

## **Senate Memorial 97 Energy Policy Task Force Report**

Senate Memorial 97 established our group, the New Mexico Energy Policy Task Force, in 2018 and charged us with developing recommendations to support a long-term clean energy policy for New Mexico. The membership of our group was formed in the summer of 2018 and we have been meeting since that time to develop our recommendations. Those participating in our effort, and providing their expertise, are listed at the end of these recommendations. They bring with them decades of energy sector experience representing customer, developer, environmental, low income, regulator and utility interests.

As a group, we determined that SM 97 was very broad and decided to narrow the scope of our work to focus on the electricity sector of our economy, and several high level, important policy recommendations. Our recommendations include addressing climate change and advancing clean energy, assuring clean energy affordability and access, and restructuring the N.M. Public Regulation Commission (NMPRC) so it can better perform its duties. More specifically:

*Climate change must be addressed quickly.*

- *We should reduce power plant emissions by transitioning from coal-fired generation, enhancing renewable and clean energy requirements, and removing impediments to energy efficiency.*
- *New Mexico should utilize a carbon market to reduce emissions, lower costs, drive new technologies and link with other states, regions and sectors.*
- *We should accelerate energy storage and electric vehicle infrastructure development.*

*Clean energy should be accessible and affordable.*

- *Legal impediments for low income energy assistance should be removed.*
- *Utilities should provide community solar power for low income communities.*
- *New Mexico should provide sustainable funding for Clean Energy Grants to benefit governments and schools.*
- *New Mexico should provide funding of weatherization for low income households.*

*The NMPRC should be restructured and adequately funded.*

- *New Mexico's Constitution should be amended to provide for a 3-member commission appointed by the Governor following a selection process.*
- *The Constitution should assure adequate funding for the commission's work to regulate utilities, and for consumer and environmental protection.*

A more detailed discussion of each of these recommendations follows.

## **Climate change must be addressed quickly.**

The impacts and potential impacts of climate change to New Mexico, and the world, are well documented and understood. In the past few years New Mexico has experienced record droughts, floods and wildfires. Recent scientific studies note the importance of taking significant action quickly to avoid the most severe impacts of global warming. This requires two things. First is to substantially reduce greenhouse gas emissions. Second is to establish a "carbon market." The good news is that New Mexico utilities have made, and intend to make, substantial progress in reducing their emissions. What remains to be done are policies to secure that progress and have NM create a carbon market capable of linking with similar markets in the U.S. A carbon market will advance efficient and low-cost emission reductions and, in the future, help spur new technologies to capture and sequester greenhouse gases already in our atmosphere – action scientists now say will be needed in the coming years. A New Mexico carbon market can help overcome federal inaction by contributing to a regional and national effort built from the ground up.

### 1) Reduce Power Plant Emissions

We recommend three specific policies to assure substantial, and quick, power plant emission reductions. The first is to transition away from coal-fired generation. The second is to expand New Mexico's renewable and clean energy requirements. And the third is to modify and extend New Mexico's policies for promoting energy efficiency.

*Transition from coal-fired generation:* New Mexico electric utilities and their customers have relied on coal-fired electricity for almost 50 years. The power plants producing this energy are now old and uneconomical. Nevertheless, much of the cost of these plants has yet to be recovered. Further complicating the situation is that local and tribal economies depend on the jobs and economic benefits that these plants provide. To address these competing concerns, we recommend legislation that enables utilities to issue low-risk, low-cost bonds that can reduce the financial impact of paying off outstanding plant costs and provide assistance to impacted communities for economic development. Replacing the power from these closed facilities should be clean, and to the extent possible, located in communities economically impacted by plant closures. Finally, economic relief should be provided to these impacted communities, to build resources and tools for transforming their economies.

*Renewable and clean energy:* New Mexico's Renewable Energy Act (REA) standards currently top out at 20% in 2020. These standards, however, have been severely compromised by complicated evaluation requirements, caps and limits. In order to build on the important progress New Mexico utilities have made towards clean energy, and to recognize the emission reduction levels needed to limit global warming, we recommend that the next step be to increase the renewable requirements for New Mexico utilities to 50 percent by 2030. We also recommend that the State's electricity be produced emission-free by mid-century. The complex caps and regulatory requirements for addressing renewable energy cost and development should be limited, simplified and streamlined.

*Energy efficiency:* One of the most effective ways to reduce power plant emissions is energy efficiency. New Mexico's Efficient Use of Energy Act (EUEA) can be improved to increase savings and assure that energy efficiency reaches its full potential by removing regulatory disincentives that inhibit development of these resources. Because energy efficiency costs so little, it is possible to fund programs, assure utilities meet their financial obligations, foster strong efficiency efforts and clean our environment all at the same time. To do so, we recommend "decoupling," i.e. separating a utility's cost recovery from its sales. Periodic, automatic rate adjustments that true up utility costs and revenues is the key, and has been successfully used in dozens of states. New Mexico's EUEA should be amended to do the same. In addition, the limit on expenditures that is currently in the EUEA should be increased to allow all cost effective energy efficiency.

## 2) Establish a Market in New Mexico to Limit Carbon Emissions

Federal inaction on climate change has made it incumbent on states to pick up the mantle for action. And while New Mexico's electric utilities have made strong progress towards reducing power plant emissions, that is only part of what is needed. Scientists now say that, because we have fallen so far behind in addressing global warming, reducing emissions will no longer be sufficient – in the future we will need to capture and sequester CO<sub>2</sub> and other greenhouse gases out of the atmosphere. There are many potential ways of doing so: reforestation, algae farms, geologic sequestration and geo-engineering. A carbon market will enable emission reductions to be made cost-effectively and efficiently while at the same time driving the R&D needed to make carbon capture solutions commercially viable. Emission limits administered by air regulators, through mechanisms such as cap & trade, have proven successful for reducing other pollutants. There are also other market mechanisms that can work successfully. These include emission performance standards for power plants (administered by air regulators), clean energy standards for utilities (administered by utility commissions) and carbon fees or taxes (administered by revenue authorities).

While we are not recommending a specific carbon limit or market mechanism for NM, we do make these specific recommendations for any such system. First, it should have a common currency with other carbon markets, i.e. tons or metric tons of CO<sub>2</sub>. Second, it should be able to link with market-based programs in other regions or states – such as the Western Climate Initiative (WCI) in the West, or the Regional Greenhouse Gas Initiative (RGGI) in the East. To do so, this means the NM program must be at least as stringent as these other programs. The required emission reductions should also be consistent with what the best available science indicates is needed to avoid severe climate disruption. Finally, the market mechanism and accompanying policies should be established quickly, and should protect disadvantaged populations. We have no time to lose.

## 3) We should accelerate energy storage and electric vehicle infrastructure development.

One of the challenges to adding large amounts of zero-emission renewable energy to utility systems is intermittency, i.e. renewables do not always produce energy when it is needed. Large renewable deployment, however, is key to meeting emission reduction targets. One answer is energy storage, which can absorb excess energy and discharge it when needed. Batteries are the most common form, but other technologies exist as well. Unfortunately, an impetus to advance storage technologies towards commercial viability has been lacking. To overcome this, we recommend that

funding be provided to the NM Energy, Minerals and Natural Resources Department (EMNRD) to study and evaluate opportunities for cost-effective energy storage, and draft legislation for the 2020 legislative session to spur energy storage development.

One of the other keys to reducing carbon emissions lies within the transportation sector, which is now the greatest emitter of greenhouse gases in the United States. Through electrification of that sector (electric vehicles), and supplying that electricity with zero-emission resources, we can reduce our carbon footprint, lower vehicle operating costs and clean our environment.

Barriers to electrification are legal and a lack of infrastructure, and our recommendation is to remove these barriers. To overcome legal barriers, we recommend exempting charging stations from the definition of a public utility – much as we have done with natural gas vehicles. To overcome the lack infrastructure, we recommend policies and investments in charging stations and other facilities needed to support an electrified transportation network.

### **Clean energy should be accessible and affordable.**

In the past, one of the main challenges for clean energy development has been its cost. Today, in large part due to the technology boost that renewable and energy efficiency standards have provided, those cost impediments have been largely overcome. Nevertheless, the benefits of clean energy, and particularly opportunities to take advantage of financial incentives for rooftop solar and energy efficiency, have not been sufficiently available to low income households – the ones most in need of those incentives and financial benefits. Nearly half of New Mexico households are low income, i.e. 200% or less than the federal poverty level. Our package of recommendations is designed to direct the financial benefits of clean energy to those that need it most.

Our recommendations begin with removing existing legal impediments for steering clean energy financial benefits to low income households. In addition, we recommend developing community solar programs for less affluent New Mexicans, providing clean energy grants to cash-strapped local governments and schools, and funding weatherization programs for low income households.

#### 1) Remove legal impediments for low income assistance

New Mexico law has been interpreted to restrict the NMPRC from developing rates that provide assistance for low income utility customers. A “non-discrimination” statute (§62-8-6 NMSA) was amended in 2008 to allow energy efficiency programs and benefits to target low income customers. That exemption should be expanded to specifically allow providing the economic benefits of renewable energy to low income households.

#### 2) Provide community solar power for low income communities

“Community solar” allows groups of customers to aggregate their loads to be served from a single solar facility, much the same as individual customers can serve their loads with rooftop solar. A community solar facility is usually developed in the general proximity of the customers, and allows customers to offset their electricity bills with lower-cost renewable energy. Today, legal and economic barriers to community solar development for low income households have stymied that

development. We recommend legislation that would require community solar gardens equal to at least 3 percent of each utility's peak load by 2025, with no less than 20 percent of that amount dedicated to low income households at affordable rates.

3) Provide sustainable funding for Clean Energy Grants to government and schools

New Mexico law includes a *Clean Energy Grants* program to help fund energy efficiency, clean transportation and renewable projects throughout New Mexico. This program is administered by EMNRD and, since its creation in 2004, has funded hundreds of projects throughout the state, including renewable energy in Fort Sumner, Las Cruces and Las Vegas, energy efficiency in Taos and Hobbs, and clean transportation in Moriarty and Belen.

In recent years, this worthwhile program has stalled for lack of funds. We recommend that \$3 million per year, for the next five years, be provided to EMNRD to provide *Clean Energy Grants* for local and tribal governments and school districts. These grants should enable renewable energy, energy efficiency and clean transportation projects that save energy, reduce cost and improve the environment. The 2017-18 Energy Roadmap, a multi-stakeholder project funded by the U.S. Department and Energy, includes worthwhile goals to help guide these expenditures.

4) Weatherize low income households

The federal government's Weatherization Assistance Program provides funds for state programs that weatherize low income households. Since 2010, New Mexico has weatherized 1,700 low income residences with \$18 million in mostly federal monies, providing utility bill savings of up to \$500 per year.

Though helpful, the current program does not provide sufficient assistance for New Mexico households, particularly in rural areas. In addition to improving the health and safety of the home, the economic benefits of weatherization to low income recipients, in the form of reduced utility bills, are substantial, long-term and sustainable. This is in part because roughly 40 percent of low income residences are owner-occupied.

We recommend two things to maximize the benefits of federally assisted weatherization for New Mexico. First, the program, with state and federal funds, should provide \$27 million per year. This will weatherize approximately 5,000 low income households each year. Second, the program's administration should be moved from the N.M. Mortgage Finance Authority to EMNRD's Energy Conservation Division, which has the expertise and mission to most effectively administer these funds.

**The NMPRC should be restructured and adequately funded.**

New Mexico's experience with an elected Public Regulation Commission has not worked well. A lot of money has been spent to sway voters. Restrictions on utility and special interest expenditures and electioneering are easily overcome through affiliate companies and organizations. In addition, the Commission has been hamstrung by a requirement that members reside in voting districts hours from where they work. And the Commission's budget has been insufficient to hire and retain the sophisticated and experienced expertise needed to protect the public. At the same time, the consumer advocacy role of the Attorney General has been underfunded, leaving small consumers

vulnerable to the resource superiority of regulated industries. These deficiencies have compromised New Mexico's ability to quickly transition to clean energy. To remedy these problems, the Commission should be restructured with secure funding.

Because the NMPRC is a Constitutional body, we recommend that a joint resolution be submitted to voters in the next general election. The resolution would restructure the commission to include three members appointed by the Governor for staggered five-year terms. The commissioners would be selected from a list of qualified applicants provided by a selection committee, similar to how judicial appointments are made. The commission, and an advocate for consumer and environmental protection, would be funded by a constitutionally secured fee of one percent of revenues from utilities supplying electricity and natural gas. This funding level would be a substantial budgetary increase for the commission and advocate, sufficient to staff the commission with needed expertise, and provide consumer and environmental protection for the public at a level in line with the resources deployed by regulated industries. A draft version of the proposed language follows this Report.

November 19, 2018

#### **New Mexico Energy Policy Task Force**

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<sup>1</sup> Because PNM is a regulated entity, Mr. O'Connell provided the group with information and expertise, but did not participate in developing these recommendations.

## **ARTICLE XI Corporations Other Than Municipal**

[REPEAL AND REPLACE]

### **Sec. 1. [Creation, composition and funding of public regulation commission]**

The "public regulation commission" is created. The legislature shall provide for an orderly transition from the status quo ante to the formation of this commission on January 1, 2023. The commission shall consist of three members appointed by the governor for terms of five years, provided that the first term for one appointed member shall be three years. No more than two commissioners shall be affiliated with the same political party. The commission shall be funded by collection of a fee, paid quarterly directly to the commission, of one percent of all intrastate revenues from retail sales received by every public utility regulated by the commission. One-tenth of this funding shall be dedicated to an "office of consumer and environmental advocacy" that resides within but is independent of the commission. The office shall have a director appointed by the governor for a term of five years. The office shall advocate to protect the economic and environmental interests of residential customers of persons and entities regulated by the commission.

Commissioners and the director shall only be removed from office by impeachment. No commissioner or director shall accept anything of value from a person or entity that is regulated by the commission.

### **Sec. 2. [Responsibilities of public regulation commission.]**

The public regulation commission shall have responsibility for regulating public utilities, including electric, natural gas and water companies; and other public service companies in such manner as the legislature shall provide.

### **Sec. 3. [Public regulation commission nominating committee.]**

There is created the "public regulation commission nominating committee," consisting of: the chief justice of the supreme court or the chief justice's designee from the supreme court; the governor, the speaker of the house of representatives, the president pro tempore of the senate and the attorney general shall each appoint one person; the dean of the university of New Mexico school of law, who shall serve as chairman of the committee and shall vote only in the event of a tie vote.

The committee shall actively solicit, accept and evaluate applications for the position of public regulation commissioner and director of the office of consumer and environmental advocacy, and may require an applicant to submit any information it deems relevant to the committee's consideration.

Upon the occurrence of any vacancy on the public regulation commission or office, the committee shall meet within thirty days and within that period submit to the governor the names of persons recommended for appointment by a majority of the committee. The committee may also meet earlier in anticipation of an impending vacancy. The committee shall submit at least two names for each vacancy.

Immediately after receiving the committee nominations, the governor may make one request of the committee for an additional name to fill a vacancy, and the committee shall promptly submit an additional name recommended for appointment by a majority of the committee. The governor shall fill a vacancy or appoint a successor to fill an impending vacancy within thirty days after receiving final nominations by appointing one of the persons nominated by the committee for appointment to the commission or office. If the governor fails to make the appointment within that period, the appointment shall be made from those nominations by the chief justice or acting chief justice of the supreme court. Any person appointed shall serve until the expiration of the term for which they are appointed, but may be nominated and appointed to serve additional terms.

