by the public utility shall not be further used by the public utility; and

[~~(d)~~] (e) that are not used by a public utility to satisfy the renewable portfolio standard or that are not traded, sold or otherwise transferred by the public utility may be carried forward for up to four years from the date of issuance and, if not used by that time, shall be retired by the public utility; and

(2) a public utility shall be responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources and has not been retired, traded, sold or otherwise transferred to another party."

Section 10. Section 62-16-6 NMSA 1978 (being Laws 2004, Chapter 65, Section 6) is amended to read:

"62-16-6. COST RECOVERY FOR RENEWABLE ENERGY.--

A. A public utility that procures or generates

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renewable energy shall recover, through the rate-making process, the reasonable costs of complying with the renewable portfolio standard. Costs that are consistent with commission approval of procurement plans or transitional procurement plans shall be deemed to be reasonable.

B. The commission shall not exclude from such recovery reasonable interconnection and transmission costs incurred by the public utility in order to deliver renewable energy to retail New Mexico customers.

C. In addition to the costs recoverable pursuant to Subsection A of this section, a public utility that procures new renewable resources in any year shall recover:

(1) a return on its investment of not less than two percent of the cost of the public utility's new renewable purchased power agreements; and

(2) its commission-approved rate of return plus an amount not less than two percent of a public utility's equity investments in new renewable energy generation facilities."

Section 11. A new section of the Renewable Energy Act is enacted to read:

"[NEW MATERIAL] ENERGY EFFICIENCY CERTIFICATES.--Energy efficiency certificates may be used in the same manner as renewable energy certificates by a public utility as set forth in Section 62-16-5 NMSA 1978, subject to the following

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limitations:

A. not more than five percent of the renewable portfolio standard applicable in any given year may be met with energy efficiency certificates;

B. energy efficiency certificates shall have a value of one kilowatt-hour for each kilowatt-hour of energy savings represented by the certificate for purposes of demonstrating compliance with the renewable portfolio standard;

C. the public utility issuing the energy efficiency certificate shall demonstrate that the energy savings represented by the certificate were measured and verified consistent with the Efficient Use of Energy Act; and

D. the commission shall ensure that net revenues from any sale by a public utility of energy efficiency certificates, less any amounts that may be authorized by the commission to be retained by the public utility, are flowed through to ratepayers."

Section 12. Section 62-17-1 NMSA 1978 (being Laws 2005, Chapter 341, Section 1) is amended to read:

"62-17-1. SHORT TITLE.--[~~Sections 1 through 11 of this act~~] Chapter 62, Article 17 NMSA 1978 may be cited as the "Efficient Use of Energy Act"."

Section 13. Section 62-17-4 NMSA 1978 (being Laws 2005, Chapter 341, Section 4) is amended to read:

"62-17-4. DEFINITIONS.--As used in the Efficient Use of

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Energy Act:

A. "commission" means the public regulation commission;

B. "cost-effective" means that the program being evaluated satisfies the total resource cost test;

C. "disincentive" means any regulatory, financial or institution barrier to a public utility's investment in energy efficiency;

[~~C.~~] D. "distribution cooperative utility" means a utility with distribution facilities organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the Rural Electric Cooperative Act or similarly organized in other states;

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

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

[~~F.~~] G. "load management" means measures or

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programs that target equipment or devices to result in [~~decrease~~] decreased peak electricity demand or shift demand from peak to off-peak periods;

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

[~~H.~~] I. "total resource cost test" means a standard that is met if, for an investment in energy efficiency or load management, on a life-cycle basis, the avoided supply-side monetary costs are greater than the monetary costs of the demand-side programs borne by both the utility and the participants."

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

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

A. Pursuant to the findings and purpose of the Efficient Use of Energy Act, the commission shall consider public utility investments in cost-effective energy efficiency and load management to be an acceptable use of ratepayer money.

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

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

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designed to provide every affected customer class with the opportunity to participate and benefit economically. The commission shall determine the cost-effectiveness of energy efficiency and load management measures using the total resource cost test.

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

E. Public utilities shall obtain commission approval of energy efficiency and load management programs before they are implemented. Public utilities proposing new energy efficiency and load management programs shall, before seeking commission approval, solicit nonbinding recommendations on the design and implementation of the programs from commission staff, the attorney general, the energy, minerals and natural resources department and other interested parties.

F. The commission shall identify any disincentives or barriers that may exist for public utility expenditures on energy efficiency and load management measures and, if found, ensure that they are eliminated in order that public utilities are financially neutral in their preference for acquiring demand- or supply-side utility resources. Upon application by a public utility, the commission shall open a docket for the purpose of identifying disincentives or barriers that discourage utility investments in energy efficiency and shall

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authorize appropriate rate-making mechanisms and financial incentives in order to eliminate the disincentives and barriers."

Section 15. A new section of the Efficient Use of Energy Act is enacted to read:

"[NEW MATERIAL] FINANCIAL INCENTIVES FOR INVESTMENTS IN ENERGY EFFICIENCY--COST RECOVERY.--The commission shall establish a financial incentive program to encourage public utilities to implement cost-effective energy efficiency programs that maximize energy and capacity savings. Financial incentive payments under the program shall be no more than the incentive rate established by the commission multiplied by the verified energy savings attributable to the portfolio of energy efficiency programs."

Section 16. EFFECTIVE DATE.--The provisions of this act shall take effect on July 1, 2007.



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