

1 AN ACT
2 RELATING TO UTILITIES; PROVIDING FOR RENEWABLE ENERGY RULES FOR
3 PUBLIC UTILITIES.
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5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO: 4

6 Section 1. SHORT TITLE.--This act may be cited as the "Renewable
7 Energy Act". 3
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8 Section 2. FINDINGS AND PURPOSES.--

9 A. The legislature finds that: 1

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

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

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

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

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

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

(1) prescribe the amounts of renewable energy resources
that public utilities shall include in their electric energy supply portfolios for sales to

1 retail customers in New Mexico by prescribed dates; S
2 (2) allow public utilities to recover costs through the rate- F
3 making process incurred for procuring or generating renewable energy used to L
4 comply with the prescribed amount; and /
5 (3) protect public utilities and their ratepayers from S
6 renewable energy costs that are above a reasonable cost threshold. B
7 Section 3. DEFINITIONS.--As used in the Renewable Energy Act: 4
8 A. "commission" means the public regulation commission; 3
9 B. "public utility" means an entity certified by the commission to P
10 provide retail electric service in New Mexico pursuant to the Public Utility Act but a
11 does not include rural electric cooperatives; g
12 C. "reasonable cost threshold" means the cost established by the e
13 commission above which a public utility shall not be required to add renewable 2
14 energy to its electric energy supply portfolio pursuant to the renewable portfolio
15 standard;
16 D. "renewable energy" means electric energy:
17 (1) generated by use of low- or zero-emissions generation
18 technology with substantial long-term production potential; and
19 (2) generated by use of renewable energy resources that
20 may include:
21 (a) solar, wind, hydropower and geothermal
22 resources;
23 (b) fuel cells that are not fossil fueled; and
24 (c) biomass resources, such as agriculture or animal
25 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

1 (3) does not include electric energy generated by use of S
2 fossil fuel or nuclear energy; and F
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3 E. "renewable portfolio standard" means the percentage of retail /
4 sales by a public utility to electric consumers in New Mexico that is required by the S
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5 Renewable Energy Act to be supplied by renewable energy. 4

6 Section 4. RENEWABLE PORTFOLIO STANDARD.-- 3
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7 A. A public utility shall meet the renewable portfolio standard a
8 requirements, as provided in this section, to include renewable energy in its electric e
9 energy supply portfolio. Requirements of the renewable portfolio standard are: 3

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

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

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

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

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

13 (5) renewable energy resources that are in a public utility's
14 electric energy supply portfolio on July 1, 2004 shall be counted in determining
15 compliance with this section.

16 B. If a public utility finds that, in any given year, the cost of
17 renewable energy that would need to be procured or generated for purposes of
18 compliance with the renewable portfolio standard would be greater than the
19 reasonable cost threshold as established by the commission pursuant to this
20 section, the public utility shall not be required to incur that cost; provided that the
21 existence of this condition excusing performance in any given year shall not operate
22 to delay the annual increases in the renewable portfolio standard in subsequent
23 years. When a public utility can generate or procure renewable energy at or below
24 the reasonable cost threshold, it shall be required to add renewable energy
25 resources to meet the renewable portfolio standard applicable in the year when the
renewable energy resources are being added.

C. By December 31, 2004, the commission shall establish, after

1 notice and hearing, the reasonable cost threshold above which level a public utility
2 shall not be required to add renewable energy to its electric energy supply portfolio
3 pursuant to the renewable portfolio standard. The commission may thereafter
4 modify the reasonable cost threshold as changing circumstances warrant, after
5 notice and hearing. In establishing and modifying the reasonable cost threshold,
6 the commission shall take into account:

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

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

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

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

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

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

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

(2) testimony and exhibits that demonstrate that the

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1 proposed procurement is reasonable as to its terms and conditions considering S
2 price, availability, dispatchability, any renewable energy certificate values and F
3 diversity of the renewable energy resource; or L
4 (3) demonstration that the plan is otherwise in the public /
5 interest. S
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6 E. The commission shall approve or modify a public utility's 4
7 procurement or transitional procurement plan within sixty days and may approve the 3
8 plan without a hearing, unless a protest is filed that demonstrates to the P
9 commission's reasonable satisfaction that a hearing is necessary. The commission a
10 may modify a plan after notice and hearing. The commission may, for good cause, g
11 extend the time to approve a procurement plan for an additional sixty days. If the e
12 commission does not act within the sixty-day period, the procurement plan is 6
13 deemed approved.

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

20 G. A public utility may file a transitional procurement plan requesting
21 that the commission determine that the costs of renewable energy resources that
22 the public utility has committed to, or may commit to, prior to the commission's
23 establishing a reasonable cost threshold, are reasonable and recoverable pursuant
24 to Section 6 of the Renewable Energy Act. The requirements of annual
25 procurement plan filings shall be applicable to any transitional procurement plan
filing pursuant to this section.

1 DUTIES.--The commission shall establish:

2 A. a system of renewable energy certificates that can be used by a
3 public utility to establish compliance with the renewable portfolio standard and that
4 may include certificates that are monitored, accounted for or transferred by or
5 through a regional system or trading program for any region in which a public utility
6 is located. The kilowatt-hour value of renewable energy certificates may be varied
7 by renewable energy resource or technology; provided that each renewable energy
8 certificate shall have a minimum value of one kilowatt-hour of renewable energy
9 represented by the certificate for purposes of compliance with the renewable
10 portfolio standard; and

11 B. requirements and procedures concerning renewable energy
12 certificates that include the provisions that:

13 (1) renewable energy certificates:

14 (a) are owned by the generator of the renewable
15 energy unless: 1) the renewable energy certificates are transferred to the
16 purchaser of the energy through specific agreement with the generator; 2) the
17 generator is a qualifying facility, as defined by the federal Public Utility Regulatory
18 Policies Act of 1978, in which case the renewable energy certificates are owned by
19 the public utility purchaser of the renewable energy unless retained by the
20 generator through specific agreement with the public utility purchaser of the energy;
21 or 3) a contract for the purchase of renewable energy is in effect prior to January 1,
22 2004, in which case the renewable energy certificates are owned by the purchaser
23 of the energy for the term of such contract;

24 (b) may be traded, sold or otherwise transferred by
25 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

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1 delivery in New Mexico unless the commission determines that there is a regional S
2 market for exchanging renewable energy certificates; F
3 (c) that are used once by a public utility to satisfy the L
4 renewable portfolio standard and are retired or that are traded, sold or otherwise /
5 transferred by the public utility shall not be further used by the public utility; and S
6 (d) that are not used by a public utility to satisfy the B
7 renewable portfolio standard or that are not traded, sold or otherwise transferred by 4
8 the public utility may be carried forward for up to four years from the date of 3
9 issuance and, if not used by that time, shall be retired by the public utility; and P
10 (2) a public utility shall be responsible for demonstrating that a g
11 a renewable energy certificate used for compliance with the renewable portfolio e
12 standard is derived from eligible renewable energy resources and has not been
13 retired, traded, sold or otherwise transferred to another party. 8

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

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

20 B. The commission shall not exclude from such recovery reasonable
21 interconnection and transmission costs incurred by the public utility in order to
22 deliver renewable energy to retail New Mexico customers.

23 Section 7. COMMISSION--ADDITIONAL POWERS AND DUTIES.--The
24 commission:

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

B. may require that a public utility offer its retail customers a

1 voluntary program for purchasing renewable energy that is in addition to energy S
2 provided by the public utility pursuant to the renewable portfolio standard, under F
3 rates and terms that are approved by the commission; and L
4 C. may exempt from compliance with the renewable portfolio /
5 standard a public utility that has an B
6 all-requirements electric supply contract on July 1, 2004, and the contract would not 4
7 reasonably permit it to procure renewable energy for purposes of meeting the 3
8 renewable portfolio standard. When the electricity supply contract is amended or P
9 renegotiated, the commission may require that a renewable portfolio standard a
10 become applicable. g e

11 Section 8. RURAL ELECTRIC COOPERATIVES--VOLUNTARY TARIFFS.--

12 The commission may require that a rural electric cooperative:

13 A. offer its retail customers a voluntary program for purchasing
14 renewable energy under rates and terms that are approved by the commission, but
15 only to the extent that the cooperative's suppliers make renewable energy available
16 under wholesale power contracts; and

17 B. report to the commission the demand for renewable energy
18 pursuant to a voluntary program.

19 Section 9. EXISTING RULES.--The commission shall establish and amend
20 rules and regulations for the implementation of renewable portfolio standards
21 consistent with the Renewable Energy Act.

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

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