

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 418

3 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

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10 AN ACT

11 RELATING TO ELECTRIC UTILITIES; ENACTING SECTIONS OF THE RURAL
12 ELECTRIC COOPERATIVE ACT; AMENDING AND ENACTING SECTIONS OF THE
13 RENEWABLE ENERGY ACT; AMENDING SECTIONS OF THE EFFICIENT USE OF
14 ENERGY ACT; PROVIDING FOR INCREASES IN THE RENEWABLE ENERGY
15 PORTFOLIO OF PUBLIC UTILITIES AND RURAL ELECTRIC COOPERATIVES.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 Section 1. A new section of the Rural Electric
19 Cooperative Act is enacted to read:

20 "[NEW MATERIAL] RENEWABLE PORTFOLIO STANDARD.--

21 A. Each distribution cooperative organized under
22 the Rural Electric Cooperative Act shall meet the renewable
23 portfolio standard requirements, as provided in this section,
24 to include renewable energy in its electric energy supply
25 portfolio. Requirements of the renewable portfolio standard

.166325.7

1 are:

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

6 (2) the renewable portfolio standard shall
7 increase by one percent per year thereafter until January 1,
8 2020, at which time the renewable portfolio standard shall be
9 ten percent of the distribution cooperative's total retail
10 sales to New Mexico customers;

11 (3) the renewable portfolio standard of each
12 distribution cooperative shall be diversified as to the type of
13 renewable energy resource, taking into consideration the
14 overall reliability, availability, dispatch flexibility and the
15 cost of the various renewable energy resources made available
16 to the distribution cooperative by its suppliers of electric
17 power; and

18 (4) renewable energy resources that are in a
19 distribution cooperative's energy supply portfolio on January
20 1, 2008 shall be counted in determining compliance with this
21 section.

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

.166325.7

1 reasonable cost threshold, the distribution cooperative shall
 2 not be required to incur that cost; provided that the existence
 3 of this condition excusing performance in any given year shall
 4 not operate to delay any renewable portfolio standard in
 5 subsequent years. For purposes of the Rural Electric
 6 Cooperative Act, "reasonable cost threshold" means an amount
 7 that shall be no greater than one percent of the distribution
 8 cooperative's gross receipts from business transacted in New
 9 Mexico for the preceding calendar year.

10 C. By March 1 of each year, a distribution
 11 cooperative shall file with the public regulation commission a
 12 report on its purchases and generation of renewable energy
 13 during the preceding calendar year. The report shall include
 14 the cost of the renewable energy resources purchased and
 15 generated by the distribution cooperative to meet the renewable
 16 portfolio standard.

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

20 Section 2. A new section of the Rural Electric
 21 Cooperative Act is enacted to read:

22 "[NEW MATERIAL] RENEWABLE ENERGY CERTIFICATES--COMMISSION
 23 DUTIES.--The public regulation commission shall establish:

24 A. a system of renewable energy certificates that
 25 can be used by a distribution cooperative to establish

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1 compliance with the renewable portfolio standard and that may
2 include certificates that are monitored, accounted for or
3 transferred by or through a regional system or trading program
4 for any region in which a rural electric cooperative is
5 located. The kilowatt-hour value of renewable energy
6 certificates may be varied by renewable energy resource or
7 technology; provided that each renewable energy certificate
8 shall have a minimum value of one kilowatt-hour for purposes of
9 compliance with the renewable portfolio standard; and

10 B. requirements and procedures concerning renewable
11 energy certificates that include the provisions that:

12 (1) renewable energy certificates:

13 (a) are owned by the generator of the
14 renewable energy unless: 1) the renewable energy certificates
15 are transferred to the purchaser of the energy through specific
16 agreement with the generator; 2) the generator is a qualifying
17 facility, as defined by the federal Public Utility Regulatory
18 Policies Act of 1978, in which case the renewable energy
19 certificates are owned by the distribution cooperative
20 purchaser of the renewable energy unless retained by the
21 generator through specific agreement with the distribution
22 cooperative purchaser of the energy; or 3) a contract for the
23 purchase of renewable energy is in effect prior to January 1,
24 2004, in which case the renewable energy certificates are owned
25 by the purchaser of the energy for the term of such contract;

.166325.7

1 (b) may be traded, sold or otherwise
2 transferred by their owner to any other party; provided that
3 the transfers and use of the certificate by a distribution
4 cooperative for compliance with the renewable energy portfolio
5 standard shall require the electric energy represented by the
6 certificate to be contracted for delivery or consumed, or
7 generated by an end-use customer of the distribution
8 cooperative in New Mexico unless the commission determines that
9 the distribution cooperative is participating in a national or
10 regional market for exchanging renewable energy certificates;

11 (c) that are used for the purpose of
12 meeting the renewable portfolio standard shall be registered,
13 beginning January 1, 2008, with a renewable energy generation
14 information system that is designed to create and track
15 ownership of renewable energy certificates and that, through
16 the use of independently audited generation data, verifies the
17 generation and delivery of electricity associated with each
18 renewable energy certificate and protects against multiple
19 counting of the same renewable energy certificate;

20 (d) that are used once by a distribution
21 cooperative to satisfy the renewable portfolio standard and are
22 retired or that are traded, sold or otherwise transferred by
23 the distribution cooperative shall not be further used by the
24 distribution cooperative; and

25 (e) that are not used by a distribution

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1 cooperative to satisfy the renewable portfolio standard or that
2 are not traded, sold or otherwise transferred by the
3 distribution cooperative may be carried forward for up to four
4 years from the date of issuance and, if not used by that time,
5 shall be retired by the distribution cooperative; and

6 (2) a distribution cooperative shall be
7 responsible for demonstrating that a renewable energy
8 certificate used for compliance with the renewable portfolio
9 standard is derived from eligible renewable energy resources
10 and has not been retired, traded, sold or otherwise transferred
11 to another party."

12 Section 3. A new section of the Rural Electric
13 Cooperative Act is enacted to read:

14 "[NEW MATERIAL] RENEWABLE ENERGY AND CONSERVATION FEE.--

15 A. A distribution cooperative may collect from its
16 customers a renewable energy and conservation fee of no more
17 than one percent of the customer's bill. In no event shall a
18 distribution cooperative collect more than seventy-five
19 thousand dollars (\$75,000) annually through the renewable
20 energy and conservation fee from any single customer. Money
21 collected through the renewable energy and conservation fee
22 shall be segregated in a separate renewable energy and
23 conservation account from other distribution cooperative funds
24 and shall be expended only on programs or projects to promote
25 the use of renewable energy, load management or energy

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1 efficiency. A distribution cooperative that collects a
2 renewable energy and conservation fee from its customers shall
3 report to the public regulation commission by March 1 of the
4 following year the following information:

5 (1) the amount of money collected through the
6 renewable energy and conservation fee in the previous calendar
7 year;

8 (2) the programs or projects on which the
9 funds collected were expended; and

10 (3) the determination of the distribution
11 cooperative as to whether and in what amount to assess a
12 renewable energy and conservation fee in the next calendar
13 year.

14 B. Each distribution cooperative that collects a
15 renewable energy and conservation fee from its customers shall
16 deduct from the fees paid to the state pursuant to Section
17 62-8-8 NMSA 1978 an amount equal to fifty percent of the amount
18 of money collected through the renewable energy and
19 conservation fee during the preceding calendar year. The money
20 shall be included in the account with other money from the
21 renewable energy and conservation fee and expended only on
22 programs or projects to promote the use of renewable energy,
23 load management or energy efficiency."

24 Section 4. A new section of the Rural Electric
25 Cooperative Act is enacted to read:

.166325.7

1 "[NEW MATERIAL] DEFINITIONS--ENERGY EFFICIENCY--RENEWABLE
2 ENERGY.--As used in the Rural Electric Cooperative Act:

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

8 B. "renewable energy" means electric energy:

9 (1) generated by use of low- or zero-emissions
10 generation technology with substantial long-term production
11 potential; and

12 (2) generated by use of renewable energy
13 resources that may include:

14 (a) solar, wind and geothermal
15 resources;

16 (b) hydropower facilities brought in
17 service after July 1, 2007;

18 (c) fuel cells that are not fossil
19 fueled; and

20 (d) biomass resources, such as
21 agriculture or animal waste, small diameter timber, salt cedar
22 and other phreatophyte or woody vegetation removed from river
23 basins or watersheds in New Mexico, landfill gas and
24 anaerobically digested waste biomass; but

25 (3) does not include electric energy generated

.166325.7

1 by use of fossil fuel or nuclear energy."

2 Section 5. Section 62-16-1 NMSA 1978 (being Laws 2004,
3 Chapter 65, Section 1) is amended to read:

4 "62-16-1. SHORT TITLE.--~~[This act]~~ Chapter 62, Article 16
5 NMSA 1978 may be cited as the "Renewable Energy Act"."

6 Section 6. Section 62-16-2 NMSA 1978 (being Laws 2004,
7 Chapter 65, Section 2) is amended to read:

8 "62-16-2. FINDINGS AND PURPOSES.--

9 A. The legislature finds that:

10 (1) the generation of electricity through the
11 use of renewable energy presents opportunities to promote
12 energy self-sufficiency, preserve the state's natural resources
13 and pursue an improved environment in New Mexico;

14 (2) the use of renewable energy by public
15 utilities subject to commission oversight in accordance with
16 the Renewable Energy Act can bring significant economic
17 benefits to New Mexico;

18 (3) public utilities should be required to
19 include prescribed amounts of renewable energy in their
20 electric energy supply portfolios for sales to retail customers
21 in New Mexico by prescribed dates;

22 (4) public utilities should be able to recover
23 their reasonable costs incurred to procure or generate energy
24 from renewable energy resources used to meet the requirements
25 of the Renewable Energy Act; ~~[and]~~

.166325.7

1 (5) a public utility should have incentives to
2 go beyond the minimum requirements of the renewable portfolio
3 standard;

4 ~~[(5)]~~ (6) public utilities should not be
5 required to acquire energy generated from renewable energy
6 resources that could result in costs above a reasonable cost
7 threshold; and

8 (7) it may serve the public interest for
9 public utilities to participate in national or regional
10 renewable energy trading.

11 B. The purposes of the Renewable Energy Act are to:

12 (1) prescribe the amounts of renewable energy
13 resources that public utilities shall include in their electric
14 energy supply portfolios for sales to retail customers in New
15 Mexico by prescribed dates;

16 (2) allow public utilities to recover costs
17 through the rate-making process incurred for procuring or
18 generating renewable energy used to comply with the prescribed
19 amount; and

20 (3) protect public utilities and their
21 ratepayers from renewable energy costs that are above a
22 reasonable cost threshold."

23 Section 7. Section 62-16-3 NMSA 1978 (being Laws 2004,
24 Chapter 65, Section 3) is amended to read:

25 "62-16-3. DEFINITIONS.--As used in the Renewable Energy
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underscored material = new
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1 Act:

2 A. "commission" means the public regulation
3 commission;

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

6 [~~B.~~] C. "public utility" means an entity certified
7 by the commission to provide retail electric service in New
8 Mexico pursuant to the Public Utility Act but does not include
9 rural electric cooperatives;

10 [~~C.~~] D. "reasonable cost threshold" means the cost
11 established by the commission above which a public utility
12 shall not be required to add renewable energy to its electric
13 energy supply portfolio pursuant to the renewable portfolio
14 standard;

15 [~~D.~~] E. "renewable energy" means electric energy:

16 (1) generated by use of low- or zero-emissions
17 generation technology with substantial long-term production
18 potential; and

19 (2) generated by use of renewable energy
20 resources that may include:

21 (a) solar, wind [~~hydropower~~] and
22 geothermal resources;

23 (b) hydropower facilities brought in
24 service after July 1, 2007;

25 [~~(b)~~] (c) fuel cells that are not fossil

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[bracketed material] = delete

1 fueled; and

2 [~~e~~] (d) biomass resources, such as
3 agriculture or animal waste, small diameter timber, salt cedar
4 and other phreatophyte or woody vegetation removed from river
5 basins or watersheds in New Mexico, landfill gas and
6 anaerobically digested waste biomass; but

7 (3) does not include electric energy generated
8 by use of fossil fuel or nuclear energy; [~~and~~]

9 F. "renewable energy certificate" means a
10 certificate or other record, in a format approved by the
11 commission, that represents all the environmental attributes
12 from one kilowatt-hour of electricity generation from a
13 renewable energy resource;

14 [~~E.~~] G. "renewable portfolio standard" means the
15 percentage of retail sales by a public utility to electric
16 consumers in New Mexico that is required by the Renewable
17 Energy Act to be supplied by renewable energy; and

18 H. "renewable purchased power agreement" means an
19 agreement that binds an entity generating power from renewable
20 energy resources to provide power at a specified price and
21 binds a public utility to purchase the power at that price."

22 Section 8. Section 62-16-4 NMSA 1978 (being Laws 2004,
23 Chapter 65, Section 4) is amended to read:

24 "62-16-4. RENEWABLE PORTFOLIO STANDARD.--

25 A. A public utility shall meet the renewable

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1 portfolio standard requirements, as provided in this section,
2 to include renewable energy in its electric energy supply
3 portfolio. Requirements of the renewable portfolio standard
4 are:

5 (1) for public utilities other than rural
6 electric cooperatives and municipalities:

7 (a) no later than January 1, 2006,
8 renewable energy shall comprise no less than five percent of
9 each public utility's total retail sales to New Mexico
10 customers;

11 [~~(2) the renewable portfolio standard shall~~
12 ~~increase by one percent per year thereafter until January 1,~~
13 ~~2011, when the renewable portfolio standard shall reach a level~~
14 ~~of ten percent of a public utility's annual retail sales in New~~
15 ~~Mexico and shall remain fixed at ten percent for each year~~
16 ~~thereafter]~~

17 (b) no later than January 1, 2011,
18 renewable energy shall comprise no less than ten percent of
19 each public utility's total retail sales to New Mexico
20 customers;

21 (c) no later than January 1, 2015,
22 renewable energy shall comprise no less than fifteen percent of
23 each public utility's total retail sales to New Mexico
24 customers; and

25 (d) no later than January 1, 2020,

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1 renewable energy shall comprise no less than twenty percent of
2 each public utility's total retail sales to New Mexico
3 customers;

4 [~~3~~] (2) the renewable portfolio standard
5 established by this section shall be reduced, as necessary, to
6 provide for the following specific procurement requirements for
7 nongovernmental customers at a single location or facility,
8 regardless of the number of meters at that location or
9 facility, with consumption exceeding ten million kilowatt-hours
10 per year. On and after January 1, 2006, the kilowatt-hours of
11 renewable energy procured for these customers shall be limited
12 so that the additional cost of the renewable portfolio standard
13 to each customer does not exceed the lower of one percent of
14 that customer's annual electric charges or forty-nine thousand
15 dollars (\$49,000). This procurement limit criteria shall
16 increase by one-fifth percent or ten thousand dollars (\$10,000)
17 per year until January 1, 2011, when the procurement limit
18 criteria shall remain fixed at the lower of two percent of that
19 customer's annual electric charges or ninety-nine thousand
20 dollars (\$99,000). After January 1, 2012, the commission may
21 adjust the ninety-nine-thousand-dollar (\$99,000) limit for
22 inflation. Nothing contained in this paragraph shall be
23 construed as affecting a public utility's right to recover all
24 reasonable costs of complying with the renewable portfolio
25 standard, pursuant to Section [~~6 of the Renewable Energy Act~~]

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1 62-16-6 NMSA 1978. The commission may authorize deferred
2 recovery of the costs of complying with the renewable portfolio
3 standard, including carrying charges;

4 ~~[(4)]~~ (3) the renewable portfolio shall be
5 diversified as to the type of renewable energy resource, taking
6 into consideration the overall reliability, availability,
7 dispatch flexibility and cost of the various renewable energy
8 resources made available by suppliers and generators; ~~[and]~~

9 (4) upon a commission motion or application by
10 a public utility, the commission shall open a docket to provide
11 appropriate performance-based financial or other incentives to
12 encourage public utilities to acquire renewable energy supplies
13 that exceed the applicable annual renewable portfolio standard
14 set forth in this section. The commission shall initiate rules
15 by June 1, 2008 to implement this subsection; and

16 (5) renewable energy resources that are in a
17 public utility's electric energy supply portfolio on July 1,
18 2004 shall be counted in determining compliance with this
19 section.

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

.166325.7

1 required to incur that cost; provided that the existence of
2 this condition excusing performance in any given year shall not
3 operate to delay the annual increases in the renewable
4 portfolio standard in subsequent years. When a public utility
5 can generate or procure renewable energy at or below the
6 reasonable cost threshold, it shall be required to add
7 renewable energy resources to meet the renewable portfolio
8 standard applicable in the year when the renewable energy
9 resources are being added.

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

19 (1) the price of renewable energy at the point
20 of sale to the public utility;

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

24 (3) the impact of the cost for renewable
25 energy on overall retail customer rates;

.166325.7

1 (4) the overall diversity, reliability,
 2 availability, dispatch flexibility, cost per kilowatt-hour and
 3 life-cycle cost on a net present value basis of renewable
 4 energy resources available from suppliers; and

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

10 D. By September 1, [~~of each year~~] 2007 and July 1
 11 of each year thereafter until [~~2012~~] 2022, and thereafter as
 12 determined necessary by the commission, a public utility shall
 13 file a report to the commission on its [~~purchases~~] procurement
 14 and generation of renewable energy during the prior calendar
 15 year and a procurement plan that includes:

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

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

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

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underscored material = new
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1 E. The commission shall approve or modify a public
2 utility's procurement or transitional procurement plan within
3 [~~sixty~~] ninety days and may approve the plan without a hearing,
4 unless a protest is filed that demonstrates to the commission's
5 reasonable satisfaction that a hearing is necessary. The
6 commission may modify a plan after notice and hearing. The
7 commission may, for good cause, extend the time to approve a
8 procurement plan for an additional [~~sixty~~] ninety days. If the
9 commission does not act within the [~~sixty~~] ninety-day period,
10 the procurement plan is deemed approved.

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

18 G. A public utility may file a transitional
19 procurement plan requesting that the commission determine that
20 the costs of renewable energy resources that the public utility
21 has committed to, or may commit to, prior to the commission's
22 establishing a reasonable cost threshold, are reasonable and
23 recoverable pursuant to Section [~~6 of the Renewable Energy Act~~]
24 62-16-6 NMSA 1978. The requirements of annual procurement plan
25 filings shall be applicable to any transitional procurement

1 plan filing pursuant to this section.

2 H. The commission shall determine if it is in the
 3 public interest for the commission to provide appropriate
 4 performance-based financial or other incentives to encourage
 5 public utilities to acquire renewable energy supplies in
 6 amounts that exceed the requirements of the renewable portfolio
 7 standard."

8 Section 9. Section 62-16-5 NMSA 1978 (being Laws 2004,
 9 Chapter 65, Section 5) is amended to read:

10 "62-16-5. RENEWABLE ENERGY CERTIFICATES--COMMISSION
 11 DUTIES.--The commission shall establish:

12 A. a system of renewable energy certificates that
 13 can be used by a public utility to establish compliance with
 14 the renewable portfolio standard and that may include
 15 certificates that are monitored, accounted for or transferred
 16 by or through a regional system or trading program for any
 17 region in which a public utility is located. The kilowatt-hour
 18 value of renewable energy certificates may be varied by
 19 renewable energy resource or technology; provided that each
 20 renewable energy certificate shall have a minimum value of one
 21 kilowatt-hour of renewable energy represented by the
 22 certificate for purposes of compliance with the renewable
 23 portfolio standard; and

24 B. requirements and procedures concerning renewable
 25 energy certificates that include the provisions that:

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underscored material = new
 [bracketed material] = delete

1 (1) renewable energy certificates:

2 (a) are owned by the generator of the
3 renewable energy unless: 1) the renewable energy certificates
4 are transferred to the purchaser of the energy through specific
5 agreement with the generator; 2) the generator is a qualifying
6 facility, as defined by the federal Public Utility Regulatory
7 Policies Act of 1978, in which case the renewable energy
8 certificates are owned by the public utility purchaser of the
9 renewable energy unless retained by the generator through
10 specific agreement with the public utility purchaser of the
11 energy; or 3) a contract for the purchase of renewable energy
12 is in effect prior to January 1, 2004, in which case the
13 renewable energy certificates are owned by the purchaser of the
14 energy for the term of such contract;

15 (b) may be traded, sold or otherwise
16 transferred by their owner to any other party; provided that
17 the transfers and use of the certificate by a public utility
18 for compliance with the renewable energy portfolio standard
19 shall require the electric energy represented by the
20 certificate to be contracted for delivery, or consumed or
21 generated by an end-use customer of the public utility in New
22 Mexico unless the commission determines that there is a
23 national or regional market for exchanging renewable energy
24 certificates;

25 (c) that are used for the purpose of

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1 meeting the renewable portfolio standard shall be registered,
 2 beginning January 1, 2009, with a renewable energy generation
 3 information system that is designed to create and track
 4 ownership of renewable energy certificates and that, through
 5 the use of independently audited generation data, verifies the
 6 generation and delivery of electricity associated with each
 7 renewable energy certificate and protects against multiple
 8 counting of the same renewable energy certificate;

9 [~~(e)~~] (d) that are used once by a public
 10 utility to satisfy the renewable portfolio standard and are
 11 retired or that are traded, sold or otherwise transferred by
 12 the public utility shall not be further used by the public
 13 utility; and

14 [~~(d)~~] (e) that are not used by a public
 15 utility to satisfy the renewable portfolio standard or that are
 16 not traded, sold or otherwise transferred by the public utility
 17 may be carried forward for up to four years from the date of
 18 issuance and, if not used by that time, shall be retired by the
 19 public utility; and

20 (2) a public utility shall be responsible for
 21 demonstrating that a renewable energy certificate used for
 22 compliance with the renewable portfolio standard is derived
 23 from eligible renewable energy resources and has not been
 24 retired, traded, sold or otherwise transferred to another
 25 party."

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1 Section 10. Section 62-16-6 NMSA 1978 (being Laws 2004,
2 Chapter 65, Section 6) is amended to read:

3 "62-16-6. COST RECOVERY FOR RENEWABLE ENERGY.--

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

10 B. The commission shall not exclude from such
11 recovery reasonable interconnection and transmission costs
12 incurred by the public utility in order to deliver renewable
13 energy to retail New Mexico customers.

14 C. Upon a commission motion or application by a
15 public utility, the commission shall open a docket to provide
16 appropriate performance-based financial or other incentives to
17 encourage public utilities to acquire renewable energy supplies
18 that exceed the applicable annual renewable portfolio standard
19 pursuant to the Renewable Energy Act. The commission shall
20 initiate rules by June 1, 2008 to implement this subsection."

21 Section 11. Section 62-16-8 NMSA 1978 (being Laws 2004,
22 Chapter 65, Section 8) is amended to read:

23 "62-16-8. RURAL ELECTRIC COOPERATIVE--VOLUNTARY
24 TARIFFS.--

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

2 ~~[A.]~~ (1) offer its retail customers a
 3 voluntary program for purchasing renewable energy under rates
 4 and terms that are approved by the commission, but only to the
 5 extent that the cooperative's suppliers make renewable energy
 6 available under wholesale power contracts; ~~[and~~

7 ~~B.]~~ (2) report to the commission the demand
 8 for renewable energy pursuant to a voluntary program; and

9 (3) comply with the requirements for the
 10 procurement of renewable energy set forth in the Rural Electric
 11 Cooperative Act.

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

15 Section 12. Section 62-17-1 NMSA 1978 (being Laws 2005,
 16 Chapter 341, Section 1) is amended to read:

17 "62-17-1. SHORT TITLE.--~~[Sections 1 through 11 of this~~
 18 ~~act]~~ Chapter 62, Article 17 NMSA 1978 may be cited as the
 19 "Efficient Use of Energy Act"."

20 Section 13. Section 62-17-5 NMSA 1978 (being Laws 2005,
 21 Chapter 341, Section 5) is amended to read:

22 "62-17-5. COMMISSION APPROVAL--ENERGY EFFICIENCY AND LOAD
 23 MANAGEMENT PROGRAMS--DISINCENTIVES.--

24 A. Pursuant to the findings and purpose of the
 25 Efficient Use of Energy Act, the commission shall consider

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1 public utility investments in cost-effective energy efficiency
2 and load management to be an acceptable use of ratepayer money.

3 B. The commission shall direct public utilities to
4 evaluate and implement cost-effective programs that reduce
5 energy demand and consumption.

6 C. Before the commission approves an energy
7 efficiency and load management program for a public utility, it
8 must find that the portfolio of programs is cost-effective and
9 designed to provide every affected customer class with the
10 opportunity to participate and benefit economically. The
11 commission shall determine the cost-effectiveness of energy
12 efficiency and load management measures using the total
13 resource cost test.

14 D. The commission shall act expeditiously on public
15 utility requests for approval of energy efficiency or load
16 management programs.

17 E. Public utilities shall obtain commission
18 approval of energy efficiency and load management programs
19 before they are implemented. Public utilities proposing new
20 energy efficiency and load management programs shall, before
21 seeking commission approval, solicit nonbinding recommendations
22 on the design and implementation of the programs from
23 commission staff, the attorney general, the energy, minerals
24 and natural resources department and other interested parties.

25 F. The commission shall, upon petition or its own

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1 motion, open a docket to identify any disincentives or barriers
 2 that may exist for public utility expenditures on energy
 3 efficiency and load management measures and, if found, ensure
 4 that they are eliminated and that an appropriate ratemaking
 5 treatment and performance-based, financial or other incentives
 6 are considered in order that public utilities are financially
 7 neutral in their preference for acquiring demand- or supply-
 8 side utility resources.

9 G. Public utilities shall set a goal of five
 10 percent reduction by January 1, 2020 in total retail sales to
 11 New Mexico customers, adjusted for load growth."

12 Section 14. Section 62-17-6 NMSA 1978 (being Laws 2005,
 13 Chapter 341, Section 6) is amended to read:

14 "62-17-6. COST RECOVERY.--

15 A. A public utility that undertakes cost-effective
 16 energy efficiency and load management programs shall recover
 17 the costs of all the programs implemented after the effective
 18 date of the Efficient Use of Energy Act through an approved
 19 tariff rider. Program costs may be deferred for future
 20 recovery through creation of a regulatory asset, provided that
 21 the deferred recovery does not cause the tariff rider to exceed
 22 the limits imposed by this section. The tariff rider for any
 23 utility customer shall not exceed the lower of [~~one and one-~~
 24 ~~half percent of~~] the commission's approved tariff for that
 25 customer's bill or seventy-five thousand dollars (\$75,000) per
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underscored material = new
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1 year except that, upon application by a public utility with the
2 advice and consent of the entity designated by law to represent
3 residential and commercial utility customers, the commission
4 may approve a tariff rider in excess of [~~one and one-half~~
5 ~~percent~~] the commission's approved tariff for customers other
6 than large customers and may approve a tariff rider in excess
7 of the lower of [~~one and one-half percent~~] the commission's
8 approved tariff or seventy-five thousand dollars (\$75,000) per
9 year for a large customer that consents to such a rider. The
10 commission shall approve such applications upon finding that
11 the proposed energy efficiency and load management programs are
12 cost-effective and that the cost recovery proposal is just and
13 reasonable.

14 B. The tariff rider shall provide for the recovery,
15 on a monthly basis or otherwise, of all reasonable costs of
16 approved energy efficiency and load management programs.

17 C. A tariff rider proposed by a public utility to
18 fund approved energy efficiency and load management programs
19 shall go into effect thirty days after filing, unless suspended
20 by the commission for a period not to exceed one hundred eighty
21 days. If the tariff rider is not approved or suspended within
22 thirty days after filing, it shall be deemed approved as a
23 matter of law. If the commission has not acted to approve or
24 disapprove the tariff rider by the end of an ordered suspension
25 period, it shall be deemed approved as a matter of law. The

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1 commission shall approve utility reconciliations of the tariff
2 rider annually based upon recovery of the reasonable costs of
3 the utility's programs.

4 D. The commission shall ensure that there are no
5 cross-subsidies between a public utility's energy efficiency
6 and load management activities and the public utility's supply-
7 side activities and shall ensure that the existence of a tariff
8 rider does not permit a public utility to earn an excessive
9 rate of return."

10 Section 15. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2007.

underscoring material = new
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