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AN ACT

RELATING TO UTILITIES; AMENDING A SECTION OF THE RENEWABLE ENERGY ACT TO EXEMPT FROM CHARGES BY A UTILITY FOR RENEWABLE ENERGY PROCUREMENTS CERTAIN EDUCATIONAL INSTITUTIONS IN ARTICLE 12, SECTION 11 OF THE CONSTITUTION OF NEW MEXICO IF THE INSTITUTION HAS CONSUMPTION EXCEEDING TWENTY MILLION KILOWATT-HOURS PER YEAR AT ANY SINGLE LOCATION OR FACILITY AND OWNS RENEWABLE ENERGY GENERATION.

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

SECTION 1. Section 62-16-4 NMSA 1978 (being Laws 2004, Chapter 65, Section 4, as amended) is amended to read:

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

A. A public utility shall meet the renewable portfolio standard requirements, as provided in this section, to include renewable energy in its electric energy supply portfolio. Requirements of the renewable portfolio standard are:

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

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

(b) no later than January 1, 2011,

1 renewable energy shall comprise no less than ten percent of
2 each public utility's total retail sales to New Mexico
3 customers;

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

8 (d) no later than January 1, 2020,
9 renewable energy shall comprise no less than twenty percent
10 of each public utility's total retail sales to New Mexico
11 customers;

12 (2) the renewable portfolio standard
13 established by this section shall be reduced, as necessary,
14 to provide for the following specific procurement
15 requirements for nongovernmental customers at a single
16 location or facility, regardless of the number of meters at
17 that location or facility, with consumption exceeding ten
18 million kilowatt-hours per year. On and after
19 January 1, 2006, the kilowatt-hours of renewable energy
20 procured for these customers shall be limited so that the
21 additional cost of the renewable portfolio standard to each
22 customer does not exceed the lower of one percent of that
23 customer's annual electric charges or forty-nine thousand
24 dollars (\$49,000). This procurement limit criterion shall
25 increase by one-fifth percent or ten thousand dollars

1 (\$10,000) per year until January 1, 2011, when the
2 procurement limit criterion shall remain fixed at the lower
3 of two percent of that customer's annual electric charges or
4 ninety-nine thousand dollars (\$99,000). After
5 January 1, 2012, the commission may adjust the
6 ninety-nine-thousand-dollar (\$99,000) limit for inflation.
7 Nothing contained in this paragraph shall be construed as
8 affecting a public utility's right to recover all reasonable
9 costs of complying with the renewable portfolio standard,
10 pursuant to Section 62-16-6 NMSA 1978. The commission may
11 authorize deferred recovery of the costs of complying with
12 the renewable portfolio standard, including carrying charges;

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

1 annual electricity charges to continue to develop within
2 twenty-four months customer-owned renewable energy
3 generation. That customer shall also certify that it will
4 retire all renewable energy certificates associated with the
5 energy produced from that expenditure;

6 (4) the renewable portfolio shall be
7 diversified as to the type of renewable energy resource,
8 taking into consideration the overall reliability,
9 availability, dispatch flexibility and cost of the various
10 renewable energy resources made available by suppliers and
11 generators;

12 (5) upon a commission motion or application
13 by a public utility, the commission shall open a docket to
14 provide appropriate performance-based financial or other
15 incentives to encourage public utilities to acquire renewable
16 energy supplies that exceed the applicable annual renewable
17 portfolio standard set forth in this section. The commission
18 shall initiate rules by June 1, 2008 to implement this
19 subsection; and

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

24 B. If a public utility finds that, in any given
25 year, the 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 cost; provided that the existence of
6 this condition excusing performance in any given year shall
7 not operate to delay the annual increases in the renewable
8 portfolio standard in subsequent years. When a public
9 utility can generate or procure renewable energy at or below
10 the reasonable cost threshold, it shall be required to add
11 renewable energy resources to meet the renewable portfolio
12 standard applicable in the year when the renewable energy
13 resources are being added.

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

24 (1) the price of renewable energy at the
25 point of sale to the public utility;

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

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

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

10 (5) other factors, including public
11 benefits, that the commission deems relevant; provided that
12 nothing in the Renewable Energy Act shall be construed to
13 permit regulation by the commission of the production or sale
14 price at the point of production of the renewable energy.

15 D. By September 1, 2007 and July 1 of each year
16 thereafter until 2022, and thereafter as determined necessary
17 by the commission, a public utility shall file a report to
18 the commission on its procurement and generation of renewable
19 energy during the prior calendar year and a procurement plan
20 that includes:

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

24 (2) testimony and exhibits that demonstrate
25 that the proposed procurement is reasonable as to its terms

1 and conditions considering price, availability,
2 dispatchability, any renewable energy certificate values and
3 diversity of the renewable energy resource; or

4 (3) demonstration that the plan is otherwise
5 in the public interest.

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

16 F. The commission may reject a procurement or
17 transitional procurement plan if it finds that the plan does
18 not contain the required information and, upon the rejection,
19 may suspend the public utility's obligation to procure
20 additional resources for the time necessary to file a revised
21 plan; provided that the total amount of renewable energy to
22 be procured by the public utility shall not change.

23 G. A public utility may file a transitional
24 procurement plan requesting that the commission determine
25 that the costs of renewable energy resources that the public

1 utility has committed to, or may commit to, prior to the
2 commission's establishing a reasonable cost threshold, are
3 reasonable and recoverable pursuant to Section 62-16-6 NMSA
4 1978. The requirements of annual procurement plan filings
5 shall be applicable to any transitional procurement plan
6 filing pursuant to this section.

7 H. The commission shall determine if it is in the
8 public interest for the commission to provide appropriate
9 performance-based financial or other incentives to encourage
10 public utilities to acquire renewable energy supplies in
11 amounts that exceed the requirements of the renewable
12 portfolio standard." _____

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