

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 200

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO PUBLIC UTILITIES; REQUIRING PUBLIC UTILITIES AND  
RURAL ELECTRIC COOPERATIVES TO MAKE NET METERING SERVICES  
AVAILABLE TO CUSTOMERS THAT OPERATE FACILITIES THAT PRODUCE  
ELECTRICAL ENERGY FROM RENEWABLE ENERGY RESOURCES; CREATING AND  
CHANGING DEFINITIONS IN THE PUBLIC UTILITY ACT; PROVIDING  
REQUIREMENTS FOR CHARGES AND CREDITS FOR NET METERING;  
PROVIDING REQUIREMENTS FOR SAFETY AND PERFORMANCE.

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

Section 1. Section 62-3-3 NMSA 1978 (being Laws 1967,  
Chapter 96, Section 3, as amended) is amended to read:

"62-3-3. DEFINITIONS.--Unless otherwise specified, when  
used in the Public Utility Act:

A. "affiliated interest" means a person who  
directly or indirectly, through one or more intermediaries,

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underscoring material = new  
[bracketed material] = delete

1 controls or is controlled by or is under common control with a  
2 public utility. Control includes instances where a person is  
3 an officer, director, partner, trustee or person of similar  
4 status or function or owns directly or indirectly or has a  
5 beneficial interest in ten percent or more of any class of  
6 securities of a person;

7 B. "average operating margin" means the average of  
8 the operating margins of a rural electric cooperative over the  
9 past five years;

10 C. "clean generation source" means a facility that  
11 produces electrical energy:

12 (1) generated by the use of low- or zero-  
13 emissions generation technology with substantial long-term  
14 production potential;

15 (2) generated by the use of a renewable energy  
16 resource that may include a solar, wind, hydropower or  
17 geothermal resource or by the use of a biomass resource such as  
18 agriculture or animal waste, small diameter timber, salt cedar  
19 and other phreatophyte or woody vegetation removed from a river  
20 basin or watershed in New Mexico, landfill gas and  
21 anaerobically digested waste biomass or hydrogen produced from  
22 renewable sources used in fuel cells; and

23 (3) that is not generated by use of fossil  
24 fuel or nuclear energy;

25 [~~B.~~] D. "commission" means the public regulation

1 commission;

2           ~~[E.]~~ E. "commissioner" means a member of the  
3 commission;

4           F. "customer-generator" means a retail customer of  
5 a public utility or rural electric cooperative who is also the  
6 operator of a clean generation source;

7           ~~[D.]~~ G. "municipality" means a municipal  
8 corporation organized under the laws of the state, and H-class  
9 counties;

10           H. "net metering" means measurement of the  
11 difference between the electricity supplied to a customer-  
12 generator by a public utility or rural electric cooperative and  
13 the electricity that is generated by the customer-generator and  
14 delivered to a public utility or rural electric cooperative at  
15 the same point of interconnection during a billing period;

16           I. "net metering revenue reduction" means the  
17 difference between a rural electric cooperative's or public  
18 utility's applicable tariff energy charge and the lower of the  
19 avoided cost as filed with the commission or three cents (\$.03)  
20 per kilowatt-hour, multiplied by the total number of  
21 kilowatt-hours that the commission estimates has been generated  
22 by all of the clean generation sources that are net metered by  
23 the public utility or rural electric cooperative;

24           J. "operating margin" means the amounts received or  
25 receivable from the furnishing of electric service by a rural

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1 electric cooperative in excess of costs incurred in the  
2 furnishing of that service;

3 K. "peak generating capacity" means the total  
4 maximum rated output, in kilowatts, of a clean generation  
5 source;

6 [~~E.~~] L. "person" means an individual, firm,  
7 partnership, company, rural electric cooperative organized  
8 under Laws 1937, Chapter 100 or the Rural Electric Cooperative  
9 Act, corporation or lessee, trustee or receiver appointed by  
10 any court. "Person" does not mean a class A county as  
11 described in Section 4-36-10 NMSA 1978 or a class B county as  
12 described in Section 4-36-8 NMSA 1978. "Person" does not mean  
13 a municipality as defined in this section unless the  
14 municipality has elected to come within the terms of the Public  
15 Utility Act as provided in Section 62-6-5 NMSA 1978. In the  
16 absence of voluntary election by a municipality to come within  
17 the provisions of the Public Utility Act, the municipality  
18 shall be expressly excluded from the operation of that act and  
19 from the operation of all its provisions, and no such  
20 municipality shall for any purpose be considered a public  
21 utility;

22 M. "rural electric cooperative" means a rural  
23 electric cooperative organized pursuant to the Rural Electric  
24 Cooperative Act;

25 [~~F.~~] N. "securities" means stock, stock

1 certificates, bonds, notes, debentures, mortgages or deeds of  
2 trust or other evidences of indebtedness issued, executed or  
3 assumed by a utility;

4 ~~[6.]~~ 0. "public utility" or "utility" means every  
5 person not engaged solely in interstate business and, except as  
6 stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own,  
7 operate, lease or control:

8 (1) any plant, property or facility for the  
9 generation, transmission or distribution, sale or furnishing to  
10 or for the public of electricity for light, heat or power or  
11 other uses;

12 (2) any plant, property or facility for the  
13 manufacture, storage, distribution, sale or furnishing to or  
14 for the public of natural or manufactured gas or mixed or  
15 liquefied petroleum gas for light, heat or power or other uses;  
16 but the term "public utility" or "utility" shall not include  
17 any plant, property or facility used for or in connection with  
18 the business of the manufacture, storage, distribution, sale or  
19 furnishing of liquefied petroleum gas in enclosed containers or  
20 tank truck for use by others than consumers who receive their  
21 supply through any pipeline system operating under municipal  
22 authority or franchise and distributing to the public;

23 (3) any plant, property or facility for the  
24 supplying, storage, distribution or furnishing to or for the  
25 public of water for manufacturing, municipal, domestic or other

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1 uses; provided, however, nothing contained in this paragraph  
2 shall be construed to apply to irrigation systems, the chief or  
3 principal business of which is to supply water for the purpose  
4 of irrigation;

5 (4) any plant, property or facility for the  
6 production, transmission, conveyance, delivery or furnishing to  
7 or for the public of steam for heat or power or other uses;  
8 [~~or~~]

9 (5) any plant, property or facility for the  
10 supplying and furnishing to or for the public of sanitary  
11 sewers for transmission and disposal of sewage produced by  
12 manufacturing, municipal, domestic or other uses; provided that  
13 the terms "public utility" or "utility" as used in the Public  
14 Utility Act do not include any utility owned or operated by a  
15 class A county as described in Section 4-36-10 NMSA 1978 either  
16 directly or through a corporation owned by or under contract  
17 with such a county; or

18 (6) any plant, property or facility for the  
19 sale or furnishing to or for the public of goods or services to  
20 reduce the consumption of or demand for electricity or natural  
21 gas that is a public utility under the definition found in  
22 Paragraph (1) or (2) of this subsection;

23 [~~H.~~] P. "rate" means every rate, tariff, charge or  
24 other compensation for utility service rendered or to be  
25 rendered by a utility and every rule, regulation, practice,

1 act, requirement or privilege in any way relating to such rate,  
2 tariff, charge or other compensation and any schedule or tariff  
3 or part of a schedule or tariff thereof;

4 ~~[F.]~~ Q. "renewable energy" means electrical energy  
5 generated by means of a low- or zero-emission generation  
6 technology that has substantial long-term production potential  
7 and may include, without limitation, solar, wind, hydropower,  
8 geothermal, landfill gas, anaerobically digested waste biomass  
9 or fuel cells that are not fossil fueled. "Renewable energy"  
10 does not include fossil fuel or nuclear energy;

11 ~~[J.]~~ R. "service" or "service regulation" means  
12 every rule, regulation, practice, act or requirement relating  
13 to the service or facility of a utility;

14 ~~[K.]~~ S. "Class I transaction" means the sale, lease  
15 or provision of real property, water rights or other goods or  
16 services by an affiliated interest to a public utility with  
17 which it is affiliated or by a public utility to its affiliated  
18 interest;

19 ~~[L.]~~ T. "Class II transaction" means:

20 (1) the formation after May 19, 1982 of a  
21 corporate subsidiary by a public utility or a public utility  
22 holding company by a public utility or its affiliated interest;

23 (2) the direct acquisition of the voting  
24 securities or other direct ownership interests of a person by a  
25 public utility if such acquisition would make the utility the

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1 owner of ten percent or more of the voting securities or other  
2 direct ownership interests of that person;

3 (3) the agreement by a public utility to  
4 purchase securities or other ownership interest of a person  
5 other than a nonprofit corporation, contribute additional  
6 equity to, acquire additional equity interest in or pay or  
7 guarantee any bonds, notes, debentures, deeds of trust or other  
8 evidence of indebtedness of any such person; provided, however,  
9 that a public utility may honor all agreements entered into by  
10 such utility prior to May 19, 1982; or

11 (4) the divestiture by a public utility of any  
12 affiliated interest that is a corporate subsidiary of the  
13 public utility;

14 [~~M.~~] U. "corporate subsidiary" means any person ten  
15 percent or more of whose voting securities or other ownership  
16 interests are directly owned by a public utility; and

17 [~~N.~~] V. "public utility holding company" means an  
18 affiliated interest that controls a public utility through the  
19 direct or indirect ownership of voting securities of that  
20 public utility."

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

23 "[NEW MATERIAL] NET METERING SERVICE.--

24 A. If a public utility or a rural electric  
25 cooperative makes net metering services available to a

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1 customer-generator with a clean generation source that the  
2 public utility or rural electric cooperative serves, the  
3 customer-generator shall pay all costs for the acquisition and  
4 installation of the necessary metering equipment and customer-  
5 owned facilities required by a public utility or rural electric  
6 cooperative for interconnection. The customer-generator shall  
7 also pay all costs incurred by the public utility or rural  
8 electric cooperative for net metering, including costs for  
9 equipment or services that are necessary to meet safety and  
10 performance standards pursuant to the Public Utility Act.

11 B. A public utility or a rural electric cooperative  
12 may charge a customer-generator for the installation of any  
13 metering equipment required for net metering that is in  
14 addition to equipment that is required for the rate tariff  
15 under which the customer is normally served. A public utility  
16 or a rural electric cooperative may install additional  
17 equipment that it deems necessary to meter the total  
18 electricity flow in each direction. If the clean generation  
19 source of the customer-generator has a peak generating capacity  
20 of ten kilowatts or less, a party requesting the additional  
21 equipment shall pay the cost of additional equipment. If the  
22 clean generation source of the customer-generator has a peak  
23 generating capacity exceeding ten kilowatts, the public utility  
24 or rural electric cooperative may require the customer-  
25 generator to pay the cost of the additional equipment.

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1 C. Costs imposed by a public utility or a rural  
2 electric cooperative on a customer-generator shall not exceed  
3 those necessary to meet safety and interconnection requirements  
4 pursuant to the Public Utility Act.

5 D. A customer-generator is responsible for costs  
6 associated with operating and maintaining a clean generation  
7 source of the customer-generator and for costs related to  
8 modification of the clean generation source required for the  
9 purposes of interconnectivity, safety and reliability.

10 E. A public utility or rural electric cooperative  
11 shall make net metering available to a customer-generator with  
12 a clean generation source with peak generating capacity of ten  
13 kilowatts or less that meets the safety and interconnection  
14 requirements pursuant to the Public Utility Act.

15 F. A public utility that is not a rural electric  
16 cooperative shall make net metering available to a customer-  
17 generator with a clean generation source that meets the safety  
18 and interconnection requirements pursuant to the Public Utility  
19 Act and that has a peak generating capacity exceeding ten  
20 kilowatts, but not exceeding one hundred kilowatts; provided  
21 that making net metering available to that customer-generator  
22 does not increase the cumulative peak generating capacity of  
23 all clean generation sources on the public utility's  
24 distribution system above one percent of the average of that  
25 public utility's peak retail demand over the past three

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1 calendar years.

2 G. A rural electric cooperative shall make net  
3 metering available to a customer-generator with a clean  
4 generation source that meets the safety and interconnection  
5 requirements pursuant to the Public Utility Act and that has a  
6 peak generating capacity exceeding ten kilowatts, but not  
7 exceeding one hundred kilowatts; provided that making net  
8 metering available to that customer-generator does not increase  
9 the net metering revenue reduction above one percent of the  
10 rural electric cooperative's average operating margins.

11 H. A rural electric cooperative may allow, with  
12 thirty days' notice to customers, additional net metering of  
13 customer-generators beyond the limits imposed by Subsection G  
14 of this section unless, within the thirty-day period after  
15 notice, the cooperative receives customer protests from  
16 customers representing a majority of the cooperative's load.

17 I. Once interconnected, net metering shall not be  
18 withdrawn from a customer-generator on the basis of the  
19 limitations specified in Subsections E through G of this  
20 section.

21 J. The commission shall adopt rules for this 2005  
22 act that shall become effective before June 1, 2006, including  
23 uniform interconnection and safety standards consistent with  
24 the requirements of Subsection C of this section and the safety  
25 and performance standards of the Public Utility Act that

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1 include application procedures, reporting requirements for peak  
2 loads and operating margins and provisions ensuring compliance  
3 and timely response by public utilities and rural electric  
4 cooperatives, including reporting requirements for disapproved  
5 applications, to customer requests for interconnection."

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

8 "[NEW MATERIAL] TARIFFS--CREDITS.--

9 A. An applicable tariff for retail electric service  
10 by a public utility or rural electric cooperative to a  
11 customer-generator shall be based on the applicable tariff of  
12 the public utility or rural electric cooperative that is  
13 applicable to the customer-generator's customer class.

14 B. A public utility or rural electric cooperative  
15 shall provide a credit for net metering to a customer-generator  
16 equal to the applicable tariff of the public utility or rural  
17 electric cooperative for the customer-generator's customer  
18 class with respect to the customer-generator's production of  
19 electricity.

20 C. If a customer-generator's net aggregate bill  
21 from the public utility or rural electric cooperative is less  
22 than zero, a credit for net metering shall be carried over to  
23 future bills of that customer-generator until the credit  
24 balance equals zero.

25 D. A customer-generator shall not claim a credit

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1 for net metering pursuant to this section from a public utility  
 2 or rural electric cooperative with respect to a clean  
 3 generation source pursuant to the Public Utility Act if the  
 4 customer-generator has claimed a credit for net metering from  
 5 another public utility or rural electric cooperative for the  
 6 same clean generation source."

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

9 "[NEW MATERIAL] SAFETY, INTERCONNECTION AND PERFORMANCE  
 10 REQUIREMENTS.--

11 A. A net metering system used by a customer-  
 12 generator shall comply with all relevant public utility or  
 13 rural electric cooperative safety and interconnection  
 14 requirements and all federal, state and local safety and  
 15 performance standards and codes.

16 B. Safety and interconnection requirements for  
 17 clean generation sources approved by the commission shall  
 18 comply with the standards of the institute of electrical and  
 19 electronics engineers for interconnecting distributed resources  
 20 with electric power systems.

21 C. A public utility or rural electric cooperative  
 22 may require a customer-generator, at that customer-generator's  
 23 expense, to provide lockable switching equipment capable of  
 24 isolating a clean generation source from the public utility's  
 25 or rural electric cooperative's system.

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1           D. A customer-generator shall notify its public  
2 utility or rural electric cooperative and the commission of the  
3 intent to install a clean generation source at least sixty days  
4 before its installation on an application form prescribed by  
5 the commission. The public utility or rural electric  
6 cooperative shall approve or disapprove the application and  
7 notify the customer-generator of its approval or disapproval  
8 within thirty days of the public utility's receipt of the  
9 application. The public utility or rural electric cooperative  
10 shall notify the commission of its approval or disapproval in  
11 accordance with the commission's rules."

12           Section 5. Section 62-16-4 NMSA 1978 (being Laws 2004,  
13 Chapter 65, Section 4) is amended to read:

14           "62-16-4. RENEWABLE PORTFOLIO STANDARD.--

15           A. A public utility shall meet the renewable  
16 portfolio standard requirements, as provided in this section,  
17 to include renewable energy in its electric energy supply  
18 portfolio. Requirements of the renewable portfolio standard  
19 are:

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

23                   (2) the renewable portfolio standard shall  
24 increase by one percent per year thereafter until January 1,  
25 2011, when the renewable portfolio standard shall reach a level

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1 of ten percent of a public utility's annual retail sales in New  
2 Mexico and shall remain fixed at ten percent for each year  
3 thereafter;

4 (3) the renewable portfolio standard  
5 established by this section shall be reduced, as necessary, to  
6 provide for the following specific procurement requirements for  
7 nongovernmental customers at a single location or facility,  
8 regardless of the number of meters at that location or  
9 facility, with consumption exceeding ten million kilowatt-hours  
10 per year. On and after January 1, 2006, the kilowatt-hours of  
11 renewable energy procured for these customers shall be limited  
12 so that the additional cost of the renewable portfolio standard  
13 to each customer does not exceed the lower of one percent of  
14 that customer's annual electric charges or forty-nine thousand  
15 dollars (\$49,000). The calculation of the additional cost of  
16 the renewable portfolio standard to each customer shall include  
17 the amount of the total net metering revenue reductions, as  
18 defined by the Public Utility Act, that the commission  
19 determines should be recovered from that customer. This  
20 procurement limit criteria shall increase by one-fifth percent  
21 or ten thousand dollars (\$10,000) per year until January 1,  
22 2011, when the procurement limit criteria shall remain fixed at  
23 the lower of two percent of that customer's annual electric  
24 charges or ninety-nine thousand dollars (\$99,000). After  
25 January 1, 2012, the commission may adjust the ninety-nine-

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1 thousand-dollar (\$99,000) limit for inflation. Nothing  
2 contained in this paragraph shall be construed as affecting a  
3 public utility's right to recover all reasonable costs of  
4 complying with the renewable portfolio standard, pursuant to  
5 Section [~~6 of the Renewable Energy Act~~] 62-16-6 NMSA 1978. The  
6 commission may authorize deferred recovery of the costs of  
7 complying with the renewable portfolio standard, including  
8 carrying charges;

9 (4) the renewable portfolio shall be  
10 diversified as to the type of renewable energy resource, taking  
11 into consideration the overall reliability, availability,  
12 dispatch flexibility and cost of the various renewable energy  
13 resources made available by suppliers and generators; and

14 (5) renewable energy resources that are in a  
15 public utility's electric energy supply portfolio on July 1,  
16 2004 shall be counted in determining compliance with this  
17 section.

18 B. If a public utility finds that, in any given  
19 year, the cost of renewable energy that would need to be  
20 procured or generated for purposes of compliance with the  
21 renewable portfolio standard would be greater than the  
22 reasonable cost threshold as established by the commission  
23 pursuant to this section, the public utility shall not be  
24 required to incur that cost; provided that the existence of  
25 this condition excusing performance in any given year shall not

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1 operate to delay the annual increases in the renewable  
2 portfolio standard in subsequent years. When a public utility  
3 can generate or procure renewable energy at or below the  
4 reasonable cost threshold, it shall be required to add  
5 renewable energy resources to meet the renewable portfolio  
6 standard applicable in the year when the renewable energy  
7 resources are being added.

8 C. By December 31, 2004, the commission shall  
9 establish, after notice and hearing, the reasonable cost  
10 threshold above which level a public utility shall not be  
11 required to add renewable energy to its electric energy supply  
12 portfolio pursuant to the renewable portfolio standard. The  
13 commission may thereafter modify the reasonable cost threshold  
14 as changing circumstances warrant, after notice and hearing.  
15 In establishing and modifying the reasonable cost threshold,  
16 the commission shall take into account:

17 (1) the price of renewable energy at the point  
18 of sale to the public utility;

19 (2) the transmission and interconnection costs  
20 required for the delivery of renewable energy to retail  
21 customers;

22 (3) the impact of the cost for net metering  
23 and renewable energy on overall retail customer rates;

24 (4) the overall diversity, reliability,  
25 availability, dispatch flexibility, cost per kilowatt-hour and

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1 life cycle cost on a net present value basis of renewable  
2 energy resources available from suppliers; and

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

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

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

16 (2) testimony and exhibits that demonstrate  
17 that the proposed procurement is reasonable as to its terms and  
18 conditions considering price, availability, dispatchability,  
19 any renewable energy certificate values and diversity of the  
20 renewable energy resource; or

21 (3) demonstration that the plan is otherwise  
22 in the public interest.

23 E. The commission shall approve or modify a public  
24 utility's procurement or transitional procurement plan within  
25 sixty days and may approve the plan without a hearing, unless a

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1 protest is filed that demonstrates to the commission's  
 2 reasonable satisfaction that a hearing is necessary. The  
 3 commission may modify a plan after notice and hearing. The  
 4 commission may, for good cause, extend the time to approve a  
 5 procurement plan for an additional sixty days. If the  
 6 commission does not act within the sixty-day period, the  
 7 procurement plan is deemed approved.

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

15 G. A public utility may file a transitional  
 16 procurement plan requesting that the commission determine that  
 17 the costs of renewable energy resources that the public utility  
 18 has committed to, or may commit to, prior to the commission's  
 19 establishing a reasonable cost threshold, are reasonable and  
 20 recoverable pursuant to Section [~~6 of the Renewable Energy Act~~]  
 21 62-16-6 NMSA 1978. The requirements of annual procurement plan  
 22 filings shall be applicable to any transitional procurement  
 23 plan filing pursuant to this section."