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SENATE BILL 43

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Roman M. Maes III

**FOR THE ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS
COMMITTEE**

AN ACT

**RELATING TO UTILITIES; PROVIDING FOR RENEWABLE ENERGY RULES FOR
PUBLIC UTILITIES.**

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

**Section 1. SHORT TITLE. -- This act may be cited as the
"Renewable Energy Act".**

Section 2. FINDINGS AND PURPOSES. --

A. The legislature finds that:

**(1) the generation of electricity through the
use of renewable energy presents opportunities to promote
energy self-sufficiency, preserve the state's natural resources
and pursue an improved environment in New Mexico;**

**(2) the use of renewable energy by public
utilities subject to commission oversight in accordance with
the Renewable Energy Act can bring significant economic**

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1 benefits to New Mexico;

2 (3) public utilities should be required to
3 include prescribed amounts of renewable energy in their
4 electric energy supply portfolios for sales to retail customers
5 in New Mexico by prescribed dates;

6 (4) public utilities should be able to recover
7 their reasonable costs incurred to procure or generate energy
8 from renewable energy resources used to meet the requirements
9 of the Renewable Energy Act; and

10 (5) public utilities should not be required to
11 acquire energy generated from renewable energy resources that
12 could result in costs above a reasonable cost threshold.

13 B. The purposes of the Renewable Energy Act are to:

14 (1) prescribe the amounts of renewable energy
15 resources that public utilities shall include in their electric
16 energy supply portfolios for sales to retail customers in New
17 Mexico by prescribed dates;

18 (2) allow public utilities to recover costs
19 through the rate-making process incurred for procuring or
20 generating renewable energy used to comply with the prescribed
21 amount; and

22 (3) protect public utilities and their
23 ratepayers from renewable energy costs that are above a
24 reasonable cost threshold.

25 Section 3. DEFINITIONS.--As used in the Renewable Energy

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1 Act:

2 A. "commission" means the public regulation
3 commission;

4 B. "public utility" means an entity certified by
5 the commission to provide retail electric service in New Mexico
6 pursuant to the Public Utility Act but does not include rural
7 electric cooperatives;

8 C. "reasonable cost threshold" means the cost
9 established by the commission above which a public utility
10 shall not be required to add renewable energy to its electric
11 energy supply portfolio pursuant to the renewable portfolio
12 standard;

13 D. "renewable energy" means electric energy:
14 (1) generated by use of low- or zero-emissions
15 generation technology with substantial long-term production
16 potential; and

17 (2) generated by use of renewable energy
18 resources that may include:

19 (a) solar, wind, hydropower and
20 geothermal resources;

21 (b) fuel cells that are not fossil
22 fueled; and

23 (c) biomass resources, such as
24 agriculture or animal waste, small diameter timber, salt cedar
25 and other phreatophyte or woody vegetation removed from river

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1 basins or watersheds in New Mexico, landfill gas and
2 anaerobically digested waste biomass; but

3 (3) does not include electric energy generated
4 by use of fossil fuel or nuclear energy; and

5 E. "renewable portfolio standard" means the
6 percentage of retail sales by a public utility to electric
7 consumers in New Mexico that is required by the Renewable
8 Energy Act to be supplied by renewable energy.

9 Section 4. RENEWABLE PORTFOLIO STANDARD. --

10 A. A public utility shall meet the renewable
11 portfolio standard requirements, as provided in this section,
12 to include renewable energy in its electric energy supply
13 portfolio using one or more sources of renewable energy.

14 Requirements of the renewable portfolio standard are:

15 (1) no later than January 1, 2006, renewable
16 energy shall comprise no less than five percent of each public
17 utility's total retail sales to New Mexico customers;

18 (2) the renewable portfolio standard shall
19 increase by one percent per year thereafter until January 1,
20 2011, when the renewable portfolio standard shall reach a level
21 of ten percent of a public utility's annual retail sales in New
22 Mexico and shall remain fixed at ten percent for each year
23 thereafter; and

24 (3) renewable energy resources that are in a
25 public utility's electric energy supply portfolio on July 1,

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1 2004 shall be counted in determining compliance with this
2 section.

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

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

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1 the commission shall take into account:

2 (1) the commodity costs of renewable energy;

3 (2) the transmission and interconnection costs
4 required for the delivery of renewable energy to retail
5 customers;

6 (3) the availability of tax credits for
7 renewable energy;

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

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

14 (6) other factors the commission deems
15 relevant.

16 D. As part of determining a reasonable cost
17 threshold, the commission may establish a reduction in the
18 renewable portfolio standard attributed to the electric load of
19 commercial and industrial customers subject to good cause found
20 after notice and hearing. The total amount of the renewable
21 portfolio standard of any public utility serving those
22 customers shall be reduced by the same amount.

23 E. Any renewable energy resources that a public
24 utility has committed to prior to the commission's establishing
25 a reasonable cost threshold shall be deemed to be in compliance

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1 with the renewable portfolio standard procurement requirements.
2 Any renewable energy resources that a public utility has
3 committed to in reliance on the reasonable cost threshold
4 established by the commission, even if later changed, shall be
5 deemed to be in compliance with the renewable portfolio
6 standard procurement requirements.

7 F. By September 1 of each year until 2012, and
8 thereafter as determined necessary by the commission, a public
9 utility shall file a report to the commission on its purchases
10 of renewable energy during the prior calendar year and a
11 procurement plan that includes:

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

15 (2) testimony and exhibits that demonstrate
16 the proposed procurement is the utility's least cost renewable
17 resource, subject to the commission's requirements and any
18 renewable energy certificate values; or

19 (3) demonstrates that the plan is otherwise in
20 the public interest.

21 G. The commission shall approve or modify a public
22 utility's procurement plan within sixty days and may approve
23 the plan without a hearing, if no objection is filed. The
24 commission may modify a plan after notice and hearing. The
25 commission may, for good cause, extend the time to approve a

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1 procurement plan for an additional sixty days. If the
2 commission does not act within the sixty day period, the
3 procurement plan is deemed approved.

4 H. The commission may reject a procurement plan if
5 it finds that the plan does not contain the required
6 information and, upon the rejection, may suspend the public
7 utility's obligation to procure additional resources for the
8 time necessary to file a revised plan; provided that the total
9 amount of renewable energy to be procured by the public utility
10 shall not change.

11 Section 5. RENEWABLE ENERGY CERTIFICATES-- COMMISSION
12 DUTIES.--The commission shall establish:

13 A. a system of renewable energy certificates that
14 can be used by a public utility to establish compliance with
15 the renewable portfolio standard and that may include
16 certificates that are monitored, accounted for or transferred
17 by or through a regional system or trading program for any
18 region in which a public utility is located. The kilowatt-hour
19 value of renewable energy certificates may be varied by
20 renewable energy resource or technology; provided that each
21 renewable energy certificate shall have a minimum value of one
22 kilowatt-hour of renewable energy represented by the
23 certificate for purposes of compliance with the renewable
24 portfolio standard; and

25 B. requirements and procedures concerning renewable

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1 energy certificates that include the provisions that:

2 (1) renewable energy certificates:

3 (a) are owned by the public utility
4 purchaser of renewable energy unless retained by the generator
5 through specific agreement with the purchaser of the energy;

6 (b) may be traded, sold or otherwise
7 transferred by their owner to any other party; provided that
8 the transfers and use of the certificate by a public utility
9 for compliance with the renewable energy portfolio standard
10 shall not require the physical delivery of electric energy
11 represented by the certificate;

12 (c) that are used once by a public
13 utility to satisfy the renewable portfolio standard or that are
14 traded, sold or otherwise transferred by the public utility
15 shall not be further used by the public utility; and

16 (d) that are not used by a public
17 utility to satisfy the renewable portfolio standard or that are
18 not traded, sold or otherwise transferred by the public utility
19 may be carried forward for up to four years from the date of
20 issuance and, if not used by that time, shall be retired by the
21 public utility; and

22 (2) a public utility shall be responsible for
23 demonstrating that a renewable energy certificate used for
24 compliance with the renewable portfolio standard is derived
25 from eligible renewable energy resources and has not been

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1 retired, traded, sold or otherwise transferred to another
2 party.

3 Section 6. COST RECOVERY FOR RENEWABLE ENERGY. --

4 A. A public utility that procures or generates
5 renewable energy shall recover, through the rate-making
6 process, the reasonable costs of complying with the renewable
7 portfolio standard that are consistent with commission approval
8 of procurement plans for a public utility and with the
9 reasonable cost threshold promulgated by the commission.

10 B. The commission shall not exclude from such
11 recovery reasonable interconnection and transmission costs
12 incurred by the public utility in order to deliver renewable
13 energy to retail New Mexico customers.

14 Section 7. COMMISSION--ADDITIONAL POWERS AND DUTIES. -- The
15 commission:

16 A. shall adopt rules regarding the renewable
17 portfolio standard, including a provision for public utility
18 records and reports;

19 B. may require that a public utility offer its
20 retail customers a voluntary program for purchasing renewable
21 energy that is in addition to energy provided by
22 the public utility pursuant to the renewable portfolio
23 standard, under rates and terms that are approved by the
24 commission; and

25 C. may exempt from compliance with the renewable

1 portfolio standard a public utility that has an all-
2 requirements electric supply contract on July 1, 2004, and the
3 contract would not reasonably permit it to procure renewable
4 energy for purposes of meeting the renewable portfolio
5 standard. When the electricity supply contract is amended or
6 renegotiated, the commission may require that a renewable
7 portfolio standard become applicable.

8 Section 8. RURAL ELECTRIC COOPERATIVES--VOLUNTARY
9 TARIFFS.--The commission may require that a rural electric
10 cooperative:

11 A. offer its retail customers a voluntary program
12 for purchasing renewable energy under rates and terms that are
13 approved by the commission, but only to the extent that the
14 cooperative's suppliers make renewable energy available under
15 wholesale power contracts; and

16 B. report to the commission the demand for
17 renewable energy pursuant to a voluntary program.

18 Section 9. EXISTING RULES.--The commission shall
19 establish and amend rules and regulations for the
20 implementation of renewable portfolio standards consistent with
21 the Renewable Energy Act.

22 Section 10. FEDERAL REQUIREMENTS.--Renewable energy
23 procured or generated by a public utility to meet a federal
24 renewable portfolio standard may be used to satisfy the
25 required procurements of the Renewable Energy Act.

1 Section 11. EFFECTIVE DATE--The effective date of the
2 provisions of this act is July 1, 2004.

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