

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 489

3 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

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10 AN ACT

11 RELATING TO PUBLIC UTILITIES; ENACTING THE ENERGY TRANSITION  
12 ACT; AUTHORIZING CERTAIN UTILITIES THAT ABANDON CERTAIN  
13 GENERATING FACILITIES TO ISSUE BONDS PURSUANT TO A FINANCING  
14 ORDER ISSUED BY THE PUBLIC REGULATION COMMISSION; AUTHORIZING  
15 THE COMMISSION TO IMPOSE A FEE ON THE QUALIFYING UTILITY TO PAY  
16 COMMISSION EXPENSES FOR CONTRACTS FOR SERVICES FOR LEGAL  
17 COUNSEL AND FINANCIAL ADVISORS TO PROVIDE ADVICE AND ASSISTANCE  
18 FOR PURPOSES RELATED TO THE ACT; PROVIDING PROCEDURES FOR  
19 REHEARING AND JUDICIAL REVIEW; PROVIDING FOR THE TREATMENT OF  
20 ENERGY TRANSITION BONDS BY THE COMMISSION; CREATING SECURITY  
21 INTERESTS IN CERTAIN PROPERTY; PROVIDING FOR THE PERFECTION OF  
22 INTERESTS IN CERTAIN PROPERTY; EXEMPTING ENERGY TRANSITION  
23 CHARGES FROM FRANCHISE AND CERTAIN OTHER GOVERNMENT FEES;  
24 PROVIDING FOR NONIMPAIRMENT OF ENERGY TRANSITION CHARGES AND  
25 BONDS; PROVIDING FOR CONFLICTS IN LAW; PROVIDING THAT ACTIONS

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1 TAKEN PURSUANT TO THE ENERGY TRANSITION ACT SHALL NOT BE  
2 INVALIDATED IF THE ACT IS HELD INVALID; REQUIRING THE PUBLIC  
3 REGULATION COMMISSION TO APPROVE PROCUREMENT OF ENERGY STORAGE  
4 SYSTEMS; PROVIDING NEW REQUIREMENTS AND TARGETS FOR THE  
5 RENEWABLE PORTFOLIO STANDARD FOR RURAL ELECTRIC COOPERATIVES  
6 AND PUBLIC UTILITIES; CREATING THE ENERGY TRANSITION INDIAN  
7 AFFAIRS FUND, THE ENERGY TRANSITION ECONOMIC DEVELOPMENT  
8 ASSISTANCE FUND AND THE ENERGY TRANSITION DISPLACED WORKER  
9 ASSISTANCE FUND; AMENDING CERTAIN DEFINITIONS IN THE RENEWABLE  
10 ENERGY ACT; REQUIRING THE HIRING OF APPRENTICES FOR THE  
11 CONSTRUCTION OF FACILITIES THAT PRODUCE OR PROVIDE ELECTRICITY;  
12 REQUIRING THE ENVIRONMENTAL IMPROVEMENT BOARD TO PROMULGATE  
13 RULES TO LIMIT CARBON DIOXIDE EMISSIONS OF CERTAIN ELECTRIC  
14 GENERATING FACILITIES.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
18 through 23 of this act may be cited as the "Energy Transition  
19 Act".

20 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
21 Energy Transition Act:

22 A. "adjustment mechanism" means a formula-based  
23 calculation used to make adjustments to the energy transition  
24 charges that are necessary to correct for any over-collection  
25 or under-collection of the energy transition charges, to

1 provide for the timely and complete payment of scheduled  
2 principal and interest on energy transition bonds and the  
3 payment and recovery of other financing costs in accordance  
4 with a financing order;

5 B. "ancillary agreement" means a bond, insurance  
6 policy, letter of credit, reserve account, surety bond,  
7 interest rate lock or swap arrangement, hedging arrangement,  
8 liquidity or credit support arrangement or other similar  
9 agreement or arrangement entered into in connection with the  
10 issuance of an energy transition bond that is designed to  
11 promote the credit quality and marketability of the bond or to  
12 mitigate the risk of an increase in interest rates;

13 C. "assignee" means a person or legal entity, that  
14 may be newly created by the qualifying utility, to which an  
15 interest in energy transition property is sold, assigned,  
16 transferred or conveyed, other than as security, and any  
17 successor to or subsequent assignee of such a person or legal  
18 entity;

19 D. "commission" means the public regulation  
20 commission;

21 E. "electric delivery service" means transmission,  
22 distribution, generation, energy or any other service from a  
23 qualifying utility pursuant to commission-approved rate  
24 schedules or special contracts;

25 F. "energy transition bond" means a bond or other

1 evidence of indebtedness or ownership that is issued by a  
2 qualifying utility or an assignee pursuant to a financing  
3 order, the proceeds of which are secured by or payable from  
4 energy transition property and that are non-recourse to the  
5 qualifying utility;

6 G. "energy transition charge" means a non-  
7 bypassable charge paid by all customers of a qualifying utility  
8 for the recovery of energy transition costs;

9 H. "energy transition cost" means the sum of:

10 (1) financing costs;

11 (2) abandonment costs, which for a qualifying  
12 generating facility shall not exceed the lower of three hundred  
13 seventy-five million dollars (\$375,000,000) or one hundred  
14 fifty percent of the undepreciated investment in a qualifying  
15 generating facility being abandoned, as of the date of the  
16 abandonment. The abandonment costs subject to this limitation  
17 shall include:

18 (a) up to thirty million dollars  
19 (\$30,000,000) per qualifying generating facility in costs not  
20 previously collected from the qualifying utility's customers  
21 for plant decommissioning and mine reclamation costs, subject  
22 to any limitations ordered by the commission prior to January  
23 1, 2019 and affirmed by the New Mexico supreme court prior to  
24 the effective date of the Energy Transition Act, associated  
25 with the abandoned qualifying generating facility;

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1 (b) up to twenty million dollars  
 2 (\$20,000,000) per qualifying generating facility in costs for  
 3 severance and job training for employees losing their jobs as a  
 4 result of an abandoned qualifying generating facility and any  
 5 associated mine that only services the abandoned qualifying  
 6 generating facility;

7 (c) undepreciated investments as of the  
 8 date of abandonment on the qualifying utility's books and  
 9 records in a qualifying generating facility that were either  
 10 being recovered in rates as of January 1, 2019 or are otherwise  
 11 found to be recoverable through a court decision; and

12 (d) other undepreciated investments in a  
 13 qualifying generating facility incurred to comply with law,  
 14 whether established by statute, court decision or rule, or  
 15 necessary to maintain the safe and reliable operation of the  
 16 qualifying generating facility prior to the facility's  
 17 abandonment;

18 (3) any other costs required to comply with  
 19 changes in law enacted after January 1, 2019 incurred by the  
 20 qualifying utility at the qualifying generating facility; and

21 (4) payments required pursuant to Section 16  
 22 of the Energy Transition Act;

23 I. "energy transition property" means the rights  
 24 and interests of a qualifying utility or an assignee under a  
 25 financing order, including the right to impose, charge, collect

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1 and receive energy transition charges in an amount necessary to  
2 provide for full payment and recovery of all energy transition  
3 costs identified in the financing order, including all revenues  
4 or other proceeds arising from those rights and interests;

5 J. "energy transition revenues" means revenues  
6 collected by or on behalf of a qualifying utility through an  
7 energy transition charge;

8 K. "financing cost" means the cost incurred by the  
9 qualifying utility or an assignee to issue and administer  
10 energy transition bonds, including:

11 (1) payment of the fee authorized pursuant to  
12 Subsection L of Section 5 of the Energy Transition Act;

13 (2) principal, interest, acquisition,  
14 defeasance and redemption premiums that are payable on energy  
15 transition bonds;

16 (3) any payment required under an ancillary  
17 agreement and any amount required to fund or replenish a  
18 reserve account or other account established under any  
19 indenture, ancillary agreement or other financing document  
20 relating to the energy transition bonds;

21 (4) any costs, fees and expenses related to  
22 issuing, supporting, repaying, servicing and refunding energy  
23 transition bonds, the application for a financing order,  
24 including related state board of finance expenses, or obtaining  
25 an order approving abandonment of a qualifying generating

1 facility;

2 (5) any costs, fees and related expenses  
 3 incurred relating to any existing secured or unsecured  
 4 obligation of a qualifying utility or an affiliate of a  
 5 qualifying utility that are necessary to obtain any consent,  
 6 release, waiver or approval from any holder of such an  
 7 obligation to permit a qualifying utility to issue or cause the  
 8 issuance of energy transition bonds;

9 (6) any taxes, fees, charges or other  
 10 assessments imposed on energy transition bonds;

11 (7) preliminary and continuing costs  
 12 associated with subsequent financing; and

13 (8) any other related costs approved for  
 14 recovery in the financing order;

15 L. "financing order" means an order of the  
 16 commission that authorizes the issuance of energy transition  
 17 bonds, authorizes the imposition, collection and periodic  
 18 adjustments of the energy transition charge and creates energy  
 19 transition property;

20 M. "financing party" means a trustee, collateral  
 21 agent or other person acting for the benefit of a bondholder,  
 22 and a party to an ancillary agreement or the energy transition  
 23 bonds, the rights and obligations of which relate to or depend  
 24 upon the existence of energy transition property, the  
 25 enforcement and priority of a security interest in energy

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1 transition property or the timely collection and payment of  
2 energy transition revenues;

3 N. "lowest cost objective" means that the  
4 structuring, marketing and pricing of energy transition bonds  
5 results in the lowest energy transition charges consistent with  
6 prevailing market conditions at the time of pricing of energy  
7 transition bonds and the structure and terms of energy  
8 transition bonds approved pursuant to the financing order;

9 O. "municipality" means any incorporated city, town  
10 or village, whether incorporated under general act, special act  
11 or special charter, incorporated counties and H class counties;

12 P. "non-bypassable" means that the payment of an  
13 energy transition charge may not be avoided by an electric  
14 service customer located within a utility service area and  
15 shall be paid by the customer that receives electric delivery  
16 service from the qualifying utility imposing the charge for as  
17 long as the energy transition bonds secured by the charge are  
18 outstanding and the related financing costs have not been  
19 recovered in full;

20 Q. "non-utility affiliate" means, with respect to a  
21 qualifying utility, a person that is an affiliated interest, as  
22 that term is used in the Public Utility Act, but a "non-utility  
23 affiliate" does not include a public utility that provides  
24 retail utility service to customers in the state;

25 R. "public utility" means "public utility" as used



1 in the Public Utility Act, but "public utility" does not  
2 include a distribution cooperative utility organized pursuant  
3 to the Rural Electric Cooperative Act;

4 S. "qualifying generating facility" means a coal-  
5 fired generating facility in New Mexico that may be composed of  
6 multiple generating units that:

7 (1) has been granted a certificate of public  
8 convenience and for which abandonment authority is granted  
9 after December 31, 2018;

10 (2) is owned or leased, in whole or in part,  
11 by a qualifying utility;

12 (3) if operated by a qualifying utility prior  
13 to the effective date of the Energy Transition Act, is to be  
14 abandoned prior to January 1, 2023; and

15 (4) if not operated by a qualifying utility  
16 prior to the effective date of the Energy Transition Act, is to  
17 be abandoned prior to January 1, 2032; and

18 T. "qualifying utility" means a public utility that  
19 meets the requirements of Paragraph (1) of Subsection G of  
20 Section 62-3-3 NMSA 1978 and owns or leases all or a portion of  
21 a qualifying generating facility and its successor or  
22 assignees.

23 SECTION 3. [NEW MATERIAL] LOCATION OF RESOURCE  
24 DEVELOPMENT AFTER ABANDONMENT.--

25 A. For a qualifying utility that abandons a

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1 qualifying generating facility in New Mexico prior to January  
2 1, 2023, the qualifying utility shall, no later than one year  
3 after approval of the abandonment, apply for commission  
4 approval of competitively procured replacement resources. As  
5 part of that competitive procurement, and in addition to the  
6 criteria set forth in Subsections B and C of this section,  
7 projects shall be ranked based on their cost, economic  
8 development opportunity and ability to provide jobs with  
9 comparable pay and benefits to those lost due to the  
10 abandonment of a qualifying generating facility. The  
11 qualitative and quantitative data and analysis used to  
12 establish the ranking shall be available for review by parties  
13 to the commission proceeding.

14 B. In determining whether to approve replacement  
15 resources, the commission shall prefer resources with the least  
16 environmental impacts, those with higher ratios of capital  
17 costs to fuel costs and those able to reduce the cost of  
18 reclamation and use for lands previously mined within the  
19 county of the qualifying generating facility.

20 C. In considering responses to requests for  
21 proposals for replacement resources pursuant to this section, a  
22 qualifying utility shall inform prospective bidders that it  
23 promotes and encourages the use of workers residing in New  
24 Mexico to the greatest extent practicable and shall take that  
25 use into consideration in evaluating proposals.

1           D. The commission shall grant all necessary  
 2           approvals for replacement resources; provided that the  
 3           commission may determine that the particular resource proposed  
 4           by the qualifying utility should not be approved and that,  
 5           instead, an alternative replacement resource that meets the  
 6           conditions of this section should be approved. The commission  
 7           shall not disallow recovery of reasonable costs associated with  
 8           requirements as to where the resources are located.

9           E. Replacement resources shall be subject to local  
 10          property taxes or a binding commitment to make an equivalent  
 11          payment in lieu of taxes.

12          F. As used in this section, "replacement resources"  
 13          means up to four hundred fifty megawatts of nameplate capacity  
 14          identified by the qualifying utility as replacement for a  
 15          qualifying generating facility, and may include energy storage  
 16          capacity; provided that such resources are located in the  
 17          school district in New Mexico where the abandoned facility is  
 18          located, are necessary to maintain reliable service and are in  
 19          the public interest as determined by the commission.

20                 SECTION 4. [NEW MATERIAL] FINANCING ORDER--APPLICATION  
 21                 CONTENTS--PENDING APPLICATIONS.--

22                 A. A qualifying utility that is abandoning a  
 23                 qualifying generating facility may apply to the commission for  
 24                 a financing order pursuant to this section to recover all of  
 25                 its energy transition costs through the issuance of energy

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1 transition bonds. To obtain a financing order, a qualifying  
2 utility shall obtain approval to abandon a qualifying  
3 generating facility pursuant to Section 62-9-5 NMSA 1978. The  
4 application for the financing order may be filed as part of the  
5 application for approval to abandon a qualifying generating  
6 facility.

7 B. An application for a financing order shall  
8 include:

9 (1) a description of the facility that the  
10 qualifying utility proposes to abandon or for which abandonment  
11 authority was granted after December 31, 2018;

12 (2) an estimate of the energy transition costs  
13 and shall:

14 (a) identify the severance pay and job  
15 training expenses for affected employees losing their jobs as a  
16 result of an abandoned qualifying generating facility and any  
17 associated mine that only services the abandoned qualifying  
18 generating facility;

19 (b) identify costs not previously  
20 collected from the qualifying utility's customers for plant  
21 decommissioning and mine reclamation costs, subject to any  
22 limitations ordered by the commission prior to January 1, 2019  
23 and affirmed by the New Mexico supreme court prior to the  
24 effective date of the Energy Transition Act, associated with  
25 the abandoned qualifying generating facility; and

1 (c) include an estimate of the financing  
2 costs associated with each series of energy transition bonds  
3 proposed to be issued;

4 (3) an estimate of the amount of energy  
5 transition charges necessary to recover the costs in Paragraph  
6 (2) of this subsection and the proposed calculation thereof,  
7 based on the estimated date of issuance and estimated principal  
8 amount of each series of energy transition bonds proposed to be  
9 issued;

10 (4) a description of the proposed adjustment  
11 mechanism that complies with the provisions of Section 6 of the  
12 Energy Transition Act;

13 (5) a memorandum with supporting exhibits from  
14 a securities firm, such firm to be attested to by the state  
15 board of finance as being experienced in the marketing of bonds  
16 and capable of providing such a memorandum, that the proposed  
17 issuance satisfies the current published AAA rating or  
18 equivalent rating criteria of at least one nationally  
19 recognized statistical rating organization for issuances  
20 similar to the proposed energy transition bonds. The request  
21 for such attestation may be made by a qualifying utility prior  
22 to an application for a financing order, and the state board of  
23 finance shall act upon such a request promptly;

24 (6) a commitment by the qualifying utility to  
25 file with the commission following the issuance of the energy

1 transition bonds:

2 (a) a description of the final structure  
3 and pricing of the bonds;

4 (b) updated financing costs and payment  
5 amount required pursuant to Section 16 of the Energy Transition  
6 Act; and

7 (c) an updated calculation of the energy  
8 transition charges;

9 (7) an estimate of timing of the issuance and  
10 term of the energy transition bonds, or series of bonds;  
11 provided that the scheduled final maturity for each bond  
12 issuance shall be no longer than twenty-five years;

13 (8) identification of plans to sell, assign,  
14 transfer or convey, other than as a security, interest in  
15 energy transition property, including identification of an  
16 assignee, and demonstration that the assignee will be a  
17 financing entity wholly owned, directly or indirectly, by the  
18 qualifying utility that will be initially capitalized by the  
19 qualifying utility in such a way that equity interests in the  
20 financing entity are at least one-half percent of the total  
21 capital of the assignee;

22 (9) identification of ancillary agreements  
23 that may be necessary or appropriate;

24 (10) a description of a proposed ratemaking  
25 process to reconcile and recover or refund any difference

1 between the energy transition costs financed by the energy  
2 transition bonds and the actual final energy transition costs  
3 incurred by the qualifying utility or the assignee;

4 (11) a proposed ratemaking method to account  
5 for the reduction in the qualifying utility's cost of service  
6 associated with the amount of undepreciated investments being  
7 recovered by the energy transition charge at the time that  
8 charge becomes effective; and

9 (12) a statement from the qualifying utility  
10 committing that the qualifying utility will use commercially  
11 reasonable efforts to obtain the lowest cost objective.

12 C. The application may include requests for  
13 approvals for new resources necessitated by the abandonment of  
14 a qualifying generating facility.

15 D. The qualifying utility or the commission may  
16 defer applications for needed approvals for new resources to a  
17 separate proceeding; provided that the application identifies  
18 adequate potential new resources sufficient to provide  
19 reasonable and proper service to retail customers.

20 E. If an application for approval to abandon a  
21 qualifying generating facility is pending before the commission  
22 on the effective date of the Energy Transition Act, the  
23 qualifying utility may file a separate application for a  
24 financing order, and the commission may join or consolidate the  
25 application for a financing order with the pending proceeding

1 involving abandonment of the qualifying generating facility,  
2 with the consent of the applicant. On such joinder or  
3 consolidation, the time periods prescribed by the Energy  
4 Transition Act shall become applicable to the joined or  
5 consolidated case as of the date of the joinder or  
6 consolidation.

7 F. If a qualifying utility does not recover energy  
8 transition costs pursuant to the Energy Transition Act, the  
9 energy transition costs may be recovered pursuant to other  
10 applicable provisions of the Public Utility Act.

11 SECTION 5. [NEW MATERIAL] FINANCING ORDER--ISSUANCE--  
12 TERMS OF BONDS--REPORTS TO COMMISSION OF DISBURSEMENT OF BOND  
13 PROCEEDS--REVIEW AND AUDIT OF RECORDS.--

14 A. The commission may approve an application for a  
15 financing order without a formal hearing if no protest  
16 establishing good cause for a formal hearing is filed within  
17 thirty days of the date when notice is given of the filing of  
18 the application for the financing order. If a hearing is held,  
19 the commission shall issue an order granting or denying the  
20 application for the financing order to a qualifying utility  
21 that is abandoning a qualifying generating facility and an  
22 order on an accompanying application of the qualifying utility  
23 for approval to abandon the qualifying generating facility  
24 within six months from the date the application for the  
25 financing order is filed with the commission. For good cause



1 shown, the commission may extend the time for issuing the order  
2 for an additional three months.

3 B. Failure to issue an order approving the  
4 application or advising of the application's noncompliance  
5 pursuant to Subsection E of this section within the time  
6 prescribed by Subsection A of this section shall be deemed  
7 approval of the application for a financing order and approval  
8 to abandon the qualifying generating facility, if abandonment  
9 approval was requested as part of the application for the  
10 financing order pursuant to this subsection. The commission  
11 shall issue an order acknowledging the deemed approvals within  
12 seven days of the expiration of the time period described in  
13 Subsection A of this section.

14 C. If an application for a financing order is  
15 accompanied by a request for approval of new resources, this  
16 section provides an alternative time frame to that provided in  
17 Subsection C of Section 62-9-1 NMSA 1978, and the time frame  
18 specified in this section shall govern, unless the request has  
19 been deferred to a separate proceeding pursuant to Subsection D  
20 of Section 4 of the Energy Transition Act.

21 D. The issuance of a financing order shall be the  
22 only approval required for the authority granted in the  
23 financing order.

24 E. The commission shall issue a financing order  
25 approving the application if the commission finds that the

1 qualifying utility's application for the financing order  
2 complies with the requirements of Section 4 of the Energy  
3 Transition Act. If the commission finds that a qualifying  
4 utility's application does not comply with Section 4 of the  
5 Energy Transition Act, the commission shall advise the  
6 qualifying utility of any changes necessary to comply with that  
7 section and provide the applicant an opportunity to amend the  
8 application to make such changes. Upon those changes being  
9 made, the commission shall issue a financing order approving  
10 the application.

11 F. A financing order shall include the following  
12 provisions:

13 (1) approval for the qualifying utility or  
14 assignee to issue energy transition bonds as requested in the  
15 application, to use energy transition bonds to finance the  
16 maximum amount of the energy transition costs as requested in  
17 the application, as may be adjusted pursuant to Paragraph (6)  
18 of Subsection B of Section 4 of the Energy Transition Act, and  
19 to use the proceeds provided in Subsection A of Section 10 of  
20 the Energy Transition Act;

21 (2) approval for the qualifying utility to  
22 recover the energy transition costs, as may be adjusted  
23 pursuant to Paragraph (6) of Subsection B of Section 4 of the  
24 Energy Transition Act, requested in the application through  
25 energy transition charges;

1                   (3) approval of the energy transition charges  
2 necessary to recover the authorized energy transition costs, to  
3 be imposed through a non-bypassable energy transition charge as  
4 a separate line item on the qualifying utility's customer  
5 bills, assessed consistent with energy and demand cost  
6 allocations within each customer class, subject to update  
7 pursuant to the notice filing contemplated by Paragraph (6) of  
8 Subsection B of Section 4 of the Energy Transition Act and  
9 subject to the application of the adjustment mechanism as  
10 provided in Section 6 of the Energy Transition Act, until the  
11 energy transition bonds issued pursuant to the financing order  
12 and the financing costs related to those bonds are paid in  
13 full;

14                   (4) approval of the adjustment mechanism in  
15 compliance with Section 6 of the Energy Transition Act;

16                   (5) a description of the energy transition  
17 property that is created by the financing order that may be  
18 used to pay, and secure the payment of, the energy transition  
19 bonds and financing costs authorized to be issued in the  
20 financing order;

21                   (6) approval to enter into necessary or  
22 appropriate ancillary agreements;

23                   (7) approval of any plans for selling,  
24 assigning, transferring or conveying, other than as a security,  
25 an interest in energy transition property; and

1 (8) approval of the proposed ratemaking  
2 process and method included in the application pursuant to  
3 Paragraphs (10) and (11) of Subsection B of Section 4 of the  
4 Energy Transition Act.

5 G. A financing order shall provide that the  
6 creation of energy transition property shall be simultaneous  
7 with the sale of the energy transition property to an assignee  
8 as provided in the application and the pledge of the energy  
9 transition property to secure energy transition bonds.

10 H. A financing order shall authorize the qualifying  
11 utility to issue one or more series of energy transition bonds  
12 for a scheduled final maturity of no more than twenty-five  
13 years for each series; provided that a rated final maturity may  
14 exceed twenty-five years. With such authorization, the  
15 qualifying utility shall not subsequently be required to secure  
16 a separate financing order prior to each issuance.

17 I. The commission may require, as a condition of  
18 the financing order and in every circumstance subject to the  
19 limitations set forth in Subsection A of Section 7 of the  
20 Energy Transition Act, that, during any period in which energy  
21 transition bonds issued pursuant to the financing order are  
22 outstanding, an assignee that is a non-utility affiliate and  
23 issues energy transition bonds shall provide in the affiliate's  
24 articles of incorporation, partnership agreement or operating  
25 agreement, as applicable, that in order for a person to file a

1 voluntary bankruptcy petition on behalf of that assignee, the  
2 prior unanimous consent of the directors, partners, managers or  
3 members, as applicable, shall be required. Any such provision  
4 shall constitute a legal, valid and binding agreement of such  
5 shareholders, partners or members of the assignee and is  
6 enforceable against such shareholders, partners or members.

7 J. A financing order may require the qualifying  
8 utility to file with the commission a periodic report showing  
9 the receipt and disbursement of proceeds of energy transition  
10 bonds and any other documents necessary for the qualifying  
11 utility to implement the financing order. Upon issuance of the  
12 energy transition bonds, the qualifying utility shall file an  
13 advice notice with the commission, subject to review by the  
14 commission for errors and corrections, that identifies the  
15 actual energy transition charges to be included on customers'  
16 bills, effective fifteen days from the date the advice notice  
17 is filed.

18 K. A financing order may authorize the commission  
19 to review and audit the books and records of the qualifying  
20 utility and of an assignee that is a non-utility affiliate and  
21 issues energy transition bonds, relating to energy transition  
22 property and the receipt and disbursement of proceeds of energy  
23 transition bonds.

24 L. After review and approval by the department of  
25 finance and administration with regard to reasonableness of

1 contracts for services, a financing order may authorize the  
2 commission to impose a fee on the qualifying utility to pay  
3 commission expenses for contract bond counsel accredited by a  
4 nationally recognized association of bond lawyers to provide  
5 advice and assistance to commission staff in reviewing an  
6 application for a financing order and the structure and  
7 marketing of the proposed energy transition bonds.

8 M. The provisions of this section shall not be  
9 construed to limit the authority of the commission to:

10 (1) investigate the practices of or to audit  
11 the books and records of a qualifying utility; or

12 (2) issue such further orders as may be  
13 necessary to effectuate the provisions of the Energy Transition  
14 Act.

15 SECTION 6. [NEW MATERIAL] ADJUSTMENT MECHANISM--  
16 ADJUSTMENT PROCEDURES--HEARING PROCEDURES IF COMMISSION  
17 DETERMINES ADJUSTMENT MADE IN ERROR.--

18 A. If the commission issues a financing order, the  
19 qualifying utility for which the order is issued may charge all  
20 of the qualifying utility's customers an energy transition  
21 charge, which shall be allocated to customer classes consistent  
22 with the production cost allocation methodology established by  
23 the commission in the qualifying utility's most recent general  
24 rate case. Energy transition charges shall be assessed  
25 consistent with the production cost allocation methodology and

1 the determination of energy and demand costs within each  
2 customer class, both of which shall be subject to the  
3 adjustment mechanism.

4 B. The commission shall periodically approve  
5 adjustments of the energy transition charges pursuant to the  
6 adjustment mechanism approved in the financing order to correct  
7 for any over-collection or under-collection of the energy  
8 transition charge and to provide for timely payment of  
9 scheduled principal of and interest on the energy transition  
10 bonds and the payment and recovery of financing costs in  
11 accordance with the financing order. Except as provided in  
12 Subsection C of this section, the qualifying utility shall file  
13 at least semiannually, or more frequently as provided in the  
14 financing order:

15 (1) a calculation estimating whether the  
16 existing energy transition charge is sufficient to provide for  
17 timely payment of scheduled principal of and interest on the  
18 energy transition bonds and the payment and recovery of other  
19 financing costs in accordance with the financing order or if  
20 either an over-collection or under-collection is projected; and

21 (2) a calculation showing the adjustment to  
22 the energy transition charge to correct for any over-collection  
23 or under-collection of energy transition charges.

24 C. The qualifying utility shall file the  
25 calculations described in Subsection B of this section at least

1 quarterly during the two-year period preceding the final  
2 maturity date of the energy transition bonds.

3 D. The adjustment mechanism shall remain in effect  
4 until the energy transition bonds and all financing costs have  
5 been fully paid and recovered, any under-collection is  
6 recovered from customers and any over-collection is returned to  
7 customers.

8 E. On the same day the qualifying utility files  
9 with the commission its calculation of the adjustment to the  
10 energy transition charge, the qualifying utility shall cause  
11 notice of the filing to be given to the parties of record in  
12 the case in which the financing order was issued.

13 F. An adjustment to the energy transition charge  
14 filed by the qualifying utility shall be deemed approved  
15 without hearing thirty days after filing the adjustment unless:

16 (1) no later than twenty days from the date  
17 the qualifying utility filed the calculation of the adjustment,  
18 the commission is notified of a potential mathematical or  
19 transcription error in the adjustment; provided that the notice  
20 identifies the error with specificity; and

21 (2) the commission determines that the  
22 calculation of the adjustment is unlikely to provide for timely  
23 payment, or is likely to result in a material overpayment, of  
24 scheduled principal of and interest on the energy transition  
25 bonds and the payment and recovery of other financing costs in



1 accordance with the financing order and, based on that  
2 determination, suspends operation of the adjustment, pending a  
3 hearing limited to the issue of the error in the adjustment;  
4 provided that the suspension shall be for a period not to  
5 exceed sixty days from the date the qualifying utility filed  
6 the calculation of the adjustment.

7 G. If the commission determines that a hearing is  
8 necessary, the commission shall hold a hearing on the proposed  
9 adjustment that shall be limited to determining whether there  
10 is a mathematical or transcription error in the calculation of  
11 the adjustment. If, after a hearing, the commission determines  
12 that the calculation of the adjustment contains a mathematical  
13 or transcription error, the commission shall issue an order  
14 that rejects and corrects the adjustment. The qualifying  
15 utility shall adjust the energy transition charge in accordance  
16 with the commission's calculation within five days from  
17 issuance of the order. If the commission does not issue an  
18 order rejecting the adjustment with a determination of the  
19 corrected calculation within sixty days from the date the  
20 qualifying utility filed the adjustment, the adjustment to the  
21 energy transition charge shall be deemed approved.

22 H. No adjustment pursuant to this section, and no  
23 proceeding held pursuant to this section, shall affect the  
24 irrevocability of the financing order pursuant to Section 7 of  
25 the Energy Transition Act.

1           SECTION 7.   [NEW MATERIAL] FINANCING ORDER--  
2 IRREVOCABILITY--AMENDMENTS.--

3           A.   A financing order is irrevocable and the  
4 commission shall not reduce, impair, postpone or terminate the  
5 energy transition charges approved in the financing order, the  
6 energy transition property or the collection or recovery of  
7 energy transition revenues.

8           B.   Subject to the limitation provided in Subsection  
9 A of this section, a financing order may be amended at the  
10 request of the qualifying utility to commence a proceeding and  
11 issue an amended financing order that:

12                   (1) provides for refinancing, retiring or  
13 refunding all or a portion of an outstanding series of energy  
14 transition bonds issued pursuant to the original financing  
15 order; provided that the commission includes in the amended  
16 financing order the findings and requirements specified in  
17 Section 5 of the Energy Transition Act; or

18                   (2) adjusts the amount of energy transition  
19 costs to be financed by energy transition bonds that have not  
20 yet been issued to reflect updated estimated or actual costs  
21 that differ from costs estimated at the time of the initial  
22 financing order or to correct any errors.

23           C.   The commission shall issue an order granting or  
24 denying the proposed amended financing order within thirty days  
25 of the filing of the request by the qualifying utility.  No

1 change in the credit rating of a qualifying utility from the  
 2 credit rating at the time of issuance of a financing order  
 3 shall impair the irrevocability of a financing order.

4 SECTION 8. [NEW MATERIAL] AGGRIEVED PARTIES--REQUEST FOR  
 5 REHEARING--JUDICIAL REVIEW.--

6 A. A financing order shall be issued as a separate  
 7 order from any other order issued by the commission on a  
 8 requested approval in the application proceeding and is a final  
 9 order of the commission. A party aggrieved by the issuance of  
 10 a financing order may apply to the commission for a rehearing  
 11 in accordance with Section 62-10-16 NMSA 1978; provided that  
 12 such application shall be due no later than ten calendar days  
 13 after issuance of the financing order. An application for  
 14 rehearing shall be deemed denied if not acted upon by the  
 15 commission within ten calendar days after the filing of the  
 16 application.

17 B. An aggrieved party may file a notice of appeal  
 18 with the supreme court in accordance with Section 62-11-1 NMSA  
 19 1978; provided that such notice shall be due no later than ten  
 20 calendar days after denial of an application for rehearing or,  
 21 if rehearing is not applied for, no later than ten calendar  
 22 days after issuance of the financing order. The supreme court  
 23 shall proceed to hear and determine the appeal as expeditiously  
 24 as practicable.

25 SECTION 9. [NEW MATERIAL] CONDITIONS THAT KEEP FINANCING

1 ORDERS IN EFFECT AND ENERGY TRANSITION CHARGES IMPOSED.--

2 A. A financing order shall remain in effect until  
3 the energy transition bonds issued pursuant to the financing  
4 order and any related financing costs have been paid in full.

5 B. A financing order shall remain in effect and  
6 unabated notwithstanding the bankruptcy, reorganization or  
7 insolvency of the qualifying utility or any non-utility  
8 affiliate or the commencement of any proceeding for bankruptcy  
9 or appointment of a receiver.

10 C. If energy transition bonds issued pursuant to a  
11 financing order are outstanding and the related energy  
12 transition costs have not been paid in full, the energy  
13 transition charges authorized by the financing order shall be  
14 collected by the qualifying utility or its successors or  
15 assignees, or a collection agent, in full through a non-  
16 bypassable charge that is a separate line item on customer  
17 bills and not a part of the qualifying utility's base rates.  
18 The charge shall be paid by all customers:

19 (1) receiving electric delivery service from  
20 the qualifying utility under commission-approved rate schedules  
21 or special contracts; and

22 (2) who acquire electricity from an  
23 alternative or subsequent electricity supplier in the utility  
24 service area, to the extent that such acquisition is permitted  
25 by New Mexico law.

1           SECTION 10. [NEW MATERIAL] QUALIFYING UTILITY DUTIES.--

2           A. Except as provided in Section 16 of the Energy  
 3 Transition Act, a qualifying utility that is abandoning a  
 4 qualifying generating facility shall use the proceeds of the  
 5 issuance of energy transition bonds only for purposes related  
 6 to providing utility service to customers and to pay financing  
 7 costs.

8           B. Energy transition revenues shall be applied  
 9 solely to the repayment of energy transition bonds and the  
 10 ongoing financing costs.

11           C. The failure of a qualifying utility to comply  
 12 with any provision of the Energy Transition Act shall not  
 13 invalidate, impair or affect a financing order, energy  
 14 transition property, energy transition charge or energy  
 15 transition bonds and financing costs. Payments to bondholders  
 16 or financing parties on the energy transition bonds shall be  
 17 made on a quarterly or semiannual basis pursuant to the terms  
 18 of the energy transition bonds.

19           D. For a qualifying utility that receives approval  
 20 of a financing order and issues sources of energy transition  
 21 bonds, the qualifying utility's generation and sources of  
 22 energy procured pursuant to power purchase agreements with a  
 23 term of twenty-four months or longer, and that are dedicated to  
 24 serve the qualifying utility's retail customers, shall not  
 25 emit, on average, more than four hundred pounds of carbon

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1 dioxide per megawatt-hour by January 1, 2023, and not more than  
2 two hundred pounds of carbon dioxide per megawatt-hour by  
3 January 1, 2032 and thereafter. Compliance shall be measured  
4 and verified every three years with the first period commencing  
5 on January 1, 2023. The commission shall adopt rules to  
6 implement the requirements of this subsection.

7 SECTION 11. [NEW MATERIAL] COMMISSION TREATMENT OF ENERGY  
8 TRANSITION BONDS.--

9 A. If the commission issues a financing order, the  
10 commission shall not treat:

11 (1) energy transition bonds issued pursuant to  
12 the financing order as debt of the qualifying utility;

13 (2) the energy transition charges paid under  
14 the financing order as revenue of the qualifying utility; or

15 (3) the energy transition costs to be financed  
16 by energy transition bonds as costs of the qualifying utility.

17 B. Reasonable actions taken by a qualifying utility  
18 to comply with the financing order shall be deemed to be just  
19 and reasonable for ratemaking purposes. Nothing in the Energy  
20 Transition Act shall:

21 (1) prevent or preclude the commission from  
22 investigating the compliance of a qualifying utility with the  
23 terms and conditions of a financing order and requiring  
24 compliance therewith;

25 (2) prevent or preclude the commission from

1 imposing regulatory sanctions against a qualifying utility for  
 2 failure to comply with the terms and conditions of a financing  
 3 order or the requirements of the Energy Transition Act;

4 (3) affect the authority of the commission to  
 5 apply the adjustment mechanism as provided in Section 6 of the  
 6 Energy Transition Act; or

7 (4) prevent or preclude the commission from  
 8 including the qualifying utility's acquisition of replacement  
 9 power resources in the qualifying utility's cost of service.

10 C. The commission shall not order or require a  
 11 qualifying utility to issue energy transition bonds to finance  
 12 any costs associated with abandonment of a qualifying  
 13 generating facility. A utility's decision not to issue energy  
 14 transition bonds shall not be a basis for the commission to  
 15 refuse to allow a qualifying utility to recover energy  
 16 transition costs in an otherwise permissible fashion, or as a  
 17 basis to refuse or condition authorization to issue securities  
 18 pursuant to Sections 62-6-6 and 62-6-7 NMSA 1978.

19 SECTION 12. [NEW MATERIAL] ENERGY TRANSITION PROPERTY--  
 20 ENERGY TRANSITION REVENUES.--

21 A. Energy transition property that is created in a  
 22 financing order shall constitute an existing, present property  
 23 right, notwithstanding that the imposition and collection of  
 24 energy transition charges depend on the qualifying utility  
 25 continuing to provide electric energy or continuing to perform

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1 its service functions relating to the collection of energy  
2 transition charges or on the level of future energy  
3 consumption. Energy transition property shall exist whether or  
4 not the energy transition revenues have been billed, have  
5 accrued or have been collected and notwithstanding that the  
6 value or amount of the energy transition property is dependent  
7 on the future provision of electric energy or service to  
8 customers by the qualifying utility.

9 B. All energy transition property created in a  
10 financing order shall continue to exist until the energy  
11 transition bonds issued and all related financing costs  
12 pursuant to a financing order are paid in full.

13 C. All or any portion of energy transition property  
14 created in a financing order may be transferred, sold, conveyed  
15 or assigned to a non-utility affiliate that is:

16 (1) wholly owned, directly or indirectly, by  
17 the qualifying utility; and

18 (2) created for the limited purposes of  
19 acquiring, owning or administering energy transition property  
20 or issuing energy transition bonds under the financing order.

21 D. All or any portion of energy transition property  
22 may be pledged to secure the payment of energy transition bonds  
23 and all financing costs.

24 E. The formation by a qualifying utility of a non-  
25 utility affiliate for the purposes of acquiring, owning or



1 administering energy transition property, issuing energy  
2 transition bonds pursuant to a financing order and transacting  
3 a transfer, sale, conveyance, assignment, grant of a security  
4 interest in or pledge of energy transition property by a  
5 qualifying utility to a non-utility affiliate, to the extent  
6 previously authorized in a financing order, does not require  
7 any further approval of the commission and shall not be subject  
8 to the rules of the commission regarding Class I transactions  
9 and Class II transactions, as defined by Section 62-3-3 NMSA  
10 1978, except that the commission may examine the books and  
11 records of the non-utility affiliate.

12 F. If a qualifying utility defaults on any required  
13 payment of energy transition bonds, a court with jurisdiction  
14 in the matter, on application by an interested party and  
15 without limiting any other remedies available to the applying  
16 party, shall order the sequestration and payment of the energy  
17 transition revenues for the benefit of bondholders, any  
18 assignees or financing parties. The order shall remain in full  
19 force and effect notwithstanding any bankruptcy, reorganization  
20 or other insolvency or receivership proceedings with respect to  
21 the qualifying utility or any non-utility affiliate.

22 G. Energy transition property, energy transition  
23 revenues and the interests of an assignee, bondholder or  
24 financing party in energy transition property and energy  
25 transition revenues are not subject to set-off, counterclaim,

1 surcharge or defense by the qualifying utility or any other  
2 person or in connection with the bankruptcy, reorganization or  
3 other insolvency or receivership proceeding of the qualifying  
4 utility, non-utility affiliate or any other entity.

5 H. Any successor to a qualifying utility shall be  
6 bound by the requirements of the Energy Transition Act and  
7 shall perform and satisfy all obligations of, and have the same  
8 rights under a financing order as, the qualifying utility under  
9 the financing order in the same manner and to the same extent  
10 as the qualifying utility, including the obligation to collect  
11 and pay energy transition revenues to persons entitled to  
12 receive the revenues.

13 SECTION 13. [NEW MATERIAL] SECURITY INTERESTS--  
14 CREATION OF SECURITY INTEREST--PRIORITY OVER OTHER LIENS--  
15 ATTACHMENT ON FILING WITH SECRETARY OF STATE.--

16 A. Except as otherwise provided in this section,  
17 the creation, perfection and enforcement of a security interest  
18 in energy transition property to secure the repayment of the  
19 principal of and interest on energy transition bonds, amounts  
20 payable pursuant to an ancillary agreement and other financing  
21 costs are governed by this section. This section shall be  
22 deemed to supersede the provisions of the Uniform Commercial  
23 Code and Chapter 62, Article 13 NMSA 1978, to the extent those  
24 provisions are inconsistent with this section.

25 B. The description or reference to energy

1 transition property in a transfer or security agreement and a  
2 financing statement is sufficient only if the description or  
3 reference refers to the Energy Transition Act and the financing  
4 order creating the energy transition property. This section  
5 applies to all purported transfers of, grants of liens on or  
6 security interests in, energy transition property.

7 C. A security interest in energy transition  
8 property is created, valid and binding at the latest of when:

- 9 (1) the financing order is issued;  
10 (2) a security agreement is executed and  
11 delivered; or  
12 (3) value is received for the energy  
13 transition bonds.

14 D. The security interest attaches without any  
15 physical delivery of collateral or other act and the lien of  
16 the security interest shall be valid, binding and perfected  
17 against all parties having claims of any kind against the  
18 person granting the security interest, regardless of whether  
19 such parties have notice of the lien, on the filing of a  
20 financing statement with the secretary of state. The secretary  
21 of state shall maintain the financing statement in the same  
22 manner and in the same recordkeeping system maintained for  
23 financing statements filed pursuant to the Uniform Commercial  
24 Code-Secured Transactions. Financing statements filed pursuant  
25 to this section shall be effective until a termination

1 statement is filed.

2 E. A security interest in energy transition  
3 property is a continuously perfected security interest and has  
4 priority over any other lien that may subsequently attach to  
5 the energy transition property unless the holder of the  
6 security interest has agreed in writing otherwise.

7 F. The priority of a security interest in energy  
8 transition property is not affected by the commingling of  
9 energy transition revenues with other funds. Any pledgee or  
10 secured party shall have a perfected security interest in the  
11 amount of all energy transition revenues that are deposited in  
12 any account of the qualifying utility and any other security  
13 interest that may apply to those funds shall be terminated when  
14 they are transferred to a segregated account for the assignee  
15 or a financing party.

16 G. No order of the commission amending a financing  
17 order and no application of the adjustment mechanism shall  
18 affect the validity, perfection or priority of a security  
19 interest in or transfer of energy transition property.

20 SECTION 14. [NEW MATERIAL] SALE OF ENERGY TRANSITION  
21 PROPERTY--PERFECTING INTERESTS--ABSOLUTE TRANSFER AND TRUE SALE  
22 REQUIREMENTS.--

23 A. Any sale, assignment or transfer of energy  
24 transition property to an assignee that is a financing entity  
25 that is wholly owned, directly or indirectly, by the utility

1 shall be an absolute transfer and true sale of, and not a  
2 pledge of or secured transaction relating to, the seller's  
3 right, title and interest in, to and under the energy  
4 transition property if the documents governing the transaction  
5 expressly state that the transaction is a sale or other  
6 absolute transfer. A transfer of an interest in energy  
7 transition property shall be created when:

8 (1) the financing order creating the energy  
9 transition property has become effective;

10 (2) the documents evidencing the transfer of  
11 energy transition property have been executed and delivered to  
12 the assignee; and

13 (3) value is received.

14 B. On the filing of a financing statement with the  
15 secretary of state pursuant to Subsection D of Section 13 of  
16 the Energy Transition Act, a transfer of an interest in energy  
17 transition property shall be perfected against all third  
18 persons, except creditors holding a prior security interest,  
19 ownership interest or assignment in the energy transition  
20 property previously perfected in accordance with Section 13 of  
21 that act.

22 C. The characterization of the sale, assignment or  
23 transfer as an absolute transfer and true sale, and the  
24 corresponding characterization of the property interest of the  
25 purchaser, shall not be affected or impaired by:

1 (1) commingling of energy transition revenues  
2 with other funds;

3 (2) the retention by the seller of:

4 (a) a partial or residual interest,  
5 including an equity interest, in the energy transition  
6 property, whether direct or indirect, or whether subordinate or  
7 otherwise; or

8 (b) the right to recover costs  
9 associated with taxes or license fees imposed on the collection  
10 of energy transition revenues;

11 (3) any recourse that the purchaser may have  
12 against the seller;

13 (4) any indemnification rights, obligations or  
14 repurchase rights made or provided by the seller;

15 (5) the obligation of the seller to collect  
16 energy transition revenues on behalf of an assignee;

17 (6) the treatment of the sale, assignment or  
18 transfer of energy transition property for tax, financial  
19 reporting or other purposes;

20 (7) any subsequent order of the commission  
21 amending a financing order pursuant to Subsection B of Section  
22 7 of the Energy Transition Act;

23 (8) any use of an adjustment mechanism  
24 approved in the financing order; or

25 (9) anything else that might affect or impair

1 the characterization of the property.

2 SECTION 15. [NEW MATERIAL] EXEMPTION FROM FEE  
 3 ASSESSMENTS.--The imposition, collection and receipt of an  
 4 energy transition charge is exempt from an assessment of a  
 5 franchise fee imposed by a municipality, county or other  
 6 political subdivision of the state and inspection and  
 7 supervision fees assessed pursuant to the Public Utility Act.

8 SECTION 16. [NEW MATERIAL] ENERGY TRANSITION INDIAN  
 9 AFFAIRS FUND--ENERGY TRANSITION ECONOMIC DEVELOPMENT ASSISTANCE  
 10 FUND--ENERGY TRANSITION DISPLACED WORKER ASSISTANCE FUND--  
 11 COMMUNITY ADVISORY COMMITTEE.--

12 A. The "energy transition Indian affairs fund" is  
 13 created in the state treasury. The fund shall consist of  
 14 appropriations, gifts, grants, donations and bequests made to  
 15 the fund. Income from the fund shall be credited to the fund,  
 16 and money in the fund shall not revert or be transferred to any  
 17 other fund at the end of a fiscal year.

18 B. The Indian affairs department shall administer  
 19 the energy transition Indian affairs fund, and money in the  
 20 fund is subject to appropriation by the legislature only to  
 21 that department to assist in addressing the conditions and  
 22 issues of tribes and native peoples in the affected community.

23 C. The Indian affairs department shall develop an  
 24 Indian affairs assistance plan to assist tribal and native  
 25 people in the affected community that shall provide for the

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1 disbursement of money in the energy transition Indian affairs  
2 fund. In developing the plan, the Indian affairs department  
3 shall establish a public planning process in the affected  
4 community to inform the use of money in the fund. The Indian  
5 affairs department shall engage in consultation with Indian  
6 nations, tribes and pueblos in the affected community pursuant  
7 to the State-Tribal Collaboration Act. The public planning  
8 process shall include at least three public meetings in the  
9 affected community. Expenditures from the fund shall be made  
10 after completion of the plan and as follows:

11 (1) to an entity approved by the Indian  
12 affairs department to receive funds for any program established  
13 at the Indian affairs department; and

14 (2) to tribal governments, public agencies or  
15 private persons to provide services and facilities in the  
16 affected community for promoting the welfare of Indian people.

17 D. The "energy transition economic development  
18 assistance fund" is created in the state treasury. The fund  
19 shall consist of appropriations, gifts, grants, donations and  
20 bequests made to the fund. Income from the fund shall be  
21 credited to the fund, and money in the fund shall not revert or  
22 be transferred to any other fund at the end of a fiscal year.

23 E. The economic development department shall  
24 administer the energy transition economic development  
25 assistance fund, and money in the fund is subject to



1 appropriation by the legislature only to that department to  
2 assist in diversifying and promoting the affected community's  
3 economy by fostering economic development opportunities  
4 unrelated to fossil fuel development or use.

5 F. The economic development department shall  
6 develop an economic diversification and development plan to  
7 assist the affected community that shall provide for the  
8 disbursement of money in the energy transition economic  
9 development assistance fund. In developing the plan, the  
10 economic development department shall request recommendations  
11 from the affected community's community advisory committee  
12 pursuant to Subsection K of this section and establish a public  
13 input process in the affected community to inform the use of  
14 money in the fund. The economic development department shall  
15 engage in consultation with Indian nations, tribes and pueblos  
16 in the affected area pursuant to the State-Tribal Collaboration  
17 Act. The public input process shall include at least three  
18 public meetings in the affected community. Expenditures from  
19 the fund shall be made pursuant to the plan and as follows:

20 (1) to an entity approved by the economic  
21 development department to receive funds for any program  
22 established at the economic development department;

23 (2) to assist employers to qualify for any tax  
24 relief for hiring displaced workers established under state or  
25 federal law; and

1 (3) to a municipality, county, Indian nation,  
2 pueblo or tribe or land grant community in New Mexico for  
3 programs designed to promote economic development in the  
4 affected community.

5 G. The "energy transition displaced worker  
6 assistance fund" is created in the state treasury. The fund  
7 shall consist of appropriations, gifts, grants, donations and  
8 bequests made to the fund. Income from the fund shall be  
9 credited to the fund, and money in the fund shall not revert or  
10 be transferred to any other fund at the end of a fiscal year.

11 H. The workforce solutions department shall  
12 administer the energy transition displaced worker assistance  
13 fund, and money in the fund is subject to appropriation by the  
14 legislature only to that department to assist displaced workers  
15 in an affected community.

16 I. The workforce solutions department shall develop  
17 a displaced worker development plan to assist displaced workers  
18 in an affected community that shall provide for the  
19 disbursement of money in the energy transition displaced worker  
20 assistance fund. In developing the plan, the workforce  
21 solutions department shall request recommendations from the  
22 affected community's community advisory committee pursuant to  
23 Subsection K of this section and establish a public input  
24 process in the affected community to inform the use of money in  
25 the energy transition displaced worker assistance fund. The

1 workforce solutions department shall engage in consultation  
2 with Indian nations, tribes and pueblos in the affected area  
3 pursuant to the State-Tribal Collaboration Act. The public  
4 input process shall include at least three public meetings in  
5 the affected community. Expenditures from the energy  
6 transition displaced worker assistance fund shall be made  
7 pursuant to the plan and as follows:

8 (1) to assist employers of displaced workers  
9 to qualify for any tax relief established under state or  
10 federal law;

11 (2) to the workforce solutions department:

12 (a) to provide assistance to displaced  
13 workers using any program established at that department; and

14 (b) for payment of costs associated with  
15 displaced workers enrolling and participating in certified  
16 apprenticeship programs in New Mexico; and

17 (3) to a municipality, county, Indian nation,  
18 pueblo or tribe or land grant community in New Mexico for job  
19 training and apprenticeship programs for displaced workers or  
20 for programs designed to promote economic development in the  
21 affected community.

22 J. Within thirty days of receipt of energy  
23 transition bond proceeds, a qualifying generating facility  
24 located in New Mexico shall transfer the following percentages  
25 of the financed amount of energy transition bonds as follows:

1 (1) one-half percent to the Indian affairs  
2 department for deposit in the energy transition Indian affairs  
3 fund;

4 (2) one and sixty-five hundredths percent to  
5 the economic development department for deposit in the energy  
6 transition economic development assistance fund; and

7 (3) three and thirty-five hundredths percent  
8 to the workforce solutions department for deposit in the energy  
9 transition displaced worker assistance fund.

10 K. In each affected community, a community advisory  
11 committee shall be convened. All meetings of the community  
12 advisory committee shall be held pursuant to the Open Meetings  
13 Act. The secretaries of Indian affairs, economic development  
14 and workforce solutions shall appoint three conveners who  
15 reside in the affected community, at least one from each major  
16 political party and one representing one of the Navajo Nation  
17 chapter houses in the affected community. The conveners shall  
18 appoint members of the community advisory committee to include  
19 a member from each municipality, county, Indian nation, pueblo,  
20 tribe and land grant community, if any, in the affected  
21 community, at least four appointees representing diverse  
22 economic and cultural perspectives of the affected community  
23 and one appointee representing displaced workers in the  
24 affected community. Within sixty days of a request by the  
25 economic development department pursuant to Subsection F of

1 this section, or the workforce solutions department pursuant to  
2 Subsection I of this section, a community advisory committee  
3 shall provide recommendations to the requesting department on  
4 the use of available funds intended for the affected community.

5 L. As used in this section:

6 (1) "affected community" means a New Mexico  
7 county located within one hundred miles of a New Mexico  
8 facility producing electricity that closes, resulting in at  
9 least forty displaced workers; and

10 (2) "displaced worker" means a New Mexico  
11 resident who:

12 (a) within the previous twelve months,  
13 was terminated from employment, or whose contract was  
14 terminated, due to the abandonment of a New Mexico facility  
15 producing electricity that resulted in displacing at least  
16 forty workers;

17 (b) had at least seventy-five percent of  
18 the resident's net income, as that term is defined in the  
19 Income Tax Act, from the employment or contract described in  
20 Subparagraph (a) of this paragraph;

21 (c) has not been able to replace the  
22 lost wages described in Subparagraph (b) of this paragraph or  
23 whose annual wages are at least twenty-five percent less than  
24 when the qualifying facility was operating; and

25 (d) does not qualify to take full

1 benefits pursuant to a pension or retirement plan.

2 SECTION 17. [NEW MATERIAL] ENERGY TRANSITION BONDS NOT  
3 PUBLIC DEBT.--Energy transition bonds issued pursuant to the  
4 Energy Transition Act shall not constitute a debt or a pledge  
5 of the faith and credit or taxing power of this state or of any  
6 county, municipality or any other political subdivision of this  
7 state. Bondholders shall have no right to have taxes levied by  
8 the legislature or the taxing authority of any county,  
9 municipality or other political subdivision of this state for  
10 the payment of the principal of or interest on energy  
11 transition bonds. The issuance of energy transition bonds does  
12 not obligate the state or a political subdivision of the state  
13 to levy any tax or make any appropriation for payment of the  
14 principal of or interest on the bonds.

15 SECTION 18. [NEW MATERIAL] ENERGY TRANSITION BONDS AS  
16 LEGAL INVESTMENTS.--Energy transition bonds shall be legal  
17 investments for all governmental units, permanent funds of the  
18 state, finance authorities, financial institutions, insurance  
19 companies, fiduciaries and other persons requiring statutory  
20 authority regarding legal investments.

21 SECTION 19. [NEW MATERIAL] STATE PLEDGE NOT TO IMPAIR.--

22 A. The state pledges to and agrees with the  
23 bondholders, any assignee and any financing parties that the  
24 state shall not take or permit any action that impairs the  
25 value of energy transition property, except as allowed pursuant

1 to Section 6 of the Energy Transition Act, or reduces, alters  
 2 or impairs energy transition charges that are imposed,  
 3 collected and remitted for the benefit of the bondholders, any  
 4 assignee and any financing parties, until the entire principal  
 5 of, interest on and redemption premium on the energy transition  
 6 bonds, all financing costs and all amounts to be paid to an  
 7 assignee or financing party under an ancillary agreement are  
 8 paid in full and performed in full.

9 B. Any person who issues energy transition bonds is  
 10 permitted to include the pledge specified in Subsection A of  
 11 this section in the energy transition bonds, ancillary  
 12 agreements and documentation related to the issuance and  
 13 marketing of the energy transition bonds.

14 SECTION 20. [NEW MATERIAL] CHOICE OF LAW.--The laws of  
 15 the state of New Mexico as set forth in the Energy Transition  
 16 Act shall govern the validity, enforceability, attachment,  
 17 perfection, priority and exercise of remedies with respect to  
 18 the transfer of an interest or right of creation of a security  
 19 interest in energy transition property, an energy transition  
 20 charge or a financing order.

21 SECTION 21. [NEW MATERIAL] CONFLICTS.--In the event of  
 22 any conflict between the Energy Transition Act and any other  
 23 law regarding the attachment, assignment or perfection, or the  
 24 effect of perfection, or priority of any security interest in  
 25 or transfer of energy transition property, the Energy

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1 Transition Act shall govern to the extent of the conflict.

2           **SECTION 22.** [NEW MATERIAL] VALIDITY ON ACTIONS IF ACT  
3 HELD INVALID.--Effective on the date that energy transition  
4 bonds are first issued under the Energy Transition Act, if any  
5 provision of that act is invalidated, superseded, replaced,  
6 repealed or expires for any reason, that occurrence shall not  
7 affect the validity of any action allowed pursuant to that act  
8 that is taken by the commission, a qualifying utility, an  
9 assignee or any other person, a collection agent, a financing  
10 party, a bondholder or a party to an ancillary agreement and,  
11 to prevent the impairment of energy transition bonds issued or  
12 authorized in a financing order issued pursuant to the Energy  
13 Transition Act, any such action shall remain in full force and  
14 effect with respect to all energy transition bonds issued or  
15 authorized in a financing order pursuant to the Energy  
16 Transition Act before the date that such provision is held to  
17 be invalid or is invalidated, superseded, replaced, repealed or  
18 expires for any reason.

19           **SECTION 23.** [NEW MATERIAL] APPLICABILITY.--The provisions  
20 of the Energy Transition Act shall not apply to a qualifying  
21 utility that makes an initial application for a financing order  
22 more than twelve years after the effective date of that act.  
23 This section shall not preclude a qualifying utility for which  
24 the commission has issued a financing order from applying to  
25 the commission for a subsequent order amending the financing



1 order, pursuant to Section 7 of the Energy Transition Act.

2 SECTION 24. A new section of the Public Utility Act is  
3 enacted to read:

4 "[NEW MATERIAL] REQUIRING THE HIRING OF APPRENTICES FOR  
5 THE CONSTRUCTION OF FACILITIES THAT GENERATE ELECTRICITY.--

6 A. The construction of New Mexico facilities that  
7 generate electricity for New Mexico retail customers, and that  
8 are not located on the customer side of an electricity meter,  
9 shall be subject to the requirements provided in Subsection B  
10 of this section if the facilities are built as a result of  
11 competitive solicitations issued after July 1, 2020.

12 B. Subject to availability of qualified applicants,  
13 the construction of facilities that generate electricity for  
14 New Mexico retail customers shall employ apprentices from an  
15 apprenticeship program during the construction phase of a  
16 project at a minimum level of the following percentages of all  
17 persons employed for the project:

18 (1) ten percent for projects for which on-site  
19 construction commences beginning January 1, 2020, and prior to  
20 January 1, 2024;

21 (2) seventeen and one-half percent for  
22 projects for which on-site construction commences beginning  
23 January 1, 2024, and prior to January 1, 2026; and

24 (3) twenty-five percent for projects for which  
25 on-site construction commences beginning January 1, 2026.

1           C. Apprenticeship programs used for purposes of  
2 this section shall encourage diversity among participants,  
3 participation by those underrepresented in the industry  
4 associated with that apprenticeship program and participation  
5 from disadvantaged communities, as determined by the workforce  
6 solutions department. The department shall promulgate rules to  
7 ensure compliance with this section.

8           D. As used in this section, "apprenticeship  
9 program" means an apprenticeship program registered pursuant to  
10 the Apprenticeship Assistance Act."

11           SECTION 25. Section 62-9-1 NMSA 1978 (being Laws 1941,  
12 Chapter 84, Section 46, as amended) is amended to read:

13           "62-9-1. NEW CONSTRUCTION--RATEMAKING PRINCIPLES.--

14           A. No public utility shall begin the construction  
15 or operation of any public utility plant or system or of any  
16 extension of any plant or system without first obtaining from  
17 the commission a certificate that public convenience and  
18 necessity require or will require such construction or  
19 operation. This section does not require a public utility to  
20 secure a certificate for an extension within any municipality  
21 or district within which it lawfully commenced operations  
22 before June 13, 1941 or for an extension within or to territory  
23 already served by it, necessary in the ordinary course of its  
24 business, or for an extension into territory contiguous to that  
25 already occupied by it and that is not receiving similar

1 service from another utility. If any public utility or mutual  
2 domestic water consumer association in constructing or  
3 extending its line, plant or system unreasonably interferes or  
4 is about to unreasonably interfere with the service or system  
5 of any other public utility or mutual domestic water consumer  
6 association rendering the same type of service, the commission,  
7 on complaint of the public utility or mutual domestic water  
8 consumer association claiming to be injuriously affected, may,  
9 upon and pursuant to the applicable procedure provided in  
10 Chapter 62, Article 10 NMSA 1978, and after giving due regard  
11 to public convenience and necessity, including reasonable  
12 service agreements between the utilities, make an order and  
13 prescribe just and reasonable terms and conditions in harmony  
14 with the Public Utility Act to provide for the construction,  
15 development and extension, without unnecessary duplication and  
16 economic waste.

17 B. If a certificate of public convenience and  
18 necessity is required pursuant to this section for the  
19 construction or extension of a generating plant or transmission  
20 lines and associated facilities, a public utility may include  
21 in the application for the certificate a request that the  
22 commission determine the ratemaking principles and treatment  
23 that will be applicable for the facilities that are the subject  
24 of the application for the certificate. If such a request is  
25 made, the commission shall, in the order granting the

1 certificate, set forth the ratemaking principles and treatment  
2 that will be applicable to the public utility's stake in the  
3 certified facilities in all ratemaking proceedings on and after  
4 such time as the facilities are placed in service. The  
5 commission shall use the ratemaking principles and treatment  
6 specified in the order in all proceedings in which the cost of  
7 the public utility's stake in the certified facilities is  
8 considered. If the commission later decertifies the  
9 facilities, the commission shall apply the ratemaking  
10 principles and treatment specified in the original  
11 certification order to the costs associated with the facilities  
12 that were incurred by the public utility prior to  
13 decertification.

14 C. The commission may approve the application for  
15 the certificate without a formal hearing if no protest is filed  
16 within sixty days of the date that notice is given, pursuant to  
17 commission order, that the application has been filed. The  
18 commission shall issue its order granting or denying the  
19 application within nine months from the date the application is  
20 filed with the commission. Failure to issue its order within  
21 nine months is deemed to be approval and final disposition of  
22 the application; provided, however, that the commission may  
23 extend the time for granting approval for an additional six  
24 months for good cause shown.

25 D. In an application for a certificate of public

1 convenience and necessity for an energy storage system, the  
 2 commission shall approve energy storage systems that:

3 (1) reduce costs to ratepayers by avoiding or  
 4 deferring the need for investment in new generation and for  
 5 upgrades to systems for the transmission and distribution of  
 6 energy;

7 (2) reduce the use of fossil fuels for meeting  
 8 demand during peak load periods and for providing ancillary  
 9 services;

10 (3) assist with ensuring grid reliability,  
 11 including transmission and distribution system stability, while  
 12 integrating sources of renewable energy into the grid;

13 (4) support diversification of energy  
 14 resources and enhance grid security;

15 (5) reduce greenhouse gases and other air  
 16 pollutants resulting from power generation;

17 (6) provide the public utility with the  
 18 discretion, subject to applicable laws and rules, to operate,  
 19 maintain and control energy storage systems so as to ensure  
 20 reliable and efficient service to customers; and

21 (7) are the most cost effective among feasible  
 22 alternatives.

23 [~~D.~~] E. As used in this section:

24 (1) "energy storage system" means methods and  
 25 technologies used to store electricity; and

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1                   (2) "mutual domestic water consumer  
2 association" means an association created and organized  
3 pursuant to the provisions of:

4                   ~~[(1)]~~ (a) Laws 1947, Chapter 206; Laws  
5 1949, Chapter 79; or Laws 1951, Chapter 52; or

6                   ~~[(2)]~~ (b) the Sanitary Projects Act."

7           SECTION 26. Section 62-15-34 NMSA 1978 (being Laws 2007,  
8 Chapter 4, Section 1, as amended by Laws 2014, Chapter 24,  
9 Section 1, and by Laws 2014, Chapter 25, Section 1) is amended  
10 to read:

11           "62-15-34. RENEWABLE PORTFOLIO STANDARD.--

12           A. Except as provided in Subsection E of this  
13 section, each distribution cooperative organized under the  
14 Rural Electric Cooperative Act shall meet the renewable  
15 portfolio standard requirements, as provided in this section,  
16 to include renewable energy in its electric energy supply  
17 portfolio as demonstrated by its retirement of renewable energy  
18 certificates. Requirements and targets of the renewable  
19 portfolio standard are as follows:

20                   (1) no later than January 1, 2015, renewable  
21 energy shall comprise no less than five percent of each  
22 distribution cooperative's total retail sales to New Mexico  
23 customers;

24                   (2) the renewable portfolio standard shall  
25 increase by one percent per year thereafter until January 1,

1 2020, at which time the renewable portfolio standard shall be  
2 ten percent of the distribution cooperative's total retail  
3 sales to New Mexico customers;

4 (3) ~~[the renewable portfolio standard of each~~  
5 ~~distribution cooperative shall be diversified as to the type of~~  
6 ~~renewable energy resource, taking into consideration the~~  
7 ~~overall reliability, availability and dispatch flexibility and~~  
8 ~~the cost of the various renewable energy resources made~~  
9 ~~available to the distribution cooperative by its suppliers of~~  
10 ~~electric power; and] a distribution cooperative shall have the~~  
11 ~~following targets and requirements for renewable energy and~~  
12 ~~zero carbon resources as a percentage of the distribution~~  
13 ~~cooperative's total retail sales in New Mexico:~~

14 (a) a requirement of forty percent  
15 renewable energy by January 1, 2025;

16 (b) a requirement of fifty percent  
17 renewable energy by January 1, 2030; and

18 (c) a target of achieving the zero  
19 carbon resource standard by January 1, 2050, composed of at  
20 least eighty percent renewable energy; provided that: 1)  
21 achieving the target is technically feasible; 2) the rural  
22 electric cooperative is able to provide reliable electric  
23 service while implementing the target; and 3) implementing the  
24 target shall not cause electric service to become unaffordable;  
25 and

1 (4) renewable energy resources that are in a  
2 distribution cooperative's energy supply portfolio on January  
3 1, 2008 shall be counted in determining compliance with this  
4 section.

5 ~~[B. If a distribution cooperative determines that,~~  
6 ~~in any given year, the cost of renewable energy that would need~~  
7 ~~to be procured or generated for purposes of compliance with the~~  
8 ~~renewable portfolio standard would be greater than the~~  
9 ~~reasonable cost threshold, the distribution cooperative shall~~  
10 ~~not be required to incur that cost; provided that the existence~~  
11 ~~of this condition excusing performance in any given year shall~~  
12 ~~not operate to delay any renewable portfolio standard in~~  
13 ~~subsequent years. For purposes of the Rural Electric~~  
14 ~~Cooperative Act, "reasonable cost threshold" means an amount~~  
15 ~~that shall be no greater than one percent of the distribution~~  
16 ~~cooperative's gross receipts from business transacted in New~~  
17 ~~Mexico for the preceding calendar year.~~

18 G.] B. By April 30 of each year, a distribution  
19 cooperative shall file with the public regulation commission a  
20 report on its purchases and generation of renewable energy  
21 during the preceding calendar year. The report shall include  
22 the cost of the renewable energy resources purchased and  
23 generated by the distribution cooperative to meet the renewable  
24 portfolio standard, an explanation of steps taken to minimize  
25 those costs, including competitive procurement and comparison



1 of the price of electricity from renewable energy resources in  
2 the bids received by the distribution cooperative to recent  
3 prices for such electricity elsewhere in the southwestern  
4 United States, and an annual compliance plan for meeting the  
5 renewable portfolio standard for the following three years.

6 C. If, in any given year, a distribution  
7 cooperative determines that the average annual levelized cost  
8 of renewable energy that would need to be procured or generated  
9 for purposes of compliance with the renewable portfolio  
10 standard would be greater than sixty dollars (\$60.00) per  
11 megawatt-hour at the point of interconnection of the renewable  
12 energy resource with the transmission system, adjusted for  
13 inflation after 2020, the distribution cooperative shall not be  
14 required to incur that excess cost; provided that the existence  
15 of this condition excusing performance in any given year shall  
16 not operate to delay compliance with the renewable portfolio  
17 standard in subsequent years. The provisions of this  
18 subsection do not preclude a distribution cooperative from  
19 accepting a project with a cost that would exceed sixty dollars  
20 (\$60.00) per megawatt-hour.

21 D. A distribution cooperative shall report to its  
22 membership a summary of its purchases and generation of  
23 renewable energy during the preceding calendar year.

24 E. A distribution cooperative organized pursuant to  
25 the Rural Electric Cooperative Act shall meet the requirements

1 and targets of the renewable portfolio standard pursuant to  
2 Subsection A of this section as demonstrated by the  
3 cooperative's retirement of renewable energy certificates  
4 associated with energy assigned to the cooperative; provided  
5 that a generation and transmission cooperative referred to in  
6 Section 62-6-4 NMSA 1978 shall be responsible for meeting the  
7 requirements and targets for all energy supplied to the  
8 distribution cooperatives in New Mexico. Energy from renewable  
9 energy and zero carbon resources that a generation and  
10 transmission cooperative supplies in compliance with the  
11 requirements and targets shall be verified at the point where  
12 the generation and transmission cooperative produces or takes  
13 delivery of the energy on behalf of the distribution  
14 cooperatives that the generation and transmission cooperative  
15 is serving."

16 SECTION 27. Section 62-15-37 NMSA 1978 (being Laws 2007,  
17 Chapter 4, Section 4, as amended by Laws 2015, Chapter 64,  
18 Section 2 and by Laws 2015, Chapter 71, Section 2) is amended  
19 to read:

20 "62-15-37. DEFINITIONS--ENERGY EFFICIENCY--RENEWABLE  
21 ENERGY.--As used in the Rural Electric Cooperative Act:

22 A. "energy efficiency" means measures, including  
23 energy conservation measures, or programs that target consumer  
24 behavior, equipment or devices to result in a decrease in  
25 consumption of electricity without reducing the amount or

1 quality of energy services;

2 B. "renewable energy" means electric energy  
 3 generated by use of renewable energy resources and delivered to  
 4 a rural electric cooperative;

5 C. "renewable energy certificate" means a  
 6 certificate or other record, in a format approved by the public  
 7 regulation commission, that represents all the environmental  
 8 attributes from one megawatt-hour of electricity generated from  
 9 renewable energy;

10 ~~[B.]~~ D. "renewable energy resource" means electric  
 11 or useful thermal energy:

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

15 ~~(2) generated by use of renewable]~~ the  
 16 following energy resources, [that may include] with or without  
 17 energy storage and delivered to a rural electric cooperative:

18 (a) solar, wind and geothermal  
 19 ~~[resources];~~

20 (b) hydropower facilities brought in  
 21 service on or after July 1, 2007;

22 (c) other hydropower facilities  
 23 supplying no greater than the amount of energy from hydropower  
 24 facilities that were part of an energy supply portfolio prior  
 25 to July 1, 2007;

1                    [~~e~~] (d) fuel cells that ~~are~~ do not  
2 use fossil ~~fueled~~ fuels to create electricity; ~~and~~

3                    ~~(d)~~ (e) biomass resources, ~~[such as]~~  
4 limited to agriculture or animal waste, small diameter timber,  
5 not to exceed eight inches, salt cedar and other phreatophyte  
6 or woody vegetation removed from river basins or watersheds in  
7 New Mexico; provided that these resources are from facilities  
8 certified by the energy, minerals and natural resources  
9 department to: 1) be of appropriate scale to have sustainable  
10 feedstock in the near vicinity; 2) have zero life cycle carbon  
11 emissions; and 3) meet scientifically determined restoration,  
12 sustainability and soil nutrient principles; and

13                    (f) landfill gas and anaerobically  
14 digested waste biomass; ~~but~~ and

15                    [~~3~~] (2) does not include electric energy  
16 generated by use of fossil fuel or nuclear energy; ~~and~~

17                    [~~G~~] E. "useful thermal energy" means renewable  
18 energy delivered from a source that can be metered and that is  
19 delivered in the state to an end user in the form of direct  
20 heat, steam or hot water or other thermal form that is used for  
21 heating, cooling, humidity control, process use or other valid  
22 end-use energy requirements and for which fossil fuel or  
23 electricity would otherwise be consumed;

24                    F. "zero carbon resource" means an electricity  
25 generation resource that emits no carbon dioxide into the

1 atmosphere, or that reduces methane emitted into the atmosphere  
 2 in an amount equal to no less than one-tenth of the tons of  
 3 carbon dioxide emitted into the atmosphere, as a result of  
 4 electricity production; and

5 G. "zero carbon resource standard" means providing  
 6 New Mexico rural electric cooperative retail customers with  
 7 electricity generated from one hundred percent zero carbon  
 8 resources."

9 SECTION 28. Section 62-16-3 NMSA 1978 (being Laws 2004,  
 10 Chapter 65, Section 3, as amended) is amended to read:

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

13 A. "commission" means the public regulation  
 14 commission;

15 B. "energy storage" means batteries or other means  
 16 by which energy can be retained and delivered as electricity  
 17 for use at a later time;

18 [~~B.~~] C. "municipality" means a municipal  
 19 corporation, organized under the laws of the state, and H class  
 20 counties;

21 [~~G.~~] D. "public utility" means an entity certified  
 22 by the commission to provide retail electric service in New  
 23 Mexico pursuant to the Public Utility Act but does not include  
 24 rural electric cooperatives;

25 [~~D.~~] E. "reasonable cost threshold" means [~~the cost~~

1 ~~established by the commission, above which a public utility~~  
2 ~~shall not be required to add renewable energy to its electric~~  
3 ~~energy supply portfolio pursuant to the renewable portfolio~~  
4 ~~standard] an average annual levelized cost of sixty dollars~~  
5 ~~(\$60.00) per megawatt-hour at the point of interconnection of~~  
6 ~~the renewable energy resource with the transmission system,~~  
7 ~~adjusted for inflation after 2020;~~

8 ~~[E.]~~ F. "renewable energy" means electric energy

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

12 ~~(2)] generated by use of renewable energy~~  
13 ~~resources [that may include:~~

14 ~~(a) solar, wind and geothermal~~  
15 ~~resources;~~

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

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

20 ~~(d) biomass resources, such as~~  
21 ~~agriculture or animal waste, small diameter timber, salt cedar~~  
22 ~~and other phreatophyte or woody vegetation removed from river~~  
23 ~~basins or watersheds in New Mexico, landfill gas and~~  
24 ~~anaerobically digested waste biomass; but~~

25 ~~(3) does not include electric energy generated~~

1 ~~by use of fossil fuel or nuclear energy]~~ and delivered to a  
 2 public utility;

3 ~~[F.]~~ G. "renewable energy certificate" means a  
 4 certificate or other record, in a format approved by the  
 5 commission, that represents all the environmental attributes  
 6 from one ~~[kilowatt-hour]~~ megawatt-hour of electricity  
 7 ~~[generation]~~ generated from ~~[a]~~ renewable energy; ~~[resource]~~

8 H. "renewable energy resource" means the following  
 9 energy resources, with or without energy storage:

10 (1) solar, wind and geothermal;

11 (2) hydropower facilities brought in service  
 12 on or after July 1, 2007;

13 (3) biomass resources, limited to agriculture  
 14 or animal waste, small diameter timber, not to exceed eight  
 15 inches, salt cedar and other phreatophyte or woody vegetation  
 16 removed from river basins or watersheds in New Mexico; provided  
 17 that these resources are from facilities certified by the  
 18 energy, minerals and natural resources department to:

19 (a) be of appropriate scale to have  
 20 sustainable feedstock in the near vicinity;

21 (b) have zero life cycle carbon  
 22 emissions; and

23 (c) meet scientifically determined  
 24 restoration, sustainability and soil nutrient principles;

25 (4) fuel cells that do not use fossil fuels to

1 create electricity; and

2 (5) landfill gas and anaerobically digested  
3 waste biogas;

4 ~~[G.]~~ I. "renewable portfolio standard" means the  
5 minimum percentage of retail sales of electricity by a public  
6 utility to electric consumers in New Mexico that is required by  
7 the Renewable Energy Act to be ~~[supplied by]~~ from renewable  
8 energy; ~~and~~

9 ~~H.]~~ J. "renewable purchased power agreement" means  
10 an agreement that binds an entity generating power from  
11 renewable energy resources to provide power at a specified  
12 price and binds ~~[a public utility to purchase the power at]~~ the  
13 purchaser to that price;

14 K. "zero carbon resource" means an electricity  
15 generation resource that emits no carbon dioxide into the  
16 atmosphere, or that reduces methane emitted into the atmosphere  
17 in an amount equal to no less than one-tenth of the tons of  
18 carbon dioxide emitted into the atmosphere, as a result of  
19 electricity production; and

20 L. "zero carbon resource standard" means providing  
21 New Mexico public utility customers with electricity generated  
22 from one hundred percent zero carbon resources."

23 SECTION 29. Section 62-16-4 NMSA 1978 (being Laws 2004,  
24 Chapter 65, Section 4, as amended) is amended to read:

25 "62-16-4. RENEWABLE PORTFOLIO STANDARD.--



1           A. A public utility shall meet the renewable  
 2 portfolio standard requirements, as provided in this section,  
 3 to include renewable energy in its electric energy supply  
 4 portfolio as demonstrated by its retirement of renewable energy  
 5 certificates; provided that the associated renewable energy is  
 6 delivered to the public utility and assigned to the public  
 7 utility's New Mexico customers. For public utilities other  
 8 than rural electric cooperatives and municipalities,  
 9 requirements of the renewable portfolio standard are:

10                   ~~[(1) for public utilities other than rural~~  
 11 ~~electric cooperatives and municipalities:~~

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

16                           ~~(b) no later than January 1, 2011,~~  
 17 ~~renewable energy shall comprise no less than ten percent of~~  
 18 ~~each public utility's total retail sales to New Mexico~~  
 19 ~~customers;~~

20                           ~~(c)]~~ (1) no later than January 1, 2015,  
 21 renewable energy shall comprise no less than fifteen percent of  
 22 each public utility's total retail sales to New Mexico  
 23 customers; [and

24                           ~~(d)]~~ (2) no later than January 1, 2020,  
 25 renewable energy shall comprise no less than twenty percent of

1 each public utility's total retail sales to New Mexico  
2 customers;

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

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1 ~~complying with the renewable portfolio standard, including~~  
2 ~~carrying charges;]~~

3 (3) no later than January 1, 2025, renewable  
4 energy shall comprise no less than forty percent of each public  
5 utility's total retail sales of electricity to New Mexico  
6 customers;

7 (4) no later than January 1, 2030, renewable  
8 energy shall comprise no less than fifty percent of each public  
9 utility's total retail sales of electricity to New Mexico  
10 customers;

11 (5) no later than January 1, 2040, renewable  
12 energy resources shall supply no less than eighty percent of  
13 all retail sales of electricity in New Mexico; provided that  
14 compliance with this standard until December 31, 2047 shall not  
15 require the public utility to displace zero carbon resources in  
16 the utility's generation portfolio on the effective date of  
17 this 2019 act; and

18 (6) no later than January 1, 2045, zero carbon  
19 resources shall supply one hundred percent of all retail sales  
20 of electricity in New Mexico. Reasonable and consistent  
21 progress shall be made over time toward this requirement.

22 B. In administering the standards required by  
23 Paragraphs (5) and (6) of Subsection A of this section, the  
24 commission shall:

25 (1) ensure that compliance shall not conflict

1 with the federal Public Utility Regulatory Policies Act of  
2 1978, as amended;

3 (2) maintain and protect the safety, reliable  
4 operation and balancing of loads and resources on the electric  
5 system;

6 (3) prevent unreasonable impacts to customer  
7 electricity bills, taking into consideration the economic and  
8 environmental costs and benefits of renewable energy resources  
9 and zero carbon resources;

10 (4) prevent carbon dioxide emitting  
11 electricity-generating resources from being reassigned,  
12 redesignated or sold as a means of complying with the standard;

13 (5) in consultation with the energy, minerals  
14 and natural resources department, undertake programs not  
15 prohibited by law to achieve the standard;

16 (6) in consultation with the department of  
17 environment, ensure that the standard does not result in  
18 material increases to greenhouse gas emissions from entities  
19 not subject to commission oversight and regulation; and

20 (7) in consultation with electricity  
21 transmission system operators responsible for balancing New  
22 Mexico electricity loads and resources, issue a report to the  
23 legislature by July 1, 2020, and each July 1 every four years  
24 thereafter. The report shall include:

25 (a) review of the standard, with a focus

1 on technologies, forecasts, existing transmission,  
 2 environmental protection, public safety, affordability and  
 3 electricity transmission and distribution system reliability;

4 (b) evaluation of the anticipated  
 5 financial costs and benefits to electric utilities in  
 6 implementing the standard, including the impacts and benefits  
 7 to customer electricity bills; and

8 (c) identification of the barriers to,  
 9 and benefits of, achieving the standard.

10 ~~[(3)]~~ C. Any customer that is a political  
 11 subdivision of the state, or any educational institution  
 12 designated in Article 12, Section 11 of the constitution of New  
 13 Mexico with an enrollment of twenty-four thousand students or  
 14 more during the fall semester on its main campus, with  
 15 consumption exceeding twenty ~~[million kilowatt-hours per year~~  
 16 ~~at any single location or facility and that owns renewable~~  
 17 ~~energy generation is exempt from all charges by the utility for~~  
 18 ~~renewable energy procurements in a year, regardless of the~~  
 19 ~~number of customer locations or meters on the system, if that~~  
 20 ~~customer certifies to the state auditor and notifies the~~  
 21 ~~commission and its serving electric utility that it will expend~~  
 22 ~~two and one-half percent of that year's annual electricity~~  
 23 ~~charges to continue to develop within twenty-four months~~  
 24 ~~customer-owned renewable energy generation. That customer~~  
 25 ~~shall also certify that it will retire all renewable energy~~

1 ~~certificates associated with the energy produced from that~~  
2 ~~expenditure;~~

3 ~~(4) the renewable portfolio shall be~~  
4 ~~diversified as to the type of renewable energy resource, taking~~  
5 ~~into consideration the overall reliability, availability,~~  
6 ~~dispatch flexibility and cost of the various renewable energy~~  
7 ~~resources made available by suppliers and generators] thousand~~  
8 ~~megawatt-hours per year at any single location or facility and~~  
9 ~~that owns facilities that produce renewable energy or hosts~~  
10 ~~such facilities through a renewable purchased power agreement,~~  
11 ~~shall not be charged by the utility for power purchases of one~~  
12 ~~year or less or fuel on the amount of electricity purchased~~  
13 ~~from the utility equal to the amount of renewable energy~~  
14 ~~produced or hosted by the customer. The customer shall~~  
15 ~~annually certify to the state auditor and notify the commission~~  
16 ~~and the customer's serving electric utility of the amount of~~  
17 ~~renewable energy produced at the customer-owned or customer-~~  
18 ~~hosted facilities that generate renewable energy. The customer~~  
19 ~~shall also certify to the state auditor and notify the~~  
20 ~~commission that the customer will retire all renewable energy~~  
21 ~~certificates associated with the renewable energy produced by~~  
22 ~~those facilities. Any financial benefits as a result of the~~  
23 ~~provisions of this subsection shall accrue to the customer~~  
24 ~~immediately upon the effective date of this 2019 act and shall~~  
25 ~~be reflected in customer bills each month, subject to annual~~

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1 true-up and reconciliation. The provisions of this subsection  
 2 shall not prevent the utility from recovering all of its  
 3 reasonable and prudent fuel and purchased power costs.

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

12 ~~(6) renewable energy resources that are in a~~  
 13 ~~public utility's electric energy supply portfolio on July 1,~~  
 14 ~~2004 shall be counted in determining compliance with this~~  
 15 ~~section] results in reductions in carbon dioxide emissions~~  
 16 ~~earlier than required by Subsection A of this section; or~~  
 17 ~~causes a reduction in the generation of electricity by~~  
 18 ~~coal-fired generating facilities, including coal-fired~~  
 19 ~~generating facilities located outside of New Mexico. The~~  
 20 ~~incentives may include additional earnings and capital~~  
 21 ~~investment opportunities for resources used in furtherance of~~  
 22 ~~the outcomes described in this subsection.~~

23 ~~[B.]~~ E. If, in any given year, a public utility  
 24 [finds] determines that [in any given year] the average annual  
 25 levelized cost of renewable energy that would need to be

1 procured or generated for purposes of compliance with the  
2 renewable portfolio standard would be greater than the  
3 reasonable cost threshold [~~as established by the commission~~  
4 ~~pursuant to this section~~], the public utility shall not be  
5 required to incur that excess cost; provided that the existence  
6 of this condition excusing performance in any given year shall  
7 not operate to delay [~~the annual increases in~~] compliance with  
8 the renewable portfolio standard in subsequent years. The  
9 provisions of this subsection do not preclude a public utility  
10 from accepting a project with a cost that would exceed the  
11 reasonable cost threshold. When a public utility can generate  
12 or procure renewable energy at or below the reasonable cost  
13 threshold, it shall be required to [~~add renewable energy~~  
14 ~~resources~~] do so to the extent necessary to meet the applicable  
15 renewable portfolio standard [~~applicable in the year when the~~  
16 ~~renewable energy resources are being added.~~

17 G. ~~By December 31, 2004, the commission shall~~  
18 ~~establish, after notice and hearing, the reasonable cost~~  
19 ~~threshold above which level a public utility shall not be~~  
20 ~~required to add renewable energy to its electric energy supply~~  
21 ~~portfolio pursuant to the renewable portfolio standard. The~~  
22 ~~commission may thereafter modify the reasonable cost threshold~~  
23 ~~as changing circumstances warrant, after notice and hearing.~~  
24 ~~In establishing and modifying the reasonable cost threshold,~~  
25 ~~the commission shall take into account:~~



1                   ~~(1) the price of renewable energy at the point~~  
2 ~~of sale to the public utility;~~

3                   ~~(2) the transmission and interconnection costs~~  
4 ~~required for the delivery of renewable energy to retail~~  
5 ~~customers;~~

6                   ~~(3) the impact of the cost for renewable~~  
7 ~~energy on overall retail customer rates;~~

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

12                   ~~(5) other factors, including public benefits,~~  
13 ~~that the commission deems relevant; provided that nothing in~~  
14 ~~the Renewable Energy Act shall be construed to permit~~  
15 ~~regulation by the commission of the production or sale price at~~  
16 ~~the point of production of the renewable energy] and shall not~~  
17 ~~be precluded from exceeding the standard.~~

18                   [D.] F. By September 1, 2007 [~~and July 1 of each~~  
19 ~~year thereafter until 2022, and thereafter as determined~~  
20 ~~necessary by the commission] and until June 30, 2019, a public  
21 utility shall file a report to the commission on its  
22 procurement and generation of renewable energy during the prior  
23 calendar year and a procurement plan that includes:~~

24                   (1) the cost of procurement for any new  
25 renewable energy resource in the next calendar year required to

1 comply with the renewable portfolio standard; and

2 (2) testimony and exhibits that demonstrate  
3 that the proposed procurement is reasonable as to its terms and  
4 conditions considering price, availability, [~~dispatchability~~]  
5 reliability, any renewable energy certificate values and  
6 diversity of the renewable energy resource; or

7 (3) demonstration that the plan is otherwise  
8 in the public interest.

9 G. By July 1, 2020, and each July 1 thereafter, a  
10 public utility shall file a report to the commission on the  
11 public utility's procurement and generation of renewable energy  
12 since the last report and a procurement plan that includes:

13 (1) the cost of procurement for new renewable  
14 energy required to comply with the renewable portfolio  
15 standard;

16 (2) the capital, operating and fuel costs on a  
17 per-megawatt-hour basis during the preceding calendar year of  
18 each nonrenewable generation resource rate-based by the  
19 utility, or dedicated to the utility through a power purchase  
20 agreement of one year or longer, and the nonrenewable  
21 generation resources' carbon dioxide emissions on a per-  
22 megawatt-hour basis during that same year;

23 (3) information, including exhibits, as  
24 applicable, that demonstrates that the proposed procurement:

25 (a) was the result of competitive

1 procurement that included opportunities for bidders to propose  
 2 purchased power, facility self-build or facility build-transfer  
 3 options;

4 (b) has a cost that is reasonable as  
 5 evidenced by a comparison of the price of electricity from  
 6 renewable energy resources in the bids received by the public  
 7 utility to recent prices for comparable energy resources  
 8 elsewhere in the southwestern United States; and

9 (c) is in the public interest,  
 10 considering factors such as overall cost and economic  
 11 development opportunities; and

12 (4) strategies used to minimize costs of  
 13 renewable energy integration, including location, diversity,  
 14 balancing area activity, demand-side management and load  
 15 management.

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

1           ~~[F.]~~ I. The commission may reject a ~~[procurement or~~  
2 ~~transitional]~~ procurement plan if ~~[it]~~, within forty days of  
3 filing, the commission finds that the plan does not contain the  
4 required information and, upon the rejection, ~~[may suspend the~~  
5 ~~public utility's obligation to procure additional resources~~  
6 ~~for]~~ shall provide the public utility the time necessary to  
7 file a revised plan; provided that the total amount of  
8 renewable energy required to be procured by the public utility  
9 shall not change.

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

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

25           SECTION 30. Section 62-16-5 NMSA 1978 (being Laws 2004,

1 Chapter 65, Section 5, as amended) is amended to read:

2 "62-16-5. RENEWABLE ENERGY CERTIFICATES--COMMISSION  
3 DUTIES.--

4 A. The commission shall establish:

5 [~~A.~~] (1) a system of renewable energy  
6 certificates that can be used by a public utility to establish  
7 compliance with the renewable portfolio standard and that may  
8 include certificates that are monitored, accounted for or  
9 transferred by or through a regional system or trading program  
10 for any region in which a public utility is located [~~The~~  
11 ~~kilowatt-hour value of renewable energy certificates may be~~  
12 ~~varied by renewable energy resource or technology; provided~~  
13 ~~that each renewable energy certificate shall have a minimum~~  
14 ~~value of one kilowatt-hour of renewable energy represented by~~  
15 ~~the certificate for purposes of compliance with the renewable~~  
16 ~~portfolio standard]; and~~

17 [~~B.~~] (2) requirements and procedures  
18 concerning requirements for renewable energy certificates [~~that~~  
19 ~~include the provisions that~~] pursuant to Subsections B and C of  
20 this section.

21 [~~(1)~~] B. Renewable energy certificates:

22 [~~(a)~~] (1) are owned by the generator of the  
23 renewable energy unless:

24 [~~(1)~~] (a) the renewable energy  
25 certificates are transferred to the purchaser of the [~~energy~~]

1 electricity through specific agreement with the generator;

2 [2] (b) the generator is a qualifying  
3 facility, as defined by the federal Public Utility Regulatory  
4 Policies Act of 1978, in which case the renewable energy  
5 certificates are owned by the public utility purchaser of the  
6 renewable energy [~~unless retained by the generator through~~  
7 ~~specific agreement with the public utility purchaser of the~~  
8 ~~energy~~]; or

9 [3] (c) a contract for the purchase of  
10 renewable energy is in effect prior to [~~January 1, 2004~~] July  
11 1, 2019, in which case the renewable energy certificates are  
12 owned by the purchaser of the [~~energy~~] electricity for the term  
13 of such contract, unless otherwise agreed to in a contract  
14 approved by the commission;

15 [(b)] (2) may be traded, sold or otherwise  
16 transferred by their owner, [~~to any other party; provided that~~  
17 ~~the transfers and use of the certificate by a public utility~~  
18 ~~for compliance with the renewable energy portfolio standard~~  
19 ~~shall require the electric energy represented by the~~  
20 ~~certificate to be contracted for delivery, or consumed or~~  
21 ~~generated by an end-use customer of the public utility in New~~  
22 ~~Mexico unless the commission determines that there is a~~  
23 ~~national or regional market for exchanging renewable energy~~  
24 ~~certificates~~] unless the certificates are from a rate-based  
25 public utility plant, in which case the entirety of the

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1 renewable energy certificates from that plant shall be retired  
2 by the utility on behalf of itself or its customers. Any  
3 contract to purchase renewable energy entered into by a public  
4 utility on or after July 1, 2019 shall include conveyance to  
5 the purchasing utility of all renewable energy certificates,  
6 and the entirety of those certificates shall be retired by that  
7 utility on behalf of itself or its customers or subsequently  
8 transferred to a retail customer for retirement under a  
9 voluntary program for purchasing renewable energy approved by  
10 the commission. A utility shall not claim that it is providing  
11 renewable energy from generation resources for which it has  
12 traded, sold or transferred the associated renewable energy  
13 certificates. The commission shall not disallow the recovery  
14 of the cost associated with any expired renewable energy  
15 certificate. The public utility shall annually file a report  
16 with the commission discussing:

17 (a) its use, sale, trading or transfer  
18 of renewable energy certificates; and

19 (b) whether and how its public claims of  
20 renewable energy generation account for renewable energy  
21 certificates that it has traded, sold or transferred;

22 ~~[(e)]~~ (3) 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 the  
3 generation and delivery of electricity associated with each  
4 renewable energy certificate and protects against multiple  
5 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 are  
13 not traded, sold or otherwise transferred by the public  
14 utility] and~~

15 (4) may be carried forward for up to four  
16 years from the date of issuance [~~and, if not used by that time]~~  
17 to establish compliance with the renewable portfolio standard,  
18 after which they shall be deemed retired by the public utility.  
19 [and

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



1           SECTION 31. Section 62-16-6 NMSA 1978 (being Laws 2004,  
2 Chapter 65, Section 6, as amended) is amended to read:

3           "62-16-6. COST RECOVERY FOR RENEWABLE ENERGY AND  
4 EMISSIONS REDUCTION.--

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

11           B. The commission shall not exclude from such cost  
12 recovery reasonable interconnection and transmission costs and  
13 costs to comply with electric industry reliability standards  
14 incurred by the public utility in order to deliver renewable  
15 energy to retail New Mexico customers.

16           C. [~~Upon a commission motion or application by a~~  
17 ~~public utility, the commission shall open a docket to provide~~  
18 ~~appropriate performance-based financial or other incentives to~~  
19 ~~encourage public utilities to acquire renewable energy supplies~~  
20 ~~that exceed the applicable annual renewable portfolio standard~~  
21 ~~pursuant to the Renewable Energy Act. The commission shall~~  
22 ~~initiate rules by June 1, 2008 to implement this subsection] If  
23 a public utility has been granted a certificate of public  
24 convenience and necessity prior to January 1, 2015 to construct  
25 or operate an electric generation facility and the investment~~

1 in that facility has been allowed recovery as part of the  
2 utility's rate-base, the commission may require the facility to  
3 discontinue serving customers within New Mexico if the  
4 replacement has less or zero carbon dioxide emissions into the  
5 atmosphere; provided that no order of the commission shall  
6 disallow recovery of any undepreciated investments or  
7 decommissioning costs associated with the facility."

8 SECTION 32. Section 62-16-7 NMSA 1978 (being Laws 2004,  
9 Chapter 65, Section 7) is amended to read:

10 "62-16-7. COMMISSION--~~[ADDITIONAL]~~ POWERS AND DUTIES--  
11 VOLUNTARY PROGRAMS.--

12 A. The commission:

13 ~~[A.]~~ (1) shall adopt rules regarding the  
14 renewable portfolio standard, including a provision for public  
15 utility records and reports; and

16 ~~[B.]~~ (2) may require that a public utility  
17 offer its retail customers a voluntary program for purchasing  
18 renewable energy that is in addition to ~~[energy]~~ electricity  
19 provided by the public utility pursuant to the renewable  
20 portfolio standard, under rates and terms that are approved by  
21 the commission. ~~[and~~

22 ~~G. may exempt from compliance with the renewable~~  
23 ~~portfolio standard a public utility that has an all-~~  
24 ~~requirements electric supply contract on July 1, 2004, and the~~  
25 ~~contract would not reasonably permit it to procure renewable~~

~~energy for purposes of meeting the renewable portfolio standard. When the electricity supply contract is amended or renegotiated, the commission may require that a renewable portfolio standard become applicable.]~~

B. All renewable energy purchased by a retail customer through an approved voluntary program shall:

(1) have all associated renewable energy certificates retired by the retail customer, or on that customer's behalf, by the public utility, and the certificates shall not be used to meet the public utility's renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978;

(2) be excluded from the total retail sales to New Mexico customers used to determine the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978; and

(3) not be subject to charges by the public utility to recover costs of complying with the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978."

SECTION 33. Section 62-16-8 NMSA 1978 (being Laws 2004, Chapter 65, Section 8, as amended) is amended to read:

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

A. The commission may require that a rural electric

1 cooperative:

2 (1) offer its retail customers a voluntary  
3 program for purchasing renewable energy under rates and terms  
4 that are approved by the commission [~~but only to the extent~~  
5 ~~that the cooperative's suppliers make renewable energy~~  
6 ~~available under wholesale power contracts~~];

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

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

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

15 SECTION 34. Section 62-16-9 NMSA 1978 (being Laws 2004,  
16 Chapter 65, Section 9) is amended to read:

17 "62-16-9. EXISTING RULES.--The commission shall  
18 [~~establish and amend~~] promulgate rules [~~and regulations for the~~  
19 ~~implementation of renewable portfolio standards consistent~~  
20 ~~with~~] to implement the provisions of the Renewable Energy Act."

21 SECTION 35. Section 62-16-10 NMSA 1978 (being Laws 2004,  
22 Chapter 65, Section 10) is amended to read:

23 "62-16-10. FEDERAL REQUIREMENTS.--Renewable energy  
24 procured or generated by a public utility to [~~meet~~] comply with  
25 a federal [~~renewable portfolio standard~~] law, rule or

1 regulation may be used to satisfy the required procurements of  
 2 the Renewable Energy Act."

3 SECTION 36. Section 74-2-5 NMSA 1978 (being Laws 1967,  
 4 Chapter 277, Section 5, as amended) is amended to read:

5 "74-2-5. DUTIES AND POWERS--ENVIRONMENTAL IMPROVEMENT  
 6 BOARD--LOCAL BOARD.--

7 A. The environmental improvement board or the local  
 8 board shall prevent or abate air pollution.

9 B. The environmental improvement board or the local  
 10 board shall:

11 (1) adopt, promulgate, publish, amend and  
 12 repeal [~~regulations~~] rules and standards consistent with the  
 13 Air Quality Control Act to attain and maintain national ambient  
 14 air quality standards and prevent or abate air pollution,  
 15 including [~~regulations~~]:

16 (a) rules prescribing air standards,  
 17 within the geographic area of the environmental improvement  
 18 board's jurisdiction or the local board's jurisdiction, or any  
 19 part thereof; and

20 (b) standards of performance that limit  
 21 carbon dioxide emissions to no more than one thousand one  
 22 hundred pounds per megawatt-hour on and after January 1, 2023  
 23 for a new or existing source that is an electric generating  
 24 facility with an original installed capacity exceeding three  
 25 hundred megawatts and that uses coal as a fuel source; and

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1                   (2) adopt a plan for the regulation, control,  
2 prevention or abatement of air pollution, recognizing the  
3 differences, needs, requirements and conditions within the  
4 geographic area of the environmental improvement board's  
5 jurisdiction or the local board's jurisdiction or any part  
6 thereof.

7                   C. ~~[Regulations]~~ Rules adopted by the environmental  
8 improvement board or the local board may:

9                   (1) include ~~[regulations]~~ rules to protect  
10 visibility in mandatory class I areas to prevent significant  
11 deterioration of air quality and to achieve national ambient  
12 air quality standards in nonattainment areas; provided that  
13 such regulations:

14                                 (a) shall be no more stringent than but  
15 at least as stringent as required by the federal act and  
16 federal regulations pertaining to visibility protection in  
17 mandatory class I areas, pertaining to prevention of  
18 significant deterioration and pertaining to nonattainment  
19 areas; and

20                                 (b) shall be applicable only to sources  
21 subject to such regulation pursuant to the federal act;

22                   (2) prescribe standards of performance for  
23 sources and emission standards for hazardous air pollutants  
24 that, except as provided in this subsection and in Subparagraph  
25 (b) of Paragraph (1) of Subsection B of this section:

1 (a) shall be no more stringent than but  
2 at least as stringent as required by federal standards of  
3 performance; and

4 (b) shall be applicable only to sources  
5 subject to such federal standards of performance;

6 (3) include regulations governing emissions  
7 from solid waste incinerators that shall be at least as  
8 stringent as, and may be more stringent than, any applicable  
9 federal emission limitations;

10 (4) include regulations requiring the  
11 installation of control technology for mercury emissions that  
12 removes the greater of what is achievable with best available  
13 control technology or ninety percent of the mercury from the  
14 input fuel for all coal-fired power plants, except for coal-  
15 fired power plants constructed and generating electric power  
16 and energy before July 1, 2007;

17 (5) require notice to the department or the  
18 local agency of the intent to introduce or permit the  
19 introduction of an air contaminant into the air within the  
20 geographical area of the environmental improvement board's  
21 jurisdiction or the local board's jurisdiction; and

22 (6) require any person emitting any air  
23 contaminant to:

24 (a) install, use and maintain emission  
25 monitoring devices;

1 (b) sample emissions in accordance with  
2 methods and at locations and intervals as may be prescribed by  
3 the environmental improvement board or the local board;

4 (c) establish and maintain records of  
5 the nature and amount of emissions;

6 (d) submit reports regarding the nature  
7 and amounts of emissions and the performance of emission  
8 control devices; and

9 (e) provide any other reasonable  
10 information relating to the emission of air contaminants.

11 D. Any regulation adopted pursuant to this section  
12 shall be consistent with federal law, if any, relating to  
13 control of motor vehicle emissions.

14 E. In making its regulations, the environmental  
15 improvement board or the local board shall give weight it deems  
16 appropriate to all facts and circumstances, including but not  
17 limited to:

18 (1) character and degree of injury to or  
19 interference with health, welfare, visibility and property;

20 (2) the public interest, including the social  
21 and economic value of the sources and subjects of air  
22 contaminants; and

23 (3) technical practicability and economic  
24 reasonableness of reducing or eliminating air contaminants from  
25 the sources involved and previous experience with equipment and



1 methods available to control the air contaminants involved."

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