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SENATE BILL 204

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO UTILITIES; ALLOWING RENEWABLE ENERGY CERTIFICATES TO BE ISSUED FOR THE GENERATION AND USE OF THERMAL ENERGY PRODUCED BY RENEWABLE ENERGY RESOURCES; DEFINING "USEFUL THERMAL ENERGY"; REQUIRING AN ADDITIONAL RENEWABLE ENERGY CERTIFICATE TO BE ISSUED PER UNIT OF ENERGY PRODUCED FROM FOREST-RELATED BIOMASS MATERIAL.

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

**SECTION 1.** Section 62-15-35 NMSA 1978 (being Laws 2007, Chapter 4, Section 2) is amended to read:

"62-15-35. RENEWABLE ENERGY CERTIFICATES--COMMISSION DUTIES.--The public regulation commission shall establish:

A. a system of renewable energy certificates that can be used by a distribution cooperative to establish compliance with the renewable portfolio standard and that may

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1 include certificates that are monitored, accounted for or  
2 transferred by or through a regional system or trading program  
3 for any region in which a rural electric cooperative is  
4 located. The kilowatt-hour value of renewable energy  
5 certificates may be varied by renewable energy resource or  
6 technology; provided that:

7 (1) each renewable energy certificate shall  
8 have a minimum value of one kilowatt-hour for purposes of  
9 compliance with the renewable portfolio standard;

10 (2) three thousand four hundred twelve British  
11 thermal units of useful thermal energy is equivalent to at  
12 least one kilowatt-hour for purposes of compliance with the  
13 renewable portfolio standard; and

14 (3) renewable energy produced from biomass  
15 that utilizes the majority of its feedstock from forest-related  
16 material shall receive an additional renewable energy  
17 certificate per unit of energy above the normal allocation; and

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

20 (1) renewable energy certificates:

21 (a) are owned by the generator of the  
22 renewable energy unless: 1) the renewable energy certificates  
23 are transferred to the purchaser of the energy through specific  
24 agreement with the generator; 2) the generator is a qualifying  
25 facility, as defined by the federal Public Utility Regulatory

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1 Policies Act of 1978, in which case the renewable energy  
2 certificates are owned by the distribution cooperative  
3 purchaser of the renewable energy unless retained by the  
4 generator through specific agreement with the distribution  
5 cooperative purchaser of the energy; or 3) a contract for the  
6 purchase of renewable energy is in effect prior to January 1,  
7 2004, in which case the renewable energy certificates are owned  
8 by the purchaser of the energy for the term of such contract;

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

20 (c) that are used for the purpose of  
21 meeting the renewable portfolio standard shall be registered,  
22 beginning January 1, 2008, with a renewable energy generation  
23 information system that is designed to create and track  
24 ownership of renewable energy certificates and that, through  
25 the use of independently audited generation data, verifies the

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1 generation and delivery of electricity or useful thermal energy  
2 associated with each renewable energy certificate and protects  
3 against multiple counting of the same renewable energy  
4 certificate;

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

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

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

22 SECTION 2. Section 62-15-37 NMSA 1978 (being Laws 2007,  
23 Chapter 4, Section 4) is amended to read:

24 "62-15-37. DEFINITIONS--ENERGY EFFICIENCY--RENEWABLE  
25 ENERGY.--As used in the Rural Electric Cooperative Act:

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1           A. "energy efficiency" means measures, including  
2 energy conservation measures, or programs that target consumer  
3 behavior, equipment or devices to result in a decrease in  
4 consumption of electricity without reducing the amount or  
5 quality of energy services; ~~and~~

6           B. "renewable energy" means electric or useful  
7 thermal energy:

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

11                   (2) generated by use of renewable energy  
12 resources that may include:

13                           (a) solar, wind and geothermal  
14 resources;

15                           (b) hydropower facilities brought in  
16 service after July 1, 2007;

17                           (c) fuel cells that are not fossil  
18 fueled; and

19                           (d) biomass resources. ~~[such as~~  
20 ~~agriculture or animal waste, small diameter timber, salt cedar~~  
21 ~~and other phreatophyte or woody vegetation removed from river~~  
22 ~~basins or watersheds in New Mexico, landfill gas and~~  
23 ~~anaerobically digested waste biomass]~~ For purposes of this  
24 subsection, "biomass resources" means organic material that is  
25 available on a renewable or recurring basis, including: 1)

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1 forest-related materials, including mill residues, logging  
2 residues, forest thinnings, slash, brush, low-commercial value  
3 materials or undesirable species, salt cedar and other  
4 phreatophyte or woody vegetation removed from river basins or  
5 watersheds and woody material harvested for the purpose of  
6 forest fire fuel reduction or forest health and watershed  
7 improvement; 2) agricultural-related materials, including  
8 orchard tree, vineyard, grain or crop residues, including  
9 straws and stover, aquatic plants and agricultural processed  
10 co-products and waste products, including fats, oils, greases,  
11 whay and lactose; 3) animal waste, including manure and  
12 slaughterhouse and other processing waste; 4) solid woody waste  
13 materials, including landscape or right-of-way tree trimmings,  
14 rangeland maintenance residues, waste pallets, crates and  
15 manufacturing, construction and demolition wood wastes,  
16 excluding pressure-treated, chemically treated or painted wood  
17 wastes and wood contaminated with plastic; 5) crops and trees  
18 planted for the purpose of being used to produce energy; 6)  
19 landfill gas, wastewater treatment gas and biosolids, including  
20 organic waste byproducts generated during the wastewater  
21 treatment process; and 7) segregated municipal solid waste,  
22 excluding tires and medical and hazardous waste; but

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

25 C. "useful thermal energy" means renewable energy

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1 delivered from a source that can be metered and that is  
2 delivered in the state to a commercial scale or public sector  
3 end user in the form of direct heat, steam, hot water or other  
4 thermal form that is used for heating, cooling, humidity  
5 control, process use or other valid end-use energy requirements  
6 and for which fossil fuel or electricity would otherwise be  
7 consumed."

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

10 "62-16-3. DEFINITIONS.--As used in the Renewable Energy  
11 Act:

- 12 A. "commission" means the public regulation  
13 commission;
- 14 B. "municipality" means a municipal corporation,  
15 organized under the laws of the state, and H class counties;
- 16 C. "public utility" means an entity certified by  
17 the commission to provide retail electric service in New Mexico  
18 pursuant to the Public Utility Act but does not include rural  
19 electric cooperatives;
- 20 D. "reasonable cost threshold" means the cost  
21 established by the commission above which a public utility  
22 shall not be required to add renewable energy to its electric  
23 energy supply portfolio pursuant to the renewable portfolio  
24 standard;
- 25 E. "renewable energy" means electric or useful

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1 thermal energy:

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

5 (2) generated by use of renewable energy  
6 resources that may include:

7 (a) solar, wind and geothermal  
8 resources;

9 (b) hydropower facilities brought in  
10 service after July 1, 2007;

11 (c) fuel cells that are not fossil  
12 fueled; and

13 (d) biomass resources. [~~such as~~  
14 ~~agriculture or animal waste, small diameter timber, salt cedar~~  
15 ~~and other phreatophyte or woody vegetation removed from river~~  
16 ~~basins or watersheds in New Mexico, landfill gas and~~  
17 ~~anaerobically digested waste biomass] For purposes of this  
18 subsection, "biomass resources" means organic material that is  
19 available on a renewable or recurring basis, including: 1)  
20 forest-related materials, including mill residues, logging  
21 residues, forest thinnings, slash, brush, low-commercial value  
22 materials or undesirable species, salt cedar and other  
23 phreatophyte or woody vegetation removed from river basins or  
24 watersheds and woody material harvested for the purpose of  
25 forest fire fuel reduction or forest health and watershed~~

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underscored material = new  
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1 improvement; 2) agricultural-related materials, including  
2 orchard tree, vineyard, grain or crop residues, including  
3 straws and stover, aquatic plants and agricultural processed  
4 co-products and waste products, including fats, oils, greases,  
5 whew and lactose; 3) animal waste, including manure and  
6 slaughterhouse and other processing waste; 4) solid woody waste  
7 materials, including landscape or right-of-way tree trimmings,  
8 rangeland maintenance residues, waste pallets, crates and  
9 manufacturing, construction and demolition wood wastes,  
10 excluding pressure-treated, chemically treated or painted wood  
11 wastes and wood contaminated with plastic; 5) crops and trees  
12 planted for the purpose of being used to produce energy; 6)  
13 landfill gas, wastewater treatment gas and biosolids, including  
14 organic waste byproducts generated during the wastewater  
15 treatment process; and 7) segregated municipal solid waste,  
16 excluding tires and medical and hazardous waste; but

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

19 F. "renewable energy certificate" means a  
20 certificate or other record, in a format approved by the  
21 commission, that represents all the environmental attributes  
22 from one kilowatt-hour of electricity generation from a  
23 renewable energy resource or from the generation of three  
24 thousand four hundred twelve British thermal units of useful  
25 thermal energy;

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underscored material = new  
[bracketed material] = delete

1 G. "renewable portfolio standard" means the  
2 percentage of retail sales by a public utility to electric  
3 consumers in New Mexico that is required by the Renewable  
4 Energy Act to be supplied by renewable energy; ~~and~~

5 H. "renewable purchased power agreement" means an  
6 agreement that binds an entity generating power from renewable  
7 energy resources to provide power at a specified price and  
8 binds a public utility to purchase the power at that price; and

9 I. "useful thermal energy" means renewable energy  
10 delivered from a source that can be metered and that is  
11 delivered in the state to a commercial scale or public sector  
12 end user in the form of direct heat, steam, hot water or other  
13 thermal form that is used for heating, cooling, humidity  
14 control, process use or other valid end-use energy requirements  
15 and for which fossil fuel or electricity would otherwise be  
16 consumed."

17 SECTION 4. Section 62-16-5 NMSA 1978 (being Laws 2004,  
18 Chapter 65, Section 5, as amended) is amended to read:

19 "62-16-5. RENEWABLE ENERGY CERTIFICATES--COMMISSION  
20 DUTIES.--The commission shall establish:

21 A. a system of renewable energy certificates that  
22 can be used by a public utility to establish compliance with  
23 the renewable portfolio standard and that may include  
24 certificates that are monitored, accounted for or transferred  
25 by or through a regional system or trading program for any

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underscoring material = new  
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1 region in which a public utility is located. The kilowatt-hour  
2 value of renewable energy certificates may be varied by  
3 renewable energy resource or technology; provided that:

4 (1) each renewable energy certificate shall  
5 have a minimum value of one kilowatt-hour of renewable energy  
6 represented by the certificate for purposes of compliance with  
7 the renewable portfolio standard;

8 (2) three thousand four hundred twelve British  
9 thermal units of useful thermal energy is equivalent to at  
10 least one kilowatt-hour for purposes of compliance with the  
11 renewable portfolio standard; and

12 (3) renewable energy produced from biomass  
13 that utilizes the majority of its feedstock from forest-related  
14 material shall receive an additional renewable energy  
15 certificate per unit of energy above the normal allocation; and

16 B. requirements and procedures concerning renewable  
17 energy certificates that include the provisions that:

18 (1) renewable energy certificates:

19 (a) are owned by the generator of the  
20 renewable energy unless: 1) the renewable energy certificates  
21 are transferred to the purchaser of the energy through specific  
22 agreement with the generator; 2) the generator is a qualifying  
23 facility, as defined by the federal Public Utility Regulatory  
24 Policies Act of 1978, in which case the renewable energy  
25 certificates are owned by the public utility purchaser of the

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

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

17 (c) that are used for the purpose of  
18 meeting the renewable portfolio standard shall be registered,  
19 beginning January 1, 2009, with a renewable energy generation  
20 information system that is designed to create and track  
21 ownership of renewable energy certificates and that, through  
22 the use of independently audited generation data, verifies the  
23 generation and delivery of electricity or useful thermal energy  
24 associated with each renewable energy certificate and protects  
25 against multiple counting of the same renewable energy

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1 certificate;

2 (d) that are used once by a public  
3 utility to satisfy the renewable portfolio standard and are  
4 retired or that are traded, sold or otherwise transferred by  
5 the public utility shall not be further used by the public  
6 utility; and

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

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

19 SECTION 5. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is July 1, 2013.

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