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AN ACT

RELATING TO ELECTRIC UTILITIES; ENACTING SECTIONS OF THE RURAL ELECTRIC COOPERATIVE ACT; AMENDING AND ENACTING SECTIONS OF THE RENEWABLE ENERGY ACT; AMENDING SECTIONS OF THE EFFICIENT USE OF ENERGY ACT; PROVIDING FOR INCREASES IN THE RENEWABLE ENERGY PORTFOLIO OF PUBLIC UTILITIES AND RURAL ELECTRIC COOPERATIVES.

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

Section 1. A new section of the Rural Electric Cooperative Act is enacted to read:

"RENEWABLE PORTFOLIO STANDARD.--

A. 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. Requirements of the renewable portfolio standard are:

(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

1 ten percent of the distribution cooperative's total retail  
2 sales to New Mexico customers;

3 (3) the renewable portfolio standard of each  
4 distribution cooperative shall be diversified as to the type  
5 of renewable energy resource, taking into consideration the  
6 overall reliability, availability, dispatch flexibility and  
7 the cost of the various renewable energy resources made  
8 available to the distribution cooperative by its suppliers of  
9 electric power; and

10 (4) renewable energy resources that are in a  
11 distribution cooperative's energy supply portfolio on January  
12 1, 2008 shall be counted in determining compliance with this  
13 section.

14 B. If a distribution cooperative determines that,  
15 in any given year, the cost of renewable energy that would  
16 need to be procured or generated for purposes of compliance  
17 with the renewable portfolio standard would be greater than  
18 the reasonable cost threshold, the distribution cooperative  
19 shall not be required to incur that cost; provided that the  
20 existence of this condition excusing performance in any given  
21 year shall not operate to delay any renewable portfolio  
22 standard in subsequent years. For purposes of the Rural  
23 Electric Cooperative Act, "reasonable cost threshold" means  
24 an amount that shall be no greater than one percent of the  
25 distribution cooperative's gross receipts from business

1 transacted in New Mexico for the preceding calendar year.

2 C. By March 1 of each year, a distribution  
3 cooperative shall file with the public regulation commission  
4 a report on its purchases and generation of renewable energy  
5 during the preceding calendar year. The report shall include  
6 the cost of the renewable energy resources purchased and  
7 generated by the distribution cooperative to meet the  
8 renewable portfolio standard.

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

12 Section 2. A new section of the Rural Electric  
13 Cooperative Act is enacted to read:

14 "RENEWABLE ENERGY CERTIFICATES--COMMISSION DUTIES.--The  
15 public regulation commission shall establish:

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

1 of compliance with the renewable portfolio standard; and

2 B. requirements and procedures concerning  
3 renewable energy certificates that include the provisions  
4 that:

5 (1) renewable energy certificates:

6 (a) are owned by the generator of the  
7 renewable energy unless: 1) the renewable energy  
8 certificates are transferred to the purchaser of the energy  
9 through specific agreement with the generator; 2) the  
10 generator is a qualifying facility, as defined by the federal  
11 Public Utility Regulatory Policies Act of 1978, in which case  
12 the renewable energy certificates are owned by the  
13 distribution cooperative purchaser of the renewable energy  
14 unless retained by the generator through specific agreement  
15 with the distribution cooperative purchaser of the energy; or  
16 3) a contract for the purchase of renewable energy is in  
17 effect prior to January 1, 2004, in which case the renewable  
18 energy certificates are owned by the purchaser of the energy  
19 for the term of such contract;

20 (b) may be traded, sold or otherwise  
21 transferred by their owner to any other party; provided that  
22 the transfers and use of the certificate by a distribution  
23 cooperative for compliance with the renewable energy  
24 portfolio standard shall require the electric energy  
25 represented by the certificate to be contracted for delivery

1 or consumed, or generated by an end-use customer of the  
2 distribution cooperative in New Mexico unless the commission  
3 determines that the distribution cooperative is participating  
4 in a national or regional market for exchanging renewable  
5 energy certificates;

6 (c) that are used for the purpose of  
7 meeting the renewable portfolio standard shall be registered,  
8 beginning January 1, 2008, with a renewable energy generation  
9 information system that is designed to create and track  
10 ownership of renewable energy certificates and that, through  
11 the use of independently audited generation data, verifies  
12 the generation and delivery of electricity associated with  
13 each renewable energy certificate and protects against  
14 multiple counting of the same renewable energy certificate;

15 (d) that are used once by a  
16 distribution cooperative to satisfy the renewable portfolio  
17 standard and are retired or that are traded, sold or  
18 otherwise transferred by the distribution cooperative shall  
19 not be further used by the distribution cooperative; and

20 (e) that are not used by a distribution  
21 cooperative to satisfy the renewable portfolio standard or  
22 that are not traded, sold or otherwise transferred by the  
23 distribution cooperative may be carried forward for up to  
24 four years from the date of issuance and, if not used by that  
25 time, shall be retired by the distribution cooperative; and

1                   (2) a distribution cooperative shall be  
2 responsible for demonstrating that a renewable energy  
3 certificate used for compliance with the renewable portfolio  
4 standard is derived from eligible renewable energy resources  
5 and has not been retired, traded, sold or otherwise  
6 transferred to another party."

7           Section 3. A new section of the Rural Electric  
8 Cooperative Act is enacted to read:

9           "RENEWABLE ENERGY AND CONSERVATION FEE.--

10           A. A distribution cooperative may collect from its  
11 customers a renewable energy and conservation fee of no more  
12 than one percent of the customer's bill. In no event shall a  
13 distribution cooperative collect more than seventy-five  
14 thousand dollars (\$75,000) annually through the renewable  
15 energy and conservation fee from any single customer. Money  
16 collected through the renewable energy and conservation fee  
17 shall be segregated in a separate renewable energy and  
18 conservation account from other distribution cooperative  
19 funds and shall be expended only on programs or projects to  
20 promote the use of renewable energy, load management or  
21 energy efficiency. A distribution cooperative that collects  
22 a renewable energy and conservation fee from its customers  
23 shall report to the public regulation commission by March 1  
24 of the following year the following information:

25           (1) the amount of money collected through

1 the renewable energy and conservation fee in the previous  
2 calendar year;

3 (2) the programs or projects on which the  
4 funds collected were expended; and

5 (3) the determination of the distribution  
6 cooperative as to whether and in what amount to assess a  
7 renewable energy and conservation fee in the next calendar  
8 year.

9 B. Each distribution cooperative that collects a  
10 renewable energy and conservation fee from its customers  
11 shall deduct from the fees paid to the state pursuant to  
12 Section 62-8-8 NMSA 1978 an amount equal to fifty percent of  
13 the amount of money collected through the renewable energy  
14 and conservation fee during the preceding calendar year. The  
15 money shall be included in the account with other money from  
16 the renewable energy and conservation fee and expended only  
17 on programs or projects to promote the use of renewable  
18 energy, load management or energy efficiency."

19 Section 4. A new section of the Rural Electric  
20 Cooperative Act is enacted to read:

21 " DEFINITIONS--ENERGY EFFICIENCY--RENEWABLE ENERGY.--As  
22 used in the Rural Electric Cooperative Act:

23 A. "energy efficiency" means measures, including  
24 energy conservation measures, or programs that target  
25 consumer behavior, equipment or devices to result in a

1 decrease in consumption of electricity without reducing the  
2 amount or quality of energy services; and

3 B. "renewable energy" means electric energy:

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

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

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

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

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

15 (d) 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."

22 Section 5. Section 62-16-1 NMSA 1978 (being Laws 2004,  
23 Chapter 65, Section 1) is amended to read:

24 "62-16-1. SHORT TITLE.--Chapter 62, Article 16 NMSA  
25 1978 may be cited as the "Renewable Energy Act"."



1           Section 6. Section 62-16-2 NMSA 1978 (being Laws 2004,  
2 Chapter 65, Section 2) is amended to read:

3           "62-16-2. FINDINGS AND PURPOSES.--

4           A. The legislature finds that:

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

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

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

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

21                   (5) a public utility should have incentives  
22 to go beyond the minimum requirements of the renewable  
23 portfolio standard;

24                   (6) public utilities should not be required  
25 to acquire energy generated from renewable energy resources

1 that could result in costs above a reasonable cost threshold;  
2 and

3 (7) it may serve the public interest for  
4 public utilities to participate in national or regional  
5 renewable energy trading.

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

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

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

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

19 Section 7. Section 62-16-3 NMSA 1978 (being Laws 2004,  
20 Chapter 65, Section 3) is amended to read:

21 "62-16-3. DEFINITIONS.--As used in the Renewable Energy  
22 Act:

23 A. "commission" means the public regulation  
24 commission;

25 B. "municipality" means a municipal corporation,

1 organized under the laws of the state, and H class counties;

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

6 D. "reasonable cost threshold" means the cost  
7 established by the commission above which a public utility  
8 shall not be required to add renewable energy to its electric  
9 energy supply portfolio pursuant to the renewable portfolio  
10 standard;

11 E. "renewable energy" means electric energy:

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

15 (2) generated by use of renewable energy  
16 resources that may include:

17 (a) solar, wind and geothermal  
18 resources;

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

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

23 (d) biomass resources, such as  
24 agriculture or animal waste, small diameter timber, salt  
25 cedar and other phreatophyte or woody vegetation removed from

1 river basins or watersheds in New Mexico, landfill gas and  
2 anaerobically digested waste biomass; but

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

5 F. "renewable energy certificate" means a  
6 certificate or other record, in a format approved by the  
7 commission, that represents all the environmental attributes  
8 from one kilowatt-hour of electricity generation from a  
9 renewable energy resource;

10 G. "renewable portfolio standard" means the  
11 percentage of retail sales by a public utility to electric  
12 consumers in New Mexico that is required by the Renewable  
13 Energy Act to be supplied by renewable energy; and

14 H. "renewable purchased power agreement" means an  
15 agreement that binds an entity generating power from  
16 renewable energy resources to provide power at a specified  
17 price and binds a public utility to purchase the power at  
18 that price."

19 Section 8. Section 62-16-4 NMSA 1978 (being Laws 2004,  
20 Chapter 65, Section 4) is amended to read:

21 "62-16-4. RENEWABLE PORTFOLIO STANDARD.--

22 A. A public utility shall meet the renewable  
23 portfolio standard requirements, as provided in this section,  
24 to include renewable energy in its electric energy supply  
25 portfolio. Requirements of the renewable portfolio standard

1 are:

2 (1) for public utilities other than rural  
3 electric cooperatives and municipalities:

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

8 (b) no later than January 1, 2011,  
9 renewable energy shall comprise no less than ten percent of  
10 each public utility's total retail sales to New Mexico  
11 customers;

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

16 (d) no later than January 1, 2020,  
17 renewable energy shall comprise no less than twenty percent  
18 of each public utility's total retail sales to New Mexico  
19 customers;

20 (2) the renewable portfolio standard  
21 established by this section shall be reduced, as necessary,  
22 to provide for the following specific procurement  
23 requirements for nongovernmental customers at a single  
24 location or facility, regardless of the number of meters at  
25 that location or facility, with consumption exceeding ten

1 million kilowatt-hours per year. On and after January 1,  
2 2006, the kilowatt-hours of renewable energy procured for  
3 these customers shall be limited so that the additional cost  
4 of the renewable portfolio standard to each customer does not  
5 exceed the lower of one percent of that customer's annual  
6 electric charges or forty-nine thousand dollars (\$49,000).  
7 This procurement limit criteria shall increase by one-fifth  
8 percent or ten thousand dollars (\$10,000) per year until  
9 January 1, 2011, when the procurement limit criteria shall  
10 remain fixed at the lower of two percent of that customer's  
11 annual electric charges or ninety-nine thousand dollars  
12 (\$99,000). After January 1, 2012, the commission may adjust  
13 the ninety-nine-thousand-dollar (\$99,000) limit for  
14 inflation. Nothing contained in this paragraph shall be  
15 construed as affecting a public utility's right to recover  
16 all reasonable costs of complying with the renewable  
17 portfolio standard, pursuant to Section 62-16-6 NMSA 1978.  
18 The commission may authorize deferred recovery of the costs  
19 of complying with the renewable portfolio standard, including  
20 carrying charges;

21 (3) the renewable portfolio shall be  
22 diversified as to the type of renewable energy resource,  
23 taking into consideration the overall reliability,  
24 availability, dispatch flexibility and cost of the various  
25 renewable energy resources made available by suppliers and

1 generators;

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

10 (5) renewable energy resources that are in a  
11 public utility's electric energy supply portfolio on July 1,  
12 2004 shall be counted in determining compliance with this  
13 section.

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

1 renewable energy resources to meet the renewable portfolio  
2 standard applicable in the year when the renewable energy  
3 resources are being added.

4 C. By December 31, 2004, the commission shall  
5 establish, after notice and hearing, the reasonable cost  
6 threshold above which level a public utility shall not be  
7 required to add renewable energy to its electric energy  
8 supply portfolio pursuant to the renewable portfolio  
9 standard. The commission may thereafter modify the  
10 reasonable cost threshold as changing circumstances warrant,  
11 after notice and hearing. In establishing and modifying the  
12 reasonable cost threshold, the commission shall take into  
13 account:

14 (1) the price of renewable energy at the  
15 point of sale to the public utility;

16 (2) the transmission and interconnection  
17 costs required for the delivery of renewable energy to retail  
18 customers;

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

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

25 (5) other factors, including public



1 benefits, that the commission deems relevant; provided that  
2 nothing in the Renewable Energy Act shall be construed to  
3 permit regulation by the commission of the production or sale  
4 price at the point of production of the renewable energy.

5 D. By September 1, 2007 and July 1 of each year  
6 thereafter until 2022, and thereafter as determined necessary  
7 by the commission, a public utility shall file a report to  
8 the commission on its procurement and generation of renewable  
9 energy during the prior calendar year and a procurement plan  
10 that includes:

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

14 (2) testimony and exhibits that demonstrate  
15 that the proposed procurement is reasonable as to its terms  
16 and conditions considering price, availability,  
17 dispatchability, any renewable energy certificate values and  
18 diversity of the renewable energy resource; or

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

21 E. The commission shall approve or modify a public  
22 utility's procurement or transitional procurement plan within  
23 ninety days and may approve the plan without a hearing,  
24 unless a protest is filed that demonstrates to the  
25 commission's reasonable satisfaction that a hearing is

1 necessary. The commission may modify a plan after notice and  
2 hearing. The commission may, for good cause, extend the time  
3 to approve a procurement plan for an additional ninety days.  
4 If the commission does not act within the ninety-day period,  
5 the procurement plan is deemed approved.

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

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

22 H. The commission shall determine if it is in the  
23 public interest for the commission to provide appropriate  
24 performance-based financial or other incentives to encourage  
25 public utilities to acquire renewable energy supplies in

1 amounts that exceed the requirements of the renewable  
2 portfolio standard."

3 Section 9. Section 62-16-5 NMSA 1978 (being Laws 2004,  
4 Chapter 65, Section 5) is amended to read:

5 "62-16-5. RENEWABLE ENERGY CERTIFICATES--COMMISSION  
6 DUTIES.--The commission shall establish:

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

19 B. requirements and procedures concerning  
20 renewable energy certificates that include the provisions  
21 that:

22 (1) renewable energy certificates:

23 (a) are owned by the generator of the  
24 renewable energy unless: 1) the renewable energy  
25 certificates are transferred to the purchaser of the energy

1 through specific agreement with the generator; 2) the  
2 generator is a qualifying facility, as defined by the federal  
3 Public Utility Regulatory Policies Act of 1978, in which case  
4 the renewable energy certificates are owned by the public  
5 utility purchaser of the renewable energy unless retained by  
6 the generator through specific agreement with the public  
7 utility purchaser of the energy; or 3) a contract for the  
8 purchase of renewable energy is in effect prior to January 1,  
9 2004, in which case the renewable energy certificates are  
10 owned by the purchaser of the energy for the term of such  
11 contract;

12 (b) may be traded, sold or otherwise  
13 transferred by their owner to any other party; provided that  
14 the transfers and use of the certificate by a public utility  
15 for compliance with the renewable energy portfolio standard  
16 shall require the electric energy represented by the  
17 certificate to be contracted for delivery, or consumed or  
18 generated by an end-use customer of the public utility in New  
19 Mexico unless the commission determines that there is a  
20 national or regional market for exchanging renewable energy  
21 certificates;

22 (c) that are used for the purpose of  
23 meeting the renewable portfolio standard shall be registered,  
24 beginning January 1, 2009, with a renewable energy generation  
25 information system that is designed to create and track

1 ownership of renewable energy certificates and that, through  
2 the use of independently audited generation data, verifies  
3 the generation and delivery of electricity associated with  
4 each renewable energy certificate and protects against  
5 multiple counting of the same renewable energy certificate;

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

11 (e) that are not used by a public  
12 utility to satisfy the renewable portfolio standard or that  
13 are not traded, sold or otherwise transferred by the public  
14 utility may be carried forward for up to four years from the  
15 date of issuance and, if not used by that time, shall be  
16 retired by the public utility; and

17 (2) a public utility shall be responsible  
18 for demonstrating that a renewable energy certificate used  
19 for compliance with the renewable portfolio standard is  
20 derived from eligible renewable energy resources and has not  
21 been retired, traded, sold or otherwise transferred to  
22 another party."

23 Section 10. Section 62-16-6 NMSA 1978 (being Laws 2004,  
24 Chapter 65, Section 6) is amended to read:

25 "62-16-6. COST RECOVERY FOR RENEWABLE ENERGY.--

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

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

11           C. Upon a commission motion or application by a  
12 public utility, the commission shall open a docket to provide  
13 appropriate performance-based financial or other incentives  
14 to encourage public utilities to acquire renewable energy  
15 supplies that exceed the applicable annual renewable  
16 portfolio standard pursuant to the Renewable Energy Act. The  
17 commission shall initiate rules by June 1, 2008 to implement  
18 this subsection."

19           Section 11. Section 62-16-8 NMSA 1978 (being Laws 2004,  
20 Chapter 65, Section 8) is amended to read:

21           "62-16-8. RURAL ELECTRIC COOPERATIVE--VOLUNTARY  
22 TARIFFS.--

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

25                   (1) offer its retail customers a voluntary

1 program for purchasing renewable energy under rates and terms  
2 that are approved by the commission, but only to the extent  
3 that the cooperative's suppliers make renewable energy  
4 available under wholesale power contracts;

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

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

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

14 Section 12. Section 62-17-1 NMSA 1978 (being Laws 2005,  
15 Chapter 341, Section 1) is amended to read:

16 "62-17-1. SHORT TITLE.--Chapter 62, Article 17 NMSA  
17 1978 may be cited as the "Efficient Use of Energy Act"."

18 Section 13. Section 62-17-5 NMSA 1978 (being Laws 2005,  
19 Chapter 341, Section 5) is amended to read:

20 "62-17-5. COMMISSION APPROVAL--ENERGY EFFICIENCY AND  
21 LOAD MANAGEMENT PROGRAMS--DISINCENTIVES.--

22 A. Pursuant to the findings and purpose of the  
23 Efficient Use of Energy Act, the commission shall consider  
24 public utility investments in cost-effective energy  
25 efficiency and load management to be an acceptable use of

1 ratepayer money.

2 B. The commission shall direct public utilities to  
3 evaluate and implement cost-effective programs that reduce  
4 energy demand and consumption.

5 C. Before the commission approves an energy  
6 efficiency and load management program for a public utility,  
7 it must find that the portfolio of programs is cost-effective  
8 and designed to provide every affected customer class with  
9 the opportunity to participate and benefit economically. The  
10 commission shall determine the cost-effectiveness of energy  
11 efficiency and load management measures using the total  
12 resource cost test.

13 D. The commission shall act expeditiously on  
14 public utility requests for approval of energy efficiency or  
15 load management programs.

16 E. Public utilities shall obtain commission  
17 approval of energy efficiency and load management programs  
18 before they are implemented. Public utilities proposing new  
19 energy efficiency and load management programs shall, before  
20 seeking commission approval, solicit nonbinding  
21 recommendations on the design and implementation of the  
22 programs from commission staff, the attorney general, the  
23 energy, minerals and natural resources department and other  
24 interested parties.

25 F. The commission shall, upon petition or its own



1 motion, open a docket to identify any disincentives or  
2 barriers that may exist for public utility expenditures on  
3 energy efficiency and load management measures and, if found,  
4 ensure that they are eliminated and that an appropriate  
5 ratemaking treatment and performance-based, financial or  
6 other incentives are considered in order that public  
7 utilities are financially neutral in their preference for  
8 acquiring demand- or supply-side utility resources.

9 G. Public utilities shall set a goal of at least  
10 five percent reduction by January 1, 2020 in total retail  
11 sales to New Mexico customers, adjusted for load growth."

12 Section 14. Section 62-17-6 NMSA 1978 (being Laws 2005,  
13 Chapter 341, Section 6) is amended to read:

14 "62-17-6. COST RECOVERY.--

15 A. A public utility that undertakes cost-effective  
16 energy efficiency and load management programs shall recover  
17 the costs of all the programs implemented after the effective  
18 date of the Efficient Use of Energy Act through an approved  
19 tariff rider. Program costs may be deferred for future  
20 recovery through creation of a regulatory asset, provided  
21 that the deferred recovery does not cause the tariff rider to  
22 exceed the limits imposed by this section. The tariff rider  
23 for any utility customer shall not exceed the lower of the  
24 commission's approved tariff for that customer's bill or  
25 seventy-five thousand dollars (\$75,000) per year except that,

1 upon application by a public utility with the advice and  
2 consent of the entity designated by law to represent  
3 residential and commercial utility customers, the commission  
4 may approve a tariff rider in excess of the commission's  
5 approved tariff for customers other than large customers and  
6 may approve a tariff rider in excess of the lower of the  
7 commission's approved tariff or seventy-five thousand dollars  
8 (\$75,000) per year for a large customer that consents to such  
9 a rider. The commission shall approve such applications upon  
10 finding that the proposed energy efficiency and load  
11 management programs are cost-effective and that the cost  
12 recovery proposal is just and reasonable.

13 B. The tariff rider shall provide for the  
14 recovery, on a monthly basis or otherwise, of all reasonable  
15 costs of approved energy efficiency and load management  
16 programs.

17 C. A tariff rider proposed by a public utility to  
18 fund approved energy efficiency and load management programs  
19 shall go into effect thirty days after filing, unless  
20 suspended by the commission for a period not to exceed one  
21 hundred eighty days. If the tariff rider is not approved or  
22 suspended within thirty days after filing, it shall be deemed  
23 approved as a matter of law. If the commission has not acted  
24 to approve or disapprove the tariff rider by the end of an  
25 ordered suspension period, it shall be deemed approved as a

1 matter of law. The commission shall approve utility  
2 reconciliations of the tariff rider annually based upon  
3 recovery of the reasonable costs of the utility's programs.

4 D. The commission shall ensure that there are no  
5 cross-subsidies between a public utility's energy efficiency  
6 and load management activities and the public utility's  
7 supply-side activities and shall ensure that the existence of  
8 a tariff rider does not permit a public utility to earn an  
9 excessive rate of return."

10 Section 15. EFFECTIVE DATE.--The effective date of the  
11 provisions of this act is July 1, 2007. \_\_\_\_\_

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