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SENATE BILL 321

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

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 THAT 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

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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

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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 shall
8 increase by one-fifth percent or ten thousand dollars (\$10,000)
9 per year until January 1, 2011, when the procurement limit
10 criteria shall remain fixed at the lower of two percent of that
11 customer's annual electric charges or ninety-nine thousand
12 dollars (\$99,000). After January 1, 2012, the commission may
13 adjust the ninety-nine-thousand-dollar (\$99,000) limit for
14 inflation. Nothing contained in this paragraph shall be
15 construed as affecting a public utility's right to recover all
16 reasonable costs of complying with the renewable portfolio
17 standard, pursuant to Section 62-16-6 NMSA 1978. The
18 commission may authorize deferred recovery of the costs of
19 complying with the renewable portfolio standard, including
20 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

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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

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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

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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:

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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

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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."