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AN ACT
RELATING TO UTILITIES; PROVIDING FOR RENEWABLE ENERGY RULES
FOR PUBLIC UTILITIES.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Renewable Energy Act".

Section 2. FINDINGS AND PURPOSES.--

A. The legislature finds that:

(1) the generation of electricity through
the use of renewable energy presents opportunities to promote
energy self-sufficiency, preserve the state's natural
resources and pursue an improved environment in New Mexico;

(2) the use of renewable energy by public
utilities subject to commission oversight in accordance with
the Renewable Energy Act can bring significant economic
benefits to New Mexico;

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

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

1 (5) public utilities should not be required
2 to acquire energy generated from renewable energy resources
3 that could result in costs above a reasonable cost threshold.

4 B. The purposes of the Renewable Energy Act are
5 to:

6 (1) prescribe the amounts of renewable
7 energy resources that public utilities shall include in their
8 electric energy supply portfolios for sales to retail
9 customers in New Mexico by prescribed dates;

10 (2) allow public utilities to recover costs
11 through the rate-making process incurred for procuring or
12 generating renewable energy used to comply with the
13 prescribed amount; and

14 (3) protect public utilities and their
15 ratepayers from renewable energy costs that are above a
16 reasonable cost threshold.

17 Section 3. DEFINITIONS.--As used in the Renewable
18 Energy Act:

19 A. "commission" means the public regulation
20 commission;

21 B. "public utility" means an entity certified by
22 the commission to provide retail electric service in New
23 Mexico pursuant to the Public Utility Act but does not
24 include rural electric cooperatives;

25 C. "reasonable cost threshold" means the cost

1 established by the commission above which a public utility
2 shall not be required to add renewable energy to its electric
3 energy supply portfolio pursuant to the renewable portfolio
4 standard;

5 D. "renewable energy" means electric energy:

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

9 (2) generated by use of renewable energy
10 resources that may include:

11 (a) solar, wind, hydropower and
12 geothermal resources;

13 (b) fuel cells that are not fossil
14 fueled; and

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

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

22 E. "renewable portfolio standard" means the
23 percentage of retail sales by a public utility to electric
24 consumers in New Mexico that is required by the Renewable
25 Energy Act to be supplied by renewable energy.

1 Section 4. RENEWABLE PORTFOLIO STANDARD.--

2 A. A public utility shall meet the renewable
3 portfolio standard requirements, as provided in this section,
4 to include renewable energy in its electric energy supply
5 portfolio. Requirements of the renewable portfolio standard
6 are:

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

10 (2) the renewable portfolio standard shall
11 increase by one percent per year thereafter until January 1,
12 2011, when the renewable portfolio standard shall reach a
13 level of ten percent of a public utility's annual retail
14 sales in New Mexico and shall remain fixed at ten percent for
15 each year thereafter;

16 (3) the renewable portfolio standard
17 established by this section shall be reduced, as necessary,
18 to provide for the following specific procurement
19 requirements for nongovernmental customers at a single
20 location or facility, regardless of the number of meters at
21 that location or facility, with consumption exceeding ten
22 million kilowatt-hours per year. On and after January 1,
23 2006, the kilowatt-hours of renewable energy procured for
24 these customers shall be limited so that the additional cost
25 of the renewable portfolio standard to each customer does not

1 exceed the lower of one percent of that customer's annual
2 electric charges or forty-nine thousand dollars (\$49,000).
3 This procurement limit criteria shall increase by one-fifth
4 percent or ten thousand dollars (\$10,000) per year until
5 January 1, 2011, when the procurement limit criteria shall
6 remain fixed at the lower of two percent of that customer's
7 annual electric charges or ninety-nine thousand dollars
8 (\$99,000). After January 1, 2012, the commission may adjust
9 the ninety-nine-thousand-dollar (\$99,000) limit for
10 inflation. Nothing contained in this paragraph shall be
11 construed as affecting a public utility's right to recover
12 all reasonable costs of complying with the renewable
13 portfolio standard, pursuant to Section 6 of the Renewable
14 Energy Act. The commission may authorize deferred recovery
15 of the costs of complying with the renewable portfolio
16 standard, including carrying charges;

17 (4) the renewable portfolio shall be
18 diversified as to the type of renewable energy resource,
19 taking into consideration the overall reliability,
20 availability, dispatch flexibility and cost of the various
21 renewable energy resources made available by suppliers and
22 generators; and

23 (5) renewable energy resources that are in a
24 public utility's electric energy supply portfolio on July 1,
25 2004 shall be counted in determining compliance with this

1 section.

2 B. If a public utility finds that, in any given
3 year, the cost of renewable energy that would need to be
4 procured or generated for purposes of compliance with the
5 renewable portfolio standard would be greater than the
6 reasonable cost threshold as established by the commission
7 pursuant to this section, the public utility shall not be
8 required to incur that cost; provided that the existence of
9 this condition excusing performance in any given year shall
10 not operate to delay the annual increases in the renewable
11 portfolio standard in subsequent years. When a public
12 utility can generate or procure renewable energy at or below
13 the reasonable cost threshold, it shall be required to add
14 renewable energy resources to meet the renewable portfolio
15 standard applicable in the year when the renewable energy
16 resources are being added.

17 C. By December 31, 2004, the commission shall
18 establish, after notice and hearing, the reasonable cost
19 threshold above which level a public utility shall not be
20 required to add renewable energy to its electric energy
21 supply portfolio pursuant to the renewable portfolio
22 standard. The commission may thereafter modify the
23 reasonable cost threshold as changing circumstances warrant,
24 after notice and hearing. In establishing and modifying the
25 reasonable cost threshold, the commission shall take into

1 account:

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

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

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

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

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

18 D. By September 1 of each year until 2012, and
19 thereafter as determined necessary by the commission, a
20 public utility shall file a report to the commission on its
21 purchases of renewable energy during the prior calendar year
22 and a procurement plan that includes:

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

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

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

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

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

25 G. A public utility may file a transitional

1 procurement plan requesting that the commission determine
2 that the costs of renewable energy resources that the public
3 utility has committed to, or may commit to, prior to the
4 commission's establishing a reasonable cost threshold, are
5 reasonable and recoverable pursuant to Section 6 of the
6 Renewable Energy Act. The requirements of annual procurement
7 plan filings shall be applicable to any transitional
8 procurement plan filing pursuant to this section.

9 Section 5. RENEWABLE ENERGY CERTIFICATES--COMMISSION
10 DUTIES.--The commission shall establish:

11 A. a system of renewable energy certificates that
12 can be used by a public utility to establish compliance with
13 the renewable portfolio standard and that may include
14 certificates that are monitored, accounted for or transferred
15 by or through a regional system or trading program for any
16 region in which a public utility is located. The
17 kilowatt-hour value of renewable energy certificates may be
18 varied by renewable energy resource or technology; provided
19 that each renewable energy certificate shall have a minimum
20 value of one kilowatt-hour of renewable energy represented by
21 the certificate for purposes of compliance with the renewable
22 portfolio standard; and

23 B. requirements and procedures concerning
24 renewable energy certificates that include the provisions
25 that:

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(1) renewable energy certificates:

(a) are owned by the generator of the renewable energy unless: 1) the renewable energy certificates are transferred to the purchaser of the energy through specific agreement with the generator; 2) 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 energy; or 3) a contract for the purchase of renewable energy is in effect prior to January 1, 2004, in which case the renewable energy certificates are owned by the purchaser of the energy for the term of such contract;

(b) 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 in New Mexico unless the commission determines that there is a regional market for exchanging renewable energy certificates;

(c) that are used once by a public utility to satisfy the renewable portfolio standard and are

1 retired or that are traded, sold or otherwise transferred by
2 the public utility shall not be further used by the public
3 utility; and

4 (d) that are not used by a public
5 utility to satisfy the renewable portfolio standard or that
6 are not traded, sold or otherwise transferred by the public
7 utility may be carried forward for up to four years from the
8 date of issuance and, if not used by that time, shall be
9 retired by the public utility; and

10 (2) a public utility shall be responsible
11 for demonstrating that a renewable energy certificate used
12 for compliance with the renewable portfolio standard is
13 derived from eligible renewable energy resources and has not
14 been retired, traded, sold or otherwise transferred to
15 another party.

16 Section 6. COST RECOVERY FOR RENEWABLE ENERGY.--

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

23 B. The commission shall not exclude from such
24 recovery reasonable interconnection and transmission costs
25 incurred by the public utility in order to deliver renewable

1 energy to retail New Mexico customers.

2 Section 7. COMMISSION--ADDITIONAL POWERS AND DUTIES.--

3 The commission:

4 A. shall adopt rules regarding the renewable
5 portfolio standard, including a provision for public utility
6 records and reports;

7 B. may require that a public utility offer its
8 retail customers a voluntary program for purchasing renewable
9 energy that is in addition to energy provided by the public
10 utility pursuant to the renewable portfolio standard, under
11 rates and terms that are approved by the commission; and

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

20 Section 8. RURAL ELECTRIC COOPERATIVES--VOLUNTARY

21 TARIFFS.--The commission may require that a rural electric
22 cooperative:

23 A. offer its retail customers a voluntary program
24 for purchasing renewable energy under rates and terms that
25 are approved by the commission, but only to the extent that

1 the cooperative's suppliers make renewable energy available
2 under wholesale power contracts; and

3 B. report to the commission the demand for
4 renewable energy pursuant to a voluntary program.

5 Section 9. EXISTING RULES.--The commission shall
6 establish and amend rules and regulations for the
7 implementation of renewable portfolio standards consistent
8 with the Renewable Energy Act.

9 Section 10. FEDERAL REQUIREMENTS.--Renewable energy
10 procured or generated by a public utility to meet a federal
11 renewable portfolio standard may be used to satisfy the
12 required procurements of the Renewable Energy Act. _____

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