

1 AN ACT

2 RELATING TO PUBLIC UTILITIES; ENACTING THE ENERGY TRANSITION
3 ACT; AUTHORIZING CERTAIN UTILITIES THAT ABANDON CERTAIN
4 GENERATING FACILITIES TO ISSUE BONDS PURSUANT TO A FINANCING
5 ORDER ISSUED BY THE PUBLIC REGULATION COMMISSION; PROVIDING
6 PROCUREMENT OF REPLACEMENT RESOURCES, INCLUDING LOCATION OF
7 THE REPLACEMENT RESOURCES; AUTHORIZING THE COMMISSION TO
8 IMPOSE A FEE ON THE QUALIFYING UTILITY TO PAY COMMISSION
9 EXPENSES FOR CONTRACTS FOR SERVICES FOR LEGAL COUNSEL AND
10 FINANCIAL ADVISORS TO PROVIDE ADVICE AND ASSISTANCE FOR
11 PURPOSES RELATED TO THE ACT; PROVIDING PROCEDURES FOR
12 REHEARING AND JUDICIAL REVIEW; PROVIDING FOR THE TREATMENT OF
13 ENERGY TRANSITION BONDS BY THE COMMISSION; CREATING SECURITY
14 INTERESTS IN CERTAIN PROPERTY; PROVIDING FOR THE PERFECTION
15 OF INTERESTS IN CERTAIN PROPERTY; EXEMPTING ENERGY TRANSITION
16 CHARGES FROM CERTAIN GOVERNMENT FEES; CREATING THE ENERGY
17 TRANSITION INDIAN AFFAIRS FUND, THE ENERGY TRANSITION
18 ECONOMIC DEVELOPMENT ASSISTANCE FUND AND THE ENERGY
19 TRANSITION DISPLACED WORKER ASSISTANCE FUND; PROVIDING FOR
20 NONIMPAIRMENT OF ENERGY TRANSITION CHARGES AND BONDS;
21 PROVIDING FOR CONFLICTS IN LAW; PROVIDING THAT ACTIONS TAKEN
22 PURSUANT TO THE ENERGY TRANSITION ACT SHALL NOT BE
23 INVALIDATED IF THE ACT IS HELD INVALID; REQUIRING THE PUBLIC
24 REGULATION COMMISSION TO APPROVE PROCUREMENT OF ENERGY
25 STORAGE SYSTEMS; PROVIDING NEW REQUIREMENTS AND TARGETS FOR

1 THE RENEWABLE PORTFOLIO STANDARD FOR RURAL ELECTRIC
2 COOPERATIVES AND PUBLIC UTILITIES; AMENDING CERTAIN
3 DEFINITIONS IN THE RENEWABLE ENERGY ACT AND RURAL ELECTRIC
4 COOPERATIVE ACT; REQUIRING THE HIRING OF APPRENTICES FOR THE
5 CONSTRUCTION OF FACILITIES THAT PRODUCE OR PROVIDE
6 ELECTRICITY; ALLOWING COST RECOVERY FOR EMISSIONS REDUCTION;
7 PROVIDING POWERS AND DUTIES FOR THE PUBLIC REGULATION
8 COMMISSION OVER VOLUNTARY PROGRAMS FOR PUBLIC UTILITIES AND
9 RURAL ELECTRIC COOPERATIVES; REQUIRING THE PROMULGATION OF
10 RULES TO IMPLEMENT THE RENEWABLE ENERGY ACT; REQUIRING THE
11 ENVIRONMENTAL IMPROVEMENT BOARD TO PROMULGATE RULES TO LIMIT
12 CARBON DIOXIDE EMISSIONS OF CERTAIN ELECTRIC GENERATING
13 FACILITIES.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. SHORT TITLE.--Sections 1 through 23 of this
17 act may be cited as the "Energy Transition Act".

18 SECTION 2. DEFINITIONS.--As used in the Energy
19 Transition Act:

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

1 payment and recovery of other financing costs in accordance
2 with a financing order;

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

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

17 D. "commission" means the public regulation
18 commission;

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

23 F. "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

1 order, the proceeds of which are secured by or payable from
2 energy transition property and that are non-recourse to the
3 qualifying utility;

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

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

8 (1) financing costs;

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

16 (a) up to thirty million dollars
17 (\$30,000,000) per qualifying generating facility in costs not
18 previously collected from the qualifying utility's customers
19 for plant decommissioning and mine reclamation costs, subject
20 to any limitations ordered by the commission prior to January
21 1, 2019 and affirmed by the New Mexico supreme court prior to
22 the effective date of the Energy Transition Act, associated
23 with the abandoned qualifying generating facility;

24 (b) up to twenty million dollars
25 (\$20,000,000) per qualifying generating facility in costs for

1 severance and job training for employees losing their jobs as
2 a result of an abandoned qualifying generating facility and
3 any associated mine that only services the abandoned
4 qualifying generating facility;

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

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

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

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

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

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

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

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

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

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

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

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

1 generating 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
8 the issuance of energy transition bonds;

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

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

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

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

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

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

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

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

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

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

1 state;

2 R. "public utility" means "public utility" as used
3 in the Public Utility Act, but "public utility" does not
4 include a distribution cooperative utility organized pursuant
5 to the Rural Electric Cooperative Act;

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

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

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

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

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

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

1 ABANDONMENT.--

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

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

22 C. In considering responses to requests for
23 proposals for replacement resources pursuant to this section,
24 a qualifying utility shall inform prospective bidders that
25 it promotes and encourages the use of workers residing in

1 New Mexico to the greatest extent practicable and shall take
2 that use into consideration in evaluating proposals.

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

12 E. Replacement resources shall be subject to local
13 property taxes or a binding commitment to make an equivalent
14 payment in lieu of taxes.

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

24 SECTION 4. FINANCING ORDER--APPLICATION CONTENTS--
25 PENDING APPLICATIONS.--

1 A. A qualifying utility that is abandoning a
2 qualifying generating facility may apply to the commission
3 for a financing order pursuant to this section to recover all
4 of its energy transition costs through the issuance of energy
5 transition bonds. To obtain a financing order, a qualifying
6 utility shall obtain approval to abandon a qualifying
7 generating facility pursuant to Section 62-9-5 NMSA 1978.
8 The application for the financing order may be filed as part
9 of the application for approval to abandon a qualifying
10 generating facility.

11 B. An application for a financing order shall
12 include:

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

16 (2) an estimate of the energy transition
17 costs and shall:

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

23 (b) identify costs not previously
24 collected from the qualifying utility's customers for plant
25 decommissioning and mine reclamation costs, subject to any

1 limitations ordered by the commission prior to January 1,
2 2019 and affirmed by the New Mexico supreme court prior to
3 the effective date of the Energy Transition Act, associated
4 with the abandoned qualifying generating facility; and

5 (c) include an estimate of the
6 financing costs associated with each series of energy
7 transition bonds proposed to be issued;

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

14 (4) a description of the proposed adjustment
15 mechanism that complies with the provisions of Section 6 of
16 the Energy Transition Act;

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

1 prior to an application for a financing order, and the state
2 board of finance shall act upon such a request promptly;

3 (6) a commitment by the qualifying utility
4 to file with the commission following the issuance of the
5 energy transition bonds:

6 (a) a description of the final
7 structure and pricing of the bonds;

8 (b) updated financing costs and payment
9 amount required pursuant to Section 16 of the Energy
10 Transition Act; and

11 (c) an updated calculation of the
12 energy transition charges;

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

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

1 (9) identification of ancillary agreements
2 that may be necessary or appropriate;

3 (10) a description of a proposed ratemaking
4 process to reconcile and recover or refund any difference
5 between the energy transition costs financed by the energy
6 transition bonds and the actual final energy transition costs
7 incurred by the qualifying utility or the assignee;

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

13 (12) a statement from the qualifying utility
14 committing that the qualifying utility will use commercially
15 reasonable efforts to obtain the lowest cost objective.

16 C. The application may include requests for
17 approvals for new resources necessitated by the abandonment
18 of a qualifying generating facility.

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

24 E. If an application for approval to abandon a
25 qualifying generating facility is pending before the

1 commission on the effective date of the Energy Transition
2 Act, the qualifying utility may file a separate application
3 for a financing order, and the commission may join or
4 consolidate the application for a financing order with the
5 pending proceeding involving abandonment of the qualifying
6 generating facility, with the consent of the applicant. On
7 such joinder or consolidation, the time periods prescribed by
8 the Energy Transition Act shall become applicable to the
9 joined or consolidated case as of the date of the joinder or
10 consolidation.

11 F. If a qualifying utility does not recover energy
12 transition costs pursuant to the Energy Transition Act, the
13 energy transition costs may be recovered pursuant to other
14 applicable provisions of the Public Utility Act.

15 SECTION 5. FINANCING ORDER--ISSUANCE--TERMS OF BONDS--
16 REPORTS TO COMMISSION OF DISBURSEMENT OF BOND PROCEEDS--
17 REVIEW AND AUDIT OF RECORDS.--

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

1 and an order on an accompanying application of the qualifying
2 utility for approval to abandon the qualifying generating
3 facility within six months from the date the application for
4 the financing order is filed with the commission. For good
5 cause shown, the commission may extend the time for issuing
6 the order for an additional three months.

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

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

25 D. The issuance of a financing order shall be the

1 only approval required for the authority granted in the
2 financing order.

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

15 F. A financing order shall include the following
16 provisions:

17 (1) approval for the qualifying utility or
18 assignee to issue energy transition bonds as requested in the
19 application, to use energy transition bonds to finance the
20 maximum amount of the energy transition costs as requested in
21 the application, as may be adjusted pursuant to Paragraph (6)
22 of Subsection B of Section 4 of the Energy Transition Act,
23 and to use the proceeds provided in Subsection A of Section
24 10 of the Energy Transition Act;

25 (2) approval for the qualifying utility to

1 recover the energy transition costs, as may be adjusted
2 pursuant to Paragraph (6) of Subsection B of Section 4 of the
3 Energy Transition Act, requested in the application through
4 energy transition charges;

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

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

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

25 (6) approval to enter into necessary or

1 appropriate ancillary agreements;

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

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

9 G. A financing order shall provide that the
10 creation of energy transition property shall be simultaneous
11 with the sale of the energy transition property to an
12 assignee as provided in the application and the pledge of the
13 energy transition property to secure energy transition bonds.

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

22 I. The commission may require, as a condition of
23 the financing order and in every circumstance subject to the
24 limitations set forth in Subsection A of Section 7 of the
25 Energy Transition Act, that, during any period in which

1 energy transition bonds issued pursuant to the financing
2 order are outstanding, an assignee that is a non-utility
3 affiliate and issues energy transition bonds shall provide in
4 the affiliate's articles of incorporation, partnership
5 agreement or operating agreement, as applicable, that in
6 order for a person to file a voluntary bankruptcy petition on
7 behalf of that assignee, the prior unanimous consent of the
8 directors, partners, managers or members, as applicable,
9 shall be required. Any such provision shall constitute a
10 legal, valid and binding agreement of such shareholders,
11 partners or members of the assignee and is enforceable
12 against such shareholders, partners or members.

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

24 K. A financing order may authorize the commission
25 to review and audit the books and records of the qualifying

1 utility and of an assignee that is a non-utility affiliate
2 and issues energy transition bonds, relating to energy
3 transition property and the receipt and disbursement of
4 proceeds of energy transition bonds.

5 L. After review and approval by the department of
6 finance and administration with regard to reasonableness of
7 contracts for services, a financing order may authorize the
8 commission to impose a fee on the qualifying utility to pay
9 commission expenses for contract bond counsel accredited by a
10 nationally recognized association of bond lawyers to provide
11 advice and assistance to commission staff in reviewing an
12 application for a financing order and the structure and
13 marketing of the proposed energy transition bonds.

14 M. 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
20 Transition Act.

21 SECTION 6. ADJUSTMENT MECHANISM--ADJUSTMENT
22 PROCEDURES--HEARING PROCEDURES IF COMMISSION DETERMINES
23 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

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

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

21 (1) a calculation estimating whether the
22 existing energy transition charge is sufficient to provide
23 for timely payment of scheduled principal of and interest on
24 the energy transition bonds and the payment and recovery of
25 other financing costs in accordance with the financing order

1 or if either an over-collection or under-collection is
2 projected; and

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

7 C. The qualifying utility shall file the
8 calculations described in Subsection B of this section at
9 least quarterly during the two-year period preceding the
10 final maturity date of the energy transition bonds.

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

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

21 F. An adjustment to the energy transition charge
22 filed by the qualifying utility shall be deemed approved
23 without hearing thirty days after filing the adjustment
24 unless:

25 (1) no later than twenty days from the date

1 the qualifying utility filed the calculation of the
2 adjustment, the commission is notified of a potential
3 mathematical or transcription error in the adjustment;
4 provided that the notice identifies the error with
5 specificity; and

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

17 G. If the commission determines that a hearing is
18 necessary, the commission shall hold a hearing on the
19 proposed adjustment that shall be limited to determining
20 whether there is a mathematical or transcription error in the
21 calculation of the adjustment. If, after a hearing, the
22 commission determines that the calculation of the adjustment
23 contains a mathematical or transcription error, the
24 commission shall issue an order that rejects and corrects the
25 adjustment. The qualifying utility shall adjust the energy

1 transition charge in accordance with the commission's
2 calculation within five days from issuance of the order. If
3 the commission does not issue an order rejecting the
4 adjustment with a determination of the corrected calculation
5 within sixty days from the date the qualifying utility filed
6 the adjustment, the adjustment to the energy transition
7 charge shall be deemed approved.

8 H. No adjustment pursuant to this section, and no
9 proceeding held pursuant to this section, shall affect the
10 irrevocability of the financing order pursuant to Section 7
11 of the Energy Transition Act.

12 SECTION 7. FINANCING ORDER--IRREVOCABILITY--
13 AMENDMENTS.--

14 A. A financing order is irrevocable and the
15 commission shall not reduce, impair, postpone or terminate
16 the energy transition charges approved in the financing
17 order, the energy transition property or the collection or
18 recovery of energy transition revenues.

19 B. Subject to the limitation provided in
20 Subsection A of this section, a financing order may be
21 amended at the request of the qualifying utility to commence
22 a proceeding and issue an amended financing order that:

23 (1) provides for refinancing, retiring or
24 refunding all or a portion of an outstanding series of energy
25 transition bonds issued pursuant to the original financing

1 order; provided that the commission includes in the amended
2 financing order the findings and requirements specified in
3 Section 5 of the Energy Transition Act; or

4 (2) adjusts the amount of energy transition
5 costs to be financed by energy transition bonds that have not
6 yet been issued to reflect updated estimated or actual costs
7 that differ from costs estimated at the time of the initial
8 financing order or to correct any errors.

9 C. The commission shall issue an order granting or
10 denying the proposed amended financing order within thirty
11 days of the filing of the request by the qualifying utility.
12 No change in the credit rating of a qualifying utility from
13 the credit rating at the time of issuance of a financing
14 order shall impair the irrevocability of a financing order.

15 SECTION 8. AGGRIEVED PARTIES--REQUEST FOR REHEARING--
16 JUDICIAL REVIEW.--

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

1 upon by the commission within ten calendar days after the
2 filing of the application.

3 B. An aggrieved party may file a notice of appeal
4 with the supreme court in accordance with Section 62-11-1
5 NMSA 1978; provided that such notice shall be due no later
6 than ten calendar days after denial of an application for
7 rehearing or, if rehearing is not applied for, no later than
8 ten calendar days after issuance of the financing order. The
9 supreme court shall proceed to hear and determine the appeal
10 as expeditiously as practicable.

11 SECTION 9. CONDITIONS THAT KEEP FINANCING ORDERS IN
12 EFFECT AND ENERGY TRANSITION CHARGES IMPOSED.--

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

16 B. A financing order shall remain in effect and
17 unabated notwithstanding the bankruptcy, reorganization or
18 insolvency of the qualifying utility or any non-utility
19 affiliate or the commencement of any proceeding for
20 bankruptcy or appointment of a receiver.

21 C. If energy transition bonds issued pursuant to a
22 financing order are outstanding and the related energy
23 transition costs have not been paid in full, the energy
24 transition charges authorized by the financing order shall be
25 collected by the qualifying utility or its successors or

1 assignees, or a collection agent, in full through a
2 non-bypassable charge that is a separate line item on
3 customer bills and not a part of the qualifying utility's
4 base rates. The charge shall be paid by all customers:

5 (1) receiving electric delivery service from
6 the qualifying utility under commission-approved rate
7 schedules or special contracts; and

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

12 SECTION 10. QUALIFYING UTILITY DUTIES.--

13 A. Except as provided in Section 16 of the Energy
14 Transition Act, a qualifying utility that is abandoning a
15 qualifying generating facility shall use the proceeds of the
16 issuance of energy transition bonds only for purposes related
17 to providing utility service to customers and to pay
18 financing costs.

19 B. Energy transition revenues shall be applied
20 solely to the repayment of energy transition bonds and the
21 ongoing financing costs.

22 C. The failure of a qualifying utility to comply
23 with any provision of the Energy Transition Act shall not
24 invalidate, impair or affect a financing order, energy
25 transition property, energy transition charge or energy

1 transition bonds and financing costs. Payments to
2 bondholders or financing parties on the energy transition
3 bonds shall be made on a quarterly or semiannual basis
4 pursuant to the terms of the energy transition bonds.

5 D. For a qualifying utility that receives approval
6 of a financing order and issues sources of energy transition
7 bonds, the qualifying utility's generation and sources of
8 energy procured pursuant to power purchase agreements with a
9 term of twenty-four months or longer, and that are dedicated
10 to serve the qualifying utility's retail customers, shall not
11 emit, on average, more than four hundred pounds of carbon
12 dioxide per megawatt-hour by January 1, 2023, and not more
13 than two hundred pounds of carbon dioxide per megawatt-hour
14 by January 1, 2032 and thereafter. Compliance shall be
15 measured and verified every three years with the first period
16 commencing on January 1, 2023. The commission shall adopt
17 rules to implement the requirements of this subsection.

18 SECTION 11. COMMISSION TREATMENT OF ENERGY TRANSITION
19 BONDS.--

20 A. If the commission issues a financing order, the
21 commission shall not treat:

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

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

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

4 B. Reasonable actions taken by a qualifying
5 utility to comply with the financing order shall be deemed to
6 be just and reasonable for ratemaking purposes. Nothing in
7 the Energy Transition Act shall:

8 (1) prevent or preclude the commission from
9 investigating the compliance of a qualifying utility with the
10 terms and conditions of a financing order and requiring
11 compliance therewith;

12 (2) prevent or preclude the commission from
13 imposing regulatory sanctions against a qualifying utility
14 for failure to comply with the terms and conditions of a
15 financing order or the requirements of the Energy Transition
16 Act;

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

20 (4) prevent or preclude the commission from
21 including the qualifying utility's acquisition of replacement
22 power resources in the qualifying utility's cost of service.

23 C. The commission shall not order or require a
24 qualifying utility to issue energy transition bonds to
25 finance any costs associated with abandonment of a qualifying

1 generating facility. A utility's decision not to issue
2 energy transition bonds shall not be a basis for the
3 commission to refuse to allow a qualifying utility to recover
4 energy transition costs in an otherwise permissible fashion,
5 or as a basis to refuse or condition authorization to issue
6 securities pursuant to Sections 62-6-6 and 62-6-7 NMSA 1978.

7 SECTION 12. ENERGY TRANSITION PROPERTY--ENERGY
8 TRANSITION REVENUES.--

9 A. Energy transition property that is created in a
10 financing order shall constitute an existing, present
11 property right, notwithstanding that the imposition and
12 collection of energy transition charges depend on the
13 qualifying utility continuing to provide electric energy or
14 continuing to perform its service functions relating to the
15 collection of energy transition charges or on the level of
16 future energy consumption. Energy transition property shall
17 exist whether or not the energy transition revenues have been
18 billed, have accrued or have been collected and
19 notwithstanding that the value or amount of the energy
20 transition property is dependent on the future provision of
21 electric energy or service to customers by the qualifying
22 utility.

23 B. All energy transition property created in a
24 financing order shall continue to exist until the energy
25 transition bonds issued and all related financing costs

1 pursuant to a financing order are paid in full.

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

6 (1) wholly owned, directly or indirectly, by
7 the qualifying utility; and

8 (2) created for the limited purposes of
9 acquiring, owning or administering energy transition property
10 or issuing energy transition bonds under the financing order.

11 D. All or any portion of energy transition
12 property may be pledged to secure the payment of energy
13 transition bonds and all financing costs.

14 E. The formation by a qualifying utility of a
15 non-utility affiliate for the purposes of acquiring, owning
16 or administering energy transition property, issuing energy
17 transition bonds pursuant to a financing order and
18 transacting a transfer, sale, conveyance, assignment, grant
19 of a security interest in or pledge of energy transition
20 property by a qualifying utility to a non-utility affiliate,
21 to the extent previously authorized in a financing order,
22 does not require any further approval of the commission and
23 shall not be subject to the rules of the commission regarding
24 Class I transactions and Class II transactions, as defined by
25 Section 62-3-3 NMSA 1978, except that the commission may

1 examine the books and records of the non-utility affiliate.

2 F. If a qualifying utility defaults on any
3 required payment of energy transition bonds, a court with
4 jurisdiction in the matter, on application by an interested
5 party and without limiting any other remedies available to
6 the applying party, shall order the sequestration and payment
7 of the energy transition revenues for the benefit of
8 bondholders, any assignees or financing parties. The order
9 shall remain in full force and effect notwithstanding any
10 bankruptcy, reorganization or other insolvency or
11 receivership proceedings with respect to the qualifying
12 utility or any non-utility affiliate.

13 G. Energy transition property, energy transition
14 revenues and the interests of an assignee, bondholder or
15 financing party in energy transition property and energy
16 transition revenues are not subject to set-off, counterclaim,
17 surcharge or defense by the qualifying utility or any other
18 person or in connection with the bankruptcy, reorganization
19 or other insolvency or receivership proceeding of the
20 qualifying utility, non-utility affiliate or any other
21 entity.

22 H. Any successor to a qualifying utility shall be
23 bound by the requirements of the Energy Transition Act and
24 shall perform and satisfy all obligations of, and have the
25 same rights under a financing order as, the qualifying

1 utility under the financing order in the same manner and to
2 the same extent as the qualifying utility, including the
3 obligation to collect and pay energy transition revenues to
4 persons entitled to receive the revenues.

5 SECTION 13. SECURITY INTERESTS--CREATION OF SECURITY
6 INTEREST--PRIORITY OVER OTHER LIENS--ATTACHMENT ON FILING
7 WITH SECRETARY OF STATE.--

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

18 B. The description or reference to energy
19 transition property in a transfer or security agreement and a
20 financing statement is sufficient only if the description or
21 reference refers to the Energy Transition Act and the
22 financing order creating the energy transition property.
23 This section applies to all purported transfers of, grants of
24 liens on or security interests in, energy transition
25 property.

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

- 3 (1) the financing order is issued;
4 (2) a security agreement is executed and
5 delivered; or
6 (3) value is received for the energy
7 transition bonds.

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

21 E. A security interest in energy transition
22 property is a continuously perfected security interest and
23 has priority over any other lien that may subsequently attach
24 to the energy transition property unless the holder of the
25 security interest has agreed in writing otherwise.

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

10 G. No order of the commission amending a financing
11 order and no application of the adjustment mechanism shall
12 affect the validity, perfection or priority of a security
13 interest in or transfer of energy transition property.

14 SECTION 14. SALE OF ENERGY TRANSITION PROPERTY--
15 PERFECTING INTERESTS--ABSOLUTE TRANSFER AND TRUE SALE
16 REQUIREMENTS.--

17 A. Any sale, assignment or transfer of energy
18 transition property to an assignee that is a financing entity
19 that is wholly owned, directly or indirectly, by the utility
20 shall be an absolute transfer and true sale of, and not a
21 pledge of or secured transaction relating to, the seller's
22 right, title and interest in, to and under the energy
23 transition property if the documents governing the
24 transaction expressly state that the transaction is a sale or
25 other absolute transfer. A transfer of an interest in energy

1 transition property shall be created when:

2 (1) the financing order creating the energy
3 transition property has become effective;

4 (2) the documents evidencing the transfer of
5 energy transition property have been executed and delivered
6 to the assignee; and

7 (3) value is received.

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

16 C. The characterization of the sale, assignment or
17 transfer as an absolute transfer and true sale, and the
18 corresponding characterization of the property interest of
19 the purchaser, shall not be affected or impaired by:

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

22 (2) the retention by the seller of:

23 (a) a partial or residual interest,
24 including an equity interest, in the energy transition
25 property, whether direct or indirect, or whether subordinate

1 or otherwise; or

2 (b) the right to recover costs
3 associated with taxes or license fees imposed on the
4 collection of energy transition revenues;

5 (3) any recourse that the purchaser may have
6 against the seller;

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

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

11 (6) the treatment of the sale, assignment or
12 transfer of energy transition property for tax, financial
13 reporting or other purposes;

14 (7) any subsequent order of the commission
15 amending a financing order pursuant to Subsection B of
16 Section 7 of the Energy Transition Act;

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

19 (9) anything else that might affect or
20 impair the characterization of the property.

21 SECTION 15. FEE ASSESSMENTS.--The energy transition
22 charge stated as a separate line entry on a customer bill
23 sent by a qualifying utility may be subject to an assessment
24 of a franchise fee imposed by a municipality, county or other
25 political subdivision of the state, pursuant to a utility

1 franchise agreement. The imposition, collection and receipt
2 of an energy transition charge is exempt from inspection and
3 supervision fees assessed pursuant to the Public Utility Act.

4 SECTION 16. ENERGY TRANSITION INDIAN AFFAIRS FUND--
5 ENERGY TRANSITION ECONOMIC DEVELOPMENT ASSISTANCE FUND--
6 ENERGY TRANSITION DISPLACED WORKER ASSISTANCE FUND--COMMUNITY
7 ADVISORY COMMITTEE.--

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

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

20 C. The Indian affairs department shall develop an
21 Indian affairs assistance plan to assist tribal and native
22 people in the affected community that shall provide for the
23 disbursement of money in the energy transition Indian affairs
24 fund. In developing the plan, the Indian affairs department
25 shall establish a public planning process in the affected

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

8 (1) to an entity approved by the Indian
9 affairs department to receive funds for any program
10 established at the Indian affairs department; and

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

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

22 E. 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

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 F. 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 request recommendations
10 from the affected community's community advisory committee
11 pursuant to Subsection K of this section and establish a
12 public input process in the affected community to inform the
13 use of money in the fund. The economic development
14 department shall engage in consultation with Indian nations,
15 tribes and pueblos in the affected area pursuant to the
16 State-Tribal Collaboration Act. The public input process
17 shall include at least three public meetings in the affected
18 community. Expenditures from the fund shall be made pursuant
19 to the plan and as follows:

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

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

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

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

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

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

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

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

13 (2) to the workforce solutions department:

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

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

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

24 J. Within thirty days of receipt of energy
25 transition bond proceeds, a qualifying generating facility

1 located in New Mexico shall transfer the following
2 percentages of the financed amount of energy transition bonds
3 as follows:

4 (1) one-half percent to the Indian affairs
5 department for deposit in the energy transition Indian
6 affairs fund;

7 (2) one and sixty-five hundredths percent to
8 the economic development department for deposit in the energy
9 transition economic development assistance fund; and

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

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

1 cultural perspectives of the affected community and one
2 appointee representing displaced workers in the affected
3 community. Within sixty days of a request by the economic
4 development department pursuant to Subsection F of this
5 section, or the workforce solutions department pursuant to
6 Subsection I of this section, a community advisory committee
7 shall provide recommendations to the requesting department on
8 the use of available funds intended for the affected
9 community.

10 L. As used in this section:

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

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

17 (a) within the previous twelve months,
18 was terminated from employment, or whose contract was
19 terminated, due to the abandonment of a New Mexico facility
20 producing electricity that resulted in displacing at least
21 forty workers;

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

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

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

7 SECTION 17. ENERGY TRANSITION BONDS NOT PUBLIC DEBT.--

8 Energy transition bonds issued pursuant to the Energy
9 Transition Act shall not constitute a debt or a pledge of the
10 faith and credit or taxing power of this state or of any
11 county, municipality or any other political subdivision of
12 this state. Bondholders shall have no right to have taxes
13 levied by the legislature or the taxing authority of any
14 county, municipality or other political subdivision of this
15 state for the payment of the principal of or interest on
16 energy transition bonds. The issuance of energy transition
17 bonds does not obligate the state or a political subdivision
18 of the state to levy any tax or make any appropriation for
19 payment of the principal of or interest on the bonds.

20 SECTION 18. ENERGY TRANSITION BONDS AS LEGAL

21 INVESTMENTS.--Energy transition bonds shall be legal
22 investments for all governmental units, permanent funds of
23 the state, finance authorities, financial institutions,
24 insurance companies, fiduciaries and other persons requiring
25 statutory authority regarding legal investments.

1 SECTION 19. STATE PLEDGE NOT TO IMPAIR.--

2 A. The state pledges to and agrees with the
3 bondholders, any assignee and any financing parties that the
4 state shall not take or permit any action that impairs the
5 value of energy transition property, except as allowed
6 pursuant to Section 6 of the Energy Transition Act, or
7 reduces, alters or impairs energy transition charges that are
8 imposed, collected and remitted for the benefit of the
9 bondholders, any assignee and any financing parties, until
10 the entire principal of, interest on and redemption premium
11 on the energy transition bonds, all financing costs and all
12 amounts to be paid to an assignee or financing party under an
13 ancillary agreement are paid in full and performed in full.

14 B. Any person who issues energy transition bonds
15 is permitted to include the pledge specified in Subsection A
16 of this section in the energy transition bonds, ancillary
17 agreements and documentation related to the issuance and
18 marketing of the energy transition bonds.

19 SECTION 20. CHOICE OF LAW.--The laws of the state of
20 New Mexico as set forth in the Energy Transition Act shall
21 govern the validity, enforceability, attachment, perfection,
22 priority and exercise of remedies with respect to the
23 transfer of an interest or right of creation of a security
24 interest in energy transition property, an energy transition
25 charge or a financing order.

1 SECTION 21. CONFLICTS.--In the event of any conflict
2 between the Energy Transition Act and any other law regarding
3 the attachment, assignment or perfection, or the effect of
4 perfection, or priority of any security interest in or
5 transfer of energy transition property, the Energy Transition
6 Act shall govern to the extent of the conflict.

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

24 SECTION 23. APPLICABILITY.--The provisions of the
25 Energy Transition Act shall not apply to a qualifying utility

1 that makes an initial application for a financing order more
2 than twelve years after the effective date of that act. This
3 section shall not preclude a qualifying utility for which the
4 commission has issued a financing order from applying to the
5 commission for a subsequent order amending the financing
6 order, pursuant to Section 7 of the Energy Transition Act.

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

9 "REQUIRING THE HIRING OF APPRENTICES FOR THE
10 CONSTRUCTION OF FACILITIES THAT GENERATE ELECTRICITY.--

11 A. The construction of New Mexico facilities that
12 generate electricity for New Mexico retail customers, and
13 that are not located on the customer side of an electricity
14 meter, shall be subject to the requirements provided in
15 Subsection B of this section if the facilities are built as a
16 result of competitive solicitations issued after July 1,
17 2020.

18 B. Subject to availability of qualified
19 applicants, the construction of facilities that generate
20 electricity for New Mexico retail customers shall employ
21 apprentices from an apprenticeship program during the
22 construction phase of a project at a minimum level of the
23 following percentages of all persons employed for the
24 project:

25 (1) ten percent for projects for which

1 on-site construction commences beginning January 1, 2020, and
2 prior to January 1, 2024;

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

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

9 C. Apprenticeship programs used for purposes of
10 this section shall encourage diversity among participants,
11 participation by those underrepresented in the industry
12 associated with that apprenticeship program and participation
13 from disadvantaged communities, as determined by the
14 workforce solutions department. The department shall
15 promulgate rules to ensure compliance with this section.

16 D. As used in this section, "apprenticeship
17 program" means an apprenticeship program registered pursuant
18 to the Apprenticeship Assistance Act."

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

21 "62-9-1. NEW CONSTRUCTION--RATEMAKING PRINCIPLES.--

22 A. No public utility shall begin the construction
23 or operation of any public utility plant or system or of any
24 extension of any plant or system without first obtaining from
25 the commission a certificate that public convenience and

1 necessity require or will require such construction or
2 operation. This section does not require a public utility to
3 secure a certificate for an extension within any municipality
4 or district within which it lawfully commenced operations
5 before June 13, 1941 or for an extension within or to
6 territory already served by it, necessary in the ordinary
7 course of its business, or for an extension into territory
8 contiguous to that already occupied by it and that is not
9 receiving similar service from another utility. If any
10 public utility or mutual domestic water consumer association
11 in constructing or extending its line, plant or system
12 unreasonably interferes or is about to unreasonably interfere
13 with the service or system of any other public utility or
14 mutual domestic water consumer association rendering the same
15 type of service, the commission, on complaint of the public
16 utility or mutual domestic water consumer association
17 claiming to be injuriously affected, may, upon and pursuant
18 to the applicable procedure provided in Chapter 62, Article
19 10 NMSA 1978, and after giving due regard to public
20 convenience and necessity, including reasonable service
21 agreements between the utilities, make an order and prescribe
22 just and reasonable terms and conditions in harmony with the
23 Public Utility Act to provide for the construction,
24 development and extension, without unnecessary duplication
25 and economic waste.

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

23 C. The commission may approve the application for
24 the certificate without a formal hearing if no protest is
25 filed within sixty days of the date that notice is given,

1 pursuant to commission order, that the application has been
2 filed. The commission shall issue its order granting or
3 denying the application within nine months from the date the
4 application is filed with the commission. Failure to issue
5 its order within nine months is deemed to be approval and
6 final disposition of the application; provided, however, that
7 the commission may extend the time for granting approval for
8 an additional six months for good cause shown.

9 D. In an application for a certificate of public
10 convenience and necessity for an energy storage system, the
11 commission shall approve energy storage systems that:

12 (1) reduce costs to ratepayers by avoiding
13 or deferring the need for investment in new generation and
14 for upgrades to systems for the transmission and distribution
15 of energy;

16 (2) reduce the use of fossil fuels for
17 meeting demand during peak load periods and for providing
18 ancillary services;

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

22 (4) support diversification of energy
23 resources and enhance grid security;

24 (5) reduce greenhouse gases and other air
25 pollutants resulting from power generation;

1 (6) provide the public utility with the
2 discretion, subject to applicable laws and rules, to operate,
3 maintain and control energy storage systems so as to ensure
4 reliable and efficient service to customers; and

5 (7) are the most cost effective among
6 feasible alternatives.

7 E. As used in this section:

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

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

13 (a) Laws 1947, Chapter 206; Laws 1949,
14 Chapter 79; or Laws 1951, Chapter 52; or

15 (b) the Sanitary Projects Act."

16 SECTION 26. Section 62-15-34 NMSA 1978 (being Laws
17 2007, Chapter 4, Section 1, as amended by Laws 2014, Chapter
18 24, Section 1, and by Laws 2014, Chapter 25, Section 1) is
19 amended to read:

20 "62-15-34. RENEWABLE PORTFOLIO STANDARD.--

21 A. Except as provided in Subsection E of this
22 section, each distribution cooperative organized under the
23 Rural Electric Cooperative Act shall meet the renewable
24 portfolio standard requirements, as provided in this section,
25 to include renewable energy in its electric energy supply

1 portfolio as demonstrated by its retirement of renewable
2 energy certificates. Requirements and targets of the
3 renewable portfolio standard are as follows:

4 (1) no later than January 1, 2015, renewable
5 energy shall comprise no less than five percent of each
6 distribution cooperative's total retail sales to New Mexico
7 customers;

8 (2) the renewable portfolio standard
9 shall increase by one percent per year thereafter until
10 January 1, 2020, at which time the renewable portfolio
11 standard shall be ten percent of the distribution
12 cooperative's total retail sales to New Mexico customers;

13 (3) a distribution cooperative shall have
14 the following targets and requirements for renewable energy
15 and zero carbon resources as a percentage of the distribution
16 cooperative's total retail sales in New Mexico:

17 (a) a requirement of forty percent
18 renewable energy by January 1, 2025;

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

21 (c) a target of achieving the zero
22 carbon resource standard by January 1, 2050, composed of at
23 least eighty percent renewable energy; provided that: 1)
24 achieving the target is technically feasible; 2) the rural
25 electric cooperative is able to provide reliable electric

1 service while implementing the target; and 3) implementing
2 the target shall not cause electric service to become
3 unaffordable; and

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

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

22 C. If, in any given year, a distribution
23 cooperative determines that the average annual levelized cost
24 of renewable energy that would need to be procured or
25 generated for purposes of compliance with the renewable

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

13 D. A distribution cooperative shall report to its
14 membership a summary of its purchases and generation of
15 renewable energy during the preceding calendar year.

16 E. A distribution cooperative organized pursuant
17 to the Rural Electric Cooperative Act shall meet the
18 requirements and targets of the renewable portfolio standard
19 pursuant to Subsection A of this section as demonstrated by
20 the cooperative's retirement of renewable energy certificates
21 associated with energy assigned to the cooperative; provided
22 that a generation and transmission cooperative referred to in
23 Section 62-6-4 NMSA 1978 shall be responsible for meeting the
24 requirements and targets for all energy supplied to the
25 distribution cooperatives in New Mexico. Energy from

1 renewable energy and zero carbon resources that a generation
2 and transmission cooperative supplies in compliance with the
3 requirements and targets shall be verified at the point where
4 the generation and transmission cooperative produces or takes
5 delivery of the energy on behalf of the distribution
6 cooperatives that the generation and transmission cooperative
7 is serving."

8 SECTION 27. Section 62-15-37 NMSA 1978 (being Laws
9 2007, Chapter 4, Section 4, as amended by Laws 2015, Chapter
10 64, Section 2 and by Laws 2015, Chapter 71, Section 2) is
11 amended to read:

12 "62-15-37. DEFINITIONS--ENERGY EFFICIENCY--RENEWABLE
13 ENERGY.--As used in the Rural Electric Cooperative Act:

14 A. "energy efficiency" means measures, including
15 energy conservation measures, or programs that target
16 consumer behavior, equipment or devices to result in a
17 decrease in consumption of electricity without reducing the
18 amount or quality of energy services;

19 B. "renewable energy" means electric energy
20 generated by use of renewable energy resources and delivered
21 to a rural electric cooperative;

22 C. "renewable energy certificate" means a
23 certificate or other record, in a format approved by the
24 public regulation commission, that represents all the
25 environmental attributes from one megawatt-hour of

1 electricity generated from renewable energy;

2 D. "renewable energy resource" means electric or
3 useful thermal energy:

4 (1) generated by use of the following energy
5 resources, with or without energy storage and delivered to a
6 rural electric cooperative:

7 (a) solar, wind and geothermal;

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

10 (c) other hydropower facilities
11 supplying no greater than the amount of energy from
12 hydropower facilities that were part of an energy supply
13 portfolio prior to July 1, 2007;

14 (d) fuel cells that do not use fossil
15 fuels to create electricity;

16 (e) biomass resources, limited to
17 agriculture or animal waste, small diameter timber, not to
18 exceed eight inches, salt cedar and other phreatophyte or
19 woody vegetation removed from river basins or watersheds in
20 New Mexico; provided that these resources are from facilities
21 certified by the energy, minerals and natural resources
22 department to: 1) be of appropriate scale to have
23 sustainable feedstock in the near vicinity; 2) have zero life
24 cycle carbon emissions; and 3) meet scientifically determined
25 restoration, sustainability and soil nutrient principles; and

1 (f) landfill gas and anaerobically
2 digested waste biomass; and

3 (2) does not include electric energy
4 generated by use of fossil fuel or nuclear energy;

5 E. "useful thermal energy" means renewable energy
6 delivered from a source that can be metered and that is
7 delivered in the state to an end user in the form of direct
8 heat, steam or hot water or other thermal form that is used
9 for heating, cooling, humidity control, process use or other
10 valid end-use energy requirements and for which fossil fuel
11 or electricity would otherwise be consumed;

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

18 G. "zero carbon resource standard" means providing
19 New Mexico rural electric cooperative retail customers with
20 electricity generated from one hundred percent zero carbon
21 resources."

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

24 "62-16-3. DEFINITIONS.--As used in the Renewable Energy
25 Act:

1 A. "commission" means the public regulation
2 commission;

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

6 C. "municipality" means a municipal corporation,
7 organized under the laws of the state, and H class counties;

8 D. "public utility" means an entity certified by
9 the commission to provide retail electric service in
10 New Mexico pursuant to the Public Utility Act but does not
11 include rural electric cooperatives;

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

17 F. "renewable energy" means electric energy
18 generated by use of renewable energy resources and delivered
19 to a public utility;

20 G. "renewable energy certificate" means a
21 certificate or other record, in a format approved by the
22 commission, that represents all the environmental attributes
23 from one megawatt-hour of electricity generated from
24 renewable energy;

25 H. "renewable energy resource" means the following SCORC/SB 489
Page 62

1 energy resources, with or without energy storage:

2 (1) solar, wind and geothermal;

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

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

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

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

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

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

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

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

1 J. "renewable purchased power agreement" means an
2 agreement that binds an entity generating power from
3 renewable energy resources to provide power at a specified
4 price and binds the purchaser to that price;

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

11 L. "zero carbon resource standard" means providing
12 New Mexico public utility customers with electricity
13 generated 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
21 energy certificates; provided that the associated renewable
22 energy is delivered to the public utility and assigned to the
23 public utility's New Mexico customers. For public utilities
24 other than rural electric cooperatives and municipalities,
25 requirements of the renewable portfolio standard are:

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

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

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

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

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

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

1 requirement.

2 B. In administering the standards required by
3 Paragraphs (5) and (6) of Subsection A of this section, the
4 commission shall:

5 (1) not jeopardize the operation of a sewage
6 treatment facility that captures and combusts methane gas in
7 the facility's operations;

8 (2) maintain and protect the safety,
9 reliable operation and balancing of loads and resources on
10 the electric system;

11 (3) prevent unreasonable impacts to customer
12 electricity bills, taking into consideration the economic and
13 environmental costs and benefits of renewable energy
14 resources and zero carbon resources;

15 (4) prevent carbon dioxide emitting
16 electricity-generating resources from being reassigned,
17 redesignated or sold as a means of complying with the
18 standard;

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

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

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

6 (a) review of the standard, with a
7 focus on technologies, forecasts, existing transmission,
8 environmental protection, public safety, affordability and
9 electricity transmission and distribution system reliability;

10 (b) evaluation of the anticipated
11 financial costs and benefits to electric utilities in
12 implementing the standard, including the impacts and benefits
13 to customer electricity bills; and

14 (c) identification of the barriers to,
15 and benefits of, achieving the standard.

16 C. Any customer that is a political subdivision of
17 the state, or any educational institution designated in
18 Article 12, Section 11 of the constitution of New Mexico with
19 an enrollment of twenty thousand students or more during the
20 fall semester on its main campus, with consumption exceeding
21 twenty thousand megawatt-hours per year at any single
22 location or facility and that owns facilities that produce
23 renewable energy or hosts such facilities through a renewable
24 purchased power agreement, shall not be charged by the
25 utility for power purchases of one year or less or fuel on

1 the amount of electricity purchased from the utility equal to
2 the amount of renewable energy produced or hosted by the
3 customer. The customer shall annually certify to the state
4 auditor and notify the commission and the customer's serving
5 electric utility of the amount of renewable energy produced
6 at the customer-owned or customer-hosted facilities that
7 generate renewable energy. The customer shall also certify
8 to the state auditor and notify the commission that the
9 customer will retire all renewable energy certificates
10 associated with the renewable energy produced by those
11 facilities. Any financial benefits as a result of the
12 provisions of this subsection shall accrue to the customer
13 immediately upon the effective date of this 2019 act and
14 shall be reflected in customer bills each month, subject to
15 annual true-up and reconciliation. The provisions of this
16 subsection shall not prevent the utility from recovering all
17 of its reasonable and prudent fuel and purchased power costs.

18 D. Upon a motion or application by a public
19 utility the commission shall, or upon a motion or application
20 by any other person the commission may, open a docket to
21 develop and provide financial or other incentives to
22 encourage public utilities to produce or acquire renewable
23 energy that exceeds the applicable annual renewable portfolio
24 standard set forth in this section; results in reductions in
25 carbon dioxide emissions earlier than required by Subsection

1 A of this section; or causes a reduction in the generation of
2 electricity by coal-fired generating facilities, including
3 coal-fired generating facilities located outside of
4 New Mexico. The incentives may include additional earnings
5 and capital investment opportunities for resources used in
6 furtherance of the outcomes described in this subsection.

7 E. If, in any given year, a public utility
8 determines that the average annual levelized cost of
9 renewable energy that would need to be procured or generated
10 for purposes of compliance with the renewable portfolio
11 standard would be greater than the reasonable cost threshold,
12 the public utility shall not be required to incur that excess
13 cost; provided that the existence of this condition excusing
14 performance in any given year shall not operate to delay
15 compliance with the renewable portfolio standard in
16 subsequent years. The provisions of this subsection do not
17 preclude a public utility from accepting a project with a
18 cost that would exceed the reasonable cost threshold. When a
19 public utility can generate or procure renewable energy at or
20 below the reasonable cost threshold, it shall be required to
21 do so to the extent necessary to meet the applicable
22 renewable portfolio standard and shall not be precluded from
23 exceeding the standard.

24 F. By September 1, 2007 and until June 30, 2019, a
25 public utility shall file a report to the commission on its

1 procurement and generation of renewable energy during the
2 prior calendar year and a procurement plan that includes:

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

6 (2) testimony and exhibits that demonstrate
7 that the proposed procurement is reasonable as to its terms
8 and conditions considering price, availability, reliability,
9 any renewable energy certificate values and diversity of the
10 renewable energy resource; or

11 (3) demonstration that the plan is otherwise
12 in the public interest.

13 G. By July 1, 2020, and each July 1 thereafter, a
14 public utility shall file a report to the commission on the
15 public utility's procurement and generation of renewable
16 energy since the last report and a procurement plan that
17 includes:

18 (1) the cost of procurement for new
19 renewable energy required to comply with the renewable
20 portfolio standard;

21 (2) the capital, operating and fuel costs on
22 a per-megawatt-hour basis during the preceding calendar year
23 of each nonrenewable generation resource rate-based by the
24 utility, or dedicated to the utility through a power purchase
25 agreement of one year or longer, and the nonrenewable

1 generation resources' carbon dioxide emissions on a
2 per-megawatt-hour basis during that same year;

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

5 (a) was the result of competitive
6 procurement that included opportunities for bidders to
7 propose purchased power, facility self-build or facility
8 build-transfer options;

9 (b) has a cost that is reasonable as
10 evidenced by a comparison of the price of electricity from
11 renewable energy resources in the bids received by the public
12 utility to recent prices for comparable energy resources
13 elsewhere in the southwestern United States; and

14 (c) is in the public interest,
15 considering factors such as overall cost and economic
16 development opportunities; and

17 (4) strategies used to minimize costs of
18 renewable energy integration, including location, diversity,
19 balancing area activity, demand-side management and load
20 management.

21 H. The commission shall approve or modify a public
22 utility's procurement plan within ninety days and may approve
23 the plan without a hearing, unless a protest is filed that
24 demonstrates to the commission's reasonable satisfaction that
25 a hearing is necessary. The commission may modify a plan

1 after notice and hearing. The commission may, for good
2 cause, extend the time to approve a procurement plan for an
3 additional ninety days. If the commission does not act
4 within the ninety-day period, the procurement plan is deemed
5 approved.

6 I. The commission may reject a procurement plan
7 if, within forty days of filing, the commission finds that
8 the plan does not contain the required information and, upon
9 the rejection, shall provide the public utility the time
10 necessary to file a revised plan; provided that the total
11 amount of renewable energy required to be procured by the
12 public utility shall not change."

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

15 "62-16-5. RENEWABLE ENERGY CERTIFICATES--COMMISSION
16 DUTIES.--

17 A. The commission shall establish:

18 (1) a system of renewable energy
19 certificates that can be used by a public utility to
20 establish compliance with the renewable portfolio standard
21 and that may include certificates that are monitored,
22 accounted for or transferred by or through a regional system
23 or trading program for any region in which a public utility
24 is located; and

25 (2) requirements and procedures concerning

1 requirements for renewable energy certificates pursuant to
2 Subsections B and C of this section.

3 B. Renewable energy certificates:

4 (1) are owned by the generator of the
5 renewable energy unless:

6 (a) the renewable energy certificates
7 are transferred to the purchaser of the electricity through
8 specific agreement with the generator;

9 (b) the generator is a qualifying
10 facility, as defined by the federal Public Utility Regulatory
11 Policies Act of 1978, in which case the renewable energy
12 certificates are owned by the public utility purchaser of the
13 renewable energy; or

14 (c) a contract for the purchase of
15 renewable energy is in effect prior to July 1, 2019, in which
16 case the renewable energy certificates are owned by the
17 purchaser of the electricity for the term of such contract,
18 unless otherwise agreed to in a contract approved by the
19 commission;

20 (2) may be traded, sold or otherwise
21 transferred by their owner, unless the certificates are from
22 a rate-based public utility plant, in which case the entirety
23 of the renewable energy certificates from that plant shall be
24 retired by the utility on behalf of itself or its customers.

25 Any contract to purchase renewable energy entered into by a

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

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

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

19 (3) that are used for the purpose of meeting
20 the renewable portfolio standard shall be registered with a
21 renewable energy generation information system that is
22 designed to create and track ownership of renewable energy
23 certificates and that, through the use of independently
24 audited generation data, verifies the generation and delivery
25 of electricity associated with each renewable energy

1 certificate and protects against multiple counting of the
2 same renewable energy certificate; and

3 (4) may be carried forward for up to four
4 years from the date of issuance to establish compliance with
5 the renewable portfolio standard, after which they shall be
6 deemed retired by the public utility.

7 C. A public utility shall be responsible for
8 demonstrating that a renewable energy certificate used for
9 compliance with the renewable portfolio standard is derived
10 from eligible renewable energy resources."

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

13 "62-16-6. COST RECOVERY FOR RENEWABLE ENERGY AND
14 EMISSIONS REDUCTION.--

15 A. A public utility that procures or generates
16 renewable energy shall recover, through the rate-making
17 process, the reasonable costs of complying with the renewable
18 portfolio standard. Costs that are consistent with
19 commission approval of procurement plans or transitional
20 procurement plans shall be deemed to be reasonable.

21 B. The commission shall not exclude from such cost
22 recovery reasonable interconnection and transmission costs
23 and costs to comply with electric industry reliability
24 standards incurred by the public utility in order to deliver
25 renewable energy to retail New Mexico customers.

1 C. If a public utility has been granted a
2 certificate of public convenience and necessity prior to
3 January 1, 2015 to construct or operate an electric
4 generation facility and the investment in that facility has
5 been allowed recovery as part of the utility's rate-base, the
6 commission may require the facility to discontinue serving
7 customers within New Mexico if the replacement has less or
8 zero carbon dioxide emissions into the atmosphere; provided
9 that no order of the commission shall disallow recovery of
10 any undepreciated investments or decommissioning costs
11 associated with the facility."

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

14 "62-16-7. COMMISSION--POWERS AND DUTIES--VOLUNTARY
15 PROGRAMS.--

16 A. The commission:

17 (1) shall adopt rules regarding the
18 renewable portfolio standard, including a provision for
19 public utility records and reports; and

20 (2) may require that a public utility offer
21 its retail customers a voluntary program for purchasing
22 renewable energy that is in addition to electricity provided
23 by the public utility pursuant to the renewable portfolio
24 standard, under rates and terms that are approved by the
25 commission.

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

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

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

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

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

19 "62-16-8. RURAL ELECTRIC COOPERATIVE--VOLUNTARY
20 TARIFFS.--

21 A. The commission may require that a rural
22 electric cooperative:

23 (1) offer its retail customers a voluntary
24 program for purchasing renewable energy under rates and terms
25 that are approved by the commission;

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

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

6 B. The commission shall establish and amend rules
7 and regulations for the implementation of renewable portfolio
8 standards consistent with the Rural Electric Cooperative
9 Act."

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

12 "62-16-9. EXISTING RULES.--The commission shall
13 promulgate rules to implement the provisions of the Renewable
14 Energy Act."

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

17 "62-16-10. FEDERAL REQUIREMENTS.--Renewable energy
18 procured or generated by a public utility to comply with a
19 federal law, rule or regulation may be used to satisfy the
20 required procurements of the Renewable Energy Act."

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

23 "74-2-5. DUTIES AND POWERS--ENVIRONMENTAL IMPROVEMENT
24 BOARD--LOCAL BOARD.--

25 A. The environmental improvement board or the

1 local board shall prevent or abate air pollution.

2 B. The environmental improvement board or the
3 local board shall:

4 (1) adopt, promulgate, publish, amend and
5 repeal rules and standards consistent with the Air Quality
6 Control Act to attain and maintain national ambient air
7 quality standards and prevent or abate air pollution,
8 including:

9 (a) rules prescribing air standards,
10 within the geographic area of the environmental improvement
11 board's jurisdiction or the local board's jurisdiction, or
12 any part thereof; and

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

19 (2) adopt a plan for the regulation,
20 control, prevention or abatement of air pollution,
21 recognizing the differences, needs, requirements and
22 conditions within the geographic area of the environmental
23 improvement board's jurisdiction or the local board's
24 jurisdiction or any part thereof.

25 C. Rules adopted by the environmental improvement

1 board or the local board may:

2 (1) include rules to protect visibility in
3 mandatory class I areas to prevent significant deterioration
4 of air quality and to achieve national ambient air quality
5 standards in nonattainment areas; provided that such
6 regulations:

7 (a) shall be no more stringent than but
8 at least as stringent as required by the federal act and
9 federal regulations pertaining to visibility protection in
10 mandatory class I areas, pertaining to prevention of
11 significant deterioration and pertaining to nonattainment
12 areas; and

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

15 (2) prescribe standards of performance for
16 sources and emission standards for hazardous air pollutants
17 that, except as provided in this subsection and in
18 Subparagraph (b) of Paragraph (1) of Subsection B of this
19 section:

20 (a) shall be no more stringent than but
21 at least as stringent as required by federal standards of
22 performance; and

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

25 (3) include regulations governing emissions

1 from solid waste incinerators that shall be at least as
2 stringent as, and may be more stringent than, any applicable
3 federal emission limitations;

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

11 (5) require notice to the department or the
12 local agency of the intent to introduce or permit the
13 introduction of an air contaminant into the air within the
14 geographical area of the environmental improvement board's
15 jurisdiction or the local board's jurisdiction; and

16 (6) require any person emitting any air
17 contaminant to:

18 (a) install, use and maintain emission
19 monitoring devices;

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

23 (c) establish and maintain records of
24 the nature and amount of emissions;

25 (d) submit reports regarding the nature SCORC/SB 489
Page 81

1 and amounts of emissions and the performance of emission
2 control devices; and

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

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

8 E. In making its regulations, the environmental
9 improvement board or the local board shall give weight it
10 deems appropriate to all facts and circumstances, including
11 but not limited to:

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

14 (2) the public interest, including the
15 social and economic value of the sources and subjects of air
16 contaminants; and

17 (3) technical practicability and economic
18 reasonableness of reducing or eliminating air contaminants
19 from the sources involved and previous experience with
20 equipment and methods available to control the air
21 contaminants involved."