

# Renewable Portfolio Standard: New Mexico Supreme Court Addresses Legality of Utility/Landfill Plan



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

06/06/2022

Co-Author: Evan Nelson

The Supreme Court of New Mexico (“Court”) addressed in a December 16th opinion the legality of the 2018 Annual Renewable Energy Plan (the “2018 Plan”) between El Paso Electric Company (“El Paso Electric”), a public utility company, and the Camino Real Landfill to Energy Facility (“Camino Real”). See *City of Las Cruces v. New Mexico Public Regulation Comm.*, 2021 WL 6013613.

The question addressed was whether the 2018 Plan violated the consumer protection provisions of New Mexico’s renewable Energy Act (“Act”).

El Paso Electric is a public utility. Camino Real is a biogas plant. The plant uses methane gas from a landfill to generate renewable energy.

The Act requires that a New Mexico public utility generate a certain percentage of its energy retail sales from renewable energy. This percentage is denominated a renewable portfolio standard (“Portfolio Standard”).

A public utility that cannot generate enough of its own renewable energy to meet this Portfolio Standard can procure renewable energy certificates (“Certificates”). Each Certificate represents a certain amount of electricity generated from a renewable energy source—like a currency by which public utilities’ compliance with the Portfolio Standard may be measured. Costs associated with procuring Certificates are then passed on to electric consumers (i.e., “ratepayers”).

Ratepayers incur the financial burden of procuring Certificates. Therefore, public utilities cannot be required to procure renewable energy to meet the Portfolio Standard if above a reasonable cost threshold (“Threshold”). As a result, the Threshold serves as a consumer protection mechanism that limits the customer bill impact.

The New Mexico Legislature identified three purposes for the Act:

1. to prescribe the amount of renewable energy resources that public utilities shall include in their Portfolio Standard plans,
2. to allow public utilities to recover costs through the rate-making process, and
3. to protect public utilities and their ratepayers from renewable energy costs above the Threshold.

The New Mexico Public Regulation Commission (the “Commission”) approved the 2018 Plan between El Paso Electric and Camino Real. It allowed El Paso Electric to purchase Certificates generated by Camino Real despite the utility’s costs for complying with the Portfolio Standard being well above the Threshold. El Paso Electric projected renewable costs of 6.54% of total revenues in 2018. The Threshold was 3%.

The City of Las Cruces (the “City”) appealed the Commission’s approval. It argued on appeal:

1. the 2018 Plan approval violated the consumer protection provisions of the Act,
2. the 2018 Plan approval contradicted the Commission’s precedent interpreting the Act, and
3. the Commission’s approval of the 2018 Plan violated the legal residuum rule because the Commission relied solely on hearsay evidence.

A key objective of the Act includes the protection of:

. . . public utilities and their ratepayers from renewable energy costs that are above a reasonable cost threshold.

The City therefore argued that the 2018 Plan approval violated the plain language of the Act.

El Paso Electric countered that the Threshold is not an absolute cap. Instead, it is just the point at which the Commission cannot require utilities to purchase renewable energy. Thus, El Paso Electric suggested that because nothing in the Act specifically prohibited a utility from exceeding the threshold, the Act was meant to be flexible in accommodating all three of its purposes.

The Court rejected El Paso Electric’s argument.

The Court decided that it was not appropriate to elevate one purpose over another. The New Mexico Legislature was deemed to have intended that each purpose carry the same weight. Nothing in the language of the Act indicates otherwise. Therefore, the Court held that the only interpretation that gave weight to each purpose is that the Threshold must operate as the point in which utilities may not incur new renewable energy costs.

Because the Court concluded that the Commission’s approval of the 2018 Plan violated the consumer protection provisions of the Act, the Court did not address the City’s remaining arguments.

The Court therefore held that El Paso Electric violated the state’s Renewable Energy Act.

A copy of the opinion can be downloaded [here](#).