

LEGISLATIVE SUMMARY SHEET

Tracking No. 0258-19

**DATE:** August 26, 2019

AN ACTION RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE AND THE NAABIK'ÍYÁTI' COMMITTEE; REQUESTING THE NEW MEXICO PUBLIC REGULATION COMMISSION TO RECONSIDER AND CONFIRM THAT SENATE BILL 489, THE ENERGY TRANSITION ACT, APPLIES TO ALL ASPECTS OF THE SAN JUAN GENERATING STATION ABANDONMENT, FINANCING AND REPLACEMENT FILINGS AND THAT NAVAJO WORKERS ARE PROVIDED ALL THE FINANCIAL AND EDUCATIONAL HELP AFFORDED TO THEM BY THE ENERGY TRANSITION ACT.

**PURPOSE:** Requesting on behalf of Navajo Nation that the New Mexico Public Regulation Commission reconsider and confirm that SB 489 Energy Transition Act applies to all aspects of the San Juan Generating Station abandonment, financing and replacement filings and Navajo workers.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate review the proposed resolution in detail.

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Resources & Development Committee  
Thence  
Naabik'íyáti' Committee

PROPOSED STANDING COMMITTEE RESOLUTION  
24<sup>th</sup> NAVAJO NATION COUNCIL—FIRST YEAR, 2019

INTRODUCED BY



Primary Sponsor

TRACKING NO. 0258-19

AN ACTION

RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE AND THE  
NAABIK'ÍYÁTI' COMMITTEE; REQUESTING THE NEW MEXICO PUBLIC  
REGULATION COMMISSION TO RECONSIDER AND CONFIRM THAT SENATE  
BILL 489, THE ENERGY TRANSITION ACT, APPLIES TO ALL ASPECTS OF THE  
SAN JUAN GENERATING STATION ABANDONMENT, FINANCING AND  
REPLACEMENT FILINGS AND THAT NAVAJO WORKERS ARE PROVIDED ALL  
THE FINANCIAL AND EDUCATIONAL HELP AFFORDED TO THEM BY THE  
ENERGY TRANSITION ACT.

WHEREAS:

**Section One. Authority**

- A. The Navajo Nation established the Resources and Development Committee to oversee the regulation of activities on Navajo Nation lands for disposition or acquisition of resources. 2 N.N.C. § 500(C)(2).
- B. The Navajo Nation established the Naabik'íyáti' Committee as a Navajo Nation Council standing committee. 2 N.N.C. § 700(A).
- C. The Naabik'íyáti' Committee has the power to coordinate all federal, county and state programs with other standing committees and branches of the Navajo Nation government to provide the most efficient delivery of services to Navajo Nation. 2 N.N.C. § 701(A)(4).

- 1 D. The Naabik'iyáti Committee further has the power to review and continually monitor  
2 the programs and activities of federal and state departments and to assist development  
3 of such programs designed to serve the Navajo People and the Navajo Nation through  
4 intergovernmental relationships between the Navajo Nation and such departments. 2  
5 N.N.C. § 701(A)(7).
- 6 E. The Navajo Nation has a government-to-government relationship with the United  
7 States of America, Treaty of 1868, Aug. 12, 1868, 15 Stat. 667.

8

9 **Section Two. Findings**

- 10 A. In March 2019, the New Mexico State Senate passed Senate Bill 489, the Energy  
11 Transition Act ("ETA"). *See* attached as **Exhibit A**.
- 12 B. The ETA is a transformative energy policy legislation which provides a responsible  
13 and just transition out of coal mining, while also providing financial, educational, and  
14 economic development funds to the workers and region affected by the proposed San  
15 Juan Generating Station ("SJGS") coal plant shutdown.
- 16 C. Navajo workers, including plant workers, mine workers, suppliers, contractors, and  
17 outage maintenance workers, make up sixty percent (60%) or the total workforce  
18 affected by the SJGS shutdown, providing much of New Mexico with affordable,  
19 reliable energy for decades.
- 20 D. The shutdown of SJGS affects fifty-six (56) Navajo power plant workers as well as  
21 one hundred and ten (110) Navajo contractors and suppliers, one hundred thirteen  
22 (113) coal mine workers, and ten (10) Navajo contractors or suppliers. These Navajo  
23 workers, contractors and suppliers would be irreparably harmed if the ETA did not  
24 apply to the SJGS filings or if litigation dragged on in the courts.
- 25 E. The New Mexico Public Regulation Commission (NMPRC) has created confusion  
26 and potential jeopardy to the \$40 million funds. The NMPRC's actions regarding the  
27 SJGS abandonment could directly affect Navajo workers, contractors, and suppliers.
- 28 F. The breakdown of the \$40 million in funds that are in jeopardy is as follows:

- a. \$12 million for a displaced workers un which would help plant and mine workers as well as contractors, suppliers, and vendors affected by the SJGS shutdown;
- b. \$10.4 million for severance for Public Service Company of New Mexico (PNM) plant workers;
- c. \$7.4 million in additional severance funds to equalize severance packages for affected coal miners;
- d. \$6 million in economic development;
- e. \$1.8 million for Indian affairs and;
- f. \$8,000 per year for three (3) years for professional training of both plant and coal mine workers;

G. The NMPRC has the authority to end confusion surround the ETA's effect on the SJGS shutdown, and provide clarity to Navajo workers as they navigate their futures. It is irresponsible of NMPRC to leave our Navajo workers in an uncertain position when Senate Bill 489, the Energy Transition Act provides the means to give monetary compensation and training to aid these workers in this time.

H. The Navajo Nation has a vested interest in seeing that Navajo workers are treated fairly and provided all the financial and educational help afforded to them by the ETA, and it is in Navajo Nation's best interest to encourage the MNPRC to confirm that the ETA applies to all aspects of the SJGS shutdown.

NOW THEREFORE, BE IT RESOLVED:

- A. The Navajo Nation hereby requests the New Mexico Public Regulation Commission to reconsider and confirm that Senate Bill 489, the Energy Transition Act applies to all aspects of the San Juan Generating Station abandonment, financing, and replacement filings and that the New Mexico Public Regulation Commission, while balancing the Public Service Company of New Mexico's customer costs, will not neglect their duties to the numerous Navajo workers, contractors and suppliers who are negatively impacted by the San Juan Generating Station shutdown.

1 B. The Navajo Nation hereby authorizes the Speaker of the Navajo Nation Council,  
2 President of the Navajo Nation, and their respective designees, to advocate on the  
3 behalf of the Navajo Nation to ensure Navajo workers impacted by the San Juan  
4 Generating Station are provided for under Senate Bill 489, the Energy Transition Act.  
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Office of the Governor  
**MICHELLE LUJAN GRISHAM**



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» Governor signs landmark energy legislation, establishing New Mexico as a national leader in renewable transition efforts

## Governor signs landmark energy legislation, establishing New Mexico as a national leader in renewable transition efforts

Mar 22, 2019 | [Press Releases](#)

SANTA FE – Surrounded by dozens of advocates and statewide leaders, Gov. Michelle Lujan Grisham on Friday signed Senate Bill 489, the Energy Transition Act, landmark legislation that sets bold statewide renewable energy standards and establishes a pathway for a low-carbon energy transition away from coal while providing workforce training and transition assistance to affected communities.

Developed over the course of a year with collaboration by community organizations, unions, energy groups and advocates, the Energy Transition Act establishes New Mexico as a national leader in clean energy. The ETA sets a statewide renewable energy standard of 50 percent by 2030 for New Mexico investor-owned utilities and rural electric cooperatives and a goal of 80 percent by 2040, in addition to setting zero-carbon resources standards for investor-owned utilities by 2045 and rural electric cooperatives by 2050. The law transitions New Mexico away from coal and toward clean energy, ensuring greater renewable energy production and reducing

costs for consumers, and provides tens of millions of dollars of economic and workforce support for communities impacted by coal plant closures, as well as the development of renewable replacement power in San Juan County.

"This is a really big deal," Gov. Lujan Grisham said. "In every corner of this state, advocates, utilities, young adults, unions, elected officials and families came together to push for and, today, enact this transformational law. The Energy Transition Act fundamentally changes the dynamic in New Mexico. This legislation is a promise to future generations of New Mexicans, who will benefit from both a cleaner environment and a more robust energy economy with exciting career and job opportunities. Crucially, the Energy Transition Act does not leave affected workers and neighbors behind. We look out for each other. With this law, we seal that promise."

"The ETA cements New Mexico's place as a national leader in the transition to a new, renewable energy economy," said sponsor Sen. Jacob Candelaria. "Unlike other states, the bill doesn't leave our neighbors that have relied on the coal industry behind. The bill will drive hundreds of millions of dollars investments in workers and communities to ensure a just transition to our state's renewable energy future."

"This is a first, fundamental and huge step forward," said sponsor Rep. Nathan Small. "We have always had the potential. Tomorrow, New Mexicans will wake up in a state that finally decided to lead, tackle renewable energy and create jobs in our communities. As the governor said, with this legislation, we leave no New Mexican behind."

"The governor's leadership has been admirable, and it's worth highlighting as we mark this historic day for New Mexico," said sponsor Sen. Mimi Stewart. "We wouldn't have been able to achieve these ambitious new standards without her, and I applaud both her and all of the stakeholders across the state who contributed to this tremendous effort. New Mexico is moving forward on clean energy."

"This legislation is a milestone for not just the state of New Mexico and the southwest, but all of the U.S., including tribal communities," said Navajo Nation President Jonathan Nez. "I applaud the governor, lawmakers, and cabinet secretaries for their work. This is a gift for our children and children of New Mexico who are yet to be born. Clean energy is the future of our nation."

"New Mexico's Energy Transition Act is the strongest package of its kind in the country," said Energy, Minerals and Natural Resources Department Secretary Sarah

Cottrell Propst. "The renewable and zero-carbon standards, apprenticeship opportunities, securitization tool for retiring uneconomic coal plants, and state programmatic and financial assistance for the affected community are unparalleled."

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## THE ENERGY TRANSITION ACT (SB489)

*The Energy Transition Act will reduce electricity costs; help San Juan workers; diversify and strengthen our economy; protect our air, land, water and public health; and allow New Mexico to begin doing its part to address climate change.*

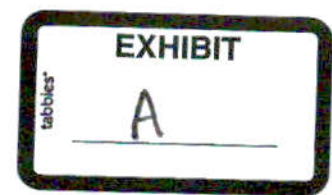
The *Energy Transition Act* (ETA, SB489) is sponsored by Senators Jacob Candelaria and Mimi Stewart and Representative Nathan Small. It would put in place the forward-looking energy policies Governor Michelle Lujan Grisham pledged during her campaign. A year in the making with countless stakeholder and community meetings, the ETA is a bold and comprehensive bill that moves our public utilities and rural electric cooperatives away from coal and towards renewable and zero-carbon resources. Among the significant benefits of the ETA are:

**1. New Mexico's electricity will be 50% renewable by 2030, with a goal of 80% by 2040. To combat climate change, our electricity will be 100% carbon-free by 2045.** Current law requires renewable energy to supply 20% of New Mexico's electricity by 2020. Because of loopholes, price caps and exemptions, the actual renewable energy serving New Mexicans is much less – as low as 3% in some cases. The ETA would increase the requirement to 50% by 2030 and apply it to all utilities and cooperatives in the State – without exemptions and loopholes. In addition, the bill sets a goal of 80% for 2040, and requires 100% zero-carbon energy by 2045 for investor-owned utilities. These standards will be among the strongest in the country, making New Mexico a leader in addressing climate change.

**2. New Mexico's economy will be bolstered by a large renewable energy build-out, with a local workforce trained to supply the needed labor.** In addition to the air, land, water, and public health benefits for New Mexicans from new renewable energy standards, there are substantial economic benefits. Renewable energy is among the least expensive sources of energy, and New Mexico contains premier sites for its development. By moving utilities away from fossil fuels and requiring a robust renewable energy build-out, those low costs will be available to all of residents. In addition, the bill provides training for New Mexico workers so that the construction and development jobs of this renewable energy build-out are sustainable.

**3. The ETA protects consumers and reduces electricity costs as New Mexico moves away from coal.** New Mexico utilities have long relied on coal-fired generation to produce electricity. But with the declining price for renewables and the aging coal infrastructure, New Mexico can now transition away from coal. Some utilities, such as PNM, have substantial coal plant costs approved for recovery but still on their books. The bill uses a tool not currently available to the PRC to better protect customers, while requiring the utility to have shared responsibility: a low-cost financing to pay off coal plant costs and close the facilities, often referred to as "securitization." Securitization is a tool used in many states to advance coal-plant retirements and renewable development, and assist workers in affected areas. Securitization is like refinancing a mortgage at a lower rate. The lower interest, AAA-rated bonds will reduce the overall cost of closing coal plants by as much as 40%--in large part because the utility no longer earns a return on the now-paid-off plant balance. For PNM, while securitization allows the company to avoid a potential write-off, the Company also loses about \$16 million per year in current earnings once completed. Because the ETA would have market forces determine ownership of replacement resources, PNM has no assurance that it can restore those lost earnings. In many states, utilities have opposed securitization because of the lost earnings and uncertain ownership opportunities. For New Mexico, securitization is a fair way for utility customers and shareholders to move away from coal. The ETA shares the financial responsibility for closing San Juan Generating Station between utility shareholders and customers.

**4. New Mexico communities impacted by coal plant closures will receive \$ millions in economic relief.** The low-interest bonds of the ETA will also be used to finance crucial economic relief for communities impacted by coal plant closures. In the case of PNM's San Juan Generating Station, securitization will provide over \$40 million to assist plant employees, mineworkers and others with severance pay and job training. In addition, with public input from community stakeholders, the fund will assist the Four Corners' economy to transition away from its dependence on fossil fuel extraction. Finally, the bill directs hundreds of millions of dollars of replacement power, including renewables, to be developed in San Juan County, where infrastructure already exists. The development will restore the tax base for the community and its schools after SJGS closes, and will provide substantial economic activity for many years to come.



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.

25 SECTION 3. LOCATION OF RESOURCE DEVELOPMENT AFTER

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

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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  
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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.

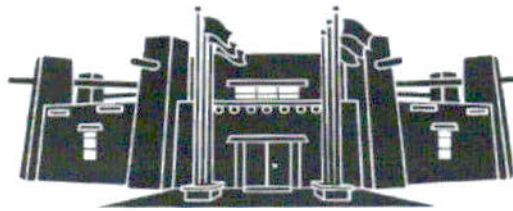
5 D. Any regulation adopted pursuant to this section  
6 shall be consistent with federal law, if any, relating to  
7 control of motor vehicle emissions.

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."



**MEMORANDUM**

**TO:** Honorable Rickie Nez  
24<sup>th</sup> Navajo Nation Council

**FROM:**   
Edward A. McCool, Acting-Chief Legislative Counsel  
Office of Legislative Counsel

**DATE:** August 26, 2019

AN ACTION RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE AND THE NAABIK'ÍYÁTI COMMITTEE; REQUESTING THE NEW MEXICO PUBLIC REGULATION COMMISSION TO RECONSIDER AND CONFIRM THAT SENATE BILL 489, THE ENERGY TRANSITION ACT, APPLIES TO ALL ASPECTS OF THE SAN JUAN GENERATING STATION ABANDONMENT, FINANCING AND REPLACEMENT FILINGS AND THAT NAVAJO WORKERS ARE PROVIDED ALL THE FINANCIAL AND EDUCATIONAL HELP AFFORDED TO THEM BY THE ENERGY TRANSITION ACT.

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that this particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§500, 501. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution.

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: 0258-19

SPONSOR: Rickie Nez

TITLE: An Action Relating To Resources And Development Committee And The NAABIK'IYATI' Committee; Requesting The New Mexico Public Regulation Commission To Reconsider And Confirm That Senate Bill 489, The Energy Transition Act, Applies To All Aspects Of The San Juan Generating Station Abandonment, Financing And Replacement Filings And That Navajo Workers Are Provided All The Financial And Educational Help Afforded To Them By The Energy Transition Act

*Date posted:* August 27, 2019 at 4:52 PM

Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)

Written comments may be mailed to:

Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515  
(928) 871-7586

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