F I S C A L   I M P A C T   R E P O R T

SPONSOR Cisneros **DATE TYPED** 2/16/05 **HB**

SHORT TITLE Efficient Use of Energy Act **SB** 644/aSCONC

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

Duplicates HB 619

SOURCES OF INFORMATION
LFC Files

Responses Received From
Environment Department (ED)
Energy Minerals & Natural Resources (EMNRD)
General Services Department (GSD)
Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

Senate Bill 644 amends the Public Utility Act (PUA) to encourage utility investment in energy efficiency and load management programs by allowing public utilities recovery of reasonable and prudently incurred expenses for such programs in an expedited manner.

This bill establishes a policy that public utilities, distribution cooperative utilities and municipal utilities include cost-effective energy efficiency and load management investments in their energy resource portfolios and that any regulatory disincentives be removed. The bill stipulates that the PRC shall consider such investments in efficiency and load management to be an acceptable use of ratepayer money. The PRC is required to direct public utilities to evaluate and implement cost-effective programs that reduce energy demand and consumption. Such programs must be reviewed and approved by the PRC prior to implementation. Public utilities would be required to get non-binding recommendations on their prospective programs from PRC staff, EMNRD, Attorney General's Office and other interested parties. Before approving a utility's efficiency or load management program, the PRC must find that the portfolio of programs is cost-effective and designed to provide every affected customer class with an opportunity to participate and benefit economically; cost-effectiveness is to be determined using the total resource cost test.

Furthermore, the PRC is directed to act expeditiously on utility requests for program approval; it must also identify and eliminate any disincentives or barriers that may exist for public utility expenditures on energy efficiency and load management.

Utilities are authorized and required to recover the costs of all approved efficiency and load management programs through approved tariff riders. Program costs may be deferred for future recovery through creation of a regulatory asset, provided the deferred recovery doesn't exceed specified limits. A tariff rider shall not exceed the lower of 1.5% of a customer's bill or $75 thousand per year unless there is consent from the customer. Larger tariffs can be approved if they are cost-effective, just and reasonable. A proposed tariff rider shall become effective 30 days after filing, unless suspended by the PRC for a period not to exceed 180 days. Annual program evaluation reports must be provided to ensure program effectiveness. The PRC is authorized to modify or terminate a program if it is not meeting intended goals. In addition, the PRC must make sure there are no cross-subsidies between a public utility's efficiency and load management programs and the utility's supply-side activities.

A large customer may implement a self-directed program. The program must be approved by the utility or by the PRC program administrator. Once approved, the large customer can get a credit of 70% to offset the cost of the tariff rider; and the credit can be carried forward. Eligible measures must have a simple payback so a large customer can get a credit of 70% to offset the cost of the tariff rider; and the credit can be carried forward. Eligible measures must have a simple payback of 1 to 7 years. Projects receiving utility rebates or financial support are not eligible. A report from an independent third party evaluator must be submitted to the PRC.

<u>Significant Issues</u>

Cost-effective energy efficiency and load management are intended to provide significant reductions in greenhouse gas emissions, regulated air emissions, water consumption and natural resource depletion, and avoid or delay the need for more expensive generation, transmission and distribution infrastructure. The PRC questions whether these goals are counter productive to a net-exporting energy state? They ask will New Mexico consumers pay to increase efficiency only to free up resources to be exported out-of-state?

This legislation encourages public utilities to invest in energy efficiency and load management programs for which they will recover their costs through a rate rider mechanism. The legislation greatly eliminates utility risk associated with the implementing these programs. Utility program cost recovery will be pre-approved by the PRC and cost recovery guaranteed. Even should a program not accomplish its goals the utility is to fully recover its reasonable and prudent program costs.

The bill requires the PRC to have an expedited schedule to approve tariff riders within thirty days of filing, if not suspended; otherwise the tariffs become effective as a matter of law. If suspended, the PRC has no more than 180 days to review, analyze, and approve or disapprove a tariff rider proposed by a public utility.

Utilities will be allowed the opportunity to invest in cost-effective energy efficiency and load management at reduced risk, removed disincentives, and allowed recovery of costs. The consumer will pay for this opportunity through tariff riders of 1.5% of that customer's bill but no more than $75 thousand per year. Only large industrial customers will experience the $75 thousand cap per year. The 1.5% cap can be exceeded if approved by the PRC and with the advice and consent of the residential and commercial customers' statutorily designated advocate, currently the Attorney General.

The PRC notes that while the legislation lists the virtues of energy efficiency and load management in New Mexico, only public utilities are directed to evaluate and implement cost-effective programs that reduce energy demand and consumption. Distribution cooperative utilities are largely not impacted by this legislation. Coops are encouraged to investigate and implement cost-effective energy efficiency and load management programs but approval of such programs remains only with the coop's governing body and not the PRC. Municipal utilities are not considered at all in this legislation.

The PRC believes this bill will require them to implement piecemeal ratemaking. Piecemeal ratemaking occurs when certain utility costs or investments are allowed for recovery from ratepayers without consideration of other, perhaps offsetting cost reductions or depreciation or retirement of plant investment. The effect is a one-way ratchet of increasing rates. The PRC currently does not allow for piecemeal ratemaking for these reasons. Implementation of an energy efficiency tariff rider will be another addition to the consumer's utility bill.

Distribution cooperative utilities are largely not impacted by this legislation. Coops are encouraged to investigate and implement cost-effective energy efficiency and load management programs but approval of such programs remains only with the governing body and not the PRC. Costs are to be recovered through general rates. Annual reporting to the PRC of programs or measures that promote energy efficiency, conservation or load management is required by the distribution cooperative utilities.

ED submitted a State Implementation Plan to EPA in December 2003 pursuant to Section 309 of the federal Regional Haze Rule (40 CFR 51.309). According to this portion of the federal rule, the state is obligated to report every five years its progress in achieving the renewable energy goal of 10 percent of the regional power needs by 2005 and 20 percent by 2020. In addition, energy efficiency projects are reported to the federal environmental protection agency every five years. Implementation of this bill may help the state achieve energy efficiency goals and better address visibility goals in New Mexico's national parks and wilderness areas.

EMNRD provided the following:

> This bill will facilitate to a significant degree the implementation of energy efficiency and load management measures in every sector of the New Mexico economy: residential, commercial, and industrial. Although utility costs for consumers may minimally increase in the near-term due to the tariff rider, substantial net cost savings to both utilities and consumers will result over the long term. Moreover, the cost savings will continue to accrue for the life of the installed efficiency technologies.
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> In many instances, energy efficiency measures are much less expensive than pursuing new electric supply generating capacity. In addition, increased efficiency in all sectors throughout the state will have the cumulative effect of reducing future energy demand, thereby deferring the construction of new electric power plants in New Mexico. Deferral of new electricity generating facilities has public health benefits in terms of minimizing the addition of hazardous air pollutants. Energy efficiency can also help resolve electric transmission supply constraints.

It is important to note that this bill represents a "consensus" bill that was developed over several months by a large group of diverse interests, including investor-owned utilities, rural electric cooperatives, consumer and public interest groups, non-profit renewable energy and energy efficiency organizations, the Attorney General's Office, PRC staff, American Association for Retired People, New Mexico Industrial Energy Consumers, Association for Commerce and Industry, San Miguel and Mora County Farm Bureau, New Mexico Conference of Churches and an energy service company. These entities were appointed and convened by Governor Richardson under the auspices of the Utility Energy Efficiency Task Force. This bill reflects the consensus of a diverse partnership indicating broad, strong support for the legislation. To be precise, one investor-owned utility supported all the provisions in the bill save for the integrated resource plans provision.

FISCAL IMPLICATIONS

The PRC estimates they will need an additional three FTEs, two Utility Economists and one Electrical Engineer at a recurring cost of $200 thousand in order to implement the provisions of this bill. They also believe there may o be additional court reporting fees and contractual services at an estimated cost of $40 thousand...

GSD believes this initiative could result in higher operating costs for state facilities due to the differential between the tariff rider, and 70 percent credit for implementing or demonstrating existing energy efficiency measures. If the energy efficiency measures do not result in reduced consumption that lowers energy bills, cost will go up by up to 30 percent of the tariff rider.

For GSD in Santa Fe, looking at electricity costs only, with annual expenditures of $1.5 million, the tariff rider will be $22,500 (lesser of 1.5 percent of electricity bill or $75,000). If GSD paid for improvements, or could prove all energy efficiency measures are exhausted, the credit will result in an annual increase in utilities of $6,750 (30 percent of $22,500).

GSD has three large user agreements, and dozens of regular consumer meters, which will not be eligible for credits.

ADMINISTRATIVE IMPLICATIONS

This bill requires the PRC to direct public utilities to evaluate and implement cost-effective programs that reduce energy demand and consumption. Programs proposed by utilities will be required to seek PRC approval prior to implementing programs or recovering costs through a rate rider. Public utilities will be required to report annually on the programs implemented and the PRC has to reconcile the tariff rider based upon recovery of the reasonable costs of the utility's programs.

Public utilities will submit to the PRC an annual report, prepared by an independent program evaluator, for measurement and verification of the utility's energy efficiency or load management programs. The PRC will need to review and evaluate that report to determine modification or termination of energy efficiency or load management programs. Public utilities will also submit to the PRC annual reports of self-directed programs for customers.

The review of such submissions will be highly complex and controversial. PRC hearings will involve opposing expert witnesses, sworn testimony, and large volumes of data. The PRC will effectively be required to make a wide range of determinations involving such matters as natural gas price forecasts for up to 40 years, the cost of coal-fired power plant retrofits, the likely future cost of developing technologies, etc. PRC pre-approval of programs will effectively select some technologies and some providers and necessarily eliminate others.

The PRC must find that the portfolio of programs is cost-effective and designed to provide every affected customer class with the opportunity to participate and benefit economically. The PRC will be responsible for the determination of the cost-effectiveness of energy efficiency and load management measures using a total resource cost test. This will ultimately be debated extensively in proceeding before the PRC and will require proper staffing

DUPLICATION

SB 644 duplicates HB 619.

TECHNICAL ISSUES

The PRC notes that this bill considers the investment in municipal utility investments in energy efficiency and load managements in its findings but contains no substantive reference or inclination that such investments should be considered by municipal utilities in the state.

OTHER SUBSTANTIVE ISSUES

The PRC states that current law is as follows:

> Utilities are required to identify viable alternatives available to them and consider all programs that are cost effective in meeting their needs for new electric generation or gas transmission capacity including energy conservation and demand side measures.
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> In order to encourage and facilitate the installation of energy conservation measures and renewable resources, the PRC allows these measures to be treated as a current expense of providing utility services and charged to all ratepayers of a utility in the same manner as current operating expenses of providing utility services or charged to the residential customer for whom the activity is performed.

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