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SENATE BILL 315

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Timothy M. Keller

AN ACT

RELATING TO ELECTRIC UTILITIES; AMENDING A SECTION OF THE
RENEWABLE ENERGY ACT TO PROVIDE FOR EARLIER DEADLINES TO MEET
CERTAIN REQUIREMENTS OF RENEWABLE ENERGY PORTFOLIOS.

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

Section 1. 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. Requirements of the renewable portfolio standard
are:

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

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

5 (b) no later than January 1, ~~[2011]~~
6 2010, renewable energy shall comprise no less than ten percent
7 of each public utility's total retail sales to New Mexico
8 customers;

9 (c) no later than January 1, ~~[2015]~~
10 2014, renewable energy shall comprise no less than fifteen
11 percent of each public utility's total retail sales to New
12 Mexico customers; and

13 (d) no later than January 1, ~~[2020]~~
14 2018, renewable energy shall comprise no less than twenty
15 percent of each public utility's total retail sales to New
16 Mexico customers;

17 (2) the renewable portfolio standard
18 established by this section shall be reduced, as necessary, to
19 provide for the following specific procurement requirements for
20 nongovernmental customers at a single location or facility,
21 regardless of the number of meters at that location or
22 facility, with consumption exceeding ten million kilowatt-hours
23 per year. On and after January 1, 2006, the kilowatt-hours of
24 renewable energy procured for these customers shall be limited
25 so that the additional cost of the renewable portfolio standard

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

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

22 (4) upon a commission motion or application by
23 a public utility, the commission shall open a docket to provide
24 appropriate performance-based financial or other incentives to
25 encourage public utilities to acquire renewable energy supplies

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1 that exceed the applicable annual renewable portfolio standard
2 set forth in this section. The commission shall initiate rules
3 by June 1, 2008 to implement this subsection; and

4 (5) renewable energy resources that are in a
5 public utility's electric energy supply portfolio on July 1,
6 2004 shall be counted in determining compliance with this
7 section.

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

23 C. By December 31, 2004, the commission shall
24 establish, after notice and hearing, the reasonable cost
25 threshold above which level a public utility shall not be

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1 required to add renewable energy to its electric energy supply
2 portfolio pursuant to the renewable portfolio standard. The
3 commission may thereafter modify the reasonable cost threshold
4 as changing circumstances warrant, after notice and hearing.
5 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
8 of sale to the public utility;

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

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

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

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

23 D. By September 1, 2007 and July 1 of each year
24 thereafter until [2022] 2020, and thereafter as determined
25 necessary by the commission, a public utility shall file a

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1 report to the commission on its procurement and generation of
2 renewable energy during the prior calendar year and a
3 procurement plan that includes:

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

7 (2) testimony and exhibits that demonstrate
8 that the proposed procurement is reasonable as to its terms and
9 conditions considering price, availability, dispatchability,
10 any renewable energy certificate values and diversity of the
11 renewable energy resource; or

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

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

24 F. The commission may reject a procurement or
25 transitional procurement plan if it finds that the plan does

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1 not contain the required information and, upon the rejection,
2 may suspend the public utility's obligation to procure
3 additional resources for the time necessary to file a revised
4 plan; provided that the total amount of renewable energy to be
5 procured by the public utility shall not change.

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

15 H. The commission shall determine if it is in the
16 public interest for the commission to provide appropriate
17 performance-based financial or other incentives to encourage
18 public utilities to acquire renewable energy supplies in
19 amounts that exceed the requirements of the renewable portfolio
20 standard."