

1 HOUSE BILL 347

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO UTILITIES; REDUCING THE AVERAGE ANNUAL LEVELIZED  
12 COST OF RENEWABLE ENERGY TO BE PROCURED OR GENERATED TO COMPLY  
13 WITH RENEWABLE PORTFOLIO STANDARDS BY A DISTRIBUTION  
14 COOPERATIVE OR PUBLIC UTILITY; PROVIDING THAT COMPLIANCE WITH  
15 RENEWABLE PORTFOLIO STANDARDS SHALL NOT RESULT IN AN INCREASE  
16 IN RATES TO CUSTOMERS OF MORE THAN A CERTAIN PERCENTAGE.  
17

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

19 **SECTION 1.** Section 62-15-34 NMSA 1978 (being Laws 2007,  
20 Chapter 4, Section 1, as amended) is amended to read:

21 "62-15-34. RENEWABLE PORTFOLIO STANDARD.--

22 A. Except as provided in Subsection E of this  
23 section, each distribution cooperative organized under the  
24 Rural Electric Cooperative Act shall meet the renewable  
25 portfolio standard requirements, as provided in this section,

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1 to include renewable energy in its electric energy supply  
2 portfolio as demonstrated by its retirement of renewable energy  
3 certificates. Requirements and targets of the renewable  
4 portfolio standard are as follows:

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

9 ~~(2) the renewable portfolio standard shall~~  
10 ~~increase by one percent per year thereafter until] (1) on and~~  
11 ~~after~~ January 1, 2020, ~~[at which time]~~ the renewable portfolio  
12 standard shall be ten percent of the distribution cooperative's  
13 total retail sales to New Mexico customers;

14 ~~[(3)] (2)~~ a distribution cooperative shall  
15 have the following targets and requirements for renewable  
16 energy and zero carbon resources as a percentage of the  
17 distribution cooperative's total retail sales in New Mexico:

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

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

22 (c) a target of achieving the zero  
23 carbon resource standard by January 1, 2050, composed of at  
24 least eighty percent renewable energy; provided that: 1)  
25 achieving the target is technically feasible; 2) the rural

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1 electric cooperative is able to provide reliable electric  
2 service while implementing the target; and 3) implementing the  
3 target shall not cause electric service to become unaffordable;  
4 and

5 ~~[(4)]~~ (3) renewable energy resources that are  
6 in a distribution cooperative's energy supply portfolio on  
7 January 1, 2008 shall be counted in determining compliance with  
8 this section.

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

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

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1 standard would be greater than [~~sixty dollars (\$60.00)~~] thirty  
2 dollars (\$30.00) per megawatt-hour at the point of  
3 interconnection of the renewable energy resource with the  
4 transmission system, adjusted for inflation after [~~2020~~] 2021,  
5 the distribution cooperative shall not be required to incur  
6 that excess cost; provided that the existence of this condition  
7 excusing performance in any given year shall not operate to  
8 delay compliance with the renewable portfolio standard in  
9 subsequent years. The provisions of this subsection do not  
10 preclude a distribution cooperative from accepting a project  
11 with a cost that would exceed [~~sixty dollars (\$60.00)~~] thirty  
12 dollars (\$30.00) per megawatt-hour.

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

16 E. A distribution cooperative organized pursuant to  
17 the Rural Electric Cooperative Act shall meet the requirements  
18 and targets of the renewable portfolio standard pursuant to  
19 Subsection A of this section as demonstrated by the  
20 cooperative's retirement of renewable energy certificates  
21 associated with energy assigned to the cooperative; provided  
22 that a generation and transmission cooperative referred to in  
23 Section 62-6-4 NMSA 1978 shall be responsible for meeting the  
24 requirements and targets for all energy supplied to the  
25 distribution cooperatives in New Mexico. Energy from renewable

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1 energy and zero carbon resources that a generation and  
2 transmission cooperative supplies in compliance with the  
3 requirements and targets shall be verified at the point where  
4 the generation and transmission cooperative produces or takes  
5 delivery of the energy on behalf of the distribution  
6 cooperatives that the generation and transmission cooperative  
7 is serving.

8 F. Compliance with the renewable portfolio standard  
9 shall not result in an increase in rates for residential or  
10 commercial customers of more than three percent in any one year  
11 or more than seven percent in any three-year period."

12 SECTION 2. Section 62-16-3 NMSA 1978 (being Laws 2004,  
13 Chapter 65, Section 3, as amended) is amended to read:

14 "62-16-3. DEFINITIONS.--As used in the Renewable Energy  
15 Act:

16 A. "commission" means the public regulation  
17 commission;

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

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

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

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1 electric cooperatives;

2 E. "reasonable cost threshold" means an average  
3 annual levelized cost of [~~sixty dollars (\$60.00)~~] thirty  
4 dollars (\$30.00) per megawatt-hour at the point of  
5 interconnection of the renewable energy resource with the  
6 transmission system, adjusted for inflation after [~~2020~~] 2021;

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

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

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

17 (1) solar, wind and geothermal;

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

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

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- 1 (a) be of appropriate scale to have  
2 sustainable feedstock in the near vicinity;
- 3 (b) have zero life cycle carbon  
4 emissions; and
- 5 (c) meet scientifically determined  
6 restoration, sustainability and soil nutrient principles;
- 7 (4) fuel cells that do not use fossil fuels to  
8 create electricity; and
- 9 (5) landfill gas and anaerobically digested  
10 waste biogas;
- 11 I. "renewable portfolio standard" means the minimum  
12 percentage of retail sales of electricity by a public utility  
13 to electric consumers in New Mexico that is required by the  
14 Renewable Energy Act to be from renewable energy;
- 15 J. "renewable purchased power agreement" means an  
16 agreement that binds an entity generating power from renewable  
17 energy resources to provide power at a specified price and  
18 binds the purchaser to that price;
- 19 K. "zero carbon resource" means an electricity  
20 generation resource that emits no carbon dioxide into the  
21 atmosphere, or that reduces methane emitted into the atmosphere  
22 in an amount equal to no less than one-tenth of the tons of  
23 carbon dioxide emitted into the atmosphere, as a result of  
24 electricity production; and
- 25 L. "zero carbon resource standard" means providing

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1 New Mexico public utility customers with electricity generated  
2 from one hundred percent zero carbon resources."

3 SECTION 3. Section 62-16-4 NMSA 1978 (being Laws 2004,  
4 Chapter 65, Section 4, as amended) is amended to read:

5 "62-16-4. RENEWABLE PORTFOLIO STANDARD.--

6 A. A public utility shall meet the renewable  
7 portfolio standard requirements, as provided in this section,  
8 to include renewable energy in its electric energy supply  
9 portfolio as demonstrated by its retirement of renewable energy  
10 certificates; provided that the associated renewable energy is  
11 delivered to the public utility and assigned to the public  
12 utility's New Mexico customers. For public utilities other  
13 than rural electric cooperatives and municipalities,  
14 requirements of the renewable portfolio standard are:

15 [~~(1)~~] ~~no later than January 1, 2015, renewable~~  
16 ~~energy shall comprise no less than fifteen percent of each~~  
17 ~~public utility's total retail sales to New Mexico customers;~~

18 ~~(2)]~~ (1) no later than January 1, 2020,  
19 renewable energy shall comprise no less than twenty percent of  
20 each public utility's total retail sales to New Mexico  
21 customers;

22 [~~(3)]~~ (2) no later than January 1, 2025,  
23 renewable energy shall comprise no less than forty percent of  
24 each public utility's total retail sales of electricity to New  
25 Mexico customers;

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1                    [~~(4)~~] (3) no later than January 1, 2030,  
2 renewable energy shall comprise no less than fifty percent of  
3 each public utility's total retail sales of electricity to New  
4 Mexico customers;

5                    [~~(5)~~] (4) no later than January 1, 2040,  
6 renewable energy resources shall supply no less than eighty  
7 percent of all retail sales of electricity in New Mexico;  
8 provided that compliance with this standard until December 31,  
9 2047 shall not require the public utility to displace zero  
10 carbon resources in the utility's generation portfolio on the  
11 effective date of this 2019 act; and

12                    [~~(6)~~] (5) no later than January 1, 2045, zero  
13 carbon resources shall supply one hundred percent of all retail  
14 sales of electricity in New Mexico. Reasonable and consistent  
15 progress shall be made over time toward this requirement.

16                    B. In administering the standards required by  
17 Paragraphs (4) and (5) [~~and (6)~~] of Subsection A of this  
18 section, the commission shall:

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

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

25                    (3) prevent unreasonable impacts to customer

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1 electricity bills, taking into consideration the economic and  
2 environmental costs and benefits of renewable energy resources  
3 and zero carbon resources;

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

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

10 (6) in consultation with the department of  
11 environment, ensure that the standard does not result in  
12 material increases to greenhouse gas emissions from entities  
13 not subject to commission oversight and regulation; and

14 (7) in consultation with electricity  
15 transmission system operators responsible for balancing New  
16 Mexico electricity loads and resources, issue a report to the  
17 legislature by July 1, 2020, and each July 1 every four years  
18 thereafter. The report shall include:

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

23 (b) evaluation of the anticipated  
24 financial costs and benefits to electric utilities in  
25 implementing the standard, including the impacts and benefits

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1 to customer electricity bills; and

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

4 C. Any customer that is a political subdivision of  
5 the state, or any educational institution designated in Article  
6 12, Section 11 of the constitution of New Mexico with an  
7 enrollment of twenty thousand students or more during the fall  
8 semester on its main campus, with consumption exceeding twenty  
9 thousand megawatt-hours per year at any single location or  
10 facility and that owns facilities that produce renewable energy  
11 or hosts such facilities through a renewable purchased power  
12 agreement, shall not be charged by the utility for power  
13 purchases of one year or less or fuel on the amount of  
14 electricity purchased from the utility equal to the amount of  
15 renewable energy produced or hosted by the customer. The  
16 customer shall annually certify to the state auditor and notify  
17 the commission and the customer's serving electric utility of  
18 the amount of renewable energy produced at the customer-owned  
19 or customer-hosted facilities that generate renewable energy.  
20 The customer shall also certify to the state auditor and notify  
21 the commission that the customer will retire all renewable  
22 energy certificates associated with the renewable energy  
23 produced by those facilities. Any financial benefits as a  
24 result of the provisions of this subsection shall accrue to the  
25 customer immediately ~~[upon the effective date of this 2019 act]~~

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1 on June 14, 2019 and shall be reflected in customer bills each  
2 month, subject to annual true-up and reconciliation. The  
3 provisions of this subsection shall not prevent the utility  
4 from recovering all of its reasonable and prudent fuel and  
5 purchased power costs.

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

20 E. If, in any given year, a public utility  
21 determines that the average annual levelized cost of renewable  
22 energy that would need to be procured or generated for purposes  
23 of compliance with the renewable portfolio standard would be  
24 greater than the reasonable cost threshold, the public utility  
25 shall not be required to incur that excess cost; provided that

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1 the existence of this condition excusing performance in any  
2 given year shall not operate to delay compliance with the  
3 renewable portfolio standard in subsequent years. The  
4 provisions of this subsection do not preclude a public utility  
5 from accepting a project with a cost that would exceed the  
6 reasonable cost threshold. When a public utility can generate  
7 or procure renewable energy at or below the reasonable cost  
8 threshold, it shall be required to do so to the extent  
9 necessary to meet the applicable renewable portfolio standard  
10 and shall not be precluded from exceeding the standard.

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

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

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

23 ~~(3) demonstration that the plan is otherwise~~  
24 ~~in the public interest.]~~

25 F. Compliance with the renewable portfolio standard

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1 shall not result in an increase in rates for residential or  
2 commercial customers of more than three percent in any one year  
3 or more than seven percent in any three-year period.

4 G. By [~~July 1, 2020, and each~~] July 1 [~~thereafter~~]  
5 of each year, a public utility shall file a report to the  
6 commission on the public utility's procurement and generation  
7 of renewable energy since the last report and a procurement  
8 plan that includes:

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

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

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

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

25 (b) has a cost that is reasonable as

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1 evidenced by a comparison of the price of electricity from  
2 renewable energy resources in the bids received by the public  
3 utility to recent prices for comparable energy resources  
4 elsewhere in the southwestern United States; and

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

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

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

21 I. The commission may reject a procurement plan  
22 if, within forty days of filing, the commission finds that the  
23 plan does not contain the required information and, upon the  
24 rejection, shall provide the public utility the time necessary  
25 to file a revised plan; provided that the total amount of

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1 renewable energy required to be procured by the public utility  
2 shall not change."

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