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HOUSE BILL 619

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

James Roger Madalena

AN ACT

RELATING TO PUBLIC UTILITIES; ENACTING THE EFFICIENT USE OF ENERGY ACT; PROVIDING FOR EXPENDITURES FOR ENERGY EFFICIENCY AND LOAD MANAGEMENT BY PUBLIC UTILITIES; AMENDING THE PUBLIC UTILITY ACT; DECLARING AN EMERGENCY.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 11 of this act may be cited as the "Efficient Use of Energy Act".

Section 2. [NEW MATERIAL] FINDINGS.--The legislature finds that:

A. energy efficiency and load management are cost-effective resources that are an essential component of the balanced resource portfolio that public utilities must achieve to provide affordable and reliable energy to public utility

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1 consumers;

2 B. energy efficiency and load management in New  
3 Mexico are resources that are currently underutilized;

4 C. public and municipal utility investment in  
5 energy efficiency and load management presents opportunities to  
6 increase New Mexico's energy security, protect New Mexico  
7 energy consumers from price increases, preserve the state's  
8 natural resources and pursue an improved environment in New  
9 Mexico;

10 D. investment in energy efficiency and load  
11 management by public utilities subject to public regulation  
12 commission oversight in accordance with the Efficient Use of  
13 Energy Act can bring significant economic benefits to New  
14 Mexico;

15 E. it serves the public interest to support public  
16 utility investments in cost-effective energy efficiency and  
17 load management by removing any regulatory disincentives that  
18 may exist and allowing recovery of costs for reasonable and  
19 prudently incurred expenses of energy efficiency and load  
20 management programs;

21 F. investments in energy efficiency and  
22 implementation of utility energy efficiency programs for  
23 economically disadvantaged New Mexicans, in conjunction with  
24 low-income weatherization programs managed by the state of New  
25 Mexico, will reduce the burden of utility costs on low-income

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1 customers;

2 G. public utility investments in cost-effective  
3 energy efficiency and load management can provide significant  
4 reductions in greenhouse gas emissions, regulated air  
5 emissions, water consumption and natural resource depletion,  
6 and can avoid or delay the need for more expensive generation,  
7 transmission and distribution infrastructure;

8 H. New Mexico should participate in regional  
9 efforts to reduce energy consumption by twenty percent by 2020  
10 through programs to reduce energy consumption;

11 I. public utility resource planning to meet New  
12 Mexico's energy service needs should be identified and  
13 evaluated on an ongoing basis in accordance with the principles  
14 of integrated resource planning; and

15 J. it is necessary and appropriate to allow  
16 distribution cooperative utilities to participate in the  
17 implementation of energy efficiency programs in ways that  
18 differ from rules applicable to public utilities that are not  
19 customer owned.

20 Section 3. [NEW MATERIAL] POLICY.--It is the policy of  
21 the Efficient Use of Energy Act that public utilities,  
22 distribution cooperative utilities and municipal utilities  
23 include cost-effective energy efficiency and load management  
24 investments in their energy resource portfolios and that any  
25 regulatory disincentives that may exist to public utility

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1 investments in cost-effective energy efficiency and load  
2 management are eliminated.

3 Section 4. [NEW MATERIAL] DEFINITIONS.--As used in the  
4 Efficient Use of Energy Act:

5 A. "commission" means the public regulation  
6 commission;

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

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

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

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

25 F. "load management" means measures or programs

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1 that target equipment or devices to result in decrease peak  
2 electricity demand or shift demand from peak to off-peak  
3 periods;

4 G. "public utility" means a public utility that is  
5 not also a distribution cooperative utility; and

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

12 Section 5. [NEW MATERIAL] COMMISSION--ENERGY EFFICIENCY  
13 AND LOAD MANAGEMENT PROGRAMS.--

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

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

21 C. Before the commission approves an energy  
22 efficiency and load management program for a public utility, it  
23 must find that the portfolio of programs is cost-effective and  
24 designed to provide every affected customer class with the  
25 opportunity to participate and benefit economically. The

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1 commission shall determine the cost-effectiveness of energy  
2 efficiency and load management measures using the total  
3 resource cost test.

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

7 E. Public utilities shall obtain commission  
8 approval of energy efficiency and load management programs  
9 before they are implemented. Public utilities proposing new  
10 energy efficiency and load management programs shall, before  
11 seeking commission approval, solicit non-binding  
12 recommendations on the design and implementation of the  
13 programs from commission staff, the attorney general, the  
14 energy, minerals and natural resources department and other  
15 interested parties.

16 F. The commission shall identify any disincentives  
17 or barriers that may exist for public utility expenditures on  
18 energy efficiency and load management and, if found, ensure  
19 that they are eliminated in order that public utilities are  
20 financially neutral in their preference for acquiring demand or  
21 supply-side utility resources.

22 Section 6. [NEW MATERIAL] COST RECOVERY.--

23 A. A public utility that undertakes cost-effective  
24 energy efficiency and load management programs shall recover  
25 the costs of all the programs implemented after the effective

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1 date of the Efficient Use of Energy Act through an approved  
2 tariff rider. Program costs may be deferred for future  
3 recovery through creation of a regulatory asset, provided that  
4 the deferred recovery does not cause the tariff rider to exceed  
5 the limits imposed by this section. The tariff rider for any  
6 utility customer shall not exceed the lower of one and one-half  
7 percent of that customer's bill or seventy-five thousand  
8 dollars (\$75,000) per year except that, upon application by a  
9 public utility with the advice and consent of the entity  
10 designated by law to represent residential and commercial  
11 utility customers, the commission may approve a tariff rider in  
12 excess of one and one-half percent for customers other than  
13 large customers and may approve a tariff rider in excess of the  
14 lower of one and one-half percent or seventy-five thousand  
15 dollars (\$75,000) per year for a large customer that consents  
16 to such a rider. The commission shall approve such  
17 applications upon finding that the proposed energy efficiency  
18 and load management programs are cost-effective and that the  
19 cost recovery proposal is just and reasonable.

20 B. The tariff rider shall provide for the recovery,  
21 on a monthly basis or otherwise, of all reasonable costs of  
22 approved energy efficiency and load management programs.

23 C. A tariff rider proposed by a public utility to  
24 fund approved energy efficiency and load management programs  
25 shall go into effect thirty days after filing, unless suspended

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1 by the commission for a period not to exceed one hundred eighty  
2 days. If the tariff rider is not approved or suspended within  
3 thirty days after filing, it shall be deemed approved as a  
4 matter of law. If the commission has not acted to approve or  
5 disapprove the tariff rider by the end of an ordered suspension  
6 period, it shall be deemed approved as a matter of law. The  
7 commission shall approve utility reconciliations of the tariff  
8 rider annually based upon recovery of the reasonable costs of  
9 the utility's programs.

10 D. The commission shall ensure that there are no  
11 cross-subsidies between a public utility's energy efficiency  
12 and load management activities and the public utility's supply-  
13 side activities and shall ensure that the existence of a tariff  
14 rider does not permit a public utility to earn an excessive  
15 rate of return.

16 Section 7. [NEW MATERIAL] ALTERNATIVE ENERGY EFFICIENCY  
17 PROVIDER.--With a public utility's consent, the commission may  
18 allow for an alternative entity to provide ratepayer-funded  
19 energy efficiency and load management to customers of that  
20 public utility.

21 Section 8. [NEW MATERIAL] MEASUREMENT AND VERIFICATION.--  
22 The public utility shall submit to the commission an annual  
23 report, prepared by an independent program evaluator, that  
24 provides information relating to the actions taken by the  
25 public utility to comply with the standards of the Efficient

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1 Use of Energy Act. The reports shall include documentation of  
2 program expenditures, measurement and verification of savings  
3 resulting from programs, evaluation of the cost-effectiveness  
4 of expenditures, evaluation of the cost-effectiveness of self-  
5 direct programs and any other information the commission may  
6 require pursuant to its rulemaking authority. The commission  
7 may direct a utility to modify or terminate a particular energy  
8 efficiency or load management program if, after an adequate  
9 period for implementation of the program, the commission  
10 determines the program is not sufficiently meeting its goals  
11 and purposes. Termination of a program or programs shall be  
12 accomplished in a manner that allows the utility to fully  
13 recover its reasonable and prudent program costs.

14 Section 9. [NEW MATERIAL] SELF-DIRECTED PROGRAMS FOR  
15 CUSTOMERS--EXEMPTIONS.--

16 A. A large customer shall receive approval for a  
17 credit for and equal to the expenditures that customer has made  
18 at its facilities on and after January 1, 2005 toward  
19 cost-effective energy efficiency and load management. To  
20 receive approval, the large customer must demonstrate to the  
21 reasonable satisfaction of the utility or self-direct program  
22 administrator that its expenditures are cost-effective. Once  
23 approved, the credit may be used to offset up to seventy  
24 percent of the tariff rider authorized by the Efficient Use of  
25 Energy Act until the credit is exhausted. Eligible

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1 expenditures shall have a simple payback period of more than  
2 one year but less than seven years. Projects that have  
3 received rebates, financial support or other substantial  
4 program support from a utility are not eligible for a credit.

5 B. A large customer shall receive approval for an  
6 exemption to paying seventy percent of the tariff rider if the  
7 customer demonstrates to the reasonable satisfaction of the  
8 utility or self-direct program administrator that it has  
9 exhausted all cost-effective energy efficiency measures at its  
10 facility. As used in this section, "cost-effective" means all  
11 measures with a simple payback period of more than one year but  
12 less than seven years.

13 C. Large customers shall seek and receive approval  
14 for credits and exemptions under this provision from the  
15 utility or a commission-approved self-direct program  
16 administrator. Approvals or disapprovals by the utility or  
17 administrator shall be subject to commission review. Any  
18 credit not fully utilized in the year it is received shall  
19 carry over to subsequent years. Implementation of credits  
20 shall be designed to minimize utility administrative costs.

21 D. Except as otherwise provided in this section,  
22 projects, expenditures and exemptions under this section shall  
23 be evaluated by an independent program evaluator using the same  
24 measurement and verification standards applying to utility  
25 programs, subject to appropriate protections for

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1 confidentiality, by the utility or a commission-approved self-  
2 direct program administrator and reported in the annual report  
3 to the commission pursuant to the Efficient Use of Energy Act.

4 Section 10. [NEW MATERIAL] INTEGRATED RESOURCE

5 PLANNING.--Pursuant to the commission's rulemaking authority,  
6 public utilities supplying electric or natural gas service to  
7 customers shall periodically file an integrated resource plan  
8 with the commission. Utility integrated resource plans shall  
9 evaluate renewable energy, energy efficiency, load management,  
10 distributed generation and conventional supply-side resources  
11 on a consistent and comparable basis and take into  
12 consideration risk and uncertainty of fuel supply, price  
13 volatility and costs of future environmental regulations in  
14 order to identify the most cost-effective portfolio of  
15 resources to supply the energy needs of customers. The  
16 preparation of resource plans shall incorporate a public  
17 advisory process. Nothing in this section shall prohibit  
18 public utilities from implementing cost-effective energy  
19 efficiency and load management programs and the commission from  
20 approving public utility expenditures on energy efficiency  
21 programs and load management programs prior to the commission  
22 establishing rules and guidelines for integrated resource  
23 planning. The commission may exempt public utilities with  
24 fewer than five thousand customers and distribution-only public  
25 utilities from the requirements of this section.

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1           Section 11. [NEW MATERIAL] DISTRIBUTION COOPERATIVE  
2 UTILITIES.--

3           A. Distribution cooperative utilities shall  
4 periodically examine the potential to assist their customers in  
5 reducing energy consumption or peak electricity demand in a  
6 cost-effective manner. Based on these studies, distribution  
7 cooperative utilities shall implement cost-effective energy  
8 efficiency and load management programs that are economically  
9 feasible and practical for their members and customers.  
10 Approval for such programs shall reside with the governing body  
11 of each distribution cooperative utility and not with the  
12 commission.

13           B. Each distribution cooperative utility shall file  
14 with the commission concurrently with its annual report, a  
15 report that describes all of the distribution cooperative  
16 utility's programs or measures that promote energy efficiency,  
17 conservation or load management. The report shall set forth  
18 the costs of each of the programs or measures for the previous  
19 calendar year and the resulting effect on the consumption of  
20 electricity. In offering or implementing energy efficiency,  
21 conservation or load management programs, a distribution  
22 cooperative utility shall attempt to minimize any cross-  
23 subsidies between customer classes.

24           C. Each distribution cooperative utility shall  
25 include in the report required by Subsection B of this section

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1 a description of all programs or measures to promote energy  
2 efficiency, conservation or load management that are planned  
3 and the anticipated date for implementation.

4 D. Costs resulting from programs or measures to  
5 promote energy efficiency, conservation or load management may  
6 be recovered by the distribution cooperative utility through  
7 its general rates. In requesting approval to recover such  
8 costs in general rates, the distribution cooperative utility  
9 may elect to use the procedure set forth in Subsection G of  
10 Section 62-8-7 NMSA 1978.

11 Section 12. Section 62-3-3 NMSA 1978 (being Laws 1967,  
12 Chapter 96, Section 3, as amended) is amended to read:

13 "62-3-3. DEFINITIONS.--Unless otherwise specified, when  
14 used in the Public Utility Act:

15 A. "affiliated interest" means a person who  
16 directly or indirectly, through one or more intermediaries,  
17 controls or is controlled by or is under common control with a  
18 public utility. Control includes instances where a person is  
19 an officer, director, partner, trustee or person of similar  
20 status or function or owns directly or indirectly or has a  
21 beneficial interest in ten percent or more of any class of  
22 securities of a person;

23 B. "commission" means the public regulation  
24 commission;

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

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

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

7 "Person" does not mean a class A county as described in Section  
8 4-36-10 NMSA 1978 or a class B county as described in Section  
9 4-36-8 NMSA 1978. "Person" does not mean a municipality as  
10 defined in this section unless the municipality has elected to  
11 come within the terms of the Public Utility Act as provided in  
12 Section 62-6-5 NMSA 1978. In the absence of voluntary election  
13 by a municipality to come within the provisions of the Public  
14 Utility Act, the municipality shall be expressly excluded from  
15 the operation of that act and from the operation of all its  
16 provisions, and no such municipality shall for any purpose be  
17 considered a public utility;

18           F. "securities" means stock, stock certificates,  
19 bonds, notes, debentures, mortgages or deeds of trust or other  
20 evidences of indebtedness issued, executed or assumed by a  
21 utility;

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

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1 (1) any plant, property or facility for the  
2 generation, transmission or distribution, sale or furnishing to  
3 or for the public of electricity for light, heat or power or  
4 other uses;

5 (2) any plant, property or facility for the  
6 manufacture, storage, distribution, sale or furnishing to or  
7 for the public of natural or manufactured gas or mixed or  
8 liquefied petroleum gas for light, heat or power or other uses;  
9 but the term "public utility" or "utility" shall not include  
10 any plant, property or facility used for or in connection with  
11 the business of the manufacture, storage, distribution, sale or  
12 furnishing of liquefied petroleum gas in enclosed containers or  
13 tank truck for use by others than consumers who receive their  
14 supply through any pipeline system operating under municipal  
15 authority or franchise and distributing to the public;

16 (3) any plant, property or facility for the  
17 supplying, storage, distribution or furnishing to or for the  
18 public of water for manufacturing, municipal, domestic or other  
19 uses; provided, however, nothing contained in this paragraph  
20 shall be construed to apply to irrigation systems, the chief or  
21 principal business of which is to supply water for the purpose  
22 of irrigation;

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

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1     ~~[or]~~

2                     (5) any plant, property or facility for the  
3 supplying and furnishing to or for the public of sanitary  
4 sewers for transmission and disposal of sewage produced by  
5 manufacturing, municipal, domestic or other uses; provided that  
6 the terms "public utility" or "utility" as used in the Public  
7 Utility Act do not include any utility owned or operated by a  
8 class A county as described in Section 4-36-10 NMSA 1978 either  
9 directly or through a corporation owned by or under contract  
10 with such a county; or

11                     (6) any plant, property or facility for the  
12 sale or furnishing to or for the public of goods or services to  
13 reduce the consumption of or demand for electricity or natural  
14 gas, and is either a public utility under the definitions found  
15 in Paragraphs (1) or (2) of this subsection, or is an  
16 alternative energy efficiency provider as described in Section  
17 7 of the Efficient Use of Energy Act;

18                     H. "rate" means every rate, tariff, charge or other  
19 compensation for utility service rendered or to be rendered by  
20 a utility and every rule, regulation, practice, act,  
21 requirement or privilege in any way relating to such rate,  
22 tariff, charge or other compensation and any schedule or tariff  
23 or part of a schedule or tariff thereof;

24                     I. "renewable energy" means electrical energy  
25 generated by means of a low- or zero-emission generation

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1 technology that has substantial long-term production potential  
2 and may include, without limitation, solar, wind, hydropower,  
3 geothermal, landfill gas, anaerobically digested waste biomass  
4 or fuel cells that are not fossil fueled. "Renewable energy"  
5 does not include fossil fuel or nuclear energy;

6 J. "service" or "service regulation" means every  
7 rule, regulation, practice, act or requirement relating to the  
8 service or facility of a utility;

9 K. "Class I transaction" means the sale, lease or  
10 provision of real property, water rights or other goods or  
11 services by an affiliated interest to a public utility with  
12 which it is affiliated or by a public utility to its affiliated  
13 interest;

14 L. "Class II transaction" means:

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

18 (2) the direct acquisition of the voting  
19 securities or other direct ownership interests of a person by a  
20 public utility if such acquisition would make the utility the  
21 owner of ten percent or more of the voting securities or other  
22 direct ownership interests of that person;

23 (3) the agreement by a public utility to  
24 purchase securities or other ownership interest of a person  
25 other than a nonprofit corporation, contribute additional

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1 equity to, acquire additional equity interest in or pay or  
2 guarantee any bonds, notes, debentures, deeds of trust or other  
3 evidence of indebtedness of any such person; provided, however,  
4 that a public utility may honor all agreements entered into by  
5 such utility prior to May 19, 1982; or

6 (4) the divestiture by a public utility of any  
7 affiliated interest that is a corporate subsidiary of the  
8 public utility;

9 M. "corporate subsidiary" means any person ten  
10 percent or more of whose voting securities or other ownership  
11 interests are directly owned by a public utility; and

12 N. "public utility holding company" means an  
13 affiliated interest that controls a public utility through the  
14 direct or indirect ownership of voting securities of that  
15 public utility."

16 Section 13. EMERGENCY.--It is necessary for the public  
17 peace, health and safety that this act take effect immediately.