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HOUSE BILL 183

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO PUBLIC UTILITIES; AMENDING A SECTION OF THE PUBLIC UTILITY ACT TO PROVIDE FOR ECONOMIC DEVELOPMENT RATES TO CERTAIN CUSTOMERS CERTIFIED BY THE ECONOMIC DEVELOPMENT DEPARTMENT TO ASSIST IN JOB CREATION AND ADDITIONAL INVESTMENT IN THE STATE; DECLARING AN EMERGENCY.

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

SECTION 1. Section 62-6-26 NMSA 1978 (being Laws 1989, Chapter 5, Section 1, as amended) is amended to read:

"62-6-26. ECONOMIC DEVELOPMENT RATES FOR GAS AND ELECTRIC UTILITIES--AUTHORIZATION.--

A. The commission may approve or otherwise allow to become effective, as provided in Subsection B of this section, applications from utilities or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 or filings

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1 by cooperative utilities pursuant to Subsection F of Section  
2 62-8-7 NMSA 1978, as appropriate, for special rates or tariffs  
3 in order to prevent the loss of customers, to encourage  
4 customers to expand present facilities and operations in New  
5 Mexico and to attract new customers where necessary or  
6 appropriate to promote economic development in New Mexico; ~~[Any~~  
7 ~~such special rates or tariffs shall be designed so as to~~  
8 ~~recover at least the incremental cost of providing service to~~  
9 ~~such customers]~~ provided, however, that the commission shall  
10 have no authority to disallow an economic development rate  
11 pursuant to a contract that meets the requirements of  
12 Subsection C of this section.

13 B. The commission may approve or otherwise allow to  
14 become effective applications from utilities or persons subject  
15 to regulation pursuant to Subsection B of Section 62-6-4 NMSA  
16 1978 and filings by cooperative utilities pursuant to  
17 Subsection F of Section 62-8-7 NMSA 1978 for economic  
18 development rates and rates designed to retain load for gas and  
19 electric utility customers; provided, however, that the  
20 commission shall have no authority to disallow an economic  
21 development rate pursuant to a contract that meets the  
22 requirements of Subsection C of this section. For purposes of  
23 this section and Section 62-8-6 NMSA 1978, economic development  
24 rates and rates designed to retain load are rates set at a  
25 level lower than the corresponding service rate for which a

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1 customer would otherwise qualify.

2 C. ~~[Economic development rates shall be approved or~~  
3 ~~otherwise allowed to become effective for an electric utility~~  
4 ~~or persons subject to regulation pursuant to Subsection B of~~  
5 ~~Section 62-6-4 NMSA 1978 or filings by cooperative utilities~~  
6 ~~pursuant to Subsection F of Section 62-8-7 NMSA 1978 only when~~  
7 ~~the utility or the substantially full requirements supplier of~~  
8 ~~the utility has excess capacity. For purposes of this section,~~  
9 ~~"excess capacity" means the amount of electric generating and~~  
10 ~~purchased power capacity available to the utility or such~~  
11 ~~supplier that is greater than the utility's or such supplier's~~  
12 ~~peak load plus a fixed percentage reserve margin set by the~~  
13 ~~commission.] An electric utility may enter into a contract with~~  
14 ~~an eligible customer to provide an economic development rate~~  
15 ~~that fixes a rate for no more than seven years that recovers at~~  
16 ~~least the incremental cost of providing service to the~~  
17 ~~customer. The commission shall allow the economic development~~  
18 ~~rate to go into effect without a hearing no later than thirty~~  
19 ~~days after the contract has been filed with the commission,~~  
20 ~~unless the commission finds that there is probable cause to~~  
21 ~~believe that the rate may not meet the requirements of this~~  
22 ~~subsection. If the commission determines that probable cause~~  
23 ~~exists to ensure that the requirements of this subsection are~~  
24 ~~met, it shall, after notice and hearing, render a decision no~~  
25 ~~later than ninety days after the date on which the contract was~~

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1 filed. If the commission does not act by that date, the  
2 contract shall go into effect. For purposes of this  
3 subsection, "incremental cost" means the fuel and purchased  
4 power costs and direct costs of transmission and distribution  
5 necessary to provide service to the customer but does not  
6 include system-wide or system expansion costs that provide  
7 additional transmission or distribution capacity, system  
8 reliability or other benefits to other customers.

9 D. A customer is eligible for an economic  
10 development rate if the customer receives a certificate of  
11 eligibility from the economic development department. The  
12 economic development department shall issue a certificate of  
13 eligibility within fifteen days of the filing of an application  
14 by a utility customer or prospective utility customer if the  
15 customer or prospective customer demonstrates to the reasonable  
16 satisfaction of the economic development department that the  
17 customer or prospective customer:

18 (1) has or will have a contract demand at a  
19 single location of at least four thousand kilowatts of electric  
20 power at its New Mexico facilities under normal operating  
21 conditions;

22 (2) will create or retain at least twenty-five  
23 full-time jobs in New Mexico with a minimum annual average  
24 salary of forty thousand dollars (\$40,000);

25 (3) will invest not less than five million

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1 dollars (\$5,000,000) in fixed assets, including machinery and  
2 equipment, in New Mexico; and

3 (4) with the economic development rate  
4 negotiated with the utility, intends to operate its facilities  
5 in New Mexico for at least ten years and that the operation or  
6 continued operation of its facility or facilities in New Mexico  
7 for the ten-year period appears economically viable under  
8 reasonable assumptions and projections.

9 E. If the customer meets the eligibility  
10 requirements of Subsection D of this section, the economic  
11 development department shall issue the certificate of  
12 eligibility containing such reasonable terms and conditions  
13 that, in its discretion, are reasonably necessary to ensure  
14 that the contract demand, job creation or retention and the  
15 investment requirements specified in Subsection D of this  
16 section are achieved, including establishing reasonable  
17 development milestones and requiring the customer to  
18 demonstrate through progress reports or otherwise its  
19 achievement of the milestones.

20 F. A customer who receives a certificate of  
21 eligibility and pays rates lower than would otherwise be  
22 applicable to the customer, but does not in fact fulfill the  
23 commitments necessary to qualify, shall be liable to the  
24 utility for the difference between the economic development  
25 rate and the rate otherwise applicable to the customer. The

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1 utility or the economic development department may require the  
2 customer or prospective customer to provide reasonable  
3 assurances that it will meet the eligibility requirements  
4 specified in Subsection D of this section, including deposits  
5 or bonds to guarantee payment to the utility of the difference  
6 between the economic development rate and the rate that would  
7 have otherwise been applicable to the customer's service.

8 G. A customer that enters into a contract with an  
9 electric utility providing an economic development rate  
10 pursuant to Subsection C of this section shall be deemed to  
11 have accepted all the terms and conditions associated with the  
12 certificate of eligibility issued by the economic development  
13 department, including the eligibility requirements of  
14 Subsection D of this section and the requirements of Subsection  
15 F of this section.

16 H. The commission shall allow the utility to fully  
17 recover in a general rate case from all other customers the  
18 full amount of the difference, if any, between the revenue  
19 recovered pursuant to the contract economic development rate  
20 and the utility's cost to provide service to that customer."

21 **SECTION 2. EMERGENCY.--**It is necessary for the public  
22 peace, health and safety that this act take effect immediately.