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AN ACT

RELATED TO ELECTRIC UTILITIES; AMENDING A SECTION OF THE
RENEWABLE ENERGY ACT TO PROVIDE A CAP 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 62-16-4 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. Requirements of the renewable portfolio standard
are:

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

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

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

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

5 (d) no later than January 1, 2020,
6 renewable energy shall comprise no less than twenty percent
7 of each public utility's total retail sales to New Mexico
8 customers;

9 (2) the renewable portfolio standard
10 established by this section shall be reduced, as necessary,
11 to provide for the following specific procurement
12 requirements for nongovernmental customers at a single
13 location or facility, regardless of the number of meters at
14 that location or facility, with consumption exceeding ten
15 million kilowatt-hours per year. On and after
16 January 1, 2006, the kilowatt-hours of renewable energy
17 procured for these customers shall be limited so that the
18 additional cost of the renewable portfolio standard to each
19 customer does not exceed the lower of one percent of that
20 customer's annual electric charges or forty-nine thousand
21 dollars (\$49,000). This procurement limit criteria shall
22 increase by one-fifth percent or ten thousand dollars
23 (\$10,000) per year until January 1, 2011, when the
24 procurement limit criteria shall remain fixed at the lower of
25 two percent of that customer's annual electric charges or

1 ninety-nine thousand dollars (\$99,000). After
2 January 1, 2012, the commission may adjust the
3 ninety-nine-thousand-dollar (\$99,000) limit for inflation.
4 Nothing contained in this paragraph shall be construed as
5 affecting a public utility's right to recover all reasonable
6 costs of complying with the renewable portfolio standard,
7 pursuant to Section 62-16-6 NMSA 1978. The commission may
8 authorize deferred recovery of the costs of complying with
9 the renewable portfolio standard, including carrying charges;

10 (3) any customer that is a political
11 subdivision of the state, with consumption exceeding twenty
12 million kilowatt-hours per year at any single location or
13 facility, and that owns renewable energy generation is exempt
14 from all charges by the utility for renewable energy
15 procurements in a year, regardless of the number of customer
16 locations or meters on the system, if that customer certifies
17 to the state auditor and notifies the commission and its
18 serving electric utility that it will expend two and one-half
19 percent of that year's annual electricity charges to continue
20 to develop within twenty-four months customer-owned renewable
21 energy generation. That customer shall also certify that it
22 will retire all renewable energy certificates associated with
23 the energy produced from that expenditure;

24 (4) the renewable portfolio shall be
25 diversified as to the type of renewable energy resource,

1 taking into consideration the overall reliability,
2 availability, dispatch flexibility and cost of the various
3 renewable energy resources made available by suppliers and
4 generators;

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

13 (6) renewable energy resources that are in a
14 public utility's electric energy supply portfolio on July 1,
15 2004 shall be counted in determining compliance with this
16 section.

17 B. If a public utility finds that, in any given
18 year, the cost of renewable energy that would need to be
19 procured or generated for purposes of compliance with the
20 renewable portfolio standard would be greater than the
21 reasonable cost threshold as established by the commission
22 pursuant to this section, the public utility shall not be
23 required to incur that cost; provided that the existence of
24 this condition excusing performance in any given year shall
25 not operate to delay the annual increases in the renewable

1 portfolio standard in subsequent years. When a public
2 utility can generate or procure renewable energy at or below
3 the reasonable cost threshold, it shall be required to add
4 renewable energy resources to meet the renewable portfolio
5 standard applicable in the year when the renewable energy
6 resources are being added.

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

17 (1) the price of renewable energy at the
18 point of sale to the public utility;

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

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

24 (4) the overall diversity, reliability,
25 availability, dispatch flexibility, cost per kilowatt-hour

1 and life-cycle cost on a net present value basis of renewable
2 energy resources available from suppliers; and

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

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

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

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

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

24 E. The commission shall approve or modify a public
25 utility's procurement or transitional procurement plan within

1 ninety days and may approve the plan without a hearing,
2 unless a protest is filed that demonstrates to the
3 commission's reasonable satisfaction that a hearing is
4 necessary. The commission may modify a plan after notice and
5 hearing. The commission may, for good cause, extend the time
6 to approve a procurement plan for an additional ninety days.
7 If the commission does not act within the ninety-day period,
8 the procurement plan is deemed approved.

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

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

25 H. The commission shall determine if it is in the

1 public interest for the commission to provide appropriate
2 performance-based financial or other incentives to encourage
3 public utilities to acquire renewable energy supplies in
4 amounts that exceed the requirements of the renewable
5 portfolio standard." _____

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