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SENATE BILL 549

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

INTRODUCED BY

Bernadette M. Sanchez

AN ACT

RELATED TO ELECTRIC UTILITIES; AMENDING SECTIONS OF THE  
RENEWABLE ENERGY ACT TO INCLUDE ALL REASONABLE COSTS OF  
PROCUREMENT IN THE REASONABLE COST THRESHOLD AND TO PROVIDE A  
CAP OF TWO PERCENT ON ADDITIONAL COSTS TO ALL CUSTOMERS  
COMPLYING WITH THE RENEWABLE PORTFOLIO STANDARD.

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

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

5 D. "reasonable cost threshold" means the cost,  
6 which shall incorporate all costs that are reasonably  
7 associated with the procurement of renewable energy,  
8 established by the commission above which a public utility  
9 shall not be required to add renewable energy to its electric  
10 energy supply portfolio pursuant to the renewable portfolio  
11 standard;

12 E. "renewable energy" means electric energy:

13 (1) generated by use of low- or zero-emissions  
14 generation technology with substantial long-term production  
15 potential; and

16 (2) generated by use of renewable energy  
17 resources that may include:

18 (a) solar, wind and geothermal  
19 resources;

20 (b) hydropower facilities brought in  
21 service after July 1, 2007;

22 (c) fuel cells that are not fossil  
23 fueled; and

24 (d) biomass resources, such as  
25 agriculture or animal waste, small diameter timber, salt cedar

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1 and other phreatophyte or woody vegetation removed from river  
2 basins or watersheds in New Mexico, landfill gas and  
3 anaerobically digested waste biomass; but

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

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

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

15 H. "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 a public utility to purchase the power at that price."

19 **SECTION 2.** Section 62-16-4 NMSA 1978 (being Laws 2004,  
20 Chapter 65, Section 4, as amended) is amended to read:

21 "62-16-4. RENEWABLE PORTFOLIO STANDARD.--

22 A. A public utility 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

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1 are:

2 (1) for public utilities other than rural  
3 electric cooperatives and municipalities:

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

8 (b) no later than January 1, 2011,  
9 renewable energy shall comprise no less than ten percent of  
10 each public utility's total retail sales to New Mexico  
11 customers;

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

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

20 (2) the renewable portfolio standard  
21 established by this section shall be reduced, as necessary, to  
22 provide for ~~[the following specific procurement requirements~~  
23 ~~for nongovernmental customers at a single location or facility,~~  
24 ~~regardless of the number of meters at that location or~~  
25 ~~facility, with consumption exceeding ten million kilowatt-hours~~

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

21 (3) the renewable portfolio shall be  
22 diversified as to the type of renewable energy resource, taking  
23 into consideration the overall reliability, availability,  
24 dispatch flexibility and cost of the various renewable energy  
25 resources made available by suppliers and generators;

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1 (4) upon a commission motion or application by  
2 a 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 set forth in this section. The commission shall initiate rules  
7 by June 1, 2008 to implement this subsection; and

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

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

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1 resources are being added.

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

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

13 (2) the transmission and interconnection costs  
14 required for the delivery of renewable energy to retail  
15 customers;

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

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

22 (5) other factors, including public benefits,  
23 that the commission deems relevant; provided that nothing in  
24 the Renewable Energy Act shall be construed to permit  
25 regulation by the commission of the production or sale price at

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1 the point of production of the renewable energy.

2 D. By September 1, 2007 and July 1 of each year  
3 thereafter until 2022, and thereafter as determined necessary  
4 by the commission, a public utility shall file a report to the  
5 commission on its procurement and generation of renewable  
6 energy during the prior calendar year and a procurement plan  
7 that includes:

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

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

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

18 E. The commission shall approve or modify a public  
19 utility's procurement or transitional procurement plan within  
20 ninety days and may approve the plan without a hearing, unless  
21 a protest is filed that demonstrates to the commission's  
22 reasonable satisfaction that a hearing is necessary. The  
23 commission may modify a plan after notice and hearing. The  
24 commission may, for good cause, extend the time to approve a  
25 procurement plan for an additional ninety days. If the

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1 commission does not act within the ninety-day period, the  
2 procurement plan is deemed approved.

3 F. The commission may reject a procurement or  
4 transitional procurement plan if it finds that the plan does  
5 not contain the required information and, upon the rejection,  
6 may suspend the public utility's obligation to procure  
7 additional resources for the time necessary to file a revised  
8 plan; provided that the total amount of renewable energy to be  
9 procured by the public utility shall not change.

10 G. A public utility may file a transitional  
11 procurement plan requesting that the commission determine that  
12 the costs of renewable energy resources that the public utility  
13 has committed to, or may commit to, prior to the commission's  
14 establishing a reasonable cost threshold, are reasonable and  
15 recoverable pursuant to Section 62-16-6 NMSA 1978. The  
16 requirements of annual procurement plan filings shall be  
17 applicable to any transitional procurement plan filing pursuant  
18 to this section.

19 H. The commission shall determine if it is in the  
20 public interest for the commission to provide appropriate  
21 performance-based financial or other incentives to encourage  
22 public utilities to acquire renewable energy supplies in  
23 amounts that exceed the requirements of the renewable portfolio  
24 standard."