



The Legislature
of the
State of New Mexico

49th Legislature, 2nd Session

LAWS 2010

CHAPTER 103

HOUSE BILL 181

with certificate of correction

Introduced by

REPRESENTATIVE JOSÉ CAMPOS

REPRESENTATIVE RICHARD D. VIGIL
REPRESENTATIVE RAY BEGAYE
REPRESENTATIVE JAMES ROGER MADALENA
REPRESENTATIVE DONA G. IRWIN
REPRESENTATIVE ELISEO LEE ALCON
REPRESENTATIVE MARY HELEN GARCIA
REPRESENTATIVE BILL B. O'NEILL





State of New Mexico
House of Representatives
OFFICE of the CHIEF CLERK
Santa Fe

STEPHEN RAY ARIAS
Chief Clerk 1983 -

Room 100, State Capitol
Santa Fe, NM 87501
Phone: (505) 986-4751
Fax: (505) 986-4755

FORTY-NINTH LEGISLATURE
SECOND SESSION, 2010

February 18, 2010

CERTIFICATE OF CORRECTION

The following error was found in

HOUSE BILL 181, with certificate of correction

and has been corrected in enrolling and engrossing:

1. On page 6, line 17 of the original bill, "of" has been inserted between "1" and "this" to correct a drafting error. The correction appears on page 6, line 7 of the enrolled and engrossed bill.

Chairperson, Enrolling & Engrossing Committee

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Chapter 103

AN ACT

1
2 RELATING TO PUBLIC UTILITIES; DECLARING THAT OWNERS OF CERTAIN
3 RENEWABLE ENERGY DISTRIBUTED GENERATION FACILITIES ARE NOT
4 PUBLIC UTILITIES; PROVIDING FOR THE CREATION OF HOLDING
5 COMPANIES; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING FOR
6 PUBLIC UTILITY COST RECOVERY.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

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

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

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

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

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

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

8 C. As used in this section:

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

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

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

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

1 enacted to read:

2 "INTERCONNECTED CUSTOMERS--UTILITY COST RECOVERY.--

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

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

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

11 D. As used in this section:

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

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

22 (3) "new interconnected customer" means a
23 customer that became an interconnected customer after December
24 31, 2010 or a customer whose renewable energy certificate
25 purchase agreement entered into prior to January 1, 2011 is no

1 longer in effect."

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

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

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

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

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

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

6 Section 4. EFFECTIVE DATE.--The effective date of the
7 provisions of Section 1 of this act is January 1, 2011. _____ HB 181
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Ben Lujan

BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES

Stephen R. Arias

STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES

Diane D. Denish

DIANE D. DENISH, PRESIDENT
SENATE

Lenore M. Naranjo

LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this 9th day of March, 2010

Bill Richardson

BILL RICHARDSON, GOVERNOR
STATE OF NEW MEXICO

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