

1 SENATE BILL 283

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

3 INTRODUCED BY

4 Stuart Ingle

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10 AN ACT

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

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "62-6-26. ECONOMIC DEVELOPMENT RATES FOR GAS AND ELECTRIC  
21 UTILITIES--AUTHORIZATION.--

22 A. The commission may approve or otherwise allow to  
23 become effective, as provided in Subsection B of this section,  
24 applications from utilities or persons subject to regulation  
25 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 approve or otherwise allow to become effective an economic  
11 development rate pursuant to a contract that meets the  
12 requirements of 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 approve or otherwise allow to become effective  
21 an economic development rate pursuant to a contract that meets  
22 the requirements of Subsection C of this section. For purposes  
23 of this section and Section 62-8-6 NMSA 1978, economic  
24 development rates and rates designed to retain load are rates  
25 set at a level lower than the corresponding service rate for

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1 which a 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 ~~contract rate to go into effect without hearing no later than~~  
19 ~~thirty days after the contract has been filed with the~~  
20 ~~commission, unless the commission finds that there is probable~~  
21 ~~cause to believe that the contract rate may not meet the~~  
22 ~~requirements of this subsection. If the commission determines~~  
23 ~~that probable cause does exist, to assure that the requirements~~  
24 ~~of this subsection are met, it shall, after notice and hearing,~~  
25 ~~render a decision no later than ninety days after the date on~~

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1 which the contract was filed. If the commission does not act  
2 by that date, the contract shall go into effect. As used in  
3 this subsection, "incremental cost" means fuel and purchased  
4 power costs, costs recoverable from customers pursuant to the  
5 Renewable Energy Act and the Efficient Use of Energy Act, and  
6 the direct costs of transmission and distribution facilities  
7 necessary to provide service to the customer, but "incremental  
8 cost" does not include system-wide or system expansion costs  
9 that provide additional transmission or distribution capacity,  
10 system reliability or other benefits to other customers.

11 D. An existing or prospective customer is an  
12 eligible customer if:

13 (1) the existing or prospective customer  
14 provides evidence satisfactory to the utility that:

15 (a) the availability of the economic  
16 development rate is a critical contributing factor in the  
17 existing or prospective customer's decision to add new or  
18 additional load or in retaining existing load that would  
19 otherwise be lost;

20 (b) in the case of an existing customer  
21 that is seeking an economic development rate to retain load,  
22 the customer has a contract demand at a single location of at  
23 least four thousand kilowatts of electric power at its New  
24 Mexico facilities under normal operating conditions;

25 (c) in the case of an existing or

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1 prospective customer seeking an economic development rate to  
2 add new or additional load, the customer will have a contract  
3 demand or an additional contract demand at a single location of  
4 at least one thousand kilowatts of electric power at its New  
5 Mexico facilities under normal operating conditions;

6 (d) the existing or prospective customer  
7 intends to operate its facilities in New Mexico for at least  
8 ten years;

9 (e) the operation or continued operation  
10 of the existing or prospective customer's facility or  
11 facilities in New Mexico for the ten-year period is  
12 economically viable under reasonable assumptions and  
13 projections; and

14 (f) the existing or prospective customer  
15 that is or will be located in New Mexico has or will have sales  
16 revenue at least fifty percent of which is for sales outside  
17 the state of New Mexico; or

18 (2) the existing or prospective customer  
19 receives a certificate of eligibility from the economic  
20 development department. The economic development department  
21 shall issue a certificate of eligibility within fifteen days of  
22 the filing of an application by an existing or prospective  
23 utility customer if the customer demonstrates to the reasonable  
24 satisfaction of the economic development department that, in  
25 addition to the conditions provided in Paragraph (1) of this

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1 subsection:

2 (a) in the case of an existing customer  
3 seeking an economic development rate to retain load, the  
4 customer will retain at least twenty full-time jobs in New  
5 Mexico with a minimum annual salary of forty thousand dollars  
6 (\$40,000), and in the case of an existing or prospective  
7 customer that is seeking an economic development rate to add  
8 additional or new load, the customer will create at least  
9 twenty full-time jobs in New Mexico with a minimum annual  
10 salary of forty thousand dollars (\$40,000);

11 (b) in the case of an existing customer  
12 seeking an economic development rate to retain load, the  
13 customer has invested not less than five million dollars  
14 (\$5,000,000) in fixed assets, including machinery and equipment  
15 in New Mexico, and in the case of an existing or prospective  
16 customer that is seeking an economic development rate to add  
17 additional or new load, the customer will invest not less than  
18 five million dollars (\$5,000,000) in fixed assets, including  
19 machinery and equipment, in New Mexico; and

20 (c) the existing or prospective customer  
21 that is or will be located in New Mexico has sales revenue at  
22 least fifty percent of which is for sales outside the state of  
23 New Mexico.

24 E. In issuing a certificate of eligibility, the  
25 economic development department shall prescribe reasonable

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1 terms and conditions necessary to assure that the contract  
2 demand, job creation or retention and investment requirements  
3 for a certificate of eligibility are achieved, including  
4 establishing reasonable development milestones and requiring  
5 the customer to demonstrate through progress reports, or  
6 otherwise, its achievement of the milestones.

7 F. A customer that accepts the terms and conditions  
8 for eligibility in Subsection D of this section by paying  
9 economic development rates lower than would otherwise be  
10 applicable to the customer, but does not in fact fulfill the  
11 commitments necessary for eligibility, shall be liable to the  
12 utility for the difference between the economic development  
13 rate and the rate otherwise applicable to the customer. The  
14 customer shall provide reasonable assurances to the utility  
15 that it will fulfill the commitments necessary for eligibility  
16 specified in Subsection D of this section, including deposits  
17 or bonds to guarantee payment to the utility of the difference  
18 between the economic development rate and the rate that would  
19 have otherwise been applicable to the customer's service.

20 G. The commission shall allow a utility to recover,  
21 through the ratemaking process, the full amount of the  
22 difference between the revenue recovered under the contract  
23 economic development rate and the revenue the utility would  
24 have recovered under the rate the customer would have paid if  
25 the customer were not on the economic development rate.

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