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HOUSE BILL 400

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

INTRODUCED BY

Angelica Rubio

AN ACT

RELATING TO UTILITIES; AMENDING SECTIONS OF THE RENEWABLE ENERGY ACT TO DELETE THE REASONABLE COST THRESHOLD AS A METHOD FOR DETERMINING RECOVERY OF REASONABLE COSTS FOR MEETING THE RENEWABLE PORTFOLIO STANDARDS.

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;

(2) the use of renewable energy by public

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1 utilities subject to commission oversight in accordance with
2 the Renewable Energy Act can bring significant economic
3 benefits to New Mexico;

4 (3) public utilities should be required to
5 include prescribed amounts of renewable energy in their
6 electric energy supply portfolios for sales to retail customers
7 in New Mexico by prescribed dates;

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

12 (5) a public utility should have incentives to
13 go beyond the minimum requirements of the renewable portfolio
14 standard;

15 [~~(6) public utilities should not be required~~
16 ~~to acquire energy generated from renewable energy resources~~
17 ~~that could result in costs above a reasonable cost threshold]~~
18 and

19 [~~(7)~~] (6) it may serve the public interest for
20 public utilities to participate in national or regional
21 renewable energy trading.

22 B. The [~~purposes~~] purpose of the Renewable Energy
23 Act [~~are~~] is to:

24 (1) prescribe the amounts of renewable energy
25 resources that public utilities shall include in their electric

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1 energy supply portfolios for sales to retail customers in New
2 Mexico by prescribed dates; and

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

7 ~~(3) protect public utilities and their~~
8 ~~ratepayers from renewable energy costs that are above a~~
9 ~~reasonable cost threshold]."~~

10 SECTION 2. Section 62-16-3 NMSA 1978 (being Laws 2004,
11 Chapter 65, Section 3, as amended) is amended to read:

12 "62-16-3. DEFINITIONS.--As used in the Renewable Energy
13 Act:

14 A. "commission" means the public regulation
15 commission;

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

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

22 ~~[D. "reasonable cost threshold" means the cost~~
23 ~~established by the commission above which a public utility~~
24 ~~shall not be required to add renewable energy to its electric~~
25 ~~energy supply portfolio pursuant to the renewable portfolio~~

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1 ~~standard;~~

2 ~~E.]~~ D. "renewable energy" means electric energy:

3 (1) generated by use of low- or zero-emissions
4 generation technology with substantial long-term production
5 potential; and

6 (2) generated by use of renewable energy
7 resources that may include:

8 (a) solar, wind and geothermal
9 resources;

10 (b) hydropower facilities brought in
11 service after July 1, 2007;

12 (c) fuel cells that are not fossil
13 fueled; and

14 (d) biomass resources, such as
15 agriculture or animal waste, small diameter timber, salt cedar
16 and other phreatophyte or woody vegetation removed from river
17 basins or watersheds in New Mexico, landfill gas and
18 anaerobically digested waste biomass; but

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

21 ~~[F.]~~ E. "renewable energy certificate" means a
22 certificate or other record, in a format approved by the
23 commission, that represents all the environmental attributes
24 from one kilowatt-hour of electricity generation from a
25 renewable energy resource;

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1 ~~[G.]~~ F. "renewable portfolio standard" means the
2 percentage of retail sales by a public utility to electric
3 consumers in New Mexico that is required by the Renewable
4 Energy Act to be supplied by renewable energy; and

5 ~~[H.]~~ G. "renewable purchased power agreement" means
6 an agreement that binds an entity generating power from
7 renewable energy resources to provide power at a specified
8 price and binds a public utility to purchase the power at that
9 price."

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

12 "62-16-4. RENEWABLE PORTFOLIO STANDARD.--

13 A. A public utility shall meet the renewable
14 portfolio standard requirements, as provided in this section,
15 to include renewable energy in its electric energy supply
16 portfolio. Requirements of the renewable portfolio standard
17 are:

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

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

24 (b) no later than January 1, 2011,
25 renewable energy shall comprise no less than ten percent of

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

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

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

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

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

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

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1 shall also certify that it will retire all renewable energy
2 certificates associated with the energy produced from that
3 expenditure;

4 (4) the renewable portfolio shall be
5 diversified as to the type of renewable energy resource, taking
6 into consideration the overall reliability, availability,
7 dispatch flexibility and cost of the various renewable energy
8 resources made available by suppliers and generators;

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

16 (6) renewable energy resources that are in a
17 public utility's electric energy supply portfolio on July 1,
18 2004 shall be counted in determining compliance with this
19 section.

20 ~~[B. If a public utility finds that, in any given~~
21 ~~year, the cost of renewable energy that would need to be~~
22 ~~procured or generated for purposes of compliance with the~~
23 ~~renewable portfolio standard would be greater than the~~
24 ~~reasonable cost threshold as established by the commission~~
25 ~~pursuant to this section, the public utility shall not be~~

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1 ~~required to incur that cost; provided that the existence of~~
2 ~~this condition excusing performance in any given year shall not~~
3 ~~operate to delay the annual increases in the renewable~~
4 ~~portfolio standard in subsequent years. When a public utility~~
5 ~~can generate or procure renewable energy at or below the~~
6 ~~reasonable cost threshold, it shall be required to add~~
7 ~~renewable energy resources to meet the renewable portfolio~~
8 ~~standard applicable in the year when the renewable energy~~
9 ~~resources are being added.~~

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

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

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

24 ~~(3) the impact of the cost for renewable~~
25 ~~energy on overall retail customer rates;~~

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

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

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

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

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

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

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

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

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

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~~to this section.~~

H.] E. The commission shall determine if it is in the 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."