

21-00128-UT; Final Order Upon Reconsideration

Santillanes, LaurieAnn , PRC <LaurieAnn.Santillanes@prc.nm.gov>

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To: ajgross@hollandhart.com <ajgross@hollandhart.com>; abbas@revtx.com <abbas@revtx.com>; Akhil, Abbas <aakhil@comcast.net>; abigail@newsdata.com <abigail@newsdata.com>; adamh@osceolaenergy.com <adamh@osceolaenergy.com>; aclee@hollandhart.com <aclee@hollandhart.com>; Alejandra.Chavira@epelectric.com <Alejandra.Chavira@epelectric.com>; alena.brandenberger@cnmec.org <alena.brandenberger@cnmec.org>; biz@lifeisgood2.com <biz@lifeisgood2.com>; alooney@ad.nmsu.edu <alooney@ad.nmsu.edu>; aalderson@consultbai.com <aalderson@consultbai.com>; AE@Jalblaw.com <AE@Jalblaw.com>; ashelhamer@courtneylawfirm.com <ashelhamer@courtneylawfirm.com>; astevens.law@gmail.com <astevens.law@gmail.com>; ctcolumbia@aol.com <ctcolumbia@aol.com>; akharriger@sawvel.com <akharriger@sawvel.com>; andrew@stone.com <andrew@stone.com>; district5@socorroelectric.com <district5@socorroelectric.com>; sancheza@rcec.coop <sancheza@rcec.coop>; april.elliott@westernresources.org <april.elliott@westernresources.org>

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF A COMMISSION)
RULEMAKING REGARDING NMPRC RULE)
17.7.3 NMAC INTEGRATED RESOURCE)
PLANS AND PROCUREMENT PROCEDURES)
_____)**

Case No. 21-00128-UT

Sincerely,
LaurieAnn Santillanes
Law Clerk for the Office of General Counsel
New Mexico Public Regulation Commission
P.O. Box 1269
Santa Fe, NM 87504-1269
Telephone: (505) 670-4830



<https://www.nm-prc.org>

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF A COMMISSION)
RULEMAKING REGARDING NMPRC RULE)
17.7.3 NMAC INTEGRATED RESOURCE PLANS)
AND PROCUREMENT PROCEDURES)
_____)**

Case No. 21-00128-UT

FINAL ORDER UPON RECONSIDERATION

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission” and “NMPRC”) upon the September 14, 2022 Final Order (the “September 14th Final Order”) adopting a repeal and replace to NMPRC Rule 17.7.3 NMAC that pertains to the filing of Integrated Resource Plans and procurement by electric utilities regulated by the Commission; upon the October 14, 2022 filing by Public Service Company of New Mexico (“PNM”) and El Paso Electric Company (“EPE”) and the October 17, 2022 by Southwestern Public Service Company (“SPS”) of their Motions for Rehearing (“Motion for Rehearing”); upon the October 14, 2022 filing by EPE of its Motion to Reopen the Record and to Present New Evidence (“Motion to Reopen”); upon the Order Setting Response Schedule dated October 19, 2022; and upon the Responses filed on October 24, 2022; wherefore, being duly informed in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. On September 14, 2022, the Commission adopted the Final Order in which the Commission adopted a repeal and replace of the Commission rule 17.7.3 NMAC pertaining to integrated resource planning (“IRP”) by electric utilities at pursuant to the Notice of Proposed Rulemaking issued on November 3, 2021 (“NOPR”) (the “IRP Rule”).

2. This Final Order Upon Rehearing incorporates herein by reference the September 14th Order’s Rule in its entirety except as modified herein, as set forth specifically in Exhibit D, containing the changes to the September 14th Order’s Rule.

3. On October 14, 2022, PNM and EPE and on October 17, 2022 SPS, pursuant to NMSA 1978, Section 62-10-16 and 1.2.2.37(F) NMAC, each filed their Motion for Rehearing of the Final Order.

4. On October 18, 2022, the Commission issued an Order requiring the following: a) Staff shall and other participants to this matter may file a written Responses to the Motions for Rehearing and Staff shall and other participants to the matter may file a written Response to EPE's Motion to Reopen.

5. PNM's Motion for Rehearing stated that it seeks rehearing regarding the following provisions of the Final Order's Rule: a) the new provisions on procurements and Independent Monitor are overbroad, improperly limit utility discretion, add to the time, resources, and costs of the IRP process without any assurance that the process will result in more effective resource acquisition proceedings. For example, PNM stated the RFP provisions requires that the utility's bid evaluation "shall be subject to review by the commission" which implies the Commission shall make a substantive assessment of the utility's; b) six (6) months is insufficient time to successfully complete the steps outlined in 17.7.3.9(A) NMAC of the facilitated stakeholder process and the Commission should allow for some flexibility; c) requirements concerning Staff and stakeholder access to utility resource modeling are burdensome because the Rule requires utilities to provide up to five modeling runs per requesting party¹ while the NOPR Rule 17.7.3 in the NOPR did not specify five modeling runs per party. PNM states that the NOPR Rule only stated that the utility was required to provide Staff and stakeholders with "reasonable access to the same modeling software used by the utility on equal footing as the utility in accordance with commission

¹ 17.7.3.9(A)(1).
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precedent, and the utility shall share all modeling information”² and therefore, neither PNM nor any other commenter, therefore, had the opportunity to provide evidence on what a reasonable number of modeling runs would be. According to PNM, depending on the number of stakeholders and the number of modeling runs they request, it may be difficult or impossible for PNM to complete the facilitated stakeholder process within the mandated six months. PNM noted that another provision that was added to the September 14th Final Order Rule that was not included in the NOPR version of the rule is at 17.7.3.9(A)(2), which effectively allows Utility Division Staff to provide an analysis “based on an alternative, open-source modeling software” and therefore neither PNM nor any other commenter had the opportunity to assess this provision because it was not in the noticed version of the proposed rule; d) the variance provision is an inadequate substitute for express exemptions because a variance is not the same thing as an exemption since a variance requires an application under 17.7.3.17 NMAC and allows the Commission discretion in whether to allow the utility to be removed from the Rule’s requirements. An exemption is an express removal from the Rule’s requirements. PNM is also concerned that the Rule’s definition of “emergency procurement” remains too narrow; and e) the Commission ignored the record about the relationship to other statutes and Commission Rules, and the new language at 17.7.3.12.M NMAC does not address the concerns raised in the comments.

6. EPE's Motion for Rehearing stated the following: a) implementation of Rule 17.7.3 would prescribe all of a utility's resource acquisitions; dictate the factors the utility must consider when evaluating resources; require that all resources be procured through a competitive solicitation; manage the resource procurement process by appointing an Independent Monitor to

² NOPR, Exhibit A at 8 (Nov. 3, 2021).
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oversee resource acquisitions; and shield the Independent Monitor's recommendations from discovery or cross-examination; b) is inconsistent with the existing statutes and the Commission's currently effective rules for procurements related to Renewable Energy Act Plans, Efficient Use of Energy Act Plans and Long Term Purchased Power Agreements; c) failed to account for the effect that the Commission's IRP planning and procurement processes would have on multi-jurisdictional³ utilities, such as EPE and Southwestern Public Service Company and therefore, EPE continues to question whether the IRP rule can be applied in a way that will allow EPE to continue planning for and procuring resources for its entire system. According to EPE: "To avoid a scenario in which this Commission requires EPE to acquire a resource that the PUCT may find imprudent, (or denies acquisition of a proposed system resource that the PUCT would approve), it will likely be necessary for EPE to continue to procure separate resource acquisitions for its New Mexico and Texas jurisdictions, as EPE did after its last IRP in 2021." EPE states that Mr. Hawkins estimates that the incremental cost to New Mexico retail customers as a result of the separate system planning and resource acquisition could be as much as \$74 million per year in 2040; d) similar to PNM, EPE stated that utilities to seek variances, rather than have exemptions, will negatively effect reliability and cites to variances needed for "emergency procurements" and "capacity and/or energy from the generation facilities of other utilities or from non-utility generators pursuant to agreements for a two (2) year term or less (including renewal terms) or for 20 megawatts of capacity or less." EPE requests that the Commission grant rehearing and eliminate the requirements that utilities must obtain variances for emergency procurements and for procurements of "capacity

³ In particular, EPE argues that the September 14th Final Order will as well as the Commission implementation of the New Mexico Renewable Energy Act will make it necessary for EPE to transition away from least-cost system planning and resource acquisitions for its New Mexico and Texas jurisdictions, given that Texas comprises 80 percent of EPE's system.

and/or energy from the generation facilities of other utilities or from non-utility generators pursuant to agreements for a two (2) year term or less (including renewal terms) or for 20 megawatts or less"; e) similar to PNM, EPE objects to the Rule's requirement that Utility Division Staff and each stakeholder as many as five (5) modeling runs per party because such a requirement will be extremely onerous for the utility and may render it impossible to conclude the facilitated stakeholder process in the six months provided by Rule 17.7.3.9(B). EPE requested a reasonable number of modeling runs, but five is not reasonable and maintains that the Commission limit the number of modeling runs to 10 in total, with Staff and stakeholders allocating those runs among themselves.

7. On October 17, 2022, Southwestern Public Service Company ("SPS") filed its Motion for Rehearing and claimed the following: a) the September 14th Final Order's Rule requires utilities file sensitive distribution and transmission information, and such disclosure presents serious national security implications and is overly burdensome and rehear Subparts (B)(12) and (B)(13) of the Appendix in order to address concerns regarding national security implications of public disclosure of the information required, as well as the burden of conducting the required analysis. SPS claims that Subpart (B)(12) required information of the Appendix was protected under North American Electric Reliability Corporation Critical Infrastructure Protection ("NERC CIP") standards and could not be disclosed; b) 17.7.3.12(H) through (J) states that utilities "rank" bids and if required to rank, the public utilities need to evaluate bids and utilities need more time to evaluate based on an enumerated list of subjective, qualitative factors in Section 17.7.3.12(I). SPS claims it is very difficult to rank bids when the factors which inform the ranking are neither objective nor quantitative. SPS suggests remedying this by amending the word "rank" in subsection I to "evaluate" and for consistency purposes, the word "ranking" in subsection J should

be changed to “evaluation”; c) 17.7.3.12: SPS claims the September 14th Final Order Rule arbitrarily constrains RFPs without statutory authority to constrain resources that are allowed to bid into a utility RFP. SPS notes that the Rule states the RFP process is “[t]o address the utility’s procurement need, if any, as described in the statement of need, and to fulfill the objectives of the utility’s action plan. . .” but SPS notes that 17.7.3.7.AA and Section 17.7.3.10.A, which defines a statement of need as “a description and explanation of the amount and type of new resources. . .” SPS claims that, by limiting the RFP to a need defined in this way, the Commission arbitrarily disallows other resources to bid into the RFP process—resources which may be more cost effective or have additional environmental benefits or other attributes to meet the utility system needs; d) 17.7.3.9. A.1 as adopted is unduly burdensome and costly for utilities and their customers regarding the software provisions in Section 17.7.3.9. SPS claims these provisions should be amended to address these concerns while still granting modeling access to stakeholders. SPS claims the rule as adopted require the utility to purchase licenses for Staff and each stakeholder to utilize the utility’s software. SPS notes that, as stated in SPS’s comments, the software SPS uses is proprietary to a third-party vendor, and SPS pays a licensing fee to use the software and according to the terms of its agreement with the vendor, SPS cannot provide access to the software to other parties without purchasing additional licenses for each person given access. In addition, SPS complains that training would likely be necessary on how to use the software for it to be of any value to those granted access and requiring SPS to bear such expenses would constitute an impermissible taxing of costs against SPS under NMSA 1978, 62-13-3(A); and e) 17.7.3.13.A arbitrarily mandates more regulatory process without benefit in subsequent regulatory proceedings especially that the results of the IRP and RFP do not have any evidentiary consequence in future Long-term Purchased Power Agreements (“LTPPA”) and Certificate of Convenience and

Necessity (“CCN”) filings; e) the September 14th Final Order’s Rule does not allow for a presumption of prudence to attach to resources, it stated that it was “satisfied with the evidentiary weight as was assigned to the rebuttable presumption in the Proposed Rule as originally written. . .” SPS believes the Commission intended that the results of the IRP and RFP should constitute prima facie evidence of need and prudence that could be rebutted by other persuasive evidence in a future LTPPA or CCN or in a future cost recovery proceeding to allow the IRP and RFP to become part of a cohesive and efficient resource-addition process. Similar to PNM, SPS argues that without the presumption of need and prudence, the IRP will be a lengthy and burdensome regulatory processes that are rehashed in final resource approval filings; and f) the September 14th Final Order’s Rule arbitrarily limits the amount of time to 75-days for a utility to rank complex bids, therefore, SPS requests the Commission amend certain rule language to appropriately reflect the “evaluation” of bids by utilities, rather than the current rule requirements to “rank” bids and accordingly lengthen the amount of time from 75 days to rank bids in the RFP and does not provide the reasoning for setting that time period to 75-days instead of 120-days. SPS asserts that seventy-five days is not enough time, especially for RFPs which receive multiple complex bids.

8. On October 24, 2022, EPE filed its Response to the Motions for Rehearing and stated that it concurred with PNM’s areas of concern as follows: a) the provisions regarding procurement and the independent monitor add to the time, resources, and costs of the IRP process without any assurance that the process will result in more effective resource acquisition proceedings, and at the cost of the loss of utility discretion; b) issues regarding the new facilitated stakeholder process related to timing and Staff and intervenor access to utility modeling data; c) uses of variances instead of exemptions is inadequate to ensure that utilities can make emergency procurements, and temporary procurements; d) simply stating that nothing in the Rule can be

construed to prevent a utility from making needed procurements as required by the REA and EUEA does not resolve the problems identified by a number of commenters that the new Rule does not adequately consider other relevant statutes and Commission rules; and d) provisions on procurement and Independent Monitor should be limited and/or removed from the Rule for exceeding the Commission's statutory authority. In addition, EPE supports the following requests in SPS's Motion: a) allow utilities to submit the result of the IRP and the RFP as prima facie evidence of need and prudence in a resources approval filing; b) limit the required model runs and access to modeling software to a more reasonable level and repeats that it supports limiting required model rules and access to modeling software; c) define the role, authority, and selection process of the appointed stakeholder process facilitator; d) require utilities to provide the technical characteristics of new resources identified in the Statement of Need, rather than the "type of new resource;" e) amend certain rule language to appropriately reflect the "evaluation" of bids by utilities, rather than the current rule requirements to "rank" bids and accordingly lengthen the amount of time from 75 days to 120 days to provide the independent monitor ("IM") with an evaluation of proposals in the RFP process; and f) strike language requiring utilities provide sensitive distribution and transmission information.

9. On October 24, 2022, PNM filed its Response and supported SPS's Motion for Rehearing as follows: a) the lack of any evidentiary consequence of the results of the IRP and RFP provisions under the new Rule, i.e., that the significant new impositions on utilities are accompanied by countervailing factors, such as presumptions of prudence on future resource acquisitions. PNM repeats that the September 14th Final Order's Rule imposes significant new requirements on utilities, including entirely new procurement requirements, yet there is no additional "regulatory weight" given to the outcomes of the new processes or "assurances" about

cost recovery and, the only assurances appear to be punitive in nature, e.g., that the Commission may take note of any “deficiencies” addressed in the independent monitor’s final report and “address” them in a future proceeding for approval of the relevant projects. PNM also asserted that SPS correctly questions whether the new Rule’s provisions on access to resource modeling software are lawful under NMSA 1978, 62-13-3(A), which requires each party to a litigated case at the PRC to “bear his own costs” and agrees with SPS that requiring utilities to cover the costs of software licenses and any required training is impermissible under the statute. PNM agrees with EPE that the number of modeling runs by limited to a total of ten, with Staff and stakeholders allocating the ten runs among themselves and SPS proposes a similar division of ten runs and PNM believes the proposals by EPE and SPS are more aligned with a “reasonable number of modeling runs,” as the Rule provides and the requests should their own costs. PNM supports SPS’s request that the Commission review the facilitated stakeholder selection process on rehearing, especially in light of the facts that: 1) PNM will be the first utility subject to the facilitated stakeholder process, and 2) the Commission itself does not understand how a facilitator will be selected. PNM agrees with Staff who also pointed out that “the Draft Rule does not explain the parameters of facilitation, e.g., who pages, who is qualified to be a facilitator, or what are the duties and responsibilities of the facilitator, and the like.” PNM contends that the September 14th Final Rule has answered none of these questions and it remains unclear exactly who the facilitator would be, what exactly is meant by the term “facilitated,” the facilitator’s relationship to the Commission, and any legal obligation the facilitator may have to the utility or the Commission. Also, PNM objects that it is also still unclear how the facilitator will be paid and, if the utility is required to pay, whether those costs would be recoverable. PNM points out that NM AREA also took the position that the Commission should not be involved in the public advisory process and concludes

that the Commission should, at the very least, outline in the Rule a process for selection of a facilitator. PNM inquired whether the facilitator will call and run the stakeholder meetings, and whether the facilitator is expected to produce written documentation of the process and believes that, to answer these questions, the Commission would need to re-open the record, allow additional input, and explore this subject in detail. PNM also agrees with SPS's proposed changes to 17.7.3.12 regarding RFPs because the new Rule constrains the *type of resources* that are allowed to bid into a utility RFP. PNM prefers to conduct "all-source" RFPs as a matter of good business practice because it allows PNM to understand exactly which resources—of whatever "type"—may be available and competitive at the time PNM is actually ready to procure new resources. According to PNM, the new Rule, however, would limit PNM's ability to pursue all-source RFPs. PNM therefore supports SPS's proposed change: that the phrase "type of new resources" in 17.7.3.7(A) NMAC and 17.7.3.10(A) NMAC be changed to "technical characteristics of new resources." Likewise, PNM supports the second change SPS proposes on this topic, to allow utilities to "evaluate bids or a portfolio of bids," instead of the new Rule's current language about "rank[ing] bids." PNM asserts that SPS raises legitimate concerns about the new prescriptive requirement that utilities must "rank" RFP bids based on a specific list of factors. PNM supports the change that SPS proposes, which would change the term "rank" to "evaluate." PNM also shares SPS's concern that the 75-day period allowed in the Rule to rank complex bids is too short. In its January 20, 2022 comments, PNM explained that the utility needs time to screen, fully defined, evaluate, model and rank the bid and that short timeline would lead to rushed/forced outcomes" proposed instead a 150-180-day timeline for this requirement, with the possibility of additional time upon a showing that the utility requires it. PNM asserts that there is clearly evidence in the record that a timeline longer than 75 days is needed. PNM can support SPS's recommended

change to 120 days. In addition, PNM agrees with SPS that detailed information on distribution feeder-level operations is unnecessary to add to the IRP and would not enhance IRP evaluations. PNM has expressed concerns about this issue throughout the rulemaking, explaining that “transmission and distribution planning is not within the scope of resource planning and pointing out that there is no evidentiary basis for including T&D planning in the Rule. PNM has continually contended that IRP modeling, as it stands today, does not have a means to model distribution feeder-level operational and loading issues. Further, PNM states that it agrees with EPE’s Motion for Rehearing addressed reliability concerns related to the Rule’s requirement that a utility must seek a variance from the Commission for emergency procurements and for short-term agreements for capacity or energy or for 20 megawatts of capacity or less. PNM asserts that EPE raises valid concerns about whether it is reasonable to require an application for a variance in short-term emergency situation, however, PNM’s solution is different. While EPE seeks only to eliminate certain types of emergency and short-term procurements from the variance requirement, PNM’s proposed solution it to convert all of the Rule’s exemptions into actual exemptions, and not require variances at all.

10. On October 24, 2022, Onward Energy (“Onward”) filed its Response which stated that SPS’s Motion for Rehearing is untimely and should be denied. Further, Onward asserts that EPE’s Motion to reopen is also untimely and should be denied. Onward argues that none of the Motions for Rehearing seek reconsideration of the Final Order based upon an alleged change in the law or the discovery of new evidence, which are the traditional grounds for granting such motions. Onward claims that the Movants are just dissatisfied that the arguments that they previously made have been rejected by the Commission. Many of the arguments made in the Motions for Rehearing are the same arguments that were the subject of extensive briefing during

the comment period in this proceeding. Onward alone addressed issues concerning the proposed action plan, the request for proposals process, and the role and powers of an independent monitor, which the Movants now complain about in the Motions for Rehearing. Various other parties in this proceeding also submitted briefing concerning these and other issues that the Movants now use as the basis for their respective Motions for Rehearing.⁴ Onward urges the Commission to deny the Motions for Hearing Rehearing because they fail to cite to any change in law for the discovery of new facts, and only seek to reargue positions previously advanced by the Movants in this proceeding.

11. On October 24, 2022, Staff filed its Response and stated the following: a) the selection of an independent monitor for the procurement process should be done at the discretion of the utility, because by selecting the independent monitor the commission could be put at risk of potential conflicts of interest in future cases that may involve this procurement and could be interpreted as implied or stated approval of the procurement process and the resources in question. According to Staff: “Resource selection is more appropriately dealt with in a future general rate case, resource acquisition proceeding, CCN application, or purchased power agreement case”; b) “reasonable access” to modeling software should be defined and set at a specific number. Staff previously suggested six (6) as a starting point for that determination. Staff believes that the reference to “reasonable access” is ambiguous and should be replaced by a statement that “The utility shall provide commission utility division Staff and stakeholders with six modeling runs per

⁴ Onward cites to the Order Denying the City of Las Cruces' Motion for Rehearing of Final Order, dated December 5, 2018, at ¶ 14 (“Though the Rehearing Motion does elaborate upon arguments made by the City in its Response to EPE’s Exception to the RD, it still relies upon arguments already considered by the Commission.”) (emphasis added); and also cites to the Final Order Denying CCAE’s Application for Rehearing, dated January 30, 2019, at ¶ 11 (“The Commission finds CCAE’s Application for Rehearing is not persuasive because it relies upon arguments In the Matter of the Application for Approval of El Paso Electric Company’s 2018 Renewable Energy Plan Pursuant to the Renewable Energy Act and 17.9.572 NMAC, and Revised Rate No. 38 – Cost Rider, Case No. 18-00109 that were already considered by the Commission and rejected.”) (emphasis added)

Staff/ stakeholder using the same modeling software that they used in their own preparation and the results of those modeling runs should be provided to the participants;” c) an open-source software is not appropriate for these types of cases because there is a lack of the ability to determine or verify its accuracy. Staff took no position on the other issues raised by the Motions for Rehearing.

12. On October 24, 2022, the Interwest Energy Alliance (“Interwest”) filed its Response. Interwest correctly points out that the Commission's rulemaking was the culmination of several years and numerous rounds of comments, workshops, and testimony in this and previous dockets on IRP and procurement issues that are involved in this rulemaking and was based on this substantial record. Interwest responds to the following issues raised by the Motions: a) contrary to PNM’s assertions that the Rule includes numerous mandates that will result in the loss of utility discretion and management prerogative, the Rule does not intrude on utility management prerogative and the Rule expressly provides that comments on the RFP shall be considered and may or may not be incorporated by the utility. The Rule only provides for comments on a utility's RFP result in recommendations to the utility rather than approval or disapproval and the Rule states that the utility retains the burden to demonstrate prudence in a subsequent procurement case; b) All the Motions for Rehearing objected to the Rule's requirement for them to perform five (5) modeling runs per party. Interwest has no objection to the requirement in the Rule but suggests that this issue be considered in a future review following some experience implementing the IRP Rule. In the meantime, Interwest asserts that Section 17.7.3.17 of the Rule provides opportunity to request a variance in the event that requests for modeling runs become overly burdensome; c) Contrary to PNM’s and EPE’s assertions that the Rule's variance provisions are inadequate to ensure that utilities can make emergency procurements, temporary procurements, and other types

of procurements that should properly be expressly exempted from the Rule, the provisions for variances for such situations are appropriate, and can be implemented expeditiously if needed and requested; d) Contrary to PNM's assertion that the new Rule does not adequately consider other relevant statutes and Commission rules, such as the Energy Transition Act, and rules regarding power purchase agreements and certificates of public convenience and necessity, Section 17.7.3.12.I includes not only the REA and EEUA, but also "other public policies regarding resource preferences adopted by New Mexico or the federal government," and Section 17.7.3.3 cites various other statutory authorities under which the IRP Rule is adopted; e) Interwest disagrees with EPE's assertion that the Final Order's Rule would require EPE to move away from least cost system planning and resource acquisitions, and would force EPE to procure separate resources for New Mexico and Texas, with significant cost increases. Interwest informs that EPE ignores that the Rule Section 17.7.3.8.D requires that multi-jurisdictional utility "shall include in its IRP a description of its resource planning requirements in the other state(s) where it operates, and a description of how it is coordinating the IRP with its out-of-state resource planning requirements." Correctly, Interwest concludes that the new IRP Rule provides that the Commission will take multi-jurisdictional issues into account. Interwest points out that New Mexico (or Texas) are not required to fashion its statutes and policies to match those of other adjoining states, and some inconsistencies between how individual states approach transition to their energy futures is inevitable. Interwest concludes that the Rule provides for consideration of multijurisdictional issues in the IRP process; f) Contrary to PNM's SPS's assertions that the Rule arbitrarily mandates more regulatory process without benefit in subsequent regulatory proceedings and the request that a utility's statement of need and action and results of IRP may be used as prima facie evidence of need and prudence in subsequent proceedings, this presumption issue was addressed at length in

comments and testimony in the rulemaking. Some commenters oppose inclusion of a rebuttable presumption of prudence in the Rule and others supported it. For this reason, the Commission's decision to not provide a rebuttable presumption is appropriate since the Rule preserves the utility's management prerogative and discretion and far from being arbitrary, the Commission thoughtfully considered this issue, and reconsideration at this point is not warranted and could be revisited in the future; g) Interwest disagrees with SPS's assertion that the Rule language in Sections 17.7.3.7.AA and 17.7.3.10.A limits the utility's RFP to a statement of need that identifies a "type of new resource," and thus, it arbitrarily disallows other resources to bid into the RFP process. To the contrary, Interwest states that the Rule provides that the statement of need means a description and explanation of "the amount and type of new resources" which does not limit the RFP to only one type of resource. Interwest points out that SPS also asserts that the Rule should allow utilities to evaluate a portfolio of bids rather than just each individual bid. Interwest suggests this approach should be considered in a future review following a few years of experience with the Rule; h) Regarding SPS's Motion for Rehearing assertion that the utilities should be required to evaluate bids, not rank bids, and need more time to do so, Interwest believes that SPS's suggestion of replacing the word "ranking" with "evaluation" in section 17.7.3.J. Interwest states that SPS's comment may have merit and should be considered in a future review following some experience with the Rule, but does not warrant rehearing or reopening the record in this case; and i) Regarding, SPS's assertion that the Rule mandates disclosure of sensitive distribution and transmission information in Subparts (B)(12) and (B)(13) of Appendix, and that this poses serious national security implications, while Interwest agrees that such information should be protected, such protection can be provided by the confidentiality provisions in Section 17.7.3.15 of the Rule and SPS does not explain why those confidentiality provisions are not sufficient.

13. On October 26, 2022, the Commission issued an Order that partially granted PNM's, EPE's and SPS's Motions for Rehearing in part and denied in part on the following issues: i) whether and how to limit the required number of model runs and access to modeling software to a reasonable level and cost recovery for licensing fees; ii) whether and how to define the role, authority, and selection process of the appointed stakeholder process facilitator, and cost recovery for the facilitator; iii) whether and how to require utilities to provide the technical characteristics of new resources identified in the Statement of Need, rather than the "type of new resource;" iv) whether and how to amend certain rule language to appropriately reflect that there will be "evaluation" of bids by utilities, rather than the current rule requirements to "rank" bids; v) whether and how to lengthen the amount of time from 75 days to 120 or 145 days to provide the independent monitor ("IM") with an evaluation of proposals in the RFP; and vi) whether and how to grant exemptions for emergency procurements, temporary procurements and/or procurements for less than 20 MW instead of requiring utilities to apply for variances for those procurements.

14. The October 26th Order found that the remainder of the issues raised by PNM's, EPE's and SPS's Motions for Rehearing should be denied for the reasons stated in Interwest's and Onward's Responses.

15. The October 26th Order found the following areas of concern raised in PNM's, EPE's and SPS's Motions for Rehearing have merit, are appropriate for reconsideration by the Commission and should be revised by this Order based upon the following reasons: a) emergency procurements and for procurements two year or less and/or under 20 MW procurements should be exempted from the procurement provisions of 17.7.3 NMAC and the Rule should not require utilities to seek variances for these procurements because it may negatively affect the public interest and the utility's ability to provide reliable and resilient electric service to its New Mexico

customers; b) the Final Order's Rule requirement that Utility Division Staff and each stakeholder as many as five (5) modeling runs per party should be deleted because such a requirement may render it difficult to conclude the facilitated stakeholder process in the six months provided by Rule 17.7.3.9(B). The Rule should be revised to a state, as the NOPR Rule stated, a "reasonable number of modeling runs" because that is not an arbitrary standard; c) in 17.7.3.15 NMAC, change the term "rank" to "evaluate" d) the 75-day period allowed in the Final Order's Rule to rank complex bids should be increased to 120 days because 75 days is, as the utilities stated in their Motions for Rehearing, is insufficient time to screen, fully defined, evaluate, model and rank the bid or may lead to rushed/forced outcomes"; and e) the facilitated stakeholder selection process should have more specificity, as PNM stated: that "the Draft Rule does not explain the parameters of facilitation, e.g., who pages, who is qualified to be a facilitator, or what are the duties and responsibilities of the facilitator, and the like." The Rule should be clarified to state, as PNM stated, who the facilitator would be, what exactly is meant by the term "facilitated," the facilitator's relationship to the Commission, and any legal obligation the facilitator may have to the utility or the Commission and how the facilitator will be paid and, if the utility is required to pay, whether those costs would be recoverable.

16. The Commission finds that the Proposed Rule, as amended by the findings and conclusions of this Final Order Upon Rehearing, incorporating by reference the September 14, 2022 Final Order, attached hereto as **Exhibit A**, should be adopted by the Commission as the repeal and replace of the Existing Rule, dated August 29, 2017.

17. The Commission finds that **Exhibit B** contains the changes to the September 14th Final Order Rule and should be adopted by the Commission in this Order as the Final Rule Upon Rehearing.

18. The Commission finds that this Final Order Upon Rehearing should adopt the repeal and replaced Rule 17.7.3 NMAC as set forth herein.

IT IS THEREFORE ORDERED:

A. The September 14th Final Order is incorporated herein by reference in its entirety except as modified herein.

B. Exhibit B is hereby adopted and contains the changes to the September 14th Final Order Rule in accordance with the October 26th Order partially granting and partially denying the Motions for Rehearing and is made part of the Final Rule Upon Rehearing as set forth in **Exhibit A**.

C. The Proposed Rule, attached hereto as **Exhibit A, containing the changes shown in Exhibit B, repealing and replacing** Rule 17.7.3 NMAC, shall be adopted and promulgated by the Commission, for inclusion in the New Mexico Administrative Code at Title 17 – Public Utilities and Utility Services, Chapter 7 – Energy Conservation, Part 3 – Integrated Resource Plans for Electric Utilities.

D. The Proposed Rule, **Exhibit A**, shall be published and noticed as required by the State Rules Act, Sections 14-4-1 to -11. The publication shall be at the earliest opportunity available after sufficient time has passed for the filing of any motions for rehearing or reconsideration of this matter and for the Commission’s consideration of any such motions.

E. The Commission’s advisory staff shall evaluate the Commission’s other rules broadly to determine if there are any corresponding rule amendments that need to be promulgated as a result of this Final Order, such as correcting cross-references to the IRP rule in other rules that may no longer be correct.

F. The Commission's advisory staff and Office of General Counsel are hereby authorized to make non-substantive changes to the attached **Exhibit A** Proposed Rule as necessary for the purposes of proofing and formatting prior to publication.

G. The record shall remain closed.

H. Copies of this Final Order, all including exhibits, shall be e-mailed to all persons listed on the attached Certificate of Service if their e-mail addresses are known, and if not known, mailed to such persons via regular mail.

I. This Order is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 2nd day of
November, 2022.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Cynthia B. Hall, electronically signed

CYNTHIA B. HALL, COMMISSIONER, DISTRICT 1

/s/ Jefferson L. Byrd, electronically signed

JEFFERSON L. BYRD, COMMISSIONER, DISTRICT 2

/s/ Joseph M. Maestas, electronically signed

JOSEPH M. MAESTAS, COMMISSIONER, DISTRICT 3

/s/ Theresa Becenti-Aguilar, electronically signed

THERESA BECENTI-AGUILAR, COMMISSIONER, DISTRICT 4

/s/ Stephen Fischmann, electronically signed

STEPHEN FISCHMANN, COMMISSIONER, DISTRICT 5



Exhibit A

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 7 ENERGY CONSERVATION
PART 3 INTEGRATED RESOURCE PLANS FOR ELECTRIC UTILITIES

17.7.3.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.7.3.1 NMAC - Rp, 17.7.3.1 NMAC, 10/27/2022]

17.7.3.2 SCOPE:

A. This rule applies to all electric utilities subject to the commission's jurisdiction over integrated resource planning.

B. Impact on other rules: Except as specifically provided herein, this rule does not supersede any other rule of the commission but is to be construed as a supplement to such rules.

C. Severability: If any part or application of this rule is held invalid, the remainder of its application shall not be affected.

[17.7.3.2 NMAC - Rp, 17.7.3.2 NMAC, 10/27/2022]

17.7.3.3 STATUTORY AUTHORITY: This rule is adopted under the authority vested in this commission by the New Mexico Constitution, Article XI, Section 2; the Public Regulation Commission Act, Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978 and Section 8-8-15 NMSA 1978; the Public Utility Act, Section 62-3-1 NMSA 1978, et seq., Section 62-3-2 NMSA 1978, Subsection H of Section 62-3-3 NMSA 1978, Section 62-6-4 NMSA 1978, Section 62-8-1 NMSA 1978, and Section 62-8-13 NMSA 1978; the Efficient Use of Energy Act, Section 62-17-1 NMSA 1978, et seq., and Section 62-17-10 NMSA 1978; the Renewable Energy Act, Section 62-16-1 NMSA 1978, et seq.; the Energy Transition Act, 62-18-1 NMSA 1978, et seq.; the grid modernization statute, Section 62-8-13 NMSA 1978; and the Community Solar Act, Section 62-16B-1 NMSA 1978, et seq.

[17.7.3.3 NMAC - Rp, 17.7.3.3 NMAC, 10/27/2022]

17.7.3.4 DURATION: Permanent.

[17.7.3.4 NMAC - Rp, 17.7.3.4 NMAC, 10/27/2022]

17.7.3.5 EFFECTIVE DATE: October 27, 2022, unless a later date is cited at the end of a section.

[17.7.3.5 NMAC - Rp, 17.7.3.5 NMAC, 10/27/2022]

17.7.3.6 OBJECTIVE:

A. The objective of this rule is to set forth the commission's requirements for the preparation, filing, review, and acceptance of integrated resource plans by public utilities supplying electric service in New Mexico in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers. This rule regulates utility integrated resource planning and procurement consistent with the commission's statutory obligations to ensure fair, just, and reasonable rates.

B. This rule serves the commission's objectives of increasing transparency, involving stakeholder participation early in the process, and tying the IRP outcome directly to the procurement process.

C. To assist utilities in identifying the most cost-effective portfolio, this rule establishes a transparent, competitive format for analyzing alternative resource portfolio plans.

D. This format promotes fair and robust competition in selection of resources to ensure consistency, efficiency, and harmony with the integrated resource planning and procurement process.

(1) In proposing cost-effective resources, utilities shall prioritize those that best comply with the state's requirements for reducing greenhouse gas emissions, fostering equitable clean energy development, and grid modernization.

(2) Utilities shall consider the following resources, including but not limited to: distributed energy resources, demand response, energy efficiency, renewable energy, flexible generation, low-emission or zero carbon resources, energy storage systems, and transmission and distribution grid improvements.

[17.7.3.6 NMAC - Rp, 17.7.3.6 NMAC, 10/27/2022]

17.7.3.7 DEFINITIONS: When used in this rule, unless otherwise specified the following definitions shall apply:

A. Definitions beginning with "A":

(1) **action plan means** the proposed process and specific actions the utility shall carry out to implement the integrated resource plan spanning a three year period following the filing of the utility's integrated resource plan;

(2) **availability factor means** the ratio of the time a generating facility is available to produce energy at its rated capacity to the total amount of time in the period being measured;

B. Definitions beginning with "B": [RESERVED]

C. Definitions beginning with "C": capacity factor means the ratio of the net energy produced by a generating facility during a given time period to the amount of net energy that could have been produced if the facility operated continuously at full capacity during that same time period;

D. Definitions beginning with "D":

(1) **demand response means** a form of load management that involves changes in electric usage by end-use customers from their normal consumption patterns, either in response to changes in the price of electricity over time, or to incentive payments designed to induce lower electricity use at times of high wholesale market prices or when system reliability is jeopardized;

(2) **demand-side resource means** storage, responsive distributed generation, and loads engaged in demand response programs that can support the grid by responding to market signals or direct load control;

(3) **derating means** a temporary or permanent reduction in the expected power output of a generating facility;

(4) **distributed energy resource (DER) means** the equipment used by an interconnection customer to generate, store, or generate and store electricity that operates in parallel with the electric distribution system.

(a) DER may include, but is not limited to: an electric generator with or without an energy storage system, a prime mover, or combination of technologies capable of injecting power and energy into the electric distribution system, which also includes the interconnection equipment necessary to safely interconnect with the distribution system;

(b) DER may not always be interconnected with the bulk power system;

(c) DER may include distributed generation resources, distributed energy storage, demand response energy efficiency, and electric vehicles and chargers that are connected to the electric distribution power grid;

(e) DER may be capable of exporting active power to an electric power system;

(f) DER includes the customer's interconnection facilities but shall not include the area electric power system operator's interconnection facilities.

E. Definitions beginning with "E":

(1) **emergency procurement means** a utility's procurement to address a system-based emergency condition including a serious threat to public health, welfare, safety, or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure, or similar event.

(2) **energy efficiency means** measures, including energy conservation measures, or programs that target consumer behavior, equipment, or devices, to result in a decrease in consumption of electricity without reducing the quantity or quality of energy services;

(3) **energy storage resource means** a commercially available technology that is capable of absorbing energy, storing it for a period of time, and thereafter delivering the energy.

(a) specifically, it means a commercially available technology that:

(i) uses mechanical, chemical, or thermal processes to:

(ii) store energy, including energy generated from renewable energy

resources and energy that would otherwise be wasted, and deliver the stored energy for use at a later time; or

(iii) store thermal energy for direct use for heating or cooling at a later time

in a manner that reduces the demand for electricity at the later time;

(iv) is composed of stationary equipment;

(v) if being used for electric grid benefits, is operationally visible and

capable of being controlled by the distribution or transmission entity managing it, to enable and optimize the safe and reliable operation of the electric system; and

(b) achieves any of the following:

(a) reduces peak electrical demand;

(b) defers the need, or substitutes for, an investment in electric generation, transmission, or distribution assets;

(c) improves the reliable operation of the electrical transmission or distribution systems; or

(d) lowers customer costs by storing energy when the cost of generating or purchasing it is low and delivering it to customers when the costs are high.

F. Definitions beginning with “F”:

(1) **facilitated stakeholder process means** the statutory public advisory process pursuant to Section 62-17-10 NMSA 1978, conducted by a commission appointee to facilitate advisory discussions among stakeholders, including members of the public, to advise the public utility and reach potential agreement in the utility’s development of its statement of need and action plan;

(2) **flexibility means** the ability of a power system or resource to timely respond as needed to changes in supply and demand through deployment or curtailment of resources by system managers or other control methods, to maintain a balanced load, and to compensate for the variability of renewable energy resources;

(3) **flexible generation means** generation resources that can start, ramp up, and ramp down quickly and efficiently, can be dispatched, and run at low output levels, and can serve frequency response and ancillary service needs, as needed;

G. Definitions beginning with “G”: [RESERVED]

H. Definitions beginning with “H”: heat rate means the ratio of energy inputs used by a generating facility expressed in British thermal units, to the energy output of that facility expressed in kilowatt-hours;

I. Definitions beginning with “I”:

(1) **integrated resource plan (IRP) means** a public utility’s plan to meet New Mexico jurisdictional retail customers’ existing and future demand in accordance with this rule and applicable state policies.

(a) specifically, it means a set of resource options that a utility could use to meet the service needs of its customers over a forecast period, including an explanation of the supply and demand circumstances under which, and the extent to which, each resource option would be used to meet those service needs.

(b) these resource options include, but are not limited to, using, refurbishing, and constructing utility plant and equipment, buying power generated by other entities, controlling customer loads, and implementing customer energy conservation;

(2) **independent monitor (IM) means** a person or entity appointed by the commission to oversee the conduct of a utility’s competitive procurement process as addressed in this rule. The IM shall report to the commission regarding the utility’s conformance with the most recently accepted statement of need and action plan and the sufficiency, reasonableness, competitive fairness, and completeness of that process;

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”:

(1) **load forecasting means** the prediction of the demand for electricity and energy over the planning period for the utility;

(2) **load management means** measures or programs that target equipment or devices to decrease peak electricity demand or shift demand from peak to off-peak periods;

M. Definitions beginning with “M”: most cost-effective resource portfolio means those supply-side resources and demand-side resources that minimize the net present value of revenue requirements proposed by the utility to meet electric system demand during the planning period consistent with reliability and risk considerations;

N. Definitions beginning with “N”:

(1) **net capacity means** the amount of flexible capacity necessary to supply instantaneous demand over and above the available capacity from variable energy resources, including wind and solar generation;

(2) **net load means** the difference between forecasted load and expected electricity production from variable generation resources;

O. Definitions beginning with “O”: [RESERVED]

P. Definitions beginning with “P”:

(1) **planning period means** the future period for which a utility develops its IRP, which, for purposes of this rule, is 20 years;

(2) **public utility or utility has the same meaning** as in the Public Utility Act, except that it does not include a distribution cooperative utility as defined in the Efficient Use of Energy Act.

Q. Definitions beginning with “Q”: [RESERVED]

R. Definitions beginning with “R”:

(1) **regional energy market means** an organized interstate market for energy, ancillary services, or capacity, operated by an independent entity (independent system operator or regional transmission operator) subject to regulatory authority of the Federal energy regulatory commission;

(2) **renewable energy means** electrical energy generated by use of renewable energy resources and delivered to a public utility;

(3) **renewable energy resource means** the following energy resources, with or without energy storage:

(a) solar, wind and geothermal;

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

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

(i) be of appropriate scale to have sustainable feedstock in the near vicinity;

(ii) have zero life cycle carbon emissions; and

(iii) meet scientifically determined restoration, sustainability and soil nutrient principles;

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

(e) landfill gas and anaerobically digested waste biogas; and

S. Definitions beginning with “S”: statement of need means a description and explanation of the amount and type of new resources, expressed in terms of energy or capacity, necessary to reliably meet an identified level of electricity demand in the planning horizon and to effect state policies.

T. Definitions beginning with “T”: [RESERVED]

U. Definitions beginning with “U”: [RESERVED]

V. Definitions beginning with “V”: [RESERVED]

W. Definitions beginning with “W”: [RESERVED]

X. Definitions beginning with “X”: [RESERVED]

Y. Definitions beginning with “Y”: [RESERVED]

Z. Definitions beginning with “Z”: [RESERVED]

[17.7.3.7 NMAC - Rp, 17.7.3.7 NMAC, 10/27/2022]

17.7.3.8 INTEGRATED RESOURCE PLANS FOR ELECTRIC UTILITIES:

A. A public utility supplying electric service to customers shall file with the commission every three years a proposed integrated resource plan (IRP) to meet the service needs of its customers over the planning period. The plan shall show the resource options the utility intends to use to meet those needs. The plan shall also specify how the implementation and use of those resource options would vary with changes in supply and demand. The utility is only required to identify a resource option type, unless a commitment to a specific resource exists at the time of the filing. The utility shall also discuss any plans to reduce emissions from existing resources through sales, leases, deratings, or retirements.

B. The IRP submitted to the commission by an electric utility shall contain the utility’s New Mexico jurisdictional information as follows:

(1) description of existing resources, see Appendix A;

(2) current load forecast, see Appendix A;

(3) load and resources table, see Appendix A;

(4) new load and facilities arising from special service agreements, economic development projects, and affiliate transactions;

(5) identification of resource options, see Appendix A;

(6) statement of need, see 17.7.3.10 NMAC;

(7) determination of the resource portfolio, see Appendix A; and

(8) action plan, see 17.7.3.11 NMAC.

C. The utilities shall file their IRP on a staggered schedule, as follows:

(1) Public service company of New Mexico shall file an IRP pursuant to 17.7.3.8 NMAC on or before September 1, 2023.

(2) Southwestern public service company shall file an IRP pursuant to 17.7.3.8 NMAC on or before September 1, 2024.

(3) El Paso electric company shall file an IRP pursuant to 17.7.3.8 NMAC on or before September 1, 2025.

D. A multi-jurisdictional utility shall include in its IRP a description of its resource planning requirements in the other state(s) where it operates, and a description of how it is coordinating the IRP with its out-of-state resource planning requirements.

E. The utility shall promptly notify the commission and participants of material events that would have the effect of changing the statement of need or action plan had those events been recognized when the statement of need or action plan was accepted.

(1) The utility shall, within two weeks of knowledge of the material event or events, submit a filing in its most recent IRP docket detailing the material events and options being considered as proposed modifications to the accepted action plan.

(2) This notice shall occur prior to the development of any proposed action plan modifications to ensure that the commission has advance notice. The utility shall serve the filing on everyone on the service list as well as each commissioner.

(3) The utility bears the burden of explaining why the events qualify as material and whether it shall file a variance, pursuant to 1.2.2.40 NMAC or 17.7.3.17 NMAC, from the accepted statement of need or action plan.

[17.7.3.8 NMAC - Rp, 17.7.3.9 NMAC, 10/27/2022]

17.7.3.9 FACILITATED STAKEHOLDER PROCESS; IRP PROCESS:

A. At least six months prior to the filing of its IRP, the utility shall notify the commission, members of the public, the New Mexico attorney general, and all parties to its most recent base rate case and most recent IRP case of its intent to file an IRP. The commission, upon notification, shall initiate a facilitated process for the utility, commission utility division staff, and stakeholders to reach a potential agreement on a proposed statement of need pursuant to 17.7.3.10 NMAC and an action plan pursuant to 17.7.3.11 NMAC. The commission, aside from utility division staff and the appointed facilitator, shall not participate in the facilitated stakeholder process.

(1) The utility shall provide commission utility division staff and stakeholders who have signed a confidentiality agreement reasonable access to the same modeling software used by the utility on equal footing as the utility, and shall perform a reasonable number of modeling runs per staff or a stakeholder, if requested by staff or a stakeholder, in accordance with commission precedent, and the utility shall share all modeling information.

(2) Nothing in this section shall preclude commission utility division staff from providing an analysis based on an alternative, open-source modeling software.

B. In selecting the facilitator, the commission, through its designee, may solicit recommendations of the names of independent firms or individuals that demonstrate independence from public utilities supplying electric service in the state, their affiliates, and likely bidders, and demonstrate the qualifications, expertise, and experience to perform the functions of a facilitator as provided in this rule. The commission shall comply with the New Mexico procurement code in its solicitation of a facilitator.

(1) The facilitator shall provide a statement of interest to the commission which discloses any contracts or other economic arrangements of any kind between the facilitator and any investor-owned electric utility or affiliate within the last four years.

(2) The facilitator shall notify the commission and utility of any perceived or actual conflicts that arise during the course of the facilitation process.

C. The commission, through its designee, shall develop a standard form of contract between the facilitator and the commission that requires the facilitator, in consultation with the utility, to issue notice of facilitated stakeholder meetings, and to host and moderate facilitated stakeholder meetings, including but not limited to, preparing the agenda, and acting as the coordinator between the utility's presentation and the stakeholders' questions and comments.

D. Funding for the services of the facilitator shall be paid by the utility and treated as a regulatory asset to be recovered through rates established in the utility's next general rate proceeding.

E. Not later than six months after the facilitated stakeholder process commences, the utility shall file the IRP with the commission, explaining all resolved and unresolved issues resulting from the facilitated process.

(1) Written public comments may be filed within 30 days of the utility's filing of the IRP.

(a) Written public comments may include the commenter's own draft statement of need and action plan for commission review.

(b) Written public comments shall be made part of the utility's IRP as addendums.

(2) The utility shall file, within 60 days of the utility's filing of the IRP, a written response to all timely filed written public comments, stating whether it adopts any of the written comments as amending the IRP and the reasons why or why not.

(3) The commission's utility division staff shall consider the filed written public comments and the utility's written responses and shall file a statement with the commission within 90 days of utility's filing of the IRP as to whether the statement of need and action plan comply with the policies and procedures of this rule.

(4) If the commission has not acted within 120 days of the filing of the IRP, the statement of need and action plan are deemed accepted as compliant with this rule. If the commission determines that the statement of need or action plan do not comply with the requirements of this rule, the commission shall identify the deficiencies and return it to the utility with instructions for re-filing.

[17.7.3.9 NMAC - N, 10/27/2022]

17.7.3.10 STATEMENT OF NEED:

A. The statement of need is a description and explanation of the amount and the types of new resources, including the technical characteristics of any proposed new resources, to be procured, expressed in terms of energy or capacity, necessary to reliably meet an identified level of electricity demand in the planning horizon and to effect state policies.

B. The statement of need shall not solely be based on projections of peak load. The need may be attributed to, but not limited by, incremental load growth, renewable energy customer programs, or replacement of existing resources, and may be defined in terms of meeting net capacity, providing reliability reserves, securing flexible resources, securing demand-side resources, securing renewable energy, expanding or modifying transmission or distribution grids, or securing energy storage as required to comply with resource requirements established by statute or commission decisions.

[17.7.3.10 NMAC - N, 10/27/2022]

17.7.3.11 ACTION PLAN:

A. The utility's action plan shall:

(1) detail the specific actions the utility shall take to implement the IRP spanning a three year period following the filing of the utility's IRP;

(2) detail the specific actions the utility shall take to develop any resource solicitations or contracting activities to fulfill the statement of need as accepted by the commission; and

(3) include a status report of the specific actions contained in the previous action plan.

B. The utility shall update the commission by filing two reports describing the utility's implementation of the action plan. These reports shall be filed in the existing IRP docket one year after the filing of the IRP, and two years after the filing of the IRP, respectively.

C. An action plan does not replace or supplant any requirements for applications for approval of resource additions set forth in New Mexico law or commission regulations.

D. The utility shall promptly notify the commission and participants of material events that would have the effect of changing the results of the utility's action plan had those events been recognized when the action plan was developed.

E. In accepting the action plan, the commission shall take into consideration contractual obligations as between the utility and any regional transmission organizations or balancing authorities of which the utility is a member.

[17.7.3.11 NMAC - N, 10/27/2022]

17.7.3.12 REQUEST FOR PROPOSALS PROCESS:

A. Scope and purpose: Unless the commission grants a public utility's variance application pursuant to 17.7.3.17 NMAC for a variance from section 12 of this rule, the utility shall follow the request for proposals process to ensure cost competitiveness and fairness in procurement by comparing proposals among bidders through a transparently designed and monitored request for proposals.

B. To address the utility's procurement need, if any, as described in the statement of need, and to fulfill the objectives of the utility's action plan, the utility shall issue a request for proposals (RFP) in the current IRP docket, within five months of the commission's acceptance of its statement of need and action plan.

C. Prior to the utility's commencement of an RFP solicitation, the utility shall provide the commission, the IM, and parties to the utility's pending IRP case with the documents and contracts that constitute the RFP solicitation (RFP documents) and a timeline for soliciting, accepting, and evaluating bids.

D. Within 21 days of receipt of the RFP documents, commissioners, commission utility division staff, and intervenors may submit comments to the utility, including on whether its proposed RFP conforms with its accepted statement of need and action plan and is not unduly discriminatory. Comments shall be considered, and may be incorporated, by the utility prior to the issuance of the RFP.

E. The utility may issue the RFP after comments are submitted on the independent monitor's design report pursuant to Subsection I of 17.7.3.14 NMAC. The utility shall file a notice with the commission of any final changes to the RFP design upon issuance.

F. The proposed RFP(s) shall include:

- (1) bid evaluation criteria;
- (2) the overall amount and duration of power the utility is soliciting and any other details concerning its resource needs;
- (3) a request for bidders' reasonable estimates of any new transmission costs and transmission upgrade costs for resources, if known;
- (4) the extent and degree to which resources shall be dispatchable, including the requirement, if necessary, that resources be able to operate under automatic dispatch control;
- (5) the utility's proposed contract(s) for the acquisition of resources;
- (6) proposed contract term lengths;
- (7) the applicable discount rate;
- (8) the timeline, including the solicitation period, the evaluation period, and the expected selection period;
- (9) all security requirements and the rationale behind them; and
- (10) any other information necessary to implement a competitive RFP process.

G. For a proposed RFP, each utility shall provide:

- (1) a description of information that the utility claims is confidential;
- (2) descriptions of proposed protection methods for:
 - (a) bid prices; and
 - (b) other bid details.

H. Not later than 120 days after the utility receives bids for its projected needs, the utility shall provide the IM with an evaluation of proposals that meet the above stated criteria, a detailed description of price and non-price criteria, its preferred portfolio of resources, along with a timeline for resource development.

I. The utility shall evaluate bids submitted in response to an RFP using the following price and non-price criteria:

- (1) consistency with the terms and requirements of the Efficient Use of Energy Act and the Renewable Energy Act; and other public policies regarding resource preferences adopted by New Mexico or the federal government;
- (2) cost of the resource that would be borne by ratepayers, described in terms of the net present value of capacity cost and lifetime cost of energy calculation;
- (3) resource effect on system operations and reliability, credit, and financial risks to the utility;
- (4) any risks imposed on ratepayers, including assessment of relative amounts of risk inherent among different technologies, fuel sources, or financing arrangements;
- (5) environmental impacts including, but not limited to, those associated with resources that emit carbon dioxide or create long-term waste disposal issues;
- (6) resource dispatchability and operational flexibility benefits or constraints;
- (7) the utility shall include in its evaluation the estimated cost and environmental impact of transmission upgrades or distribution infrastructure upgrades necessary to deliver the project's energy, capacity, or services;
- (8) each bidder shall be responsible for all costs associated with interconnecting its project to the transmission grid or, if applicable, to local distribution facilities; and
- (9) completeness and credibility of a detailed critical path schedule, and ability to meet scheduled construction start date and commercial operational date, including completing the interconnection process.

J. Additional criteria used by the utility for evaluation may not establish a preference for utility ownership or for projects proposed by a utility-affiliated company. The utility shall not unreasonably discriminate between proposals for a utility-owned or utility affiliate-owned resource and proposals for a resource owned by an independent power producer through a purchased power agreement.

K. The bid evaluation shall ensure that all bids are compared and evaluated on a consistent basis that is competitive, fair, and shall be subject to review by the commission.

L. The utility may issue additional RFPs in the current IRP docket, adhering to the processes and procedures described in 17.7.3.12 NMAC, if prudent following a material event pursuant to Subsection D of 17.7.3.11 NMAC.

M. Nothing in this rule shall be construed to prevent a public utility from procuring resources as required by the REA, Section 62-16-4 NMSA 1978, the EUEA, Section 62-17-5 NMSA 1978, or 17.9.570 NMAC. Such procurements shall be included in the utility's forecasting, statement of need, and action plan.

[17.7.3.12 NMAC - N, 10/27/2022]

17.7.3.13 COST RECOVERY:

A. Acceptance of the utility's statement of need and action plan does not constitute a finding of prudence or pre-approval of costs associated with acquiring additional resources.

B. Any costs incurred to implement an accepted action plan shall be considered in a general rate case, resource acquisition proceeding, or appropriate application for a CCN.

[17.7.3.13 NMAC - N, 10/27/2022]

17.7.3.14 INDEPENDENT MONITOR:

A. Scope and purpose: The independent monitor's role is to help the commission determine that the request for proposals design and execution is fair, competitive, and transparent. The independent monitor shall advise the commission and report on the RFP process, but the independent monitor shall not make or participate in the public utility's decisions regarding the procurement process or the selection of resources.

B. Following commission acceptance of a public utility's statement of need and action plan, the commission shall appoint an independent monitor to monitor the procurement process of a public utility for competitive resource procurements pursuant to 17.7.3.12 NMAC. The independent monitor, as provided in this section, shall assist the commission in ensuring that all such processes are reasonable and competitively fair and shall report to the commission regarding those matters as provided in this rule. The commission may appoint an IM for emergency procurements pursuant to 17.7.3.17 NMAC.

C. The commission shall, through its designee:

- (1) undertake a process consistent with state purchasing rules and commission policies in recommending a pool of qualified IMs;
- (2) develop an RFP, including the scope, terms of work, and evaluation process to score the RFP responses;
- (3) receive, review, score, and rank the RFP responses;
- (4) confer with the public utility on the recommendation of the IM;
- (5) recommend qualified bidders to the commission for appointment as the IM; and
- (6) administer the contract with the appointed IM, including: confirming that contract deliverables are met, reviewing invoices and related contract performance, and approving utility invoices after staff's review and approval.

D. In selecting the IM, the commission, through its designee, may solicit recommendations of the names of independent firms or individuals that demonstrate independence from public utilities supplying electric service in the state, their affiliates, and likely bidders, and demonstrate the qualifications, expertise, and experience to perform the functions of an IM as provided in this rule.

(1) The IM shall provide a statement of interest to the commission which discloses any contracts or other economic arrangements of any kind between the IM and any investor-owned electric utility or affiliate within the last four years.

(2) The IM shall notify the commission and utility of any perceived or actual conflicts that arise during the course of the procurement process.

E. The commission, through its designee, shall develop a standard form of contract between an IM and the commission that requires the IM to perform the functions of an IM as provided in this rule in a manner that is not subject to the control of the public utility. The standard form of contract between an IM and the commission

for IM services as provided for in this rule shall include, but shall not be limited to, the identification of the IM's functions and scope of work as provided in Subsection G of 17.7.3.14 NMAC.

F. Funding for the services of the IM shall be paid by the utility and treated as a regulatory asset to be recovered through rates established in the utility's next general rate proceeding.

G. Duties of the independent monitor:

(1) The IM shall file a minimum of two reports with the commission. The first report shall analyze the RFP design (design report). The final report shall review the fairness of the RFP execution (final report).

(a) In the design report, the IM shall report to the commission on RFP design within 28 days of the public utility's provision of RFP documents pursuant to Subsection C of 17.7.3.12 NMAC. The IM shall analyze the proposed RFP, including but not limited to its scope, instructions, conditions for eligible proposals, specifications, time schedules, disclosure of bid evaluation methods, and term sheets. The RFP design report shall state whether the contents of the proposed RFP comply with the requirements of 17.7.3.10 NMAC through 17.7.3.12 NMAC and are otherwise reasonable, competitively fair, designed to promote a robust bid response, and designed to identify a utility's most cost-effective option among resource alternatives to meet its service needs in compliance with this rule.

(b) In the final report, the IM shall, within 30 days of the utility's submission of its shortlist to the IM, review and report on the reasonableness, competitiveness, and fairness of the utility's solicitation, evaluation, and procurement processes, including but not limited to bid screening, comparison, evaluation, and short-listing criteria.

(i) The IM shall state whether the RFP process implemented by the public utility complied with the requirements of 17.7.3.11 NMAC and 17.7.3.12 NMAC.

(ii) The IM's report shall also provide summary information on the results of the bids, including the number of bids sorted by the following criteria: by resource type, capacity or energy, price range by resource type, and whether there were any deficiencies in those respects that should be addressed by the commission in a future proceeding for approval of the solicited projects. The commission may rely on that opinion to request that the utility make modifications in a timely manner.

(2) At any point during the public utility's RFP process the IM may notify the commission and the utility of any deficiency as contemplated in Subsection G of 17.7.3.14 NMAC.

H. The public utility shall provide the IM with prompt and continuing access to all documents, data, assumptions, models, specific model inputs, bidding and weighting criteria used, and any other relevant information reviewed, produced, or relied on by the public utility in the preparation and conduct of its competitive resource procurement process.

I. All communications, including but not limited to reports pursuant to this section, provided by the IM to the commission, shall be made part of the commission's public records in a timely manner in the public utility's most recent IRP docket.

(1) The public utility, commission utility division staff, and any parties to the public utility's most recent IRP docket may comment within 14 days of the filing of the design report to the public record. After the design report comment deadline of 14 days, the utility may issue the RFP.

(2) In any proceeding filed by a public utility for approvals stemming from its solicitation made pursuant to the RFP process as described in 17.7.3.12 NMAC, the commission may rely upon any reports or findings of the IM assigned to monitor that solicitation as evidence, provided that such evidence shall not be conclusive as to whether or not a resource proposed by the utility shall be approved.

J. All communications between the public utility and any bidders shall be shared at the same time with the IM. Commission utility division staff and any parties are restricted from initiating contacts with the independent monitor. The independent monitor may initiate contact with the utility, commission utility division staff, and any parties.

(1) For all contacts with the public utility, commission utility division staff, and any parties in the resource plan proceeding, the independent monitor shall maintain a log that briefly identifies the entities communicating with the IM, the date and duration of the communication, the means of communication, the topics discussed, and the materials exchanged, if any.

(2) The communications log shall be contained in the IM's report to the commission pursuant to Subparagraph (b) of Paragraph (1) of Subsection G of 17.7.3.14 NMAC.

K. The independent monitor shall serve as an advisor to the commission and shall not be a party to the proceedings in accordance with 1.2.3.9 NMAC. As such, the independent monitor shall not be subject to discovery nor cross-examination at hearing, if one is held, but the public utility, commission utility division staff,

and any parties shall have the opportunity to respond to any reports or findings of the IM pursuant to Paragraph (1) of Subsection I of 17.7.3.14 NMAC.

L. The commission shall not appoint an independent monitor for a utility's procurement for which the commission grants a variance pursuant to Subsection D of 17.7.3.17 NMAC.
[17.7.3.14 NMAC - N, 10/27/2022]

17.7.3.15 CONFIDENTIALITY OF INFORMATION:

A. The utility may submit any portions of its IRP under seal to the extent the utility deems specific information to be confidential.

B. The utility shall seek a protective order under Subsection B of 17.1.2.8 NMAC for those portions of its IRP it considers confidential, and the utility shall have the burden of proving its right to such protection.

(1) Any information submitted under seal pursuant to this paragraph shall remain under seal for a period of three years, after which time it shall become public unless the utility seeks and obtains further protection from the commission.

(2) Information submitted under seal shall be available for review by the commission and its designated representatives and by any person who has entered into a confidentiality agreement with the utility in a form approved by commission order, provided, however, that bidders or potential bidders shall not have access to competitively sensitive information of other bidders.

C. The utility shall not disclose any bid information for which a non-winning bidder has requested confidential treatment except in accordance with a commission protective order limiting disclosure of such information to persons who execute and file a confidentiality agreement with the commission as provided in that order.

[17.7.3.15 NMAC - Rp, 17.7.3.11 NMAC, 10/27/2022]

17.7.3.16 EXEMPTIONS:

A. Motion for exemption from rule: Upon motion by a utility and for good cause shown, the commission may exempt public utilities with fewer than five thousand customers and distribution-only public utilities from the requirements of this rule.

B. Filing of a notice of exemption from rule: Upon the filing of a notice of exemption in the utility's most recent IRP docket, a utility shall be exempted from the requirements of Sections 12 and 14 of 17.7.3 NMAC for the following procurements:

(1) emergency procurements; and

(2) capacity or energy from the generation facilities of other utilities or from non-utility generators pursuant to agreements for a two year term or less (including renewal terms) or for 20 megawatts of capacity or less;

C. Multi-state resource planning: The commission shall take into account a public utility's resource planning requirements in other states and shall authorize utilities that operate in multiple states to implement plans that coordinate the applicable state resource planning requirements.

[17.7.3.16 NMAC - Rp, 17.7.3.14 NMAC, 10/27/2022]

17.7.3.17 VARIANCES AND AMENDMENTS:

A. A utility may file a request for a variance from the requirements of this rule.

B. Such application shall:

(1) describe the situation which necessitates the variance;

(2) set out the effect of complying with this rule on the utility and its customers if the

variance is not granted;

(3) identify the section(s) of this rule for which the variance is requested;

(4) describe the expected result which the request shall have if granted; and

(5) state how the variance shall aid in achieving the purposes of this rule.

C. The commission may grant a request for a procedural variance through an order issued by the chair, a commissioner, or a designated hearing examiner.

D. The following types of procurements that deviate from the utility's commission-accepted action plan shall be submitted to the commission as an application for a variance pursuant to 17.7.3.17 NMAC:

(1) capacity or energy from newly-constructed, utility-owned, supply-side resources with a nameplate rating of 20 megawatts or less;

- (2) improvements or modifications to existing utility generation facilities that change the production capability of the generation facility site in question by 20 megawatts or less based on the utility's share of the total power generation at the facility site and that have an estimated cost of \$20 million or less;
 - (3) interruptible service provided to the utility's electric customers;
 - (4) modification to, or amendment of, existing power purchase agreements provided that the modification or amendment does not extend the agreement more than four years, does not add more than 20 megawatts of nameplate capacity to the utility's system, and is cost effective in comparison to other supply-side alternatives available to the utility; and
 - (5) utility administered demand-side programs.
- [17.7.3.17 NMAC - Rp, 17.7.3.15 NMAC, 10/27/2022]

HISTORY of 17.7.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:
Public Service Commission, NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities, filed 6/30/1988.

History of Repealed Material: NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities (filed 6/30/1988) repealed 4/16/2007.

17.7.3 NMAC - Integrated Resource Plans for Electric Utilities filed 3/30/2007, repealed 10/27/2022.

Other History:

Only that applicable portion of NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities (filed 6/30/1988) was renumbered, reformatted and replaced by 17.7.3 NMAC, Integrated Resource Plans for Electric Utilities, effective 4/16/2007.

17.7.3 NMAC - Integrated Resource Plans for Electric Utilities filed 3/30/2007, replaced by 17.7.3 NMAC - Integrated Resource Plans for Electric Utilities, effective 10/27/2022.

Exhibit B

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 7 ENERGY CONSERVATION
PART 3 INTEGRATED RESOURCE PLANS FOR ELECTRIC UTILITIES

17.7.3.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.7.3.1 NMAC - Rp, 17.7.3.1 NMAC, 10/27/2022]

17.7.3.2 SCOPE:

A. This rule applies to all electric utilities subject to the commission's jurisdiction over integrated resource planning.

B. Impact on other rules: Except as specifically provided herein, this rule does not supersede any other rule of the commission but is to be construed as a supplement to such rules.

C. Severability: If any part or application of this rule is held invalid, the remainder of its application shall not be affected.

[17.7.3.2 NMAC - Rp, 17.7.3.2 NMAC, 10/27/2022]

17.7.3.3 STATUTORY AUTHORITY: This rule is adopted under the authority vested in this commission by the New Mexico Constitution, Article XI, Section 2; the Public Regulation Commission Act, Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978 and Section 8-8-15 NMSA 1978; the Public Utility Act, Section 62-3-1 NMSA 1978, et seq., Section 62-3-2 NMSA 1978, Subsection H of Section 62-3-3 NMSA 1978, Section 62-6-4 NMSA 1978, Section 62-8-1 NMSA 1978, and Section 62-8-13 NMSA 1978; the Efficient Use of Energy Act, Section 62-17-1 NMSA 1978, et seq., and Section 62-17-10 NMSA 1978; the Renewable Energy Act, Section 62-16-1 NMSA 1978, et seq.; the Energy Transition Act, 62-18-1 NMSA 1978, et seq.; the grid modernization statute, Section 62-8-13 NMSA 1978; and the Community Solar Act, Section 62-16B-1 NMSA 1978, et seq.

[17.7.3.3 NMAC - Rp, 17.7.3.3 NMAC, 10/27/2022]

17.7.3.4 DURATION: Permanent.

[17.7.3.4 NMAC - Rp, 17.7.3.4 NMAC, 10/27/2022]

17.7.3.5 EFFECTIVE DATE: October 27, 2022, unless a later date is cited at the end of a section.

[17.7.3.5 NMAC - Rp, 17.7.3.5 NMAC, 10/27/2022]

17.7.3.6 OBJECTIVE:

A. The objective of this rule is to set forth the commission's requirements for the preparation, filing, review, and acceptance of integrated resource plans by public utilities supplying electric service in New Mexico in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers. This rule regulates utility integrated resource planning and procurement consistent with the commission's statutory obligations to ensure fair, just, and reasonable rates.

B. This rule serves the commission's objectives of increasing transparency, involving stakeholder participation early in the process, and tying the IRP outcome directly to the procurement process.

C. To assist utilities in identifying the most cost-effective portfolio, this rule establishes a transparent, competitive format for analyzing alternative resource portfolio plans.

D. This format promotes fair and robust competition in selection of resources to ensure consistency, efficiency, and harmony with the integrated resource planning and procurement process.

(1) In proposing cost-effective resources, utilities shall prioritize those that best comply with the state's requirements for reducing greenhouse gas emissions, fostering equitable clean energy development, and grid modernization.

(2) Utilities shall consider the following resources, including but not limited to: distributed energy resources, demand response, energy efficiency, renewable energy, flexible generation, low-emission or zero carbon resources, energy storage systems, and transmission and distribution grid improvements.

[17.7.3.6 NMAC - Rp, 17.7.3.6 NMAC, 10/27/2022]

17.7.3.7 DEFINITIONS: When used in this rule, unless otherwise specified the following definitions shall apply:

A. Definitions beginning with "A":

(1) **action plan means** the proposed process and specific actions the utility shall carry out to implement the integrated resource plan spanning a three year period following the filing of the utility's integrated resource plan;

(2) **availability factor means** the ratio of the time a generating facility is available to produce energy at its rated capacity to the total amount of time in the period being measured;

B. Definitions beginning with "B": [RESERVED]

C. Definitions beginning with "C": capacity factor means the ratio of the net energy produced by a generating facility during a given time period to the amount of net energy that could have been produced if the facility operated continuously at full capacity during that same time period;

D. Definitions beginning with "D":

(1) **demand response means** a form of load management that involves changes in electric usage by end-use customers from their normal consumption patterns, either in response to changes in the price of electricity over time, or to incentive payments designed to induce lower electricity use at times of high wholesale market prices or when system reliability is jeopardized;

(2) **demand-side resource means** storage, responsive distributed generation, and loads engaged in demand response programs that can support the grid by responding to market signals or direct load control;

(3) **derating means** a temporary or permanent reduction in the expected power output of a generating facility;

(4) **distributed energy resource (DER) means** the equipment used by an interconnection customer to generate, store, or generate and store electricity that operates in parallel with the electric distribution system.

(a) DER may include, but is not limited to: an electric generator with or without an energy storage system, a prime mover, or combination of technologies capable of injecting power and energy into the electric distribution system, which also includes the interconnection equipment necessary to safely interconnect with the distribution system;

(b) DER may not always be interconnected with the bulk power system;

(c) DER may include distributed generation resources, distributed energy storage, demand response energy efficiency, and electric vehicles and chargers that are connected to the electric distribution power grid;

(e) DER may be capable of exporting active power to an electric power system;

(f) DER includes the customer's interconnection facilities but shall not include the area electric power system operator's interconnection facilities.

E. Definitions beginning with "E":

(1) **emergency procurement means** a utility's procurement to address a system-based emergency condition including a serious threat to public health, welfare, safety, or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure, or similar event.

(2) **energy efficiency means** measures, including energy conservation measures, or programs that target consumer behavior, equipment, or devices, to result in a decrease in consumption of electricity without reducing the quantity or quality of energy services;

(3) **energy storage resource means** a commercially available technology that is capable of absorbing energy, storing it for a period of time, and thereafter delivering the energy.

(a) specifically, it means a commercially available technology that:

(i) uses mechanical, chemical, or thermal processes to:

(ii) store energy, including energy generated from renewable energy

resources and energy that would otherwise be wasted, and deliver the stored energy for use at a later time; or

(iii) store thermal energy for direct use for heating or cooling at a later time

in a manner that reduces the demand for electricity at the later time;

(iv) is composed of stationary equipment;

(v) if being used for electric grid benefits, is operationally visible and

capable of being controlled by the distribution or transmission entity managing it, to enable and optimize the safe and reliable operation of the electric system; and

(b) achieves any of the following:

(a) reduces peak electrical demand;

(b) defers the need, or substitutes for, an investment in electric generation, transmission, or distribution assets;

(c) improves the reliable operation of the electrical transmission or distribution systems; or

(d) lowers customer costs by storing energy when the cost of generating or purchasing it is low and delivering it to customers when the costs are high.

F. Definitions beginning with “F”:

(1) **facilitated stakeholder process means** the statutory public advisory process pursuant to Section 62-17-10 NMSA 1978, conducted by a commission appointee to facilitate advisory discussions among stakeholders, including members of the public, to advise the public utility and reach potential agreement in the utility’s development of its statement of need and action plan;

(2) **flexibility means** the ability of a power system or resource to timely respond as needed to changes in supply and demand through deployment or curtailment of resources by system managers or other control methods, to maintain a balanced load, and to compensate for the variability of renewable energy resources;

(3) **flexible generation means** generation resources that can start, ramp up, and ramp down quickly and efficiently, can be dispatched, and run at low output levels, and can serve frequency response and ancillary service needs, as needed;

G. Definitions beginning with “G”: [RESERVED]

H. Definitions beginning with “H”: heat rate means the ratio of energy inputs used by a generating facility expressed in British thermal units, to the energy output of that facility expressed in kilowatt-hours;

I. Definitions beginning with “I”:

(1) **integrated resource plan (IRP) means** a public utility’s plan to meet New Mexico jurisdictional retail customers’ existing and future demand in accordance with this rule and applicable state policies.

(a) specifically, it means a set of resource options that a utility could use to meet the service needs of its customers over a forecast period, including an explanation of the supply and demand circumstances under which, and the extent to which, each resource option would be used to meet those service needs.

(b) these resource options include, but are not limited to, using, refurbishing, and constructing utility plant and equipment, buying power generated by other entities, controlling customer loads, and implementing customer energy conservation;

(2) **independent monitor (IM) means** a person or entity appointed by the commission to oversee the conduct of a utility’s competitive procurement process as addressed in this rule. The IM shall report to the commission regarding the utility’s conformance with the most recently accepted statement of need and action plan and the sufficiency, reasonableness, competitive fairness, and completeness of that process;

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”:

(1) **load forecasting means** the prediction of the demand for electricity and energy over the planning period for the utility;

(2) **load management means** measures or programs that target equipment or devices to decrease peak electricity demand or shift demand from peak to off-peak periods;

M. Definitions beginning with “M”: most cost-effective resource portfolio means those supply-side resources and demand-side resources that minimize the net present value of revenue requirements proposed by the utility to meet electric system demand during the planning period consistent with reliability and risk considerations;

N. Definitions beginning with “N”:

(1) **net capacity means** the amount of flexible capacity necessary to supply instantaneous demand over and above the available capacity from variable energy resources, including wind and solar generation;

(2) **net load means** the difference between forecasted load and expected electricity production from variable generation resources;

O. Definitions beginning with “O”: [RESERVED]

P. Definitions beginning with “P”:

(1) **planning period means** the future period for which a utility develops its IRP, which, for purposes of this rule, is 20 years;

(2) **public utility or utility has the same meaning** as in the Public Utility Act, except that it does not include a distribution cooperative utility as defined in the Efficient Use of Energy Act.

Q. Definitions beginning with “Q”: [RESERVED]

R. Definitions beginning with “R”:

(1) **regional energy market means** an organized interstate market for energy, ancillary services, or capacity, operated by an independent entity (independent system operator or regional transmission operator) subject to regulatory authority of the Federal energy regulatory commission;

(2) **renewable energy means** electrical energy generated by use of renewable energy resources and delivered to a public utility;

(3) **renewable energy resource means** the following energy resources, with or without energy storage:

(a) solar, wind and geothermal;

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

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

(i) be of appropriate scale to have sustainable feedstock in the near vicinity;

(ii) have zero life cycle carbon emissions; and

(iii) meet scientifically determined restoration, sustainability and soil nutrient principles;

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

(e) landfill gas and anaerobically digested waste biogas; and

S. Definitions beginning with “S”: statement of need means a description and explanation of the amount and type of new resources, expressed in terms of energy or capacity, necessary to reliably meet an identified level of electricity demand in the planning horizon and to effect state policies.

T. Definitions beginning with “T”: [RESERVED]

U. Definitions beginning with “U”: [RESERVED]

V. Definitions beginning with “V”: [RESERVED]

W. Definitions beginning with “W”: [RESERVED]

X. Definitions beginning with “X”: [RESERVED]

Y. Definitions beginning with “Y”: [RESERVED]

Z. Definitions beginning with “Z”: [RESERVED]

[17.7.3.7 NMAC - Rp, 17.7.3.7 NMAC, 10/27/2022]

17.7.3.8 INTEGRATED RESOURCE PLANS FOR ELECTRIC UTILITIES:

A. A public utility supplying electric service to customers shall file with the commission every three years a proposed integrated resource plan (IRP) to meet the service needs of its customers over the planning period. The plan shall show the resource options the utility intends to use to meet those needs. The plan shall also specify how the implementation and use of those resource options would vary with changes in supply and demand. The utility is only required to identify a resource option type, unless a commitment to a specific resource exists at the time of the filing. The utility shall also discuss any plans to reduce emissions from existing resources through sales, leases, deratings, or retirements.

B. The IRP submitted to the commission by an electric utility shall contain the utility’s New Mexico jurisdictional information as follows:

(1) description of existing resources, see Appendix A;

(2) current load forecast, see Appendix A;

(3) load and resources table, see Appendix A;

(4) new load and facilities arising from special service agreements, economic development projects, and affiliate transactions;

(5) identification of resource options, see Appendix A;

(6) statement of need, see 17.7.3.10 NMAC;

(7) determination of the resource portfolio, see Appendix A; and

(8) action plan, see 17.7.3.11 NMAC.

C. The utilities shall file their IRP on a staggered schedule, as follows:

(1) Public service company of New Mexico shall file an IRP pursuant to 17.7.3.8 NMAC on or before September 1, 2023.

(2) Southwestern public service company shall file an IRP pursuant to 17.7.3.8 NMAC on or before September 1, 2024.

(3) El Paso electric company shall file an IRP pursuant to 17.7.3.8 NMAC on or before September 1, 2025.

D. A multi-jurisdictional utility shall include in its IRP a description of its resource planning requirements in the other state(s) where it operates, and a description of how it is coordinating the IRP with its out-of-state resource planning requirements.

E. The utility shall promptly notify the commission and participants of material events that would have the effect of changing the statement of need or action plan had those events been recognized when the statement of need or action plan was accepted.

(1) The utility shall, within two weeks of knowledge of the material event or events, submit a filing in its most recent IRP docket detailing the material events and options being considered as proposed modifications to the accepted action plan.

(2) This notice shall occur prior to the development of any proposed action plan modifications to ensure that the commission has advance notice. The utility shall serve the filing on everyone on the service list as well as each commissioner.

(3) The utility bears the burden of explaining why the events qualify as material and whether it shall file a variance, pursuant to 1.2.2.40 NMAC or 17.7.3.17 NMAC, from the accepted statement of need or action plan.

[17.7.3.8 NMAC - Rp, 17.7.3.9 NMAC, 10/27/2022]

17.7.3.9 FACILITATED STAKEHOLDER PROCESS; IRP PROCESS:

A. At least six months prior to the filing of its IRP, the utility shall notify the commission, members of the public, the New Mexico attorney general, and all parties to its most recent base rate case and most recent IRP case of its intent to file an IRP. The commission, upon notification, shall initiate a facilitated process for the utility, commission utility division staff, and stakeholders to reach a potential agreement on a proposed statement of need pursuant to 17.7.3.10 NMAC and an action plan pursuant to 17.7.3.11 NMAC. The commission, aside from utility division staff and the appointed facilitator, shall not participate in the facilitated stakeholder process.

(1) The utility shall provide commission utility division staff and stakeholders who have signed a confidentiality agreement reasonable access to the same modeling software used by the utility on equal footing as the utility, and shall perform a reasonable number of modeling runs per staff or a stakeholder, if requested by staff or a stakeholder, in accordance with commission precedent, and the utility shall share all modeling information.

(2) Nothing in this section shall preclude commission utility division staff from providing an analysis based on an alternative, open-source modeling software.

B. In selecting the facilitator, the commission, through its designee, may solicit recommendations of the names of independent firms or individuals that demonstrate independence from public utilities supplying electric service in the state, their affiliates, and likely bidders, and demonstrate the qualifications, expertise, and experience to perform the functions of a facilitator as provided in this rule. The commission shall comply with the New Mexico procurement code in its solicitation of a facilitator.

(1) The facilitator shall provide a statement of interest to the commission which discloses any contracts or other economic arrangements of any kind between the facilitator and any investor-owned electric utility or affiliate within the last four years.

(2) The facilitator shall notify the commission and utility of any perceived or actual conflicts that arise during the course of the facilitation process.

C. The commission, through its designee, shall develop a standard form of contract between the facilitator and the commission that requires the facilitator, in consultation with the utility, to issue notice of facilitated stakeholder meetings, and to host and moderate facilitated stakeholder meetings, including but not limited to, preparing the agenda, and acting as the coordinator between the utility's presentation and the stakeholders' questions and comments.

D. Funding for the services of the facilitator shall be paid by the utility and treated as a regulatory asset to be recovered through rates established in the utility's next general rate proceeding.

E. Not later than six months after the facilitated stakeholder process commences, the utility shall file the IRP with the commission, explaining all resolved and unresolved issues resulting from the facilitated process.

(1) Written public comments may be filed within 30 days of the utility's filing of the IRP.

(a) Written public comments may include the commenter's own draft statement of need and action plan for commission review.

(b) Written public comments shall be made part of the utility's IRP as addendums.

(2) The utility shall file, within 60 days of the utility's filing of the IRP, a written response to all timely filed written public comments, stating whether it adopts any of the written comments as amending the IRP and the reasons why or why not.

(3) The commission's utility division staff shall consider the filed written public comments and the utility's written responses and shall file a statement with the commission within 90 days of utility's filing of the IRP as to whether the statement of need and action plan comply with the policies and procedures of this rule.

(4) If the commission has not acted within 120 days of the filing of the IRP, the statement of need and action plan are deemed accepted as compliant with this rule. If the commission determines that the statement of need or action plan do not comply with the requirements of this rule, the commission shall identify the deficiencies and return it to the utility with instructions for re-filing.

[17.7.3.9 NMAC - N, 10/27/2022]

17.7.3.10 STATEMENT OF NEED:

A. The statement of need is a description and explanation of the amount and the types of new resources, including the technical characteristics of any proposed new resources, to be procured, expressed in terms of energy or capacity, necessary to reliably meet an identified level of electricity demand in the planning horizon and to effect state policies.

B. The statement of need shall not solely be based on projections of peak load. The need may be attributed to, but not limited by, incremental load growth, renewable energy customer programs, or replacement of existing resources, and may be defined in terms of meeting net capacity, providing reliability reserves, securing flexible resources, securing demand-side resources, securing renewable energy, expanding or modifying transmission or distribution grids, or securing energy storage as required to comply with resource requirements established by statute or commission decisions.

[17.7.3.10 NMAC - N, 10/27/2022]

17.7.3.11 ACTION PLAN:

A. The utility's action plan shall:

(1) detail the specific actions the utility shall take to implement the IRP spanning a three year period following the filing of the utility's IRP;

(2) detail the specific actions the utility shall take to develop any resource solicitations or contracting activities to fulfill the statement of need as accepted by the commission; and

(3) include a status report of the specific actions contained in the previous action plan.

B. The utility shall update the commission by filing two reports describing the utility's implementation of the action plan. These reports shall be filed in the existing IRP docket one year after the filing of the IRP, and two years after the filing of the IRP, respectively.

C. An action plan does not replace or supplant any requirements for applications for approval of resource additions set forth in New Mexico law or commission regulations.

D. The utility shall promptly notify the commission and participants of material events that would have the effect of changing the results of the utility's action plan had those events been recognized when the action plan was developed.

E. In accepting the action plan, the commission shall take into consideration contractual obligations as between the utility and any regional transmission organizations or balancing authorities of which the utility is a member.

[17.7.3.11 NMAC - N, 10/27/2022]

17.7.3.12 REQUEST FOR PROPOSALS PROCESS:

A. Scope and purpose: Unless the commission grants a public utility's variance application pursuant to 17.7.3.17 NMAC for a variance from section 12 of this rule, the utility shall follow the request for proposals process to ensure cost competitiveness and fairness in procurement by comparing proposals among bidders through a transparently designed and monitored request for proposals.

B. To address the utility's procurement need, if any, as described in the statement of need, and to fulfill the objectives of the utility's action plan, the utility shall issue a request for proposals (RFP) in the current IRP docket, within five months of the commission's acceptance of its statement of need and action plan.

C. Prior to the utility's commencement of an RFP solicitation, the utility shall provide the commission, the IM, and parties to the utility's pending IRP case with the documents and contracts that constitute the RFP solicitation (RFP documents) and a timeline for soliciting, accepting, and evaluating bids.

D. Within 21 days of receipt of the RFP documents, commissioners, commission utility division staff, and intervenors may submit comments to the utility, including on whether its proposed RFP conforms with its accepted statement of need and action plan and is not unduly discriminatory. Comments shall be considered, and may be incorporated, by the utility prior to the issuance of the RFP.

E. The utility may issue the RFP after comments are submitted on the independent monitor's design report pursuant to Subsection I of 17.7.3.14 NMAC. The utility shall file a notice with the commission of any final changes to the RFP design upon issuance.

F. The proposed RFP(s) shall include:

- (1) bid evaluation criteria;
- (2) the overall amount and duration of power the utility is soliciting and any other details concerning its resource needs;
- (3) a request for bidders' reasonable estimates of any new transmission costs and transmission upgrade costs for resources, if known;
- (4) the extent and degree to which resources shall be dispatchable, including the requirement, if necessary, that resources be able to operate under automatic dispatch control;
- (5) the utility's proposed contract(s) for the acquisition of resources;
- (6) proposed contract term lengths;
- (7) the applicable discount rate;
- (8) the timeline, including the solicitation period, the evaluation period, and the expected selection period;
- (9) all security requirements and the rationale behind them; and
- (10) any other information necessary to implement a competitive RFP process.

G. For a proposed RFP, each utility shall provide:

- (1) a description of information that the utility claims is confidential;
- (2) descriptions of proposed protection methods for:
 - (a) bid prices; and
 - (b) other bid details.

H. Not later than 120 days after the utility receives bids for its projected needs, the utility shall provide the IM with an evaluation of proposals that meet the above stated criteria, a detailed description of price and non-price criteria, its preferred portfolio of resources, along with a timeline for resource development.

I. The utility shall evaluate bids submitted in response to an RFP using the following price and non-price criteria:

- (1) consistency with the terms and requirements of the Efficient Use of Energy Act and the Renewable Energy Act; and other public policies regarding resource preferences adopted by New Mexico or the federal government;
- (2) cost of the resource that would be borne by ratepayers, described in terms of the net present value of capacity cost and lifetime cost of energy calculation;
- (3) resource effect on system operations and reliability, credit, and financial risks to the utility;
- (4) any risks imposed on ratepayers, including assessment of relative amounts of risk inherent among different technologies, fuel sources, or financing arrangements;
- (5) environmental impacts including, but not limited to, those associated with resources that emit carbon dioxide or create long-term waste disposal issues;
- (6) resource dispatchability and operational flexibility benefits or constraints;
- (7) the utility shall include in its evaluation the estimated cost and environmental impact of transmission upgrades or distribution infrastructure upgrades necessary to deliver the project's energy, capacity, or services;
- (8) each bidder shall be responsible for all costs associated with interconnecting its project to the transmission grid or, if applicable, to local distribution facilities; and
- (9) completeness and credibility of a detailed critical path schedule, and ability to meet scheduled construction start date and commercial operational date, including completing the interconnection process.

J. Additional criteria used by the utility for evaluation may not establish a preference for utility ownership or for projects proposed by a utility-affiliated company. The utility shall not unreasonably discriminate between proposals for a utility-owned or utility affiliate-owned resource and proposals for a resource owned by an independent power producer through a purchased power agreement.

K. The bid evaluation shall ensure that all bids are compared and evaluated on a consistent basis that is competitive, fair, and shall be subject to review by the commission.

L. The utility may issue additional RFPs in the current IRP docket, adhering to the processes and procedures described in 17.7.3.12 NMAC, if prudent following a material event pursuant to Subsection D of 17.7.3.11 NMAC.

M. Nothing in this rule shall be construed to prevent a public utility from procuring resources as required by the REA, Section 62-16-4 NMSA 1978, the EUEA, Section 62-17-5 NMSA 1978, or 17.9.570 NMAC. Such procurements shall be included in the utility's forecasting, statement of need, and action plan.

[17.7.3.12 NMAC - N, 10/27/2022]

17.7.3.13 COST RECOVERY:

A. Acceptance of the utility's statement of need and action plan does not constitute a finding of prudence or pre-approval of costs associated with acquiring additional resources.

B. Any costs incurred to implement an accepted action plan shall be considered in a general rate case, resource acquisition proceeding, or appropriate application for a CCN.

[17.7.3.13 NMAC - N, 10/27/2022]

17.7.3.14 INDEPENDENT MONITOR:

A. Scope and purpose: The independent monitor's role is to help the commission determine that the request for proposals design and execution is fair, competitive, and transparent. The independent monitor shall advise the commission and report on the RFP process, but the independent monitor shall not make or participate in the public utility's decisions regarding the procurement process or the selection of resources.

B. Following commission acceptance of a public utility's statement of need and action plan, the commission shall appoint an independent monitor to monitor the procurement process of a public utility for competitive resource procurements pursuant to 17.7.3.12 NMAC. The independent monitor, as provided in this section, shall assist the commission in ensuring that all such processes are reasonable and competitively fair and shall report to the commission regarding those matters as provided in this rule. The commission may appoint an IM for emergency procurements pursuant to 17.7.3.17 NMAC.

C. The commission shall, through its designee:

- (1) undertake a process consistent with state purchasing rules and commission policies in recommending a pool of qualified IMs;
- (2) develop an RFP, including the scope, terms of work, and evaluation process to score the RFP responses;
- (3) receive, review, score, and rank the RFP responses;
- (4) confer with the public utility on the recommendation of the IM;
- (5) recommend qualified bidders to the commission for appointment as the IM; and
- (6) administer the contract with the appointed IM, including: confirming that contract deliverables are met, reviewing invoices and related contract performance, and approving utility invoices after staff's review and approval.

D. In selecting the IM, the commission, through its designee, may solicit recommendations of the names of independent firms or individuals that demonstrate independence from public utilities supplying electric service in the state, their affiliates, and likely bidders, and demonstrate the qualifications, expertise, and experience to perform the functions of an IM as provided in this rule.

(1) The IM shall provide a statement of interest to the commission which discloses any contracts or other economic arrangements of any kind between the IM and any investor-owned electric utility or affiliate within the last four years.

(2) The IM shall notify the commission and utility of any perceived or actual conflicts that arise during the course of the procurement process.

E. The commission, through its designee, shall develop a standard form of contract between an IM and the commission that requires the IM to perform the functions of an IM as provided in this rule in a manner that is not subject to the control of the public utility. The standard form of contract between an IM and the commission

for IM services as provided for in this rule shall include, but shall not be limited to, the identification of the IM's functions and scope of work as provided in Subsection G of 17.7.3.14 NMAC.

F. Funding for the services of the IM shall be paid by the utility and treated as a regulatory asset to be recovered through rates established in the utility's next general rate proceeding.

G. Duties of the independent monitor:

(1) The IM shall file a minimum of two reports with the commission. The first report shall analyze the RFP design (design report). The final report shall review the fairness of the RFP execution (final report).

(a) In the design report, the IM shall report to the commission on RFP design within 28 days of the public utility's provision of RFP documents pursuant to Subsection C of 17.7.3.12 NMAC. The IM shall analyze the proposed RFP, including but not limited to its scope, instructions, conditions for eligible proposals, specifications, time schedules, disclosure of bid evaluation methods, and term sheets. The RFP design report shall state whether the contents of the proposed RFP comply with the requirements of 17.7.3.10 NMAC through 17.7.3.12 NMAC and are otherwise reasonable, competitively fair, designed to promote a robust bid response, and designed to identify a utility's most cost-effective option among resource alternatives to meet its service needs in compliance with this rule.

(b) In the final report, the IM shall, within 30 days of the utility's submission of its shortlist to the IM, review and report on the reasonableness, competitiveness, and fairness of the utility's solicitation, evaluation, and procurement processes, including but not limited to bid screening, comparison, evaluation, and short-listing criteria.

(i) The IM shall state whether the RFP process implemented by the public utility complied with the requirements of 17.7.3.11 NMAC and 17.7.3.12 NMAC.

(ii) The IM's report shall also provide summary information on the results of the bids, including the number of bids sorted by the following criteria: by resource type, capacity or energy, price range by resource type, and whether there were any deficiencies in those respects that should be addressed by the commission in a future proceeding for approval of the solicited projects. The commission may rely on that opinion to request that the utility make modifications in a timely manner.

(2) At any point during the public utility's RFP process the IM may notify the commission and the utility of any deficiency as contemplated in Subsection G of 17.7.3.14 NMAC.

H. The public utility shall provide the IM with prompt and continuing access to all documents, data, assumptions, models, specific model inputs, bidding and weighting criteria used, and any other relevant information reviewed, produced, or relied on by the public utility in the preparation and conduct of its competitive resource procurement process.

I. All communications, including but not limited to reports pursuant to this section, provided by the IM to the commission, shall be made part of the commission's public records in a timely manner in the public utility's most recent IRP docket.

(1) The public utility, commission utility division staff, and any parties to the public utility's most recent IRP docket may comment within 14 days of the filing of the design report to the public record. After the design report comment deadline of 14 days, the utility may issue the RFP.

(2) In any proceeding filed by a public utility for approvals stemming from its solicitation made pursuant to the RFP process as described in 17.7.3.12 NMAC, the commission may rely upon any reports or findings of the IM assigned to monitor that solicitation as evidence, provided that such evidence shall not be conclusive as to whether or not a resource proposed by the utility shall be approved.

J. All communications between the public utility and any bidders shall be shared at the same time with the IM. Commission utility division staff and any parties are restricted from initiating contacts with the independent monitor. The independent monitor may initiate contact with the utility, commission utility division staff, and any parties.

(1) For all contacts with the public utility, commission utility division staff, and any parties in the resource plan proceeding, the independent monitor shall maintain a log that briefly identifies the entities communicating with the IM, the date and duration of the communication, the means of communication, the topics discussed, and the materials exchanged, if any.

(2) The communications log shall be contained in the IM's report to the commission pursuant to Subparagraph (b) of Paragraph (1) of Subsection G of 17.7.3.14 NMAC.

K. The independent monitor shall serve as an advisor to the commission and shall not be a party to the proceedings in accordance with 1.2.3.9 NMAC. As such, the independent monitor shall not be subject to discovery nor cross-examination at hearing, if one is held, but the public utility, commission utility division staff,

and any parties shall have the opportunity to respond to any reports or findings of the IM pursuant to Paragraph (1) of Subsection I of 17.7.3.14 NMAC.

L. The commission shall not appoint an independent monitor for a utility's procurement for which the commission grants a variance pursuant to Subsection D of 17.7.3.17 NMAC.
[17.7.3.14 NMAC - N, 10/27/2022]

17.7.3.15 CONFIDENTIALITY OF INFORMATION:

A. The utility may submit any portions of its IRP under seal to the extent the utility deems specific information to be confidential.

B. The utility shall seek a protective order under Subsection B of 17.1.2.8 NMAC for those portions of its IRP it considers confidential, and the utility shall have the burden of proving its right to such protection.

(1) Any information submitted under seal pursuant to this paragraph shall remain under seal for a period of three years, after which time it shall become public unless the utility seeks and obtains further protection from the commission.

(2) Information submitted under seal shall be available for review by the commission and its designated representatives and by any person who has entered into a confidentiality agreement with the utility in a form approved by commission order, provided, however, that bidders or potential bidders shall not have access to competitively sensitive information of other bidders.

C. The utility shall not disclose any bid information for which a non-winning bidder has requested confidential treatment except in accordance with a commission protective order limiting disclosure of such information to persons who execute and file a confidentiality agreement with the commission as provided in that order.

[17.7.3.15 NMAC - Rp, 17.7.3.11 NMAC, 10/27/2022]

17.7.3.16 EXEMPTIONS:

A. Motion for exemption from rule: Upon motion by a utility and for good cause shown, the commission may exempt public utilities with fewer than five thousand customers and distribution-only public utilities from the requirements of this rule.

B. Filing of a notice of exemption from rule: Upon the filing of a notice of exemption in the utility's most recent IRP docket, a utility shall be exempted from the requirements of Sections 12 and 14 of 17.7.3 NMAC for the following procurements:

(1) emergency procurements; and

(2) capacity or energy from the generation facilities of other utilities or from non-utility generators pursuant to agreements for a two year term or less (including renewal terms) or for 20 megawatts of capacity or less;

C. Multi-state resource planning: The commission shall take into account a public utility's resource planning requirements in other states and shall authorize utilities that operate in multiple states to implement plans that coordinate the applicable state resource planning requirements.

[17.7.3.16 NMAC - Rp, 17.7.3.14 NMAC, 10/27/2022]

17.7.3.17 VARIANCES AND AMENDMENTS:

A. A utility may file a request for a variance from the requirements of this rule.

B. Such application shall:

(1) describe the situation which necessitates the variance;

(2) set out the effect of complying with this rule on the utility and its customers if the

variance is not granted;

(3) identify the section(s) of this rule for which the variance is requested;

(4) describe the expected result which the request shall have if granted; and

(5) state how the variance shall aid in achieving the purposes of this rule.

C. The commission may grant a request for a procedural variance through an order issued by the chair, a commissioner, or a designated hearing examiner.

D. The following types of procurements that deviate from the utility's commission-accepted action plan shall be submitted to the commission as an application for a variance pursuant to 17.7.3.17 NMAC:

(1) capacity or energy from newly-constructed, utility-owned, supply-side resources with a nameplate rating of 20 megawatts or less;

- (2) improvements or modifications to existing utility generation facilities that change the production capability of the generation facility site in question by 20 megawatts or less based on the utility's share of the total power generation at the facility site and that have an estimated cost of \$20 million or less;
 - (3) interruptible service provided to the utility's electric customers;
 - (4) modification to, or amendment of, existing power purchase agreements provided that the modification or amendment does not extend the agreement more than four years, does not add more than 20 megawatts of nameplate capacity to the utility's system, and is cost effective in comparison to other supply-side alternatives available to the utility; and
 - (5) utility administered demand-side programs.
- [17.7.3.17 NMAC - Rp, 17.7.3.15 NMAC, 10/27/2022]

HISTORY of 17.7.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:
Public Service Commission, NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities, filed 6/30/1988.

History of Repealed Material: NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities (filed 6/30/1988) repealed 4/16/2007.

17.7.3 NMAC - Integrated Resource Plans for Electric Utilities filed 3/30/2007, repealed 10/27/2022.

Other History:

Only that applicable portion of NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities (filed 6/30/1988) was renumbered, reformatted and replaced by 17.7.3 NMAC, Integrated Resource Plans for Electric Utilities, effective 4/16/2007.

17.7.3 NMAC - Integrated Resource Plans for Electric Utilities filed 3/30/2007, replaced by 17.7.3 NMAC - Integrated Resource Plans for Electric Utilities, effective 10/27/2022.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF A COMMISSION)
RULEMAKING REGARDING NMPRC RULE)
17.7.3 NMAC INTEGRATED RESOURCE PLANS)
AND PROCUREMENT PROCEDURES)
_____)**

Case No. 21-00128-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Final Order Upon Reconsideration* was sent via email to the following parties on the date indicated below:

A.J. Gross	ajgross@hollandhart.com;
Abbas Akhil	abbas@revtx.com;
Abbas Akhil	aakhil@comcast.net;
Abigail Sawyer	abigail@newsdata.com;
Adam Harper	adamh@osceolaenergy.com;
Adele Lee	aclee@hollandhart.com;
Alejandra Chavira	Alejandra.Chavira@epelectric.com;
Alena Brandenberger	alena.brandenberger@cnmec.org;
Allen H. Downs	biz@lifeisgood2.com;
Alton Looney	alooney@ad.nmsu.edu;
Amanda Alderson	aalderson@consultbai.com;
Amanda Edwards	AE@JalbLaw.com;
Amy Shelhamer	ashelhamer@courtneylawfirm.com;
Anastasia S. Stevens	astevens.law@gmail.com;
Andrea Crane	ctcolumbia@aol.com;
Andrew Harriger	akharriger@sawvel.com;
Andrew Stone	andrew@stone.com;
Anne Dorough	district5@socorroelectric.com;
Antonio Sanchez	sancheza@rcec.coop;
April Elliott	april.elliott@westernresources.org;
April Elliott	april@elliottanalytics.com;
April Elliott	ccae@elliottanalytics.com;
Art O'Donnell	Art.O'Donnell@prc.nm.gov;
Austin Rueschhoff	darueschhoff@hollandhart.com;
B. Hart	Joshua.smith@sierraclub.org;
Ben Luxenberg	ben.luxenberg@galeheaddev.com;
Bernarr Treat	Bernarr.R.Treat@xcelenergy.com
Bobby Ferris	bferris@lcecnet.com;
Brad Baldrige	brad.baldrige@xcelenergy.com;
Bradford Borman	Bradford.borman@prc.nm.gov;
Brian K. Johnson, PE	brian@nmreta.net;
Bruce Throne	bthroneatty@newmexico.com;
Capt Robert L. Friedman	Robert.Friedman.5@us.af.mil;
Capt. Lanny Zieman	Lanny.Zieman.1@us.af.mil;

Capt. Natalie Cepak
Carey Salaz
Carla Najjar
Carol Clifford
Casey Settles
CCAE- Charles Noble
CFREC/CLEANENERGY
Charles Garcia
Charles Mulcock
Charles T. Pinson
Chris Dizon
Chris Martinez
Chris McKee
Chris Punt
Chuck Moore
Collin Gillespie
Columbus Electric
Continental Divide Electric
Corina Sandoval
Curtis Hutcheson
Cydney Beadles
Cynthia Hall
Dahl Harris
Damon Withrow
Dana S. Hardy
Daniel Najjar
Daniel Najjar
Danil Weinman
Darren Zigich
Dave Sonntag
David Black
David Spradlin
Delbert Lucero
Dena M. Bennett
Denise Barrera
Don Hancock
Duncan Valley Electric
Dylan Connelly
Ed Rougemont
EJ-Charles Carter Hall
EJ-Jill Tauber
EJ-Sara Gersen
Elisha Leyba-Tercero
Elizabeth Ramirez
Eric Martinot
Ernesto Gonzales

Natalie.Cepak.2@us.af.mil;
Carey.Salaz@pnm.com;
csnajjar@virtuelaw.com;
carol@thejonesfirm.com;
casey.settles@xcelenergy.com;
noble.ccae@gmail.com;
cfrecleanenergy@yahoo.com;
cgarcia@cuddymccarthy.com;
charliem@ote-coop.com;
cpinson@cvecoop.org;
Chris.dizon@endlessenergy.solar;
chrism@col.coop.com;
chris.mckee@krqe.com;
chris.j.punt@xcelenergy.com;
cmoore@navopache.org;
Collin.Gillespie@prc.nm.gov;
general@col-coop.com;
bob@rf-lawfirm.com;
csandoval@cdec.coop;
Curtis.hutcheson@epelectric.com;
cydney.beadles@westernresources.org;
Cynthia.Hall@prc.nm.gov;
dahlharris@hotmail.com;
damon.withrow@xcelenergy.com;
dhardy@hinklelawfirm.com;
dnajjar@virtuelaw.com;
vnajjar@aol.com;
dan@ppcsolar.com;
darenk.zigich@prc.nm.gov;
D_Sonntag@wfec.com;
david.black@prc.nm.gov;
spradlin@springercoop.com;
delbertl@ote-coop.com;
dmb@modrall.com;
deniseb@secpower.com;
sricdon@earthlink.com;
kimberly@dvec.org;
dylan.connelly@affordable-solar.com;
erougemont@nmelectric.coop;
Chall@earthjustice.org;
jtauber@earthjustice.org;
sgersen@earthjustice.org;
Elisha.Leyba-Tercero@prc.nm.gov;
Elizabeth.Ramirez@prc.nm.gov;
emartinot@gridworks.org;
egonzales@jemezcoop.org;

Farmers' Electric Cooperative, Inc.

Fred Kennon

Gabriella Dasheno

Gabrielle Burkhart

Garibay, Joe A

Gary Roulet

Gideon Elliot

Gilbert Fuentes

Gino Grilli

Greg R. Meyer

Greg Sonnenfeld

Holland Hart

Jack Sidler

Jacob Fraatz

Jacqueline Waite

James Schichtl

Jane L. Yee

Jane Yee

Janie Chermak

Jarryd Commerford

Jason Marks

Jason Montoya

Jason Trujillo

Javier Perea

Jeff Wernert

Jeffrey H. Albright

Jeffrey J. Wechsler

Jemez Mountain Electric

Jenna Warmuth

Jennifer Ortiz

Jennifer Vega-Brown

Jeremy Lewis

Jim DesJardins

Jim DesJardins

Joan Drake

John Bogatko

Ed Rilkoff

Jorge A. Garcia

Jose F. Provencio

Jose Lovato

Joseph Yar

Joshua L. Smith

Jospeh Herrera

Judith Amer

Judith Parsons

Julia Broggi

fec@fecnm.org;

fredk@donaanacounty.org;

Gabriella.Dasheno@prc.nm.gov;

Gabrielle.Burkhart@krqe.com;

joe.garibay@epelectric.com;

g_roulet@wfec.com;

gelliott@nmag.gov;

GilbertT.Fuentes@prc.nm.gov;

ggrilli@dimension-energy.com;

gmeyer@consultbai.com;

greg@sonnenfeldconsulting.com;

glgarganoamari@hollandhart.com;

Jack.Sidler@prc.nm.gov;

jfraatz@dimension-energy.com;

jacqueline.waite@emnrd.nm.gov;

James.Schichtl@epelectric.com;

jane.cambio@gmail.com;

jane.cambio@gmail.com;

jchermak@unm.edu;

jarryd@srenergy.com;

lawoffice@jasonmarks.com;

JasonN.Montoya@prc.nm.gov;

jtrujillo@morasanmiguel.coop;

lperea@solarsmartliving.com;

jwernert@theprimegroupllc.com;

JA@JalbLaw.com;

Jwechsler@montand.com;

ajchavez@jemezcoop.org;

jwarmuth@nexamp.com;

Jennifer.Ortiz@epelectric.com;

Jvega-brown@las-cruces.org;

jlewis@slo.state.nm.us;

jimdesjardins1@gmail.com;

j.desjardins@hotmail.com;

jdrake@modrall.com;

John.bogatko@prc.nm.gov;

Ed.rilkoff@prc.nm.gov;

JAG@las-cruces.org;

Jprovencio@las-cruces.org;

jlovato@kitcarson.com;

joseph@yarlawoffice.com;

Jsmith.watsonlawlc@gmail.com;

jherrera@socorroelectric.com;

Judith.Amer@prc.nm.gov;

Judith.parsons@epelectric.com;

jbroggi@hollandhart.com;

Julie Tackett
Kari E. Olson
Katelyn Hart
Katherine Coleman
Keith Herrmann
Kelly Gould
Kelsey Rader
Ken Wilson
Keven Gedko
Keven Groenewold
Kitty Turner
Kyle J. Smith
Kyle Reddell
Lance Adkins
Larry Blank
Laura Rodriguez
Lea County Electric
Leah Boone
Les Montoya
Leslie Padilla
Linda Hudgins
Linda pleasant
Lisa LaRoque
Lisa Mattson
Lisa Tormoen Hickey
Luis Reyes
M. Poche
Maj Scott Kirk
Maj. Andrew J. Unsicker
Marcia B. Driggers
Mariel Nanasi
Mario A. Contreras
Mario A. Romero
Mark Faulkenbury
Mark Fenton
Mark Tupler
Mark Walker
Marta Tomic
Matthew Collins
Matthew Dunne
Matthew Loftus
Matthew Miller
Maureen Reno
Mayane Barudin
Mayor Trujillo
Melanie Enderdine
j_tackett@wfec.com;
Kolson@montand.com;
katelyn.hart@gknet.com;
katie.coleman@tklaw.com;
kherrmann@stelznerlaw.com;
kelly@thegouldlawfirm.com;
Krader@cabq.gov;
ken.wilson@westernresources.org;
kgedko@nmag.gov;
kgroenewold@nmelectric.coop;
KAT@jpollockinc.com;
Kyle.j.smith124.civ@mail.mil;
kyle.a.reddell@xcelenergy.com;
lance@fecnm.org;
lb@tahoeconomics.com;
laura.rodriguez@epelectric.com;
mnewell@newelllawnm.com;
LBoone@cvecoop.org;
lmontoya@morasanmiguel.coop;
Leslie.Padilla@pnmresources.com;
Linda.l.hudgins@xcelenergy.com;
Linda.pleasant@epelectric.com;
Llarocque@las-cruces.org;
lmattson@pivotenergy.net;
lisahickey@newlawgroup.com;
lreyes@kitcarson.com;
mpoche@kitcarson.com;
scott.kirk.2@us.af.mil;
Andrew.Unsicker@us.af.mil;
marcyd@las-cruces.org;
Mariel@seedsbeneaththesnow.com;
Mario.a.contreras@xcelenergy.com;
marior@ote-coop.com;
M_Faulkenberry@wfec.com;
Mark.Fenton@pnm.com;
Marc.Tupler@prc.nm.gov;
Mark.a.walker@xcelenergy.com;
marta@votesolar.org;
matthew.collins@cnmec.org;
Mdunne337@gmail.com
matthew.p.loftus@xcelenergy.com;
Matthew.miller@sierraclub.org;
mreno@reno-energy.com;
mayane@votesolar.org;
mayortrujillo@cityofanthonym.org;
makenderdine@energyfuturesinitiative.org;

Melissa Trevino
Merrie Lee Soules
Michael C. Smith
Michael I. Garcia
Michael J. Moffett
Michael Keegan
Michael P. Gorman
Michael Ropp
Michelle Rosier
Mike D'Antonio
Mike McInnes
Milo Chavez
Mora-San Miguel Electric
Mr. Thomas Jernigan
Ms. Ebony Payton
Nadine Varela
Nancy Burns
Nann M. Winter
Nathan Duran
Navopache Electric
Neil Burbure
Nelson Goodin
Nicholas Koluncich
Nikolas Stoffel
NMIEC- James Dauphinais
NMIEC- Peter Gould
NMIEC-Richard C. Mertz
NMSU- Doug Gegax
NMSU General Counsel
Northern Rio Arriba Electric
Olga Lavrova
Otero County Electric
Pat O'Connell
Patricia Griego
Paulina Olivas
Peggy Martinez-Rael
Perry Robinson
Peter Auh
Philip B. Simpson
Phillip Oldham
Pollard, William
Prosperity Works- Ona Porter
Raelynn Bean
Randy Massey
Ricardo Gonzales
Richard Alvidrez

Melissa_Trevino@oxy.com;
mlsoules@hotmail.com;
michaels.smith@prc.nm.gov;
MikGarcia@berncos.gov;
mmoffett@cmtisantafe.com;
mkeegan@wbklaw.com;
mgorman@consultbai.com;
meropp@sandia.gov;
Michelle.rosier@state.mn.us;
michael.a.d'antonio@xcelenergy.com;
mmcinnnes@tristategt.org;
milo.chavez@prc.nm.gov;
lwiggin@wwwlaw.us;
Thomas.Jernigan.3@us.af.mil;
Ebony.Payton.ctr@us.af.mil;
nvarela@kitcarson.com;
Nancy.burns@epelectric.com;
nwinter@stelznerlaw.com;
nduran@jemezcoop.org;
ggouker@navopache.org;
neil.burbure@galeheaddev.com;
nelsong@donaanacounty.org;
nkoluncich@slo.state.nm.us;
nsstoffel@hollandhart.com;
jdauphinais@consultbai.com;
peter@thegouldlawfirm.com;
rcmertz7@outlook.com;
dgegax@nmsu.edu;
gencounsel@nmsu.edu;
nora@noraelectric.org;
olavrova@nmsu.edu;
s.t.overstreet.law@gmail.com;
pat.oconnell@westernresources.org;
Patricia.griego@epelectric.com;
paulina@solarsmartliving.com;
Peggy.Martinez-Rael@prc.nm.gov;
Perry.Robinson@urenco.com;
pauh@abcwua.org;
philipbsimpson@comcast.net;
phillip.oldham@tklaw.com;
william.pollard@epelectric.com;
Ona@Prosperityworks.net;
rbean@cvcoop.org;
masseyfarm@vtc.net;
rico.gonzales@epelectric.com;
ralvidrez@mstlaw.com;

Rick Gilliam
Robert Castillo
Robert Lundin
Roberto Favela
Rod Sgrignoli
Roosevelt County Electric
Russ McKee
Russell Fisk
Ruth Sakya
Ryan Centerwall
Saif Isamil
Sara Birmingham
Saul J. Ramos
Shawna Tillberg
Sierra Electric
SierraClub – Ramona Blaber
Sky Stanfield
Socorro Electric
Sonya Mares
Southwestern Electric
Springer Electric
Stacey Goodwin
Stephanie Dzur
Stephen Land
Steve Newby
Steve Schwebke
Steve Seelye
Steven Lunt
Steven Rymsha
Sydnee Wright
Taiyoko Saidewic
Thomas Moore
Thorvald A. Nelson
Tim Dobson
TKLaw office
Tom Figart
Travis Dorr
Travis Sullivan
Tri-State Generation and Transmission
TSgt Arnold Braxton
TSgt Ryan Moore
Vidal Barela
Vincent Martinez
Wade Nelson
Wayne Soza
Western Farmers Electric

Rick@votesolar.org;
rcastillo@cdec.coop;
robert.lundin@prc.nm.gov;
roberto.favela@epelectric.com;
rodney.sgrignoli@xcelenergy.com;
rcec@rcec.coop;
RMcKee@cvcoop.org;
Russell.fisk@prc.nm.gov;
Ruth.sakya@xcelenergy.com;
ryan.centerwall@affordable-solar.com;
matthesismail@cabq.gov;
sbirmingham@seia.org;
sramos@doeal.gov;
shawna@yarlawoffice.com;
sierra@secpower.com;
Ramona.blaber@sierraclub.org;
stanfield@smwlaw.com;
service@socorroelectric.com;
smares@hinklelawfirm.com;
gary@alsuplawoffice.com;
dsmith9346@zialink.com;
Stacey.Goodwin@pnmresources.com;
Stephanie@Dzur-Law.com;
stephen.land@aes.com;
snewby@zianet.com;
Steven.Schwebke@pnm.com;
sseelye@theprimegroupllc.com;
stewel@dvec.org;
steven.rymsha@sunrun.com;
swright@nmag.gov;
Taiyoko@PositiveEnergySolar.com;
thom@fecnm.org;
tnelson@hollandhart.com;
tdobson@ad.nmsu.edu;
tk.eservice@tklaw.com;
tomf@donaanacounty.org;
travis.a.dorr@xcelenergy.com;
tsullivan@swec-coop.org;
kreif@tristategt.org;
Arnold.Braxton@us.af.mil;
Ryan.Moore.5@us.af.mil;
vbarela@morasanmiguel.coop;
vmartinez@tristategt.org;
WNelson@cvcoop.org;
wayne.soza@epelectric.com;
matt.caves@wfec.com;

Will DuBois
William A. Grant
William P. Templeman
William Templeman
WRA - Steve Michel
Zoe E. Lees
Leslie Padilla
Steve Schwebke
Devi Glick
Tyler Fitch

Will.w.dubois@xcelenergy.com;
william.a.grant@xcelenergy.com;
wtempleman@cmtisantafe.com;
wtempleman@cmtisantafe.com;
smichel@westernresources.org;
zoe.e.lees@xcelenergy.com;
Leslie.Padilla@pnmresources.com;
Steven.Schwebke@pnm.com;
dglick@synapse-energy.com;
tfitch@synapse-energy.com;

DATED this 3rd day of November, 2022.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ LaurieAnn Santillanes, electronically signed

LaurieAnn Santillanes, Law Clerk

Laurieann.santillanes@prc.nm.gov