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SENATE BILL 489

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

INTRODUCED BY

Jacob R. Candelaria and Nathan P. Small

AN ACT

RELATING TO PUBLIC UTILITIES; ENACTING THE ENERGY TRANSITION
ACT; AUTHORIZING CERTAIN UTILITIES THAT ABANDON CERTAIN
GENERATING FACILITIES TO ISSUE BONDS PURSUANT TO A FINANCING
ORDER ISSUED BY THE PUBLIC REGULATION COMMISSION; PROVIDING
PROCEDURES FOR REHEARING AND JUDICIAL REVIEW; PROVIDING FOR THE
TREATMENT OF ENERGY TRANSITION BONDS BY THE COMMISSION;
CREATING SECURITY INTERESTS IN CERTAIN PROPERTY; PROVIDING FOR
THE PERFECTION OF INTERESTS IN CERTAIN PROPERTY; EXEMPTING
ENERGY TRANSITION CHARGES FROM FRANCHISE AND CERTAIN OTHER
GOVERNMENT FEES; PROVIDING FOR NONIMPAIRMENT OF ENERGY
TRANSITION CHARGES AND BONDS; PROVIDING FOR CONFLICTS IN LAW;
PROVIDING THAT ACTIONS TAKEN PURSUANT TO THE ENERGY TRANSITION
ACT SHALL NOT BE INVALIDATED IF THE ACT IS HELD INVALID;
REQUIRING THE PUBLIC REGULATION COMMISSION TO APPROVE
PROCUREMENT OF ENERGY STORAGE SYSTEMS; PROVIDING NEW

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1 REQUIREMENTS AND TARGETS FOR THE RENEWABLE PORTFOLIO STANDARD
2 FOR RURAL ELECTRIC COOPERATIVES AND PUBLIC UTILITIES; CREATING
3 THE ENERGY TRANSITION ECONOMIC DEVELOPMENT ASSISTANCE FUND AND
4 THE ENERGY TRANSITION DISPLACED WORKER ASSISTANCE FUND;
5 AMENDING CERTAIN DEFINITIONS IN THE RENEWABLE ENERGY ACT;
6 REQUIRING THE HIRING OF APPRENTICES FOR THE CONSTRUCTION OF
7 FACILITIES THAT PRODUCE OR PROVIDE ELECTRICITY; REQUIRING THE
8 ENVIRONMENTAL IMPROVEMENT BOARD TO PROMULGATE RULES TO LIMIT
9 CARBON DIOXIDE EMISSIONS OF CERTAIN ELECTRIC GENERATING
10 FACILITIES.

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

18 A. "adjustment mechanism" means a formula-based
19 calculation used to make adjustments to the energy transition
20 charges that are necessary to correct for any over-collection
21 or under-collection of the energy transition charges, to
22 provide for the timely and complete payment of scheduled
23 principal and interest on energy transition bonds and the
24 payment and recovery of other financing costs in accordance
25 with a financing order;

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

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

15 D. "commission" means the public regulation
16 commission;

17 E. ~~"competitively procured replacement resources" means~~
replacement resources selected by a qualifying utility from the results of
a request for proposals and bid evaluation process determined by the
commission to be reasonable in scope, competitively fair as to ownership
of replacement resources and otherwise reasonable and consistent with
the objective of identifying the most cost-effective portfolio of resources
to supply the energy needs of customers of the qualifying facility.

18
19 F. "electric delivery service" means transmission,

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20 distribution, generation, energy or any other service from a
21 qualifying utility pursuant to commission-approved rate
22 schedules or special contracts;

23 ~~G.~~ "energy transition bond" means a bond or other
24 evidence of indebtedness or ownership that is issued by a
25 qualifying utility or an assignee pursuant to a financing
26 order, the proceeds of which are secured by or payable from
27 energy transition property and that are non-recourse to the

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1 qualifying utility;

2 ~~H.~~ "energy transition charge" means a non-
3 bypassable charge paid by all customers of a qualifying utility
4 for the recovery of energy transition costs;

~~I.~~ "energy transition cost" means the sum of all costs
determined by the PRC to be prudent and reasonable including::

- 5 (1) financing costs;
- 6 (2) abandonment costs, which for a qualifying
7 generating facility shall not exceed the lower of three hundred
8 seventy-five million dollars (\$375,000,000) or one hundred
9 fifty percent of the undepreciated investment in a qualifying
10 generating facility being abandoned, as of the date of the
11 abandonment and may include:

12 (a) up to thirty million dollars
13 (\$30,000,000) per qualifying generating facility in costs not
14 previously collected from the qualifying utility's customers
15 for plant decommissioning and mine reclamation costs, subject
16 to any limitations ordered by the commission prior to January
17 1, 2019 and affirmed by the New Mexico supreme court prior to
18 the effective date of the Energy Transition Act, associated
19 with the abandoned qualifying generating facility. If a financing
order is approved by the PRC in accordance with this Act a qualifying utility shall not
be allowed to recover from customers plant decommissioning and mine reclamation
costs in any amount in addition to the amount authorized in § H (2) (a) in any future
proceeding ;

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Commented [A1]: If PNM does not like this addition because it knows that there are at least \$224M in projected liabilities for reclamation and decommissioning (as testified to in 16-00276) then delete this section entirely until the PRC has had a chance to obtain accurate contemporaneous amounts.

20 (b) up to twenty million dollars
21 (\$20,000,000) per qualifying generating facility in costs for
22 severance and job training for employees losing their jobs as a
23 result of an abandoned qualifying generating facility and any
24 associated mine that only services the abandoned qualifying

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1 generating facility;

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

7 (d) other undepreciated investments in a
8 qualifying generating facility incurred to comply with law,
9 whether established by statute, court decision or ~~rule~~;

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

13 (4) payments required pursuant to Section
16
14 of the Energy Transition Act;

15 ~~J.~~ "energy transition property" means the rights
16 and interests of a qualifying utility or an assignee under a
17 financing order, including the right to impose, charge, collect
18 and receive energy transition charges in an amount necessary to
19 provide for full payment and recovery of all energy transition
20 costs identified in the financing order, including all revenues
21 or other proceeds arising from those rights and interests;

22 ~~K.~~ "energy transition revenues" means revenues

Commented [A2]: To allow the utility to decide what are necessary costs without PRC oversight is a license to spend and gold plate.

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<#>necessary to maintain the safe and reliable operation of the
<#>qualifying generating facility prior to the facility's
abandonment

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1 collected by or on behalf of a qualifying utility through an
2 energy transition charge;
3 ~~1.~~ "financing cost" means the cost incurred by the
4 qualifying utility or an assignee to issue and administer
5 energy transition bonds, including:
6 (1) reasonable commission expenses
7 incurred for
8 contract legal, counsel and an independent financial advisor,
9 with substantial experience representing regulatory bodies in
10 securitized investor-owned electric utility bond transactions
11 similar to energy transition bonds to provide advice and
12 assistance to commission staff in reviewing an application for
13 a financing order, drafting a financing order, and the
14 structuring, marketing and pricing of the
15 energy transition bonds;
16 (2) principal, interest, acquisition,
17 defeasance and redemption premiums that are payable on energy
18 transition bonds;
19 (3) any payment required under an ancillary
20 agreement and any amount required to fund or replenish a
21 reserve account or other account established under any
22 indenture, ancillary agreement or other financing document
23 relating to the energy transition bonds;
24 (4) any costs, fees and expenses related to
25 issuing, supporting, repaying, servicing and refunding energy
transition bonds, the application for a financing order,
including related state board of finance expenses, or obtaining
an order approving abandonment of a qualifying generating

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Deleted: not to exceed three hundred thousand dollars (\$300,000),

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Commented [A4]: INSERT FROM SB492 To protect ratepayers COMMISSION must be allowed to determine what resources it needs in similar manner as utility as it does in all other proceedings

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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 ~~M.~~ "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 ~~N.~~ "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 ~~Q.~~ "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;

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9 ~~P.~~ "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;

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12 ~~Q.~~ "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;

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20 ~~R.~~ "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;

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25 ~~S.~~ "public utility" means "public utility" as used

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

20 SECTION 3. [NEW MATERIAL] LOCATION OF RESOURCE
21 DEVELOPMENT AFTER ABANDONMENT.--

22 A. For a qualifying utility that abandons a

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Commented [A6]: I'm concerned about Four Corners for 2 reasons: 1) I think we need to see how New Mexicans do with this bill and its (un)intended consequences before we add Four Corners Power plant to this securitization effort. It is the prudent thing to do. 2) The PRC has already ruled that PNM's life extension of and investment in Four Corners power plant was imprudent and in the next rate case it will determine the extent of cost disallowance. The law is that only prudently incurred expenses should be allowed. PNM did NO contemporaneous financial evaluation before its reinvestment in coal.

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<#>prior to the effective date of the Energy Transition Act, is to
<#>be abandoned prior to January 1, 2032; and
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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
approval of competitively procured replacement resources provided

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~~that a qualifying utility's competitive procurement process for replacement resources shall
not prevent bidders from proposing, or the qualifying utility from considering, a resource
owned by an independent power producer provided pursuant to a purchased power
agreement at a site owned or controlled by the qualifying utility unless the qualifying
utility shows the commission that it would not be feasible for it to lease or transfer
ownership or control of the site to an independent power producer for the term of such an
agreement for reasonable compensation.~~

4 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 utility

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~~shall provide to bidders the average pay and benefits so that
independent power producers may fairly compete with the utility
in advance of the bidding process.~~ The

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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. In any competitive procurement
process of replacement resources the qualifying utility shall

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disclose to all interested bidders all information necessary for the independent power producers to address the ranking criteria set forth in section 3.

Commented [A7]: This affords fair and transparent procurement practices for all.

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.

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1 D. The commission shall grant all necessary
2 approvals for replacement resources that are competitively
3 procured.

4 E. Replacement resources shall be subject to local
5 property taxes or a binding commitment to make an equivalent
6 payment in lieu of taxes.

7 F. As used in this section, "replacement resources"
8 means up to four hundred fifty megawatts of nameplate capacity

9 identified by the qualifying utility as replacement for the San
10 Juan generating facility, and may include supply side renewable
11 energy, energy storage and conventional resources, that the
12 qualifying utility demonstrates to the commission is a result
13 of a competitive procurement process and is necessary to
14 replace the capacity of a qualifying generating facility in
15 order to provide cost effective, efficient and reliable service
16 to its customers and are in

17 the public interest as determined by the commission; there shall
18 be a preference to locate replacement resources in the
19 school district in New Mexico where the abandoned facility is
20 located.

SECTION 3.5. [NEW MATERIAL] - COST RECOVERY WITHOUT
21 ENERGY TRANSITION BONDS.-- To the extent a qualifying utility
22 fails to recover energy transition costs through the issuance
23 of energy transition bonds, the portion of energy transition
24 costs that may be recovered from customers shall be determined
25 by the commission based on generally applicable ratemaking
26 principles, including the extent to which components of the
27 qualifying generating facility continue to be used and useful.

28 SECTION 4. [NEW MATERIAL] FINANCING ORDER--APPLICATION
29 CONTENTS--PENDING APPLICATIONS.--

30 A. A qualifying utility that is abandoning a
31 qualifying generating facility may apply to the commission for
32 a financing order pursuant to this section to recover all of

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<#>commission may determine that the particular resource proposed
<#>by the qualifying utility should not be approved and that,
<#>instead, an alternative replacement resource that meets the
<#>conditions of this section should be approved. The commission
<#>shall not disallow recovery of reasonable costs necessary to
<#>comply with the locational directives provided in Subsection A
of this section.

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qualifying

Commented [A8]: If you don't specify San Juan here then this bill permits 450 MW for FCPP - and PNM only has 200 MW there and this would encourage overbuilding.

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the public interest as determined by the commission

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Commented [A10]: This new section seeks to ensure that PNM uses securitization if SB489 passes. Right now it is still optional. They say they intend but could change mind and still get 100% recovery. This says if don't use securitization it goes back to PRC. If get 100%, then must use securitization.

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

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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)

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16
17 a commitment by the qualifying utility to
18 file with the commission following the issuance of the energy

Commented [A11]:Unnecessary handled in financing order process

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Deleted: a securities firm, such firm to be attested to by the state

Deleted: board of finance as being experienced in the marketing of bonds

Deleted: and capable of providing such a memorandum, that the proposed

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<#>equivalent rating criteria of at least one nationally
<#>recognized statistical rating organization for issuances
<#>similar to the proposed energy transition bonds with latest scheduled maturities of 20 years or longer.
Upon a qualifying utility agreeing to pay the reasonable cost of such a memorandum, Tthe request
<#>for such attestation may be made by a qualifying utility prior
<#>to an application for a financing order, and the state board of

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(6)→

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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 (6) an estimate of timing of the issuance and
10 term of the energy transition bonds, or series of bonds;
11 provided that the scheduled maturity for each bond
12 issuance shall be no longer than ~~thirty years from the issue~~
date;

13 (7) 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 (8) identification of ancillary agreements
23 that may be necessary or appropriate;

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

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Commented [A12]: INSERT From SB492.

Commented [A13]: Longer terms consistent with AAA rating matching existing rate base amortization will lower impact on ratepayer bill depending on interest rates at time of structuring. Statute should give flexibility for maximum ratepayer benefit. These issues will be addressed in financing order as in other states.

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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; and
4 (10) a statement from the qualifying utility
5 committing that the qualifying utility will use its best
6 efforts to obtain the lowest cost objective; and

(11) an estimate of the net present value of qualifying utility customer savings expected to result if the proposed energy transition bonds are issued, as determined by a comparison between the costs to customers that are expected to result from the financing with energy transition bonds and the costs that would result from the application of traditional electric utility financing mechanisms for the same purposes, using the qualifying utility's pre-tax weighted average cost of capital as a discount rate, and assuming the same level of abandonment costs are paid from proceeds of traditional electric utility financing mechanisms.

7 C. The application may include requests for
8 approvals for new resources necessitated by the abandonment of
9 a qualifying generating facility.

10 D. The qualifying utility or the commission may
11 defer applications for needed approvals for new resources to a
12 separate proceeding; provided that the application identifies
13 adequate potential new resources sufficient to provide
14 reasonable and proper service to retail customers.

15 E. If an application for approval to abandon a
16 qualifying generating facility is pending before the commission
17 on the effective date of the Energy Transition Act, the
18 qualifying utility may file a separate application for a
19 financing order, and the commission may join or consolidate the
20 application for a financing order with the pending proceeding
21 involving abandonment of the qualifying generating facility,
22 with the consent of the applicant. On such joinder or
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Commented [A14]: RATEPAYER PROTECTION TO ENSURE SAVINGS ARE SHOWN in other state statutes authorizing electric utility securitization commonly require some form of showing of NPV customer savings in the application for a financing order. For example, see: →

•Calif. Public Utilities Code §850.1(a)(3)(A)(iii): "The issuance of the recovery bonds ... satisfy all of the following conditions: .. The recovery of recovery costs through the designation of the fixed recovery charges and any associated fixed recovery tax amounts, and the issuance of recovery bonds in connection with the fixed recovery charges, would **reduce, to the maximum extent possible, the rates on a present value basis that consumers within the electrical corporation's service territory would pay as compared to the use of traditional utility financing mechanisms,** which shall be calculated using the electrical corporation's corporate debt and equity in the ratio approved by the commission at the time of the financing order."

•California Public Utilities Code §848.1(a): "The recovery corporation shall in its application specify that consumers within its service territory would benefit from reduced rates on a present value basis through the issuance of recovery bonds. The commission shall designate fixed recovery amounts and any associated fixed recovery tax amounts as recoverable in one or more financing orders if the commission determines, as part of its findings in connection with the financing order, that the designation of the fixed recovery amounts and any associated fixed recovery tax amounts, and the issuance of recovery bonds in connection with fixed recovery amounts, would **reduce the rates on a present value basis that consumers within the recovery corporation's service territory would pay if the financing order were not adopted.**"

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23 consolidation, the time periods prescribed by the Energy
24 Transition Act shall become applicable to the joined or
25 consolidated case as of the date of the joinder or

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1 consolidation.

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

5 A. The commission may approve an application for a
6 financing order without a formal hearing if no protest
7 establishing good cause for a formal hearing is filed within
8 thirty days of the date when notice is given of the filing of
9 the application for the financing order. If a hearing is held,
10 the commission shall issue an order granting or denying the
11 application for the financing order to a qualifying utility
12 that is abandoning a qualifying generating facility and an
13 order on an accompanying application of the qualifying utility
14 for approval to abandon the qualifying generating facility
15 within six months from the date the application for the
16 financing order is filed with the commission. For good cause
17 shown, the commission may extend the time for issuing the order
18 for an additional three months.

19 B. Failure to issue a financing order within the
20 time prescribed by subsection A of this section shall be deemed
21 approval of the application for a financing order and approval
22 to abandon the qualifying generating facility, if abandonment
23 approval was requested as part of the application for the
24 financing order pursuant to this subsection. The commission
25 shall issue an order acknowledging the deemed approvals within

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1 seven days of the expiration of the time period described in
2 Subsection A of this section.

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

10 D. The issuance of a financing order shall be the
11 only approval required for the authority granted in the
12 financing order.

E. In addition to other powers and duties of the
commission:

(1) the commission shall perform comprehensive
due diligence in its evaluation of an application for a
financing order and shall oversee the process used to
structure, market and price the securitization bonds;

(2) the commission may attach such conditions to
the approval of a financing order as the commission deems
appropriate to maximize the financial benefits or minimize the
financial risks of the transaction to customers and to directly
impacted New Mexico workers and communities;

(3) the commission may specify details of the
process used to structure, market and price energy transition
bonds, including selection of the underwriter or underwriters;

(4) the commission shall review and determine the
reasonableness of all proposed up-front and ongoing financing
costs; and

(5) the commission shall ensure that the
structuring, marketing and pricing of energy transition bonds
optimizes net present value customer savings, consistent with
market conditions and the terms of the financing order.

13 F. The commission shall issue a financing order
14 approving the application if the commission finds that the
15 qualifying utility's application for the financing order
16 complies with the requirements of Section 4 and Subsection E of
this Section 5 of the Energy

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17 Transition Act. If the commission finds that a qualifying
18 utility's application does not comply with section 4 or
Subsection E of this section 5 of the
19 Energy Transition Act, the commission shall advise the
20 qualifying utility of any changes necessary to comply with that
21 section and provide the applicant an opportunity to amend the
22 application to make such changes. Upon those changes being
23 made, the commission shall issue a financing order approving
24 the application.

25 F. A financing order shall include the following

1 provisions:

2 (1) approval for the qualifying utility or
3 assignee to issue energy transition bonds as requested in the
4 application, to use energy transition bonds to finance the
5 maximum amount of the energy transition costs as requested in
6 the application, as may be adjusted pursuant to Paragraph (6)
7 of Subsection B of Section 4 of the Energy Transition Act, and
8 to use the proceeds provided in Subsection A of Section 10 of
9 the Energy Transition Act;

10 (2) approval for the qualifying utility to
11 recover the energy transition costs, as may be adjusted
12 pursuant to Paragraph (6) of Subsection B of Section 4 of the
13 Energy Transition Act, requested in the application through
14 energy transition charges;

15 (3) approval of the energy transition charges
16 necessary to recover the authorized energy transition costs, to
17 be imposed through a non-bypassable energy transition charge as
18 a separate line item on the qualifying utility's customer
19 bills, assessed consistent with energy and demand cost
20 allocations within each customer class, subject to update
21 pursuant to the notice filing contemplated by Paragraph (6) of
22 Subsection B of Section 4 of the Energy Transition Act and
23 subject to the application of the adjustment mechanism as
24 provided in Section 6 of the Energy Transition Act, until the
25 energy transition bonds issued pursuant to the financing order

1 and the financing costs related to those bonds are paid in
2 full;

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

5 (5) a description of the energy transition
6 property that is created by the financing order that may be
7 used to pay, and secure the payment of, the energy transition
8 bonds and financing costs authorized to be issued in the
9 financing order;

10 (6) approval to enter into necessary or
11 appropriate ancillary agreements;

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

15 (8) approval of the proposed ratemaking
16 process to reconcile and recover or refund any difference
17 between the energy transition costs financed by the energy
18 transition bonds and the actual final energy transition costs
19 incurred by the qualifying utility or the assignee.

20 G. A financing order shall provide that the
21 creation of energy transition property shall be simultaneous
22 with the sale of the energy transition property to an assignee
23 as provided in the application and the pledge of the energy
24 transition property to secure energy transition bonds.

25 H. A financing order shall authorize the qualifying

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1 utility to issue one or more series of energy transition bonds
2 for a ~~latest scheduled maturity~~ of no more than ~~thirty~~
3 years for each series; provided that a ~~legal final~~ maturity may
4 exceed ~~thirty~~ years. With such authorization, the
5 qualifying utility shall not subsequently be required to secure
6 a separate financing order prior to each issuance.

7 I. The commission may require, as a condition of
8 the financing order and in every circumstance subject to the
9 limitations set forth in Subsection A of Section 7 of the
10 Energy Transition Act, that, during any period in which energy
11 transition bonds issued pursuant to the financing order are
12 outstanding, an assignee that is a non-utility affiliate and
13 issues energy transition bonds shall provide in the affiliate's
14 articles of incorporation, partnership agreement or operating
15 agreement, as applicable, that in order for a person to file a
16 voluntary bankruptcy petition on behalf of that assignee, the
17 prior unanimous consent of the directors, partners, managers or
18 members, as applicable, shall be required. Any such provision
19 shall constitute a legal, valid and binding agreement of such
20 shareholders, partners or members of the assignee and is
21 enforceable against such shareholders, partners or members.

22 J. A financing order may require the qualifying
23 utility to file with the commission a periodic report showing
24 the receipt and disbursement of proceeds of energy transition
25 bonds and any other documents necessary for the qualifying

Commented [A16]: SEE COMMENT ABOVE - MUST USE APPROPRIATE TERMS Each energy transition bond will have a scheduled maturity date, and also a legal final maturity date. "Scheduled final maturity" confuses these two separate dates.

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1 utility to implement the financing order. Upon issuance of the
2 energy transition bonds, the qualifying utility shall file an
3 advice notice with the commission, subject to review by the
4 commission for errors and corrections, that identifies the
5 actual energy transition charges to be included on customers'
6 bills, effective fifteen days from the date the advice notice
7 is filed.

8 K. A financing order may authorize the commission
9 to review and audit the books and records of the qualifying
10 utility and of an assignee that is a non-utility affiliate and
11 issues energy transition bonds, relating to energy transition
12 property and the receipt and disbursement of proceeds of energy
13 transition bonds.

14 L. The provisions of this section shall not be
15 construed to limit the authority of the commission to:

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

18 (2) issue such further orders as may be
19 necessary to effectuate the provisions of the Energy Transition
20 Act.

21 SECTION 6. [NEW MATERIAL] ADJUSTMENT MECHANISM--
22 ADJUSTMENT PROCEDURES--HEARING PROCEDURES IF COMMISSION
23 DETERMINES ADJUSTMENT MADE IN ERROR.--

24 A. If the commission issues a financing order, the
25 qualifying utility for which the order is issued may charge all

1 of the qualifying utility's customers an energy transition
2 charge, which shall be allocated to customer classes consistent
3 with the production cost allocation methodology established by
4 the commission in the qualifying utility's most recent general
5 rate case and subsequently reestablished at each general rate
6 case. Energy transition charges shall be assessed, subject to
7 the adjustment mechanism, consistent with the assessments of
8 energy and demand costs within each customer class.

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

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

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

4 C. The qualifying utility shall file the
5 calculations described in subsection B of this section at least
6 quarterly during the two-year period preceding the final
7 maturity date of the energy transition bonds.

8 D. The adjustment mechanism shall remain in effect
9 until the energy transition bonds and all financing costs have
10 been fully paid and recovered, any under-collection is
11 recovered from customers and any over-collection is returned to
12 customers.

13 E. On the same day the qualifying utility files
14 with the commission its calculation of the adjustment to the
15 energy transition charge, the qualifying utility shall cause
16 notice of the filing to be given to the parties of record in
17 the case in which the financing order was issued.

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

21 (1) no later than twenty days from the date
22 the qualifying utility filed the calculation of the adjustment,
23 the commission is notified of a potential mathematical or
24 transcription error in the adjustment; provided that the notice
25 identifies the error with specificity; and

1 (2) the commission determines that the
2 calculation of the adjustment is unlikely to provide for timely
3 payment, or is likely to result in a material overpayment, of
4 scheduled principal of and interest on the energy transition
5 bonds and the payment and recovery of other financing costs in
6 accordance with the financing order and, based on that
7 determination, suspends operation of the adjustment, pending a
8 hearing limited to the issue of the error in the adjustment;
9 provided that the suspension shall be for a period not to
10 exceed sixty days from the date the qualifying utility filed
11 the calculation of the adjustment.

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

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1 energy transition charge shall be deemed approved.

2 H. No adjustment pursuant to this section, and no
3 proceeding held pursuant to this section, shall affect the
4 irrevocability of the financing order pursuant to section 7 of
5 the Energy Transition Act.

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

8 A. A financing order is irrevocable and the
9 commission shall not reduce, impair, postpone or terminate the
10 energy transition charges approved in the financing order, the
11 energy transition property or the collection or recovery of
12 energy transition revenues.

13 B. Subject to the limitation provided in Subsection
14 A of this section, a financing order may be amended at the
15 request of the qualifying utility to commence a proceeding and
16 issue an amended financing order that:

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

23 (2) adjusts the amount of energy transition
24 costs to be financed by energy transition bonds that have not
25 yet been issued to reflect updated estimated or actual costs

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1 that differ from costs estimated at the time of the initial
2 financing order or to correct any errors.

3 C. The commission shall issue an order granting or
4 denying the proposed amended financing order within thirty days
5 of the filing of the request by the qualifying utility. No
6 change in the credit rating of a qualifying utility from the
7 credit rating at the time of issuance of a financing order
8 shall impair the irrevocability of a financing order.

9 SECTION 8. [NEW MATERIAL] AGGRIEVED PARTIES--REQUEST FOR
10 REHEARING--JUDICIAL REVIEW.--

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

22 B. An aggrieved party may file a notice of appeal
23 with the supreme court in accordance with Section 62-11-1 NMSA
24 1978; provided that such notice shall be due no later than
25 twenty calendar days after denial of an application for rehearing or,

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1 if rehearing is not applied for, no later than twenty calendar
2 days after issuance of the financing order. The supreme court
3 shall proceed to hear and determine the appeal as expeditiously
4 as practicable.

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5 SECTION 9. [NEW MATERIAL] CONDITIONS THAT KEEP FINANCING
6 ORDERS IN EFFECT AND ENERGY TRANSITION CHARGES IMPOSED.--

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

10 B. A financing order shall remain in effect and
11 unabated notwithstanding the bankruptcy, reorganization or
12 insolvency of the qualifying utility or any non-utility
13 affiliate or the commencement of any proceeding for bankruptcy
14 or appointment of a receiver.

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

24 (1) receiving electric delivery service from
25 the qualifying utility under commission-approved rate schedules

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1 or special contracts; and

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

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

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

13 B. Energy transition revenues shall be applied
14 solely to the repayment of energy transition bonds and the
15 ongoing financing costs.

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

24 D. For a qualifying utility that receives approval
25 of a financing order, the qualifying utility's generation and
sources of
1 energy procured pursuant to power purchase agreements with a
2 term of twenty-four months or longer, and that are dedicated to
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bonds,

3 serve the qualifying utility's retail customers, shall not
4 emit, on average, more than four hundred pounds of carbon
5 dioxide per megawatt-hour by January 1, 2023, and not more than
6 two hundred pounds of carbon dioxide per megawatt-hour by
7 January 1, 2032 and thereafter. Compliance shall be measured
8 and verified every three years with the first period commencing
9 on January 1, 2023. The commission shall adopt rules to
10 implement the requirements of this subsection.
11

12 SECTION 11. [NEW MATERIAL] COMMISSION TREATMENT OF ENERGY
13 TRANSITION BONDS.--

14 A. If the commission issues a financing order, the
15 commission shall not treat:

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

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

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

22 B. Reasonable actions taken by a qualifying utility
23 to comply with the financing order shall be deemed to be just
24 and reasonable for ratemaking purposes. Nothing in the Energy
25 Transition Act shall:

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1 (1) prevent or preclude the commission from
2 investigating the compliance of a qualifying utility with the
3 terms and conditions of a financing order and requiring
4 compliance therewith;

5 (2) prevent or preclude the commission from
6 imposing regulatory sanctions against a qualifying utility for
7 failure to comply with the terms and conditions of a financing
8 order or the requirements of the Energy Transition Act;

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

12 (4) prevent or preclude the commission from
13 including the qualifying utility's acquisition of replacement
14 power resources in the qualifying utility's cost of service.

15 C. ~~[Except as provided in Subsection D of this
section 11,] the commission shall not order or
require a~~

16 qualifying utility to issue energy transition bonds to finance
17 any costs associated with abandonment of a qualifying

18 generating facility. ~~A utility's decision not to apply for a
financing order,~~

19 ~~shall not be a basis for the commission to~~

20 refuse to allow a qualifying utility to recover energy
21 transition costs in an otherwise permissible fashion, or as a
22 basis to refuse or condition authorization to issue securities
26 pursuant to Sections 62-6-6 and 62-6-7 NMSA 1978.

~~D. If on its own motion or complaint by an affected
person, the commission determines that it is likely that
securitization of energy transition costs associated with a
qualifying generating facility would meet the tests contained
in Section 4 and Section 5 of the Energy Transition Act, the
commission shall require the qualifying utility to file an
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application for a financing order.]

- 1 SECTION 12. [NEW MATERIAL] ENERGY TRANSITION PROPERTY--
- 2 ENERGY TRANSITION REVENUES.--

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1 A. Energy transition property that is created in a
2 financing order shall constitute an existing, present property
3 right, notwithstanding that the imposition and collection of
4 energy transition charges depend on the qualifying utility
5 continuing to provide electric energy or continuing to perform
6 its service functions relating to the collection of energy
7 transition charges or on the level of future energy
8 consumption. Energy transition property shall exist whether or
9 not the energy transition revenues have been billed, have
10 accrued or have been collected and notwithstanding that the
11 value or amount of the energy transition property is dependent
12 on the future provision of electric energy or service to
13 customers by the qualifying utility.

14 B. All energy transition property created in a
15 financing order shall continue to exist until the energy
16 transition bonds issued and all related financing costs
17 pursuant to a financing order are paid in full.

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

21 (1) wholly owned, directly or indirectly, by
22 the qualifying utility; and

23 (2) created for the limited purposes of
24 acquiring, owning or administering energy transition property
25 or issuing energy transition bonds under the financing order.

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1 D. All or any portion of energy transition property
2 may be pledged to secure the payment of energy transition bonds
3 and all financing costs.

4 E. The formation by a qualifying utility of a non-
5 utility affiliate for the limited purpose of acquiring, owning
6 or administering energy transition property or issuing energy
7 transition bonds pursuant to a financing order, and any
8 transfer, sale, conveyance, assignment, grant of a security
9 interest in or pledge of energy transition property by a
10 qualifying utility to a non-utility affiliate, to the extent
11 previously authorized in a financing order, does not require
12 any further approval of the commission and shall not be subject
13 to the rules of the commission regarding Class I transactions
14 and Class II transactions, as defined by Section 62-3-3 NMSA
15 1978, except that the commission may examine the books and
16 records of the non-utility affiliate.

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

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1 the qualifying utility or any non-utility affiliate.

2 G. Energy transition property, energy transition
3 revenues and the interests of an assignee, bondholder or
4 financing party in energy transition property and energy
5 transition revenues are not subject to set-off, counterclaim,
6 surcharge or defense by the qualifying utility or any other
7 person or in connection with the bankruptcy, reorganization or
8 other insolvency or receivership proceeding of the qualifying
9 utility, non-utility affiliate or any other entity.

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

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

21 A. Except as otherwise provided in this section,
22 the creation, perfection and enforcement of a security interest
23 in energy transition property to secure the repayment of the
24 principal of and interest on energy transition bonds, amounts
25 payable pursuant to an ancillary agreement and other financing

1 costs are governed by this section. This section shall be
2 deemed to supersede the provisions of the Uniform Commercial
3 Code and Chapter 62, Article 13 NMSA 1978, to the extent those
4 provisions are inconsistent with this section.

5 B. The description or reference to energy
6 transition property in a transfer or security agreement and a
7 financing statement is sufficient only if the description or
8 reference refers to the Energy Transition Act and the financing
9 order creating the energy transition property. This section
10 applies to all purported transfers of, grants of liens on or
11 security interests in, energy transition property.

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

- 14 (1) the financing order is issued;
15 (2) a security agreement is executed and
16 delivered; or
17 (3) value is received for the energy
18 transition bonds.

19 D. The security interest attaches without any
20 physical delivery of collateral or other act and the lien of
21 the security interest shall be valid, binding and perfected
22 against all parties having claims of any kind against the
23 person granting the security interest, regardless of whether
24 such parties have notice of the lien, on the filing of a
25 financing statement with the secretary of state. The secretary

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1 of state shall maintain the financing statement in the same
2 manner and in the same recordkeeping system maintained for
3 financing statements filed pursuant to the Uniform Commercial
4 Code-Secured Transactions. Financing statements filed pursuant
5 to this section shall be effective until a termination
6 statement is filed.

7 E. A security interest in energy transition
8 property is a continuously perfected security interest and has
9 priority over any other lien that may subsequently attach to
10 the energy transition property unless the holder of the
11 security interest has agreed in writing otherwise.

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

21 G. No order of the commission amending a financing
22 order and no application of the adjustment mechanism shall
23 affect the validity, perfection or priority of a security
24 interest in or transfer of energy transition property.

25 SECTION 14. [NEW MATERIAL] SALE OF ENERGY TRANSITION

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1 PROPERTY--PERFECTING INTERESTS--ABSOLUTE TRANSFER AND TRUE SALE
2 REQUIREMENTS.--

3 A. Any sale, assignment or transfer of energy
4 transition property to an assignee that is a financing entity
5 that is wholly owned, directly or indirectly, by the utility
6 shall be an absolute transfer and true sale of, and not a
7 pledge of or secured transaction relating to, the seller's
8 right, title and interest in, to and under the energy
9 transition property if the documents governing the transaction
10 expressly state that the transaction is a sale or other
11 absolute transfer. A transfer of an interest in energy
12 transition property shall be created when:

13 (1) the financing order creating the energy
14 transition property has become effective;

15 (2) the documents evidencing the transfer of
16 energy transition property have been executed and delivered to
17 the assignee; and

18 (3) value is received.

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

1 that act.

2 C. The characterization of the sale, assignment or
3 transfer as an absolute transfer and true sale, and the
4 corresponding characterization of the property interest of the
5 purchaser, shall not be affected or impaired by:

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

8 (2) the retention by the seller of:

9 (a) a partial or residual interest,
10 including an equity interest, in the energy transition
11 property, whether direct or indirect, or whether subordinate or
12 otherwise; or

13 (b) the right to recover costs
14 associated with taxes or license fees imposed on the collection
15 of energy transition revenues;

16 (3) any recourse that the purchaser may have
17 against the seller;

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

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

22 (6) the treatment of the sale, assignment or
23 transfer of energy transition property for tax, financial
24 reporting or other purposes;

25 (7) any subsequent order of the commission

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1 amending a financing order pursuant to Subsection B of Section
2 7 of the Energy Transition Act;

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

5 (9) anything else that might affect or impair
6 the characterization of the property.

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

13 SECTION 16. [NEW MATERIAL] ENERGY TRANSITION ECONOMIC
14 DEVELOPMENT ASSISTANCE FUND--ENERGY TRANSITION DISPLACED WORKER
15 ASSISTANCE FUND.--

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

22 B. The economic development department shall
23 administer the energy transition economic development
24 assistance fund, and money in the fund is subject to
25 appropriation by the legislature only to that department to

Commented [A22]: We would support a sharing of the burden for transition costs and the importance of including corporate accountability as part of the model being established. Our suggestion is that Section 16, the economic transition fund be changed "Upon the closure and abandonment of a qualifying generating facility located in New Mexico, the qualifying utility shall transfer [x] percent of the proceeds of energy transition bonds to the community "and that will be matched 1:1 by the utility". This way the company has some responsibility to the community for which it has extracted so much wealth for the last (at that time) 50 years. We are also concerned that the Transition Fund NOT be used to solicit the attraction of other companies to keep the coal plant or mine running.

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

4 C. The economic development department shall
5 develop an economic diversification and development plan to
6 assist the affected community that shall provide for the
7 disbursement of money in the energy transition economic
8 development assistance fund. In developing the plan, the
9 economic development department shall establish a public
10 planning process in the affected community to inform the use of
11 money in the fund. The public planning process shall include:

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12 (1) consultation with indigenous community members and tribal
agencies in the affected community according to standards
established in the United Nations Declaration of the Rights of
Indigenous Peoples. The public planning process will include a
participatory budgeting process.

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in the affected community.

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13 Expenditures from the fund shall be made after completion of
14 the plan and as follows:

15 (1) to an entity approved by the economic
16 development department to receive funds for any program
established at or approved for funding by the economic
development department including local renewable energy
development projects specifically targeted for indigenous
communities.

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17 (2) to assist employers to qualify for any tax
18 relief for hiring displaced workers established under state or
19 federal law; and

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

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24

D. The "energy transition displaced worker

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1 assistance fund" is created in the state treasury. The fund
2 shall consist of appropriations, gifts, grants, donations and
3 bequests made to the fund. Income from the fund shall be
4 credited to the fund, and money in the fund shall not revert or
5 be transferred to any other fund at the end of a fiscal year.

6 E. The workforce solutions department shall
7 administer the energy transition displaced worker assistance
8 fund, and money in the fund is subject to appropriation by the
9 legislature only to that department to assist displaced workers
10 in an affected community.

11 F. The workforce solutions department shall develop
12 a displaced worker development plan to assist displaced workers
13 in an affected community that shall provide for the
14 disbursement of money in the energy transition displaced worker
15 assistance fund. In developing the plan, the workforce
16 solutions department shall establish a public planning process
17 in the affected community to inform the use of money in the
25 fund.

The public planning process shall include
(1) consultation with indigenous displaced workers in
accordance with standards established in the United Nations
Declaration of the Rights of Indigenous Peoples.

(2)The public planning process will include a participatory
budgeting process.

1 Expenditures from

2 the fund shall be made after completion of the plan and as
3 follows:

4 (1) to assist employers of displaced workers
5 to qualify for any tax relief established under state or
6 federal law;

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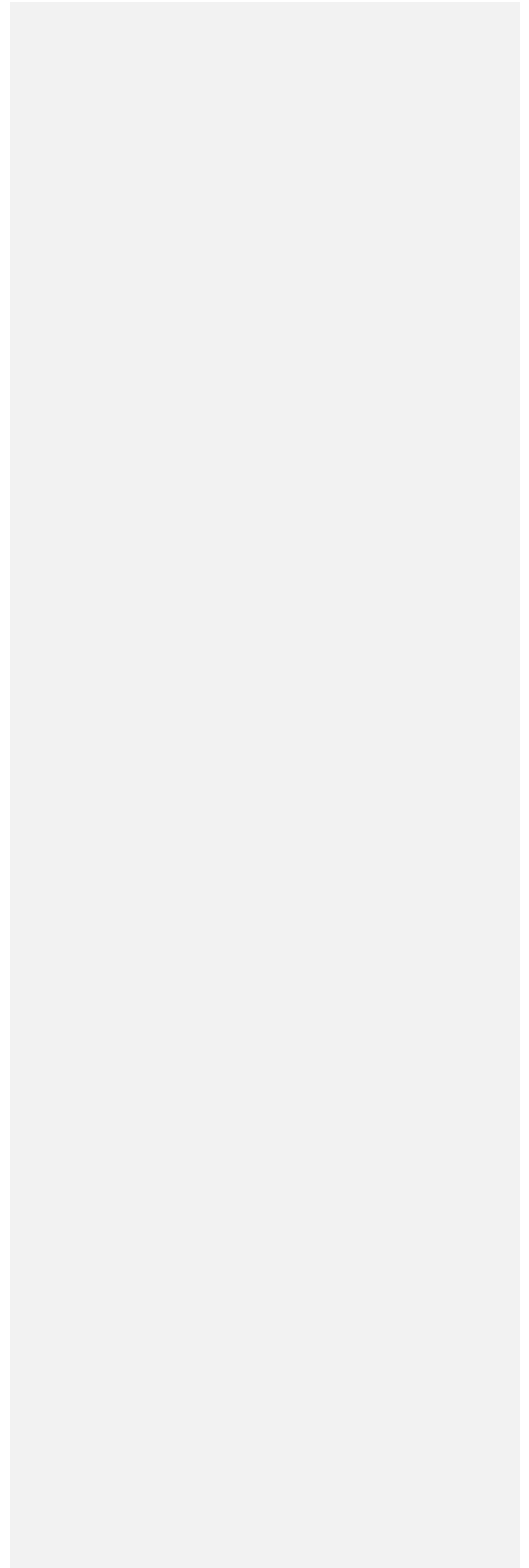
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public meetings in the affected
community.

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(2) to the workforce solutions department:



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

3 (b) for payment of costs associated with
4 displaced workers enrolling and participating in certified
5 apprenticeship programs in New Mexico; and

6 (3) to a municipality, county, Indian nation,
7 pueblo or tribe or tribal college and tribal university or land
grant community in New Mexico for job
8 training and apprenticeship programs for displaced workers or
9 for programs designed to promote economic development in the
10 affected community.

11 G. within thirty days of receipt of energy
12 transition bond proceeds, a qualifying generating facility
13 located in New Mexico shall transfer the following percentages
14 of the financed amount of energy transition bonds as follows:

15 (1) one and sixty-five hundredths percent to
16 the economic development department for deposit in the energy
17 transition economic development assistance fund; and

18 (2) three and eighty-five hundredths percent
19 to the workforce solutions department for deposit in the energy
20 transition displaced worker assistance fund.

21 H. As used in this section:

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

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

3 (a) within the previous twelve months,
4 was terminated from employment, or whose contract was
5 terminated, due to the abandonment of a New Mexico facility
6 producing electricity that resulted in displacing at least
7 forty workers;

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

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

16 (d) does not qualify to take full
17 benefits pursuant to a pension or retirement plan.

18 SECTION 17. [NEW MATERIAL] ENERGY TRANSITION BONDS NOT
19 PUBLIC DEBT.--Energy transition bonds issued pursuant to the
20 Energy Transition Act shall not constitute a debt or a pledge
21 of the faith and credit or taxing power of this state or of any
22 county, municipality or any other political subdivision of this
23 state. __ Bondholders shall have no right to have taxes levied by
24 the legislature or the taxing authority of any county,
25 municipality or other political subdivision of this state for

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1 the payment of the principal of or interest on energy
2 transition bonds. The issuance of energy transition bonds does
3 not obligate the state or a political subdivision of the state
4 to levy any tax or make any appropriation for payment of the
5 principal of or interest on the bonds.

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

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

13 A. The state pledges to and agrees with the
14 Bondholders, any assignee and any financing parties that the
15 state shall not take or permit any action that impairs the
16 value of energy transition property, except as allowed pursuant
17 to Section 6 of the Energy Transition Act, or reduces, alters
18 or impairs energy transition charges that are imposed,
19 collected and remitted for the benefit of the bondholders, any
20 assignee and any financing parties, until the entire principal
21 of, interest on and redemption premium on the energy transition
22 bonds, all financing costs and all amounts to be paid to an
23 assignee or financing party under an ancillary agreement are
24 paid in full and performed in full.

25 B. Any person who issues energy transition bonds is

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1 permitted to include the pledge specified in Subsection A of
2 this section in the energy transition bonds, ancillary
3 agreements and documentation related to the issuance and
4 marketing of the energy transition bonds.

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

12 SECTION 21. [NEW MATERIAL] CONFLICTS.--In the event of
13 any conflict between the Energy Transition Act and any other
14 law regarding the attachment, assignment or perfection, or the
15 effect of perfection, or priority of any security interest in
16 or transfer of energy transition property, the Energy
17 Transition Act shall govern to the extent of the conflict.

18 SECTION 22. [NEW MATERIAL] VALIDITY ON ACTIONS IF ACT
19 HELD INVALID.--Effective on the date that energy transition
20 bonds are first issued under the Energy Transition Act, if any
21 provision of that act is invalidated, superseded, replaced,
22 repealed or expires for any reason, that occurrence shall not
23 affect the validity of any action allowed pursuant to that act
24 that is taken by the commission, a qualifying utility, an
25 assignee or any other person, a collection agent, a financing

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1 party, a bondholder or a party to an ancillary agreement and,
2 to prevent the impairment of energy transition bonds issued or
3 authorized in a financing order issued pursuant to the Energy
4 Transition Act, any such action shall remain in full force and
5 effect with respect to all energy transition bonds issued or
6 authorized in a financing order pursuant to the Energy
7 Transition Act before the date that such provision is held to
8 be invalid or is invalidated, superseded, replaced, repealed or
9 expires for any reason.

10 SECTION 23. ~~[NEW MATERIAL]~~ APPLICABILITY.--The provisions
11 of the Energy Transition Act shall not apply to a qualifying
12 utility that makes an initial application for a financing order
13 more than twelve years after the effective date of that act.
14 This section shall not preclude a qualifying utility for which
15 the commission has issued a financing order from applying to
16 the commission for a subsequent order amending the financing
17 order, pursuant to Section 7 of the Energy Transition Act.

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

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

22 A. The construction of New Mexico facilities that
23 generate electricity for New Mexico retail customers, and that
24 are not located on the customer side of an electricity meter,
25 shall be subject to the requirements provided in Subsection B

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1 of this section if the facilities are built as a result of
2 competitive solicitations issued after July 1, 2020.

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3 B. Subject to availability of qualified applicants,
4 the construction of facilities that generate electricity for
5 New Mexico retail customers shall employ apprentices from an
6 apprenticeship program during the construction phase of a
7 project at a minimum level of the following percentages of all
8 persons employed for the project:

9 (1) ten percent for projects for which on-site
10 construction commences beginning January 1, 2020, and prior to
11 January 1, 2024;

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

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

17 C. Apprenticeship programs used for purposes of
18 this section shall encourage diversity among participants,
19 participation by those underrepresented in the industry
20 associated with that apprenticeship program and participation
21 from disadvantaged communities, as determined by the workforce
22 solutions department. The department shall promulgate rules to
23 ensure compliance with this section.

24 D. As used in this section, "apprenticeship
25 program" means an apprenticeship program registered pursuant to

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1 the Apprenticeship Assistance Act."

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

4 "62-9-1. NEW CONSTRUCTION--RATEMAKING PRINCIPLES.--

5 A. No public utility shall begin the construction
6 or operation of any public utility plant or system or of any
7 extension of any plant or system without first obtaining from
8 the commission a certificate that public convenience and
9 necessity require or will require such construction or
10 operation. This section does not require a public utility to
11 secure a certificate for an extension within any municipality
12 or district within which it lawfully commenced operations
13 before June 13, 1941 or for an extension within or to territory
14 already served by it, necessary in the ordinary course of its
15 business, or for an extension into territory contiguous to that
16 already occupied by it and that is not receiving similar
17 service from another utility. If any public utility or mutual
18 domestic water consumer association in constructing or
19 extending its line, plant or system unreasonably interferes or
20 is about to unreasonably interfere with the service or system
21 of any other public utility or mutual domestic water consumer
22 association rendering the same type of service, the commission,
23 on complaint of the public utility or mutual domestic water
24 consumer association claiming to be injuriously affected, may,
25 upon and pursuant to the applicable procedure provided in

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1 Chapter 62, Article 10 NMSA 1978, and after giving due regard
2 to public convenience and necessity, including reasonable
3 service agreements between the utilities, make an order and
4 prescribe just and reasonable terms and conditions in harmony
5 with the Public Utility Act to provide for the construction,
6 development and extension, without unnecessary duplication and
7 economic waste.

8 B. If a certificate of public convenience and
9 necessity is required pursuant to this section for the
10 construction or extension of a generating plant or transmission
11 lines and associated facilities, a public utility may include
12 in the application for the certificate a request that the
13 commission determine the ratemaking principles and treatment
14 that will be applicable for the facilities that are the subject
15 of the application for the certificate. If such a request is
16 made, the commission shall, in the order granting the
17 certificate, set forth the ratemaking principles and treatment
18 that will be applicable to the public utility's stake in the
19 certified facilities in all ratemaking proceedings on and after
20 such time as the facilities are placed in service. The
21 commission shall use the ratemaking principles and treatment
22 specified in the order in all proceedings in which the cost of
23 the public utility's stake in the certified facilities is
24 considered. If the commission later decertifies the
25 facilities, the commission shall apply the ratemaking

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1 principles and treatment specified in the original
2 certification order to the costs associated with the facilities
3 that were incurred by the public utility prior to
4 decertification.

5 C. The commission may approve the application for
6 the certificate without a formal hearing if no protest is filed
7 within sixty days of the date that notice is given, pursuant to
8 commission order, that the application has been filed. The
9 commission shall issue its order granting or denying the
10 application within nine months from the date the application is
11 filed with the commission. Failure to issue its order within
12 nine months is deemed to be approval and final disposition of
13 the application; provided, however, that the commission may
14 extend the time for granting approval for an additional six
15 months for good cause shown.

D. The commission shall approve an application by a public utility for a certificate of public convenience and necessity for an energy storage system or for approval of an agreement to purchase energy storage services from another party that shows the commission, based on a competitively fair request for proposals process that does not unreasonably discriminate between proposals for utility ownership of an energy storage system and proposals for the sale of energy storage services by another party, that the energy storage system or purchase of energy storage services from another party proposed is the utility's most cost-effective resource option among feasible alternatives to provide it with the energy storage service it needs and is reasonably expected to:

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16 (1) reduce the use of fossil fuels for meeting

17 demand during peak load periods and for providing ancillary

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1 services;

2 (2) assist with ensuring grid reliability,

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3 including transmission and distribution system stability, while
4 integrating sources of renewable energy into the grid;

5 (3), support diversification of energy

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6 resources and enhance grid security;

7 (4) reduce greenhouse gases and other air

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8 pollutants resulting from power generation; and

9 (5) allow the public utility, subject to applicable laws and

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rules, to control the use of an energy storage system or storage

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services purchased from another party

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10 [D.] E. As used in this section:

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

13 (2) "mutual domestic water consumer

14 association" means an association created and organized

15 pursuant to the provisions of:

16 [<1)] (a) Laws 1947, Chapter 206; Laws
17 1949, Chapter 79; or Laws 1951, Chapter 52; or

18 [<2)] (b) the Sanitary Projects Act."

19 SECTION 26. Section 62-15-34 NMSA 1978 (being Laws 2007,
20 Chapter 4, Section 1, as amended by Laws 2014, Chapter 24,
21 Section 1, and by Laws 2014, Chapter 25, Section 1) is amended
22 to read:

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1 "62-15-34. RENEWABLE PORTFOLIO STANDARD.--

2 A. Each distribution cooperative organized under
3 the Rural Electric Cooperative Act shall meet the renewable
4 portfolio standard requirements, as provided in this section,
5 to include renewable energy in its electric energy supply
6 portfolio as demonstrated by its retirement of renewable energy
7 certificates. Requirements and targets of the renewable
8 portfolio standard are as follows:

9 (1) no later than January 1, 2015, renewable
10 energy shall comprise no less than five percent of each
11 distribution cooperative's total retail sales to New Mexico
12 customers;

13 (2) the renewable portfolio standard shall
14 increase by one percent per year thereafter until January 1,
15 2020, at which time the renewable portfolio standard shall be
16 ten percent of the distribution cooperative's total retail
17 sales to New Mexico customers;

18 (3) ~~[the renewable portfolio standard of each~~
19 ~~distribution cooperative shall be diversified as to the type of~~
20 ~~renewable energy resource, taking into consideration the~~
21 ~~overall reliability, availability and dispatch flexibility and~~
22 ~~the cost of the various renewable energy resources made~~
23 ~~available to the distribution cooperative by its suppliers of~~
24 ~~electric power; and] a distribution cooperative shall have the~~
25 following targets and requirements for renewable energy and

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1 zero carbon resources as a percentage of the distribution
2 cooperative's total retail sales in New Mexico:

3 (a) a requirement of forty percent
4 renewable energy by January 1, 2025;

5 (b) a requirement of fifty percent
6 renewable energy by January 1, 2030;

7 (c) a target of achieving the zero
8 carbon resource standard by January 1, 2050, composed of at
9 least eighty percent renewable energy; provided that: 1)
10 achieving the target is technically feasible; 2) the rural
11 electric cooperative is able to provide reliable electric
12 service while implementing the target; and 3) implementing the
13 target shall not cause electric service to become unaffordable;
14 and

15 (4) renewable energy resources that are in a
16 distribution cooperative's energy supply portfolio on January
17 1, 2008 shall be counted in determining compliance with this
18 section.

19 ~~[B. If a distribution cooperative determines that,~~
20 ~~in any given year, the cost of renewable energy that would need~~
21 ~~to be procured or generated for purposes of compliance with the~~
22 ~~renewable portfolio standard would be greater than the~~
23 ~~reasonable cost threshold, the distribution cooperative shall~~
24 ~~not be required to incur that cost; provided that the existence~~
25 ~~of this condition excusing performance in any given year shall~~

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1 ~~not operate to delay any renewable portfolio standard in~~
2 ~~subsequent years. For purposes of the Rural Electric~~
3 ~~Cooperative Act, "reasonable cost threshold" means an amount~~
4 ~~that shall be no greater than one percent of the distribution~~
5 ~~cooperative's gross receipts from business transacted in New~~
6 ~~Mexico for the preceding calendar year.~~

7 ~~C.]~~ B. By April 30 of each year, a distribution
8 cooperative shall file with the public regulation commission a
9 report on its purchases and generation of renewable energy
10 during the preceding calendar year. The report shall include
11 the cost of the renewable energy resources purchased and
12 generated by the distribution cooperative to meet the renewable
13 portfolio standard, an explanation of steps taken to minimize
14 those costs, including competitive procurement and comparison
15 of the price of electricity from renewable energy resources in
16 the bids received by the distribution cooperative to recent
17 prices for such electricity elsewhere in the southwestern
18 United States, and an annual compliance plan for meeting the
19 renewable portfolio standard for the following three years.

20 C. If, in any given year, a distribution
21 cooperative determines that the average annual levelized cost
22 of renewable energy that would need to be procured or generated
23 for purposes of compliance with the renewable portfolio
24 standard would be greater than sixty dollars (\$60.00) per
25 megawatt-hour at the point of interconnection of the renewable

1 energy resource with the transmission system, adjusted for
2 inflation after 2020, the distribution cooperative shall not be
3 required to incur that excess cost; provided that the existence
4 of this condition excusing performance in any given year shall
5 not operate to delay compliance with the renewable portfolio
6 standard in subsequent years. The provisions of this
7 subsection do not preclude a distribution cooperative from
8 accepting a project with a cost that would exceed sixty dollars
9 (\$60.00) per megawatt-hour.

10 D. A distribution cooperative shall report to its
11 membership a summary of its purchases and generation of
12 renewable energy during the preceding calendar year."

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

17 "62-15-37. DEFINITIONS--ENERGY EFFICIENCY--RENEWABLE
18 ENERGY.--As used in the Rural Electric Cooperative Act:

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

24 B. "renewable energy" means electric energy
25 generated by use of renewable energy resources and delivered to

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1 a rural electric cooperative;

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

7 ~~[B-]~~ D. "renewable energy resource" means electric
8 or useful thermal energy:

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

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

15 (a) solar, wind and geothermal
16 [resources];

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

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

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

25 ~~(d)]~~ (e) biomass resources, [such as]

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

10 (f) landfill gas and anaerobically
11 digested waste biomass; ~~but~~ and

12 ~~(3)~~ (2) does not include electric energy
13 generated by use of fossil fuel or nuclear energy; ~~and~~

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

21 F. "zero carbon resource" means an electricity
22 generation resource that emits no carbon dioxide into the
23 atmosphere as a result of electricity production; and

24 G. "zero carbon resource standard" means providing
25 New Mexico rural electric cooperative retail customers with

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1 electricity generated from one hundred percent zero carbon
2 resources."

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

5 "62-16-3. DEFINITIONS.--As used in the Renewable Energy
6 Act:

7 A. "commission" means the public regulation
8 commission;

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

12 [~~B-~~] C. "municipality" means a municipal
13 corporation, organized under the laws of the state, and H class
14 counties;

15 [~~C-~~] D. "public utility" means an entity certified
16 by the commission to provide retail electric service in New
17 Mexico pursuant to the Public Utility Act but does not include
18 rural electric cooperatives;

19 [~~D-~~] E. "reasonable cost threshold" means [~~the cost~~
20 ~~established by the commission, above which a public utility~~
21 ~~shall not be required to add renewable energy to its electric~~
22 ~~energy supply portfolio pursuant to the renewable portfolio~~
23 ~~standard] an average annual levelized cost of sixty dollars
24 (\$60.00) per megawatt-hour at the point of interconnection of
25 the renewable energy resource with the transmission system,~~

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1 adjusted for inflation after 2020;

2 [E.] F. "renewable energy" means electric energy

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

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

8 ~~(a) solar, wind and geothermal~~
9 ~~resources;~~

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

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

14 ~~(d) biomass resources, such as~~
15 ~~agriculture or animal waste, small diameter timber, salt cedar~~
16 ~~and other phreatophyte or woody vegetation removed from river~~
17 ~~basins or watersheds in New Mexico, landfill gas and~~
18 ~~anaerobically digested waste biomass; but~~

19 ~~(3) does not include electric energy generated~~
20 ~~by use of fossil fuel or nuclear energy] and delivered to a~~
21 ~~public utility;~~

22 [F.] G. "renewable energy certificate" means a
23 certificate or other record, in a format approved by the
24 commission, that represents all the environmental attributes
25 from one [~~kilowatt-hour~~] megawatt-hour of electricity

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1 [generation] generated from [a] renewable energy; [resource]

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

4 (1) solar, wind and geothermal;

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

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

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

15 (b) have zero life cycle carbon
16 emissions; and

17 (c) meet scientifically determined
18 restoration, sustainability and soil nutrient principles;

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

21 (5) landfill gas and anaerobically digested
22 waste biogas;

23 [G-] I. "renewable portfolio standard" means the
24 minimum percentage of retail sales of electricity by a public
25 utility to electric consumers in New Mexico that is required by

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1 the Renewable Energy Act to be ~~[supplied by]~~ from renewable
2 energy; ~~[and~~

3 ~~H.]~~ J. "renewable purchased power agreement" means
4 an agreement that binds an entity generating power from
5 renewable energy resources to provide power at a specified
6 price and binds ~~[a public utility to purchase the power at]~~ the
7 purchaser to that price;

8 K. "zero carbon resource" means an electricity
9 generation resource that emits no carbon dioxide into the
10 atmosphere as a result of electricity production; and

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

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

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

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

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

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

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

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

15 ~~(d)]~~ (2) no later than January 1, 2020,
16 renewable energy shall comprise no less than twenty percent of
17 each public utility's total retail sales to New Mexico
18 customers;

19 ~~[(2) the renewable portfolio standard~~
20 ~~established by this section shall be reduced, as necessary, to~~
21 ~~provide for the following specific procurement requirements for~~
22 ~~nongovernmental customers at a single location or facility,~~
23 ~~regardless of the number of meters at that location or~~
24 ~~facility, with consumption exceeding ten million kilowatt-hours~~
25 ~~per year. On and after January 1, 2006, the kilowatt-hours of~~

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1 renewable energy procured for these customers shall be limited
2 so that the additional cost of the renewable portfolio standard
3 to each customer does not exceed the lower of one percent of
4 that customer's annual electric charges or forty nine thousand
5 dollars (\$49,000). This procurement limit criterion shall
6 increase by one-fifth percent or ten thousand dollars (\$10,000)
7 per year until January 1, 2011, when the procurement limit
8 criterion shall remain fixed at the lower of two percent of
9 that customer's annual electric charges or ninety nine thousand
10 dollars (\$99,000). After January 1, 2012, the commission may
11 adjust the ninety-nine-thousand-dollar (\$99,000) limit for
12 inflation. Nothing contained in this paragraph shall be
13 construed as affecting a public utility's right to recover all
14 reasonable costs of complying with the renewable portfolio
15 standard, pursuant to Section 62-16-6 NMSA 1978. The
16 commission may authorize deferred recovery of the costs of
17 complying with the renewable portfolio standard, including
18 carrying charges;]

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

23 (4) no later than January 1, 2030, renewable
24 energy shall comprise no less than fifty percent of each public
25 utility's total retail sales of electricity to New Mexico

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1 customers;

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

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

13 (7) A public utility shall demonstrate to the Commission that
any resource procured to satisfy the zero carbon resource
standard is its most cost effective option among feasible
resource alternatives.

14 B. In administering the standards required by
15 Paragraphs (5) and (6) of Subsection A of this section, the
16 commission shall:

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

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

24 (3) prevent carbon dioxide emitting
25 electricity-generating resources from being reassigned,
26 redesignated or sold as a means of complying with the standard;

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

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

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

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

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

21 (c) identification of the barriers to,
22 and benefits of, achieving the standard.

23 [~~(3)~~] C. Any customer that is a political
24 subdivision of the state, or any educational institution
25 designated in Article 12, Section 11 of the constitution of New

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1 Mexico with an enrollment of twenty-four thousand students or
2 more during the fall semester on its main campus, with
3 consumption exceeding twenty [~~million kilowatt-hours~~] thousand
4 megawatt-hours per year at any single location or facility and
5 that owns facilities that produce renewable energy [~~generation~~]
6 or hosts such facilities through a renewable purchased power
7 agreement is exempt from all charges by the utility for
8 [~~renewable energy procurements in a year~~] fuel and power
9 purchases of one year or less, regardless of the number of
10 customer locations or meters on the system, if that customer
11 certifies to the state auditor and notifies the commission and
12 its serving electric utility that it will [~~expend two and one-~~
13 ~~half percent of that year's annual electricity charges to~~
14 ~~continue to~~] develop within twenty-four months customer-owned
15 or customer-hosted facilities that generate renewable energy
16 [~~generation~~] sufficient to meet the percentages required by
17 Subsection A of this section for the combined total energy
18 consumption of all of its customer locations and meters. That
19 customer shall also certify that it will retire all renewable
20 energy certificates associated with the [~~energy produced from~~
21 ~~that expenditure~~];

22 (4) ~~the renewable portfolio shall be~~
23 ~~diversified as to the type of renewable energy resource, taking~~
24 ~~into consideration the overall reliability, availability,~~
25 ~~dispatch flexibility and cost of the various renewable energy~~

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1 ~~resources made available by suppliers and generators;~~
2 renewable energy produced by those facilities.

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

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

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

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

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

25 (1) ~~the price of renewable energy at the point~~

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1 of sale to the public utility;

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

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

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

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

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

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

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

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

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

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

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

22 (3) testimony and exhibits that demonstrate
23 that the proposed procurement:

24 (a) was the result of a competitive
25 solicitation that included opportunities for bidders to propose

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1 purchased power, facility self-build or facility build-transfer
2 options;

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

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

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

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

25 ~~[F-]~~ I. The commission may reject a ~~[procurement or~~

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

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

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

24 SECTION 30. Section 62-16-5 NMSA 1978 (being Laws 2004,
25 Chapter 65, Section 5, as amended) is amended to read:

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1 "62-16-5. RENEWABLE ENERGY CERTIFICATES--COMMISSION
2 DUTIES.--

3 A. The commission shall establish:

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

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

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

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

23 [~~1~~] (a) the renewable energy
24 certificates are transferred to the purchaser of the [energy]
25 electricity through specific agreement with the generator;

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

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

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

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

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

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

21 ~~(c)~~ (3) that are used for the purpose of
22 meeting the renewable portfolio standard shall be registered
23 [beginning January 1, 2009] with a renewable energy generation
24 information system that is designed to create and track
25 ownership of renewable energy certificates and that, through

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1 the use of independently audited generation data, verifies the
2 generation and delivery of electricity associated with each
3 renewable energy certificate and protects against multiple
4 counting of the same renewable energy certificate;

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

10 ~~(e) that are not used by a public~~
11 ~~utility to satisfy the renewable portfolio standard or that are~~
12 ~~not traded, sold or otherwise transferred by the public~~
13 ~~utility] and~~

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

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

25 SECTION 31. Section 62-16-6 NMSA 1978 (being Laws 2004,

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1 Chapter 65, Section 6, as amended) is amended to read:

2 "62-16-6. COST RECOVERY FOR RENEWABLE ENERGY.--

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

9 B. The commission shall not exclude from such cost
10 recovery reasonable interconnection and transmission costs
11 incurred by the public utility in order to deliver renewable
12 energy to retail New Mexico customers.

13 [~~C. Upon a commission motion or application by a
14 public utility, the commission shall open a docket to provide
15 appropriate performance-based financial or other incentives to
16 encourage public utilities to acquire renewable energy supplies
17 that exceed the applicable annual renewable portfolio standard
18 pursuant to the Renewable Energy Act. The commission shall
19 initiate rules by June 1, 2008 to implement this subsection.~~]"

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

22 "62-16-7. COMMISSION--~~[ADDITIONAL]~~ POWERS AND DUTIES--
23 VOLUNTARY PROGRAMS.--

24 A. The commission:

25 [~~A.~~] (1) shall adopt rules regarding the

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1 renewable portfolio standard, including a provision for public
2 utility records and reports; and

3 ~~[B-]~~ (2) may require that a public utility
4 offer its retail customers a voluntary program for purchasing
5 renewable energy that is in addition to ~~[energy]~~ electricity
6 provided by the public utility pursuant to the renewable
7 portfolio standard, under rates and terms that are approved by
8 the commission. ~~[and~~

9 ~~C. may exempt from compliance with the renewable~~
10 ~~portfolio standard a public utility that has an all-~~
11 ~~requirements electric supply contract on July 1, 2004, and the~~
12 ~~contract would not reasonably permit it to procure renewable~~
13 ~~energy for purposes of meeting the renewable portfolio~~
14 ~~standard. when the electricity supply contract is amended or~~
15 ~~renegotiated, the commission may require that a renewable~~
16 ~~portfolio standard become applicable.]~~

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

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

25 (2) be excluded from the total retail sales to

1 New Mexico customers used to determine the renewable portfolio
2 standard requirements pursuant to Subsection A of Section
3 62-16-4 NMSA 1978; and

4 (3) be used to offset sales to the retail
5 customer that are subject to charges by the public utility to
6 recover costs of complying with the renewable portfolio
7 standard requirements pursuant to Subsection A of Section
8 62-16-4 NMSA 1978."

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

11 "62-16-8. RURAL ELECTRIC COOPERATIVE--VOLUNTARY
12 TARIFFS.--

13 A. The commission may require that a rural electric
14 cooperative:

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

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

22 (3) comply with the requirements for the
23 procurement of renewable energy set forth in the Rural Electric
24 Cooperative Act.

25 B. The commission shall establish and amend rules

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1 and regulations for the implementation of renewable portfolio
2 standards consistent with the Rural Electric Cooperative Act."

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

5 "62-16-9. EXISTING RULES.--The commission shall
6 [~~establish and amend~~] promulgate rules [~~and regulations for the~~
7 ~~implementation of renewable portfolio standards consistent~~
8 ~~with~~] to implement the provisions of the Renewable Energy Act."

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

11 "62-16-10. FEDERAL REQUIREMENTS.--Renewable energy
12 procured or generated by a public utility to [~~meet~~] comply with
13 a federal [~~renewable portfolio standard~~] law, rule or
14 regulation may be used to satisfy the required procurements of
15 the Renewable Energy Act."

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

18 "74-2-5. DUTIES AND POWERS--ENVIRONMENTAL IMPROVEMENT
19 BOARD--LOCAL BOARD.--

20 A. The environmental improvement board or the local
21 board shall prevent or abate air pollution.

22 B. The environmental improvement board or the local
23 board shall:

24 (1) adopt, promulgate, publish, amend and
25 repeal [~~regulations~~] rules and standards consistent with the

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1 Air Quality Control Act to attain and maintain national ambient
2 air quality standards and prevent or abate air pollution,
3 including ~~[regulations]~~:

4 (a) rules prescribing air standards,
5 within the geographic area of the environmental improvement
6 board's jurisdiction or the local board's jurisdiction, or any
7 part thereof; and

8 (b) standards of performance that limit
9 carbon dioxide emissions to no more than eight hundred forty-
10 five pounds per megawatt-hour on and after January 1, 2023 for
11 a source that is an electric generating facility with an in-
12 service date prior to January 1, 1984, that uses coal as a fuel
13 source; and

14 (2) adopt a plan for the regulation, control,
15 prevention or abatement of air pollution, recognizing the
16 differences, needs, requirements and conditions within the
17 geographic area of the environmental improvement board's
18 jurisdiction or the local board's jurisdiction or any part
19 thereof.

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

22 (1) include ~~[regulations]~~ rules to protect
23 visibility in mandatory class I areas to prevent significant
24 deterioration of air quality and to achieve national ambient
25 air quality standards in nonattainment areas; provided that

1 such regulations:

2 (a) shall be no more stringent than but
3 at least as stringent as required by the federal act and
4 federal regulations pertaining to visibility protection in
5 mandatory class I areas, pertaining to prevention of
6 significant deterioration and pertaining to nonattainment
7 areas; and

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

10 (2) prescribe standards of performance for
11 sources and emission standards for hazardous air pollutants
12 that, except as provided in this subsection and in Subparagraph
13 (b) of Paragraph (1) of Subsection B of this section:

14 (a) shall be no more stringent than but
15 at least as stringent as required by federal standards of
16 performance; and

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

19 (3) include regulations governing emissions
20 from solid waste incinerators that shall be at least as
21 stringent as, and may be more stringent than, any applicable
22 federal emission limitations;

23 (4) include regulations requiring the
24 installation of control technology for mercury emissions that
25 removes the greater of what is achievable with best available

1 control technology or ninety percent of the mercury from the
2 input fuel for all coal-fired power plants, except for coal-
3 fired power plants constructed and generating electric power
4 and energy before July 1, 2007;

5 (5) require notice to the department or the
6 local agency of the intent to introduce or permit the
7 introduction of an air contaminant into the air within the
8 geographical area of the environmental improvement board's
9 jurisdiction or the local board's jurisdiction; and

10 (6) require any person emitting any air
11 contaminant to:

12 (a) install, use and maintain emission
13 monitoring devices;

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

17 (c) establish and maintain records of
18 the nature and amount of emissions;

19 (d) submit reports regarding the nature
20 and amounts of emissions and the performance of emission
21 control devices; and

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

24 D. Any regulation adopted pursuant to this section
25 shall be consistent with federal law, if any, relating to

underscored material = new
~~[bracketed material] = delete~~

1 control of motor vehicle emissions.

2 E. In making its regulations, the environmental
3 improvement board or the local board shall give weight it deems
4 appropriate to all facts and circumstances, including but not
5 limited to:

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

8 (2) the public interest, including the social
9 and economic value of the sources and subjects of air
10 contaminants; and

11 (3) technical practicability and economic
12 reasonableness of reducing or eliminating air contaminants from
13 the sources involved and previous experience with equipment and
14 methods available to control the air contaminants involved."

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