

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 81

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

William H. Payne

AN ACT

RELATING TO UTILITIES; AMENDING A SECTION OF THE RENEWABLE ENERGY ACT TO EXEMPT FROM CHARGES BY A UTILITY FOR RENEWABLE ENERGY PROCUREMENTS CERTAIN EDUCATIONAL INSTITUTIONS IN ARTICLE 12, SECTION 11 OF THE CONSTITUTION OF NEW MEXICO IF THE INSTITUTION HAS CONSUMPTION EXCEEDING TWENTY MILLION KILOWATT-HOURS PER YEAR AT ANY SINGLE LOCATION OR FACILITY AND OWNS RENEWABLE ENERGY GENERATION.

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

**SECTION 1.** Section 62-16-4 NMSA 1978 (being Laws 2004, Chapter 65, Section 4, as amended) is amended to read:

"62-16-4. RENEWABLE PORTFOLIO STANDARD.--

A. A public utility shall meet the renewable portfolio standard requirements, as provided in this section, to include renewable energy in its electric energy supply

underscoring material = new  
~~[bracketed material] = delete~~

underscored material = new  
~~[bracketed material] = delete~~

1 portfolio. Requirements of the renewable portfolio standard  
2 are:

3 (1) for public utilities other than rural  
4 electric cooperatives and municipalities:

5 (a) no later than January 1, 2006,  
6 renewable energy shall comprise no less than five percent of  
7 each public utility's total retail sales to New Mexico  
8 customers;

9 (b) no later than January 1, 2011,  
10 renewable energy shall comprise no less than ten percent of  
11 each public utility's total retail sales to New Mexico  
12 customers;

13 (c) no later than January 1, 2015,  
14 renewable energy shall comprise no less than fifteen percent of  
15 each public utility's total retail sales to New Mexico  
16 customers; and

17 (d) no later than January 1, 2020,  
18 renewable energy shall comprise no less than twenty percent of  
19 each public utility's total retail sales to New Mexico  
20 customers;

21 (2) the renewable portfolio standard  
22 established by this section shall be reduced, as necessary, to  
23 provide for the following specific procurement requirements for  
24 nongovernmental customers at a single location or facility,  
25 regardless of the number of meters at that location or

.195413.1

underscored material = new  
[bracketed material] = delete

1 facility, with consumption exceeding ten million kilowatt-hours  
2 per year. On and after January 1, 2006, the kilowatt-hours of  
3 renewable energy procured for these customers shall be limited  
4 so that the additional cost of the renewable portfolio standard  
5 to each customer does not exceed the lower of one percent of  
6 that customer's annual electric charges or forty-nine thousand  
7 dollars (\$49,000). This procurement limit [~~criteria~~] criterion  
8 shall increase by one-fifth percent or ten thousand dollars  
9 (\$10,000) per year until January 1, 2011, when the procurement  
10 limit [~~criteria~~] criterion shall remain fixed at the lower of  
11 two percent of that customer's annual electric charges or  
12 ninety-nine thousand dollars (\$99,000). After January 1, 2012,  
13 the commission may adjust the ninety-nine-thousand-dollar  
14 (\$99,000) limit for inflation. Nothing contained in this  
15 paragraph shall be construed as affecting a public utility's  
16 right to recover all reasonable costs of complying with the  
17 renewable portfolio standard, pursuant to Section 62-16-6 NMSA  
18 1978. The commission may authorize deferred recovery of the  
19 costs of complying with the renewable portfolio standard,  
20 including carrying charges;

21 (3) any customer that is a political  
22 subdivision of the state or any educational institution  
23 designated in Article 12, Section 11 of the constitution of New  
24 Mexico, with an enrollment of twenty-four thousand students or  
25 more during the fall semester on its main campus, with

.195413.1

underscoring material = new  
~~[bracketed material] = delete~~

1 consumption exceeding twenty million kilowatt-hours per year at  
2 any single location or facility, and that owns renewable energy  
3 generation is exempt from all charges by the utility for  
4 renewable energy procurements in a year, regardless of the  
5 number of customer locations or meters on the system, if that  
6 customer certifies to the state auditor and notifies the  
7 commission and its serving electric utility that it will expend  
8 two and one-half percent of that year's annual electricity  
9 charges to continue to develop within twenty-four months  
10 customer-owned renewable energy generation. That customer  
11 shall also certify that it will retire all renewable energy  
12 certificates associated with the energy produced from that  
13 expenditure;

14 (4) the renewable portfolio shall be  
15 diversified as to the type of renewable energy resource, taking  
16 into consideration the overall reliability, availability,  
17 dispatch flexibility and cost of the various renewable energy  
18 resources made available by suppliers and generators;

19 (5) upon a commission motion or application by  
20 a public utility, the commission shall open a docket to provide  
21 appropriate performance-based financial or other incentives to  
22 encourage public utilities to acquire renewable energy supplies  
23 that exceed the applicable annual renewable portfolio standard  
24 set forth in this section. The commission shall initiate rules  
25 by June 1, 2008 to implement this subsection; and

.195413.1

underscoring material = new  
~~[bracketed material] = delete~~

1 (6) renewable energy resources that are in a  
2 public utility's electric energy supply portfolio on July 1,  
3 2004 shall be counted in determining compliance with this  
4 section.

5 B. If a public utility finds that, in any given  
6 year, the cost of renewable energy that would need to be  
7 procured or generated for purposes of compliance with the  
8 renewable portfolio standard would be greater than the  
9 reasonable cost threshold as established by the commission  
10 pursuant to this section, the public utility shall not be  
11 required to incur that cost; provided that the existence of  
12 this condition excusing performance in any given year shall not  
13 operate to delay the annual increases in the renewable  
14 portfolio standard in subsequent years. When a public utility  
15 can generate or procure renewable energy at or below the  
16 reasonable cost threshold, it shall be required to add  
17 renewable energy resources to meet the renewable portfolio  
18 standard applicable in the year when the renewable energy  
19 resources are being added.

20 C. By December 31, 2004, the commission shall  
21 establish, after notice and hearing, the reasonable cost  
22 threshold above which level a public utility shall not be  
23 required to add renewable energy to its electric energy supply  
24 portfolio pursuant to the renewable portfolio standard. The  
25 commission may thereafter modify the reasonable cost threshold

.195413.1

underscored material = new  
~~[bracketed material] = delete~~

1 as changing circumstances warrant, after notice and hearing.  
2 In establishing and modifying the reasonable cost threshold,  
3 the commission shall take into account:

4 (1) the price of renewable energy at the point  
5 of sale to the public utility;

6 (2) the transmission and interconnection costs  
7 required for the delivery of renewable energy to retail  
8 customers;

9 (3) the impact of the cost for renewable  
10 energy on overall retail customer rates;

11 (4) the overall diversity, reliability,  
12 availability, dispatch flexibility, cost per kilowatt-hour and  
13 life-cycle cost on a net present value basis of renewable  
14 energy resources available from suppliers; and

15 (5) other factors, including public benefits,  
16 that the commission deems relevant; provided that nothing in  
17 the Renewable Energy Act shall be construed to permit  
18 regulation by the commission of the production or sale price at  
19 the point of production of the renewable energy.

20 D. By September 1, 2007 and July 1 of each year  
21 thereafter until 2022, and thereafter as determined necessary  
22 by the commission, a public utility shall file a report to the  
23 commission on its procurement and generation of renewable  
24 energy during the prior calendar year and a procurement plan  
25 that includes:

.195413.1

underscored material = new  
~~[bracketed material] = delete~~

1 (1) the cost of procurement for any new  
2 renewable energy resource in the next calendar year required to  
3 comply with the renewable portfolio standard; and

4 (2) testimony and exhibits that demonstrate  
5 that the proposed procurement is reasonable as to its terms and  
6 conditions considering price, availability, dispatchability,  
7 any renewable energy certificate values and diversity of the  
8 renewable energy resource; or

9 (3) demonstration that the plan is otherwise  
10 in the public interest.

11 E. The commission shall approve or modify a public  
12 utility's procurement or transitional procurement plan within  
13 ninety days and may approve the plan without a hearing, unless  
14 a protest is filed that demonstrates to the commission's  
15 reasonable satisfaction that a hearing is necessary. The  
16 commission may modify a plan after notice and hearing. The  
17 commission may, for good cause, extend the time to approve a  
18 procurement plan for an additional ninety days. If the  
19 commission does not act within the ninety-day period, the  
20 procurement plan is deemed approved.

21 F. The commission may reject a procurement or  
22 transitional procurement plan if it finds that the plan does  
23 not contain the required information and, upon the rejection,  
24 may suspend the public utility's obligation to procure  
25 additional resources for the time necessary to file a revised

.195413.1

underscoring material = new  
~~[bracketed material] = delete~~

1 plan; provided that the total amount of renewable energy to be  
2 procured by the public utility shall not change.

3 G. A public utility may file a transitional  
4 procurement plan requesting that the commission determine that  
5 the costs of renewable energy resources that the public utility  
6 has committed to, or may commit to, prior to the commission's  
7 establishing a reasonable cost threshold, are reasonable and  
8 recoverable pursuant to Section 62-16-6 NMSA 1978. The  
9 requirements of annual procurement plan filings shall be  
10 applicable to any transitional procurement plan filing pursuant  
11 to this section.

12 H. The commission shall determine if it is in the  
13 public interest for the commission to provide appropriate  
14 performance-based financial or other incentives to encourage  
15 public utilities to acquire renewable energy supplies in  
16 amounts that exceed the requirements of the renewable  
17 portfolio standard."