

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 218

56TH LEGISLATURE - STATE OF NEW MEXICO- FIRST SESSION, 2023

AN ACT

RELATING TO PUBLIC UTILITIES; REQUIRING CERTAIN PUBLIC
UTILITIES TO PROVIDE AFFORDABLE RATES OR AN ENERGY
AFFORDABILITY PROGRAM TO LOW-INCOME RESIDENTIAL CUSTOMERS;
REQUIRING THE PUBLIC REGULATION COMMISSION TO ESTABLISH
CRITERIA FOR AFFORDABLE RATES.

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

SECTION 1. Section 62-8-6 NMSA 1978 (being Laws 1941,
Chapter 84, Section 42, as amended) is amended to read:

"62-8-6. DISCRIMINATION.--

A. No public utility shall, as to rates or
services, make or grant any unreasonable preference or
advantage to any corporation or person within any
classification or subject any corporation or person within any
classification to any unreasonable prejudice or disadvantage.

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underscored material = new
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1 No public utility shall establish and maintain any unreasonable
2 differences as to rates of service either as between localities
3 or as between classes of service.

4 B. Nothing shall prohibit, however, the commission
5 from approving:

6 (1) economic development rates [~~and~~];
7 (2) rates designed to retain load [~~or from~~
8 approving]; and

9 (3) energy efficiency programs designed to
10 reduce the burden of energy costs on low-income customers
11 pursuant to the Efficient Use of Energy Act.

12 C. Notwithstanding Subsection A of this section, a
13 public utility may make or grant a reasonable preference or
14 advantage to low-income residential customers, and the
15 commission may approve a rate, charge, service, program,
16 classification or facility that includes such a preference or
17 advantage. The implementation of such a commission-approved
18 rate, charge, service, program, classification or facility by a
19 public utility shall not be deemed to subject any person or
20 corporation to any prejudice, disadvantage or undue
21 discrimination."

22 SECTION 2. A new section of Chapter 62, Article 8 NMSA
23 1978 is enacted to read:

24 "[NEW MATERIAL] INVESTOR-OWNED UTILITY AFFORDABLE RATES
25 FOR LOW-INCOME RESIDENTIAL CUSTOMERS.--

1 A. Each investor-owned public utility shall offer a
2 just and reasonable affordable rate for low-income residential
3 customers.

4 B. Each investor-owned public utility shall file
5 with the commission an initial proposed affordable rate for
6 low-income residential customers no later than January 1, 2024.

7 C. Each investor-owned public utility shall file
8 its initial proposed affordable rate with an advice notice that
9 is served on all parties of record in the utility's last rate
10 case at the time it files the advice notice with the
11 commission. The filing shall include information showing that
12 the rate:

13 (1) is available to all low-income residential
14 customers;

15 (2) meets the definition of "affordable rate"
16 as defined in this section; and

17 (3) was developed after soliciting and
18 considering nonbinding recommendations on the design and
19 implementation of the rate from interested parties.

20 D. The initial proposed affordable rate shall go
21 into effect thirty days after filing, unless suspended by the
22 commission for a period not to exceed one hundred twenty days.
23 If the commission has not acted to approve an affordable rate
24 by the end of the suspension period, the initial proposed
25 affordable rate shall be deemed approved as a matter of law.

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1 If, after a hearing, the commission finds the proposed rate to
2 be unjust and unreasonable, the commission shall determine the
3 just and reasonable affordable rate to be charged.

4 E. Notwithstanding Subsection B of this section, an
5 investor-owned public utility may elect to file its initial
6 proposed just and reasonable affordable rate in its first
7 general rate case that is to be filed after the effective date
8 of this section; provided that the rate case shall be filed
9 prior to December 31, 2025.

10 F. Each investor-owned public utility shall file a
11 proposed updated affordable rate, if an update is needed to
12 maintain an affordable rate for low-income residential
13 customers, for approval in future general rate cases.

14 G. Nothing in this section shall prohibit the
15 commission from:

16 (1) approving an affordable rate that is a
17 flat dollar amount rate reduction from general residential
18 rates or a percentage rate reduction from residential rates;
19 provided that the reduction is calculated to result in an
20 affordable rate for the average low-income residential
21 customer;

22 (2) approving an affordable rate for
23 low-income residential customers based on specified tiers of
24 household income; or

25 (3) authorizing programs that seek to decrease

1 or eliminate participating customer arrears or increase the
2 frequency of participating customer payments; provided that
3 such programs shall be designed to increase affordability and
4 continuity of service for participating customers and to reduce
5 utility costs associated with customer account collection
6 activities.

7 H. Each investor-owned public utility shall file
8 affordable-rate evaluations every three years that measure:

9 (1) the estimated change in energy burden for
10 an average participating customer, based on publicly available
11 income data and the utility's available billing and usage data;

12 (2) disconnection notices and service
13 disconnections;

14 (3) frequency of customer payments, utility
15 collection costs, arrearage and bad debt; and

16 (4) any other relevant criterion that can be
17 assessed with available data that the commission deems
18 appropriate.

19 I. The commission shall promulgate rules and issue
20 orders as necessary to implement, administer and evaluate
21 affordable rates.

22 J. The commission shall allow an investor-owned
23 public utility to recover:

24 (1) the reasonable cost of implementing an
25 affordable rate, including administrative costs, evaluation

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1 costs and start-up costs, on a timely basis; and

2 (2) costs incurred because of an approved
3 initial affordable rate in the investor-owned public utility's
4 next general rate case.

5 K. Investor-owned public utilities may use
6 information collected or created for the purpose of
7 administering energy assistance programs to formulate
8 affordable rates.

9 L. As used in this section:

10 (1) "affordable rate" means a rate for
11 electric and natural gas utility service designed to prevent an
12 average low-income customer from paying an unsustainable share
13 of income toward these services, the design of which shall be
14 further prescribed by the commission by rule or order and which
15 may be based solely upon publicly available aggregate income
16 data for New Mexico residents;

17 (2) "energy burden" means the percentage of
18 gross household income spent by a customer on an individual
19 investor-owned public utility's bills;

20 (3) "investor-owned public utility" means a
21 public utility subject to regulation by the commission that
22 provides electric or natural gas service to residential
23 customers, but "investor-owned public utility" does not mean a
24 cooperative organized pursuant to the Rural Electric
25 Cooperative Act; and

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1 (4) "low income" means an annual household
 2 adjusted gross income, as defined in the Income Tax Act, equal
 3 to or less than two hundred percent of the current federal
 4 poverty level guidelines published by the United States
 5 department of health and human services."

6 SECTION 3. Section 62-15-37 NMSA 1978 (being Laws 2007,
 7 Chapter 4, Section 4, as amended) is amended to read:

8 "62-15-37. DEFINITIONS--ENERGY EFFICIENCY--RENEWABLE
 9 ENERGY.--As used in the Rural Electric Cooperative Act:

10 A. "affordable rate" means a rate for electric and
 11 natural gas utility service designed to prevent an average low-
 12 income customer from paying an unsustainable share of income
 13 toward these services, the design of which shall be further
 14 prescribed by the commission by rule or order and which may be
 15 based solely upon publicly available aggregate income data for
 16 New Mexico residents;

17 B. "energy burden" means the percentage of gross
 18 household income spent by a customer on bills for electric
 19 service provided by a cooperative;

20 [~~A.~~] C. "energy efficiency" means measures,
 21 including energy conservation measures, or programs that target
 22 consumer behavior, equipment or devices to result in a decrease
 23 in consumption of electricity without reducing the amount or
 24 quality of energy services;

25 D. "low income" means an annual household adjusted

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1 gross income, as defined in the Income Tax Act, equal to or
2 less than one hundred fifty percent of the current federal
3 poverty level guidelines published by the United States
4 department of health and human services;

5 [B-] E. "renewable energy" means electric energy
6 generated by use of renewable energy resources and delivered to
7 a rural electric cooperative;

8 [G-] F. "renewable energy certificate" means a
9 certificate or other record, in a format approved by the public
10 regulation commission, that represents all the environmental
11 attributes from one megawatt-hour of electricity generated from
12 renewable energy;

13 [D-] G. "renewable energy resource" means electric
14 or useful thermal energy:

15 (1) generated by use of the following energy
16 resources, with or without energy storage and delivered to a
17 rural electric cooperative:

18 (a) solar, wind and geothermal;

19 (b) hydropower facilities brought in
20 service on or after July 1, 2007;

21 (c) other hydropower facilities
22 supplying no greater than the amount of energy from hydropower
23 facilities that were part of an energy supply portfolio prior
24 to July 1, 2007;

25 (d) fuel cells that do not use fossil

1 fuels to create electricity;

2 (e) biomass resources, limited to
3 agriculture or animal waste, small diameter timber, not to
4 exceed eight inches, salt cedar and other phreatophyte or woody
5 vegetation removed from river basins or watersheds in New
6 Mexico; provided that these resources are from facilities
7 certified by the energy, minerals and natural resources
8 department to: 1) be of appropriate scale to have sustainable
9 feedstock in the near vicinity; 2) have zero life cycle carbon
10 emissions; and 3) meet scientifically determined restoration,
11 sustainability and soil nutrient principles; and

12 (f) landfill gas and anaerobically
13 digested waste biomass; and

14 (2) does not include electric energy generated
15 by use of fossil fuel or nuclear energy;

16 [~~E.~~] H. "useful thermal energy" means renewable
17 energy delivered from a source that can be metered and that is
18 delivered in the state to an end user in the form of direct
19 heat, steam or hot water or other thermal form that is used for
20 heating, cooling, humidity control, process use or other valid
21 end-use energy requirements and for which fossil fuel or
22 electricity would otherwise be consumed;

23 [~~F.~~] I. "zero carbon resource" means an electricity
24 generation resource that emits no carbon dioxide into the
25 atmosphere, or that reduces methane emitted into the atmosphere

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1 in an amount equal to no less than one-tenth of the tons of
2 carbon dioxide emitted into the atmosphere, as a result of
3 electricity production; and

4 ~~[G.]~~ J. "zero carbon resource standard" means
5 providing New Mexico rural electric cooperative retail
6 customers with electricity generated from one hundred percent
7 zero carbon resources."

8 SECTION 4. A new section of the Rural Electric
9 Cooperative Act is enacted to read:

10 "[NEW MATERIAL] RURAL ELECTRIC COOPERATIVE ENERGY
11 AFFORDABILITY FOR LOW-INCOME RESIDENTIAL CUSTOMERS.--

12 A. Each cooperative shall establish an energy
13 affordability plan for low-income residential customers by no
14 later than the date of the cooperative's next general rate
15 adjustment.

16 B. An energy affordability plan shall be designed
17 to lower the energy burden of the average low-income
18 residential customer in the cooperative's service territory.

19 C. An energy affordability plan may consist of:

20 (1) an affordable rate for low-income
21 residential customers; or

22 (2) programs or services designed to reduce
23 the energy burden of low-income residential customers that may
24 include:

25 (a) energy efficiency improvements;

- 1 (b) weatherization improvements;
- 2 (c) bill assistance funded by voluntary
- 3 member contributions;
- 4 (d) outreach and communications efforts;
- 5 and
- 6 (e) other programs to reduce energy
- 7 burden; or

8 (3) a combination of Paragraphs (1) and (2) of
9 this subsection.

10 D. Each cooperative shall annually publish a report
11 on its website on the availability and progress of the
12 cooperative's energy affordability plan, including the number
13 of low-income residential customers served by each component of
14 the program to the extent reasonably determinable and the
15 estimated impact of the plan on the energy burden of an average
16 low-income residential member of the cooperative.

17 E. A cooperative that chooses to offer an energy
18 affordability plan for low-income residential customers prior
19 to its next general rate adjustment may recover any reasonable
20 implementation costs through an existing rate adjustment
21 mechanism or charge until its next general rate adjustment."