

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 266

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

AN ACT

RELATING TO ENERGY; AMENDING THE RENEWABLE ENERGY ACT; ADDING  
DEFINITIONS; ESTABLISHING MINIMUM PORTFOLIO STANDARDS FOR  
DISTRIBUTED ENERGY RESOURCES.

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

SECTION 1. Section 62-16-3 NMSA 1978 (being Laws 2004,  
Chapter 65, Section 3, as amended) is amended to read:

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

A. "commission" means the public regulation  
commission;

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

C. "municipality" means a municipal corporation,

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

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

6 E. "reasonable cost threshold" means an average  
7 annual levelized cost of sixty dollars (\$60.00) per megawatt-  
8 hour at the point of interconnection of the renewable energy  
9 resource with the transmission system, adjusted for inflation  
10 after 2020;

11 F. "renewable energy" means electric energy  
12 generated by use of renewable energy resources and delivered to  
13 a public utility;

14 G. "renewable energy certificate" means a  
15 certificate or other record, in a format approved by the  
16 commission, that represents all the environmental attributes  
17 from one megawatt-hour of electricity generated from renewable  
18 energy;

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

21 (1) solar, wind and geothermal;

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

24 (3) biomass resources, limited to agriculture  
25 or animal waste, small diameter timber, not to exceed eight

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1 inches, salt cedar and other phreatophyte or woody vegetation  
 2 removed from river basins or watersheds in New Mexico; provided  
 3 that these resources are from facilities certified by the  
 4 energy, minerals and natural resources department to:

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

7 (b) have zero life cycle carbon  
 8 emissions; and

9 (c) meet scientifically determined  
 10 restoration, sustainability and soil nutrient principles;

11 (4) fuel cells that do not use fossil fuels to  
 12 create electricity; and

13 (5) landfill gas and anaerobically digested  
 14 waste biogas;

15 I. "renewable portfolio standard" means the minimum  
 16 percentage of retail sales of electricity by a public utility  
 17 to electric consumers in New Mexico that is required by the  
 18 Renewable Energy Act to be from renewable energy;

19 J. "renewable purchased power agreement" means an  
 20 agreement that binds an entity generating power from renewable  
 21 energy resources to provide power at a specified price and  
 22 binds the purchaser to that price;

23 K. "retail distributed generation" means a new or  
 24 existing renewable energy facility that is no greater than five  
 25 megawatts, measured in alternating current, that is

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1 interconnected to the distribution system and:

2 (1) is either located behind a New Mexico  
3 customer's meter; or

4 (2) is a community solar facility as defined  
5 in Subsection D of Section 62-16B-2 NMSA 1978;

6 [~~K.~~] L. "zero carbon resource" means an electricity  
7 generation resource that emits no carbon dioxide into the  
8 atmosphere, or that reduces methane emitted into the atmosphere  
9 in an amount equal to no less than one-tenth of the tons of  
10 carbon dioxide emitted into the atmosphere, as a result of  
11 electricity production; and

12 [~~L.~~] M. "zero carbon resource standard" means  
13 providing New Mexico public utility customers with electricity  
14 generated from one hundred percent zero carbon resources."

15 SECTION 2. Section 62-16-4 NMSA 1978 (being Laws 2004,  
16 Chapter 65, Section 4, as amended) is amended to read:

17 "62-16-4. RENEWABLE PORTFOLIO STANDARD.--

18 A. A public utility shall meet the renewable  
19 portfolio standard requirements, as provided in this section,  
20 to include renewable energy in its electric energy supply  
21 portfolio as demonstrated by its retirement of renewable energy  
22 certificates; provided that the associated renewable energy is  
23 delivered to the public utility and assigned to the public  
24 utility's New Mexico customers. For public utilities other  
25 than rural electric cooperatives and municipalities,

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1 requirements of the renewable portfolio standard are:

2 (1) no later than January 1, 2015, renewable  
3 energy shall comprise no less than fifteen percent of each  
4 public utility's total retail sales to New Mexico customers;

5 (2) no later than January 1, 2020, renewable  
6 energy shall comprise no less than twenty percent of each  
7 public utility's total retail sales to New Mexico customers;

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

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

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

23 (6) no later than January 1, 2045, zero carbon  
24 resources shall supply one hundred percent of all retail sales  
25 of electricity in New Mexico. Reasonable and consistent

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1 progress shall be made over time toward this requirement.

2 B. As part of the resource acquisitions needed to  
3 comply with Subsection A of this section, a public utility  
4 shall cause retail distributed generation to be interconnected  
5 to the public utility's system by encouraging customer adoption  
6 and access. Compliance shall be demonstrated by the public  
7 utility's retirement of renewable energy certificates for  
8 retail distributed generation; provided that the associated  
9 renewable energy is delivered to the public utility and  
10 assigned to the public utility's New Mexico customers. In the  
11 case of qualifying facilities that are net metered, all of the  
12 energy generated by the qualifying facility shall be deemed to  
13 have been purchased by the public utility and all of the energy  
14 consumed on-site by the qualifying facility shall be included  
15 in the determination of total retail sales for the purposes of  
16 calculating the renewable portfolio standard as described in  
17 Subsection A of this section. For public utilities other than  
18 rural electric cooperatives and municipalities, requirements of  
19 the renewable portfolio standard are:

20 (1) no later than January 1, 2026, retail  
21 distributed generation shall comprise no less than six percent  
22 of each public utility's total retail sales to New Mexico  
23 customers;

24 (2) no later than January 1, 2028, retail  
25 distributed generation shall comprise no less than eight

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

3 (3) no later than January 1, 2030, retail  
 4 distributed generation shall comprise no less than ten percent  
 5 of each public utility's total retail sales of electricity to  
 6 New Mexico customers;

7 (4) no later than January 1, 2031, retail  
 8 distributed generation shall comprise no less than twelve  
 9 percent of each public utility's total retail sales of  
 10 electricity to New Mexico customers;

11 (5) no later than January 1, 2033, retail  
 12 distributed generation shall comprise no less than fifteen  
 13 percent of each public utility's total retail sales of  
 14 electricity to New Mexico customers;

15 (6) by no later than November 1, 2032, the  
 16 commission shall provide to the appropriate interim legislative  
 17 committee a report on the status of the retail distributed  
 18 generation requirement set forth in this subsection and  
 19 recommendations for future compliance requirements; and

20 (7) to support the implementation of the  
 21 requirements set forth in this subsection:

22 (a) each public utility shall, by  
 23 December 31, 2024, make available information and maps that  
 24 provide the amount of retail distributed generation that can be  
 25 interconnected to the distribution system at a given time and

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1 at a given location under existing grid conditions and  
2 operations without adversely impacting safety, power quality,  
3 reliability or other operational criteria and without requiring  
4 electric infrastructure upgrades; and

5 (b) each public utility shall make such  
6 information accessible via the public utility's website and  
7 update such information on a monthly basis.

8 C. Any person may contest a public utility's  
9 compliance with Subsection B of this section by bringing a  
10 complaint before the commission.

11 ~~[B.]~~ D. In administering the standards required by  
12 Paragraphs (5) and (6) of Subsection A of this section and  
13 Paragraph (5) of Subsection B of this section, the commission  
14 shall:

15 (1) not jeopardize the operation of a sewage  
16 treatment facility that captures and combusts methane gas in  
17 the facility's operations;

18 (2) maintain and protect the safety, reliable  
19 operation and balancing of loads and resources on the electric  
20 system;

21 (3) prevent unreasonable impacts to customer  
22 electricity bills, taking into consideration the economic and  
23 environmental costs and benefits of renewable energy resources  
24 and zero carbon resources;

25 (4) prevent carbon dioxide emitting



1 electricity-generating resources from being reassigned,  
 2 redesignated or sold as a means of complying with the standard;

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

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

10 (7) in consultation with electricity  
 11 transmission system operators responsible for balancing New  
 12 Mexico electricity loads and resources, issue a report to the  
 13 legislature by July 1, 2020, and each July 1 every four years  
 14 thereafter. The report shall include:

15 (a) review of the standard, with a focus  
 16 on technologies, forecasts, existing transmission,  
 17 environmental protection, public safety, affordability and  
 18 electricity transmission and distribution system reliability;

19 (b) evaluation of the anticipated  
 20 financial costs and benefits to electric utilities in  
 21 implementing the standard, including the impacts and benefits  
 22 to customer electricity bills; and

23 (c) identification of the barriers to,  
 24 and benefits of, achieving the standard.

25 [~~G.~~] E. Any customer that is a political

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1 subdivision of the state, or any educational institution  
2 designated in Article 12, Section 11 of the constitution of New  
3 Mexico with an enrollment of twenty thousand students or more  
4 during the fall semester on its main campus, with consumption  
5 exceeding twenty thousand megawatt-hours per year at any single  
6 location or facility and that owns facilities that produce  
7 renewable energy or hosts such facilities through a renewable  
8 purchased power agreement, shall not be charged by the utility  
9 for power purchases of one year or less or fuel on the amount  
10 of electricity purchased from the utility equal to the amount  
11 of renewable energy produced or hosted by the customer. The  
12 customer shall annually certify to the state auditor and notify  
13 the commission and the customer's serving electric utility of  
14 the amount of renewable energy produced at the customer-owned  
15 or customer-hosted facilities that generate renewable energy.  
16 The customer shall also certify to the state auditor and notify  
17 the commission that the customer will retire all renewable  
18 energy certificates associated with the renewable energy  
19 produced by those facilities. Any financial benefits as a  
20 result of the provisions of this subsection shall accrue to the  
21 customer immediately ~~[upon the effective date of this 2019 act]~~  
22 on June 14, 2019 and shall be reflected in customer bills each  
23 month, subject to annual true-up and reconciliation. The  
24 provisions of this subsection shall not prevent the utility  
25 from recovering all of its reasonable and prudent fuel and

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1 purchased power costs.

2           ~~[D.]~~ F. Upon a motion or application by a public  
3 utility the commission shall, or upon a motion or application  
4 by any other person the commission may, open a docket to  
5 develop and provide financial or other incentives to encourage  
6 public utilities to produce or acquire renewable energy or  
7 retail distributed generation that exceeds the applicable  
8 annual renewable portfolio standard set forth in this section;  
9 results in reductions in carbon dioxide emissions earlier than  
10 required by Subsection A of this section; or causes a reduction  
11 in the generation of electricity by coal-fired generating  
12 facilities, including coal-fired generating facilities located  
13 outside of New Mexico. The incentives may include additional  
14 earnings and capital investment opportunities for resources  
15 used in furtherance of the outcomes described in this  
16 subsection.

17           ~~[E.]~~ G. If, in any given year, a public utility  
18 determines that the average annual levelized cost of  
19 transmission-interconnected renewable energy that would need to  
20 be procured or generated for purposes of compliance with the  
21 renewable portfolio standard would be greater than the  
22 reasonable cost threshold, the public utility shall not be  
23 required to incur that excess cost; provided that the existence  
24 of this condition excusing performance in any given year shall  
25 not operate to delay compliance with the renewable portfolio

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1 standard in subsequent years. The provisions of this  
2 subsection do not preclude a public utility from accepting a  
3 project with a cost that would exceed the reasonable cost  
4 threshold. When a public utility can generate or procure  
5 renewable energy at or below the reasonable cost threshold, it  
6 shall be required to do so to the extent necessary to meet the  
7 applicable renewable portfolio standard and shall not be  
8 precluded from exceeding the standard.

9 ~~[F-]~~ H. By September 1, 2007 and until June 30,  
10 2019, a public utility shall file a report to the commission on  
11 its procurement and generation of renewable energy during the  
12 prior calendar year and a procurement plan that includes:

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

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

21 (3) demonstration that the plan is otherwise  
22 in the public interest.

23 ~~[G-]~~ I. By July 1, 2020, and each July 1  
24 thereafter, a public utility shall file a renewable energy  
25 standard report to the commission on the public utility's

1 procurement and generation of renewable energy since the last  
2 report and a procurement plan that includes:

3 (1) the cost of procurement for new renewable  
4 energy required to comply with the renewable portfolio  
5 standard;

6 (2) the capital, operating and fuel costs on a  
7 per-megawatt-hour basis during the preceding calendar year of  
8 each nonrenewable generation resource rate-based by the  
9 utility, or dedicated to the utility through a power purchase  
10 agreement of one year or longer, and the nonrenewable  
11 generation resources' carbon dioxide emissions on a per-  
12 megawatt-hour basis during that same year;

13 (3) information, including exhibits, as  
14 applicable, that demonstrates that the proposed procurement:

15 (a) was the result of competitive  
16 procurement that included opportunities for bidders to propose  
17 purchased power, facility self-build or facility build-transfer  
18 options;

19 (b) has a cost that is reasonable as  
20 evidenced by a comparison of the price of electricity from  
21 renewable energy resources in the bids received by the public  
22 utility to recent prices for comparable energy resources  
23 elsewhere in the southwestern United States; and

24 (c) is in the public interest,  
25 considering factors such as overall cost and economic

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1 development opportunities; and

2 (4) strategies used to minimize costs of  
3 renewable energy integration, including location, diversity,  
4 balancing area activity, demand-side management and load  
5 management.

6 [~~H.~~] J. The commission shall approve or modify a  
7 public utility's procurement plan within ninety days and may  
8 approve the plan without a hearing, unless a protest is filed  
9 that demonstrates to the commission's reasonable satisfaction  
10 that a hearing is necessary. The commission may modify a plan  
11 after notice and hearing. The commission may, for good cause,  
12 extend the time to approve a procurement plan for an additional  
13 ninety days. If the commission does not act within the ninety-  
14 day period, the procurement plan is deemed approved.

15 [~~F.~~] K. The commission may reject a procurement  
16 plan if, within forty days of filing, the commission finds that  
17 the plan does not contain the required information and, upon  
18 the rejection, shall provide the public utility the time  
19 necessary to file a revised plan; provided that the total  
20 amount of renewable energy required to be procured by the  
21 public utility shall not change."

22 SECTION 3. EFFECTIVE DATE.--The effective date of the  
23 provisions of this act is January 1, 2024.