AN ACT

RELATING TO PUBLIC UTILITIES; ENACTING THE EFFICIENT USE OF ENERGY ACT; PROVIDING FOR EXPENDITURES FOR ENERGY EFFICIENCY AND LOAD MANAGEMENT BY PUBLIC UTILITIES; AMENDING THE PUBLIC UTILITY ACT; DECLARING AN EMERGENCY.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 11 of this act may be cited as the "Efficient Use of Energy Act".

Section 2. [NEW MATERIAL] FINDINGS.--The legislature finds that:

A. energy efficiency and load management are cost-effective resources that are an essential component of the balanced resource portfolio that public utilities must achieve to provide affordable and reliable energy to public utility customers.
consumers;

B. energy efficiency and load management in New Mexico are resources that are currently underutilized;

C. public and municipal utility investment in energy efficiency and load management presents opportunities to increase New Mexico's energy security, protect New Mexico energy consumers from price increases, preserve the state's natural resources and pursue an improved environment in New Mexico;

D. investment in energy efficiency and load management by public utilities subject to public regulation commission oversight in accordance with the Efficient Use of Energy Act can bring significant economic benefits to New Mexico;

E. it serves the public interest to support public utility investments in cost-effective energy efficiency and load management by removing any regulatory disincentives that may exist and allowing recovery of costs for reasonable and prudently incurred expenses of energy efficiency and load management programs;

F. investments in energy efficiency and implementation of utility energy efficiency programs for economically disadvantaged New Mexicans, in conjunction with low-income weatherization programs managed by the state of New Mexico, will reduce the burden of utility costs on low-income
customers;

G. public utility investments in cost-effective energy efficiency and load management can provide significant reductions in greenhouse gas emissions, regulated air emissions, water consumption and natural resource depletion, and can avoid or delay the need for more expensive generation, transmission and distribution infrastructure;

H. New Mexico should participate in regional efforts to reduce energy consumption by twenty percent by 2020 through programs to reduce energy consumption;

I. public utility resource planning to meet New Mexico's energy service needs should be identified and evaluated on an ongoing basis in accordance with the principles of integrated resource planning; and

J. it is necessary and appropriate to allow distribution cooperative utilities to participate in the implementation of energy efficiency programs in ways that differ from rules applicable to public utilities that are not customer owned.

Section 3. [NEW MATERIAL] POLICY.--It is the policy of the Efficient Use of Energy Act 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 that may exist to public utility
investments in cost-effective energy efficiency and load management are eliminated.

Section 4. [NEW MATERIAL] DEFINITIONS.--As used in the Efficient Use of Energy Act:

A. "commission" means the public regulation commission;

B. "cost-effective" means that the program being evaluated satisfies the total resource cost test;

C. "distribution cooperative utility" means a utility with distribution facilities organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the Rural Electric Cooperative Act or similarly organized in other states;

D. "energy efficiency" means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices to result in a decrease in consumption of electricity and natural gas without reducing the amount or quality of energy services;

E. "large customer" means a utility customer at a single, contiguous field, location or facility, regardless of the number of meters at that field, location or facility, with electricity consumption greater than seven thousand megawatt-hours per year or natural gas use greater than three hundred sixty thousand decatherms per year;

F. "load management" means measures or programs
that target equipment or devices to result in decrease peak
electricity demand or shift demand from peak to off-peak
periods;

G. "public utility" means a public utility that is
not also a distribution cooperative utility; and

H. "total resource cost test" means a standard that
is met if, for an investment in energy efficiency or load
management, on a life-cycle basis the avoided supply-side
monetary costs are greater than the monetary costs of the
demand-side programs borne by both the utility and the
participants.

Section 5. [NEW MATERIAL] COMMISSION--ENERGY EFFICIENCY
AND LOAD MANAGEMENT PROGRAMS.--

A. Pursuant to the findings and purpose of the
Efficient Use of Energy Act, the commission shall consider
public utility investments in cost-effective energy efficiency
and load management to be an acceptable use of ratepayer money.

B. The commission shall direct public utilities to
evaluate and implement cost-effective programs that reduce
energy demand and consumption.

C. Before the commission approves an energy
efficiency and load management program for a public utility, it
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
commission shall determine the cost-effectiveness of energy
efficiency and load management measures using the total
resource cost test.

D. The commission shall act expeditiously on public
utility requests for approval of energy efficiency or load
management programs.

E. Public utilities shall obtain commission
approval of energy efficiency and load management programs
before they are implemented. Public utilities proposing new
energy efficiency and load management programs shall, before
seeking commission approval, solicit non-binding
recommendations on the design and implementation of the
programs from commission staff, the attorney general, the
energy, minerals and natural resources department and other
interested parties.

F. The commission shall identify any disincentives
or barriers that may exist for public utility expenditures on
energy efficiency and load management and, if found, ensure
that they are eliminated in order that public utilities are
financially neutral in their preference for acquiring demand or
supply-side utility resources.

Section 6. [NEW MATERIAL] COST RECOVERY.--

A. A public utility that undertakes cost-effective
energy efficiency and load management programs shall recover
the costs of all the programs implemented after the effective
date of the Efficient Use of Energy Act through an approved
tariff rider. Program costs may be deferred for future
recovery through creation of a regulatory asset, provided that
the deferred recovery does not cause the tariff rider to exceed
the limits imposed by this section. The tariff rider for any
utility customer shall not exceed the lower of one and one-half
percent of that customer's bill or seventy-five thousand
dollars ($75,000) per year except that, upon application by a
public utility with the advice and consent of the entity
designated by law to represent residential and commercial
utility customers, the commission may approve a tariff rider in
excess of one and one-half percent for customers other than
large customers and may approve a tariff rider in excess of the
lower of one and one-half percent or seventy-five thousand
dollars ($75,000) per year for a large customer that consents
to such a rider. The commission shall approve such
applications upon finding that the proposed energy efficiency
and load management programs are cost-effective and that the
cost recovery proposal is just and reasonable.

B. The tariff rider shall provide for the recovery,
on a monthly basis or otherwise, of all reasonable costs of
approved energy efficiency and load management programs.

C. A tariff rider proposed by a public utility to
fund approved energy efficiency and load management programs
shall go into effect thirty days after filing, unless suspended
by the commission for a period not to exceed one hundred eighty
days. If the tariff rider is not approved or suspended within
thirty days after filing, it shall be deemed approved as a
matter of law. If the commission has not acted to approve or
disapprove the tariff rider by the end of an ordered suspension
period, it shall be deemed approved as a matter of law. The
commission shall approve utility reconciliations of the tariff
rider annually based upon recovery of the reasonable costs of
the utility's programs.

D. The commission shall ensure that there are no
cross-subsidies between a public utility's energy efficiency
and load management activities and the public utility's supply-
side activities and shall ensure that the existence of a tariff
rider does not permit a public utility to earn an excessive
rate of return.

Section 7. [NEW MATERIAL] ALTERNATIVE ENERGY EFFICIENCY
PROVIDER.--With a public utility's consent, the commission may
allow for an alternative entity to provide ratepayer-funded
energy efficiency and load management to customers of that
public utility.

Section 8. [NEW MATERIAL] MEASUREMENT AND VERIFICATION.--
The public utility shall submit to the commission an annual
report, prepared by an independent program evaluator, that
provides information relating to the actions taken by the
public utility to comply with the standards of the Efficient
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Use of Energy Act. The reports shall include documentation of program expenditures, measurement and verification of savings resulting from programs, evaluation of the cost-effectiveness of expenditures, evaluation of the cost-effectiveness of self-direct programs and any other information the commission may require pursuant to its rulemaking authority. The commission may direct a utility to modify or terminate a particular energy efficiency or load management program if, after an adequate period for implementation of the program, the commission determines the program is not sufficiently meeting its goals and purposes. Termination of a program or programs shall be accomplished in a manner that allows the utility to fully recover its reasonable and prudent program costs.

Section 9. [NEW MATERIAL] SELF-DIRECTED PROGRAMS FOR CUSTOMERS--EXEMPTIONS.--

A. A large customer shall receive approval for a credit for and equal to the expenditures that customer has made at its facilities on and after January 1, 2005 toward cost-effective energy efficiency and load management. To receive approval, the large customer must demonstrate to the reasonable satisfaction of the utility or self-direct program administrator that its expenditures are cost-effective. Once approved, the credit may be used to offset up to seventy percent of the tariff rider authorized by the Efficient Use of Energy Act until the credit is exhausted. Eligible
expenditures shall have a simple payback period of more than one year but less than seven years. Projects that have received rebates, financial support or other substantial program support from a utility are not eligible for a credit.

B. A large customer shall receive approval for an exemption to paying seventy percent of the tariff rider if the customer demonstrates to the reasonable satisfaction of the utility or self-direct program administrator that it has exhausted all cost-effective energy efficiency measures at its facility. As used in this section, "cost-effective" means all measures with a simple payback period of more than one year but less than seven years.

C. Large customers shall seek and receive approval for credits and exemptions under this provision from the utility or a commission-approved self-direct program administrator. Approvals or disapprovals by the utility or administrator shall be subject to commission review. Any credit not fully utilized in the year it is received shall carry over to subsequent years. Implementation of credits shall be designed to minimize utility administrative costs.

D. Except as otherwise provided in this section, projects, expenditures and exemptions under this section shall be evaluated by an independent program evaluator using the same measurement and verification standards applying to utility programs, subject to appropriate protections for
confidentiality, by the utility or a commission-approved self-
direct program administrator and reported in the annual report
to the commission pursuant to the Efficient Use of Energy Act.

Section 10.  [NEW MATERIAL] INTEGRATED RESOURCE

PLANNING.--Pursuant to the commission's rulemaking authority,
public utilities supplying electric or natural gas service to
customers shall periodically file an integrated resource plan
with the commission. Utility integrated resource plans shall
evaluate renewable energy, energy efficiency, load management,
distributed generation and conventional supply-side resources
on a consistent and comparable basis and take into
consideration risk and uncertainty of fuel supply, price
volatility and costs of future environmental regulations in
order to identify the most cost-effective portfolio of
resources to supply the energy needs of customers. The
preparation of resource plans shall incorporate a public
advisory process. Nothing in this section shall prohibit
public utilities from implementing cost-effective energy
efficiency and load management programs and the commission from
approving public utility expenditures on energy efficiency
programs and load management programs prior to the commission
establishing rules and guidelines for integrated resource
planning. The commission may exempt public utilities with
fewer than five thousand customers and distribution-only public
utilities from the requirements of this section.
Section 11. [NEW MATERIAL] DISTRIBUTION COOPERATIVE UTILITIES.--

A. Distribution cooperative utilities shall periodically examine the potential to assist their customers in reducing energy consumption or peak electricity demand in a cost-effective manner. Based on these studies, distribution cooperative utilities shall implement cost-effective energy efficiency and load management programs that are economically feasible and practical for their members and customers. Approval for such programs shall reside with the governing body of each distribution cooperative utility and not with the commission.

B. Each distribution cooperative utility shall file with the commission concurrently with its annual report, a report that describes all of the distribution cooperative utility's programs or measures that promote energy efficiency, conservation or load management. The report shall set forth the costs of each of the programs or measures for the previous calendar year and the resulting effect on the consumption of electricity. In offering or implementing energy efficiency, conservation or load management programs, a distribution cooperative utility shall attempt to minimize any cross-subsidies between customer classes.

C. Each distribution cooperative utility shall include in the report required by Subsection B of this section
a description of all programs or measures to promote energy efficiency, conservation or load management that are planned and the anticipated date for implementation.

D. Costs resulting from programs or measures to promote energy efficiency, conservation or load management may be recovered by the distribution cooperative utility through its general rates. In requesting approval to recover such costs in general rates, the distribution cooperative utility may elect to use the procedure set forth in Subsection G of Section 62-8-7 NMSA 1978.

Section 12. Section 62-3-3 NMSA 1978 (being Laws 1967, Chapter 96, Section 3, as amended) is amended to read:

"62-3-3. DEFINITIONS.--Unless otherwise specified, when used in the Public Utility Act:

A. "affiliated interest" means a person who directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a public utility. Control includes instances where a person is an officer, director, partner, trustee or person of similar status or function or owns directly or indirectly or has a beneficial interest in ten percent or more of any class of securities of a person;

B. "commission" means the public regulation commission;

C. "commissioner" means a member of the commission;
D. "municipality" means a municipal corporation organized under the laws of the state, and H-class counties;

E. "person" means an individual, firm, partnership, company, rural electric cooperative organized under Laws 1937, Chapter 100 or the Rural Electric Cooperative Act, corporation or lessee, trustee or receiver appointed by any court.

"Person" does not mean a class A county as described in Section 4-36-10 NMSA 1978 or a class B county as described in Section 4-36-8 NMSA 1978. "Person" does not mean a municipality as defined in this section unless the municipality has elected to come within the terms of the Public Utility Act as provided in Section 62-6-5 NMSA 1978. In the absence of voluntary election by a municipality to come within the provisions of the Public Utility Act, the municipality shall be expressly excluded from the operation of that act and from the operation of all its provisions, and no such municipality shall for any purpose be considered a public utility;

F. "securities" means stock, stock certificates, bonds, notes, debentures, mortgages or deeds of trust or other evidences of indebtedness issued, executed or assumed by a utility;

G. "public utility" or "utility" means every person not engaged solely in interstate business and, except as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own, operate, lease or control:
(1) any plant, property or facility for the generation, transmission or distribution, sale or furnishing to or for the public of electricity for light, heat or power or other uses;

(2) any plant, property or facility for the manufacture, storage, distribution, sale or furnishing to or for the public of natural or manufactured gas or mixed or liquefied petroleum gas for light, heat or power or other uses; but the term "public utility" or "utility" shall not include any plant, property or facility used for or in connection with the business of the manufacture, storage, distribution, sale or furnishing of liquefied petroleum gas in enclosed containers or tank truck for use by others than consumers who receive their supply through any pipeline system operating under municipal authority or franchise and distributing to the public;

(3) any plant, property or facility for the supplying, storage, distribution or furnishing to or for the public of water for manufacturing, municipal, domestic or other uses; provided, however, nothing contained in this paragraph shall be construed to apply to irrigation systems, the chief or principal business of which is to supply water for the purpose of irrigation;

(4) any plant, property or facility for the production, transmission, conveyance, delivery or furnishing to or for the public of steam for heat or power or other uses;
(5) any plant, property or facility for the
supplying and furnishing to or for the public of sanitary
sewers for transmission and disposal of sewage produced by
manufacturing, municipal, domestic or other uses; provided that
the terms "public utility" or "utility" as used in the Public
Utility Act do not include any utility owned or operated by a
class A county as described in Section 4-36-10 NMSA 1978 either
directly or through a corporation owned by or under contract
with such a county; or

(6) any plant, property or facility for the
sale or furnishing to or for the public of goods or services to
reduce the consumption of or demand for electricity or natural
gas, and is either a public utility under the definitions found
in Paragraphs (1) or (2) of this subsection, or is an
alternative energy efficiency provider as described in Section
7 of the Efficient Use of Energy Act;

H. "rate" means every rate, tariff, charge or other
compensation for utility service rendered or to be rendered by
a utility and every rule, regulation, practice, act,
requirement or privilege in any way relating to such rate,
tariff, charge or other compensation and any schedule or tariff
or part of a schedule or tariff thereof;

I. "renewable energy" means electrical energy
generated by means of a low- or zero-emission generation
technology that has substantial long-term production potential
and may include, without limitation, solar, wind, hydropower,
geothermal, landfill gas, anaerobically digested waste biomass
or fuel cells that are not fossil fueled. "Renewable energy"
does not include fossil fuel or nuclear energy;

J. "service" or "service regulation" means every
rule, regulation, practice, act or requirement relating to the
service or facility of a utility;

K. "Class I transaction" means the sale, lease or
provision of real property, water rights or other goods or
services by an affiliated interest to a public utility with
which it is affiliated or by a public utility to its affiliated
interest;

L. "Class II transaction" means:

(1) the formation after May 19, 1982 of a
corporate subsidiary by a public utility or a public utility
holding company by a public utility or its affiliated interest;

(2) the direct acquisition of the voting
securities or other direct ownership interests of a person by a
public utility if such acquisition would make the utility the
owner of ten percent or more of the voting securities or other
direct ownership interests of that person;

(3) the agreement by a public utility to
purchase securities or other ownership interest of a person
other than a nonprofit corporation, contribute additional
equity to, acquire additional equity interest in or pay or
guarantee any bonds, notes, debentures, deeds of trust or other
evidence of indebtedness of any such person; provided, however,
that a public utility may honor all agreements entered into by
such utility prior to May 19, 1982; or

(4) the divestiture by a public utility of any
affiliated interest that is a corporate subsidiary of the
public utility;

M. "corporate subsidiary" means any person ten
percent or more of whose voting securities or other ownership
interests are directly owned by a public utility; and

N. "public utility holding company" means an
affiliated interest that controls a public utility through the
direct or indirect ownership of voting securities of that
public utility."

Section 13. EMERGENCY.--It is necessary for the public
peace, health and safety that this act take effect immediately.

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