

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 489

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO PUBLIC UTILITIES; ENACTING THE ENERGY TRANSITION ACT; AUTHORIZING CERTAIN UTILITIES THAT ABANDON CERTAIN GENERATING FACILITIES TO ISSUE BONDS PURSUANT TO A FINANCING ORDER ISSUED BY THE PUBLIC REGULATION COMMISSION; Sf1→**PROVIDING PROCUREMENT OF REPLACEMENT RESOURCES, INCLUDING LOCATION OF THE REPLACEMENT RESOURCES;**←Sf1 AUTHORIZING THE COMMISSION TO IMPOSE A FEE ON THE QUALIFYING UTILITY TO PAY COMMISSION EXPENSES FOR CONTRACTS FOR SERVICES FOR LEGAL COUNSEL AND FINANCIAL ADVISORS TO PROVIDE ADVICE AND ASSISTANCE FOR PURPOSES RELATED TO THE ACT; PROVIDING PROCEDURES FOR REHEARING AND JUDICIAL REVIEW;

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PROVIDING FOR THE TREATMENT OF ENERGY TRANSITION BONDS BY THE COMMISSION; CREATING SECURITY INTERESTS IN CERTAIN PROPERTY; PROVIDING FOR THE PERFECTION OF INTERESTS IN CERTAIN PROPERTY; EXEMPTING ENERGY TRANSITION CHARGES FROM Sfl→~~FRANCHISE AND~~←Sfl CERTAIN Sfl→~~OTHER~~←Sfl GOVERNMENT FEES; Sfl→**CREATING THE ENERGY TRANSITION INDIAN AFFAIRS FUND, THE ENERGY TRANSITION ECONOMIC DEVELOPMENT ASSISTANCE FUND AND THE ENERGY TRANSITION DISPLACED WORKER ASSISTANCE FUND;**←Sfl PROVIDING FOR NONIMPAIRMENT OF ENERGY TRANSITION CHARGES AND BONDS; PROVIDING FOR CONFLICTS IN LAW; PROVIDING THAT ACTIONS TAKEN PURSUANT TO THE ENERGY TRANSITION ACT SHALL NOT BE INVALIDATED IF THE ACT IS HELD INVALID; REQUIRING THE PUBLIC REGULATION COMMISSION TO APPROVE PROCUREMENT OF ENERGY STORAGE SYSTEMS; PROVIDING NEW REQUIREMENTS AND TARGETS FOR THE RENEWABLE PORTFOLIO STANDARD FOR RURAL ELECTRIC COOPERATIVES AND PUBLIC UTILITIES;

Sfl→~~CREATING THE ENERGY TRANSITION INDIAN AFFAIRS FUND, THE ENERGY TRANSITION ECONOMIC DEVELOPMENT ASSISTANCE FUND AND THE ENERGY TRANSITION DISPLACED WORKER ASSISTANCE FUND;~~←Sfl AMENDING CERTAIN DEFINITIONS IN THE RENEWABLE ENERGY ACT Sfl→**AND RURAL ELECTRIC COOPERATIVE ACT**←Sfl; REQUIRING THE HIRING OF APPRENTICES FOR THE CONSTRUCTION OF FACILITIES THAT PRODUCE OR PROVIDE ELECTRICITY; Sfl→**ALLOWING COST RECOVERY FOR EMISSIONS REDUCTION; PROVIDING POWERS AND DUTIES FOR THE PUBLIC REGULATION COMMISSION OVER VOLUNTARY PROGRAMS FOR PUBLIC UTILITIES AND RURAL ELECTRIC COOPERATIVES; REQUIRING THE**

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PROMULGATION OF RULES TO IMPLEMENT THE RENEWABLE ENERGY

ACT; ←Sf1 REQUIRING THE ENVIRONMENTAL IMPROVEMENT BOARD TO PROMULGATE RULES TO LIMIT CARBON DIOXIDE EMISSIONS OF CERTAIN ELECTRIC GENERATING FACILITIES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 23 of this act may be cited as the "Energy Transition Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Energy Transition Act:

A. "adjustment mechanism" means a formula-based calculation used to make adjustments to the energy transition charges that are necessary to correct for any over-collection or under-collection of the energy transition charges, to provide for the timely and complete payment of scheduled principal and interest on energy transition bonds and the payment and recovery of other financing costs in accordance with a financing order;

B. "ancillary agreement" means a bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement or other similar agreement or arrangement entered into in connection with the issuance of an energy transition bond that is designed to promote the credit quality and marketability of the bond or to mitigate the risk of an increase in interest rates;

C. "assignee" means a person or legal entity, that

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may be newly created by the qualifying utility, to which an interest in energy transition property is sold, assigned, transferred or conveyed, other than as security, and any successor to or subsequent assignee of such a person or legal entity;

D. "commission" means the public regulation commission;

E. "electric delivery service" means transmission, distribution, generation, energy or any other service from a qualifying utility pursuant to commission-approved rate schedules or special contracts;

F. "energy transition bond" means a bond or other evidence of indebtedness or ownership that is issued by a qualifying utility or an assignee pursuant to a financing order, the proceeds of which are secured by or payable from energy transition property and that are non-recourse to the qualifying utility;

G. "energy transition charge" means a non-bypassable charge paid by all customers of a qualifying utility for the recovery of energy transition costs;

H. "energy transition cost" means the sum of:

- (1) financing costs;
- (2) abandonment costs, which for a qualifying generating facility shall not exceed the lower of three hundred seventy-five million dollars (\$375,000,000) or one hundred

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fifty percent of the undepreciated investment in a qualifying generating facility being abandoned, as of the date of the abandonment. The abandonment costs subject to this limitation shall include:

(a) up to thirty million dollars (\$30,000,000) per qualifying generating facility in costs not previously collected from the qualifying utility's customers for plant decommissioning and mine reclamation costs, subject to any limitations ordered by the commission prior to January 1, 2019 and affirmed by the New Mexico supreme court prior to the effective date of the Energy Transition Act, associated with the abandoned qualifying generating facility;

(b) up to twenty million dollars (\$20,000,000) per qualifying generating facility in costs for severance and job training for employees losing their jobs as a result of an abandoned qualifying generating facility and any associated mine that only services the abandoned qualifying generating facility;

(c) undepreciated investments as of the date of abandonment on the qualifying utility's books and records in a qualifying generating facility that were either being recovered in rates as of January 1, 2019 or are otherwise found to be recoverable through a court decision; and

(d) other undepreciated investments in a qualifying generating facility incurred to comply with law, whether established by statute, court decision or rule, or necessary to maintain the safe and reliable operation of the qualifying generating facility prior to the facility's

abandonment;

(3) any other costs required to comply with changes in law enacted after January 1, 2019 incurred by the qualifying utility at the qualifying generating facility; and

(4) payments required pursuant to Section 16 of the Energy Transition Act;

I. "energy transition property" means the rights and interests of a qualifying utility or an assignee under a financing order, including the right to impose, charge, collect and receive energy transition charges in an amount necessary to provide for full payment and recovery of all energy transition costs identified in the financing order, including all revenues or other proceeds arising from those rights and interests;

J. "energy transition revenues" means revenues collected by or on behalf of a qualifying utility through an energy transition charge;

K. "financing cost" means the cost incurred by the qualifying utility or an assignee to issue and administer energy transition bonds, including:

(1) payment of the fee authorized pursuant to Subsection L of Section 5 of the Energy Transition Act;

(2) principal, interest, acquisition, defeasance and redemption premiums that are payable on energy transition bonds;

(3) any payment required under an ancillary

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agreement and any amount required to fund or replenish a reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the energy transition bonds;

(4) any costs, fees and expenses related to issuing, supporting, repaying, servicing and refunding energy transition bonds, the application for a financing order, including related state board of finance expenses, or obtaining an order approving abandonment of a qualifying generating facility;

(5) any costs, fees and related expenses incurred relating to any existing secured or unsecured obligation of a qualifying utility or an affiliate of a qualifying utility that are necessary to obtain any consent, release, waiver or approval from any holder of such an obligation to permit a qualifying utility to issue or cause the issuance of energy transition bonds;

(6) any taxes, fees, charges or other assessments imposed on energy transition bonds;

(7) preliminary and continuing costs associated with subsequent financing; and

(8) any other related costs approved for recovery in the financing order;

L. "financing order" means an order of the commission that authorizes the issuance of energy transition bonds, authorizes the imposition, collection and periodic adjustments of the energy transition charge and creates energy transition property;

M. "financing party" means a trustee, collateral agent or other person acting for the benefit of a bondholder, and a party to an ancillary agreement or the energy transition bonds, the rights and obligations of which relate to or depend upon the existence of energy transition property, the enforcement and priority of a security interest in energy transition property or the timely collection and payment of energy transition revenues;

N. "lowest cost objective" means that the structuring, marketing and pricing of energy transition bonds results in the lowest energy transition charges consistent with prevailing market conditions at the time of pricing of energy transition bonds and the structure and terms of energy transition bonds approved pursuant to the financing order;

O. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, incorporated counties and H class counties;

P. "non-bypassable" means that the payment of an energy transition charge may not be avoided by an electric service customer located within a utility service area and shall be paid by the customer that receives electric delivery service from the qualifying utility imposing the charge for as long as the energy transition bonds secured by the charge are outstanding and the related financing costs have not been recovered in full;

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Q. "non-utility affiliate" means, with respect to a qualifying utility, a person that is an affiliated interest, as that term is used in the Public Utility Act, but a "non-utility affiliate" does not include a public utility that provides retail utility service to customers in the state;

R. "public utility" means "public utility" as used in the Public Utility Act, but "public utility" does not include a distribution cooperative utility organized pursuant to the Rural Electric Cooperative Act;

S. "qualifying generating facility" means a coal-fired generating facility in New Mexico that may be composed of multiple generating units that:

(1) has been granted a certificate of public convenience and for which abandonment authority is granted after December 31, 2018;

(2) is owned or leased, in whole or in part, by a qualifying utility;

(3) if operated by a qualifying utility prior to the effective date of the Energy Transition Act, is to be abandoned prior to January 1, 2023; and

(4) if not operated by a qualifying utility prior to the effective date of the Energy Transition Act, is to be abandoned prior to January 1, 2032; and

T. "qualifying utility" means a public utility that meets the requirements of Paragraph (1) of Subsection G of Section 62-3-3 NMSA 1978 and owns or leases all or a portion of a qualifying generating facility and its successor or assignees.

SECTION 3. [NEW MATERIAL] LOCATION OF RESOURCE

DEVELOPMENT AFTER ABANDONMENT.--

A. For a qualifying utility that abandons a qualifying generating facility in New Mexico prior to January 1, 2023, the qualifying utility shall, no later than one year after approval of the abandonment, apply for commission approval of competitively procured replacement resources. As part of that competitive procurement, and in addition to the criteria set forth in Subsections B and C of this section, projects shall be ranked based on their cost, economic development opportunity and ability to provide jobs with comparable pay and benefits to those lost due to the abandonment of a qualifying generating facility. The qualitative and quantitative data and analysis used to establish the ranking shall be available for review by parties to the commission proceeding.

B. In determining whether to approve replacement resources, the commission shall prefer resources with the least environmental impacts, those with higher ratios of capital costs to fuel costs and those able to reduce the cost of reclamation and use for lands previously mined within the county of the qualifying generating facility.

C. In considering responses to requests for proposals for replacement resources pursuant to this section, a qualifying utility shall inform prospective bidders that it

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promotes and encourages the use of workers residing in New Mexico to the greatest extent practicable and shall take that use into consideration in evaluating proposals.

D. The commission shall grant all necessary approvals for replacement resources; provided that the commission may determine that the particular resource proposed by the qualifying utility should not be approved and that, instead, an alternative replacement resource that meets the conditions of this section should be approved. The commission shall not disallow recovery of reasonable costs associated with requirements as to where the resources are located.

E. Replacement resources shall be subject to local property taxes or a binding commitment to make an equivalent payment in lieu of taxes.

F. As used in this section, "replacement resources" means up to four hundred fifty megawatts of nameplate capacity identified by the qualifying utility as replacement for a qualifying generating facility, and may include energy storage capacity; provided that such resources are located in the school district in New Mexico where the abandoned facility is located, are necessary to maintain reliable service and are in the public interest as determined by the commission.

**SECTION 4. [NEW MATERIAL] FINANCING ORDER--APPLICATION CONTENTS--PENDING APPLICATIONS.--**

A. A qualifying utility that is abandoning a qualifying generating facility may apply to the commission for a financing order pursuant to this section to recover all of its energy transition costs through the issuance of energy

transition bonds. To obtain a financing order, a qualifying utility shall obtain approval to abandon a qualifying generating facility pursuant to Section 62-9-5 NMSA 1978. The application for the financing order may be filed as part of the application for approval to abandon a qualifying generating facility.

B. An application for a financing order shall include:

(1) a description of the facility that the qualifying utility proposes to abandon or for which abandonment authority was granted after December 31, 2018;

(2) an estimate of the energy transition costs and shall:

(a) identify the severance pay and job training expenses for affected employees losing their jobs as a result of an abandoned qualifying generating facility and any associated mine that only services the abandoned qualifying generating facility;

(b) identify costs not previously collected from the qualifying utility's customers for plant decommissioning and mine reclamation costs, subject to any limitations ordered by the commission prior to January 1, 2019 and affirmed by the New Mexico supreme court prior to the effective date of the Energy Transition Act, associated with the abandoned qualifying generating facility; and

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(c) include an estimate of the financing costs associated with each series of energy transition bonds proposed to be issued;

(3) an estimate of the amount of energy transition charges necessary to recover the costs in Paragraph (2) of this subsection and the proposed calculation thereof, based on the estimated date of issuance and estimated principal amount of each series of energy transition bonds proposed to be issued;

(4) a description of the proposed adjustment mechanism that complies with the provisions of Section 6 of the Energy Transition Act;

(5) a memorandum with supporting exhibits from a securities firm, such firm to be attested to by the state board of finance as being experienced in the marketing of bonds and capable of providing such a memorandum, that the proposed issuance satisfies the current published AAA rating or equivalent rating criteria of at least one nationally recognized statistical rating organization for issuances similar to the proposed energy transition bonds. The request for such attestation may be made by a qualifying utility prior to an application for a financing order, and the state board of finance shall act upon such a request promptly;

(6) a commitment by the qualifying utility to file with the commission following the issuance of the energy transition bonds:

(a) a description of the final structure and pricing of the bonds;

(b) updated financing costs and payment amount required pursuant to Section 16 of the Energy Transition Act; and

(c) an updated calculation of the energy transition charges;

(7) an estimate of timing of the issuance and term of the energy transition bonds, or series of bonds; provided that the scheduled final maturity for each bond issuance shall be no longer than twenty-five years;

(8) identification of plans to sell, assign, transfer or convey, other than as a security, interest in energy transition property, including identification of an assignee, and demonstration that the assignee will be a financing entity wholly owned, directly or indirectly, by the qualifying utility that will be initially capitalized by the qualifying utility in such a way that equity interests in the financing entity are at least one-half percent of the total capital of the assignee;

(9) identification of ancillary agreements that may be necessary or appropriate;

(10) a description of a proposed ratemaking process to reconcile and recover or refund any difference between the energy transition costs financed by the energy transition bonds and the actual final energy transition costs incurred by the qualifying utility or the assignee;

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(11) a proposed ratemaking method to account for the reduction in the qualifying utility's cost of service associated with the amount of undepreciated investments being recovered by the energy transition charge at the time that charge becomes effective; and

(12) a statement from the qualifying utility committing that the qualifying utility will use commercially reasonable efforts to obtain the lowest cost objective.

C. The application may include requests for approvals for new resources necessitated by the abandonment of a qualifying generating facility.

D. The qualifying utility or the commission may defer applications for needed approvals for new resources to a separate proceeding; provided that the application identifies adequate potential new resources sufficient to provide reasonable and proper service to retail customers.

E. If an application for approval to abandon a qualifying generating facility is pending before the commission on the effective date of the Energy Transition Act, the qualifying utility may file a separate application for a financing order, and the commission may join or consolidate the application for a financing order with the pending proceeding involving abandonment of the qualifying generating facility, with the consent of the applicant. On such joinder or consolidation, the time periods prescribed by the Energy Transition Act shall become applicable to the joined or consolidated case as of the date of the joinder or consolidation.

F. If a qualifying utility does not recover energy transition costs pursuant to the Energy Transition Act, the energy transition costs may be recovered pursuant to other applicable provisions of the Public Utility Act.

**SECTION 5. [NEW MATERIAL] FINANCING ORDER--ISSUANCE--  
TERMS OF BONDS--REPORTS TO COMMISSION OF DISBURSEMENT OF BOND  
PROCEEDS--REVIEW AND AUDIT OF RECORDS.--**

A. The commission may approve an application for a financing order without a formal hearing if no protest establishing good cause for a formal hearing is filed within thirty days of the date when notice is given of the filing of the application for the financing order. If a hearing is held, the commission shall issue an order granting or denying the application for the financing order to a qualifying utility that is abandoning a qualifying generating facility and an order on an accompanying application of the qualifying utility for approval to abandon the qualifying generating facility within six months from the date the application for the financing order is filed with the commission. For good cause shown, the commission may extend the time for issuing the order for an additional three months.

B. Failure to issue an order approving the application or advising of the application's noncompliance pursuant to Subsection E of this section within the time prescribed by Subsection A of this section shall be deemed

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approval of the application for a financing order and approval to abandon the qualifying generating facility, if abandonment approval was requested as part of the application for the financing order pursuant to this subsection. The commission shall issue an order acknowledging the deemed approvals within seven days of the expiration of the time period described in Subsection A of this section.

C. If an application for a financing order is accompanied by a request for approval of new resources, this section provides an alternative time frame to that provided in Subsection C of Section 62-9-1 NMSA 1978, and the time frame specified in this section shall govern, unless the request has been deferred to a separate proceeding pursuant to Subsection D of Section 4 of the Energy Transition Act.

D. The issuance of a financing order shall be the only approval required for the authority granted in the financing order.

E. The commission shall issue a financing order approving the application if the commission finds that the qualifying utility's application for the financing order complies with the requirements of Section 4 of the Energy Transition Act. If the commission finds that a qualifying utility's application does not comply with Section 4 of the Energy Transition Act, the commission shall advise the qualifying utility of any changes necessary to comply with that section and provide the applicant an opportunity to amend the application to make such changes. Upon those changes being made, the commission shall issue a financing order approving

the application.

F. A financing order shall include the following provisions:

(1) approval for the qualifying utility or assignee to issue energy transition bonds as requested in the application, to use energy transition bonds to finance the maximum amount of the energy transition costs as requested in the application, as may be adjusted pursuant to Paragraph (6) of Subsection B of Section 4 of the Energy Transition Act, and to use the proceeds provided in Subsection A of Section 10 of the Energy Transition Act;

(2) approval for the qualifying utility to recover the energy transition costs, as may be adjusted pursuant to Paragraph (6) of Subsection B of Section 4 of the Energy Transition Act, requested in the application through energy transition charges;

(3) approval of the energy transition charges necessary to recover the authorized energy transition costs, to be imposed through a non-bypassable energy transition charge as a separate line item on the qualifying utility's customer bills, assessed consistent with energy and demand cost allocations within each customer class, subject to update pursuant to the notice filing contemplated by Paragraph (6) of Subsection B of Section 4 of the Energy Transition Act and subject to the application of the adjustment mechanism as

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provided in Section 6 of the Energy Transition Act, until the energy transition bonds issued pursuant to the financing order and the financing costs related to those bonds are paid in full;

(4) approval of the adjustment mechanism in compliance with Section 6 of the Energy Transition Act;

(5) a description of the energy transition property that is created by the financing order that may be used to pay, and secure the payment of, the energy transition bonds and financing costs authorized to be issued in the financing order;

(6) approval to enter into necessary or appropriate ancillary agreements;

(7) approval of any plans for selling, assigning, transferring or conveying, other than as a security, an interest in energy transition property; and

(8) approval of the proposed ratemaking process and method included in the application pursuant to Paragraphs (10) and (11) of Subsection B of Section 4 of the Energy Transition Act.

G. A financing order shall provide that the creation of energy transition property shall be simultaneous with the sale of the energy transition property to an assignee as provided in the application and the pledge of the energy transition property to secure energy transition bonds.

H. A financing order shall authorize the qualifying utility to issue one or more series of energy transition bonds for a scheduled final maturity of no more than twenty-five

years for each series; provided that a rated final maturity may exceed twenty-five years. With such authorization, the qualifying utility shall not subsequently be required to secure a separate financing order prior to each issuance.

I. The commission may require, as a condition of the financing order and in every circumstance subject to the limitations set forth in Subsection A of Section 7 of the Energy Transition Act, that, during any period in which energy transition bonds issued pursuant to the financing order are outstanding, an assignee that is a non-utility affiliate and issues energy transition bonds shall provide in the affiliate's articles of incorporation, partnership agreement or operating agreement, as applicable, that in order for a person to file a voluntary bankruptcy petition on behalf of that assignee, the prior unanimous consent of the directors, partners, managers or members, as applicable, shall be required. Any such provision shall constitute a legal, valid and binding agreement of such shareholders, partners or members of the assignee and is enforceable against such shareholders, partners or members.

J. A financing order may require the qualifying utility to file with the commission a periodic report showing the receipt and disbursement of proceeds of energy transition bonds and any other documents necessary for the qualifying utility to implement the financing order. Upon issuance of the energy transition bonds, the qualifying utility shall file an

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advice notice with the commission, subject to review by the commission for errors and corrections, that identifies the actual energy transition charges to be included on customers' bills, effective fifteen days from the date the advice notice is filed.

K. A financing order may authorize the commission to review and audit the books and records of the qualifying utility and of an assignee that is a non-utility affiliate and issues energy transition bonds, relating to energy transition property and the receipt and disbursement of proceeds of energy transition bonds.

L. After review and approval by the department of finance and administration with regard to reasonableness of contracts for services, a financing order may authorize the commission to impose a fee on the qualifying utility to pay commission expenses for contract bond counsel accredited by a nationally recognized association of bond lawyers to provide advice and assistance to commission staff in reviewing an application for a financing order and the structure and marketing of the proposed energy transition bonds.

M. The provisions of this section shall not be construed to limit the authority of the commission to:

(1) investigate the practices of or to audit the books and records of a qualifying utility; or

(2) issue such further orders as may be necessary to effectuate the provisions of the Energy Transition Act.

SECTION 6. [NEW MATERIAL] ADJUSTMENT MECHANISM--

ADJUSTMENT PROCEDURES--HEARING PROCEDURES IF COMMISSION  
DETERMINES ADJUSTMENT MADE IN ERROR.--

A. If the commission issues a financing order, the qualifying utility for which the order is issued may charge all of the qualifying utility's customers an energy transition charge, which shall be allocated to customer classes consistent with the production cost allocation methodology established by the commission in the qualifying utility's most recent general rate case. Energy transition charges shall be assessed consistent with the production cost allocation methodology and the determination of energy and demand costs within each customer class, both of which shall be subject to the adjustment mechanism.

B. The commission shall periodically approve adjustments of the energy transition charges pursuant to the adjustment mechanism approved in the financing order to correct for any over-collection or under-collection of the energy transition charge and to provide for timely payment of scheduled principal of and interest on the energy transition bonds and the payment and recovery of financing costs in accordance with the financing order. Except as provided in Subsection C of this section, the qualifying utility shall file at least semiannually, or more frequently as provided in the financing order:

- (1) a calculation estimating whether the

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existing energy transition charge is sufficient to provide for timely payment of scheduled principal of and interest on the energy transition bonds and the payment and recovery of other financing costs in accordance with the financing order or if either an over-collection or under-collection is projected; and

(2) a calculation showing the adjustment to the energy transition charge to correct for any over-collection or under-collection of energy transition charges.

C. The qualifying utility shall file the calculations described in Subsection B of this section at least quarterly during the two-year period preceding the final maturity date of the energy transition bonds.

D. The adjustment mechanism shall remain in effect until the energy transition bonds and all financing costs have been fully paid and recovered, any under-collection is recovered from customers and any over-collection is returned to customers.

E. On the same day the qualifying utility files with the commission its calculation of the adjustment to the energy transition charge, the qualifying utility shall cause notice of the filing to be given to the parties of record in the case in which the financing order was issued.

F. An adjustment to the energy transition charge filed by the qualifying utility shall be deemed approved without hearing thirty days after filing the adjustment unless:

(1) no later than twenty days from the date the qualifying utility filed the calculation of the adjustment, the commission is notified of a potential mathematical or

transcription error in the adjustment; provided that the notice identifies the error with specificity; and

(2) the commission determines that the calculation of the adjustment is unlikely to provide for timely payment, or is likely to result in a material overpayment, of scheduled principal of and interest on the energy transition bonds and the payment and recovery of other financing costs in accordance with the financing order and, based on that determination, suspends operation of the adjustment, pending a hearing limited to the issue of the error in the adjustment; provided that the suspension shall be for a period not to exceed sixty days from the date the qualifying utility filed the calculation of the adjustment.

G. If the commission determines that a hearing is necessary, the commission shall hold a hearing on the proposed adjustment that shall be limited to determining whether there is a mathematical or transcription error in the calculation of the adjustment. If, after a hearing, the commission determines that the calculation of the adjustment contains a mathematical or transcription error, the commission shall issue an order that rejects and corrects the adjustment. The qualifying utility shall adjust the energy transition charge in accordance with the commission's calculation within five days from issuance of the order. If the commission does not issue an order rejecting the adjustment with a determination of the

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corrected calculation within sixty days from the date the qualifying utility filed the adjustment, the adjustment to the energy transition charge shall be deemed approved.

H. No adjustment pursuant to this section, and no proceeding held pursuant to this section, shall affect the irrevocability of the financing order pursuant to Section 7 of the Energy Transition Act.

**SECTION 7. [NEW MATERIAL] FINANCING ORDER--  
IRREVOCABILITY--AMENDMENTS.--**

A. A financing order is irrevocable and the commission shall not reduce, impair, postpone or terminate the energy transition charges approved in the financing order, the energy transition property or the collection or recovery of energy transition revenues.

B. Subject to the limitation provided in Subsection A of this section, a financing order may be amended at the request of the qualifying utility to commence a proceeding and issue an amended financing order that:

(1) provides for refinancing, retiring or refunding all or a portion of an outstanding series of energy transition bonds issued pursuant to the original financing order; provided that the commission includes in the amended financing order the findings and requirements specified in Section 5 of the Energy Transition Act; or

(2) adjusts the amount of energy transition costs to be financed by energy transition bonds that have not yet been issued to reflect updated estimated or actual costs that differ from costs estimated at the time of the initial

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financing order or to correct any errors.

C. The commission shall issue an order granting or denying the proposed amended financing order within thirty days of the filing of the request by the qualifying utility. No change in the credit rating of a qualifying utility from the credit rating at the time of issuance of a financing order shall impair the irrevocability of a financing order.

**SECTION 8. [NEW MATERIAL] AGGRIEVED PARTIES--REQUEST FOR REHEARING--JUDICIAL REVIEW.--**

A. A financing order shall be issued as a separate order from any other order issued by the commission on a requested approval in the application proceeding and is a final order of the commission. A party aggrieved by the issuance of a financing order may apply to the commission for a rehearing in accordance with Section 62-10-16 NMSA 1978; provided that such application shall be due no later than ten calendar days after issuance of the financing order. An application for rehearing shall be deemed denied if not acted upon by the commission within ten calendar days after the filing of the application.

B. An aggrieved party may file a notice of appeal with the supreme court in accordance with Section 62-11-1 NMSA 1978; provided that such notice shall be due no later than ten calendar days after denial of an application for rehearing or, if rehearing is not applied for, no later than ten calendar

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days after issuance of the financing order. The supreme court shall proceed to hear and determine the appeal as expeditiously as practicable.

**SECTION 9. [NEW MATERIAL] CONDITIONS THAT KEEP FINANCING ORDERS IN EFFECT AND ENERGY TRANSITION CHARGES IMPOSED.--**

A. A financing order shall remain in effect until the energy transition bonds issued pursuant to the financing order and any related financing costs have been paid in full.

B. A financing order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization or insolvency of the qualifying utility or any non-utility affiliate or the commencement of any proceeding for bankruptcy or appointment of a receiver.

C. If energy transition bonds issued pursuant to a financing order are outstanding and the related energy transition costs have not been paid in full, the energy transition charges authorized by the financing order shall be collected by the qualifying utility or its successors or assignees, or a collection agent, in full through a non-bypassable charge that is a separate line item on customer bills and not a part of the qualifying utility's base rates. The charge shall be paid by all customers:

(1) receiving electric delivery service from the qualifying utility under commission-approved rate schedules or special contracts; and

(2) who acquire electricity from an alternative or subsequent electricity supplier in the utility service area, to the extent that such acquisition is permitted

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by New Mexico law.

**SECTION 10. [NEW MATERIAL] QUALIFYING UTILITY DUTIES.--**

A. Except as provided in Section 16 of the Energy Transition Act, a qualifying utility that is abandoning a qualifying generating facility shall use the proceeds of the issuance of energy transition bonds only for purposes related to providing utility service to customers and to pay financing costs.

B. Energy transition revenues shall be applied solely to the repayment of energy transition bonds and the ongoing financing costs.

C. The failure of a qualifying utility to comply with any provision of the Energy Transition Act shall not invalidate, impair or affect a financing order, energy transition property, energy transition charge or energy transition bonds and financing costs. Payments to bondholders or financing parties on the energy transition bonds shall be made on a quarterly or semiannual basis pursuant to the terms of the energy transition bonds.

D. For a qualifying utility that receives approval of a financing order and issues sources of energy transition bonds, the qualifying utility's generation and sources of energy procured pursuant to power purchase agreements with a term of twenty-four months or longer, and that are dedicated to serve the qualifying utility's retail customers, shall not

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emit, on average, more than four hundred pounds of carbon dioxide per megawatt-hour by January 1, 2023, and not more than two hundred pounds of carbon dioxide per megawatt-hour by January 1, 2032 and thereafter. Compliance shall be measured and verified every three years with the first period commencing on January 1, 2023. The commission shall adopt rules to implement the requirements of this subsection.

**SECTION 11. [NEW MATERIAL] COMMISSION TREATMENT OF ENERGY TRANSITION BONDS.--**

A. If the commission issues a financing order, the commission shall not treat:

(1) energy transition bonds issued pursuant to the financing order as debt of the qualifying utility;

(2) the energy transition charges paid under the financing order as revenue of the qualifying utility; or

(3) the energy transition costs to be financed by energy transition bonds as costs of the qualifying utility.

B. Reasonable actions taken by a qualifying utility to comply with the financing order shall be deemed to be just and reasonable for ratemaking purposes. Nothing in the Energy Transition Act shall:

(1) prevent or preclude the commission from investigating the compliance of a qualifying utility with the terms and conditions of a financing order and requiring compliance therewith;

(2) prevent or preclude the commission from imposing regulatory sanctions against a qualifying utility for failure to comply with the terms and conditions of a financing

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order or the requirements of the Energy Transition Act;

(3) affect the authority of the commission to apply the adjustment mechanism as provided in Section 6 of the Energy Transition Act; or

(4) prevent or preclude the commission from including the qualifying utility's acquisition of replacement power resources in the qualifying utility's cost of service.

C. The commission shall not order or require a qualifying utility to issue energy transition bonds to finance any costs associated with abandonment of a qualifying generating facility. A utility's decision not to issue energy transition bonds shall not be a basis for the commission to refuse to allow a qualifying utility to recover energy transition costs in an otherwise permissible fashion, or as a basis to refuse or condition authorization to issue securities pursuant to Sections 62-6-6 and 62-6-7 NMSA 1978.

**SECTION 12. [NEW MATERIAL] ENERGY TRANSITION PROPERTY--  
ENERGY TRANSITION REVENUES.--**

A. Energy transition property that is created in a financing order shall constitute an existing, present property right, notwithstanding that the imposition and collection of energy transition charges depend on the qualifying utility continuing to provide electric energy or continuing to perform its service functions relating to the collection of energy transition charges or on the level of future energy

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consumption. Energy transition property shall exist whether or not the energy transition revenues have been billed, have accrued or have been collected and notwithstanding that the value or amount of the energy transition property is dependent on the future provision of electric energy or service to customers by the qualifying utility.

B. All energy transition property created in a financing order shall continue to exist until the energy transition bonds issued and all related financing costs pursuant to a financing order are paid in full.

C. All or any portion of energy transition property created in a financing order may be transferred, sold, conveyed or assigned to a non-utility affiliate that is:

(1) wholly owned, directly or indirectly, by the qualifying utility; and

(2) created for the limited purposes of acquiring, owning or administering energy transition property or issuing energy transition bonds under the financing order.

D. All or any portion of energy transition property may be pledged to secure the payment of energy transition bonds and all financing costs.

E. The formation by a qualifying utility of a non-utility affiliate for the purposes of acquiring, owning or administering energy transition property, issuing energy transition bonds pursuant to a financing order and transacting a transfer, sale, conveyance, assignment, grant of a security interest in or pledge of energy transition property by a qualifying utility to a non-utility affiliate, to the extent

previously authorized in a financing order, does not require any further approval of the commission and shall not be subject to the rules of the commission regarding Class I transactions and Class II transactions, as defined by Section 62-3-3 NMSA 1978, except that the commission may examine the books and records of the non-utility affiliate.

F. If a qualifying utility defaults on any required payment of energy transition bonds, a court with jurisdiction in the matter, on application by an interested party and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the energy transition revenues for the benefit of bondholders, any assignees or financing parties. The order shall remain in full force and effect notwithstanding any bankruptcy, reorganization or other insolvency or receivership proceedings with respect to the qualifying utility or any non-utility affiliate.

G. Energy transition property, energy transition revenues and the interests of an assignee, bondholder or financing party in energy transition property and energy transition revenues are not subject to set-off, counterclaim, surcharge or defense by the qualifying utility or any other person or in connection with the bankruptcy, reorganization or other insolvency or receivership proceeding of the qualifying utility, non-utility affiliate or any other entity.

H. Any successor to a qualifying utility shall be

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bound by the requirements of the Energy Transition Act and shall perform and satisfy all obligations of, and have the same rights under a financing order as, the qualifying utility under the financing order in the same manner and to the same extent as the qualifying utility, including the obligation to collect and pay energy transition revenues to persons entitled to receive the revenues.

**SECTION 13. [NEW MATERIAL] SECURITY INTERESTS--**

**CREATION OF SECURITY INTEREST--PRIORITY OVER OTHER LIENS--  
ATTACHMENT ON FILING WITH SECRETARY OF STATE.--**

A. Except as otherwise provided in this section, the creation, perfection and enforcement of a security interest in energy transition property to secure the repayment of the principal of and interest on energy transition bonds, amounts payable pursuant to an ancillary agreement and other financing costs are governed by this section. This section shall be deemed to supersede the provisions of the Uniform Commercial Code and Chapter 62, Article 13 NMSA 1978, to the extent those provisions are inconsistent with this section.

B. The description or reference to energy transition property in a transfer or security agreement and a financing statement is sufficient only if the description or reference refers to the Energy Transition Act and the financing order creating the energy transition property. This section applies to all purported transfers of, grants of liens on or security interests in, energy transition property.

C. A security interest in energy transition property is created, valid and binding at the latest of when:

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- (1) the financing order is issued;
- (2) a security agreement is executed and delivered; or
- (3) value is received for the energy transition bonds.

D. The security interest attaches without any physical delivery of collateral or other act and the lien of the security interest shall be valid, binding and perfected against all parties having claims of any kind against the person granting the security interest, regardless of whether such parties have notice of the lien, on the filing of a financing statement with the secretary of state. The secretary of state shall maintain the financing statement in the same manner and in the same recordkeeping system maintained for financing statements filed pursuant to the Uniform Commercial Code-Secured Transactions. Financing statements filed pursuant to this section shall be effective until a termination statement is filed.

E. A security interest in energy transition property is a continuously perfected security interest and has priority over any other lien that may subsequently attach to the energy transition property unless the holder of the security interest has agreed in writing otherwise.

F. The priority of a security interest in energy transition property is not affected by the commingling of

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energy transition revenues with other funds. Any pledgee or secured party shall have a perfected security interest in the amount of all energy transition revenues that are deposited in any account of the qualifying utility and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party.

G. No order of the commission amending a financing order and no application of the adjustment mechanism shall affect the validity, perfection or priority of a security interest in or transfer of energy transition property.

**SECTION 14. [NEW MATERIAL] SALE OF ENERGY TRANSITION PROPERTY--PERFECTING INTERESTS--ABSOLUTE TRANSFER AND TRUE SALE REQUIREMENTS.--**

A. Any sale, assignment or transfer of energy transition property to an assignee that is a financing entity that is wholly owned, directly or indirectly, by the utility shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title and interest in, to and under the energy transition property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A transfer of an interest in energy transition property shall be created when:

(1) the financing order creating the energy transition property has become effective;

(2) the documents evidencing the transfer of energy transition property have been executed and delivered to

the assignee; and

(3) value is received.

B. On the filing of a financing statement with the secretary of state pursuant to Subsection D of Section 13 of the Energy Transition Act, a transfer of an interest in energy transition property shall be perfected against all third persons, except creditors holding a prior security interest, ownership interest or assignment in the energy transition property previously perfected in accordance with Section 13 of that act.

C. The characterization of the sale, assignment or transfer as an absolute transfer and true sale, and the corresponding characterization of the property interest of the purchaser, shall not be affected or impaired by:

(1) commingling of energy transition revenues with other funds;

(2) the retention by the seller of:

(a) a partial or residual interest, including an equity interest, in the energy transition property, whether direct or indirect, or whether subordinate or otherwise; or

(b) the right to recover costs associated with taxes or license fees imposed on the collection of energy transition revenues;

(3) any recourse that the purchaser may have

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against the seller;

(4) any indemnification rights, obligations or repurchase rights made or provided by the seller;

(5) the obligation of the seller to collect energy transition revenues on behalf of an assignee;

(6) the treatment of the sale, assignment or transfer of energy transition property for tax, financial reporting or other purposes;

(7) any subsequent order of the commission amending a financing order pursuant to Subsection B of Section 7 of the Energy Transition Act;

(8) any use of an adjustment mechanism approved in the financing order; or

(9) anything else that might affect or impair the characterization of the property.

SECTION 15. [NEW MATERIAL] SCORC→~~EXEMPTION FROM~~←SCORC FEE ASSESSMENTS.--The SCORC→~~imposition, collection and receipt of an energy transition charge is exempt from~~ **energy transition charge stated as a separate line entry on a customer bill sent by a qualifying utility may be subject to**←SCORC an assessment of a franchise fee imposed by a municipality, county or other political subdivision of the state SCORC→**and** , **pursuant to a utility franchise agreement. The imposition, collection and receipt of an energy transition charge is exempt from**←SCORC inspection and supervision fees assessed pursuant to the Public Utility Act.

SECTION 16. [NEW MATERIAL] ENERGY TRANSITION INDIAN AFFAIRS FUND--ENERGY TRANSITION ECONOMIC DEVELOPMENT ASSISTANCE

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FUND--ENERGY TRANSITION DISPLACED WORKER ASSISTANCE FUND--  
COMMUNITY ADVISORY COMMITTEE.--

A. The "energy transition Indian affairs fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

B. The Indian affairs department shall administer the energy transition Indian affairs fund, and money in the fund is subject to appropriation by the legislature only to that department to assist in addressing the conditions and issues of tribes and native peoples in the affected community.

C. The Indian affairs department shall develop an Indian affairs assistance plan to assist tribal and native people in the affected community that shall provide for the disbursement of money in the energy transition Indian affairs fund. In developing the plan, the Indian affairs department shall establish a public planning process in the affected community to inform the use of money in the fund. The Indian affairs department shall engage in consultation with Indian nations, tribes and pueblos in the affected community pursuant to the State-Tribal Collaboration Act. The public planning process shall include at least three public meetings in the affected community. Expenditures from the fund shall be made

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after completion of the plan and as follows:

(1) to an entity approved by the Indian affairs department to receive funds for any program established at the Indian affairs department; and

(2) to tribal governments, public agencies or private persons to provide services and facilities in the affected community for promoting the welfare of Indian people.

D. The "energy transition economic development assistance fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

E. The economic development department shall administer the energy transition economic development assistance fund, and money in the fund is subject to appropriation by the legislature only to that department to assist in diversifying and promoting the affected community's economy by fostering economic development opportunities unrelated to fossil fuel development or use.

F. The economic development department shall develop an economic diversification and development plan to assist the affected community that shall provide for the disbursement of money in the energy transition economic development assistance fund. In developing the plan, the economic development department shall request recommendations from the affected community's community advisory committee pursuant to Subsection K of this section and establish a public

input process in the affected community to inform the use of money in the fund. The economic development department shall engage in consultation with Indian nations, tribes and pueblos in the affected area pursuant to the State-Tribal Collaboration Act. The public input process shall include at least three public meetings in the affected community. Expenditures from the fund shall be made pursuant to the plan and as follows:

- (1) to an entity approved by the economic development department to receive funds for any program established at the economic development department;
- (2) to assist employers to qualify for any tax relief for hiring displaced workers established under state or federal law; and
- (3) to a municipality, county, Indian nation, pueblo or tribe or land grant community in New Mexico for programs designed to promote economic development in the affected community.

G. The "energy transition displaced worker assistance fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

H. The workforce solutions department shall administer the energy transition displaced worker assistance

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fund, and money in the fund is subject to appropriation by the legislature only to that department to assist displaced workers in an affected community.

I. The workforce solutions department shall develop a displaced worker development plan to assist displaced workers in an affected community that shall provide for the disbursement of money in the energy transition displaced worker assistance fund. In developing the plan, the workforce solutions department shall request recommendations from the affected community's community advisory committee pursuant to Subsection K of this section and establish a public input process in the affected community to inform the use of money in the energy transition displaced worker assistance fund. The workforce solutions department shall engage in consultation with Indian nations, tribes and pueblos in the affected area pursuant to the State-Tribal Collaboration Act. The public input process shall include at least three public meetings in the affected community. Expenditures from the energy transition displaced worker assistance fund shall be made pursuant to the plan and as follows:

(1) to assist employers of displaced workers to qualify for any tax relief established under state or federal law;

(2) to the workforce solutions department:

(a) to provide assistance to displaced workers using any program established at that department; and

(b) for payment of costs associated with displaced workers enrolling and participating in certified

apprenticeship programs in New Mexico; and

(3) to a municipality, county, Indian nation, pueblo or tribe or land grant community in New Mexico for job training and apprenticeship programs for displaced workers or for programs designed to promote economic development in the affected community.

J. Within thirty days of receipt of energy transition bond proceeds, a qualifying generating facility located in New Mexico shall transfer the following percentages of the financed amount of energy transition bonds as follows:

(1) one-half percent to the Indian affairs department for deposit in the energy transition Indian affairs fund;

(2) one and sixty-five hundredths percent to the economic development department for deposit in the energy transition economic development assistance fund; and

(3) three and thirty-five hundredths percent to the workforce solutions department for deposit in the energy transition displaced worker assistance fund.

K. In each affected community, a community advisory committee shall be convened. All meetings of the community advisory committee shall be held pursuant to the Open Meetings Act. The secretaries of Indian affairs, economic development and workforce solutions shall appoint three conveners who reside in the affected community, at least one from each major

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political party and one representing one of the Navajo Nation chapter houses in the affected community. The conveners shall appoint members of the community advisory committee to include a member from each municipality, county, Indian nation, pueblo, tribe and land grant community, if any, in the affected community, at least four appointees representing diverse economic and cultural perspectives of the affected community and one appointee representing displaced workers in the affected community. Within sixty days of a request by the economic development department pursuant to Subsection F of this section, or the workforce solutions department pursuant to Subsection I of this section, a community advisory committee shall provide recommendations to the requesting department on the use of available funds intended for the affected community.

L. As used in this section:

(1) "affected community" means a New Mexico county located within one hundred miles of a New Mexico facility producing electricity that closes, resulting in at least forty displaced workers; and

(2) "displaced worker" means a New Mexico resident who:

(a) within the previous twelve months, was terminated from employment, or whose contract was terminated, due to the abandonment of a New Mexico facility producing electricity that resulted in displacing at least forty workers;

(b) had at least seventy-five percent of the resident's net income, as that term is defined in the

Income Tax Act, from the employment or contract described in Subparagraph (a) of this paragraph;

(c) has not been able to replace the lost wages described in Subparagraph (b) of this paragraph or whose annual wages are at least twenty-five percent less than when the qualifying facility was operating; and

(d) does not qualify to take full benefits pursuant to a pension or retirement plan.

**SECTION 17. [NEW MATERIAL] ENERGY TRANSITION BONDS NOT PUBLIC DEBT.--**Energy transition bonds issued pursuant to the Energy Transition Act shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state. Bondholders shall have no right to have taxes levied by the legislature or the taxing authority of any county, municipality or other political subdivision of this state for the payment of the principal of or interest on energy transition bonds. The issuance of energy transition bonds does not obligate the state or a political subdivision of the state to levy any tax or make any appropriation for payment of the principal of or interest on the bonds.

**SECTION 18. [NEW MATERIAL] ENERGY TRANSITION BONDS AS LEGAL INVESTMENTS.--**Energy transition bonds shall be legal investments for all governmental units, permanent funds of the state, finance authorities, financial institutions, insurance

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companies, fiduciaries and other persons requiring statutory authority regarding legal investments.

**SECTION 19. [NEW MATERIAL] STATE PLEDGE NOT TO IMPAIR.--**

A. The state pledges to and agrees with the bondholders, any assignee and any financing parties that the state shall not take or permit any action that impairs the value of energy transition property, except as allowed pursuant to Section 6 of the Energy Transition Act, or reduces, alters or impairs energy transition charges that are imposed, collected and remitted for the benefit of the bondholders, any assignee and any financing parties, until the entire principal of, interest on and redemption premium on the energy transition bonds, all financing costs and all amounts to be paid to an assignee or financing party under an ancillary agreement are paid in full and performed in full.

B. Any person who issues energy transition bonds is permitted to include the pledge specified in Subsection A of this section in the energy transition bonds, ancillary agreements and documentation related to the issuance and marketing of the energy transition bonds.

**SECTION 20. [NEW MATERIAL] CHOICE OF LAW.--**The laws of the state of New Mexico as set forth in the Energy Transition Act shall govern the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right of creation of a security interest in energy transition property, an energy transition charge or a financing order.

**SECTION 21. [NEW MATERIAL] CONFLICTS.--**In the event of

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any conflict between the Energy Transition Act and any other law regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any security interest in or transfer of energy transition property, the Energy Transition Act shall govern to the extent of the conflict.

SECTION 22. [NEW MATERIAL] VALIDITY ON ACTIONS IF ACT HELD INVALID.--Effective on the date that energy transition bonds are first issued under the Energy Transition Act, if any provision of that act is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect the validity of any action allowed pursuant to that act that is taken by the commission, a qualifying utility, an assignee or any other person, a collection agent, a financing party, a bondholder or a party to an ancillary agreement and, to prevent the impairment of energy transition bonds issued or authorized in a financing order issued pursuant to the Energy Transition Act, any such action shall remain in full force and effect with respect to all energy transition bonds issued or authorized in a financing order pursuant to the Energy Transition Act before the date that such provision is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason.

SECTION 23. [NEW MATERIAL] APPLICABILITY.--The provisions of the Energy Transition Act shall not apply to a qualifying utility that makes an initial application for a financing order

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more than twelve years after the effective date of that act. This section shall not preclude a qualifying utility for which the commission has issued a financing order from applying to the commission for a subsequent order amending the financing order, pursuant to Section 7 of the Energy Transition Act.

SECTION 24. A new section of the Public Utility Act is enacted to read:

"[NEW MATERIAL] REQUIRING THE HIRING OF APPRENTICES FOR THE CONSTRUCTION OF FACILITIES THAT GENERATE ELECTRICITY.--

A. The construction of New Mexico facilities that generate electricity for New Mexico retail customers, and that are not located on the customer side of an electricity meter, shall be subject to the requirements provided in Subsection B of this section if the facilities are built as a result of competitive solicitations issued after July 1, 2020.

B. Subject to availability of qualified applicants, the construction of facilities that generate electricity for New Mexico retail customers shall employ apprentices from an apprenticeship program during the construction phase of a project at a minimum level of the following percentages of all persons employed for the project:

(1) ten percent for projects for which on-site construction commences beginning January 1, 2020, and prior to January 1, 2024;

(2) seventeen and one-half percent for projects for which on-site construction commences beginning January 1, 2024, and prior to January 1, 2026; and

(3) twenty-five percent for projects for which

on-site construction commences beginning January 1, 2026.

C. Apprenticeship programs used for purposes of this section shall encourage diversity among participants, participation by those underrepresented in the industry associated with that apprenticeship program and participation from disadvantaged communities, as determined by the workforce solutions department. The department shall promulgate rules to ensure compliance with this section.

D. As used in this section, "apprenticeship program" means an apprenticeship program registered pursuant to the Apprenticeship Assistance Act."

**SECTION 25.** Section 62-9-1 NMSA 1978 (being Laws 1941, Chapter 84, Section 46, as amended) is amended to read:

"62-9-1. NEW CONSTRUCTION--RATEMAKING PRINCIPLES.--

A. No public utility shall begin the construction or operation of any public utility plant or system or of any extension of any plant or system without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction or operation. This section does not require a public utility to secure a certificate for an extension within any municipality or district within which it lawfully commenced operations before June 13, 1941 or for an extension within or to territory already served by it, necessary in the ordinary course of its business, or for an extension into territory contiguous to that

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already occupied by it and that is not receiving similar service from another utility. If any public utility or mutual domestic water consumer association in constructing or extending its line, plant or system unreasonably interferes or is about to unreasonably interfere with the service or system of any other public utility or mutual domestic water consumer association rendering the same type of service, the commission, on complaint of the public utility or mutual domestic water consumer association claiming to be injuriously affected, may, upon and pursuant to the applicable procedure provided in Chapter 62, Article 10 NMSA 1978, and after giving due regard to public convenience and necessity, including reasonable service agreements between the utilities, make an order and prescribe just and reasonable terms and conditions in harmony with the Public Utility Act to provide for the construction, development and extension, without unnecessary duplication and economic waste.

B. If a certificate of public convenience and necessity is required pursuant to this section for the construction or extension of a generating plant or transmission lines and associated facilities, a public utility may include in the application for the certificate a request that the commission determine the ratemaking principles and treatment that will be applicable for the facilities that are the subject of the application for the certificate. If such a request is made, the commission shall, in the order granting the certificate, set forth the ratemaking principles and treatment that will be applicable to the public utility's stake in the

certified facilities in all ratemaking proceedings on and after such time as the facilities are placed in service. The commission shall use the ratemaking principles and treatment specified in the order in all proceedings in which the cost of the public utility's stake in the certified facilities is considered. If the commission later decertifies the facilities, the commission shall apply the ratemaking principles and treatment specified in the original certification order to the costs associated with the facilities that were incurred by the public utility prior to decertification.

C. The commission may approve the application for the certificate without a formal hearing if no protest is filed within sixty days of the date that notice is given, pursuant to commission order, that the application has been filed. The commission shall issue its order granting or denying the application within nine months from the date the application is filed with the commission. Failure to issue its order within nine months is deemed to be approval and final disposition of the application; provided, however, that the commission may extend the time for granting approval for an additional six months for good cause shown.

D. In an application for a certificate of public convenience and necessity for an energy storage system, the commission shall approve energy storage systems that:

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(1) reduce costs to ratepayers by avoiding or deferring the need for investment in new generation and for upgrades to systems for the transmission and distribution of energy;

(2) reduce the use of fossil fuels for meeting demand during peak load periods and for providing ancillary services;

(3) assist with ensuring grid reliability, including transmission and distribution system stability, while integrating sources of renewable energy into the grid;

(4) support diversification of energy resources and enhance grid security;

(5) reduce greenhouse gases and other air pollutants resulting from power generation;

(6) provide the public utility with the discretion, subject to applicable laws and rules, to operate, maintain and control energy storage systems so as to ensure reliable and efficient service to customers; and

(7) are the most cost effective among feasible alternatives.

[D.] E. As used in this section:

(1) "energy storage system" means methods and technologies used to store electricity; and

(2) "mutual domestic water consumer association" means an association created and organized pursuant to the provisions of:

[+1] (a) Laws 1947, Chapter 206; Laws 1949, Chapter 79; or Laws 1951, Chapter 52; or

[~~2~~] (b) the Sanitary Projects Act."

SECTION 26. 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. Except as provided in Subsection E of this section, each distribution cooperative organized under the Rural Electric Cooperative Act shall meet the renewable portfolio standard requirements, as provided in this section, to include renewable energy in its electric energy supply portfolio as demonstrated by its retirement of renewable energy certificates. Requirements and targets of the renewable portfolio standard are as follows:

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

(2) the renewable portfolio standard shall increase by one percent per year thereafter until January 1, 2020, at which time the renewable portfolio standard shall be ten percent of the distribution cooperative's total retail sales to New Mexico customers;

(3) ~~[the renewable portfolio standard of each distribution cooperative shall be diversified as to the type of~~

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~~renewable energy resource, taking into consideration the overall reliability, availability and dispatch flexibility and the cost of the various renewable energy resources made available to the distribution cooperative by its suppliers of electric power; and] a distribution cooperative shall have the following targets and requirements for renewable energy and zero carbon resources as a percentage of the distribution cooperative's total retail sales in New Mexico:~~

(a) a requirement of forty percent renewable energy by January 1, 2025;

(b) a requirement of fifty percent renewable energy by January 1, 2030; and

(c) a target of achieving the zero carbon resource standard by January 1, 2050, composed of at least eighty percent renewable energy; provided that: 1) achieving the target is technically feasible; 2) the rural electric cooperative is able to provide reliable electric service while implementing the target; and 3) implementing the target shall not cause electric service to become unaffordable;  
and

(4) renewable energy resources that are in a distribution cooperative's energy supply portfolio on January 1, 2008 shall be counted in determining compliance with this section.

~~[B. If a distribution cooperative determines 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, the distribution cooperative 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 any renewable portfolio standard in subsequent years. For purposes of the Rural Electric Cooperative Act, "reasonable cost threshold" means an amount that shall be no greater than one percent of the distribution cooperative's gross receipts from business transacted in New Mexico for the preceding calendar year.~~

~~G.] B. By April 30 of each year, a distribution cooperative shall file with the public regulation commission a report on its purchases and generation of renewable energy during the preceding calendar year. The report shall include the cost of the renewable energy resources purchased and generated by the distribution cooperative to meet the renewable portfolio standard, an explanation of steps taken to minimize those costs, including competitive procurement and comparison of the price of electricity from renewable energy resources in the bids received by the distribution cooperative to recent prices for such electricity elsewhere in the southwestern United States, and an annual compliance plan for meeting the renewable portfolio standard for the following three years.~~

C. If, in any given year, a distribution cooperative determines that the average annual levelized cost of renewable energy that would need to be procured or generated

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for purposes of compliance with the renewable portfolio standard would be greater than sixty dollars (\$60.00) per megawatt-hour at the point of interconnection of the renewable energy resource with the transmission system, adjusted for inflation after 2020, the distribution cooperative shall not be required to incur that excess cost; provided that the existence of this condition excusing performance in any given year shall not operate to delay compliance with the renewable portfolio standard in subsequent years. The provisions of this subsection do not preclude a distribution cooperative from accepting a project with a cost that would exceed sixty dollars (\$60.00) per megawatt-hour.

D. A distribution cooperative shall report to its membership a summary of its purchases and generation of renewable energy during the preceding calendar year.

E. A distribution cooperative organized pursuant to the Rural Electric Cooperative Act shall meet the requirements and targets of the renewable portfolio standard pursuant to Subsection A of this section as demonstrated by the cooperative's retirement of renewable energy certificates associated with energy assigned to the cooperative; provided that a generation and transmission cooperative referred to in Section 62-6-4 NMSA 1978 shall be responsible for meeting the requirements and targets for all energy supplied to the distribution cooperatives in New Mexico. Energy from renewable energy and zero carbon resources that a generation and transmission cooperative supplies in compliance with the requirements and targets shall be verified at the point where

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the generation and transmission cooperative produces or takes delivery of the energy on behalf of the distribution cooperatives that the generation and transmission cooperative is serving."

SECTION 27. Section 62-15-37 NMSA 1978 (being Laws 2007, Chapter 4, Section 4, as amended by Laws 2015, Chapter 64, Section 2 and by Laws 2015, Chapter 71, Section 2) is amended to read:

"62-15-37. DEFINITIONS--ENERGY EFFICIENCY--RENEWABLE ENERGY.--As used in the Rural Electric Cooperative Act:

A. "energy efficiency" means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices to result in a decrease in consumption of electricity without reducing the amount or quality of energy services;

B. "renewable energy" means electric energy generated by use of renewable energy resources and delivered to a rural electric cooperative;

C. "renewable energy certificate" means a certificate or other record, in a format approved by the public regulation commission, that represents all the environmental attributes from one megawatt-hour of electricity generated from renewable energy;

[B.] D. "renewable energy resource" means electric or useful thermal energy:

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

(2) ~~generated by use of renewable~~ the  
following energy resources, [that may include] with or without  
energy storage and delivered to a rural electric cooperative:

(a) solar, wind and geothermal  
[resources];

(b) hydropower facilities brought in  
service on or after July 1, 2007;

(c) other hydropower facilities  
supplying no greater than the amount of energy from hydropower  
facilities that were part of an energy supply portfolio prior  
to July 1, 2007;

[~~e~~] (d) fuel cells that [~~are~~] do not  
use fossil [fueled] fuels to create electricity; [and

[~~d~~] (e) biomass resources, [~~such as~~]  
limited to agriculture or animal waste, small diameter timber,  
not to exceed eight inches, salt cedar and other phreatophyte  
or woody vegetation removed from river basins or watersheds in  
New Mexico; provided that these resources are from facilities  
certified by the energy, minerals and natural resources  
department to: 1) be of appropriate scale to have sustainable  
feedstock in the near vicinity; 2) have zero life cycle carbon  
emissions; and 3) meet scientifically determined restoration,  
sustainability and soil nutrient principles; and

(f) landfill gas and anaerobically  
digested waste biomass; [~~but~~] and

~~[(3)]~~ (2) does not include electric energy generated by use of fossil fuel or nuclear energy; ~~[and]~~

~~[G.]~~ E. "useful thermal energy" means renewable energy delivered from a source that can be metered and that is delivered in the state to an end user in the form of direct heat, steam or hot water or other thermal form that is used for heating, cooling, humidity control, process use or other valid end-use energy requirements and for which fossil fuel or electricity would otherwise be consumed;

F. "zero carbon resource" means an electricity generation resource that emits no carbon dioxide into the atmosphere, or that reduces methane emitted into the atmosphere in an amount equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere, as a result of electricity production; and

G. "zero carbon resource standard" means providing New Mexico rural electric cooperative retail customers with electricity generated from one hundred percent zero carbon resources."

SECTION 28. 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;

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B. "energy storage" means batteries or other means by which energy can be retained and delivered as electricity for use at a later time;

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

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

[D.] E. "reasonable cost threshold" means ~~[the cost established by the commission, above which a public utility shall not be required to add renewable energy to its electric energy supply portfolio pursuant to the renewable portfolio standard]~~ an average annual levelized cost of sixty dollars (\$60.00) per megawatt-hour at the point of interconnection of the renewable energy resource with the transmission system, adjusted for inflation after 2020;

[E.] F. "renewable energy" means electric energy ~~[(1) generated by use of low- or zero-emissions generation technology with substantial long-term production potential; and~~

~~(2)] generated by use of renewable energy resources [that may include:~~

~~(a) solar, wind and geothermal resources;~~

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

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

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

~~(3) does not include electric energy generated by use of fossil fuel or nuclear energy] and delivered to a public utility;~~

[F.] G. "renewable energy certificate" means a certificate or other record, in a format approved by the commission, that represents all the environmental attributes from one [kilowatt-hour] megawatt-hour of electricity [generation] generated from [a] renewable energy; [resource]

H. "renewable energy resource" means the following energy resources, with or without energy storage:

- (1) solar, wind and geothermal;
- (2) hydropower facilities brought in service on or after July 1, 2007;
- (3) biomass resources, limited to agriculture or animal waste, small diameter timber, not to exceed eight inches, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico; provided that these resources are from facilities certified by the

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energy, minerals and natural resources department to:

(a) be of appropriate scale to have sustainable feedstock in the near vicinity;

(b) have zero life cycle carbon emissions; and

(c) meet scientifically determined restoration, sustainability and soil nutrient principles;

(4) fuel cells that do not use fossil fuels to create electricity; and

(5) landfill gas and anaerobically digested waste biogas;

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

H.] J. "renewable purchased power agreement" means an agreement that binds an entity generating power from renewable energy resources to provide power at a specified price and binds [~~a public utility to purchase the power at~~] the purchaser to that price;

K. "zero carbon resource" means an electricity generation resource that emits no carbon dioxide into the atmosphere, or that reduces methane emitted into the atmosphere in an amount equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere, as a result of electricity production; and

L. "zero carbon resource standard" means providing

New Mexico public utility customers with electricity generated from one hundred percent zero carbon resources."

SECTION 29. 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 as demonstrated by its retirement of renewable energy certificates; provided that the associated renewable energy is delivered to the public utility and assigned to the public utility's New Mexico customers. For public utilities other than rural electric cooperatives and municipalities, 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;~~

~~(e)] (1) no later than January 1, 2015,~~

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renewable energy shall comprise no less than fifteen percent of each public utility's total retail sales to New Mexico customers; [~~and~~

~~(d)] (2) 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;~~

~~[(2) the renewable portfolio standard 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~~

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~~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;]~~

(3) no later than January 1, 2025, renewable energy shall comprise no less than forty percent of each public utility's total retail sales of electricity to New Mexico customers;

(4) no later than January 1, 2030, renewable energy shall comprise no less than fifty percent of each public utility's total retail sales of electricity to New Mexico customers;

(5) no later than January 1, 2040, renewable energy resources shall supply no less than eighty percent of all retail sales of electricity in New Mexico; provided that compliance with this standard until December 31, 2047 shall not require the public utility to displace zero carbon resources in the utility's generation portfolio on the effective date of this 2019 act; and

(6) no later than January 1, 2045, zero carbon resources shall supply one hundred percent of all retail sales of electricity in New Mexico. Reasonable and consistent progress shall be made over time toward this requirement.

B. In administering the standards required by Paragraphs (5) and (6) of Subsection A of this section, the

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commission shall:

SCORC→~~(1) ensure that compliance shall not conflict with the federal Public Utility Regulatory Policies Act of 1978, as amended;~~←SCORC

SCORC→(1) not jeopardize the operation of a sewage treatment facility that captures and combusts methane gas in the facility's operations;←SCORC

(2) maintain and protect the safety, reliable operation and balancing of loads and resources on the electric system;

(3) prevent unreasonable impacts to customer electricity bills, taking into consideration the economic and environmental costs and benefits of renewable energy resources and zero carbon resources;

(4) prevent carbon dioxide emitting electricity-generating resources from being reassigned, redesignated or sold as a means of complying with the standard;

(5) in consultation with the energy, minerals and natural resources department, undertake programs not prohibited by law to achieve the standard;

(6) in consultation with the department of environment, ensure that the standard does not result in material increases to greenhouse gas emissions from entities not subject to commission oversight and regulation; and

(7) in consultation with electricity transmission system operators responsible for balancing New Mexico electricity loads and resources, issue a report to the legislature by July 1, 2020, and each July 1 every four years

thereafter. The report shall include:

(a) review of the standard, with a focus on technologies, forecasts, existing transmission, environmental protection, public safety, affordability and electricity transmission and distribution system reliability;

(b) evaluation of the anticipated financial costs and benefits to electric utilities in implementing the standard, including the impacts and benefits to customer electricity bills; and

(c) identification of the barriers to, and benefits of, achieving the standard.

[~~3~~] C. Any customer that is a political subdivision of the state, or any educational institution designated in Article 12, Section 11 of the constitution of New Mexico with an enrollment of SCORC ~~→~~**twenty-four** ~~←~~ **twenty** ← SCORC 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

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~~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] thousand megawatt-hours per year at any single location or facility and that owns facilities that produce renewable energy or hosts such facilities through a renewable purchased power agreement, shall not be charged by the utility for power purchases of one year or less or fuel on the amount of electricity purchased from the utility equal to the amount of renewable energy produced or hosted by the customer. The customer shall annually certify to the state auditor and notify the commission and the customer's serving electric utility of the amount of renewable energy produced at the customer-owned or customer-hosted facilities that generate renewable energy. The customer shall also certify to the state auditor and notify the commission that the customer will retire all renewable energy certificates associated with the renewable energy produced by those facilities. Any financial benefits as a result of the provisions of this subsection shall accrue to the customer immediately upon the effective date of this 2019 act and shall be reflected in customer bills each month, subject to annual true-up and reconciliation. The provisions of this subsection~~

shall not prevent the utility from recovering all of its reasonable and prudent fuel and purchased power costs.

~~(5)~~ D. Upon a ~~commission~~ motion or application  
SCORC → ~~[by a public utility]~~ **by a public utility** ← SCORC  
SCORC → ~~,~~ ← SCORC the commission ~~[shall]~~ **SCORC → may** , **or upon a motion or application by any other person the commission may,** ← SCORC open a docket to develop and provide ~~[appropriate performance-based]~~ financial or other incentives to encourage public utilities to produce or acquire renewable energy ~~[supplies]~~ that ~~[exceed]~~ exceeds 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]~~ results in reductions in carbon dioxide emissions earlier than required by Subsection A of this section; or causes a reduction in the generation of electricity by coal-fired generating facilities, including coal-fired generating facilities located outside of New Mexico. The incentives may include additional earnings and capital investment opportunities for resources used in furtherance of the outcomes described in this subsection.

~~[B.]~~ E. If, in any given year, a public utility

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[finds] determines that [~~in any given year~~] the average annual levelized 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 excess cost; provided that the existence of this condition excusing performance in any given year shall not operate to delay [~~the annual increases in~~] compliance with the renewable portfolio standard in subsequent years. The provisions of this subsection do not preclude a public utility from accepting a project with a cost that would exceed the reasonable cost threshold. 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~~] do so to the extent necessary to meet the applicable 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] and shall not be precluded from exceeding the standard.~~

~~[D.] F. By September 1, 2007 [and July 1 of each year thereafter until 2022, and thereafter as determined necessary by the commission] and until June 30, 2019, 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~~

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(2) testimony and exhibits that demonstrate that the proposed procurement is reasonable as to its terms and conditions considering price, availability, [~~dispatchability~~] reliability, any renewable energy certificate values and diversity of the renewable energy resource; or

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

G. By July 1, 2020, and each July 1 thereafter, a public utility shall file a report to the commission on the public utility's procurement and generation of renewable energy since the last report and a procurement plan that includes:

(1) the cost of procurement for new renewable energy required to comply with the renewable portfolio standard;

(2) the capital, operating and fuel costs on a per-megawatt-hour basis during the preceding calendar year of each nonrenewable generation resource rate-based by the utility, or dedicated to the utility through a power purchase agreement of one year or longer, and the nonrenewable generation resources' carbon dioxide emissions on a per-megawatt-hour basis during that same year;

(3) information, including exhibits, as applicable, that demonstrates that the proposed procurement:

(a) was the result of competitive procurement that included opportunities for bidders to propose purchased power, facility self-build or facility build-transfer options;

(b) has a cost that is reasonable as

evidenced by a comparison of the price of electricity from renewable energy resources in the bids received by the public utility to recent prices for comparable energy resources elsewhere in the southwestern United States; and

(c) is in the public interest, considering factors such as overall cost and economic development opportunities; and

(4) strategies used to minimize costs of renewable energy integration, including location, diversity, balancing area activity, demand-side management and load management.

[E.] H. 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.] I. The commission may reject a [~~procurement or transitional~~] procurement plan if [~~it~~], within forty days of filing, the commission finds that the plan does not contain the required information and, upon the rejection, [may suspend the

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~~public utility's obligation to procure additional resources for]~~ shall provide the public utility the time necessary to file a revised plan; provided that the total amount of renewable energy required 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.~~

~~H. 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.]"~~

SECTION 30. Section 62-16-5 NMSA 1978 (being Laws 2004, Chapter 65, Section 5, as amended) is amended to read:

"62-16-5. RENEWABLE ENERGY CERTIFICATES--COMMISSION DUTIES.--

A. The commission shall establish:

~~[A.]~~ (1) a system of renewable energy certificates that can be used by a public utility to establish compliance with the renewable portfolio standard and that may

include certificates that are monitored, accounted for or transferred by or through a regional system or trading program for any region in which a public utility is located [~~The kilowatt-hour value of renewable energy certificates may be varied by renewable energy resource or technology; provided that each renewable energy certificate shall have a minimum value of one kilowatt-hour of renewable energy represented by the certificate for purposes of compliance with the renewable portfolio standard~~]; and

[~~B.~~] (2) requirements and procedures concerning requirements for renewable energy certificates [~~that include the provisions that~~] pursuant to Subsections B and C of this section.

[~~(1)~~] B. Renewable energy certificates:

[~~(a)~~] (1) are owned by the generator of the renewable energy unless:

[~~(1)~~] (a) the renewable energy certificates are transferred to the purchaser of the [~~energy~~] electricity through specific agreement with the generator;

[~~(2)~~] (b) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the public utility purchaser of the renewable energy [~~unless retained by the generator through specific agreement with the public utility purchaser of the~~

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energy]; or

[3>] (c) a contract for the purchase of renewable energy is in effect prior to [~~January 1, 2004~~] July 1, 2019, in which case the renewable energy certificates are owned by the purchaser of the [energy] electricity for the term of such contract, unless otherwise agreed to in a contract approved by the commission;

[~~(b)~~] (2) may be traded, sold or otherwise transferred by their owner, [~~to any other party; provided that the transfers and use of the certificate by a public utility for compliance with the renewable energy portfolio standard shall require the electric energy represented by the certificate to be contracted for delivery, or consumed or generated by an end-use customer of the public utility in New Mexico unless the commission determines that there is a national or regional market for exchanging renewable energy certificates~~] unless the certificates are from a rate-based public utility plant, in which case the entirety of the renewable energy certificates from that plant shall be retired by the utility on behalf of itself or its customers. Any contract to purchase renewable energy entered into by a public utility on or after July 1, 2019 shall include conveyance to the purchasing utility of all renewable energy certificates, and the entirety of those certificates shall be retired by that utility on behalf of itself or its customers or subsequently transferred to a retail customer for retirement under a voluntary program for purchasing renewable energy approved by the commission. A utility shall not claim that it is providing

renewable energy from generation resources for which it has traded, sold or transferred the associated renewable energy certificates. The commission shall not disallow the recovery of the cost associated with any expired renewable energy certificate. The public utility shall annually file a report with the commission discussing:

(a) its use, sale, trading or transfer of renewable energy certificates; and

(b) whether and how its public claims of renewable energy generation account for renewable energy certificates that it has traded, sold or transferred;

~~[(c)]~~ (3) that are used for the purpose of meeting the renewable portfolio standard shall be registered ~~[beginning January 1, 2009]~~ with a renewable energy generation information system that is designed to create and track ownership of renewable energy certificates and that, through the use of independently audited generation data, verifies the generation and delivery of electricity associated with each renewable energy certificate and protects against multiple counting of the same renewable energy certificate;

~~[(d) that are used once by a public utility to satisfy the renewable portfolio standard and are retired or that are traded, sold or otherwise transferred by the public utility shall not be further used by the public utility; and~~

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~~(e) that are not used by a public utility to satisfy the renewable portfolio standard or that are not traded, sold or otherwise transferred by the public utility]~~ and

(4) may be carried forward for up to four years from the date of issuance [~~and, if not used by that time]~~ to establish compliance with the renewable portfolio standard, after which they shall be deemed retired by the public utility. [~~and~~

~~(2)]~~ C. A public utility shall be responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources [~~and has not been retired, traded, sold or otherwise transferred to another party]~~."

SECTION 31. Section 62-16-6 NMSA 1978 (being Laws 2004, Chapter 65, Section 6, as amended) is amended to read:

"62-16-6. COST RECOVERY FOR RENEWABLE ENERGY AND EMISSIONS REDUCTION.--

A. A public utility that procures or generates renewable energy shall recover, through the rate-making process, the reasonable costs of complying with the renewable portfolio standard. Costs that are consistent with commission approval of procurement plans or transitional procurement plans shall be deemed to be reasonable.

B. The commission shall not exclude from such cost recovery reasonable interconnection and transmission costs and costs to comply with electric industry reliability standards

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incurred by the public utility in order to deliver renewable energy to retail New Mexico customers.

C. ~~[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 pursuant to the Renewable Energy Act. The commission shall initiate rules by June 1, 2008 to implement this subsection]~~ If a public utility has been granted a certificate of public convenience and necessity prior to January 1, 2015 to construct or operate an electric generation facility and the investment in that facility has been allowed recovery as part of the utility's rate-base, the commission may require the facility to discontinue serving customers within New Mexico if the replacement has less or zero carbon dioxide emissions into the atmosphere; provided that no order of the commission shall disallow recovery of any undepreciated investments or decommissioning costs associated with the facility."

SECTION 32. Section 62-16-7 NMSA 1978 (being Laws 2004, Chapter 65, Section 7) is amended to read:

"62-16-7. COMMISSION--~~[ADDITIONAL]~~ POWERS AND DUTIES--  
VOLUNTARY PROGRAMS.--

A. The commission:

~~[A.]~~ (1) shall adopt rules regarding the

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renewable portfolio standard, including a provision for public utility records and reports; and

[B-] (2) may require that a public utility offer its retail customers a voluntary program for purchasing renewable energy that is in addition to [energy] electricity provided by the public utility pursuant to the renewable portfolio standard, under rates and terms that are approved by the commission. [and

~~G. may exempt from compliance with the renewable portfolio standard a public utility that has an all-requirements electric supply contract on July 1, 2004, and the contract would not reasonably permit it to procure renewable energy for purposes of meeting the renewable portfolio standard. When the electricity supply contract is amended or renegotiated, the commission may require that a renewable portfolio standard become applicable.]~~

B. All renewable energy purchased by a retail customer through an approved voluntary program shall:

(1) have all associated renewable energy certificates retired by the retail customer, or on that customer's behalf, by the public utility, and the certificates shall not be used to meet the public utility's renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978;

(2) be excluded from the total retail sales to New Mexico customers used to determine the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978; and

(3) not be subject to charges by the public utility to recover costs of complying with the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978."

SECTION 33. Section 62-16-8 NMSA 1978 (being Laws 2004, Chapter 65, Section 8, as amended) is amended to read:

"62-16-8. RURAL ELECTRIC COOPERATIVE--VOLUNTARY TARIFFS.--

A. The commission may require that a rural electric cooperative:

(1) offer its retail customers a voluntary program for purchasing renewable energy under rates and terms that are approved by the commission [~~but only to the extent that the cooperative's suppliers make renewable energy available under wholesale power contracts~~];

(2) report to the commission the demand for renewable energy pursuant to a voluntary program; and

(3) comply with the requirements for the procurement of renewable energy set forth in the Rural Electric Cooperative Act.

B. The commission shall establish and amend rules and regulations for the implementation of renewable portfolio standards consistent with the Rural Electric Cooperative Act."

SECTION 34. Section 62-16-9 NMSA 1978 (being Laws 2004, Chapter 65, Section 9) is amended to read:

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"62-16-9. EXISTING RULES.--The commission shall [~~establish and amend~~] promulgate rules [~~and regulations for the implementation of renewable portfolio standards consistent with~~] to implement the provisions of the Renewable Energy Act."

SECTION 35. Section 62-16-10 NMSA 1978 (being Laws 2004, Chapter 65, Section 10) is amended to read:

"62-16-10. FEDERAL REQUIREMENTS.--Renewable energy procured or generated by a public utility to [~~meet~~] comply with a federal [~~renewable portfolio standard~~] law, rule or regulation may be used to satisfy the required procurements of the Renewable Energy Act."

SECTION 36. Section 74-2-5 NMSA 1978 (being Laws 1967, Chapter 277, Section 5, as amended) is amended to read:

"74-2-5. DUTIES AND POWERS--ENVIRONMENTAL IMPROVEMENT BOARD--LOCAL BOARD.--

A. The environmental improvement board or the local board shall prevent or abate air pollution.

B. The environmental improvement board or the local board shall:

(1) adopt, promulgate, publish, amend and repeal [~~regulations~~] rules and standards consistent with the Air Quality Control Act to attain and maintain national ambient air quality standards and prevent or abate air pollution, including [~~regulations~~]:

(a) rules prescribing air standards, within the geographic area of the environmental improvement board's jurisdiction or the local board's jurisdiction, or any part thereof; and

(b) standards of performance that limit carbon dioxide emissions to no more than one thousand one hundred pounds per megawatt-hour on and after January 1, 2023 for a new or existing source that is an electric generating facility with an original installed capacity exceeding three hundred megawatts and that uses coal as a fuel source; and

(2) adopt a plan for the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions within the geographic area of the environmental improvement board's jurisdiction or the local board's jurisdiction or any part thereof.

C. ~~[Regulations]~~ Rules adopted by the environmental improvement board or the local board may:

(1) include ~~[regulations]~~ rules to protect visibility in mandatory class I areas to prevent significant deterioration of air quality and to achieve national ambient air quality standards in nonattainment areas; provided that such regulations:

(a) shall be no more stringent than but at least as stringent as required by the federal act and federal regulations pertaining to visibility protection in mandatory class I areas, pertaining to prevention of significant deterioration and pertaining to nonattainment areas; and

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(b) shall be applicable only to sources subject to such regulation pursuant to the federal act;

(2) prescribe standards of performance for sources and emission standards for hazardous air pollutants that, except as provided in this subsection and in Subparagraph (b) of Paragraph (1) of Subsection B of this section:

(a) shall be no more stringent than but at least as stringent as required by federal standards of performance; and

(b) shall be applicable only to sources subject to such federal standards of performance;

(3) include regulations governing emissions from solid waste incinerators that shall be at least as stringent as, and may be more stringent than, any applicable federal emission limitations;

(4) include regulations requiring the installation of control technology for mercury emissions that removes the greater of what is achievable with best available control technology or ninety percent of the mercury from the input fuel for all coal-fired power plants, except for coal-fired power plants constructed and generating electric power and energy before July 1, 2007;

(5) require notice to the department or the local agency of the intent to introduce or permit the introduction of an air contaminant into the air within the geographical area of the environmental improvement board's jurisdiction or the local board's jurisdiction; and

(6) require any person emitting any air

contaminant to:

- (a) install, use and maintain emission monitoring devices;
- (b) sample emissions in accordance with methods and at locations and intervals as may be prescribed by the environmental improvement board or the local board;
- (c) establish and maintain records of the nature and amount of emissions;
- (d) submit reports regarding the nature and amounts of emissions and the performance of emission control devices; and
- (e) provide any other reasonable information relating to the emission of air contaminants.

D. Any regulation adopted pursuant to this section shall be consistent with federal law, if any, relating to control of motor vehicle emissions.

E. In making its regulations, the environmental improvement board or the local board shall give weight it deems appropriate to all facts and circumstances, including but not limited to:

- (1) character and degree of injury to or interference with health, welfare, visibility and property;
- (2) the public interest, including the social and economic value of the sources and subjects of air contaminants; and

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(3) technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved."

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