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## FISCAL IMPACT REPORT

SPONSOR SFI DATE TYPED 2/13/04 HB \_\_\_\_\_

SHORT TITLE Public Utility Renewable Energy Rules SB 43/SFIS

ANALYST Garcia

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
		See Narrative			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Regulation Commission  
Energy, Minerals, and Natural Resources Department

### SUMMARY

#### Synopsis of Bill

The bill establishes a requirement that investor-owned electric utilities meet a “renewable portfolio standard requirement” by having renewable energy comprise no less than 5 percent of retail sales by 2006, increasing 1 percent per year and leveling off at 10 percent by 2011. Renewable energy is defined as electric energy generated from resources such as solar, wind, hydropower, geothermal or biomass, but does not include fossil fuel or nuclear energy. For the most part, the bill places the existing Public Regulation Commission (PRC) Rule #573 into statute. PRC Rule #573 requires the above renewable portfolio standards, which do not apply to rural electric cooperatives or municipal electric utilities.

Furthermore, the purpose of the bill is to ensure the achievement of the “renewable portfolio standard requirement” is at a reasonable cost to the utility and subsequently the ratepayer. The bill sets the amounts of renewable energy the public utilities shall sell to retail New Mexico customers by certain dates, allows public utilities to recover costs of complying with the bill through the ratemaking process, and protects public utilities and their ratepayers from renewable energy costs above a “reasonable cost threshold.”

The bill requires the PRC to establish the “reasonable cost threshold,” through hearings and research, by December 31, 2004. If the cost of renewable energy generation is above this PRC established level, the public utility will not be required to add renewable energy to its supply portfolio. The PRC is required to take into consideration specified factors that include: the impact on overall rates, diversity of the portfolio, reliability, and availability of resources, in setting the threshold.

If good cause is shown, industrial and commercial customers can also be subject to a reduced “renewable portfolio standard requirement.” By September 1 of each year until 2012, a public utility would be required to file a report with the PRC on its purchases of renewable energy in the previous year, and show that its plans for future purchases are the least cost renewable resource. The PRC would then approve or modify procurement plans via hearings and the rate-making process.

Lastly, language is included to reduce the Renewable Portfolio Standard (RPS) for nongovernmental customers at a single location or facility with consumption exceeding ten million kilowatt-hours per year (10,000,000 kwh/yr). This provision essentially covers the large consumers of electricity (i.e. manufacturers and other large businesses).

The number of kilowatt-hours of electricity from renewable sources procured for these customers is to be limited so that the additional cost of the RPS to each customer does not exceed the lower of 1 percent of that customer’s annual electric charges or forty-nine thousand dollars (\$49,000). This procurement limit criterion is then increased by 1/5 percent or ten thousand dollars (\$10,000) per year until January 1, 2001, when it remains fixed at the lower of 2 percent of the customer’s annual electric charges or ninety thousand dollars (\$90,000). Clarification is then provided that the preceding language in no way affects a public utility’s right to recover all reasonable costs of complying with the RPS. The Substitute also provides the PRC the authority to defer recovery of the costs of complying with the PRS, including carrying charges.

### Significant Issues

1) According to EMNRD, the Substitute for SB 43 provides strong consumer protection provisions, specifically for large industrial energy consumers. The bill was fashioned collaboratively among New Mexico’s major investor-owned utilities, the PRC, the Coalition for Clean Affordable Energy, the trade association NM Industrial Energy Consumers, and representative of the Richardson administration; the Substitute meets with the approval of these parties.

2) PRC’s rule has been legally challenged by an investor-owned utility, El Paso Electric Company. The challenge is before the NM Supreme Court and is based on the claim that the PRC does not have the legal authority to adopt a “renewable portfolio standard.” The Supreme Court proceedings have been put on hold pending the Legislature’s action on this legislation. If the bill is not passed, the appeal will proceed. If the bill is passed, the appeal would be withdrawn. If the appeal and the bill do not pass, the existing PRC Rule #573 will remain in effect without the “reasonable cost threshold” feature.

3) The legislation will help diversify NM’s electric energy supply portfolio, utilizing the state’s substantial renewable resource potential. The generation of electricity from renewable energy sources may help to preserve the state’s natural resources, improve the environment, and bring potential economic benefits to New Mexico. The potential benefits are currently immeasurable.

4) This bill would require the PRC to set a “reasonable cost threshold,” review reports, hold hearings and amend its existing renewable energy rule. Current staff and procedures review the “renewable portfolio standard” but not a “reasonable cost threshold.” The PRC has adequate expertise to accommodate the bill’s provisions.

5) The State of New Mexico, through SJM 89 in 2003, has a goal of developing renewable energy resources. The PRC renewable portfolio standard encourages development of renewable energy resources in the state. However, this bill may not encourage the generators to be in the state.

### **FISCAL IMPLICATIONS**

The fiscal implications of the bill would be marginal. The agency could likely absorb the cost of conducting the “reasonable cost threshold” analysis. However, some additional costs may be needed such as the cost of court reporters, publication, and possible contracting with other experts ranging from \$10 thousand to \$30 thousand in non-recurring costs.

### **ADMINISTRATIVE IMPLICATIONS**

The PRC would hold additional hearings and amend the renewable energy rule. Existing staff levels are adequate to handle the increased workload.

### **OTHER SUBSTANTIVE ISSUES**

According to the Energy, Minerals and Natural Resources Department, studies have indicated that, while a “renewable portfolio standard” may slightly negatively impact electric rates in the short term (*i.e.* up to 10 years), its long-term impact will help to stabilize electric rates by diversifying the supply mix and, in effect, serve as a substitute for natural gas-fired electric power production. Transitioning to renewable sources for electricity production helps protect New Mexico’s environment, serves as a public health safeguard (no or fewer air pollutants), and preserves scarce water supplies (fossil-fuel generated electricity uses substantial quantities of water for cooling). Renewable energy development offers opportunities for potential in-state economic development, particularly in NM’s outlying rural areas where renewable energy projects are most likely to be located.

However, despite the benefits of renewable energy for the above reasons, requiring utilities to have renewable energy generation mechanisms can be cost prohibitive. The research and development as well as the fixed costs of these mechanisms (*i.e.* solar, wind, geothermal or biomass) can likely raise the fixed and marginal costs of a utility, which inevitably would be passed on to ratepayers. Consequently, the bill adds the “reasonable cost threshold” feature (PRC Rule # 573 does not) to ensure the fixed and marginal costs of implementing the 10 percent renewable standard is not dramatic and passed onto ratepayers as a large increase in electric bills.

In addition, the bill instructs the PRC, through hearings and research, to determine what the “reasonable cost threshold” would be. The bill also requires full reporting by the utility to ensure complete information is shared with the PRC to determine if a utility meets the threshold.