SENATE BILL 266

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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AN ACT

RELATING TO ENERGY; AMENDING THE RENEWABLE ENERGY ACT; ADDING DEFINITIONS; ESTABLISHING MINIMUM PORTFOLIO STANDARDS FOR DISTRIBUTED ENERGY RESOURCES.

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

SECTION 1. 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

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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. "retail distributed generation" means a renewable energy facility that is no greater than five megawatts, measured in alternating current, and:

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(1) is either located behind a customer's meter; or

(2) allocates at least thirty percent of the resource's nameplate capacity directly to low-income customers as defined in Subsection G of Section 62-16B-2 NMSA 1978;

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

SECTION 2. 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,

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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

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progress shall be made over time toward this requirement.

B. In addition to the requirements of Subsection A of this section, a public utility shall be required to include retail distributed generation in its electric energy supply portfolio as demonstrated by its retirement of renewable energy certificates for retail electrical generation; 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, 2026, retail distributed generation shall comprise no less than six percent of each public utility's total retail sales to New Mexico customers;

(2) no later than January 1, 2028, retail distributed generation shall comprise no less than eight percent of each public utility's total retail sales to New Mexico customers;

(3) no later than January 1, 2030, retail distributed generation shall comprise no less than ten percent of each public utility's total retail sales of electricity to New Mexico customers;

(4) no later than January 1, 2031, retail distributed generation shall comprise no less than twelve

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percent of each public utility's total retail sales of electricity to New Mexico customers; and

(5) no later than January 1, 2033, retail distributed generation shall comprise no less than fifteen percent of each public utility's total retail sales of electricity to New Mexico customers.

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

(1) not jeopardize the operation of a sewage treatment facility that captures and combusts 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

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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.~~] D. 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

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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~~] on June 14, 2019 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.~~] E. 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

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develop and provide financial or other incentives to encourage public utilities to produce or acquire renewable energy or retail distributed generation 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.~~] F. If, in any given year, a public utility determines that the average annual levelized cost of transmission-interconnected 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

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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.~~] G. 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.~~] H. By July 1, 2020, and each July 1 thereafter, a public utility shall file a renewable energy standard 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

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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

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management.

[~~H.~~] I. 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.~~] J. 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 3. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2024.

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