



The Legislature
of the
State of New Mexico

49th Legislature, Second Session

LAWS 2010

CHAPTER 102

SENATE BILL 190

Introduced by

SENATOR WILLIAM H. PAYNE AND SENATOR MICHAEL S. SANCHEZ



Chapter 102

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

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
20 accordance 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
5 of 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
10 recover all of its reasonable costs of providing service to
11 customers.

12 D. As used in this section:

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

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

23 (3) "new interconnected customer" means a
24 customer that became an interconnected customer after
25 December 31, 2010 or a customer whose renewable energy

1 certificate purchase agreement entered into prior to January
2 1, 2011 is no longer in effect."

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

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

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

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

24 C. By December 31, 2012, the commission shall
25 submit a report to the legislature that describes the

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

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

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Diane D. Denish

Diane D. Denish, President
Senate

Lenore M. Naranjo
Lenore M. Naranjo, Chief Clerk
Senate

Ben Lujan

Ben Lujan, Speaker
House of Representatives

Stephen R. Arias
Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this 9th day of March, 2010

Bill Richardson

Governor Bill Richardson
State of New Mexico

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