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RELATING TO UTILITIES; AMENDING A SECTION OF THE RENEWABLE
ENERGY ACT TO EXEMPT FROM CHARGES BY A UTILITY FOR RENEWABLE
ENERGY PROCUREMENTS CERTAIN EDUCATIONAL INSTITUTIONS IN
ARTICLE 12, SECTION 11 OF THE CONSTITUTION OF NEW MEXICO IF
THE INSTITUTION HAS CONSUMPTION EXCEEDING TWENTY MILLION
KILOWATT-HOURS PER YEAR AT ANY SINGLE LOCATION OR FACILITY
AND OWNS RENEWABLE ENERGY GENERATION.

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;

(c) 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; and

(d) 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;

established by this section shall be reduced, as necessary, to provide for the following specific procurement requirements for nongovernmental customers at a single location or facility, regardless of the number of meters at that location or facility, with consumption exceeding ten million kilowatt-hours per year. On and after January 1, 2006, the kilowatt-hours of renewable energy procured for these customers shall be limited so that the additional cost of the renewable portfolio standard to each customer does not exceed the lower of one percent of that customer's annual electric charges or forty-nine thousand dollars (\$49,000). This procurement limit criterion shall increase by one-fifth percent or ten thousand dollars

(\$10,000) per year until January 1, 2011, when the procurement limit criterion shall remain fixed at the lower of two percent of that customer's annual electric charges or ninety-nine thousand dollars (\$99,000). After January 1, 2012, the commission may adjust the ninety-nine-thousand-dollar (\$99,000) limit for inflation. Nothing contained in this paragraph shall be construed as affecting a public utility's right to recover all reasonable costs of complying with the renewable portfolio standard, pursuant to Section 62-16-6 NMSA 1978. The commission may authorize deferred recovery of the costs of complying with the renewable portfolio standard, including carrying charges;

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-four thousand students or more during the fall semester on its main campus, with consumption exceeding twenty million kilowatt-hours per year at any single location or facility, and that owns renewable energy generation is exempt from all charges by the utility for renewable energy procurements in a year, regardless of the number of customer locations or meters on the system, if that customer certifies to the state auditor and notifies the commission and its serving electric utility that it will expend two and one-half percent of that year's

annual electricity charges to continue to develop within twenty-four months customer-owned renewable energy generation. That customer shall also certify that it will retire all renewable energy certificates associated with the energy produced from that expenditure;

- (4) the renewable portfolio shall be diversified as to the type of renewable energy resource, taking into consideration the overall reliability, availability, dispatch flexibility and cost of the various renewable energy resources made available by suppliers and generators;
- (5) upon a commission motion or application by a public utility, the commission shall open a docket to provide appropriate performance-based financial or other incentives to encourage public utilities to acquire renewable energy supplies that exceed the applicable annual renewable portfolio standard set forth in this section. The commission shall initiate rules by June 1, 2008 to implement this subsection; and
- (6) renewable energy resources that are in a public utility's electric energy supply portfolio on
 July 1, 2004 shall be counted in determining compliance with this section.
- B. If a public utility finds that, in any given year, the cost of 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 as established by the commission pursuant to this section, the public utility shall not be required to incur that cost; provided that the existence of this condition excusing performance in any given year shall not operate to delay the annual increases in the renewable portfolio standard in subsequent years. When a public utility can generate or procure renewable energy at or below the reasonable cost threshold, it shall be required to add renewable energy resources to meet the renewable portfolio standard applicable in the year when the renewable energy resources are being added.

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

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

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

- (3) the impact of the cost for renewable energy on overall retail customer rates;
- (4) the overall diversity, reliability, availability, dispatch flexibility, cost per kilowatt-hour and life-cycle cost on a net present value basis of renewable energy resources available from suppliers; and
- (5) other factors, including public benefits, that the commission deems relevant; provided that nothing in the Renewable Energy Act shall be construed to permit regulation by the commission of the production or sale price at the point of production of the renewable energy.
- D. By September 1, 2007 and July 1 of each year thereafter until 2022, and thereafter as determined necessary by the commission, 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,
dispatchability, any renewable energy certificate values and
diversity of the renewable energy resource; or

- $\hbox{(3)} \quad demonstration \ that \ the \ plan \ is \ otherwise \\$ in the public interest.
- E. The commission shall approve or modify a public utility's procurement or transitional 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.
- F. The commission may reject a procurement or transitional procurement plan if it finds that the plan does not contain the required information and, upon the rejection, may suspend the public utility's obligation to procure additional resources for the time necessary to file a revised plan; provided that the total amount of renewable energy to be procured by the public utility shall not change.
- G. A public utility may file a transitional procurement plan requesting that the commission determine that the costs of renewable energy resources that the public

utility has committed to, or may commit to, prior to the commission's establishing a reasonable cost threshold, are reasonable and recoverable pursuant to Section 62-16-6 NMSA 1978. The requirements of annual procurement plan filings shall be applicable to any transitional procurement plan filing pursuant to this section.

The commission shall determine if it is in the Η. public interest for the commission to provide appropriate performance-based financial or other incentives to encourage public utilities to acquire renewable energy supplies in amounts that exceed the requirements of the renewable portfolio standard."______ SB 81

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