AN ACT

RELATING TO UTILITIES; ENACTING THE CLEAN ELECTRIFICATION ACT; ALLOWING UTILITIES AND COOPERATIVES TO PROVIDE BENEFICIAL AND LOW-INCOME ELECTRIFICATION; REQUIRING PUBLIC UTILITIES, MUNICIPAL UTILITIES AND RURAL ELECTRIC COOPERATIVES TO REDUCE CARBON DIOXIDE EMISSIONS FROM ELECTRICITY GENERATION OVER TIME; PRESCRIBING DEADLINES AND REQUIREMENTS; ALLOWING THE CREATION OF CLEAN ELECTRICITY CREDITS; ESTABLISHING COMPLIANCE PROCEDURES; ESTABLISHING FEES; CREATING A PENALTY; ALLOWING VARIANCES; AMENDING THE STATE AIR QUALITY PERMIT FUND; MAKING AN APPROPRIATION.

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

SECTION 1. A new section of Chapter 62 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 of this
act may be cited as the "Clean Electrification Act"."

SECTION 2. A new section of Chapter 62 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Clean Electrification Act:

A. "base period emissions" means the average annual metric tons of carbon dioxide that a utility or cooperative caused to be emitted into the atmosphere from its dedicated generation during the three-calendar-year period of 2018 to 2020; provided that for a utility that has received approval of a financing order pursuant to the Energy Transition Act, "base period emissions" means the utility's average New Mexico load during the three-calendar-year period of 2018 to 2020 multiplied by two-tenths metric tons per megawatt-hour. The operation of any dedicated generation that reduces methane emitted into the atmosphere in an amount equal to at least one-tenth of the metric tons of carbon dioxide that the generation emitted into the atmosphere shall be deemed to not emit any carbon dioxide;

B. "beneficial and low-income electrification" means the conversion or development of a building use or industrial process from one that does, or economically could, consume fossil-fueled energy to one that uses electric energy, or the provision of electricity to existing low-income and indigenous New Mexico households without electricity service;
C. "clean electricity credit" or "credit" means an instrument in a physical or electronic format approved by the secretary that represents each metric ton of emissions that is less than one per megawatt-hour produced from dedicated generation;

D. "commission" means the public regulation commission;

E. "compliance period" means a three-calendar-year period, with the first period being the years 2022 through 2024;

F. "cooperative" means a rural electric cooperative organized pursuant to the Rural Electric Cooperative Act;

G. "dedicated generation" means electricity production capacity that is owned by, or assigned for a period of twenty-four months or longer to, a utility or cooperative to serve its New Mexico load; provided that if a utility's or cooperative's electricity production capacity produces:

(1) more energy in a year than the utility's or cooperative's New Mexico load, "dedicated generation" means the sum of:

(a) the utility's or cooperative's renewable generation capacity; and

(b) the utility's or cooperative's non-renewable generation capacity, uniformly scaled down by the ratio of the utility's or cooperative's New Mexico load minus .218768.2
the amount of energy produced by renewable generation capacity

to the amount of energy produced from the non-renewable
generation capacity; and

(2) less energy in a year than the utility's
or cooperative's New Mexico load, the shortfall is deemed to be
provided from dedicated generation with an emission rate equal
to the purchased power emission rate;

H. "department" means the department of
environment;

I. "emissions" means carbon dioxide emitted into
the atmosphere;

J. "market development" means financial incentives
or technical assistance provided to the developer, builder,
owner or resident of a home, apartment building, commercial
building, government building or industrial facility or to an
equipment distributor, installer or manufacturer to further the
deployment of beneficial and low-income electrification
technologies and solutions, including facilities to
electrically charge transportation vehicles;

K. "New Mexico load" means the megawatt-hours of
electricity during a year that a utility or cooperative sells
to its New Mexico retail customers plus the amount of energy
lost from transmission lines, distribution lines and energy
storage operations, plus the amount of energy stored at the end
of the year and minus the amount of energy stored at the
beginning of the year and minus load that has renewable energy
assigned to serve a particular customer; provided that the
utility verifies that the particular customer has or will
retain the associated renewable energy certificates and will
not use them for compliance with a law or regulation in any
jurisdiction;

L. "purchased power emission rate" means the
combustion output emission rate, in metric tons of carbon
dioxide per megawatt-hour, identified in the United States
environmental protection agency's emissions and generation
resource integrated database reports for the North American
electric reliability council subregion from which the power was
procured; provided that, if the reports are unavailable for the
period during which the power was procured, or if there exists
a better approximation of the average emission rate from
combustion methods of producing electricity in the applicable
subregion, "purchased power emission rate" means the emission
rate that best represents the emissions from combustion sources
of electricity production in the applicable subregion, as
determined by the department;

M. "reference emission rate" means one metric ton
of carbon dioxide per megawatt-hour of produced electricity;

N. "secretary" means the secretary of environment;

and

O. "utility" means an electric public utility as
SECTION 3. A new section of Chapter 62 NMSA 1978 is enacted to read:

"[NEW MATERIAL] CLEAN ELECTRICITY REQUIREMENTS.--

A. A utility or cooperative shall make reasonable and consistent progress over time to reduce the emissions from its dedicated generation as follows:

(1) a utility shall emit no more than ninety-two percent of its base period emissions in 2022 and shall reduce its emissions by an amount equal to an additional four percent of its base period emissions each year thereafter until January 1, 2045. For calendar year 2045 and thereafter, emissions shall remain fixed at zero; and

(2) a cooperative shall emit no more than its base period emissions in 2022 and ninety-six percent of its base period emissions in 2023 and shall reduce its emissions by an amount equal to an additional four percent each year until January 1, 2039, after which it shall reduce its emissions by an amount equal to an additional three percent of its base period emissions each year until January 1, 2050. For calendar year 2050 and thereafter, emissions shall remain fixed at zero.

B. To demonstrate compliance with the requirements of Subsection A of this section, a utility or cooperative shall...
retire a number of credits, the amount of which is calculated
annually, equal to the reference emission rate multiplied by
the utility's or cooperative's New Mexico load for that year,
less the number of metric tons of its base period emissions
reduced as specified for that year under Subsection A of this
section as applicable. At the end of each compliance period, a
utility or cooperative shall retire the cumulative credits
required for each year of that period, plus any deficiency
amount required by Subsection E of Section 6 of the Clean
Electrification Act. If in any year the calculated number of
credits to retire is a negative number, that amount shall be
deemed to be zero.

C. For calculating base period emissions, the
purchased power emission rate for the period closest to 2019
shall be used."

SECTION 4. A new section of Chapter 62 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] BENEFICIAL AND LOW-INCOME
ELECTRIFICATION.--

A. An investor-owned utility or cooperative that is
in compliance with the Clean Electrification Act may undertake
projects and provide market development and customer incentives
to electrify energy usage in buildings and industrial processes
within the utility's or cooperative's service territory.

B. The reasonable and prudent costs of the
expenditures and investments of beneficial and low-income electrification shall be recoverable through a commission-approved tariff rider or in base rates. Projects that qualify for approval and rate recovery shall provide for improved utilization of electricity transmission and distribution systems, or shall be shown to reduce carbon dioxide or methane emitted into the atmosphere in amounts exceeding what would occur during the lifetime of the proposed project, in the absence of the project.

C. Investor-owned utility projects that provide electricity to existing low-income and indigenous households without electricity service shall be allowed an additional one hundred basis point return on equity for those project investments. The one dollar ($1.00) per credit fee required by Subsection A of Section 6 of the Clean Electrification Act shall be waived for one year for a cooperative or municipal utility that electrifies at least one hundred existing low-income or indigenous households in the prior year.

D. On or before July 1, 2022, and thereafter upon request by the commission but no more frequently than every two years, a utility or cooperative shall file with the commission a plan to undertake beneficial and low-income electrification projects and an application to develop projects pursuant to that plan. When considering applications for approval, the commission shall consider whether the projects reasonably

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satisfy the criteria for beneficial or low-income electrification projects and the reasonableness and prudence of undertaking such projects."

SECTION 5. A new section of Chapter 62 NMSA 1978 is enacted to read:

"[NEW MATERIAL] CLEAN ELECTRICITY CREDITS.--

A. By June 1 of each year beginning in 2023, the secretary shall approve and certify the creation of credits associated with the prior calendar year's emissions from a utility's or cooperative's dedicated generation.

B. The number of credits certified shall equal the megawatt-hours produced from the dedicated generation in a year multiplied by the difference of one minus the emission rate of that generation, in metric tons per megawatt-hour; provided that:

(1) dedicated generation shall be deemed to have zero emissions if its operation reduces metric tons of methane emitted into the atmosphere by an amount equal to no less than one-tenth of the metric tons of emissions from that generation;

(2) dedicated generation with an emission rate that cannot be verified to the satisfaction of the secretary shall be deemed to have an emission rate equal to the purchased power emission rate; and

(3) dedicated generation that is provided
renewable energy certificates associated with its electricity production shall be considered to have zero emissions in the base period emissions determination and in the provision of credits during a compliance period if the renewable energy certificates associated with that production are or will be retired by the utility or cooperative to which the generation is dedicated.

C. The secretary may authorize credits to be sold or otherwise transferred; provided that the authorization does not result in increased emissions over time and is otherwise consistent with the protection of public health, safety and the environment in New Mexico communities. Credits shall not expire and may be used at any time unless and until they are retired for compliance with the Clean Electrification Act or another law or rule requiring carbon dioxide reductions in another jurisdiction or sector of the economy. Credits shall not be used for compliance more than once. The secretary may allow credits, allowances or other instruments from another jurisdiction or economic sector that has a program to require comparable reductions of emissions over time and that accepts credits into its program to be certified and used for compliance with the Clean Electrification Act; provided that the use of credits, allowances or other instruments from another jurisdiction or economic sector shall not result in increased emissions over time and shall be otherwise consistent.
with the protection of public health, safety and the
environment in New Mexico communities.

D. The department shall establish and maintain a
secure and verifiable system for creating, accounting, tracking
and retiring credits. The secretary may use a third party, or a
regional or national system, to satisfy the requirements of
this subsection."

SECTION 6. A new section of Chapter 62 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] COMPLIANCE PROCEDURES--FEES.--

A. On or before January 1, 2022, a utility or
cooperative shall file with the department a verified statement
of its base period emissions along with supporting
documentation and other information as the secretary may
require. A fee of one dollar ($1.00) per metric ton of
approved base period emissions shall be paid to the department.
Unless the department determines within thirty days that the
statement may be incorrect, it shall be deemed approved. If a
statement is not deemed approved, the department shall
determine by June 15, 2022 the appropriate base period
emissions for the utility or cooperative, and the fee shall be
paid within seven days of approval. Once established, the
determination of base period emissions shall not be changed.

B. On or before July 1 of each calendar year
commencing in 2023, a utility or cooperative shall file with
the department a verified statement of its entitlement to, and reconciliation of, clean electricity credits for the prior calendar year. The statement shall be accompanied by supporting documentation that includes the utility's or cooperative's production and emissions from its dedicated generation, an accounting and reconciliation of all credits that the utility or cooperative has been provided, has transferred, has banked and has retired for compliance at the conclusion of the last calendar year and additional information as the secretary may require.

C. Unless the secretary determines that the statement of entitlement and reconciliation may be incorrect, the secretary shall within sixty days of the filing provide the requested number of credits in the format proposed by the utility or cooperative, or another format as determined by the secretary. If the secretary determines that further inquiry is appropriate, the secretary shall determine the correct number of reconciled credits and shall provide by October 1 of that same year the correct number of additional clean electricity credits to which the utility or cooperative is entitled. A fee of one dollar ($1.00) for each credit provided shall be paid to the department by the utility or cooperative receiving credits within thirty days of issuance.

D. On or before July 1, 2025 for compliance in the 2022 through 2024 period, and every three years thereafter for
compliance during the next three-year period, a utility or a cooperative shall file an application certifying to the department that it will retire the requisite number of clean electricity credits. This certification shall include verified information and documentation necessary for the department to determine that the correct number of credits will be retired and that the renewable energy certificates associated with dedicated generation from renewable energy have been or will be retired by the utility or cooperative. The department shall within thirty days of the application approve and require the retirement of sufficient clean electricity credits to establish compliance with the Clean Electrification Act.

E. If a utility or cooperative possesses an insufficient number of credits for retirement at the end of a compliance period, the utility or cooperative shall satisfy one hundred twenty-five percent of that deficiency on or before July 1 of the year following the end of the next three-year compliance period. After notice and hearing, the department shall assess a penalty of one hundred dollars ($100) per deficient credit, paid to the department within thirty days of the assessment, for any deficiency persisting beyond a second consecutive compliance period.

F. The department may undertake audits or other oversight procedures to ensure compliance with the Clean Electrification Act. The attorney general shall seek a court order.
order to enforce the Clean Electrification Act and any
applicable penalties upon request by the department.

G. Fees collected by the department pursuant to
this section shall be deposited in the state air quality permit
fund. A utility or cooperative may recover fees paid to the
department through a commission-approved monthly tariff rider
designed to recover those fees over a period of twelve months
or through base rates."

SECTION 7. A new section of Chapter 62 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] OTHER LAWS AND REGULATIONS.--The Clean
Electrification Act does not diminish or otherwise affect a
utility's or cooperative's obligation to comply with any other
law or rule, unless that law or rule so provides. If a federal
law or regulation requires earlier or greater emission
reductions than required by the Clean Electrification Act, the
department shall adjust the emission reduction requirements of
the Clean Electrification Act to conform to the federal law or
regulation."

SECTION 8. A new section of Chapter 62 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] VARIANCES.--A utility or cooperative may
request from the department a variance from compliance with the
requirements of the Clean Electrification Act. Applications
shall be in writing and shall state the reason for the variance
request, identify each section of the Clean Electrification Act for which a variance is requested, describe the effect the variance will have on compliance with the Clean Electrification Act and describe why the variance would be a reasonable alternative to the Clean Electrification Act's requirements. In consultation with the commission, the department may grant a requested variance if it determines that the variance is required to preserve the reliability or affordability of electricity service in New Mexico and those factors outweigh any harm to public health, safety or the environment caused by noncompliance. A variance granted by the department shall be of the shortest duration, consistent with the protection of public health, safety and the environment and the preservation of affordable and reliable electricity service.

SECTION 9. Section 74-2-15 NMSA 1978 (being Laws 1992, Chapter 20, Section 18) is amended to read:

"74-2-15. STATE AIR QUALITY PERMIT FUND.--

A. There is created in the state treasury the "state air quality permit fund" to be administered by the department. All fees collected by the department pursuant to Section 74-2-7 NMSA 1978 and the Clean Electrification Act shall be deposited in the state air quality permit fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

B. Money in the state air quality permit fund is .218768.2
appropriated to the department for the purpose of paying the reasonable costs of:

(1) reviewing and acting upon any application for a permit;

(2) if the owner or operator receives a permit, implementing and enforcing the terms and conditions of such permit not including any court costs or other costs associated with any enforcement action;

(3) emissions and ambient monitoring;

(4) preparing generally applicable regulations or guidance;

(5) modeling, analysis and demonstrations; and

(6) preparing inventories and tracking emissions; and

(7) regulating air pollution, including carbon dioxide and criteria pollutants."