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SENATE BILL 312

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Mimi Stewart and Nathan P. Small

AN ACT

RELATING TO UTILITIES; REQUIRING THAT RENEWABLE ENERGY COMPRISE SEVENTY PERCENT OF TOTAL RETAIL SALES TO NEW MEXICO CUSTOMERS OF RURAL ELECTRIC COOPERATIVES BY 2040; REQUIRING THAT RENEWABLE ENERGY COMPRISE EIGHTY PERCENT OF TOTAL RETAIL SALES TO NEW MEXICO CUSTOMERS OF PUBLIC UTILITIES BY 2040.

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

SECTION 1. Section 62-15-34 NMSA 1978 (being Laws 2007, Chapter 4, Section 1, as amended by Laws 2014, Chapter 24, Section 1 and by Laws 2014, Chapter 25, Section 1) is amended to read:

"62-15-34. RENEWABLE PORTFOLIO STANDARD.--

A. Each distribution cooperative organized under the Rural Electric Cooperative Act shall meet the renewable portfolio standard requirements, as provided in this section,

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1 to include renewable energy in its electric energy supply
2 portfolio. Requirements of the renewable portfolio standard
3 are:

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

8 (2) after January 1, 2015, the renewable
9 portfolio standard shall increase by one percent per year
10 [~~thereafter~~] until January 1, 2020, at which time the renewable
11 portfolio standard shall be ten percent of the distribution
12 cooperative's total retail sales to New Mexico customers;

13 (3) after January 1, 2020, the renewable
14 portfolio standard shall increase by an average of three
15 percent per year until January 1, 2025, at which time the
16 renewable portfolio standard shall be twenty-five percent of
17 the distribution cooperative's total retail sales to New Mexico
18 customers;

19 (4) after January 1, 2025, the renewable
20 portfolio standard shall increase by an average of three
21 percent per year until January 1, 2030, at which time the
22 renewable portfolio standard shall be forty percent of the
23 distribution cooperative's total retail sales to New Mexico
24 customers;

25 (5) after January 1, 2030, the renewable

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1 portfolio standard shall increase by an average of three
2 percent per year until January 1, 2035, at which time the
3 renewable portfolio standard shall be fifty-five percent of the
4 distribution cooperative's total retail sales to New Mexico
5 customers;

6 (6) after January 1, 2035, the renewable
7 portfolio standard shall increase by an average of three
8 percent per year until January 1, 2040, at which time the
9 renewable portfolio standard shall be seventy percent of the
10 distribution cooperative's total retail sales to New Mexico
11 customers;

12 [~~(3)~~] (7) the renewable portfolio standard of
13 each distribution cooperative shall be diversified as to the
14 type of renewable energy resource, taking into consideration
15 the overall reliability, availability and dispatch flexibility
16 and the cost of the various renewable energy resources made
17 available to the distribution cooperative by its suppliers of
18 electric power; and

19 [~~(4)~~] (8) renewable energy resources that are
20 in a distribution cooperative's energy supply portfolio on
21 January 1, 2008, shall be counted in determining compliance
22 with this section.

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

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1 renewable portfolio standard would be greater than the
2 reasonable cost threshold, the distribution cooperative shall
3 not be required to incur that cost; provided that the existence
4 of this condition excusing performance in any given year shall
5 not operate to delay any renewable portfolio standard in
6 subsequent years. [~~For purposes of the Rural Electric~~
7 ~~Cooperative Act]~~

8 C. Prior to January 1, 2020, the reasonable cost
9 threshold [~~means an amount that~~] shall be no greater than one
10 percent of the distribution cooperative's gross receipts from
11 business transacted in New Mexico for the preceding calendar
12 year. By January 1, 2020, the public regulation commission
13 shall establish, after notice and hearing, the reasonable cost
14 threshold above which level a distribution cooperative shall
15 not be required to add renewable energy to its electric energy
16 supply portfolio pursuant to the renewable portfolio standard.
17 The commission may thereafter modify the reasonable cost
18 threshold as changing circumstances warrant, after notice and
19 hearing. In establishing and modifying the reasonable cost
20 threshold, the commission shall take into account:

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

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

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

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

7 (5) the percentage requirements of the
8 renewable portfolio standard and the extent to which the
9 reasonable cost threshold limits the ability to achieve those
10 requirements;

11 (6) the avoided capital costs and operating
12 costs, including for fuel and purchased power, on a life-cycle
13 basis, for electric energy that would otherwise have been
14 required or produced by sources other than renewable sources;
15 and

16 (7) other factors, including public benefits,
17 that the commission deems relevant; provided that nothing in
18 the Rural Electric Cooperative Act shall be construed to permit
19 regulation by the commission of the production or sale price at
20 the point of production of the renewable energy.

21 [~~G.~~] D. By April 30 of each year, a distribution
22 cooperative shall file with the public regulation commission a
23 report on its purchases and generation of renewable energy
24 during the preceding calendar year. The report shall include
25 the cost of the renewable energy resources purchased and

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1 generated by the distribution cooperative to meet the renewable
2 portfolio standard.

3 ~~[D-]~~ E. A distribution cooperative shall report to
4 its membership a summary of its purchases and generation of
5 renewable energy during the preceding calendar year."

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

8 "62-16-4. RENEWABLE PORTFOLIO STANDARD.--

9 A. A public utility shall meet the renewable
10 portfolio standard requirements, as provided in this section,
11 to include renewable energy in its electric energy supply
12 portfolio. Requirements of the renewable portfolio standard
13 are:

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

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

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

24 ~~(c)]~~ (a) no later than January 1, 2015,
25 renewable energy shall comprise no less than fifteen percent of

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1 each public utility's total retail sales to New Mexico
2 customers; [~~and~~

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

7 (c) after January 1, 2020, the renewable
8 portfolio standard shall increase by an average of three
9 percent per year until January 1, 2025, at which time renewable
10 energy shall be thirty-five percent of each public utility's
11 total retail sales to New Mexico customers;

12 (d) after January 1, 2025, the renewable
13 portfolio standard shall increase by an average of three
14 percent per year until January 1, 2030, at which time renewable
15 energy shall be fifty percent of each public utility's total
16 retail sales to New Mexico customers;

17 (e) after January 1, 2030, the renewable
18 portfolio standard shall increase by an average of three
19 percent per year until January 1, 2035, at which time renewable
20 energy shall be sixty-five percent of each public utility's
21 total retail sales to New Mexico customers; and

22 (f) after January 1, 2035, the renewable
23 portfolio standard shall increase by an average of three
24 percent per year until January 1, 2040, at which renewable
25 energy shall be eighty percent of each public utility's total

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1 retail sales to New Mexico customers;

2 (2) the renewable portfolio standard
3 established by this section shall be reduced, as necessary, to
4 provide for the following specific procurement requirements for
5 nongovernmental customers at a single location or facility,
6 regardless of the number of meters at that location or
7 facility, with consumption exceeding ten million kilowatt-hours
8 per year. On and after January 1, [2006] 2011, the kilowatt-
9 hours of renewable energy procured for these customers shall be
10 limited so that the additional cost of the renewable portfolio
11 standard to each customer [~~does not exceed the lower of one~~
12 ~~percent of that customer's annual electric charges or forty-~~
13 ~~nine thousand dollars (\$49,000).~~ This procurement limit
14 ~~criteria shall increase by one-fifth percent or ten thousand~~
15 ~~dollars (\$10,000) per year until January 1, 2011, when the~~
16 ~~procurement limit criteria shall remain fixed at] shall be the
17 lower of two percent of that customer's annual electric charges
18 or ninety-nine thousand dollars (\$99,000). After January 1,
19 2012, the commission may adjust the ninety-nine-thousand-dollar
20 (\$99,000) limit for inflation. Nothing contained in this
21 paragraph shall be construed as affecting a public utility's
22 right to recover all reasonable costs of complying with the
23 renewable portfolio standard, pursuant to Section 62-16-6 NMSA
24 1978. The commission may authorize deferred recovery of the
25 costs of complying with the renewable portfolio standard,~~

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1 including carrying charges;

2 (3) any customer that is a political
3 subdivision of the state or any educational institution
4 designated in Article 12, Section 11 of the constitution of New
5 Mexico, with an enrollment of twenty-four thousand students or
6 more during the fall semester on its main campus, with
7 consumption exceeding twenty million kilowatt-hours per year at
8 any single location or facility, and that owns renewable energy
9 generation is exempt from all charges by the utility for
10 renewable energy procurements in a year, regardless of the
11 number of customer locations or meters on the system, if that
12 customer certifies to the state auditor and notifies the
13 commission and its serving electric utility that it will expend
14 two and one-half percent of that year's annual electricity
15 charges to continue to develop within twenty-four months
16 customer-owned renewable energy generation. That customer
17 shall also certify that it will retire all renewable energy
18 certificates associated with the energy produced from that
19 expenditure;

20 (4) the renewable portfolio shall be
21 diversified as to the type of renewable energy resource, taking
22 into consideration the overall reliability, availability,
23 dispatch flexibility and cost of the various renewable energy
24 resources made available by suppliers and generators. The
25 commission may impose the diversification requirements on a

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1 public utility by public utility basis;

2 (5) 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 (6) renewable energy resources that are in a
10 public utility's electric energy supply portfolio on July 1,
11 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 C. 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 and applying the reasonable
11 cost threshold, the commission shall take into account:

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

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

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

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

23 (5) the percentage requirements of the
24 renewable portfolio standard and the extent to which the
25 reasonable cost threshold limits the ability to achieve those

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1 requirements;

2 (6) the avoided capital costs and operating
3 costs, including for fuel and purchased power, on a life-cycle
4 basis, for electric energy that would otherwise have been
5 required or produced by sources other than renewable sources;
6 and

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

12 D. [~~By September 1, 2007 and July 1 of each year~~
13 ~~thereafter until 2022, and thereafter~~] As determined necessary
14 by the commission, a public utility shall file a report to the
15 commission on its procurement and generation of renewable
16 energy during the prior [~~calendar year~~] reporting or planning
17 period and a procurement plan that includes:

18 (1) the cost of procurement for any new
19 renewable energy resource in the next [~~calendar year~~] reporting
20 or planning period, as determined by the commission, required
21 to comply with the renewable portfolio standard; and

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

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1 renewable energy resource; or

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

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

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

21 G. A public utility may file a transitional
22 procurement plan requesting that the commission determine that
23 the costs of renewable energy resources that the public
24 utility has committed to, or may commit to, prior to the
25 commission's establishing a reasonable cost threshold, are

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1 reasonable and recoverable pursuant to Section 62-16-6 NMSA
2 1978. The requirements of annual procurement plan filings
3 shall be applicable to any transitional procurement plan filing
4 pursuant to this section.

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

11 SECTION 3. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2017.