

AN ACT

RELATING TO PUBLIC UTILITIES; DECLARING THAT OWNERS OF CERTAIN RENEWABLE ENERGY DISTRIBUTED GENERATION FACILITIES ARE NOT PUBLIC UTILITIES; PROVIDING FOR THE CREATION OF HOLDING COMPANIES; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING FOR PUBLIC UTILITY COST RECOVERY.

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

Section 1. A new section of the Public Utility Act is enacted to read:

"RENEWABLE ENERGY DISTRIBUTED GENERATION FACILITIES-- OWNERS AND OPERATORS NOT PUBLIC UTILITIES.--

A. Notwithstanding any other provision of the Public Utility Act to the contrary, a person not otherwise a public utility shall not be deemed to be a public utility subject to the jurisdiction, control or regulation of the commission and the provisions of the Public Utility Act solely because the person owns or controls all or any part of any renewable energy distributed generation facility that:

(1) is located on the host's site;

(2) produces electric energy used at the host's site and sold to the host or the host's tenants or employees located at the host's site; and

(3) shares a common point of connection with the electric utility serving the area and the host or the

host's tenants and employees served by the renewable energy distributed generation facility.

B. Nothing contained in this section shall be interpreted to prohibit the sale of energy produced by the renewable energy distributed generation facility to the electric utility serving the area in which the renewable energy distributed generation facility is located.

C. As used in this section:

(1) "host" means the customer of a public utility who uses the electric energy produced by a renewable energy distributed generation facility and occupies the site upon which the renewable energy distributed generation facility is located;

(2) "renewable energy distributed generation facility" means a facility that produces electric energy by the use of renewable energy and that is sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the host at the site of the renewable energy distributed generation facility in accordance with applicable interconnection rules; and

(3) "site" means all the contiguous property owned or leased by the host, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights of way or utility rights of way."

Section 2. A new section of the Public Utility Act is

HB 181
Page 2

enacted to read:

"INTERCONNECTED CUSTOMERS--UTILITY COST RECOVERY.--

A. Upon request of an investor-owned utility in any general rate case, the commission shall approve interconnected customer rate riders to recover the costs of ancillary and standby services pursuant to this section only for new interconnected customers, except that a utility may seek approval of interconnected customer rate riders in the utility's renewable energy procurement plan filing before January 1, 2011, to be in effect until the conclusion of the utility's next general rate case. In establishing interconnected customer rate riders, the commission shall assure that costs to be recovered through the rate riders are not duplicative of costs to be recovered in underlying rates and shall give due consideration to the reasonably determinable embedded and incremental costs of the utility to serve new interconnected customers and the reasonably determinable benefits to the utility system provided by new interconnected customers during each three-year period after which new interconnected customer rate riders go into effect. The benefits to the utility system, as applicable, include avoided renewable energy certificate procurement costs, reduced capital investment costs resulting from the avoidance or deferral of capital expenditures, reduced energy and capacity costs and line loss reductions.

B. In a filing made pursuant to Subsection G of Section 62-8-7 NMSA 1978, a rural electric cooperative may implement rates or rate riders by customer class, giving due consideration to reasonably determinable costs and benefits of interconnected systems, that are specifically designed to recover from interconnected customers the fixed costs of providing electric services to those customers.

C. Nothing in this section shall be interpreted as preventing the utility from charging rates designed to recover all of its reasonable costs of providing service to customers.

D. As used in this section:

(1) "ancillary and standby services" means services that are essential to maintain electric system reliability and are required by or are a consequence of interconnecting distributed generation facilities to a utility's system and may include, among other services, regulation and frequency response, regulation and voltage support, spinning reserves and supplemental reserves;

(2) "interconnected customer" means a utility customer that is also interconnected to non-utility distributed generation facilities; and

(3) "new interconnected customer" means a customer that became an interconnected customer after December 31, 2010 or a customer whose renewable energy certificate purchase agreement entered into prior to January 1, 2011 is no

longer in effect."

Section 3. A new section of the Public Utility Act is enacted to read:

"RENEWABLE ENERGY-RELATED SERVICES--POWERS AND DUTIES OF COMMISSION.--

A. No later than July 1, 2011, the commission shall approve any new application for creation of a holding company filed by a public utility prior to January 1, 2011, as part of that utility's plan to offer renewable energy-related services for the residents of New Mexico; provided that the creation of the holding company shall be subject to such terms and conditions as are in the public interest. The creation of a holding company under this subsection shall not result in any loss of the commission's jurisdiction over corporate allocations to the utility or over costs that are charged to ratepayers.

B. Any order of the commission entered prior to January 1, 2011 declaring the public utility status of a person who owns or controls all or any part of any distributed generation facility and sells the electricity produced by the facility to other persons shall have no force or effect on or after May 19, 2010.

C. By December 31, 2012, the commission shall submit a report to the legislature that describes the effectiveness of the state's renewable energy distributed

generation program in supporting the development of new renewable energy resources and that identifies any recommended changes to improve the program's effectiveness, consistent with the public policies declared in the Public Utility Act. This report shall be no more than ten pages in length."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of Section 1 of this act is January 1, 2011. _____