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## FISCAL IMPACT REPORT

SPONSOR Hamblen LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 2/18/23  
BILL  
SHORT TITLE Renewable Portfolio Standard Calculation NUMBER Senate Bill 326  
ANALYST J. Torres

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			
<b>Total</b>						

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent version of this legislation.

Relates to and may conflict with Senate Bill 266.

### Sources of Information

LFC Files

#### Responses Received From

Energy Minerals and Natural Resources Department (EMNRD)

Public Regulation Commission (PRC)

## SUMMARY

### Synopsis of Senate Bill 326

Senate Bill 326 (SB326) modifies Section 62-16-5(B)(1)(b) NMSA 1978 of the Renewable Energy Act to allow net-metered generation sources (excess solar or wind energy generated by a utility customer that is sent back to the grid) to factor into utility retail sales when calculating the utility's compliance with renewable portfolio standard targets. The bill's modification awards ownership of the renewable energy certificate ("REC") to the public utility: "in the determination of total retail sales for the purposes of calculating the renewable portfolio standard" under Section 62-16-5(A) NMSA 1978. This determination is made regardless of whether the REC was purchased by the utility, delivered to the utility, or consumed behind-the-meter by the generator. The bill, therefore, allows the utility to calculate the entire generator electric consumption, regardless of offsetting net-metered renewable energy, in determining the public utility's renewable portfolio standard (RPS) compliance.

The effective date of this bill is July 1, 2023.

## FISCAL IMPLICATIONS

Neither EMNRD nor PRC noted a fiscal impact. The impact on utilities and their customers is unknown.

## SIGNIFICANT ISSUES

EMNRD states:

Renewable portfolio standards (RPS) are a policy tool to encourage decarbonization of the state’s electricity supply through a series of utility retail sales targets. In New Mexico, the state’s investor-owned utilities are on the following schedule:

By 2020, at least 20% of retail sales must be from renewable energy
By 2025, at least 40% of retail sales must be from renewable energy
By 2030, at least 50% of retail sales must be from renewable energy
By 2040, at least 80% of retail sales must be from renewable energy
By 2045, 100% of retail sales must be from zero carbon resources

The state’s rural electric cooperatives are on the following schedule, provided that the targets are “technically feasible,” do not impact reliability, and can be achieved affordably.

By 2020, at least 10% of retail sales must be from renewable energy
By 2025, at least 40% of retail sales must be from renewable energy
By 2030, at least 50% of retail sales must be from renewable energy
By 2050, 100% of retail sales must be from zero carbon resources

Net metering is a type of utility billing and metering structure where a customer who generates more power than they consume (for example, a customer who has solar panels on their house in the middle of a sunny day in July) to be compensated for providing the larger electric grid with their excess power. The customer is billed for their “net” energy use, i.e. the total of their draws on the grid minus their supply to the grid.

Currently in New Mexico’s RPS statutes, net-metered generation is factored into utility retail sales as a reduction in the total sales denominator (i.e., it reduces the amount of total sales a utility has, because the customer-generated energy reduces the amount of energy the customer would have otherwise purchased from the utility). SB326 would amend the law to allow utilities to count energy generated by a qualifying net-metered generation facility toward the calculation of the *numerator*—the amount of sales derived from renewable energy, if the utility owns the renewable energy certificate (REC) associated with the energy generated by the qualifying net-metered generation facility.

An extremely simplified example follows:

- A utility sells 100 MW of electricity, of which 25 MW are renewable. An additional 5 MW of net-metered renewable generation is provided to the electric grid.
  - **Percentage of renewable energy under current law:**  $25/(100-5) = 25/95 = 26.32\%$  renewable
  - **Percentage of renewable energy under SB326:**  $(25+5)/100 = 30/100 =$

30% renewable

New Mexico does not have a mechanism for valuing renewable energy certificates for behind-the-meter distributed generation. Generally, by owning an REC, a utility is able to count on a regular and consistent flow of electrons to the grid. Behind-the-meter generation, the kind which is commonly net-metered, is built for the customer first and foremost, with surplus periodically back-flowing to the grid—but that surplus is not guaranteed. While SB326 may make the RPS calculations turn out more positively for utilities, the practical problem of securing reliable and consistent renewable energy supply for the good of the entire grid may not be improved.

PRC states:

The amendment to Section 62-16-5(B)(1)(b) may create an inconsistency with Section 62-16-4(A) which requires that, for RECs to be retired for RPS compliance, the associated renewable energy shall be “delivered” to the public utility and “assigned” to NM customers: *“A public utility shall meet the renewable portfolio standard requirements, as provided in this section, to include renewable energy in its electric energy supply portfolio as demonstrated by its retirement of renewable energy certificates; provided that the associated renewable energy is **delivered** to the public utility and assigned to the public utility's New Mexico customers.”* (bold added for emphasis).

However, a generator of renewable energy who is also a qualifying facility as defined by [Public Utility Regulatory Policies Act] PURPA and who is net-metered with the public utility may simultaneously generate renewable energy as it consumes that renewable energy behind-the-meter. In such case, the renewable energy could not be “delivered” to the public utility as required by Section 62-16-4(A). SB326, by amending Section 62-16-5(B)(1)(b) but not changing the “delivered” language in Section 62-16-4(A) may only newly award ownership of RECs to the public utility that the public utility may not then be able to use for RPS compliance due to not being “delivered” to the public utility. That might create an RPS compliance nullity which does not appear to be the intent of SB326. SB326’s creation of this conflict between Sections 62-16-4(A) and 62-16-5(B)(1)(b) will spawn litigation before the Commission and may likely spawn litigation before the New Mexico Supreme Court.

SB326 contains language that *could* carry double meaning and create fundamental issues. The language at issue reads, “All of the energy consumed on site by the qualifying facility will be included in the determination of total retail sales for the purposes of calculating the renewable portfolio standard.” It is unclear if this language means that all of a customer’s consumption will be credited to the public utility’s RPS compliance burden or simply to its total retail sales. If it means that it is calculated simply to its total retail sales, then no major issue may result by its implementation. However, if it means that all of a customer’s consumption is calculated as part of the public utility’s RPS compliance burden, that is, part of calculating the public utility’s RPS percentage, then it creates a fundamental issue of potentially counting non-renewable energy as renewable energy for RPS compliance (because a distributed generation customer may consume more electricity than just the renewable energy it generates).

SB326 would alter the existing property rights scheme for RECs that has existed since the

passage of the Renewable Energy Act. RECs that currently and historically have been owned by the public utility’s customers would change ownership hands to the public utility. This may result in a “taking” that implicates the Constitutional rights of the public utility’s customers.<sup>1</sup> Takings are permitted when just compensation is provided and the taking is for a public use. SB326 provides no compensation to customers, and the usage of the RECs would be for the private benefit of the public utility to sell on the open market or to attempt to retire for regulatory compliance.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB326 conflicts with SB266, which requires public utilities to retire an increasing amount of RECs produced by retail distributed generation customers, by amending the same section of law.

## **OTHER SUBSTANTIVE ISSUES**

PRC states:

SB326 appears to be a legislative response to the Public Regulation Commission’s recent rulemaking in Case No. 20-00158-UT, in which the commission adopted the following rule language that permitted the public utility to claim ownership of only the RECs associated with excess production by a net metered qualifying facility:

- (3) for any REC that a public utility claims to own pursuant to the exceptions stated in Sub-paragraphs (a), (b), and (c) of Paragraph (1) of Subsection B of Section 62-16-5 NMSA 1978, the public utility shall have purchased the associated renewable energy. In the case of qualifying facilities that are net metered pursuant to 17.9.570.10 NMAC, only the excess net energy delivered from the qualifying facility to the utility shall be deemed to be purchased by the utility for the purposes of this Rule, unless a different purchasing scheme is permitted in a specific agreement or contract pursuant to Sub-paragraphs (a) and (c) of Paragraph (1) of Subsection B of Section 62-16-5 NMSA 1978.

The commission would need to open a new rulemaking docket to consider revisions to the above-quoted language if SB326 were to become law. SB326 would reduce the amount of RECs that public utilities need to produce or acquire to comply with the RPS.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

PRC states:

Status quo - generators of renewable energy who are also qualifying facilities as defined by PURPA and who are net-metered with the public utility, such as distributed generation customers, would retain ownership of the RECs produced by their systems, with the exception of the RECs that correspond to the associated renewable energy that the public utility purchases from the customers, i.e. the excess net metered energy, for which ownership would transfer to the public utility pursuant to Section 62-16-5(B)(1)(b).

JT/rl/hg/al

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<sup>1</sup> New Mexico Constitution Article II, Section 18: “No person shall be deprived of life, liberty or property without due process of law.”