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SENATE BILL 535

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

William H. Payne

AN ACT

RELATING TO UTILITIES; AMENDING SECTIONS OF THE RENEWABLE ENERGY ACT TO PROVIDE REASONABLE COST THRESHOLDS THAT ARE NO MORE THAN TWO PERCENT OF A CUSTOMER'S AGGREGATED UTILITY BILL; PROVIDING FOR A SCHEDULE FOR FILINGS OF RENEWABLE ENERGY PROCUREMENT PLANS.

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

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

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

A. The legislature finds that:

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

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

5 (3) public utilities should be required to
6 include prescribed amounts of renewable energy in their
7 electric energy supply portfolios for sales to retail customers
8 in New Mexico by prescribed dates if those amounts can be
9 procured within the limits imposed by the reasonable cost
10 threshold;

11 (4) public utilities should be able to recover
12 their reasonable costs incurred to procure or generate energy
13 from renewable energy resources used to meet the requirements
14 of the Renewable Energy Act;

15 (5) a public utility should have incentives to
16 go beyond the minimum requirements of the renewable portfolio
17 standard if those incentives can be provided within the limits
18 imposed by the reasonable cost threshold;

19 (6) public utilities should not be required to
20 acquire energy generated from renewable energy resources that
21 could result in costs above a reasonable cost threshold; and

22 (7) it may serve the public interest for
23 public utilities to participate in national or regional
24 renewable energy trading.

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

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

5 (2) allow public utilities to recover costs
6 through the rate-making process incurred for procuring or
7 generating renewable energy used to comply with the prescribed
8 amount; and

9 (3) protect public utilities and their
10 ratepayers from renewable energy costs that are above a
11 reasonable cost threshold."

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

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

24 D. "reasonable cost threshold" means ~~[the]~~ a total
25 cost ~~[established by the commission above which a public~~

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1 ~~utility shall not be required to add renewable energy to its~~
2 ~~electric energy supply portfolio pursuant to the renewable~~
3 ~~portfolio standard] for all renewable resources procured~~
4 ~~pursuant to the Renewable Energy Act that shall not exceed two~~
5 ~~percent of customers' bills, exclusive of franchise fees, taxes~~
6 ~~and any rate adders or riders;~~

7 E. "renewable energy" means electric energy:

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

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

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

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

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

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

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

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1 F. "renewable energy certificate" means a
2 certificate or other record, in a format approved by the
3 commission, that represents all the environmental attributes
4 from one kilowatt-hour of electricity generation from a
5 renewable energy resource;

6 G. "renewable portfolio standard" means the
7 percentage of retail sales by a public utility to electric
8 consumers in New Mexico that is required by the Renewable
9 Energy Act to be supplied by renewable energy; and

10 H. "renewable purchased power agreement" means an
11 agreement that binds an entity generating power from renewable
12 energy resources to provide power at a specified price and
13 binds a public utility to purchase the power at that price."

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

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

17 A. Subject to the limits imposed by the reasonable
18 cost threshold, a public utility shall meet the renewable
19 portfolio standard requirements, as provided in this section,
20 to include renewable energy in its electric energy supply
21 portfolio. Requirements of the renewable portfolio standard
22 are:

23 (1) for public utilities other than rural
24 electric cooperatives and municipalities:

25 (a) no later than January 1, 2006,

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

4 (b) no later than January 1, 2011,
5 renewable energy shall comprise no less than ten percent of
6 each public utility's total retail sales to New Mexico
7 customers;

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

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

16 (2) the renewable portfolio standard
17 established by this section shall be reduced, as necessary, to
18 provide for the following specific procurement requirements for
19 nongovernmental customers, local governmental customers and
20 educational institutions at a single location [~~or facility~~],
21 regardless of the number of meters at that location [~~or~~
22 ~~facility~~], with consumption exceeding ten million kilowatt-
23 hours per year. For the purposes of this section, "location"
24 means all of the contiguous property owned or leased by the
25 customer, without regard to interruptions in contiguity caused

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1 by easements, public thoroughfares, transportation rights of
2 way or utility rights of way. On and after January 1, 2006,
3 the kilowatt-hours of renewable energy procured for these
4 customers shall be limited so that the additional cost of the
5 renewable portfolio standard to each customer does not exceed
6 the lower of one percent of that customer's annual electric
7 charges or forty-nine thousand dollars (\$49,000). This
8 procurement limit [~~criteria~~] criterion shall increase by one-
9 fifth percent or ten thousand dollars (\$10,000) per year until
10 January 1, 2011, when the procurement limit [~~criteria~~]
11 criterion shall remain fixed at the lower of two percent of
12 that customer's annual electric charges or ninety-nine thousand
13 dollars (\$99,000). After January 1, 2012, the commission may
14 adjust the ninety-nine-thousand-dollar (\$99,000) limit for
15 inflation. Nothing contained in this paragraph shall be
16 construed as affecting a public utility's right to recover all
17 reasonable costs of complying with the renewable portfolio
18 standard, pursuant to Section 62-16-6 NMSA 1978. The
19 commission may authorize deferred recovery of the costs of
20 complying with the renewable portfolio standard, including
21 carrying charges;

22 ~~[(3) the renewable portfolio shall be~~
23 ~~diversified as to the type of renewable energy resource, taking~~
24 ~~into consideration the overall reliability, availability,~~
25 ~~dispatch flexibility and cost of the various renewable energy~~

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1 ~~resources made available by suppliers and generators;~~
2 ~~(4) upon a commission motion or application by~~
3 ~~a public utility, the commission shall open a docket to provide~~
4 ~~appropriate performance-based financial or other incentives to~~
5 ~~encourage public utilities to acquire renewable energy supplies~~
6 ~~that exceed the applicable annual renewable portfolio standard~~
7 ~~set forth in this section. The commission shall initiate rules~~
8 ~~by June 1, 2008 to implement this subsection]; and~~

9 ~~[(5)]~~ (3) renewable energy resources that are
10 in a public utility's electric energy supply portfolio on July
11 1, 2004 shall be counted in determining compliance with this
12 section.

13 B. If a public utility finds that, in any given
14 year, the cost of renewable energy that would need to be
15 procured or generated for purposes of compliance with the
16 renewable portfolio standard would be greater than the
17 reasonable cost threshold [~~as established by the commission~~
18 ~~pursuant to this section~~], the public utility shall not be
19 required to incur that cost [~~provided that the existence of~~
20 ~~this condition excusing performance in any given year shall not~~
21 ~~operate to delay the annual increases in the renewable~~
22 ~~portfolio standard in subsequent years~~]. When a public utility
23 can generate or procure renewable energy at or below the
24 reasonable cost threshold, it shall be required to add
25 renewable energy resources to meet the renewable portfolio

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1 standard applicable in the year when the renewable energy
2 resources are being added.

3 ~~[G. By December 31, 2004, the commission shall~~
4 ~~establish, after notice and hearing, the reasonable cost~~
5 ~~threshold above which level a public utility shall not be~~
6 ~~required to add renewable energy to its electric energy supply~~
7 ~~portfolio pursuant to the renewable portfolio standard. The~~
8 ~~commission may thereafter modify the reasonable cost threshold~~
9 ~~as changing circumstances warrant, after notice and hearing.~~
10 ~~In establishing and modifying the reasonable cost threshold,~~
11 ~~the commission shall take into account:~~

12 ~~(1) the price of renewable energy at the point~~
13 ~~of sale to the public utility;]~~

14 C. In its procurement plan filing, a public utility
15 shall demonstrate that the total cost of all renewable
16 resources included in its plan, together with the total cost of
17 all previously approved renewable resources for which costs
18 have not been actually recovered, does not exceed the
19 reasonable cost threshold in any year in which the plan will be
20 in effect. In calculating the reasonable cost threshold, the
21 overall cost that will be recovered from the customer shall be
22 included, including:

23 (1) the price of renewable energy and
24 renewable energy certificates at the point of sale to the
25 public utility;

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1 (2) the transmission and interconnection costs
2 required for the delivery of renewable energy to retail
3 customers;

4 ~~[(3) the impact of the cost for renewable
5 energy on overall retail customer rates;~~

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

10 ~~(5) other factors, including public benefits,
11 that the commission deems relevant; provided that nothing in
12 the Renewable Energy Act shall be construed to permit
13 regulation by the commission of the production or sale price at
14 the point of production of the renewable energy.~~

15 ~~D. By September 1, 2007 and July 1 of each year
16 thereafter until 2022, and thereafter as determined necessary
17 by the commission]~~

18 (3) the return on and return of the public
19 utility's capital investment in renewable energy;

20 (4) the capital costs, maintenance costs and
21 fuel expenses of those portions of existing and planned
22 generation that will be used to balance intermittent renewable
23 resources;

24 (5) the cost of power purchased to balance
25 intermittent renewable resources;

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1 (6) the cost of all incentives provided to a
2 public utility pursuant to the Renewable Energy Act; and

3 (7) imputed debt, costs such as fuel and any
4 other costs associated with the procurement of renewable
5 energy.

6 D. In developing its procurement plan, a public
7 utility shall evaluate all feasible renewable energy options on
8 a net present value basis with the cost of each resource
9 analyzed through its projected life using a life-cycle or
10 similar analysis, provided that the cost of adding such
11 resources does not exceed the reasonable cost threshold.

12 E. The reasonable cost threshold shall be two
13 percent of the public utility's revenues from its customers,
14 less revenue received from rate and tariff riders, fuel and
15 purchased power cost adjustment clauses, gross receipts taxes
16 and franchise fees, from the calendar year preceding the year
17 in which the plan is filed. Costs shall not be offset by
18 claimed savings unless the savings are reasonably determinable
19 and will benefit customers during the plan period. The costs
20 of adding renewable energy resources to a utility's supply
21 portfolio shall not be subject to the reasonable cost threshold
22 if the renewable energy resources:

23 (1) are identified as the least cost resource
24 to meet customer needs in the utility's integrated resource
25 planning process; and

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1 (2) to the extent required by the Public
2 Utility Act, have been granted a certificate of public
3 convenience and necessity by the commission.

4 F. Every two years, a public utility shall file a
5 report to the commission on its procurement and generation of
6 renewable energy during the prior [~~calendar year~~] reporting
7 period and a procurement plan that includes:

8 (1) the cost of procurement for any new
9 renewable energy resource in the next [~~calendar year~~] plan
10 period required to comply with the renewable portfolio
11 standard; and

12 (2) testimony and exhibits that demonstrate
13 that the proposed procurement is reasonable as to its terms and
14 conditions considering [~~price, availability, dispatchability,~~
15 ~~any renewable energy certificate values and diversity of the~~
16 ~~renewable energy resource~~] relevant risk factors, such as
17 financial, competitive, reliability, operational, fuel supply,
18 price volatility and environmental regulation factors, and
19 whether the procurement complies with the limits imposed by the
20 reasonable cost threshold; or

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

23 [~~E.~~] G. The commission shall establish a schedule
24 for forthcoming filings of renewable procurement plans
25 considering its own resources and the resources of the affected

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1 public utilities, customers and other interested parties.

2 H. A public utility shall not be required to file a
3 procurement plan for any plan period for which it files a
4 report with the commission showing that procurement plans
5 previously approved by the commission cause the utility to
6 exceed the reasonable cost threshold in the plan period.

7 I. The commission shall approve, reject or modify a
8 public utility's [~~procurement or transitional~~] procurement plan
9 within ninety days and may approve the plan without a hearing,
10 unless a protest is filed that demonstrates to the commission's
11 reasonable satisfaction that a hearing is necessary. The
12 commission may modify a plan after notice and hearing. The
13 commission may, for good cause, extend the time to approve a
14 procurement plan for an additional ninety days. If the
15 commission does not act within the [~~ninety-day period~~] total
16 time period allowed in this section, the procurement plan is
17 deemed approved.

18 [~~F.~~] J. The commission may reject a [~~procurement or~~
19 ~~transitional~~] procurement plan if it finds that the plan does
20 not contain the required information and, upon the rejection,
21 may suspend the public utility's obligation to procure
22 additional resources for the time necessary to file a revised
23 plan; provided that the total amount of renewable energy to be
24 procured by the public utility shall not change.

25 [~~G. A public utility may file a transitional~~

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1 ~~procurement plan requesting that the commission determine that~~
2 ~~the costs of renewable energy resources that the public utility~~
3 ~~has committed to, or may commit to, prior to the commission's~~
4 ~~establishing a reasonable cost threshold, are reasonable and~~
5 ~~recoverable pursuant to Section 62-16-6 NMSA 1978. The~~
6 ~~requirements of annual procurement plan filings shall be~~
7 ~~applicable to any transitional procurement plan filing pursuant~~
8 ~~to this section.~~

9 H.] K. The commission shall determine if it is in
10 the public interest for the commission to provide appropriate
11 performance-based financial or other incentives to encourage
12 public utilities to acquire renewable energy supplies in
13 amounts that exceed the requirements of the renewable portfolio
14 standard only if the procurement does not cause the public
15 utility to exceed the limits imposed by the reasonable cost
16 threshold."

17 SECTION 4. Section 62-16-5 NMSA 1978 (being Laws 2004,
18 Chapter 65, Section 5, as amended) is amended to read:

19 "62-16-5. RENEWABLE ENERGY CERTIFICATES--COMMISSION
20 DUTIES.--The commission shall establish:

21 A. a system of renewable energy certificates that
22 can be used by a public utility to establish compliance with
23 the renewable portfolio standard and that may include
24 certificates that are monitored, accounted for or transferred
25 [~~by or through a regional system or trading program for any~~

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1 ~~region in which a public utility is located]~~ from any region or
2 jurisdiction. The kilowatt-hour value of renewable energy
3 certificates may be varied by renewable energy resource or
4 technology; provided that each renewable energy certificate
5 shall have a minimum value of one kilowatt-hour of renewable
6 energy represented by the certificate for purposes of
7 compliance with the renewable portfolio standard; and

8 B. requirements and procedures concerning renewable
9 energy certificates that include the provisions that:

10 (1) renewable energy certificates:

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

24 (b) may be traded, sold or otherwise
25 transferred by their owner to any other party; ~~provided that~~

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1 ~~the transfers and use of the certificate by a public utility~~
2 ~~for compliance with the renewable energy portfolio standard~~
3 ~~shall require the electric energy represented by the~~
4 ~~certificate to be contracted for delivery, or consumed or~~
5 ~~generated by an end-use customer of the public utility in New~~
6 ~~Mexico unless the commission determines that there is a~~
7 ~~national or regional market for exchanging renewable energy~~
8 ~~certificates]~~

9 (c) that are used for the purpose of
10 meeting the renewable portfolio standard shall be registered
11 [~~beginning January 1, 2009~~] with a renewable energy generation
12 information system that is designed to create and track
13 ownership of renewable energy certificates and that, through
14 the use of independently audited generation data, verifies the
15 generation and delivery of electricity associated with each
16 renewable energy certificate and protects against multiple
17 counting of the same renewable energy certificate;

18 (d) that are used once by a public
19 utility to satisfy the renewable portfolio standard and are
20 retired or that are traded, sold or otherwise transferred by
21 the public utility shall not be further used by the public
22 utility; and

23 (e) that are not used by a public
24 utility to satisfy the renewable portfolio standard or that are
25 not traded, sold or otherwise transferred by the public utility

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1 may be carried forward for [~~up to four years from the date of~~
2 ~~issuance~~] future use and, [~~if not~~] when used [~~by that time~~],
3 shall be retired by the public utility; and

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

10 SECTION 5. Section 62-16-6 NMSA 1978 (being Laws 2004,
11 Chapter 65, Section 6, as amended) is amended to read:

12 "62-16-6. COST RECOVERY FOR RENEWABLE ENERGY.--

13 A. A public utility that procures or generates
14 renewable energy shall recover, through the rate-making
15 process, the reasonable costs of complying with the renewable
16 portfolio standard. Costs that are consistent with commission
17 approval of procurement plans or transitional procurement plans
18 shall be deemed to be reasonable. Nothing in this subsection
19 is intended to affect a public utility's right to recover the
20 costs associated with procurement plans that have been approved
21 by the commission.

22 B. The commission shall not exclude from such
23 recovery reasonable interconnection and transmission costs
24 incurred by the public utility in order to deliver renewable
25 energy to retail New Mexico customers.

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1 C. Upon a commission motion or application by a
2 public utility, the commission shall open a docket to provide
3 appropriate performance-based financial or other incentives to
4 encourage public utilities to acquire renewable energy supplies
5 that exceed the applicable annual renewable portfolio standard
6 pursuant to the Renewable Energy Act. The commission shall
7 initiate rules by June 1, 2008 to implement this subsection."

8 SECTION 6. A new section of the Renewable Energy Act is
9 enacted to read:

10 "[NEW MATERIAL] EFFECT ON PREVIOUSLY APPROVED PROCUREMENT
11 PLANS.--Nothing in this 2011 act shall be interpreted as
12 affecting procurement plans previously approved by the
13 commission. A public utility shall have the right to recover
14 the costs associated with previously approved procurement
15 plans, even if such plans exceed the reasonable cost threshold
16 established by the Renewable Energy Act."