AN ACT

RELATING TO PUBLIC UTILITIES; ENACTING THE ENERGY TRANSITION ACT; AUTHORIZING CERTAIN UTILITIES THAT ABANDON CERTAIN GENERATING FACILITIES TO ISSUE BONDS PURSUANT TO A FINANCING ORDER ISSUED BY THE PUBLIC REGULATION COMMISSION; PROVIDING PROCUREMENT OF REPLACEMENT RESOURCES, INCLUDING LOCATION OF THE REPLACEMENT RESOURCES; AUTHORIZING THE COMMISSION TO IMPOSE A FEE ON THE QUALIFYING UTILITY TO PAY COMMISSION EXPENSES FOR CONTRACTS FOR SERVICES FOR LEGAL COUNSEL AND FINANCIAL ADVISORS TO PROVIDE ADVICE AND ASSISTANCE FOR PURPOSES RELATED TO THE ACT; PROVIDING PROCEDURES FOR REHEARING AND JUDICIAL REVIEW; PROVIDING FOR THE TREATMENT OF ENERGY TRANSITION BONDS BY THE COMMISSION; CREATING SECURITY INTERESTS IN CERTAIN PROPERTY; PROVIDING FOR THE PERFECTION OF INTERESTS IN CERTAIN PROPERTY; EXEMPTING ENERGY TRANSITION CHARGES FROM CERTAIN GOVERNMENT FEES; CREATING THE ENERGY TRANSITION INDIAN AFFAIRS FUND, THE ENERGY TRANSITION ECONOMIC DEVELOPMENT ASSISTANCE FUND AND THE ENERGY TRANSITION DISPLACED WORKER ASSISTANCE FUND; PROVIDING FOR NONIMPAIRMENT OF ENERGY TRANSITION CHARGES AND BONDS; PROVIDING FOR CONFLICTS IN LAW; PROVIDING THAT ACTIONS TAKEN PURSUANT TO THE ENERGY TRANSITION ACT SHALL NOT BE INVALIDATED IF THE ACT IS HELD INVALID; REQUIRING THE PUBLIC REGULATION COMMISSION TO APPROVE PROCUREMENT OF ENERGY STORAGE SYSTEMS; PROVIDING NEW REQUIREMENTS AND TARGETS FOR
THE RENEWABLE PORTFOLIO STANDARD FOR RURAL ELECTRIC
COOPERATIVES AND PUBLIC UTILITIES; AMENDING CERTAIN
DEFINITIONS IN THE RENEWABLE ENERGY ACT AND RURAL ELECTRIC
COOPERATIVE ACT; REQUIRING THE HIRING OF APPRENTICES FOR THE
CONSTRUCTION OF FACILITIES THAT PRODUCE OR PROVIDE
ELECTRICITY; ALLOWING COST RECOVERY FOR EMISSIONS REDUCTION;
PROVIDING POWERS AND DUTIES FOR THE PUBLIC REGULATION
COMMISSION OVER VOLUNTARY PROGRAMS FOR PUBLIC UTILITIES AND
RURAL ELECTRIC COOPERATIVES; REQUIRING THE PROMULGATION OF
RULES TO IMPLEMENT THE RENEWABLE ENERGY ACT; REQUIRING THE
ENVIRONMENTAL IMPROVEMENT BOARD TO PROMULGATE RULES TO LIMIT
CARBON DIOXIDE EMISSIONS OF CERTAIN ELECTRIC GENERATING
FACILITIES.

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

SECTION 1. SHORT TITLE.--Sections 1 through 23 of this
act may be cited as the "Energy Transition Act".

SECTION 2. DEFINITIONS.--As used in the Energy
Transition Act:

A. "adjustment mechanism" means a formula-based
calculation used to make adjustments to the energy transition
charges that are necessary to correct for any over-collection
or under-collection of the energy transition charges, to
provide for the timely and complete payment of scheduled
principal and interest on energy transition bonds and the
payment and recovery of other financing costs in accordance with a financing order;

   B. "ancillary agreement" means a bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement or other similar agreement or arrangement entered into in connection with the issuance of an energy transition bond that is designed to promote the credit quality and marketability of the bond or to mitigate the risk of an increase in interest rates;

   C. "assignee" means a person or legal entity, that may be newly created by the qualifying utility, to which an interest in energy transition property is sold, assigned, transferred or conveyed, other than as security, and any successor to or subsequent assignee of such a person or legal entity;

   D. "commission" means the public regulation commission;

   E. "electric delivery service" means transmission, distribution, generation, energy or any other service from a qualifying utility pursuant to commission-approved rate schedules or special contracts;

   F. "energy transition bond" means a bond or other evidence of indebtedness or ownership that is issued by a qualifying utility or an assignee pursuant to a financing
order, the proceeds of which are secured by or payable from
energy transition property and that are non-recourse to the
qualifying utility;

G. "energy transition charge" means a
non-bypassable charge paid by all customers of a qualifying
utility for the recovery of energy transition costs;

H. "energy transition cost" means the sum of:

(1) financing costs;

(2) abandonment costs, which for a
qualifying generating facility shall not exceed the lower of
three hundred seventy-five million dollars ($375,000,000) or
one hundred fifty percent of the undepreciated investment in
a qualifying generating facility being abandoned, as of the
date of the abandonment. The abandonment costs subject to
this limitation shall include:

(a) up to thirty million dollars
($30,000,000) per qualifying generating facility in costs not
previously collected from the qualifying utility's customers
for plant decommissioning and mine reclamation costs, subject
to any limitations ordered by the commission prior to January
1, 2019 and affirmed by the New Mexico supreme court prior to
the effective date of the Energy Transition Act, associated
with the abandoned qualifying generating facility;

(b) up to twenty million dollars
($20,000,000) per qualifying generating facility in costs for
severance and job training for employees losing their jobs as a result of an abandoned qualifying generating facility and any associated mine that only services the abandoned qualifying generating facility;

(c) undepreciated investments as of the date of abandonment on the qualifying utility's books and records in a qualifying generating facility that were either being recovered in rates as of January 1, 2019 or are otherwise found to be recoverable through a court decision; and

(d) other undepreciated investments in a qualifying generating facility incurred to comply with law, whether established by statute, court decision or rule, or necessary to maintain the safe and reliable operation of the qualifying generating facility prior to the facility's abandonment;

(3) any other costs required to comply with changes in law enacted after January 1, 2019 incurred by the qualifying utility at the qualifying generating facility; and

(4) payments required pursuant to Section 16 of the Energy Transition Act;

I. "energy transition property" means the rights and interests of a qualifying utility or an assignee under a financing order, including the right to impose, charge, collect and receive energy transition charges in an amount
necessary to provide for full payment and recovery of all
energy transition costs identified in the financing order,
including all revenues or other proceeds arising from those
rights and interests;

J. "energy transition revenues" means revenues
collected by or on behalf of a qualifying utility through an
energy transition charge;

K. "financing cost" means the cost incurred by the
qualifying utility or an assignee to issue and administer
energy transition bonds, including:

(1) payment of the fee authorized pursuant
to Subsection L of Section 5 of the Energy Transition Act;

(2) principal, interest, acquisition,
defeasance and redemption premiums that are payable on energy
transition bonds;

(3) any payment required under an ancillary
agreement and any amount required to fund or replenish a
reserve account or other account established under any
indenture, ancillary agreement or other financing document
relating to the energy transition bonds;

(4) any costs, fees and expenses related to
issuing, supporting, repaying, servicing and refunding energy
transition bonds, the application for a financing order,
including related state board of finance expenses, or
obtaining an order approving abandonment of a qualifying
generating facility;

(5) any costs, fees and related expenses incurred relating to any existing secured or unsecured obligation of a qualifying utility or an affiliate of a qualifying utility that are necessary to obtain any consent, release, waiver or approval from any holder of such an obligation to permit a qualifying utility to issue or cause the issuance of energy transition bonds;

(6) any taxes, fees, charges or other assessments imposed on energy transition bonds;

(7) preliminary and continuing costs associated with subsequent financing; and

(8) any other related costs approved for recovery in the financing order;

L. "financing order" means an order of the commission that authorizes the issuance of energy transition bonds, authorizes the imposition, collection and periodic adjustments of the energy transition charge and creates energy transition property;

M. "financing party" means a trustee, collateral agent or other person acting for the benefit of a bondholder, and a party to an ancillary agreement or the energy transition bonds, the rights and obligations of which relate to or depend upon the existence of energy transition property, the enforcement and priority of a security interest
in energy transition property or the timely collection and payment of energy transition revenues;

N. "lowest cost objective" means that the structuring, marketing and pricing of energy transition bonds results in the lowest energy transition charges consistent with prevailing market conditions at the time of pricing of energy transition bonds and the structure and terms of energy transition bonds approved pursuant to the financing order;

O. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, incorporated counties and H class counties;

P. "non-bypassable" means that the payment of an energy transition charge may not be avoided by an electric service customer located within a utility service area and shall be paid by the customer that receives electric delivery service from the qualifying utility imposing the charge for as long as the energy transition bonds secured by the charge are outstanding and the related financing costs have not been recovered in full;

Q. "non-utility affiliate" means, with respect to a qualifying utility, a person that is an affiliated interest, as that term is used in the Public Utility Act, but a "non-utility affiliate" does not include a public utility that provides retail utility service to customers in the
state;

R. "public utility" means "public utility" as used in the Public Utility Act, but "public utility" does not include a distribution cooperative utility organized pursuant to the Rural Electric Cooperative Act;

S. "qualifying generating facility" means a coal-fired generating facility in New Mexico that may be composed of multiple generating units that:

   (1) has been granted a certificate of public convenience and for which abandonment authority is granted after December 31, 2018;

   (2) is owned or leased, in whole or in part, by a qualifying utility;

   (3) if operated by a qualifying utility prior to the effective date of the Energy Transition Act, is to be abandoned prior to January 1, 2023; and

   (4) if not operated by a qualifying utility prior to the effective date of the Energy Transition Act, is to be abandoned prior to January 1, 2032; and

T. "qualifying utility" means a public utility that meets the requirements of Paragraph (1) of Subsection G of Section 62-3-3 NMSA 1978 and owns or leases all or a portion of a qualifying generating facility and its successor or assignees.

SECTION 3. LOCATION OF RESOURCE DEVELOPMENT AFTER
ABANDONMENT.--

A. For a qualifying utility that abandons a qualifying generating facility in New Mexico prior to January 1, 2023, the qualifying utility shall, no later than one year after approval of the abandonment, apply for commission approval of competitively procured replacement resources. As part of that competitive procurement, and in addition to the criteria set forth in Subsections B and C of this section, projects shall be ranked based on their cost, economic development opportunity and ability to provide jobs with comparable pay and benefits to those lost due to the abandonment of a qualifying generating facility. The qualitative and quantitative data and analysis used to establish the ranking shall be available for review by parties to the commission proceeding.

B. In determining whether to approve replacement resources, the commission shall prefer resources with the least environmental impacts, those with higher ratios of capital costs to fuel costs and those able to reduce the cost of reclamation and use for lands previously mined within the county of the qualifying generating facility.

C. In considering responses to requests for proposals for replacement resources pursuant to this section, a qualifying utility shall inform prospective bidders that it promotes and encourages the use of workers residing in
New Mexico to the greatest extent practicable and shall take that use into consideration in evaluating proposals.

D. The commission shall grant all necessary approvals for replacement resources; provided that the commission may determine that the particular resource proposed by the qualifying utility should not be approved and that, instead, an alternative replacement resource that meets the conditions of this section should be approved. The commission shall not disallow recovery of reasonable costs associated with requirements as to where the resources are located.

E. Replacement resources shall be subject to local property taxes or a binding commitment to make an equivalent payment in lieu of taxes.

F. As used in this section, "replacement resources" means up to four hundred fifty megawatts of nameplate capacity identified by the qualifying utility as replacement for a qualifying generating facility, and may include energy storage capacity; provided that such resources are located in the school district in New Mexico where the abandoned facility is located, are necessary to maintain reliable service and are in the public interest as determined by the commission.

SECTION 4. FINANCING ORDER--APPLICATION CONTENTS-- PENDING APPLICATIONS.--
A. A qualifying utility that is abandoning a qualifying generating facility may apply to the commission for a financing order pursuant to this section to recover all of its energy transition costs through the issuance of energy transition bonds. To obtain a financing order, a qualifying utility shall obtain approval to abandon a qualifying generating facility pursuant to Section 62-9-5 NMSA 1978. The application for the financing order may be filed as part of the application for approval to abandon a qualifying generating facility.

B. An application for a financing order shall include:

1. a description of the facility that the qualifying utility proposes to abandon or for which abandonment authority was granted after December 31, 2018;
2. an estimate of the energy transition costs and shall:
   a) identify the severance pay and job training expenses for affected employees losing their jobs as a result of an abandoned qualifying generating facility and any associated mine that only services the abandoned qualifying generating facility;
   b) identify costs not previously collected from the qualifying utility's customers for plant decommissioning and mine reclamation costs, subject to any
limitations ordered by the commission prior to January 1, 2019 and affirmed by the New Mexico supreme court prior to the effective date of the Energy Transition Act, associated with the abandoned qualifying generating facility; and

(c) include an estimate of the financing costs associated with each series of energy transition bonds proposed to be issued;

(3) an estimate of the amount of energy transition charges necessary to recover the costs in Paragraph (2) of this subsection and the proposed calculation thereof, based on the estimated date of issuance and estimated principal amount of each series of energy transition bonds proposed to be issued;

(4) a description of the proposed adjustment mechanism that complies with the provisions of Section 6 of the Energy Transition Act;

(5) a memorandum with supporting exhibits from a securities firm, such firm to be attested to by the state board of finance as being experienced in the marketing of bonds and capable of providing such a memorandum, that the proposed issuance satisfies the current published AAA rating or equivalent rating criteria of at least one nationally recognized statistical rating organization for issuances similar to the proposed energy transition bonds. The request for such attestation may be made by a qualifying utility.
prior to an application for a financing order, and the state
board of finance shall act upon such a request promptly;

(6) a commitment by the qualifying utility
to file with the commission following the issuance of the
ergy transition bonds:

(a) a description of the final
structure and pricing of the bonds;

(b) updated financing costs and payment
amount required pursuant to Section 16 of the Energy
Transition Act; and

(c) an updated calculation of the
energy transition charges;

(7) an estimate of timing of the issuance
and term of the energy transition bonds, or series of bonds;
provided that the scheduled final maturity for each bond
issuance shall be no longer than twenty-five years;

(8) identification of plans to sell, assign,
transfer or convey, other than as a security, interest in
energy transition property, including identification of an
assignee, and demonstration that the assignee will be a
financing entity wholly owned, directly or indirectly, by the
qualifying utility that will be initially capitalized by the
qualifying utility in such a way that equity interests in the
financing entity are at least one-half percent of the total
capital of the assignee;
(9) identification of ancillary agreements that may be necessary or appropriate;

(10) a description of a proposed ratemaking process to reconcile and recover or refund any difference between the energy transition costs financed by the energy transition bonds and the actual final energy transition costs incurred by the qualifying utility or the assignee;

(11) a proposed ratemaking method to account for the reduction in the qualifying utility's cost of service associated with the amount of undepreciated investments being recovered by the energy transition charge at the time that charge becomes effective; and

(12) a statement from the qualifying utility committing that the qualifying utility will use commercially reasonable efforts to obtain the lowest cost objective.

C. The application may include requests for approvals for new resources necessitated by the abandonment of a qualifying generating facility.

D. The qualifying utility or the commission may defer applications for needed approvals for new resources to a separate proceeding; provided that the application identifies adequate potential new resources sufficient to provide reasonable and proper service to retail customers.

E. If an application for approval to abandon a qualifying generating facility is pending before the
commission on the effective date of the Energy Transition Act, the qualifying utility may file a separate application for a financing order, and the commission may join or consolidate the application for a financing order with the pending proceeding involving abandonment of the qualifying generating facility, with the consent of the applicant. On such joinder or consolidation, the time periods prescribed by the Energy Transition Act shall become applicable to the joined or consolidated case as of the date of the joinder or consolidation.

F. If a qualifying utility does not recover energy transition costs pursuant to the Energy Transition Act, the energy transition costs may be recovered pursuant to other applicable provisions of the Public Utility Act.

SECTION 5. FINANCING ORDER--ISSUANCE--TERMS OF BONDS--REPORTS TO COMMISSION OF DISBURSEMENT OF BOND PROCEEDS--REVIEW AND AUDIT OF RECORDS.--

A. The commission may approve an application for a financing order without a formal hearing if no protest establishing good cause for a formal hearing is filed within thirty days of the date when notice is given of the filing of the application for the financing order. If a hearing is held, the commission shall issue an order granting or denying the application for the financing order to a qualifying utility that is abandoning a qualifying generating facility.
and an order on an accompanying application of the qualifying utility for approval to abandon the qualifying generating facility within six months from the date the application for the financing order is filed with the commission. For good cause shown, the commission may extend the time for issuing the order for an additional three months.

B. Failure to issue an order approving the application or advising of the application's noncompliance pursuant to Subsection E of this section within the time prescribed by Subsection A of this section shall be deemed approval of the application for a financing order and approval to abandon the qualifying generating facility, if abandonment approval was requested as part of the application for the financing order pursuant to this subsection. The commission shall issue an order acknowledging the deemed approvals within seven days of the expiration of the time period described in Subsection A of this section.

C. If an application for a financing order is accompanied by a request for approval of new resources, this section provides an alternative time frame to that provided in Subsection C of Section 62-9-1 NMSA 1978, and the time frame specified in this section shall govern, unless the request has been deferred to a separate proceeding pursuant to Subsection D of Section 4 of the Energy Transition Act.

D. The issuance of a financing order shall be the
only approval required for the authority granted in the
financing order.

E. The commission shall issue a financing order
approving the application if the commission finds that the
qualifying utility's application for the financing order
complies with the requirements of Section 4 of the Energy
Transition Act. If the commission finds that a qualifying
utility's application does not comply with Section 4 of the
Energy Transition Act, the commission shall advise the
qualifying utility of any changes necessary to comply with
that section and provide the applicant an opportunity to
amend the application to make such changes. Upon those
changes being made, the commission shall issue a financing
order approving the application.

F. A financing order shall include the following
provisions:

(1) approval for the qualifying utility or
assignee to issue energy transition bonds as requested in the
application, to use energy transition bonds to finance the
maximum amount of the energy transition costs as requested in
the application, as may be adjusted pursuant to Paragraph (6)
of Subsection B of Section 4 of the Energy Transition Act,
and to use the proceeds provided in Subsection A of Section
10 of the Energy Transition Act;

(2) approval for the qualifying utility to
recover the energy transition costs, as may be adjusted pursuant to Paragraph (6) of Subsection B of Section 4 of the Energy Transition Act, requested in the application through energy transition charges;

(3) approval of the energy transition charges necessary to recover the authorized energy transition costs, to be imposed through a non-bypassable energy transition charge as a separate line item on the qualifying utility's customer bills, assessed consistent with energy and demand cost allocations within each customer class, subject to update pursuant to the notice filing contemplated by Paragraph (6) of Subsection B of Section 4 of the Energy Transition Act and subject to the application of the adjustment mechanism as provided in Section 6 of the Energy Transition Act, until the energy transition bonds issued pursuant to the financing order and the financing costs related to those bonds are paid in full;

(4) approval of the adjustment mechanism in compliance with Section 6 of the Energy Transition Act;

(5) a description of the energy transition property that is created by the financing order that may be used to pay, and secure the payment of, the energy transition bonds and financing costs authorized to be issued in the financing order;

(6) approval to enter into necessary or
appropriate ancillary agreements;

(7) approval of any plans for selling, assigning, transferring or conveying, other than as a security, an interest in energy transition property; and

(8) approval of the proposed ratemaking process and method included in the application pursuant to Paragraphs (10) and (11) of Subsection B of Section 4 of the Energy Transition Act.

G. A financing order shall provide that the creation of energy transition property shall be simultaneous with the sale of the energy transition property to an assignee as provided in the application and the pledge of the energy transition property to secure energy transition bonds.

H. A financing order shall authorize the qualifying utility to issue one or more series of energy transition bonds for a scheduled final maturity of no more than twenty-five years for each series; provided that a rated final maturity may exceed twenty-five years. With such authorization, the qualifying utility shall not subsequently be required to secure a separate financing order prior to each issuance.

I. The commission may require, as a condition of the financing order and in every circumstance subject to the limitations set forth in Subsection A of Section 7 of the Energy Transition Act, that, during any period in which
energy transition bonds issued pursuant to the financing
order are outstanding, an assignee that is a non-utility
affiliate and issues energy transition bonds shall provide in
the affiliate's articles of incorporation, partnership
agreement or operating agreement, as applicable, that in
order for a person to file a voluntary bankruptcy petition on
behalf of that assignee, the prior unanimous consent of the
directors, partners, managers or members, as applicable,
shall be required. Any such provision shall constitute a
legal, valid and binding agreement of such shareholders,
partners or members of the assignee and is enforceable
against such shareholders, partners or members.

J. A financing order may require the qualifying
utility to file with the commission a periodic report showing
the receipt and disbursement of proceeds of energy transition
bonds and any other documents necessary for the qualifying
utility to implement the financing order. Upon issuance of
the energy transition bonds, the qualifying utility shall
file an advice notice with the commission, subject to review
by the commission for errors and corrections, that identifies
the actual energy transition charges to be included on
customers' bills, effective fifteen days from the date the
advice notice is filed.

K. A financing order may authorize the commission
to review and audit the books and records of the qualifying
utility and of an assignee that is a non-utility affiliate
and issues energy transition bonds, relating to energy
transition property and the receipt and disbursement of
proceeds of energy transition bonds.

L. After review and approval by the department of
finance and administration with regard to reasonableness of
contracts for services, a financing order may authorize the
commission to impose a fee on the qualifying utility to pay
commission expenses for contract bond counsel accredited by a
nationally recognized association of bond lawyers to provide
advice and assistance to commission staff in reviewing an
application for a financing order and the structure and
marketing of the proposed energy transition bonds.

M. The provisions of this section shall not be
construed to limit the authority of the commission to:

(1) investigate the practices of or to audit
the books and records of a qualifying utility; or

(2) issue such further orders as may be
necessary to effectuate the provisions of the Energy
Transition Act.

SECTION 6. ADJUSTMENT MECHANISM--ADJUSTMENT
PROCEDURES--HEARING PROCEDURES IF COMMISSION DETERMINES
ADJUSTMENT MADE IN ERROR.--

A. If the commission issues a financing order, the
qualifying utility for which the order is issued may charge
all of the qualifying utility's customers an energy transition charge, which shall be allocated to customer classes consistent with the production cost allocation methodology established by the commission in the qualifying utility's most recent general rate case. Energy transition charges shall be assessed consistent with the production cost allocation methodology and the determination of energy and demand costs within each customer class, both of which shall be subject to the adjustment mechanism.

B. The commission shall periodically approve adjustments of the energy transition charges pursuant to the adjustment mechanism approved in the financing order to correct for any over-collection or under-collection of the energy transition charge and to provide for timely payment of scheduled principal of and interest on the energy transition bonds and the payment and recovery of financing costs in accordance with the financing order. Except as provided in Subsection C of this section, the qualifying utility shall file at least semiannually, or more frequently as provided in the financing order:

1. a calculation estimating whether the existing energy transition charge is sufficient to provide for timely payment of scheduled principal of and interest on the energy transition bonds and the payment and recovery of other financing costs in accordance with the financing order.
or if either an over-collection or under-collection is projected; and

(2) a calculation showing the adjustment to the energy transition charge to correct for any over-collection or under-collection of energy transition charges.

C. The qualifying utility shall file the calculations described in Subsection B of this section at least quarterly during the two-year period preceding the final maturity date of the energy transition bonds.

D. The adjustment mechanism shall remain in effect until the energy transition bonds and all financing costs have been fully paid and recovered, any under-collection is recovered from customers and any over-collection is returned to customers.

E. On the same day the qualifying utility files with the commission its calculation of the adjustment to the energy transition charge, the qualifying utility shall cause notice of the filing to be given to the parties of record in the case in which the financing order was issued.

F. An adjustment to the energy transition charge filed by the qualifying utility shall be deemed approved without hearing thirty days after filing the adjustment unless:

(1) no later than twenty days from the date
the qualifying utility filed the calculation of the
adjustment, the commission is notified of a potential
mathematical or transcription error in the adjustment;
provided that the notice identifies the error with
specificity; and

(2) the commission determines that the
calculation of the adjustment is unlikely to provide for
timely payment, or is likely to result in a material
overpayment, of scheduled principal of and interest on the
energy transition bonds and the payment and recovery of other
financing costs in accordance with the financing order and,
based on that determination, suspends operation of the
adjustment, pending a hearing limited to the issue of the
error in the adjustment; provided that the suspension shall
be for a period not to exceed sixty days from the date the
qualifying utility filed the calculation of the adjustment.

G. If the commission determines that a hearing is
necessary, the commission shall hold a hearing on the
proposed adjustment that shall be limited to determining
whether there is a mathematical or transcription error in the
calculation of the adjustment. If, after a hearing, the
commission determines that the calculation of the adjustment
contains a mathematical or transcription error, the
commission shall issue an order that rejects and corrects the
adjustment. The qualifying utility shall adjust the energy

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transition charge in accordance with the commission's
calculation within five days from issuance of the order. If
the commission does not issue an order rejecting the
adjustment with a determination of the corrected calculation
within sixty days from the date the qualifying utility filed
the adjustment, the adjustment to the energy transition
charge shall be deemed approved.

H. No adjustment pursuant to this section, and no
proceeding held pursuant to this section, shall affect the
irrevocability of the financing order pursuant to Section 7
of the Energy Transition Act.

SECTION 7. FINANCING ORDER--IRREVOCABILITY--
AMENDMENTS.--

A. A financing order is irrevocable and the
commission shall not reduce, impair, postpone or terminate
the energy transition charges approved in the financing
order, the energy transition property or the collection or
recovery of energy transition revenues.

B. Subject to the limitation provided in
Subsection A of this section, a financing order may be
amended at the request of the qualifying utility to commence
a proceeding and issue an amended financing order that:

(1) provides for refinancing, retiring or
refunding all or a portion of an outstanding series of energy
transition bonds issued pursuant to the original financing
order; provided that the commission includes in the amended
financing order the findings and requirements specified in
Section 5 of the Energy Transition Act; or

(2) adjusts the amount of energy transition
costs to be financed by energy transition bonds that have not
yet been issued to reflect updated estimated or actual costs
that differ from costs estimated at the time of the initial
financing order or to correct any errors.

C. The commission shall issue an order granting or
denying the proposed amended financing order within thirty
days of the filing of the request by the qualifying utility.

No change in the credit rating of a qualifying utility from
the credit rating at the time of issuance of a financing
order shall impair the irrevocability of a financing order.

SECTION 8. AGGRIEVED PARTIES--REQUEST FOR REHEARING--
JUDICIAL REVIEW.--

A. A financing order shall be issued as a separate
order from any other order issued by the commission on a
requested approval in the application proceeding and is a
final order of the commission. A party aggrieved by the
issuance of a financing order may apply to the commission for
a rehearing in accordance with Section 62-10-16 NMSA 1978;
provided that such application shall be due no later than ten
calendar days after issuance of the financing order. An
application for rehearing shall be deemed denied if not acted
upon by the commission within ten calendar days after the filing of the application.

B. An aggrieved party may file a notice of appeal with the supreme court in accordance with Section 62-11-1 NMSA 1978; provided that such notice shall be due no later than ten calendar days after denial of an application for rehearing or, if rehearing is not applied for, no later than ten calendar days after issuance of the financing order. The supreme court shall proceed to hear and determine the appeal as expeditiously as practicable.

SECTION 9. CONDITIONS THAT KEEP FINANCING ORDERS IN EFFECT AND ENERGY TRANSITION CHARGES IMPOSED.--

A. A financing order shall remain in effect until the energy transition bonds issued pursuant to the financing order and any related financing costs have been paid in full.

B. A financing order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization or insolvency of the qualifying utility or any non-utility affiliate or the commencement of any proceeding for bankruptcy or appointment of a receiver.

C. If energy transition bonds issued pursuant to a financing order are outstanding and the related energy transition costs have not been paid in full, the energy transition charges authorized by the financing order shall be collected by the qualifying utility or its successors or
assignees, or a collection agent, in full through a non-bypassable charge that is a separate line item on customer bills and not a part of the qualifying utility's base rates. The charge shall be paid by all customers:

(1) receiving electric delivery service from the qualifying utility under commission-approved rate schedules or special contracts; and

(2) who acquire electricity from an alternative or subsequent electricity supplier in the utility service area, to the extent that such acquisition is permitted by New Mexico law.

SECTION 10. QUALIFYING UTILITY DUTIES.--

A. Except as provided in Section 16 of the Energy Transition Act, a qualifying utility that is abandoning a qualifying generating facility shall use the proceeds of the issuance of energy transition bonds only for purposes related to providing utility service to customers and to pay financing costs.

B. Energy transition revenues shall be applied solely to the repayment of energy transition bonds and the ongoing financing costs.

C. The failure of a qualifying utility to comply with any provision of the Energy Transition Act shall not invalidate, impair or affect a financing order, energy transition property, energy transition charge or energy
transition bonds and financing costs. Payments to bondholders or financing parties on the energy transition bonds shall be made on a quarterly or semiannual basis pursuant to the terms of the energy transition bonds.

D. For a qualifying utility that receives approval of a financing order and issues sources of energy transition bonds, the qualifying utility's generation and sources of energy procured pursuant to power purchase agreements with a term of twenty-four months or longer, and that are dedicated to serve the qualifying utility's retail customers, shall not emit, on average, more than four hundred pounds of carbon dioxide per megawatt-hour by January 1, 2023, and not more than two hundred pounds of carbon dioxide per megawatt-hour by January 1, 2032 and thereafter. Compliance shall be measured and verified every three years with the first period commencing on January 1, 2023. The commission shall adopt rules to implement the requirements of this subsection.

SECTION 11. COMMISSION TREATMENT OF ENERGY TRANSITION BONDS.--

A. If the commission issues a financing order, the commission shall not treat:

(1) energy transition bonds issued pursuant to the financing order as debt of the qualifying utility;

(2) the energy transition charges paid under the financing order as revenue of the qualifying utility; or
(3) the energy transition costs to be financed by energy transition bonds as costs of the qualifying utility.

B. Reasonable actions taken by a qualifying utility to comply with the financing order shall be deemed to be just and reasonable for ratemaking purposes. Nothing in the Energy Transition Act shall:

(1) prevent or preclude the commission from investigating the compliance of a qualifying utility with the terms and conditions of a financing order and requiring compliance therewith;

(2) prevent or preclude the commission from imposing regulatory sanctions against a qualifying utility for failure to comply with the terms and conditions of a financing order or the requirements of the Energy Transition Act;

(3) affect the authority of the commission to apply the adjustment mechanism as provided in Section 6 of the Energy Transition Act; or

(4) prevent or preclude the commission from including the qualifying utility's acquisition of replacement power resources in the qualifying utility's cost of service.

C. The commission shall not order or require a qualifying utility to issue energy transition bonds to finance any costs associated with abandonment of a qualifying
generating facility. A utility's decision not to issue energy transition bonds shall not be a basis for the commission to refuse to allow a qualifying utility to recover energy transition costs in an otherwise permissible fashion, or as a basis to refuse or condition authorization to issue securities pursuant to Sections 62-6-6 and 62-6-7 NMSA 1978.

SECTION 12. ENERGY TRANSITION PROPERTY--ENERGY TRANSITION REVENUES.--

A. Energy transition property that is created in a financing order shall constitute an existing, present property right, notwithstanding that the imposition and collection of energy transition charges depend on the qualifying utility continuing to provide electric energy or continuing to perform its service functions relating to the collection of energy transition charges or on the level of future energy consumption. Energy transition property shall exist whether or not the energy transition revenues have been billed, have accrued or have been collected and notwithstanding that the value or amount of the energy transition property is dependent on the future provision of electric energy or service to customers by the qualifying utility.

B. All energy transition property created in a financing order shall continue to exist until the energy transition bonds issued and all related financing costs
pursuant to a financing order are paid in full.

C. All or any portion of energy transition property created in a financing order may be transferred, sold, conveyed or assigned to a non-utility affiliate that is:

(1) wholly owned, directly or indirectly, by the qualifying utility; and

(2) created for the limited purposes of acquiring, owning or administering energy transition property or issuing energy transition bonds under the financing order.

D. All or any portion of energy transition property may be pledged to secure the payment of energy transition bonds and all financing costs.

E. The formation by a qualifying utility of a non-utility affiliate for the purposes of acquiring, owning or administering energy transition property, issuing energy transition bonds pursuant to a financing order and transacting a transfer, sale, conveyance, assignment, grant of a security interest in or pledge of energy transition property by a qualifying utility to a non-utility affiliate, to the extent previously authorized in a financing order, does not require any further approval of the commission and shall not be subject to the rules of the commission regarding Class I transactions and Class II transactions, as defined by Section 62-3-3 NMSA 1978, except that the commission may
examine the books and records of the non-utility affiliate.

F. If a qualifying utility defaults on any required payment of energy transition bonds, a court with jurisdiction in the matter, on application by an interested party and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the energy transition revenues for the benefit of bondholders, any assignees or financing parties. The order shall remain in full force and effect notwithstanding any bankruptcy, reorganization or other insolvency or receivership proceedings with respect to the qualifying utility or any non-utility affiliate.

G. Energy transition property, energy transition revenues and the interests of an assignee, bondholder or financing party in energy transition property and energy transition revenues are not subject to set-off, counterclaim, surcharge or defense by the qualifying utility or any other person or in connection with the bankruptcy, reorganization or other insolvency or receivership proceeding of the qualifying utility, non-utility affiliate or any other entity.

H. Any successor to a qualifying utility shall be bound by the requirements of the Energy Transition Act and shall perform and satisfy all obligations of, and have the same rights under a financing order as, the qualifying utility.
utility under the financing order in the same manner and to
the same extent as the qualifying utility, including the
obligation to collect and pay energy transition revenues to
persons entitled to receive the revenues.

SECTION 13. SECURITY INTERESTS--CREATION OF SECURITY
INTEREST--PRIORITY OVER OTHER LIENS--ATTACHMENT ON FILING
WITH SECRETARY OF STATE.--

A. Except as otherwise provided in this section,
the creation, perfection and enforcement of a security
interest in energy transition property to secure the
repayment of the principal of and interest on energy
transition bonds, amounts payable pursuant to an ancillary
agreement and other financing costs are governed by this
section. This section shall be deemed to supersede the
provisions of the Uniform Commercial Code and Chapter 62,
Article 13 NMSA 1978, to the extent those provisions are
inconsistent with this section.

B. The description or reference to energy
transition property in a transfer or security agreement and a
financing statement is sufficient only if the description or
reference refers to the Energy Transition Act and the
financing order creating the energy transition property.
This section applies to all purported transfers of, grants of
liens on or security interests in, energy transition
property.
C. A security interest in energy transition property is created, valid and binding at the latest of when:
   (1) the financing order is issued;
   (2) a security agreement is executed and delivered; or
   (3) value is received for the energy transition bonds.

D. The security interest attaches without any physical delivery of collateral or other act and the lien of the security interest shall be valid, binding and perfected against all parties having claims of any kind against the person granting the security interest, regardless of whether such parties have notice of the lien, on the filing of a financing statement with the secretary of state. The secretary of state shall maintain the financing statement in the same manner and in the same recordkeeping system maintained for financing statements filed pursuant to the Uniform Commercial Code-Secured Transactions. Financing statements filed pursuant to this section shall be effective until a termination statement is filed.

E. A security interest in energy transition property is a continuously perfected security interest and has priority over any other lien that may subsequently attach to the energy transition property unless the holder of the security interest has agreed in writing otherwise.
F. The priority of a security interest in energy transition property is not affected by the commingling of energy transition revenues with other funds. Any pledgee or secured party shall have a perfected security interest in the amount of all energy transition revenues that are deposited in any account of the qualifying utility and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party.

G. No order of the commission amending a financing order and no application of the adjustment mechanism shall affect the validity, perfection or priority of a security interest in or transfer of energy transition property.

SECTION 14. SALE OF ENERGY TRANSITION PROPERTY--PERFECTING INTERESTS--ABSOLUTE TRANSFER AND TRUE SALE REQUIREMENTS.--

A. Any sale, assignment or transfer of energy transition property to an assignee that is a financing entity that is wholly owned, directly or indirectly, by the utility shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title and interest in, to and under the energy transition property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A transfer of an interest in energy
transition property shall be created when:

(1) the financing order creating the energy transition property has become effective;
(2) the documents evidencing the transfer of energy transition property have been executed and delivered to the assignee; and
(3) value is received.

B. On the filing of a financing statement with the secretary of state pursuant to Subsection D of Section 13 of the Energy Transition Act, a transfer of an interest in energy transition property shall be perfected against all third persons, except creditors holding a prior security interest, ownership interest or assignment in the energy transition property previously perfected in accordance with Section 13 of that act.

C. The characterization of the sale, assignment or transfer as an absolute transfer and true sale, and the corresponding characterization of the property interest of the purchaser, shall not be affected or impaired by:

(1) commingling of energy transition revenues with other funds;
(2) the retention by the seller of:
   (a) a partial or residual interest, including an equity interest, in the energy transition property, whether direct or indirect, or whether subordinate
or otherwise; or

(b) the right to recover costs

associated with taxes or license fees imposed on the

collection of energy transition revenues;

(3) any recourse that the purchaser may have

against the seller;

(4) any indemnification rights, obligations

or repurchase rights made or provided by the seller;

(5) the obligation of the seller to collect

energy transition revenues on behalf of an assignee;

(6) the treatment of the sale, assignment or

transfer of energy transition property for tax, financial

reporting or other purposes;

(7) any subsequent order of the commission

amending a financing order pursuant to Subsection B of

Section 7 of the Energy Transition Act;

(8) any use of an adjustment mechanism

approved in the financing order; or

(9) anything else that might affect or

impair the characterization of the property.

SECTION 15. FEE ASSESSMENTS.--The energy transition

charge stated as a separate line entry on a customer bill

sent by a qualifying utility may be subject to an assessment

of a franchise fee imposed by a municipality, county or other

political subdivision of the state, pursuant to a utility
franchise agreement. The imposition, collection and receipt
of an energy transition charge is exempt from inspection and
supervision fees assessed pursuant to the Public Utility Act.

SECTION 16. ENERGY TRANSITION INDIAN AFFAIRS FUND--
ENERGY TRANSITION ECONOMIC DEVELOPMENT ASSISTANCE FUND--
ENERGY TRANSITION DISPLACED WORKER ASSISTANCE FUND--COMMUNITY
ADVISORY COMMITTEE.--

A. The "energy transition Indian affairs fund" is
created in the state treasury. The fund shall consist of
appropriations, gifts, grants, donations and bequests made to
the fund. Income from the fund shall be credited to the
fund, and money in the fund shall not revert or be
transferred to any other fund at the end of a fiscal year.

B. The Indian affairs department shall administer
the energy transition Indian affairs fund, and money in the
fund is subject to appropriation by the legislature only to
that department to assist in addressing the conditions and
issues of tribes and native peoples in the affected
community.

C. The Indian affairs department shall develop an
Indian affairs assistance plan to assist tribal and native
people in the affected community that shall provide for the
disbursement of money in the energy transition Indian affairs
fund. In developing the plan, the Indian affairs department
shall establish a public planning process in the affected
community to inform the use of money in the fund. The Indian affairs department shall engage in consultation with Indian nations, tribes and pueblos in the affected community pursuant to the State-Tribal Collaboration Act. The public planning process shall include at least three public meetings in the affected community. Expenditures from the fund shall be made after completion of the plan and as follows:

1. to an entity approved by the Indian affairs department to receive funds for any program established at the Indian affairs department; and
2. to tribal governments, public agencies or private persons to provide services and facilities in the affected community for promoting the welfare of Indian people.

D. The "energy transition economic development assistance fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

E. The economic development department shall administer the energy transition economic development assistance fund, and money in the fund is subject to appropriation by the legislature only to that department to
assist in diversifying and promoting the affected community's economy by fostering economic development opportunities unrelated to fossil fuel development or use.

F. The economic development department shall develop an economic diversification and development plan to assist the affected community that shall provide for the disbursement of money in the energy transition economic development assistance fund. In developing the plan, the economic development department shall request recommendations from the affected community's community advisory committee pursuant to Subsection K of this section and establish a public input process in the affected community to inform the use of money in the fund. The economic development department shall engage in consultation with Indian nations, tribes and pueblos in the affected area pursuant to the State-Tribal Collaboration Act. The public input process shall include at least three public meetings in the affected community. Expenditures from the fund shall be made pursuant to the plan and as follows:

(1) to an entity approved by the economic development department to receive funds for any program established at the economic development department;

(2) to assist employers to qualify for any tax relief for hiring displaced workers established under state or federal law; and
(3) to a municipality, county, Indian
nation, pueblo or tribe or land grant community in New Mexico
for programs designed to promote economic development in the
affected community.

G. The "energy transition displaced worker
assistance fund" is created in the state treasury. The fund
shall consist of appropriations, gifts, grants, donations and
bequests made to the fund. Income from the fund shall be
credited to the fund, and money in the fund shall not revert
or be transferred to any other fund at the end of a fiscal
year.

H. The workforce solutions department shall
administer the energy transition displaced worker assistance
fund, and money in the fund is subject to appropriation by
the legislature only to that department to assist displaced
workers in an affected community.

I. The workforce solutions department shall
develop a displaced worker development plan to assist
displaced workers in an affected community that shall provide
for the disbursement of money in the energy transition
displaced worker assistance fund. In developing the plan,
the workforce solutions department shall request
recommendations from the affected community's community
advisory committee pursuant to Subsection K of this section
and establish a public input process in the affected
community to inform the use of money in the energy transition
displaced worker assistance fund. The workforce solutions
department shall engage in consultation with Indian nations,
tribes and pueblos in the affected area pursuant to the
State-Tribal Collaboration Act. The public input process
shall include at least three public meetings in the affected
community. Expenditures from the energy transition displaced
worker assistance fund shall be made pursuant to the plan and
as follows:

(1) to assist employers of displaced workers
to qualify for any tax relief established under state or
federal law;

(2) to the workforce solutions department:
   (a) to provide assistance to displaced
   workers using any program established at that department; and
   (b) for payment of costs associated
   with displaced workers enrolling and participating in
   certified apprenticeship programs in New Mexico; and

(3) to a municipality, county, Indian
nation, pueblo or tribe or land grant community in New Mexico
for job training and apprenticeship programs for displaced
workers or for programs designed to promote economic
development in the affected community.

J. Within thirty days of receipt of energy
transition bond proceeds, a qualifying generating facility
located in New Mexico shall transfer the following percentages of the financed amount of energy transition bonds as follows:

(1) one-half percent to the Indian affairs department for deposit in the energy transition Indian affairs fund;

(2) one and sixty-five hundredths percent to the economic development department for deposit in the energy transition economic development assistance fund; and

(3) three and thirty-five hundredths percent to the workforce solutions department for deposit in the energy transition displaced worker assistance fund.

K. In each affected community, a community advisory committee shall be convened. All meetings of the community advisory committee shall be held pursuant to the Open Meetings Act. The secretaries of Indian affairs, economic development and workforce solutions shall appoint three conveners who reside in the affected community, at least one from each major political party and one representing one of the Navajo Nation chapter houses in the affected community. The conveners shall appoint members of the community advisory committee to include a member from each municipality, county, Indian nation, pueblo, tribe and land grant community, if any, in the affected community, at least four appointees representing diverse economic and
cultural perspectives of the affected community and one
appointee representing displaced workers in the affected
community. Within sixty days of a request by the economic
development department pursuant to Subsection F of this
section, or the workforce solutions department pursuant to
Subsection I of this section, a community advisory committee
shall provide recommendations to the requesting department on
the use of available funds intended for the affected
community.

L. As used in this section:

(1) "affected community" means a New Mexico
county located within one hundred miles of a New Mexico
facility producing electricity that closes, resulting in at
least forty displaced workers; and

(2) "displaced worker" means a New Mexico
resident who:

(a) within the previous twelve months,
was terminated from employment, or whose contract was
terminated, due to the abandonment of a New Mexico facility
producing electricity that resulted in displacing at least
forty workers;

(b) had at least seventy-five percent
of the resident's net income, as that term is defined in the
Income Tax Act, from the employment or contract described in
Subparagraph (a) of this paragraph;
(c) has not been able to replace the lost wages described in Subparagraph (b) of this paragraph or whose annual wages are at least twenty-five percent less than when the qualifying facility was operating; and

(d) does not qualify to take full benefits pursuant to a pension or retirement plan.

SECTION 17. ENERGY TRANSITION BONDS NOT PUBLIC DEBT.--Energy transition bonds issued pursuant to the Energy Transition Act shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state. Bondholders shall have no right to have taxes levied by the legislature or the taxing authority of any county, municipality or other political subdivision of this state for the payment of the principal of or interest on energy transition bonds. The issuance of energy transition bonds does not obligate the state or a political subdivision of the state to levy any tax or make any appropriation for payment of the principal of or interest on the bonds.

SECTION 18. ENERGY TRANSITION BONDS AS LEGAL INVESTMENTS.--Energy transition bonds shall be legal investments for all governmental units, permanent funds of the state, finance authorities, financial institutions, insurance companies, fiduciaries and other persons requiring statutory authority regarding legal investments.
SECTION 19. STATE PLEDGE NOT TO IMPAIR.--

A. The state pledges to and agrees with the bondholders, any assignee and any financing parties that the state shall not take or permit any action that impairs the value of energy transition property, except as allowed pursuant to Section 6 of the Energy Transition Act, or reduces, alters or impairs energy transition charges that are imposed, collected and remitted for the benefit of the bondholders, any assignee and any financing parties, until the entire principal of, interest on and redemption premium on the energy transition bonds, all financing costs and all amounts to be paid to an assignee or financing party under an ancillary agreement are paid in full and performed in full.

B. Any person who issues energy transition bonds is permitted to include the pledge specified in Subsection A of this section in the energy transition bonds, ancillary agreements and documentation related to the issuance and marketing of the energy transition bonds.

SECTION 20. CHOICE OF LAW.--The laws of the state of New Mexico as set forth in the Energy Transition Act shall govern the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right of creation of a security interest in energy transition property, an energy transition charge or a financing order.
SECTION 21. CONFLICTS.--In the event of any conflict between the Energy Transition Act and any other law regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any security interest in or transfer of energy transition property, the Energy Transition Act shall govern to the extent of the conflict.

SECTION 22. VALIDITY ON ACTIONS IF ACT HELD INVALID.--Effective on the date that energy transition bonds are first issued under the Energy Transition Act, if any provision of that act is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect the validity of any action allowed pursuant to that act that is taken by the commission, a qualifying utility, an assignee or any other person, a collection agent, a financing party, a bondholder or a party to an ancillary agreement and, to prevent the impairment of energy transition bonds issued or authorized in a financing order issued pursuant to the Energy Transition Act, any such action shall remain in full force and effect with respect to all energy transition bonds issued or authorized in a financing order pursuant to the Energy Transition Act before the date that such provision is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason.

SECTION 23. APPLICABILITY.--The provisions of the Energy Transition Act shall not apply to a qualifying utility
that makes an initial application for a financing order more
than twelve years after the effective date of that act. This
section shall not preclude a qualifying utility for which the
commission has issued a financing order from applying to the
commission for a subsequent order amending the financing
order, pursuant to Section 7 of the Energy Transition Act.

SECTION 24. A new section of the Public Utility Act is
enacted to read:

"REQUIRING THE HIRING OF APPRENTICES FOR THE
CONSTRUCTION OF FACILITIES THAT GENERATE ELECTRICITY.--

A. The construction of New Mexico facilities that
generate electricity for New Mexico retail customers, and
that are not located on the customer side of an electricity
meter, shall be subject to the requirements provided in
Subsection B of this section if the facilities are built as a
result of competitive solicitations issued after July 1,
2020.

B. Subject to availability of qualified
applicants, the construction of facilities that generate
electricity for New Mexico retail customers shall employ
apprentices from an apprenticeship program during the
construction phase of a project at a minimum level of the
following percentages of all persons employed for the
project:

(1) ten percent for projects for which
on-site construction commences beginning January 1, 2020, and
prior to January 1, 2024;

(2) seventeen and one-half percent for
projects for which on-site construction commences beginning
January 1, 2024, and prior to January 1, 2026; and

(3) twenty-five percent for projects
for which on-site construction commences beginning
January 1, 2026.

C. Apprenticeship programs used for purposes of
this section shall encourage diversity among participants,
participation by those underrepresented in the industry
associated with that apprenticeship program and participation
from disadvantaged communities, as determined by the
workforce solutions department. The department shall
promulgate rules to ensure compliance with this section.

D. As used in this section, "apprenticeship
program" means an apprenticeship program registered pursuant
to the Apprenticeship Assistance Act."

SECTION 25. Section 62-9-1 NMSA 1978 (being Laws 1941,
Chapter 84, Section 46, as amended) is amended to read:

"62-9-1. NEW CONSTRUCTION--RATEMAKING PRINCIPLES.--

A. No public utility shall begin the construction
or operation of any public utility plant or system or of any
extension of any plant or system without first obtaining from
the commission a certificate that public convenience and
necessity require or will require such construction or operation. This section does not require a public utility to secure a certificate for an extension within any municipality or district within which it lawfully commenced operations before June 13, 1941 or for an extension within or to territory already served by it, necessary in the ordinary course of its business, or for an extension into territory contiguous to that already occupied by it and that is not receiving similar service from another utility. If any public utility or mutual domestic water consumer association in constructing or extending its line, plant or system unreasonably interferes or is about to unreasonably interfere with the service or system of any other public utility or mutual domestic water consumer association rendering the same type of service, the commission, on complaint of the public utility or mutual domestic water consumer association claiming to be injuriously affected, may, upon and pursuant to the applicable procedure provided in Chapter 62, Article 10 NMSA 1978, and after giving due regard to public convenience and necessity, including reasonable service agreements between the utilities, make an order and prescribe just and reasonable terms and conditions in harmony with the Public Utility Act to provide for the construction, development and extension, without unnecessary duplication and economic waste.
B. If a certificate of public convenience and necessity is required pursuant to this section for the construction or extension of a generating plant or transmission lines and associated facilities, a public utility may include in the application for the certificate a request that the commission determine the ratemaking principles and treatment that will be applicable for the facilities that are the subject of the application for the certificate. If such a request is made, the commission shall, in the order granting the certificate, set forth the ratemaking principles and treatment that will be applicable to the public utility's stake in the certified facilities in all ratemaking proceedings on and after such time as the facilities are placed in service. The commission shall use the ratemaking principles and treatment specified in the order in all proceedings in which the cost of the public utility's stake in the certified facilities is considered. If the commission later decertifies the facilities, the commission shall apply the ratemaking principles and treatment specified in the original certification order to the costs associated with the facilities that were incurred by the public utility prior to decertification.

C. The commission may approve the application for the certificate without a formal hearing if no protest is filed within sixty days of the date that notice is given,
pursuant to commission order, that the application has been
filed. The commission shall issue its order granting or
denying the application within nine months from the date the
application is filed with the commission. Failure to issue
its order within nine months is deemed to be approval and
final disposition of the application; provided, however, that
the commission may extend the time for granting approval for
an additional six months for good cause shown.

D. In an application for a certificate of public
convenience and necessity for an energy storage system, the
commission shall approve energy storage systems that:

(1) reduce costs to ratepayers by avoiding
or deferring the need for investment in new generation and
for upgrades to systems for the transmission and distribution
of energy;

(2) reduce the use of fossil fuels for
meeting demand during peak load periods and for providing
ancillary services;

(3) assist with ensuring grid reliability,
including transmission and distribution system stability,
while integrating sources of renewable energy into the grid;

(4) support diversification of energy
resources and enhance grid security;

(5) reduce greenhouse gases and other air
pollutants resulting from power generation;
provide the public utility with the discretion, subject to applicable laws and rules, to operate, maintain and control energy storage systems so as to ensure reliable and efficient service to customers; and

(7) are the most cost effective among feasible alternatives.

E. As used in this section:

(1) "energy storage system" means methods and technologies used to store electricity; and

(2) "mutual domestic water consumer association" means an association created and organized pursuant to the provisions of:

(a) Laws 1947, Chapter 206; Laws 1949, Chapter 79; or Laws 1951, Chapter 52; or

(b) the Sanitary Projects Act."

SECTION 26. Section 62-15-34 NMSA 1978 (being Laws 2007, Chapter 4, Section 1, as amended by Laws 2014, Chapter 24, Section 1, and by Laws 2014, Chapter 25, Section 1) is amended to read:

"62-15-34. RENEWABLE PORTFOLIO STANDARD.--

A. Except as provided in Subsection E of this section, each distribution cooperative organized under the Rural Electric Cooperative Act shall meet the renewable portfolio standard requirements, as provided in this section, to include renewable energy in its electric energy supply
portfolio as demonstrated by its retirement of renewable energy certificates. Requirements and targets of the renewable portfolio standard are as follows:

   (1) no later than January 1, 2015, renewable energy shall comprise no less than five percent of each distribution cooperative's total retail sales to New Mexico customers;

   (2) the renewable portfolio standard shall increase by one percent per year thereafter until January 1, 2020, at which time the renewable portfolio standard shall be ten percent of the distribution cooperative's total retail sales to New Mexico customers;

   (3) a distribution cooperative shall have the following targets and requirements for renewable energy and zero carbon resources as a percentage of the distribution cooperative's total retail sales in New Mexico:

       (a) a requirement of forty percent renewable energy by January 1, 2025;

       (b) a requirement of fifty percent renewable energy by January 1, 2030; and

       (c) a target of achieving the zero carbon resource standard by January 1, 2050, composed of at least eighty percent renewable energy; provided that: 1) achieving the target is technically feasible; 2) the rural electric cooperative is able to provide reliable electric
service while implementing the target; and 3) implementing
the target shall not cause electric service to become
unaffordable; and

(4) renewable energy resources that are in
a distribution cooperative's energy supply portfolio on
January 1, 2008 shall be counted in determining compliance
with this section.

B. By April 30 of each year, a distribution
cooperative shall file with the public regulation commission
a report on its purchases and generation of renewable energy
during the preceding calendar year. The report shall include
the cost of the renewable energy resources purchased and
generated by the distribution cooperative to meet the
renewable portfolio standard, an explanation of steps taken
to minimize those costs, including competitive procurement
and comparison of the price of electricity from renewable
energy resources in the bids received by the distribution
cooperative to recent prices for such electricity elsewhere
in the southwestern United States, and an annual compliance
plan for meeting the renewable portfolio standard for the
following three years.

C. If, in any given year, a distribution
cooperative determines that the average annual levelized cost
of renewable energy that would need to be procured or
generated for purposes of compliance with the renewable

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portfolio standard would be greater than sixty dollars ($60.00) per megawatt-hour at the point of interconnection of the renewable energy resource with the transmission system, adjusted for inflation after 2020, the distribution cooperative shall not be required to incur that excess cost; provided that the existence of this condition excusing performance in any given year shall not operate to delay compliance with the renewable portfolio standard in subsequent years. The provisions of this subsection do not preclude a distribution cooperative from accepting a project with a cost that would exceed sixty dollars ($60.00) per megawatt-hour.

D. A distribution cooperative shall report to its membership a summary of its purchases and generation of renewable energy during the preceding calendar year.

E. A distribution cooperative organized pursuant to the Rural Electric Cooperative Act shall meet the requirements and targets of the renewable portfolio standard pursuant to Subsection A of this section as demonstrated by the cooperative's retirement of renewable energy certificates associated with energy assigned to the cooperative; provided that a generation and transmission cooperative referred to in Section 62-6-4 NMSA 1978 shall be responsible for meeting the requirements and targets for all energy supplied to the distribution cooperatives in New Mexico. Energy from
renewable energy and zero carbon resources that a generation
and transmission cooperative supplies in compliance with the
requirements and targets shall be verified at the point where
the generation and transmission cooperative produces or takes
delivery of the energy on behalf of the distribution
cooperatives that the generation and transmission cooperative
is serving."

SECTION 27. Section 62-15-37 NMSA 1978 (being Laws
2007, Chapter 4, Section 4, as amended by Laws 2015, Chapter
64, Section 2 and by Laws 2015, Chapter 71, Section 2) is
amended to read:

"62-15-37. DEFINITIONS--ENERGY EFFICIENCY--RENEWABLE
ENERGY.--As used in the Rural Electric Cooperative Act:

A. "energy efficiency" means measures, including
energy conservation measures, or programs that target
consumer behavior, equipment or devices to result in a
decrease in consumption of electricity without reducing the
amount or quality of energy services;

B. "renewable energy" means electric energy
generated by use of renewable energy resources and delivered
to a rural electric cooperative;

C. "renewable energy certificate" means a
certificate or other record, in a format approved by the
public regulation commission, that represents all the
environmental attributes from one megawatt-hour of
electricity generated from renewable energy;

D. "renewable energy resource" means electric or useful thermal energy:

(1) generated by use of the following energy resources, with or without energy storage and delivered to a rural electric cooperative:

(a) solar, wind and geothermal;

(b) hydropower facilities brought in service on or after July 1, 2007;

(c) other hydropower facilities supplying no greater than the amount of energy from hydropower facilities that were part of an energy supply portfolio prior to July 1, 2007;

(d) fuel cells that do not use fossil fuels to create electricity;

(e) biomass resources, limited to agriculture or animal waste, small diameter timber, not to exceed eight inches, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico; provided that these resources are from facilities certified by the energy, minerals and natural resources department to: 1) be of appropriate scale to have sustainable feedstock in the near vicinity; 2) have zero life cycle carbon emissions; and 3) meet scientifically determined restoration, sustainability and soil nutrient principles; and
(f) landfill gas and anaerobically
digested waste biomass; and

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

E. "useful thermal energy" means renewable energy
delivered from a source that can be metered and that is
delivered in the state to an end user in the form of direct
heat, steam or hot water or other thermal form that is used
for heating, cooling, humidity control, process use or other
valid end-use energy requirements and for which fossil fuel
or electricity would otherwise be consumed;

F. "zero carbon resource" means an electricity
generation resource that emits no carbon dioxide into the
atmosphere, or that reduces methane emitted into the
atmosphere in an amount equal to no less than one-tenth of
the tons of carbon dioxide emitted into the atmosphere, as a
result of electricity production; and

G. "zero carbon resource standard" means providing
New Mexico rural electric cooperative retail customers with
electricity generated from one hundred percent zero carbon
resources."

SECTION 28. Section 62-16-3 NMSA 1978 (being Laws 2004,
Chapter 65, Section 3, as amended) is amended to read:

"62-16-3. DEFINITIONS.--As used in the Renewable Energy
Act:
A. "commission" means the public regulation commission;

B. "energy storage" means batteries or other means by which energy can be retained and delivered as electricity for use at a later time;

C. "municipality" means a municipal corporation, organized under the laws of the state, and H class counties;

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

E. "reasonable cost threshold" means an average annual levelized cost of sixty dollars ($60.00) per megawatt-hour at the point of interconnection of the renewable energy resource with the transmission system, adjusted for inflation after 2020;

F. "renewable energy" means electric energy generated by use of renewable energy resources and delivered to a public utility;

G. "renewable energy certificate" means a certificate or other record, in a format approved by the commission, that represents all the environmental attributes from one megawatt-hour of electricity generated from renewable energy;

H. "renewable energy resource" means the following
energy resources, with or without energy storage:

(1) solar, wind and geothermal;

(2) hydropower facilities brought in service on or after July 1, 2007;

(3) biomass resources, limited to agriculture or animal waste, small diameter timber, not to exceed eight inches, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico; provided that these resources are from facilities certified by the energy, minerals and natural resources department to:

(a) be of appropriate scale to have sustainable feedstock in the near vicinity;

(b) have zero life cycle carbon emissions; and

(c) meet scientifically determined restoration, sustainability and soil nutrient principles;

(4) fuel cells that do not use fossil fuels to create electricity; and

(5) landfill gas and anaerobically digested waste biogas;

I. "renewable portfolio standard" means the minimum percentage of retail sales of electricity by a public utility to electric consumers in New Mexico that is required by the Renewable Energy Act to be from renewable energy;
J. "renewable purchased power agreement" means an agreement that binds an entity generating power from renewable energy resources to provide power at a specified price and binds the purchaser to that price;

K. "zero carbon resource" means an electricity generation resource that emits no carbon dioxide into the atmosphere, or that reduces methane emitted into the atmosphere in an amount equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere, as a result of electricity production; and

L. "zero carbon resource standard" means providing New Mexico public utility customers with electricity generated from one hundred percent zero carbon resources."

SECTION 29. 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 portfolio as demonstrated by its retirement of renewable energy certificates; provided that the associated renewable energy is delivered to the public utility and assigned to the public utility's New Mexico customers. For public utilities other than rural electric cooperatives and municipalities, requirements of the renewable portfolio standard are:
(1) no later than January 1, 2015, renewable energy shall comprise no less than fifteen percent of each public utility's total retail sales to New Mexico customers;

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

(3) no later than January 1, 2025, renewable energy shall comprise no less than forty percent of each public utility's total retail sales of electricity to New Mexico customers;

(4) no later than January 1, 2030, renewable energy shall comprise no less than fifty percent of each public utility's total retail sales of electricity to New Mexico customers;

(5) no later than January 1, 2040, renewable energy resources shall supply no less than eighty percent of all retail sales of electricity in New Mexico; provided that compliance with this standard until December 31, 2047 shall not require the public utility to displace zero carbon resources in the utility's generation portfolio on the effective date of this 2019 act; and

(6) no later than January 1, 2045, zero carbon resources shall supply one hundred percent of all retail sales of electricity in New Mexico. Reasonable and consistent progress shall be made over time toward this
requirement.

B. In administering the standards required by Paragraphs (5) and (6) of Subsection A of this section, the commission shall:

   (1) not jeopardize the operation of a sewage treatment facility that captures and combuts methane gas in the facility's operations;

   (2) maintain and protect the safety, reliable operation and balancing of loads and resources on the electric system;

   (3) prevent unreasonable impacts to customer electricity bills, taking into consideration the economic and environmental costs and benefits of renewable energy resources and zero carbon resources;

   (4) prevent carbon dioxide emitting electricity-generating resources from being reassigned, redesignated or sold as a means of complying with the standard;

   (5) in consultation with the energy, minerals and natural resources department, undertake programs not prohibited by law to achieve the standard;

   (6) in consultation with the department of environment, ensure that the standard does not result in material increases to greenhouse gas emissions from entities not subject to commission oversight and regulation; and
(7) in consultation with electricity transmission system operators responsible for balancing New Mexico electricity loads and resources, issue a report to the legislature by July 1, 2020, and each July 1 every four years thereafter. The report shall include:

(a) review of the standard, with a focus on technologies, forecasts, existing transmission, environmental protection, public safety, affordability and electricity transmission and distribution system reliability;

(b) evaluation of the anticipated financial costs and benefits to electric utilities in implementing the standard, including the impacts and benefits to customer electricity bills; and

(c) identification of the barriers to, and benefits of, achieving the standard.

C. Any customer that is a political subdivision of the state, or any educational institution designated in Article 12, Section 11 of the constitution of New Mexico with an enrollment of twenty thousand students or more during the fall semester on its main campus, with consumption exceeding twenty thousand megawatt-hours per year at any single location or facility and that owns facilities that produce renewable energy or hosts such facilities through a renewable purchased power agreement, shall not be charged by the utility for power purchases of one year or less or fuel on
the amount of electricity purchased from the utility equal to the amount of renewable energy produced or hosted by the customer. The customer shall annually certify to the state auditor and notify the commission and the customer's serving electric utility of the amount of renewable energy produced at the customer-owned or customer-hosted facilities that generate renewable energy. The customer shall also certify to the state auditor and notify the commission that the customer will retire all renewable energy certificates associated with the renewable energy produced by those facilities. Any financial benefits as a result of the provisions of this subsection shall accrue to the customer immediately upon the effective date of this 2019 act and shall be reflected in customer bills each month, subject to annual true-up and reconciliation. The provisions of this subsection shall not prevent the utility from recovering all of its reasonable and prudent fuel and purchased power costs.

D. Upon a motion or application by a public utility the commission shall, or upon a motion or application by any other person the commission may, open a docket to develop and provide financial or other incentives to encourage public utilities to produce or acquire renewable energy that exceeds the applicable annual renewable portfolio standard set forth in this section; results in reductions in carbon dioxide emissions earlier than required by Subsection
A of this section; or causes a reduction in the generation of
electricity by coal-fired generating facilities, including
coal-fired generating facilities located outside of
New Mexico. The incentives may include additional earnings
and capital investment opportunities for resources used in
furtherance of the outcomes described in this subsection.

E. If, in any given year, a public utility
determines that the average annual levelized cost of
renewable energy that would need to be procured or generated
for purposes of compliance with the renewable portfolio
standard would be greater than the reasonable cost threshold,
the public utility shall not be required to incur that excess
cost; provided that the existence of this condition excusing
performance in any given year shall not operate to delay
compliance with the renewable portfolio standard in
subsequent years. The provisions of this subsection do not
preclude a public utility from accepting a project with a
cost that would exceed the reasonable cost threshold. When a
public utility can generate or procure renewable energy at or
below the reasonable cost threshold, it shall be required to
do so to the extent necessary to meet the applicable
renewable portfolio standard and shall not be precluded from
exceeding the standard.

F. By September 1, 2007 and until June 30, 2019, a
public utility shall file a report to the commission on its
procurement and generation of renewable energy during the prior calendar year and a procurement plan that includes:

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

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

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

G. By July 1, 2020, and each July 1 thereafter, a public utility shall file a report to the commission on the public utility's procurement and generation of renewable energy since the last report and a procurement plan that includes:

(1) the cost of procurement for new renewable energy required to comply with the renewable portfolio standard;

(2) the capital, operating and fuel costs on a per-megawatt-hour basis during the preceding calendar year of each nonrenewable generation resource rate-based by the utility, or dedicated to the utility through a power purchase agreement of one year or longer, and the nonrenewable
generation resources' carbon dioxide emissions on a per-megawatt-hour basis during that same year;

(3) information, including exhibits, as applicable, that demonstrates that the proposed procurement:

(a) was the result of competitive procurement that included opportunities for bidders to propose purchased power, facility self-build or facility build-transfer options;

(b) has a cost that is reasonable as evidenced by a comparison of the price of electricity from renewable energy resources in the bids received by the public utility to recent prices for comparable energy resources elsewhere in the southwestern United States; and

(c) is in the public interest, considering factors such as overall cost and economic development opportunities; and

(4) strategies used to minimize costs of renewable energy integration, including location, diversity, balancing area activity, demand-side management and load management.

H. The commission shall approve or modify a public utility's procurement plan within ninety days and may approve the plan without a hearing, unless a protest is filed that demonstrates to the commission's reasonable satisfaction that a hearing is necessary. The commission may modify a plan
after notice and hearing. The commission may, for good
cause, extend the time to approve a procurement plan for an
additional ninety days. If the commission does not act
within the ninety-day period, the procurement plan is deemed
approved.

I. The commission may reject a procurement plan
if, within forty days of filing, the commission finds that
the plan does not contain the required information and, upon
the rejection, shall provide the public utility the time
necessary to file a revised plan; provided that the total
amount of renewable energy required to be procured by the
public utility shall not change."

SECTION 30. Section 62-16-5 NMSA 1978 (being Laws 2004,
Chapter 65, Section 5, as amended) is amended to read:

"62-16-5. RENEWABLE ENERGY CERTIFICATES--COMMISSION
DUTIES.--

A. The commission shall establish:

(1) a system of renewable energy
certificates that can be used by a public utility to
establish compliance with the renewable portfolio standard
and that may include certificates that are monitored,
accounted for or transferred by or through a regional system
or trading program for any region in which a public utility
is located; and

(2) requirements and procedures concerning
requirements for renewable energy certificates pursuant to Subsections B and C of this section.

B. Renewable energy certificates:

   (1) are owned by the generator of the renewable energy unless:

       (a) the renewable energy certificates are transferred to the purchaser of the electricity through specific agreement with the generator;

       (b) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the public utility purchaser of the renewable energy; or

       (c) a contract for the purchase of renewable energy is in effect prior to July 1, 2019, in which case the renewable energy certificates are owned by the purchaser of the electricity for the term of such contract, unless otherwise agreed to in a contract approved by the commission;

   (2) may be traded, sold or otherwise transferred by their owner, unless the certificates are from a rate-based public utility plant, in which case the entirety of the renewable energy certificates from that plant shall be retired by the utility on behalf of itself or its customers.

Any contract to purchase renewable energy entered into by a
public utility on or after July 1, 2019 shall include conveyance to the purchasing utility of all renewable energy certificates, and the entirety of those certificates shall be retired by that utility on behalf of itself or its customers or subsequently transferred to a retail customer for retirement under a voluntary program for purchasing renewable energy approved by the commission. A utility shall not claim that it is providing renewable energy from generation resources for which it has traded, sold or transferred the associated renewable energy certificates. The commission shall not disallow the recovery of the cost associated with any expired renewable energy certificate. The public utility shall annually file a report with the commission discussing:

(a) its use, sale, trading or transfer of renewable energy certificates; and

(b) whether and how its public claims of renewable energy generation account for renewable energy certificates that it has traded, sold or transferred;

(3) that are used for the purpose of meeting the renewable portfolio standard shall be registered with a renewable energy generation information system that is designed to create and track ownership of renewable energy certificates and that, through the use of independently audited generation data, verifies the generation and delivery of electricity associated with each renewable energy
certificate and protects against multiple counting of the same renewable energy certificate; and

    (4) may be carried forward for up to four years from the date of issuance to establish compliance with the renewable portfolio standard, after which they shall be deemed retired by the public utility.

    C. A public utility shall be responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources."

SECTION 31. Section 62-16-6 NMSA 1978 (being Laws 2004, Chapter 65, Section 6, as amended) is amended to read:

"62-16-6. COST RECOVERY FOR RENEWABLE ENERGY AND EMISSIONS REDUCTION.--

    A. A public utility that procures or generates renewable energy shall recover, through the rate-making process, the reasonable costs of complying with the renewable portfolio standard. Costs that are consistent with commission approval of procurement plans or transitional procurement plans shall be deemed to be reasonable.

    B. The commission shall not exclude from such cost recovery reasonable interconnection and transmission costs and costs to comply with electric industry reliability standards incurred by the public utility in order to deliver renewable energy to retail New Mexico customers."
C. If a public utility has been granted a certificate of public convenience and necessity prior to January 1, 2015 to construct or operate an electric generation facility and the investment in that facility has been allowed recovery as part of the utility's rate-base, the commission may require the facility to discontinue serving customers within New Mexico if the replacement has less or zero carbon dioxide emissions into the atmosphere; provided that no order of the commission shall disallow recovery of any undepreciated investments or decommissioning costs associated with the facility.

SECTION 32. Section 62-16-7 NMSA 1978 (being Laws 2004, Chapter 65, Section 7) is amended to read:

"62-16-7. COMMISSION--POWERS AND DUTIES--VOLUNTARY PROGRAMS.--

A. The commission:

(1) shall adopt rules regarding the renewable portfolio standard, including a provision for public utility records and reports; and

(2) may require that a public utility offer its retail customers a voluntary program for purchasing renewable energy that is in addition to electricity provided by the public utility pursuant to the renewable portfolio standard, under rates and terms that are approved by the commission."
B. All renewable energy purchased by a retail customer through an approved voluntary program shall:

   (1) have all associated renewable energy certificates retired by the retail customer, or on that customer's behalf, by the public utility, and the certificates shall not be used to meet the public utility's renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978;

   (2) be excluded from the total retail sales to New Mexico customers used to determine the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978; and

   (3) not be subject to charges by the public utility to recover costs of complying with the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978."

SECTION 33. Section 62-16-8 NMSA 1978 (being Laws 2004, Chapter 65, Section 8, as amended) is amended to read:

"62-16-8. RURAL ELECTRIC COOPERATIVE--VOLUNTARY TARIFFS.--

   A. The commission may require that a rural electric cooperative:

   (1) offer its retail customers a voluntary program for purchasing renewable energy under rates and terms that are approved by the commission;
(2) report to the commission the demand for renewable energy pursuant to a voluntary program; and
(3) comply with the requirements for the procurement of renewable energy set forth in the Rural Electric Cooperative Act.

B. The commission shall establish and amend rules and regulations for the implementation of renewable portfolio standards consistent with the Rural Electric Cooperative Act."

SECTION 34. Section 62-16-9 NMSA 1978 (being Laws 2004, Chapter 65, Section 9) is amended to read:

"62-16-9. EXISTING RULES.--The commission shall promulgate rules to implement the provisions of the Renewable Energy Act."

SECTION 35. Section 62-16-10 NMSA 1978 (being Laws 2004, Chapter 65, Section 10) is amended to read:

"62-16-10. FEDERAL REQUIREMENTS.--Renewable energy procured or generated by a public utility to comply with a federal law, rule or regulation may be used to satisfy the required procurements of the Renewable Energy Act."

SECTION 36. Section 74-2-5 NMSA 1978 (being Laws 1967, Chapter 277, Section 5, as amended) is amended to read:

"74-2-5. DUTIES AND POWERS--ENVIRONMENTAL IMPROVEMENT BOARD--LOCAL BOARD.--

A. The environmental improvement board or the
local board shall prevent or abate air pollution.

B. The environmental improvement board or the local board shall:

   (1) adopt, promulgate, publish, amend and repeal rules and standards consistent with the Air Quality Control Act to attain and maintain national ambient air quality standards and prevent or abate air pollution, including:

       (a) rules prescribing air standards, within the geographic area of the environmental improvement board's jurisdiction or the local board's jurisdiction, or any part thereof; and

       (b) standards of performance that limit carbon dioxide emissions to no more than one thousand one hundred pounds per megawatt-hour on and after January 1, 2023 for a new or existing source that is an electric generating facility with an original installed capacity exceeding three hundred megawatts and that uses coal as a fuel source; and

   (2) adopt a plan for the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions within the geographic area of the environmental improvement board's jurisdiction or the local board's jurisdiction or any part thereof.

C. Rules adopted by the environmental improvement board shall prevent or abate air pollution.
board or the local board may:

   (1) include rules to protect visibility in mandatory class I areas to prevent significant deterioration of air quality and to achieve national ambient air quality standards in nonattainment areas; provided that such regulations:

          (a) shall be no more stringent than but at least as stringent as required by the federal act and federal regulations pertaining to visibility protection in mandatory class I areas, pertaining to prevention of significant deterioration and pertaining to nonattainment areas; and

          (b) shall be applicable only to sources subject to such regulation pursuant to the federal act;

   (2) prescribe standards of performance for sources and emission standards for hazardous air pollutants that, except as provided in this subsection and in Subparagraph (b) of Paragraph (1) of Subsection B of this section:

          (a) shall be no more stringent than but at least as stringent as required by federal standards of performance; and

          (b) shall be applicable only to sources subject to such federal standards of performance;

   (3) include regulations governing emissions
from solid waste incinerators that shall be at least as stringent as, and may be more stringent than, any applicable federal emission limitations;

(4) include regulations requiring the installation of control technology for mercury emissions that removes the greater of what is achievable with best available control technology or ninety percent of the mercury from the input fuel for all coal-fired power plants, except for coal-fired power plants constructed and generating electric power and energy before July 1, 2007;

(5) require notice to the department or the local agency of the intent to introduce or permit the introduction of an air contaminant into the air within the geographical area of the environmental improvement board's jurisdiction or the local board's jurisdiction; and

(6) require any person emitting any air contaminant to:

(a) install, use and maintain emission monitoring devices;

(b) sample emissions in accordance with methods and at locations and intervals as may be prescribed by the environmental improvement board or the local board;

(c) establish and maintain records of the nature and amount of emissions;

(d) submit reports regarding the nature
and amounts of emissions and the performance of emission
control devices; and

(e) provide any other reasonable
information relating to the emission of air contaminants.

D. Any regulation adopted pursuant to this section
shall be consistent with federal law, if any, relating to
control of motor vehicle emissions.

E. In making its regulations, the environmental
improvement board or the local board shall give weight it
deems appropriate to all facts and circumstances, including
but not limited to:

(1) character and degree of injury to or
interference with health, welfare, visibility and property;

(2) the public interest, including the
social and economic value of the sources and subjects of air
contaminants; and

(3) technical practicability and economic
reasonableness of reducing or eliminating air contaminants
from the sources involved and previous experience with
equipment and methods available to control the air
contaminants involved."