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
BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF A COMMISSION )
RULEMAKING REGARDING NMPRC RULE )
17.7.3 NMAC INTEGRATED RESOURCE PLANS ) Case No. 21-00128-UT
AND PROCUREMENT PROCEDURES )

ERRATA TO FINAL ORDER WITH ATTACHMENT #1

Pursuant to 1.2.2.37(G)(1) NMAC and 1.2.2.30 NMAC, the New Mexico Public
Regulation Commission is issuing an Errata Order to Final Order issued on September 14, 2022
(the “Order”) to correct the Final Order as follows:

IT IS THEREFORE ORDERED:

A. The omitted Exhibits A, B and C and Appendix A that were intended to be attached to the
Final Order are hereby attached. See Attachment #1 entitled Final Order with Exhibits A, B, and C, and
Appendix attached and corrected Table of Contents and Table of Authorities

B. The Table of Contents and Table of Authorities contained page number errors and were
corrected to reference the correct page to the citation.

C. The date in Paragraph 35 was corrected to change August 31, 2022 to August 24, 2022.

D. Certain page breaks throughout Part D were deleted.

E. This Errata to the Final Order with Attachment #1 is effective immediately.

F. A copy of this Errata to the Final Order with Attachment #1 shall be served on all persons
listed on the attached certificate of service via email.
ISSUED at Santa Fe, New Mexico, this 15th day of September, 2022.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Stephen Fischmann, electronically signed
COMMISSIONER
BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF A COMMISSION RULEMAKING )
REGARDING NMPRC RULE 17.7.3 NMAC INTEGRATED ) Case No. 21-00128-UT
RESOURCE PLANS AND PROCUREMENT PROCEDURES )

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Errata to Final Order
with Attachment #1 was sent via email to the following parties on the date indicated below:

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NEW MEXICO PUBLIC REGULATION COMMISSION

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LaurieAnn Santillanes, Law Clerk
BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF A COMMISSION )
RULEMAKING REGARDING NMPRC RULE )
17.7.3 NMAC INTEGRATED RESOURCE PLANS ) Case No. 21-00128-UT
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THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission” and “PRC”) upon the Commission’s own motion to amend NMPRC Rule 17.7.3 NMAC that pertains to the filing of Integrated Resource Plans and procurement by electric utilities regulated by the Commission; wherefore, being duly informed in the premises,

THE COMMISSION FINDS AND CONCLUDES:

A. Procedural History

1. On May 26, 2021, the Commission issued the “Order Opening Docket, Initiating Rulemaking and Establishing Workshop Schedule” in which the Commission determined to evaluate repealing and replacing the Commission’s integrated resource plan (“IRP”) rule, 17.7.3 NMAC. The Commission’s justification was as follows: a) to update the IRP Rule to comply with the following laws that have been enacted and/or amended since the original Rule was promulgated in 2007, the Public Utility Act (“PUA”), NMSA 1978, Sections 62-3-1 to -5 (1953, as amended through 2019) and Section 62-8-13 (2021); the Efficient Use of Energy Act (“EUEA”), Sections 62-17-1 to -11 (2005, as amended through 2019); the Renewable Energy Act (“REA”), Sections 62-16-1 to -10 (2004, as amended through 2021); the Energy Transition Act (“ETA”), Sections 62-18-1 to -23 (2019); and the Community Solar Act (“CSA”), Sections 62-16B-1 to -8 (2021); b) 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; c) to better assist utilities in identifying the most cost-effective portfolio, by establishing fair and robust competitive procurement regulations to ensure selection of the most cost-effective portfolio of resources; d) to ensure that utilities, when proposing resources, prioritize those that best comply with the state’s requirements for reducing greenhouse gas emissions, fostering clean energy
development, and grid modernization; e) to ensure that, in considering proposed resources, utilities shall properly prioritize distributed energy resources, demand response, energy efficiency, renewable energy, and flexible generation, including but not limited to: low-emission fueled resources, energy storage systems, and transmission and distribution grid improvements; f) to improve transparency for regulators, intervenors, and the public in the planning and procurement process; and g) to minimize hastily reviewed last minute regulatory decisions created by current deficiencies in planning and procurement processes.

2. The May 26th Order scheduled an initial workshop date of June 22, 2021 to discuss draft revisions to the IRP Rule to be proposed by the Commission, and set an initial comment deadline of June 18, 2021.

3. On June 7, 2021, the Commission issued the “Order” which attached an initial draft of proposed changes to the IRP Rule as Exhibit A.

4. On June 14, 2021, Southwestern Public Service Company (“SPS”) moved to suspend the deadline for comments or, in the alternative, proposed to have a second round of comments scheduled.¹

5. On June 15, 2021, Renewable Energy Industries Association (“REIA”) moved for clarification of the May 26th Order and responded to SPS’s motion.²

6. On June 16, 2021, the Commission issued the “Order Granting Southwestern Public Service Company’s Motion for Allowance of an Additional Round of Initial Comments and Additional Workshop and Granting REIA’s Motion for Clarification” in which it set a second

² 21-00128-UT, REIA’s Motion for Clarification and Response to SPS’s Motion for Additional Time (Jun. 15, 2021).

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round of comments to be filed on July 15, 2021 and a second workshop to be held on July 22, 2021.

7. The following commenters filed initial comments on June 18, 2021: El Paso Electric Company (“EPE”); Interwest Energy Alliance (“Interwest”); New Mexico Affordable Reliable Energy Alliance (“NMAREA”); Onward Energy Holdings, LLC (“Onward”); Public Service Company of New Mexico (“PNM”); SPS; and Utility Division Staff (“Staff”).

8. On June 22, 2021, the Commission conducted the initial workshop which was attended by representatives from: City of Las Cruces (“CLC”), ContourGlobal, EPE, Interwest, NMAREA, New Mexico Independent Power Producers Association, New Mexico Large Customer Group (“NMLCG”), Onward, PNM, REIA, SPS, Staff, and Western Resource Advocates.3

9. On June 23, 2021, the Commission issued the “Notice of Filing of June 22, 2021 Workshop Slides and Straw Proposal” which was a presentation that was made at the initial workshop entitled “Major Changes to IRP Rule Document” that summarized the proposed changes to the IRP Rule.

10. On July 13, 2021, the New Mexico Attorney General (“NMAG”) filed its entry of appearance and expansion of the service list for counsel and agency staff.4

11. On July 15, 2021, EPE, Onward, and SPS filed their second round of comments.


3 Attendance reflects the individuals and groups who requested to be invited and to speak at the workshop as tracked on the Commission’s sign-up sheet, but not necessarily those who were actually in attendance on June 22, 2021.
13. Also on July 16, 2021, the Commission issued the “Order on Rescheduling of Workshop” which cancelled the July 22, 2021 workshop and rescheduled it for August 2, 2021.

14. On July 26, 2021, the Commission issued the “Notice of Filing of Agenda for August 2nd, 2021 Workshop and Updated Draft Rule” which made available to the public the agenda for the second workshop and additional edits to the “Draft Rule” made by the Commission after consideration of the initial comments and initial workshop.

15. On August 2, 2021, the Commission conducted the second workshop which was attended by: AES Corporation; Affordable Solar; CLC; Central Valley Electric Cooperative, Inc.; EPE; Gale Head Development; Interwest; Malta, Inc.; NMAG; NMLCG; New Mexico Renewable Energy Transmission Authority; Onward; Philip B. Simpson; PNM; REIA; Soltage, LLC.; SPS; Staff; and Western Resource Advocates. At the second workshop, the Commission solicited participants for a working group to develop a proposal for the independent monitor (“IM”) section for the Draft Rule.

16. On August 23, 2021 the IM Working Group held its first online meeting for organizational purposes. Representatives from CLC, EPE, NMAG, NMLCG, Onward, and PNM were invited and joined by representatives from the Commission. Later, Interwest, SPS, and Staff were invited to participate.

17. On August 27, 2021, the IM Working Group held its second online meeting.

18. On September 14, 2021, the IM Working Group held its third online meeting.

19. On September 28, 2021, the IM Working Group held its fourth online meeting.

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5 Attendance reflects the individuals and groups who requested to be invited and to speak at the workshop as tracked on the Commission’s sign-up sheet, but not necessarily those who were actually in attendance on August 2, 2021.

21. On October 5, 2021, the IM Working Group held its fifth online meeting.

22. On November 3, 2021, the Commission issued the “Order Issuing Notice of Proposed Rulemaking” ("NOPR Order") which created the formal rulemaking in this docket to amend Commission Rule 17.7.3 NMAC. Further, the NOPR Order provided to the public the “Proposed Rule” which was developed from evaluating the commentary and workshops on the Draft Rule. The NOPR Order set commentary deadlines of January 10, 2022 for initial comments, February 1, 2022 for response comments, and March 22, 2022 for reply comments. The NOPR Order scheduled a public hearing for March 15, 2022 and determined that the record in this case shall close on April 12, 2022.

23. On December 8, 2021, EPE filed its notice of substitution of counsel and a motion to amend the service list.6

24. On December 13, 2021, the Commission issued the “Affirmation that Notice of Proposed Rulemaking was Published in the New Mexico Register and Two Newspapers of General Circulation; that Notice of Proposed Rulemaking and Proposed Rule Language were Provided to the Public Pursuant to the State Rules Act (14-4-2 NMSA 1978) and the Public Regulation Commission Act (8-8-15 NMSA 1978).”

25. On January 5, 2022, NMAG moved to amend the service list.7

26. On January 6, 2022, PNM moved to amend the service list.8

6 21-00128-UT, Notice of Substitution of Counsel and Request for Amendment of Service List (Dec. 8, 2021).
7 21-00128-UT, Motion of the New Mexico Attorney General to Amend the Official Service List (Jan. 5, 2022).
8 21-00128-UT, Motion of Public Service Company of New Mexico to Amend the Official Service List (Jan. 6, 2022).

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27. On January 10, 2022, the following commenters filed initial comments: EPE, Interwest, NMAREA, NMLCG, Onward, PNM, REIA, Sierra Club, SPS, Staff, and Vote Solar.

28. On February 1, 2022, the following commenters filed response comments: EPE, NMAG, NMAREA, NMLCG, Onward, PNM, SPS, and Staff.

29. On March 14, 2022, SPS filed a letter addressed to the five Commissioners stating its intention not to participate in the public hearing.

30. Also on March 14, 2022, the Commission issued the “Order” which designated a presiding officer for the public hearing.

31. On March 15, 2022, the Commission held the public hearing in this case, which was attended by: EPE, Interwest, NMLCG, OE Solar, Onward, PNM, REIA, and Staff.9

32. On March 22, 2022, the Commission filed the transcript of the March 15, 2022 public hearing, reported by Allison Ash-Hoyman, RPR.

33. Also on March 22, 2022, the following commenters filed reply comments: CLC, EPE, Interwest, NMAREA, Onward, PNM, SPS, and Staff.

34. On April 12, 2022, the record closed in this rulemaking.

35. On August 24, 2022, the Commission discussed comments and amendments to the Proposed Rule at its weekly open meeting.

36. The IRP Rule was originally promulgated on April 16, 2007, but it was most recently amended on August 29, 2017. The Rule as it has existed prior to today’s order shall be referred to as the “Existing Rule” throughout this Final Order.

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9 Attendance reflects actual attendance.
B. Statement of the Case

37. In this Order, the Commission approves and adopts a substantial revision to its rules governing electric utility integrated resource planning and the related procurement of resources necessary to meet an accepted forecast of need. This linkage of planning and procurement is considered essential to meet the challenges of effecting a clean energy industry and economy in New Mexico, as expressed in the terms, goals and timelines of the ETA and other legislation cited in the Procedural History section above.

38. More than simply a vehicle for the furtherance of legislative directives and executive policies, the Proposed Rule revamps and modernizes the planning process to accommodate increased stakeholder involvement, and it will provide the Commission with improved evidentiary records and specific timelines for its consideration of critical energy resource choices that will be made by the jurisdictional utilities via this new process.

39. The Proposed Rule addresses the goals of transparency and early stakeholder input in the planning and procurement process, and it ensures that updated state policies and all appropriate technologies are properly considered in utilities’ resource decisions. It transforms the current, at times ineffective public input process and addresses recurring problems of poorly designed and questionably non-compliant, and certainly non-transparent, resource solicitations experienced in recent years. The Proposed Rule’s unified planning and procurement process, with specified start dates and filing dates, puts the commission in the proactive position required to protect the public interest.

40. The increased visibility into utility forecasts and need projections will require a new paradigm of cooperation and active engagement for all participants, especially for the Commission and its staff. The increased level of upfront stakeholder and commission involvement is expected
to reduce the likelihood of the Commission denying a given utility’s application for a certificate of public convenience and necessity (“CCN”) or purchased power agreements (“PPA”).

41. The Proposed Rule adopts a definitive three-year cycle for each utility to commence and complete the IRP process and initiate procurements. This new process takes effect commencing January 1, 2023, with utilities filing in this order:

   a. 2023 – Public Service Company of New Mexico;
   b. 2024 – Southwestern Public Service Company; and

42. Under the schedule described in Section 8 of the Proposed Rule, the facilitated stakeholder process shall commence no later than March 1, in order for a completed or contested IRP to be filed with the Commission by September 1, in any given year.

   i. How the Proposed Rule Revises the Existing Planning Process

43. Instead of a formalized adjudicatory proceeding for litigating an IRP’s forecasted inputs and assumptions, the Proposed Rule instead establishes a collaborative facilitated process for utility and stakeholders to evaluate and reach potential agreement on a proposed statement of need for new and/or additional resources, if any such need is determined in the planning period, and an action plan to guide the procurement or development of resources and programs to meet the stated need.

44. The statement of need, as described in Section 10 of the Proposed Rule, is based on load forecasts, existing resource retirements, and other factors specified in the Appendix A section of the Proposed Rule. Participating stakeholders shall be allowed access to utility models and assumptions (subject to non-disclosure agreements) and may, during the course of the facilitated process, propose reasonable alternatives to the utility analysis and forecasts.
45. The results of forecasts (tables, charts, and data) may be included as appendices to the proposed statement of need and action plan, which comprise the main body of an IRP. Projections of resource costs based on the most current market information, and any projections of needed transmission and/or distribution upgrades associated with the resource needs, should also be included as appendix data.

46. The “need” shall be expressed in terms of resources that meet the principles expressed in the IRP Rule’s objectives section, not in terms of specific generation technologies or projects; that is:

i. they meet requirements of statute, including the PUA, ETA, REA, EUEA, CSA, etc.;

ii. utilities shall prioritize those that best comply with the state’s requirements for just and reasonable cost, reducing greenhouse gas emissions, fostering clean energy development, and grid modernization; and

iii. in considering proposed resources to address the stated need, utilities shall consider distributed energy resources, demand response, energy efficiency, renewable energy, and flexible generation, including but not limited to low-emission fueled resources, energy storage systems, and transmission and distribution grid improvements.

47. A most-cost-effective portfolio of resources shall be derived from the statement of need analysis.

48. Additionally, the statement of need shall not be solely based on projections of peak demand within the planning horizon but may identify the need for meeting seasonal load patterns, intra-day variability of renewable resources, reliability reserves, flexible and/or demand-side
resources, and/or renewable energy paired with energy storage as required to comply with resource requirements established by statute or Commission decisions.

49. Not later than six months after this process commences, the IRP containing the potential areas of agreement, plus a detailed explanation of any unresolved and/or contested issues, shall be filed with the Commission as an application for acceptance of the statement of need and action plan.

50. Public comments on the IRP are due within 30 days of filing, and the utility has 30 days to file responses to those comments. The Commission’s Utility Division Staff, no later than 90 days after the utility’s filing of the IRP, shall file a statement with the Commission as to whether the statement of need and action plan comply with the requirements established in the Proposed Rule.

51. If the Commission has not acted within 120 days from the filing of the IRP, the statement of need and action plan shall be deemed compliant. If the Commission determines that the statement of need and/or action plan are not in compliance with the Proposed Rule, the Commission shall return the filing to the utility with instructions for re-filing.

52. The statement of need and action plan shall be accepted by the Commission before the utility begins the resource solicitation process pursuant to Section 12 of the Proposed Rule.

53. Acceptance of the statement of need and action plan shall lead to a solicitation via requests for proposals (“RFP”) to meet the determined need. The utility shall provide the Commission and intervenors with the documents and draft contracts that will constitute the RFP solicitation, along with a timeline for soliciting, accepting, evaluating, and ranking bids.

54. For all procurements except those that meet the criteria for a variance to be applied for by the utility, the Commission shall appoint an Independent Monitor (“IM”) to ensure
consistency with the action plan and the fairness of the utility competitive process. The utility shall pay the costs of the IM and may recover those costs in rates. The Proposed Rule provides a detailed listing of the requirements and authorities of the IM.

55. As stated above, the Commission recognizes that not all resource options are best secured via competitive bidding, and the Proposed Rule allows for the Commission to grant variance requests that comport with the criteria established in the Proposed Rule, or for the utility to cite material events that impact the action plan.

56. The utility shall issue an RFP, if one is indicated in the action plan, within five months of the Commission’s acceptance of the statement of need and action plan.

57. Parties will have 21 days to provide comments as to the consistency of the RFP with the approved action plan.

58. Within 28 days of the utility providing the RFP materials, the IM shall file a “design report” with the Commission, reviewing whether the RFP complies with the requirements of the Proposed Rule.

59. Comments may be submitted on the design report 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.

60. Not later than 75 days after receiving bids for the projected needs, the utility shall provide the IM with a ranking of projects/proposals that meet the above stated criteria, a detailed description of price and non-price criteria for selection of a proposed short-list, a “preferred portfolio” of resources, and any alternative portfolio designed to meet the identified needs within the planning period, along with a timeline for resource development.
61. The IM shall file a “final report” within 30 days of the utility’s submission of its shortlist to the IM that reviews the fairness of the RFP execution.

62. Following the RFP and IM processes, the utility may apply for CCN and/or PPA approvals at its discretion.

63. Acceptance of the utility’s statement of need and action plan shall not constitute a finding of prudency or pre-approval of costs associated with acquiring additional resources.

64. Any costs incurred to implement the action plan shall be considered in a general rate case and/or resource acquisition proceeding.

65. Nothing in the Proposed Rule shall be construed to prevent a utility from procuring resources as required by the REA or EUEA. Any such procurements shall be included in the utility’s forecasting, statement of need, and action plan.

ii. What Remains from the Existing Rule

66. The filing of the IRP with the Commission for acceptance of the statement of need and action plan closely mimics the acceptance process as has existed in the Existing Rule for several years.

67. With the exception of requiring additional information about planned upgrades to the electric distribution and transmission system, the details of existing resources and forecast data assumptions from the Existing Rule, now to be found in Appendix A, remain as important inputs to determining system needs.

68. Also unchanged is the fact that the utility’s action plan is the product of utility management’s decision making, albeit conducted in a more inclusive public process. Early staff and stakeholder involvement in the IRP and procurement processes is intended to provide clarity
and timeliness to the utility’s subsequent procurements, and increased certainty of Commission approval of those resources via the existing CCN or PPA approval processes.
C. Legal Authority

69. Regulatory authority, vested to the New Mexico Public Regulation Commission in the Constitution and various statutes of New Mexico, affords the Commission the license to develop and promulgate rules which govern the processes and procedures of public utility resource planning and procurement. The State’s Constitution and array of statutes form a “web” of interrelated authorities under which the Commission has broad jurisdiction to implement regulatory schemes befitting of the Commission’s expertise and exclusive power. The Proposed Rule is one of many expressions of the Commission’s regulatory authority that does not neatly rest in any one single grant of power, rather, it is derived from the Commission’s broad explicit and implicit authority warranted by the laws of New Mexico.

70. The Commission’s legal responsibilities are defined in the State’s Constitution, “The public regulation commission shall have responsibility for regulating public utilities as provided by law.” N.M. Const. art. XI, § 2. That responsibility for regulating public utilities is provided in law as: “The commission shall have general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations and in respect to its securities, all in accordance with the provisions and subject to the reservations of the Public Utility Act . . . .” NMSA 1978, § 62-6-4 (2003) (emphasis added). The Commission derives much of its power from the PUA, which is “a comprehensive regulatory scheme granting the PRC the policy-making authority to plan and coordinate the activities of New Mexico public utilities, in a manner consistent with the Legislature’s stated goals.” Doña Ana Mut. Domestic Water Consumers Ass'n v. N.M. Pub. Regulation Comm'n, 2006-NMSC-032, ¶ 16 (emphasis added). Importantly, as it relates to third-party suppliers of energy, the “sale, furnishing or delivery of . . . electricity by any person to a utility for resale to or for the public shall be subject to regulation by
the commission but only to the extent necessary to enable the commission to determine that the cost to the utility of the . . . electricity at the place where the major distribution to the public begins is reasonable and that the methods of delivery of the . . . electricity are adequate . . . .” § 62-6-4 (emphasis added).

71. Additionally, a key principle disseminates throughout the laws governing public utilities and the Commission’s authority: public utility rates and services shall be fair, just, and reasonable. “It is the declared policy of the state that the public interest, the interest of consumers and the interest of investors require the regulation and supervision of public utilities to the end that reasonable and proper services shall be available at fair, just and reasonable rates . . . .” § 62-3-1 (2008). “Every rate made, demanded or received by any public utility shall be just and reasonable.” § 62-8-1 (1953). A further key principle, according to the New Mexico Supreme Court, is that the Commission shall be allowed great discretion and flexibility in acting on its authority. “The legislature has established certain goals which utility regulation and supervision are intended to achieve: reasonable and proper services should be made available to the public at fair, just and reasonable rates . . . . Further, the Legislature has allowed the Commission great flexibility in the methods to be used in achieving those goals.” S. Union Gas Co. v. New Mexico Pub. Serv. Comm’n, 1972-NMSC-072, ¶ 2. “The Commission is vested with considerable discretion in determining whether a rate to be received and charged is just and reasonable.” Hobbs Gas Co. v. New Mexico Pub. Serv. Comm’n, 1980-NMSC-005, ¶ 4. Importantly, “rate” is defined as: “every rate, tariff, charge or other compensation for utility service rendered or to be rendered by a utility and every rule, regulation, practice, act, requirement or privilege in any way relating to such rate, tariff, charge or other compensation and any schedule or tariff or part of a schedule or tariff thereof . . . .” § 62-3-3(H) (2009) (emphasis added).
72. In addition to the Commission’s general and exclusive powers, it may “take administrative action by issuing orders not inconsistent with law to assure implementation of and compliance with the provisions of law for which the commission is responsible and to enforce those orders by appropriate administrative action and court proceedings” and “adopt such reasonable administrative, regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties . . . .” § 8-8-4 (1999). The Commission’s general and exclusive power also extends to “do all things necessary and convenient in the exercise of its power and jurisdiction.” § 62-6-4. And in interpreting the aforementioned authority of the Commission, the PUA “shall be liberally construed to carry out its purposes.” § 62-3-2 (1985).

73. In relation to integrated resource planning, the Commission has the specific, distinctive authority as follows:

Pursuant to the commission's rulemaking authority, public utilities supplying electric or natural gas service to customers shall periodically file an integrated resource plan with the commission. Utility integrated resource plans shall evaluate renewable energy, energy efficiency, load management, distributed generation and conventional supply-side resources on a consistent and comparable basis and take into consideration risk and uncertainty of fuel supply, price volatility and costs of anticipated environmental regulations in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers. The preparation of resource plans shall incorporate a public advisory process. Nothing in this section shall prohibit public utilities from implementing cost-effective energy efficiency and load management programs and the commission from approving public utility expenditures on energy efficiency programs and load management programs prior to the commission establishing rules and guidelines for integrated resource planning. The commission may exempt public utilities with fewer than five thousand customers and distribution-only public utilities from the requirements of this section. 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. The requirements of this section shall take effect one year following the commission's adoption of rules implementing the provisions of this section.

74. Further authorities that bolster the contributing to the Commission’s authority to and reason for the need to amend and update the IRP rule, is the recent, rapid movement in New Mexico’s energy and utilities policies. In the previous four years, numerous, significant laws have been enacted which shift the regulatory paradigm such that the Commission should reflect on its policies with a new viewpoint. These changes include the passage of: the ETA; the CSA; major amendments to the REA – specifically the renewable portfolio standard (“RPS”); amendments to the EUEA; the transportation electrification statute, NMSA 1978, Section 62-8-12 (2019); and the grid modernization statute. These changes to established law all empower the Commission to be required to take a focused interest in renewable and clean energy procurements, policy outcomes, and the dealings of public utilities so that New Mexico will be better positioned to integrate with a green-energy-future whilst protecting and limiting impacts (to rates and reliability) on utility customers.

75. While it is true that an explicit provision of enabling law, that is directly on point to the specific procurement-related sections of the Proposed Rule, does not exist, such a provision is not needed to permit the Commission to promulgate the Proposed Rule, nor should one be expected to exist. In passing law, the Legislature cannot be expected to foresee and address all issues, developments, and needs that may arise in utility regulation. See City of Albuquerque v. N.M. Pub. Regulation Comm’n, 2003-NMSC-028, ¶ 16 (“[I]t is presumed, in the context of administrative matters that the Legislature has delegated to an agency, that the Legislature intended for the agency to interpret legislative language, in a reasonable manner consistent with legislative intent, in order to develop the necessary policy to respond to unaddressed or unforeseen issues.”). The Commission’s legislative power to adopt rules must define and follow boundaries of authority as determined by the Constitution and statutes. See Rivas v. Bd. of Cosmetologists, 1984-NMSC-
076, ¶ 3. Within those boundaries, there must exist an “intelligible principle” for the Commission’s actions to conform. See id. Likewise, the Commission is once-again afforded discretion in defining and following its boundaries of authority and conforming to an intelligible principle. See New Energy Econ., Inc. v. N.M. Pub. Regulation Comm’n, 2018-NMSC-024, ¶ 25 (“As to matters of law, if it is clear that our Legislature delegated to the PRC (either explicitly or implicitly) the task of giving meaning to interpretive gaps in a statute, we will defer to the PRC’s construction of the statute as the PRC has been delegated policy-making authority and possesses the expertise necessary to make sound policy.”)

76. Thus, there exists an interrelated “web” of authority from which the Commission draws its power, and to which it is bound, to promulgate the Proposed Rule. From the Constitutional responsibility to regulate public utilities; to the statutory authority of general and exclusive power to supervise public utilities and plan and coordinate their activities; to the paramount importance of ensuring fair, just, and reasonable rates (whereas “rates” includes rules, regulations, requirements, practices, and acts that in any way relate to such rates); to the duty to regulate the cost of third party deliveries of electricity to utilities for the public; to the specific duty to craft rules for IRPs; to the Commission’s policy-making, gap-filling, and interpretive powers; to the recent revolution in State policy to focus on utilities’ renewable and carbon-free energy procurements; a boundary of authority exists in which an intelligible principle is amply supported and readily identifiable. The intelligible principle, simply, comes from the IRP statute: “to identify the most cost-effective portfolio of resources to supply the energy needs of customers.” § 62-17-10.

77. In past years, the Commission’s IRP Rule worked to achieve merely generic results on that intelligible principle. IRPs did not reliably plan or predict any actual procurements to come,
and utility procurements often occurred behind a veil from the Commission. Now, with the Proposed Rule, the Commission seeks to achieve specificity and transparency in the pursuit of identifying the most cost-effective portfolios of resources to supply customers. Planning and procurement go hand-in-hand. What good is the plan if there is no rule requiring the utility to put that plan into action, unless there is a material change in circumstances? Procurement must follow planning. Also, how might an IRP accomplish identifying the most cost-effective portfolio of resources to supply the energy needs of customers without there being an accompanying process to evaluate how the actual resources were procured and determined to be the "most cost effective"? The Proposed Rule provides a process to evaluate actual potential generation resources in order to achieve the goals of a public utility’s integrated resource plan, legislative directives, and the Commission’s Constitutional responsibility.

78. The section below contains summaries and analyses of the positions and arguments of the commenters on the Commission’s legal authority to promulgate the Proposed Rule.

i. Legal Authority Commentary Summary and Analysis

79. EPE argued that the Commission is limited to the power and authority expressly granted and necessarily implied by statute, thus, when the Commission exercises power beyond that which is statutorily defined, it infringes upon utility management. EPE alleged that nothing in the authorities cited by the Commission authorize it to promulgate the Proposed Rule. EPE argued that the overall effect of Sections 9, 11, and 12 of the Proposed Rule would be to remove the utility’s discretion to determine procurements. Language in other statutes, as argued by EPE,

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11 Id. at 3, 4.
12 Id. at 4.
indicates that the Legislature “intended to preserve utilities’ ability to make their own resource planning decisions.”

80. EPE cited authority stating that statutes are not to be read in a way that would render parts of them superfluous. EPE argued that the Proposed Rule would render NMSA 1978, Section 62-16-4(D) (2019) superfluous, because that section authorizes incentives for a utility to procure additional renewable energy resources, yet, the Proposed Rule would dictate all of a utility’s procurements. EPE recognized that the Commission has authority to “ensure that a utility procures the types and quantifies [sic] of resources prescribed by statute . . . The Commission undoubtedly has statutory authority to ensure that New Mexico utilities satisfy those minimum requirements within the reliability and cost parameters of the REA.” However, EPE argued that there is no express or implied authority for the Commission to require that utilities acquire specific types and quantities of resources apart from the statutory minimum.

81. EPE argued that the Commission does not have authority to require competitive solicitations because the IRP statute is silent on the matter, however, the ETA and the EUEA both discuss competitive solicitations, which shows that the Legislature knows how to grant the Commission that power. Similarly, EPE argued that the Commission lacks authority to appoint an independent monitor because the statutes do not expressly authorize it.

82. EPE disagreed with NMLCG and Onward that the Commission’s general and exclusive power to regulate and supervise the rates and service regulations of utilities gives it

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13 Id.
14 Id. at 5.
15 Id.
16 Id. at 5.
17 Id.
18 Id. at 6.
19 Id. at 7.

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oversight authority over procurement, because, as EPE argued, procurement is not the same as charging rates or providing services.\textsuperscript{20} EPE acknowledged that the Commission may “enforce New Mexico’s resource procurement requirements” in CCN and PPA proceedings.\textsuperscript{21}

83. Interwest stated that it “applauds the Commission for opening this rulemaking and revisiting these important issues, and appreciates the opportunity to provide comments regarding procurement procedures and Integrated Resource Plans and planning.”\textsuperscript{22} Interwest further “agrees with and supports” the objectives of the Proposed Rule.\textsuperscript{23} Interwest disagrees with the commenters who objected to linking procurement with the IRP.\textsuperscript{24} “The linkage between a utility’s IRP and subsequent procurements is real and typical. The ultimate aim of the IRP is to identify the portfolio of procurements that are expected to be the most cost effective combination to fulfill the identified needs of the utility.”\textsuperscript{25} The Commission concurs with Interwest’s comments.

84. NMAG’s opinion is that the “Commission has the statutory authority to combine resource planning and procurement oversight into a single process.”\textsuperscript{26} NMAG stated,

The Commission is right to be considering the connection between integrated resource planning, and procurements, given that no less than five legislative acts have been passed since 2007 that affect the planning and procurement process. In light of this, it is appropriate that the planning and procurement processes are analyzed and updated in order to ensure that the Commission’s rules are consistent with legislative directives and operate in a manner that serves the public interest.\textsuperscript{27}

The Commission concurs with NMAG’s comments.

\textsuperscript{21} Id.
\textsuperscript{24} Id. at 3.
\textsuperscript{25} Id.
\textsuperscript{26} 21-00128-UT, Office of the Attorney General’s Response Comments (“NMAG Response”) (Feb. 1, 2022) at 2.
\textsuperscript{27} Id. at 1, 2.

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85. NMAREA commented that it “has historically supported, and continues to support, the development of a rule that ensures robust competition in the IOUs' procurement of new resources, renewable resources in particular.”\textsuperscript{28} NMAREA noted the objections from EPE, PNM, and SPS, however, it stated that it “does not necessarily agree with all the IOUs’ legal arguments.”\textsuperscript{29}

86. NMLCG argued that the Commission has authority to promulgate the Proposed Rule.\textsuperscript{30} NMLCG argued that the “intelligible principle doctrine” was implemented because the Legislature cannot expect nor foresee the breadth of necessary utility regulation, therefore, the Legislature delegates to the Commission discretion to interpret legislative language so that it may respond to unexpected or unforeseen issues with its policy-making and rulemaking powers.\textsuperscript{31} NMLCG commented that the basis of the Commission’s power is the general and exclusive power to regulate and supervise public utilities subject to the reservations of the PUA, and that the PUA offers a comprehensive regulatory scheme which grants the Commission policy-making authority to plan and coordinate the activities of public utilities.\textsuperscript{32} NMLCG noted that the Court defers to the Commission’s interpretation of its statutory authority unless that interpretation is unreasonable, because the Commission possesses the expertise to make sound policy.\textsuperscript{33} NMLCG argued that it is not unreasonable to interpret the statutory scheme to allow the Commission to supervise and regulate the implementation of New Mexico’s aggressive environmental goals and to protect utility

\textsuperscript{28} 21-00128-UT, The New Mexico Affordable Reliable Energy Alliance’s Initial Comments On NOPR (“NMAREA Initial”) (Jan. 10, 2022) at 3.
\textsuperscript{29} Id. at 5.
\textsuperscript{31} Id.
\textsuperscript{32} Id. at 3.
\textsuperscript{33} Id.

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customers, thus, the Proposed Rule stems from the Commission’s authority to implement necessary and convenient regulations.34

87. NMLCG argued that the IRP statute only discusses the contents of an IRP broadly, leaving gaps in the policy to be filled by the Commission.35 One of those gaps, as implied by NMLCG, is procurement. “To argue that the Commission does not have authority to implement the proposed rules suggests that there is no mechanism to enforce New Mexico’s resource procurement requirements.”36 According the NMLCG, “the more sensible and reasonable interpretation is that the Legislature passed laws setting forth standards and goals for utility resource procurement but specifically left to the Commission how to get there . . . As such, the Commission’s proposed rules address the legislative gaps in the plethora of statutes delegated to it, and its interpretation of these statutes is not unreasonable.”37 The Commission concurs with NMLCG’s comments.

88. Onward argued that an express legislative mandate is not required to support the Commission’s authority to promulgate the Proposed Rule so long as the Commission’s actions are consistent with the general policy goals of the Legislature.38 Onward argued that the Commission’s role in relation to public utility procurement, as devised by the Legislature, is to supervise through reasonable and appropriate regulation to ensure that procurements result in the most cost-effective resource portfolio and that service is adequate, efficient, and reasonable at just and reasonable rates.39 Onward noted that the definition of “rate”, as used in the PUA, includes “every rule,

34 Id. at 3, 4.
35 See id. at 5.
36 Id. (emphasis added).
37 Id.
39 Id. at 2, 3.
regulation, practice, act, requirement or privilege in any way relating to such rate . . . .” 40 § 62-3-3(H). Thus, Onward argued that the statutory authorities afford the Commission with “ample authority” to regulate public utility procurement practices. 41 The Commission concurs with Onward’s comments.

89. PNM argued that the Commission’s authority is limited to what is expressly granted or necessarily implied by statute. 42 According to PNM, the only authority granted by the IRP statute is to enact rules governing the periodic filing of IRPs. 43 PNM argued that because the Commission formerly described the IRP as a “planning tool” in a prior rulemaking docket, all provisions of the Proposed Rule that go beyond the scope of a “planning tool” should be removed. 44 PNM argued that the Commission is not the financial manager of a public utility and is not permitted to substitute its judgment for that of the utility’s directors. 45 PNM cited the regulatory limitation in Section 62-6-4(B) in its argument that the procurement regulations in the Proposed Rule go beyond the “extent necessary” to determine whether costs are reasonable. 46

90. SPS argued that the Commission’s authority is limited by statute, and any action it takes must conform to some statutory standard or intelligible principle. 47 SPS alleged that there is no basis in any of the statutes cited by the Commission to provide for procurement oversight. 48 SPS argued that the Legislature’s conferral of the responsibility to conduct a competitive procurement, as it relates to the RPS, is on the utility, which, according to SPS, affirmatively shows

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40 Id. at 3 (emphasis in original).
41 Id.
43 Id. at 4.
44 Id. at 5, 6.
45 Id. at 6.
46 Id.
47 21-00128-UT, Southwestern Public Service Company’s Initial Comments (“SPS Initial”) (Jan. 10, 2022) at 11.
48 Id. at 12.

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that the Legislature did not confer the authority to manage a competitive RFP process in the IRP rule.\textsuperscript{49} SPS stated that, although it supports the use of competitive procurements, mandating competitive procurements in the Proposed Rule has no basis in statute.\textsuperscript{50} SPS stated broadly, and in conclusory terms without explanation, that the Proposed Rule would impinge on interstate commerce and the supremacy of the Federal Energy Regulatory Commission in contravention of the United States Constitution,\textsuperscript{51} thus, those arguments need not be addressed here.

91. CLC, REIA, Sierra Club/Vote Solar, and Staff did not submit comment on the Commission’s legal authority to promulgate the Proposed Rule.

92. The Commission disagrees with the comments of EPE, PNM, and SPS regarding possible infringement of utilities’ managerial prerogatives and decision-making because the Proposed Rule does not usurp the final decision making of the public utilities’ plan, statement of need, action plan, and procurement decisions. However, in response to these comments, the Commission has revised the Proposed Rule to remove the litigated approval stage of the statement of need and action plan in favor of an “acceptance” process for these documents, similar to what has been codified in the Existing Rule. Whereas an approval procedure early in the IRP process might be interpreted as overly prescriptive, an acceptance procedure, along with input from the Commission, Staff, and stakeholders, provides the utility with multiple opinions and options to guide its implementation of the action plan without mandating any specific resource selections. The revised acceptance procedures do not lock the utility into any Commission-mandated course of action, nor does it create a point of litigation at the statement of need and action plan. The utility may take into consideration the input of the Commission, Staff, and stakeholders in its selection

\textsuperscript{49} Id.
\textsuperscript{50} Id. at 13.
\textsuperscript{51} Id. at 16.

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of additional resources at its discretion. The removal of the approval procedure also eliminates any confusion as to the legal status of an “approved” statement of need and action plan.

93. Furthermore, the utility is placed in an active role throughout the IRP and RFP processes. The Proposed Rule places the responsibility of guiding the Commission, Staff, and stakeholders on the utility throughout the IRP and RFP processes, and it places the responsibility of all substantive decision-making on the utility. Additionally, the utility is left with discretion in its choices throughout the processes of the Proposed Rule.

94. Looking at the Proposed Rule as amended by this Final Order, the utility has freedom and discretion to choose: when to begin the facilitated stakeholder process,\(^{52}\) whether to reach agreement with stakeholders on the statement of need or action plan,\(^{53}\) how many modeling runs is reasonable,\(^{54}\) when to file the IRP,\(^{55}\) how to coordinate its out-of-state planning requirements,\(^{56}\) when to file IRP comment responses,\(^{57}\) what the contents of the statement of need and action plan shall be,\(^{58}\) whether to notify the Commission of material events that would have the effect of changing the statement of need and action plan,\(^{59}\) when to issue an RFP,\(^{60}\) what shall constitute the RFP documents,\(^{61}\) when to provide the RFP documents,\(^{62}\) whether to incorporate comments on the RFP,\(^{63}\) what information to include in an RFP,\(^{64}\) how to prioritize bid ranking

\(^{52}\) Exhibit C at 17.7.3.9(A) (subject to limitations for the initial filing date and for a filing deadline).
\(^{53}\) Id.
\(^{54}\) Id. at 17.7.3.9(A)(1).
\(^{55}\) Id. at 17.7.3.9(B) (subject to a filing deadline).
\(^{56}\) Id. at 17.7.3.8(C).
\(^{57}\) Id. at 17.7.3.9(B)(2) (subject to a filing deadline).
\(^{58}\) Id. at 17.7.3.10 and 17.7.3.11.
\(^{59}\) Id. at 17.7.3.8(E) and 17.7.3.11(D).
\(^{60}\) Id. at 17.7.3.12(B) (subject to a deadline).
\(^{61}\) Id. at 17.7.3.12(C).
\(^{62}\) Id.
\(^{63}\) Id. at 17.7.3.12(D).
\(^{64}\) Id. at 17.7.3.12(F) (in addition to what is prescribed in the Proposed Rule as interpreted by the utility).
criteria and how to rank bids,\(^{65}\) whether to issue additional RFPs or make other mandated procurements,\(^{66}\) to seek cost recovery,\(^{67}\) who to recommend to serve as independent monitor,\(^{68}\) whether and how to comment on the independent monitor’s report,\(^{69}\) whether to claim confidentiality protections,\(^{70}\) whether to seek a variance from any provision of the Proposed Rule,\(^{71}\) and finally, whether to pursue procurement of any of the bidders’ resources. Meanwhile, the Commission makes no \textit{substantive} decisions on the utility’s IRP or RFP. Thus, there is no merit to the argument that the Commission is supplanting utility management’s discretion and decision-making with its own.

95. The Commission stands by any \textit{dicta} in previous IRP rulemakings as to the planning nature of the IRP. However, the Commission has determined that regulation is necessary to ensure that procurement of additional resources flows directly from a utility’s need as stated within the IRP, the planning tool. Too often has a utility proposed procuring additional resources without notifying the Commission of material events that have changed the utility’s need. The notice requirement is thus retained in the Proposed Rule as a legacy of the Existing Rule.

96. Integrated resource plans must not wither on the vine after their submission, relegated to a mere compliance docket, remaining static. Rather, execution must follow planning, which must be dynamic. Implementation of the Proposed Rule increases transparency and provides guidance for the execution of a utility’s plans. If a material event occurs that warrants a different course of action than the submitted action plan entails, the utility is required to put the Commission

\(^{65}\) Id. at 17.7.3.12(H) and 17.7.3.12(I).
\(^{66}\) Id. at 17.7.3.12(L) and 17.7.3.12(M).
\(^{67}\) Id. at 17.7.3.13 and 17.7.3.14(F).
\(^{68}\) Id. at 17.7.3.14(C)(4) and 17.7.3.14(D).
\(^{69}\) Id. at 17.7.3.14(I).
\(^{70}\) Id. at 17.7.3.15.
\(^{71}\) Id. at 17.7.3.17.
and other stakeholders on notice as to how that change affects both the utility’s need and its action plan to follow through on that need. The Commission agrees with the comments of NMLCG, NMAG, and Onward that the Commission has the authority to promulgate the Proposed Rule and would direct PNM, SPS, and EPE to those comments as to legal authority. However, legislative intent must also be considered. To be sure, the Legislature did not determine that integrated resource plans must be filed periodically with the Commission simply for those plans to exist. Rather, the IRP, as a planning tool, is meant to inform the public and Commission so that it may carry out its mandate to ensure just and reasonable rates under the PUA inter alia.

97. The Commission disagrees with NMAREA’s and others’ assertion that the Commission is bound to its previous decisions in Case No. 17-00198-UT. What the Commission did in 2017, prior to the enactment of the ETA, CSA, Grid Modernization, Electric Vehicle, and changed RPS targets and dates, is immaterial to what it is doing now, given the changed circumstances in law, fact, and New Mexico’s regulatory posture since 2017. The Commission is not bound by stare decisis, nor prohibited from changing its procedure. “Although a Commission should be able to change its procedure, it should not arbitrarily or capriciously do so without good reasons.” S. Union Gas Co. v. New Mexico Pub. Serv. Comm’n, 1972-NMSC-072, ¶ 9. The Commission is additionally delegated broad discretion to act. Circumstances have changed. Facts have changed. The law has changed. The Commission has changed. Above all, the Proposed Rule is substantially different than any other amendments to the IRP Rule that the Commission has considered previously. Four of the five current commissioners were not sitting at the time the Commission ruled on Case No. 17-00198-UT. Further, the State Supreme Court, on any appeal of this case, would evaluate the Commission’s decisions and actions in this case, but it would not evaluate the Commission’s decisions and actions in a prior case not under review. Such an
evaluation would be based on a determination of whether substantial evidence exists to support the Commission’s decision, and whether the Commission has acted arbitrarily or capriciously. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Rinker v. State Corp. Comm'n*, 1973–NMSC–021, ¶ 5. This standard of review illustrates a significant level of deference that the Commission receives on appellate review. The Commission believes that given the changes in the circumstances since Case No. 17-00198-UT, substantial evidence supports the Commission’s decision to augment the planning document known as the IRP, and tie it to procurement as part of a comprehensive regulatory scheme to ensure just and reasonable rates.

98. Additionally, the term “planning tool” is not defined in Case No. 17-00198-UT nor does it exist anywhere in the IRP statute. Thus the Commission incorrectly stated, in that previous docket, that the EUEA *expressly* defines the IRP as a “planning tool.”72 The black letter law of Section 62-17-10 does not contain the word “tool.” Further, NMAREA and others *assume the meaning* of “planning tool” to prevent the Commission from regulating procurement, which is a fiction. Case No. 17-00198-UT is distinguishable from this Case because the underlying issues differ – the Final Order in 17-00198-UT stated, “The IRP statute never intended the IRP process to become a fully litigated process over a period of years and was never intended to become a substitute for and at times a duplication of the CCN process.”73 Amendments to the Proposed Rule have removed the litigated approval process and individual resource approvals are not contemplated in the Proposed Rule, thus, the issues in this Case are distinguishable from Case No. 17-00198-UT. It is the Commission’s position that the meaning of the term “planning tool” implies

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73 Id.

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follow-through on such plans. Where a disconnect is evident between planning and action, it is the Commission’s duty to rectify the issue and effect the legislature’s intent.
D. Commentary Summary and Analysis

i. 17.7.3.1 NMAC – Issuing Agency

99. The Commission did not propose any changes to, and no comments were provided for, Section One of the Proposed Rule.

ii. 17.7.3.2 NMAC – Scope

100. The Commission did not propose any substantive changes to Section Two of the Proposed Rule.

101. EPE commented that the Commission needs to clearly define the scope of the Proposed Rule and clarify how it interacts with other rules.\(^{74}\) EPE proposed language that would limit the scope of the Proposed Rule to only New Mexico jurisdictional energy needs.\(^{75}\) EPE proposed that utilities that operate in multiple jurisdictions should be able to opt-out of rule.\(^{76}\) EPE proposed rule language that would remove certain competitive procurements from the scope of the Proposed Rule, as well as “agreements with a qualifying facility pursuant to Section 17.9.570” because “utilities are required to purchase the output from those facilities.”\(^{77}\)

102. CLC, Interwest, NMAG, NMAREA, NMLCG, Onward, PNM, REIA, Sierra Club, SPS, Staff, and Vote Solar did not submit comment on Section 17.7.3.2 of the Proposed Rule.

103. The Commission’s rules do not typically describe how they interact with other Commission rules. The Commission is capable of applying its rules without codified guidance. No commenter has persuasively described a conflict of the Proposed Rule with any other Commission rules. The Commission does not agree with EPE to allow multi-jurisdictional utilities to opt-out of

\(^{74}\) EPE Initial at 18.
\(^{75}\) EPE Reply, Attachment A at 1.
\(^{76}\) Id.
\(^{77}\) Id.

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the Proposed Rule, as that would effectively deregulate such utilities. The Commission agrees with EPE regarding carve-outs in the Proposed Rule, however, the Commission discusses that issue in more detail in Parts D xvi. and xvii. of this Final Order. The Commission does not understand EPE’s comment about, and proposed language for, qualifying facilities. By the terms of the Proposed Rule, utilities shall evaluate distributed energy resources whether or not their output is required to be purchased.

iii. 17.7.3.3 NMAC – Statutory Authority

104. The authority of the Commission to promulgate the Proposed Rule, and a summary of the comments submitted that address the Commission’s authority, is addressed in Part C. of this Order.

iv. 17.7.3.4 NMAC – Duration

105. The Commission did not propose any changes to, and no comments were provided for, Section Four of the Proposed Rule.

v. 17.7.3.5 NMAC – Effective Date

106. The Commission did not propose any changes to, and no comments were provided for, Section Five of the Proposed Rule.
vi. 17.7.3.6 NMAC – Objective

107. The Proposed Rule amends the objective of the Existing Rule in ways that aligns the IRP Rule with the Commission’s intent, the Commission’s legal authority, and the recently enacted and amended statutes as described in this Final Order. Section Six of the Proposed Rule highlights the Commission’s objectives of increasing transparency and stakeholder involvement, requiring a competitive procurement format, and prioritizing the reduction of greenhouse gases and fostering the development of clean energy.

108. CLC “strongly supports the objective of integrated resource planning to identify the most cost-effective portfolio of supply-side and demand-side resources, consistent with the policies and requirements expressed in New Mexico law.”

109. EPE commented that it is unclear what distinction there is between “proposed resources” and “proposing resources” as those terms are used in paragraph (D) of 17.7.3.6 of the Proposed Rule. EPE argued that there are two lists of priorities that are illogical and inefficient when read together, as they would require different priorities when proposing resources and when considering proposed resources. EPE commented that neither set of priorities mentions cost.

110. Interwest agrees with and supports the objectives of the Proposed Rule. Interwest commented that the Commission’s guiding principle in this rulemaking should be to implement the objectives as described in Section 17.7.3.6 of the Proposed Rule. Interwest noted that the Proposed Rule ensures transparent, fair, and robust competition in procurement that is consistent,
efficient, and harmonious with the IRP process.\textsuperscript{84} Interwest alleged that the value of competition is that it results in lower prices.\textsuperscript{85} Interwest noted that the use of an independent monitor is key to a fair and transparent competitive process.\textsuperscript{86}

111. NMLCG suggested that Section 17.7.3.6(A) of the Proposed Rule should include evaluation of reliability, emergency conditions, and statutory requirements.\textsuperscript{87}

112. Onward did not submit comments on Section Six of the Proposed Rule, however, Onward commented that it is “very supportive” of the Proposed Rule, which, in its view, is critically needed and will streamline the IRP process and make it more transparent.\textsuperscript{88}

113. PNM commented that the Proposed Rule’s objectives are mutually exclusive.\textsuperscript{89} PNM argued that transmission and distribution should be cut from the language of Section 17.7.3.6 of the Proposed Rule as it is not within the scope of resource planning.\textsuperscript{90} PNM proposed that system reliability and cost-effectiveness should be included as priorities because they are priorities in the PUA.\textsuperscript{91} PNM proposed that it may be better to strike the term “distributed energy resources” (“DER”) from Section 17.7.3.6(D)(2) of the Proposed Rule entirely because DER is not within the utility’s control.\textsuperscript{92}

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{84} Id.
\item\textsuperscript{85} Id.
\item\textsuperscript{86} Id.
\item\textsuperscript{87} NMLCG Response at 10.
\item\textsuperscript{88} 21-00128-UT, Initial Comments of Onward Energy Holdings, LLC (“Onward Initial”) (Jan. 10, 2022) at 3.
\item\textsuperscript{89} PNM Initial, Exhibit A at 1; PNM Response at 17.
\item\textsuperscript{90} PNM Initial, Exhibit A at 1.
\item\textsuperscript{91} Id.
\item\textsuperscript{92} PNM Response at 17.
\end{enumerate}
\end{footnotesize}
114. REIA “commends the Commission for directing that utilities prioritize distributed energy resources (DER) in the integrated resource planning process, in proposed rule 17.7.3.6(D)(2).” 93

115. SPS commented that prioritizing matters other than cost-effectiveness will increase rates. 94 SPS then stated that cost-effectiveness “is not the only criterion evaluated by the utility.” 95 SPS argued that the priorities listed in paragraph (D) of Section 17.7.3.6 of the Proposed Rule are impractical and ambiguous. 96 SPS proposed that the word “influence” be changed to “participation.” 97 SPS commented that the priorities listed are mutually exclusive. 98 SPS noted that “fostering equitable clean energy development” does not appear in New Mexico statute. 99

116. NMAG, NMAREA, Sierra Club, Staff, and Vote Solar did not submit comments on Section Six of the Proposed Rule.

117. The Commission concurs with the comments of CLC, Interwest, Onward, and REIA.

118. The Commission agrees with EPE, PNM, and SPS that paragraph (D) of 17.7.3.6 of the Proposed Rule is unclear and lacks a nexus to cost and has adopted revisions to address those issues, as can be seen on Exhibit C. The Commission disagrees with the utilities that the priorities listed in the objectives are mutually exclusive. The Proposed Rule operates under the direct statutory requirement that IRPs identify the most cost-effective portfolios, but it also operates under the influence of other statutory schemes which require large amounts of renewable energy.
and zero-carbon energy resources as well as reducing greenhouse gas emissions. The Proposed Rule incorporates these broad objectives as priorities, which is within the Commission’s regulatory discretion to do.

119. The Commission agrees with SPS to replace "influence" with “participation”. The Commission notes that SPS’s argument that the Proposed Rule’s many objectives and priorities will increase rates falls flat given SPS’s contradictory statements made in its same comment filing that cost-effectiveness is not the only criterion that it uses to evaluate resources.

120. The issue of the inclusion of transmission and distribution in the IRP filing received attention in the comments. NMAREA noted that transmission, in particular, is of paramount importance in planning because “all future resource additions depend on the availability of the transmission capacity on the system.”\textsuperscript{100} Capacity cannot be efficiently planned without considering transmission. These arguments are echoed by Onward, who agrees that utilities should be required to file a comprehensive transmission plan.\textsuperscript{101}

121. Distribution planning is an integral part of the resource planning process. The IRP statute specifically includes load management as a subject of IRP planning. How load is managed is a direct result of distribution system investment in substations, feeders, transformers, and smart inverters. Distribution planning is a key tool for load management planning. One cannot plan for load management without planning for distribution. In addition, the Commission considers DER an important consideration in the grid of the future to satisfy the requirements of the ETA. The Commission is determined to move away from the traditional peak load projection approach to planning in favor of a much more holistic approach that considers all emerging energy resources.

\textsuperscript{100} NMAREA Initial at 10.
\textsuperscript{101} Onward Response at 8.
The Commission does not assert that it is within the utility’s purview to dictate or control the addition of DER. However, as a planning tool, utilities shall take into consideration the availability of DER as part of its identification of resource options. As a policy matter, DER is an important part of the future of the grid. Utilities are encouraged to facilitate DER deployment to comport with their obligations under the ETA. Utilities must not disregard DER entirely in the IRP planning process. They should instead account for the growth rate of DER, the impact of DER on system reliability, and the effect of DER with regard to RPS requirements under the ETA.

122. While the Commission strives to enhance the objectives of the IRP Rule through requiring elements such as fostering equitable clean energy development and reducing greenhouse gas emissions, the Commission does not minimize, trivialize, neglect, or render meaningless the cost-effective or system reliability elements that have traditionally guided the planning process. The Commission has amended the language in the Proposed Rule to reflect this position, as can be seen on Exhibit C.
vii. 17.7.3.7 NMAC – Definitions

123. The Proposed Rule would include new definitions for new and existing terms found in the Proposed Rule and Appendix A. These terms are: action plan, availability factor, capacity factor, demand response, demand-side resource, demand-side management, derating, distributed energy resource, emergency procurement, energy efficiency, energy storage resource, flexibility, flexible generation, heat rate, integrated resource plan, independent monitor, load forecasting, load management, most cost-effective resource portfolio, net capacity, net load, optimization, planning period, public utility and utility, refurbish, regional energy market, renewable energy, renewable energy resource, and statement of need.

124. EPE commented that the descriptors “quickly and efficiently” and “low output levels” as contained in the definition of “flexible generation” in the Proposed Rule are vague. EPE proposed that the Commission should define “flexible generation” in quantitative terms. EPE provided the example that the term could be defined by how fast a resource can change its level of generation or load. EPE agreed with Staff that “statement of need” could be integrated with the definition of “integrated resource plan,” and EPE agreed with REIA that the definition of “distributed energy resource” should be consistent with other rules. The Commission does not necessarily disagree with EPE’s comments on “flexible generation,” however, the Commission does not have a rule language proposal from EPE to evaluate, nor further information on the efficacy of such a change. Therefore, the Commission declines to alter the definition of “flexible generation” in the Proposed Rule. The Commission also declines to eliminate the definition of

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102 EPE Initial at 13.
103 Id.
104 Id.

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“statement of need” because it is a key part of the Proposed Rule. Finally, the Commission agrees that “distributed energy resources” should be defined consistently across rules.

125. PNM commented that the Proposed Rule’s definition of “emergency procurement” is too restrictive, and PNM proposed the following instead: “a procurement that may result from a utility’s need to address a system-based emergency condition resulting from a material event.”106 PNM commented that only the first sentence in the definition of “energy storage resource” is necessary.107 PNM proposed to include resources as one of the subjects in the definition of “flexibility.”108 PNM proposed to add certain qualities in the definition of “flexible generation,” such as starting, dispatching, and serving frequency response and ancillary service needs.109 PNM disagreed with the definition of “integrated resource plan” that it is a “set of resource options.”110 PNM commented that the definition of “most cost-effective resource portfolio” lacks clarity given the Proposed Rule’s updated objective.111 PNM commented that “optimization” is not clearly defined and may not need to be defined at all since it is only used once in the Proposed Rule.112 PNM commented that it does not understand the need to have a 30 megawatt threshold within the definition of “refurbish,” and noted that it may not need to be defined since the term is only used in one other definition.113 PNM proposed to delete “type of new resources” from the definition of

106 PNM Initial at 1.
107 Id. at 2.
108 Id.
109 Id.
110 Id.
111 Id.
112 Id. at 3.
113 Id.
“statement of need” because resources are not needed based on type, but rather, attribute,\textsuperscript{114} yet PNM also recommended to delete “statement of need” entirely.\textsuperscript{115}

126. The Commission agrees with PNM that the terms “optimization” and “refurbish” do not need to be defined. The Commission agrees with PNM’s minor line edits for the definitions of “flexibility” and “flexible generation.” However, the Commission is not persuaded to broaden, thereby increasing the ambiguity of, the definition of “emergency procurement” as requested. PNM did not justify its reason for paring down the definition of “energy storage resource” other than by stating the second sentence is not necessary. PNM’s arguments that the definition of “most-cost effective resource portfolio” is unclear given the purported “competing” objectives of the Proposed Rule fails due to the bootstrapping fallacy, that is, PNM is justifying its argument here with its own argument elsewhere. The Commission also disagrees with both the edit and the deletion of “statement of need” as proposed by PNM. The Commission observes that it is possible that a “type” of resource could be needed, or that a type of resource could be determined to be a part of an IRP portfolio, especially considering the stringent renewable and carbon-free energy requirements of the RPS.

127. REIA commented that the Commission should harmonize the definition of “distributed energy resource” in the Proposed Rule with the definition of that term in the interconnection rulemaking, Case No. 21-00266-UT.\textsuperscript{116} The Commission concurs with REIA.

128. SPS commented that the period to implement the action plan should be changed to “following submittal” of the IRP rather than approval.\textsuperscript{117} SPS commented that the definition for

\textsuperscript{114} Id.
\textsuperscript{115} 21-00128-UT, Public Service Company Of New Mexico’s Response Comments On Proposed Rule 17.7.3 (“PNM Response”) (Feb. 1, 2022) at 6.
\textsuperscript{116} REIA Initial at 2.
\textsuperscript{117} SPS Initial at 26.
“independent monitor” is not consistent with the section in the Proposed Rule relating to the independent monitor. 118 SPS proposed edits to “independent monitor” that delete the prescriptive parts of the definition. 119 SPS proposed to change the term “refurbish” to “repower.” 120 SPS commented that “statement of need” is ambiguous and should be deleted. 121 SPS agreed with REIA on the definition of “distributed energy resources.” 122 The Commission agrees with SPS that the period following the action plan should be based on filing of the IRP, so that the three-year planning period is consistent across all aspects of the Proposed Rule. Analysis of comments relating to the independent monitor shall be addressed in Part D.xiv. of this Order. The Commission need not address SPS’s proposed change of “refurbish” as it shall delete that definition from the Proposed Rule. SPS’s assertion that the definition of “statement of need” is ambiguous is conclusory and unsupported.

129. Staff commented that the definition for “statement of need” should be eliminated and included in the definition of “integrated resource plan.” 123 The Commission disagrees with Staff, because “statement of need” is integral to the Proposed Rule, and simply incorporating it into another definition is not a substantive change, rather, it is semantics which produces more complexity and confusion for the IRP, and is at odds with the terms of the Proposed Rule.

130. CLC, Interwest, NMAG, NMAREA, NMLCG, Onward, Sierra Club, and Vote Solar did not submit comment on Section 17.7.3.7 of the Proposed Rule.

118 Id.
119 SPS Initial, Exhibit 1 at 3.
120 SPS Initial at 26.
121 Id.
123 21-00128-UT, Utility Division Staff’s Initial Comments (“Staff Initial”) (Jan. 10, 2022) at 2, 3.
viii. 17.7.3.8 NMAC – Integrated Resource Plans for Electric Utilities

131. The Proposed Rule reshapes the existing IRP section of the Existing Rule in two key ways. First, it simplifies the Existing Rule by separating the policy from procedure. It keeps the general requirements for an IRP intact and up-front. Much of the verbose information found in the IRP section of the Existing Rule is moved to Appendix A under the Proposed Rule. Second, Section 17.7.3.8 of the Proposed Rule is drafted to be consistent with the policy and procedure to be found in the following sections.

132. EPE commented that the language in Section 17.7.3.8(A) of the Proposed Rule is too subjective and speculative. EPE broadly stated that the Proposed Rule is flawed because it does not adequately account for its effects on multi-jurisdictional utilities. EPE recommended that the Commission should define the term “material event” as used in Section 17.7.3.8 of the Proposed Rule, including that a material event be outside the utility’s control, have actually occurred or be reasonably certain to occur, and be within the utility’s actual knowledge. EPE proposed to shift the burden of proof on to the party alleging that there is a material event rather than on the utility. EPE opposes Interwest’s and NMLCG’s comments.

133. Interwest commented that the Proposed Rule should specify when the IRP filing term starts, and suggested that IRPs be filed based on the filing date of the utility’s prior IRP. Interwest commented that the language in Section 17.7.3.8(A) of the Proposed Rule is too vague and proposed clarifying language. Interwest proposed to add “any” to “plans to reduce existing

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124 EPE Initial at 14.
125 Id. at 8.
126 Id. at 14.
127 Id. at 14, 15.
128 See EPE Response at 7, 6.
129 Interwest Initial at 2.
130 Id.
resources” to clarify that there could be instances when the utility does not have such plans.\textsuperscript{131} Interwest agreed with other commenters that a three-year filing cycle is preferable to a four-year cycle.\textsuperscript{132}

134. NMAG commented that it is concerned that a four-year IRP cycle may be insufficient for responding to changing market conditions, technologies, and prices.\textsuperscript{133} NMAG proposed to revert to the three-year cycle, as is consistent with other states.\textsuperscript{134}

135. NMAREA only commented that the Commission should “delink” the IRP sections on the Proposed Rule from the remainder of it.\textsuperscript{135}

136. NMLCG commented that, in alignment with the Legislature’s policy direction, paragraph (A) of Section 17.7.3.8 of the Proposed Rule should consider emissions reductions rather than resource reductions.\textsuperscript{136} NMLCG additionally comments that paragraph (D)(3) of Section 17.7.3.8 of the Proposed Rule can be read in a circular fashion.\textsuperscript{137}

137. Onward did not submit comments on Section Seven of the Proposed Rule, however, Onward commented that it is “very supportive” of the Proposed Rule, which, in its view, is critically needed and will streamline the IRP process and make it more transparent.\textsuperscript{138}

138. PNM commented that the four-year planning cycle in the Proposed Rule is insufficient and that a three-year cycle is standard in the industry.\textsuperscript{139} PNM noted that its duty to only identify resource options generically, as contained in Section Eight of the Proposed Rule, is

\textsuperscript{131} Id. \\
\textsuperscript{132} Interwest Reply at 9. \\
\textsuperscript{133} NMAG Response at 6. \\
\textsuperscript{134} Id. \\
\textsuperscript{135} 21-00128-UT, The New Mexico Affordable Reliable Energy Alliance’s Response Comments on NOPR (“NMAREA Response”) (Feb. 1, 2022) at 6. \\
\textsuperscript{136} 21-00128-UT, New Mexico Large Customer Group’s Initial Comments (“NMLCG Initial”) (Jan. 10, 2022) at 2. \\
\textsuperscript{137} Id. at 2, 3. \\
\textsuperscript{138} Onward Initial at 3. \\
\textsuperscript{139} PNM Initial, Exhibit A at 3.
similar to the way PNM currently considers resources.\textsuperscript{140} PNM suggested that it may be more appropriate for material event notices to be filed in specific procurement dockets rather than in the generic IRP docket.\textsuperscript{141} Finally, PNM commented that the two week filing timeframe for material event notices may not be sufficient given that it may take longer than two weeks to determine if an event is material.\textsuperscript{142}

139. SPS commented that a four-year IRP cycle may be too short of a time period.\textsuperscript{143} SPS noted that it is unsure how implementation and usage of resources could change with supply.\textsuperscript{144} Identifying a resource generically is problematic, according to SPS, because bid results could potentially differ from models.\textsuperscript{145} SPS commented that the material event notice requirement is impractical and would require constant, burdensome notifications to the Commission.\textsuperscript{146}

140. Staff commented that the IRPs of the three major investor-owned utilities should be specified to be filed in separate years in the rule so that no more than one IRP case is filed in any given year.\textsuperscript{147}

141. CLC, REIA, Sierra Club, and Vote Solar did not submit comments on Section 17.7.3.8 of the Proposed Rule.

142. The Commission agrees with EPE that the language in Section 17.7.3.8(A) of the Proposed Rule is too subjective and speculative and should be rewritten. However, the Commission disagrees with EPE that the Proposed Rule does not account for multi-jurisdictional utilities. The Commission would direct EPE’s attention to paragraph (D) in Section 17.7.3.8 of the

\textsuperscript{140} Id. at 4.
\textsuperscript{141} Id.
\textsuperscript{142} Id.
\textsuperscript{143} SPS Initial at 26.
\textsuperscript{144} Id.
\textsuperscript{145} Id.
\textsuperscript{146} Id.
\textsuperscript{147} 21-00128-UT, Utility Division Staff’s Response Comments (“Staff Response”) (Feb. 1, 2022) at 1.
Proposed Rule, which actively puts the utility in the driver’s seat in regards to coordinating its in-state and out-of-state requirements. The Commission categorically disagrees with EPE’s comments regarding the material event reporting requirements. Since 2007 a nearly verbatim requirement has existed in the Commission’s Administrative Code:

17.7.3.10 OBLIGATION TO NOTIFY OF MATERIAL CHANGES AND UPDATE ACTION PLAN: 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 IRP had those events been recognized when the IRP was developed. As part of this notification, the utility shall explain how this event(s) has changed the action plan. 148

The Proposed Rule incorporates and elaborates further on the Existing Rule. EPE has been operating under a virtually identical requirement for 15 years without issue. Further, there is no need to clarify who carries the burden of proof in relation to the material event provision of the Proposed Rule, because it only applies to the utility.

143. The Commission agrees with Interwest that the language in Section 17.7.3.8(A) of the Proposed Rule is too vague and should be rewritten. The Commission concurs that adding “any” to the last sentence is prudent. And the Commission also agrees with Interwest that the filing cycle for IRPs should be three years rather than four.

144. The Commission agrees with NMAG that the filing cycle for IRPs should be three years rather than four.

145. The Commission does not understand what it means to “delink” portions of the Proposed Rule in the context of this NOPR as requested by NMAREA. The Proposed Rule as presented in this NOPR is not merely compartmentalized edits to the Existing Rule, rather, it is a

148 17.7.3.10 NMAC.
full-scale re-thinking of the IRP Rule with each necessary component interrelated with the other components.

146. NMLCG’s comments are well taken, and the Commission shall incorporate changes to Section 17.7.3.8 of the Proposed Rule to satisfy NMLCG’s concerns.

147. The Commission concurs with Onward’s comments.

148. The Commission generally agrees with PNM’s comments concerning the IRP filing cycle and the material event notices. The Commission has incorporated the three-year cycle into the Proposed Rule. However, the Commission intends for material event notices to be filed in the IRP docket so that the statement of need and action plan can be amended if necessary. Such amendments may not occur in an approval docket for a specific procurement. The Commission believes that PNM’s concern regarding the insufficiency of the two-week filing deadline is already addressed in the Proposed Rule, as “knowledge” is the key legal term of art. PNM’s proposal would place too much discretion in the utility’s hands.

149. The Commission disagrees with SPS’s conclusory assertion that a four-year IRP cycle is too brief, rather, four-years is likely too lengthy, and the Proposed Rule shall reflect a three-year period. The Commission would draw to SPS’s attention that supply, like demand, can also be variable given the increasing penetration of variable generation. The Commission would also draw to SPS’s attention the fact that the Commission’s rules are not well suited to predicting or dictating actual bid results from bidders. If there is a wide chasm between the generic resources planned for, and the actual resources bid-in, then that is a reality the utility, Commission, and intervenors will confront at the appropriate time, but that time is not now. Finally, the Commission is not persuaded by SPS’s opposition to the material event notice requirements in the Proposed
Rule, as has been stated previously, the same notice requirement has been on the rulebook for 15 years.

150. The Commission agrees with Staff and has incorporated a filing schedule in to Section 17.7.3.8 of the Proposed Rule.
ix. 17.7.3.9 NMAC – Facilitated Stakeholder Process; IRP Process

151. Section Nine of the Proposed Rule rebrands and recontextualizes the existing “Public Advisory Process” to the “Facilitated Stakeholder Process,” and it provides for the procedural steps to filing and acceptance of the action plan and statement of need. The aim of this public advisory process is the same as what has existed in the past, however, the facilitated stakeholder process is designed to be more efficient and to produce results. It halves the duration of the Existing Rule’s public advisory process and encourages stakeholder engagement; this would be accomplished by more direct, upfront Commission involvement. The process is also designed to narrow issues for consideration by the Commission in an “acceptance” phase of the IRP similar to what has existed since the last IRP rule revisions in 2017.

152. CLC commented that it favors Section 17.7.3.9 of the Proposed Rule which grants parties access to the utility’s modeling software and information, however, it noted that modeling is a time-consuming process. CLC commented that the Commission’s standard form protective order should be adequate for the facilitated stakeholder process, however, six months would probably be inadequate. CLC continued that setting a deadline for Commission action on an IRP is appropriate because no one benefits from having a long IRP process during which time foundational information becomes stale. CLC posited that four months is not enough time for the Commission to give notice and conduct a formal administrative proceeding, for discovery, for testimony, for briefing, to develop a recommended decision, and to make exceptions to the recommendations. CLC commented that, like the Existing Rule, the Proposed Rule does not

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149 CLC Reply at 2.
150 Id.
151 Id. at 2, 3.
152 Id. at 3.

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make clear to participants of the IRP process whether or not the Commission will hold a hearing or accept and IRP without one.\textsuperscript{153} CLC described feeling frustrated in the past when time and effort put in to an IRP public advisory process was summarily dismissed by the Commission not holding a hearing.\textsuperscript{154} Finally, CLC noted that, even if the facilitated stakeholder process was extraordinarily successful in fostering agreement amongst the participants, a disputed process is still required which will take longer than four months.\textsuperscript{155}

153. EPE commented that even though Section 17.7.3.9 of the Proposed Rule is entitled “Facilitated Stakeholder Process,” only sub-part (A) refers to that process whereas sub-part (B) refers to another process.\textsuperscript{156} EPE alleged that the Proposed Rule would allow the Commission to dictate a statement of need and action plan over the objections of utility management.\textsuperscript{157} EPE commented that parties’ right of appeal following statement of need and action plan approval is not addressed.\textsuperscript{158} EPE objected to the requirement that utilities are to provide staff and stakeholders with modeling software, because EPE does not own such software and cannot, by contract, provide it to third parties.\textsuperscript{159} EPE noted that few stakeholders have the expertise and resources to perform modeling.\textsuperscript{160} EPE agreed with Staff that the title of the section should be “Public Advisory Process” to align it with statute, and that it should be voluntary.\textsuperscript{161} EPE opposed Interwest’s proposals for this section of the Proposed Rule, except that EPE did not oppose Interwest’s proposal that the utility conduct modeling runs for Staff and stakeholders.\textsuperscript{162} EPE opposed Staff’s

\begin{footnotes}
\textsuperscript{153} Id.
\textsuperscript{154} Id.
\textsuperscript{155} See id.
\textsuperscript{156} EPE Initial at 15.
\textsuperscript{157} Id.
\textsuperscript{158} Id. at 16.
\textsuperscript{159} Id.
\textsuperscript{160} Id. at 17.
\textsuperscript{161} EPE Response at 8.
\textsuperscript{162} Id. at 9, 10.
\end{footnotes}
recommendation to allow for six modeling runs per stakeholder, which it alleged could take substantial time and resources, and in response, EPE proposed a total of four runs for all stakeholders with a caveat that any further runs should be justified by the requestor.\textsuperscript{163} EPE disagreed with NMAREA’s proposal that utilities be required to share modeling software and data.\textsuperscript{164} EPE commented that the timeline in the Proposed Rule may not be realistic, and the Commission should establish an expedited process to resolve disputes that may arise.\textsuperscript{165}

154. Interwest commented, and proposed draft language, that Staff and stakeholders should have input into the “base case” to be utilized in modeling and bid evaluation.\textsuperscript{166} Interwest proposed to eliminate paragraph (B) and move it to a new sub-paragraph of the Proposed Rule, and to revise the IRP process timeline to six months for Commission review.\textsuperscript{167} Interwest proposed that parties without expert consultants may request the utility to perform modeling on their behalf.\textsuperscript{168} Interwest agrees with other commentors that a maximum number of modeling runs should be specified, and proposed six runs per party.\textsuperscript{169}

155. NMAG commented that, although laudably proposed, it agrees with Sierra Club and Vote Solar that the IRP process may not allow sufficient flexibility and may constrain the parties’ and the Commission’s capability to address all issues presented.\textsuperscript{170} NMAG held that if the Commission seeks to create a rebuttable presumption mechanism in the Proposed Rule, then it needs to allow sufficient time to evaluate “all resources and measures” that a utility proposes.\textsuperscript{171}

\begin{footnotes}
\item[163] \textit{Id.} at 10.
\item[164] \textit{Id.} at 11.
\item[165] EPE Reply at 14, 15.
\item[166] Interwest Initial at 2, Exhibit A at 4.
\item[167] \textit{Id.} at 3.
\item[168] \textit{Id.}
\item[169] Interwest Reply at 9.
\item[170] NMAG Response at 13.
\item[171] \textit{Id.}
\end{footnotes}
In NMAG’s opinion, 12 months is an appropriate timeframe.\textsuperscript{172} NMAG commented that modeling software and information should be provided at the outset of the stakeholder process, and that stakeholders should be entitled to three modeling runs performed by the utility, while retaining the ability to self-perform modeling.\textsuperscript{173}

156. NMAREA commented that it supports the Proposed Rule’s requirement that utilities share their modeling software and information with Staff and stakeholders\textsuperscript{174}, and that it is an “absolutely essential requirement as no stakeholder can even begin to analyze the [utility’s] portfolio proposals without this access.”\textsuperscript{175} NMAREA made conclusory comments that the facilitated stakeholder process would intrude on the utilities’ managerial discretion.\textsuperscript{176} NMAREA proposed that the Commission pause this notice of proposed rulemaking, and instead, hold more “intensive” workshops.\textsuperscript{177} NMAREA alleged that the existing public advisory process is mandated by the IRP statute.\textsuperscript{178} NMAREA criticized the Proposed Rule for allowing the Commission to involve itself in the public advisory process.\textsuperscript{179} NMAREA noted that nothing in the Proposed Rule anticipates new disagreements that may arise and cause delays during the IRP process.\textsuperscript{180} NMAREA questioned whether the six-month and four-month timelines are adequate, and cited Sierra Club’s and Vote Solar’s assertion that a shorter timeline would bias the process in favor of the utility.\textsuperscript{181}

\begin{itemize}
\item \textsuperscript{172} \textit{Id.}
\item \textsuperscript{173} \textit{Id.} at 14.
\item \textsuperscript{174} NMAREA Initial at 14.
\item \textsuperscript{175} NMAREA Response at 8.
\item \textsuperscript{176} NMAREA Initial at 14.
\item \textsuperscript{177} \textit{Id.}
\item \textsuperscript{178} NMAREA Response at 11.
\item \textsuperscript{179} \textit{See id.} at 12.
\item \textsuperscript{180} \textit{See id.} at 13.
\item \textsuperscript{181} \textit{Id.} at 14.
\end{itemize}
157. NMLCG did not submit comments on Section 17.7.3.9 of the Proposed Rule, however, NMLCG supports the Proposed Rule.\(^{182}\) NMLCG representative, Nik Stoffel, appeared at the public hearing in this matter and stated,

> I do want to just comment on the recommendations from some parties that there be additional workshops. We certainly appreciate the intent that that suggestion is offered. And in the ordinary course we think it would be helpful but in this instance where there is such disagreement about whether the Commission has the authority to implement the rules it's proposed, absent I think a clear change of direction in the kind of rules the Commission wants to adopt, we really question how meaningful or productive those workshops would be. If there is ongoing disputes about the Commission's authority to approve the resource need and approve an action plan and to link that to the resource acquisition process it's proposed, it seems like conducting workshops to further explore those ideas would not be very productive.\(^{183}\)

158. Onward replied that it disagrees with NMAREA’s proposal to establish further workshops in this matter.\(^{184}\) Onward commented that in this docket the Commission has spent considerable effort soliciting and considering input from workshop participants and commenters.\(^{185}\) Onward noted that introducing new workshops at this late stage would only work to delay enactment of these “much needed regulatory reforms – without any corresponding benefit….\(^{186}\) Onward further disagreed with NMAREA that the Proposed Rule encroaches on the utilities’ managerial prerogative.\(^{187}\) Onward noted that the Proposed Rule levels the playing field for robust competition, increased transparency, and appropriate oversight.\(^{188}\)

159. PNM commented that Section 17.7.3.9(A) of the Proposed Rule transfers managerial judgment from the utility to the Commission and unknown third parties.\(^{189}\) PNM

\(^{182}\) NMLCG Response at 1.
\(^{183}\) Tr. 13:5-21 (Mar. 15, 2022).
\(^{184}\) Onward Response at 6.
\(^{185}\) Id.
\(^{186}\) Id.
\(^{187}\) Id.
\(^{188}\) Id.
\(^{189}\) PNM Initial at 7.
commented that the four-month timeline for approval of the statement of need and action plan is unrealistic.\textsuperscript{190} PNM asserted that six months is insufficient time to “complete an IRP” because it approximately takes 12 to 18 months to “produce a report.”\textsuperscript{191} PNM guessed that stakeholders will be unsatisfied by not having a year-long facilitated process.\textsuperscript{192} PNM proposed retaining the existing public advisory process along with the facilitated stakeholder process, but that participation in the latter would be contingent on the former.\textsuperscript{193} PNM commented that the Proposed Rule should clarify what “on equal footing” means and how the costs of modeling shall be recovered.\textsuperscript{194} PNM agreed with Staff that the stakeholder process should not be facilitated by the Commission.\textsuperscript{195} PNM agreed with NMAREA’s comments on the facilitated stakeholder process.\textsuperscript{196} PNM “amplified” SPS’s concerns about special interest stakeholders dictating resource planning for a utility.\textsuperscript{197}

160. REIA did not submit comments on Section 17.7.3.9 of the Proposed Rule.

161. Sierra Club and Vote Solar commented that the procedures proposed in Section 17.7.3.9(B) of the Proposed Rule are incapable of providing stakeholders adequate opportunity to delve into the assumptions and data behind a utility’s IRP.\textsuperscript{198} They commented that the Proposed Rule is ambiguous to whether stakeholders have the right to protest, or how the Commission will determine to conduct a hearing.\textsuperscript{199} They surmised that, when a case is assigned to a hearing

\textsuperscript{190} \textit{Id.} at 10.
\textsuperscript{191} PNM Initial, Exhibit A at 5.
\textsuperscript{192} \textit{Id.}
\textsuperscript{193} \textit{Id.}
\textsuperscript{194} \textit{Id.} at 6.
\textsuperscript{195} PNM Response at 6.
\textsuperscript{196} PNM Reply at 4.
\textsuperscript{197} \textit{Id.} at 5.
\textsuperscript{198} 21-00128-UT, Initial Comments Of Sierra Club And Vote Solar (“SC/VS Initial”) (Jan. 10, 2022) at 1.
\textsuperscript{199} \textit{Id.} at 6.
examiner, there is a timeframe of events to be expected, for which four months is wholly inadequate.\textsuperscript{200}

162. SPS commented that the end-product of the proposed IRP process is a binding planning document that may incorporate judgments and strategies with which the utility disagrees, therefore, it would impermissibly displace utility management’s exercise of judgment.\textsuperscript{201} SPS alleged that the facilitated stakeholder process is not a public advisory process as contemplated by the IRP statute because it goes beyond “advice.”\textsuperscript{202} SPS posited that the Proposed Rule is unclear on who the facilitator is and how he or she will be compensated.\textsuperscript{203} SPS proposed that Section 17.7.3.9 of the Proposed Rule should be deleted.\textsuperscript{204} It further made conclusory claims that the Proposed Rule would create concerns over energy security, would confer property rights and “regulation” rights on persons who don’t have such legal rights, and would increase costs for customers.\textsuperscript{205} SPS disagreed with Interwest and Onward regarding stakeholder influence who, they claim, stand to benefit financially from the Proposed Rule.\textsuperscript{206} SPS opposed Staff’s recommendation for utilities to provide six modeling runs per Staff/stakeholder because it would be unduly burdensome.\textsuperscript{207} SPS opposed NMAREA’s recommendation for utilities to share their modeling software and system data with requesting parties.\textsuperscript{208} SPS commented that it sees value in ceasing this NOPR and holding additional workshops.\textsuperscript{209}

\begin{flushright}
\textsuperscript{200} Id. at 7.
\textsuperscript{201} SPS Initial at 7.
\textsuperscript{202} Id. at 12.
\textsuperscript{203} Id. at 17.
\textsuperscript{204} Id. at 26.
\textsuperscript{205} Id. at 26, 27.
\textsuperscript{206} SPS Response 2.
\textsuperscript{207} Id. at 6.
\textsuperscript{208} Id. at 7.
\end{flushright}
163. Staff proposed that the stakeholder process should not be facilitated by the Commission, rather, it should be utility-led at its discretion, because it is duplicative of the IRP adjudication.\textsuperscript{210} Staff commented that the Commission should consider reverting the name of Section 17.7.3.9 of the Proposed Rule to “public advisory process” to match the IRP statute.\textsuperscript{211} Staff proposed that Staff and stakeholders be allowed six modeling runs per Staff and stakeholder.\textsuperscript{212}

164. Concerning the public advisory process, the IRP statute merely states, “The preparation of resource plans shall incorporate a public advisory process.” NMSA 1978, § 62-17-4 (2019). The statute does not define “public advisory process,” nor does it elaborate on the term, therefore, it is the duty of the Commission to interpret and provide regulations for what that term means. Additionally, the Commission has the statutory authority to “adopt rules to streamline the resolution of cases before it when appropriate by: (a) the use of hearing examiners; (b) the taking of evidence with the least delay practicable; (c) limiting repetitious testimony; and (d) adopting procedures for resolving cases in ways other than by trial-type hearings when appropriate, including consent calendars, conferences, settlements, mediation, arbitration and other alternative dispute resolution methods and the use of staff decisions.” § 8-8-4.

165. Whether Section 17.7.3.9 of the Proposed Rule is called “facilitated stakeholder process” or “public advisory process” makes no substantive difference to the actual requirements of the statute or Proposed Rule – arguments directed at the title of the Section are semantics-based. No commenter has made a persuasive argument that the “public advisory process” cannot be crafted as a process involving stakeholders and Commission facilitation. Nor has any party

\textsuperscript{210} Staff Initial at 3.
\textsuperscript{211} \textit{Id.}
\textsuperscript{212} \textit{Id.} at 4.
persuasively argued that the Commission cannot change the way it interprets the meaning of “public advisory process” as used in the statute. The title “Facilitated Stakeholder Process” merely describes the process contained in Section 17.7.3.9 of the Proposed Rule more accurately.

166. As with some other sections of the Proposed Rule, several commenters exhibited a reluctance to alter the existing IRP process. The utilities argued that the Commission lacks statutory authority to change the IRP process in the manner described in the Proposed Rule, particularly, to have the Commission approve a statement of need and action plan and to tie procurement to the planning process, rather than keeping the IRP as a planning-only document. The Commission’s legal justification is dealt with in Part C. of this Order and will not be repeated here.

167. There were several commenters who discussed the timeline for the facilitated stakeholder process as set out in Section 17.7.3.9 of the Proposed Rule. It is important to note that many of the objections to the Proposed Rule are based on misunderstandings and lack of insight into the Commission’s intent with that Section. First, the Commission’s goal is to substantially shorten the overall IRP process with procedures designed to promote agreement amongst the participants and parties, and to narrow any unresolved issues that may be subject to litigation. Shortening the public advisory process helps to incorporate the new procurement guidelines and processes which could, in sum, extend the overall timeline of an IRP case. The Existing Rule fails to provide an efficient or time-appropriate process, as utility IRPs take at least 15 months to complete given the drawn-out public advisory process which has shown to be wearing and rife with attrition, yet the Existing Rule has no bounds on the back-end for finality and no linkage to procurement. Further, the efficacy of the Existing Rule’s public advisory process is suspect. The Proposed Rule’s stakeholder and IRP processes would conclude in approximately ten months or
less, depending on the circumstances. Ten months is sufficient time to develop a utility’s IRP and adopt a statement of need and action plan, and it balances the need to prevent stale data from poisoning the RFP process.

168. Despite comments that the facilitated stakeholder process may result in litigation and added time, the Commission is convinced that participants working in good faith would help bring about better results than the Existing Rule has produced. The increased visibility into utility forecasts and need projections will require a new paradigm of cooperation and active engagement for all participants, especially for the Commission and Staff. The increased level of upfront stakeholder and Commission involvement may reduce the likelihood of the Commission denying a utility’s application for a CCN or PPA. However, the Commission is persuaded by comments that the litigated portion of the Proposed Rule needs to be revised.

169. With the process as proposed in the NOPR version of the Proposed Rule, from the out-set, participants and parties would have known three very important factors: 1) disagreement during the facilitated process may likely lead to a litigated case, 2) the unresolved issues will be known to everyone involved, and 3) the litigated case is narrowly focused on approving the statement of need and action plan, \textit{i.e.}, none of the other component parts and inputs, that together represent the IRP, would have been subject to Commission approval. Further, the Commission did not anticipate requiring a recommended decision to navigate and understand the limited issues, which would have greatly reduced the need for a lengthy procedural schedule. Importantly, the facilitator and the Commission would have been capable of providing expedited resolution to unique issues on a case-by-case basis without having to prescribe specific procedures in the Rule. Limited litigated issues should have led to a need for only limited discovery, limited testimony, and limited briefing, and, most importantly, a limited decision for the Commission to rule on.
Additionally, requiring a maximum of six months for the facilitated stakeholder process and four months for the litigated process would have put participants and parties on notice that they must conduct their cases efficiently. The participants and parties should conform to the requirements of the Proposed Rule rather than the Proposed Rule allowing itself to be stretched and deformed to accommodate commenters’ inclinations for inefficient and protracted litigation.

170. However, the Commission is sympathetic to the widely held concerns that the litigated portion of the IRP process, as proposed in the NOPR, is too brief to allow an appropriate development of issues, which could impact the due process rights of the parties and the quality of the outcomes from IRP cases. The Commission does not wish to hamper stakeholders, interveners, and Staff in their attempts to decipher complex resource planning issues, as that would negatively impact the quality of the record for which the Commission relies on to make well-informed decisions. Simultaneously, the Commission does not wish to increase the duration of the overall IRP process.

171. Thus, the Commission shall retract the statement of need and action plan approval process as proposed in Section 17.7.3.9(B) of the Proposed Rule, rather, it shall adopt a process that closely resembles the Existing Rule, i.e., the Proposed Rule now incorporates a commentary process following the filing of the IRP, in which the Commission would seek to “accept” the statement of need and action plan rather than “approve” them. This commentary process only substantively differs from the existing Rule in two ways: 1) the timeline is extended from 20/40/60/90-day comment and acceptance deadlines to 30-day intervals at 30/60/90/120-days for comments and acceptance; and 2) any public comments submitted, which may or may not include the commenter’s own statement of need and action plan, shall be made part of the utility’s IRP as

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addendums. Therefore, although the public advisory process will drastically change, the IRP submittal process is left relatively intact.

172. Additionally, the Commission is sympathetic to the other concerns of the commenters, thus, the Commission has incorporated certain edits to Section 17.7.3.9 of the Proposed Rule, including: semantic changes, a requirement that the Commission not insert itself into the facilitated stakeholder process, removal of the language that the Commission may “modify” the statement of need or action plan, that Staff and stakeholders shall sign a confidentiality agreement before having access to the utility’s modeling software and information, and a limit on the number of modeling runs. However, the Commission does not see how postponing a decision in this docket, after the record has closed, and holding more workshops could accomplish the goal of improving the Proposed Rule given the ample opportunity the commentors have had to engage thus far. There are obvious hard lines that some of the commentors are unwilling to cross, thus, further workshops would unfruitfully expend Commission and stakeholder resources for little or no benefit.
x. 17.7.3.10 NMAC – Statement of Need

173. Section 10 of the Proposed Rule establishes the statement of need – the part of the IRP that describes and explains the amount and type of new resources that are necessary to reliably meet an identified level of electricity demand in the planning horizon. Part of the objective of this Section is to diverge from the traditional sole projection of peak load as expressed in terms of energy or capacity. Rather, the statement of need, in addition to projections of peak load, may derive from incremental load growth, renewable energy customers programs, or replacement of existing resources. It may be defined holistically in terms of factors such as meeting net capacity, providing reliability reserves, securing flexible and/or demand-side resources, securing renewable energy, or securing energy storage to comply with the resource requirements established by statute or commission decisions. The statement of need is informed by the facilitated stakeholder process. In-turn, the statement of need informs the action plan.

174. EPE commented that paragraph (A) of Section 17.7.3.10 of the Proposed Rule is ambiguous because it does not state whether it encompasses all resource acquisitions or whether it only applies to those acquisitions necessary to satisfy capacity needs.\textsuperscript{213} EPE suggested clarifying the types of resource acquisitions that are intended to be included in the statement of need.\textsuperscript{214} EPE also commented that the word “energy” should be deleted from paragraph (A) because “demand is measured in terms of capacity, not energy.”\textsuperscript{215} Further, EPE commented that while the statement of need should account for all factors that have an effect on resource acquisitions and projected need, the non-peak-load factors create uncertainty under the Proposed

\textsuperscript{213} EPE Initial at 17.
\textsuperscript{214} Id.
\textsuperscript{215} Id.

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Rule.\textsuperscript{216} EPE proposed replacing the phrase “statement of need” with the term “integrated resource plan,” because the IRP itself is a statement of need.\textsuperscript{217} EPE contended that if the statement of need is kept in the Proposed Rule, then transmission resources should not be included.\textsuperscript{218}

175. Interwest commented that “transmission is a key element of utility resource and system planning and should be included in the statement of need.”\textsuperscript{219} Interwest highlighted the importance of transmission planning by providing examples of constraints caused by lack of transmission facilities, such as access to wind-rich resources of eastern New Mexico and the resource adequacy and reliability of service during the Summer 2022 peak load season.\textsuperscript{220} Interwest argues that transmission planning is a key element needed for New Mexico utilities to obtain additional renewable and capacity resources to comply with the ETA.\textsuperscript{221}

176. NMAREA made substantial comments on the need for including transmission planning in the Proposed Rule.\textsuperscript{222} NMAREA pointed to PNM’s issues with transmission constraints, arguing that a lack of a comprehensive transmission plan could negatively impact PNM’s ability to meet its 2040 zero emissions goal.\textsuperscript{223} NMREA also noted that a failure to plan for transmission could result in higher costs for ratepayers because delays in transmission planning might create lost opportunities for collaboration with other regional utilities and independent developers on joint transmission projects.\textsuperscript{224}
177. NMAG commented that additional explanation and refinement of the statement of and action plan sections are necessary.\textsuperscript{225} NMAG agreed with some of the parties’ concerns about the statement of need and action plan as issued in the NOPR: creating possible confusion or duplication.\textsuperscript{226} NMAG recommended removing the statement of need as a distinct element of the Proposed Rule because it creates ambiguities as to how the statement of need, action plan, and RFP processes relate to one other.\textsuperscript{227} NMAG recommended explicitly outlining the “legal and procedural steps and requirements to move from one stage of the IRP process to the next.”\textsuperscript{228} NMAG noted that the Proposed Rule is “silent on the approval process for the Statement of Need and the action plan.”\textsuperscript{229} NMAG created a list of issues it would see addressed regarding the statement of need as contemplated in Proposed Rule, including timelines, processes, ripeness for appeal, due process, and cost recovery.\textsuperscript{230}

178. Onward agreed with NMAREA’s suggestion that the utilities should be required to file a comprehensive transmission plan as part of the IRP.\textsuperscript{231}

179. PNM commented that the statement of need, together with the action plan, “supplants” the IRP.\textsuperscript{232} PNM noted that an approval stage in the statement of need process is a significant departure from the Existing Rule.\textsuperscript{233} Further, PNM argued that the timelines proposed in the Proposed Rule are unrealistic as the it would require approval of the statement of need and action plan within four months of the IRP’s submission to the Commission.\textsuperscript{234} PNM suggested

\begin{itemize}
  \item \textsuperscript{225} NMAG Response at 3.
  \item \textsuperscript{226} \textit{Id.}
  \item \textsuperscript{227} \textit{Id.} at 8, 9.
  \item \textsuperscript{228} \textit{Id.} at 3.
  \item \textsuperscript{229} \textit{Id.} at 9.
  \item \textsuperscript{230} \textit{Id.}
  \item \textsuperscript{231} Onward Response at 8.
  \item \textsuperscript{232} PNM Initial at 9.
  \item \textsuperscript{233} \textit{Id.}
  \item \textsuperscript{234} \textit{Id.} at 10
\end{itemize}

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that the statement of need and action plan be approved simultaneously to avoid delay.\textsuperscript{235} PNM also contended that the statement of need should be tied to attributes of needed resources rather than specific resources or resource types.\textsuperscript{236} PNM commented that paragraph (C) of Section 17.7.3.10 of the Proposed Rule contemplates resource acquisitions outside of the context of a statement of need and action plan, without affirmatively stating whether or not it is mandatory for a utility to link planning and procurement.\textsuperscript{237} PNM further responded in agreement with Staff that all references to “statement of need” should be deleted from the Proposed Rule as it is “confusing” and “appears to supplant the more general term ‘integrated resource plan’”.\textsuperscript{238} PNM suggested eliminating transmission planning from the IRP, contending it is a “complex subject” or “complicated subject,” and that there is no evidentiary basis for its inclusion.\textsuperscript{239}

180. SPS commented that it is unclear what resource requirements are established by commission decisions in Section 17.7.3.10(B) of the Proposed Rule.\textsuperscript{240} SPS commented that adding an approval stage for the statement of need is an “unnecessary regulatory step” which could result in losing out on economic opportunities to obtain resources, in part because results of the IRP may become stale before an RFP is issued.\textsuperscript{241} In particular, SPS suggested that the statement of need should allow for “economic energy” as a “need”.\textsuperscript{242} SPS commented that paragraphs (A) and (B) of Section 17.7.3.10 of the Proposed Rule appear contradictory in that the former states the need assessment is based on load forecasting while the latter includes supplemental factors.\textsuperscript{243}

\begin{footnotesize}
\textsuperscript{235} PNM Initial, Exhibit A, at 6.
\textsuperscript{236} \textit{Id.} at 7.
\textsuperscript{237} \textit{Id.}
\textsuperscript{238} PNM Response at 6.
\textsuperscript{239} \textit{Id.} at 10.
\textsuperscript{240} SPS Initial at 17.
\textsuperscript{241} \textit{Id.} at 27.
\textsuperscript{242} \textit{Id.}
\textsuperscript{243} \textit{Id.}
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SPS argued that it is “unclear whether the ‘needs’ must be identified, and whether they can change over time.” SPS disagreed with NMAREA and Interwest that transmission planning should be included in the statement of need, because SPS is already required to file transmission plans through its Southwest Power Pool planning process and because SPS contended that there is no indication regarding what the benefits and costs of such a plan would be.

181. Staff suggested removing the statement of need from definitions and eliminating any reference to the term “statement of need” in the Proposed Rule, arguing that the term “statement of need” is essentially already encompassed in the definition of an IRP.

182. CLC, NMLCG, REIA, Sierra Club, and Vote Solar did not submit comments on Section 10 of the Proposed Rule.

183. The Commission disagrees with EPE’s comments that the term “energy” be removed from paragraph 17.7.3.10(A) of the Proposed Rule. EPE’s comments that the types of resource acquisitions are not specified in this Section are well taken. The Commission addressed EPE’s point by creating carve-outs in the variance section of the Proposed Rule that illustrate what types of resource acquisitions are not contemplated in the statement of need. The Commission disagrees with EPE’s comments concerning supplemental measures of need beyond peak load. The Commission would direct EPE, SPS, and PNM, to Appendix A of the rule, which details factors included in the statement of need, together with paragraphs (A) and (B) of Section 10. The Commission, as a policy matter, has determined that peak load shall not be the sole criterion in forecasting demand. Rather, the Commission has determined that the factors listed in paragraph 17.7.3.10(B) of the Proposed Rule, in addition to the material in Appendix A, will provide a more

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244 Id.
245 SPS Response at 4.
246 Staff Initial at 2, 4.

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holistic picture of a utility’s need. The Commission emphatically disagrees with the suggestions of EPE, NMAG, PNM, and Staff that the term “statement of need” is duplicative, that it causes confusion, or that it is unnecessary. The statement of need forecasts demand and informs the action plan, with the statement of need and action plan constituting the planning phase of the IRP process. There is a clear distinction between a description and explanation of a given utility’s need and that utility’s plan to address that need. The former is the statement of need. The latter is the action plan.

184. The Commission disagrees with the comments of EPE, PNM, and SPS as to the inclusion of transmission planning in the statement of need. The Commission agrees with the comments of Interwest, NMAREA, and Onward, that transmission is a key element of the IRP process. Transmission, while complex, is not so complicated that it cannot be taken into account. Further, the Commission concurs with the concerns of NMAREA and Interwest that failure to include transmission planning could result in transmission constraints and opportunities to provide lower rates to customers through collaboration.

185. The Commission agrees with the comments of PNM and others that a four-month timeline is unrealistic for a litigated approval of the statement of need and action plan and for that reason, is revising the NOPR rule attachment to remove any reference to “approval” of the statement of need and/or action plan in part to minimize delays and litigation during the “acceptance phase” of the IRP process, as discussed above in Part D.ix. of this Final Order, and as may be seen on Exhibit C.
xi. 17.7.3.11 NMAC – Action Plan

186. Section eleven of the Proposed Rule establishes the action plan as the planning document that follows and is informed by the statement of need. The action plan is intended to provide clarity and timeliness to the utility’s subsequent procurements and increased certainty with respect to approval of those resources. The action plan details the specific actions the utility will take to implement the IRP within a three-year period following the filing of the utility’s IRP. This includes actions that utilities take to develop resource solicitations or contracting activities to satisfy the statement of need as well as any updates to the previous action plan filed in the previous IRP docket for a given utility. Within the three-year cycle, the utility is required to provide two updates to the commission. Utilities are still responsible, as they are under the Existing Rule, for promptly notifying the commission and stakeholders of material events that would have changed the action plan had those events been recognized or anticipated when the action plan was developed.

187. EPE noted two issues in its initial comments regarding Section 11 of the Proposed Rule. First, EPE took issue with the lack of clarity for how the IRP is reconciled with other Commission rules.247 Second, EPE argued that the requirement to notify the Commission of material events is flawed because the term “material event” is not defined in the Proposed Rule.248 In response comments, EPE disagreed with the proposal by Interwest that would require the inclusion of generation and other resource types and amounts, as well as transmission expansion and upgrades in the action plan.249 EPE maintained that transmission planning is not within the

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247 EPE Initial at 18.
248 Id. at 19.
249 EPE Response at 12, 13.
Further, EPE argued that transmission upgrades are dependent on which resources are selected in the RFP process, rendering their inclusion in the action plan premature. EPE agreed with NMLCG that paragraph 17.7.3.11(A)(2) of the Proposed Rule should be revised to remove the phrase “as approved by the Commission.” EPE also disagreed with Onward that participants should be given an “express right” to seek specific relief if a utility fails to meet its obligations under the action plan. Finally, EPE advised that there should be a section describing the contested case proceeding that the Commission would conduct if the parties cannot agree on an action plan.

188. Interwest proposed that generation resource types and amounts, and transmission expansion and upgrades, be included in the action plan.

189. NMAG has concerns about the statement of need and action plan sections as written in the Proposed Rule. NMAG suggested refinement of these sections to eliminate possible confusion, duplication, and ambiguity as to how the statement of need, action plan, and independent monitor sections work together. Specifically, NMAG requested that the Proposed Rule “explicitly outline the legal and procedural steps and requirements to move from one stage of the IRP process to the next.” NMAG also recommended a three-year IRP cycle length for consistency with practices in other states. NMAG noted that the Proposed Rule “is clear that the

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250 Id. at 13.
251 Id.
252 Id.
253 Id.
254 EPE Reply, Exhibit A at 5.
255 Interwest Initial, Exhibit A at 5.
256 NMAG Response at 3.
257 Id. at 3, 9.
258 Id. at 3.
utility can and should notify the commission, and all participants, in the event of a material change
that would change the action plan . . . .”259

190. NMAREA commented that it is concerned with the timing of the twin approvals in
the Proposed Rule as presented in the NOPR, noting that four months from the filing date to
approvals of the statement of need and the action plan may be unrealistic.260

191. NMLCG commented that Section 11 contains ambiguity as to when the IRP cycle
starts and offered specific language to clarify that the cycle begins from the filing date rather than
the approval date.261 NMLCG pointed out that nothing in the Proposed Rule specifies that the
statement of need is approved before the action plan is approved.262 Thus, NMLCG noted that the
language of Section 17.7.3.11(A)(2) of the Proposed Rule should be revised to address this
underlying, albeit inexplicit assumption.263

192. Onward showed support for the proposed implementation of the action plan,
although it suggested that express consequences for failure to comply with the action plan should
be included in the Proposed Rule.264 Onward suggested that participants be granted a process to
seek specific relief if a utility does not meet the obligations of its action plan.265

193. PNM commented that the introduction of the term “action plan” is confusing
and that it “creates risks of disputes, litigation, and delay at multiple touchpoints.”266 PNM
commented that breaking the IRP process down into the statement of need, action plan, and RFP
processes is a significant departure from the Existing Rule, and that these terms supplant the

259 Id. at 5.
260 NMAREA Response at 14.
261 NMLCG Initial at 3.
262 Id. at 4.
263 Id.
264 Onward Initial at 3.
265 Id.
266 PNM Initial at 2.

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IRP. PNM also commented that a four month timeline from the submission of the statement of need and action plan to approval is unrealistic. PNM’s proposed a specific language change to paragraph 17.7.3.11(A) of the Proposed Rule that would direct utilities, within the action plan, to detail specific actions the utility shall take to implement “the directional findings” of the IRP. PNM suggested clarifying whether RFPs may be issued prior to a final order on the proposed action plan. PNM was additionally concerned about the legal significance of an approved action plan.

194. Sierra Club and Vote Solar jointly commented that a four-month process, from the filing of the statement of need and action plan to approval, is unrealistic as contemplated in the Proposed Rule. Sierra Club and Vote Solar illustrate the timing and logistical issues with assigning a case to a hearing examiner, discovery, filing testimony, and issuing an RD, to demonstrate that four months is “wholly inadequate.”

195. SPS commented that the “additional step of obtaining approval of an action plan, or approval of any modifications to action plan, is an unnecessary regulatory step” that could result in delay or lost economic opportunities. Specifically, SPS suggested that the four-year time-period be revised. SPS contended that the notice requirement of paragraph C. of Section 11 of the Proposed Rule is impractical.
196. Staff commented that Paragraph B of Section 11 of the Proposed Rule should specify that updates to the action plan should be filed in the existing IRP docket.277

197. CLC and REIA did not submit comments on Section 11 of the Proposed Rule.

198. The Commission appreciates the comments of EPE and has revised the Proposed Rule from the NOPR attached rule to lay out the procedures described in the rule more clearly. However, the Commission notes that the material event notice requirement is a part of the Existing Rule, and the term “material event” has not been the subject of controversy or misinterpretation under the Existing Rule. The Commission declines to substantially modify the material event notice requirement, in agreement with NMAG and in disagreement with EPE, SPS, and PNM.

199. Further, the inclusion of transmission planning has been addressed in Part D.x. of this Final Order. To be clear on transmission planning, the Commission agrees with the comments of Interwest and disagrees with the positions of the utilities that inclusion of transmission planning is overly complex, unnecessary, or impractical.

200. The Commission disagrees with PNM and Staff that the term “action plan” is confusing or misleading. The feature of the Proposed Rule that the IRP process has been refined to clearly delineate what a utility’s need is based on, the plan to address that need, and then the subsequent procurement, if any, is not a flaw, but a strength of the Proposed Rule. The Commission agrees with NMAG that more guidance on the flow of this process is warranted, and has thus modified the Proposed Rule accordingly, as can be seen on Exhibit C.

201. The Commission agrees with the comments of PNM, NMAREA, Sierra Club, SPS, Vote Solar, and others that a four-month timeline is unrealistic for a litigated approval of the

277 Staff Initial at 4.
statement of need and action plan. The Commission has revised the Proposed Rule to remove any reference to “approval” of the statement of need and/or action plan in part to minimize delays and litigation during the “acceptance phase” of the IRP process, as discussed above in Part D.ix. of this Final Order, and as can be seen on Exhibit C. This change addresses the four-month approval timeline concerns of PNM, NMAREA, Sierra Club, and Vote Solar.

202. The Commission agrees with the commenters that proposed that the four-year IRP cycle be shortened. In response, the Commission has modified the Proposed Rule to include a three-year cycle rather than a four-year cycle, as can be seen on Exhibit C.

203. The Commission is not persuaded by PNM’s proposal to change the language of 17.7.3.11(A) of the Proposed Rule to reflect “directional findings” of the IRP, because PNM’s proposal is not explained or supported in its comments.

204. The Commission is persuaded by Staff’s proposed language change to clarify that action plan updates shall be made in the existing IRP docket.
xii. 17.7.3.12 NMAC – Request for Proposals Process

205. Section 12 of the Proposed Rule creates the linkage between planning and procurement by requiring a utility to issue a request for proposals (“RFP”) following the Commission’s acceptance of its statement of need and action plan. As part of the RFP process to increase transparency, the Proposed Rule requires the utility to share its RFP information and results at different steps of the process. The Proposed Rule gives stakeholders an opportunity to comment on the solicitation before it is issued. Finally, the Proposed Rule prescribes certain types of information and criteria to be addressed in the RFP and bid evaluation.

206. CLC commented that there is an “obvious” issue related to timing in the Proposed Rule.278 CLC asked what would happen if the utility does not need additional resources, or if the action plan identifies resource needs at different times over the four years.279 CLC described the benefits of all-source RFPs and questioned whether the Proposed Rule would limit RFPs to the exact types and amounts of resources as may be described in a statement of need.280 CLC argued that IRP modeling assumptions will take precedence over actual RFP bid results as it relates to costs borne by customers.281 CLC noted that the use of regulated RFP process cannot solve all of the problems with resource planning and procurement.282 CLC commented that the quality and accuracy of modeling assumptions “can be suspect.”283 CLC commented that optimal planning and identification of the most cost-effective portfolio should take in to consideration transmission and distribution costs.284

278 CLC Reply at 6.
279 Id.
280 Id.
281 Id.
282 Id.
283 Id. at 7.
284 Id. at 8.
207. EPE commented that in paragraph A. of Section 12 of the Proposed Rule, the language appears to mandate the issuance of an RFP, without regard to need. EPE commented that if the Commission’s intent under paragraph B. of Section 12 of the Proposed Rule is to “ensure broad dissemination of the RFP documents” then all stakeholders who express an interest in those documents should have access. EPE argued that 17.7.3.12(C) NMAC of the Proposed Rule does not describe consequences to the utility for failure to consider Commission and/or stakeholder input on the RFP documents.

208. EPE made several comments with respect to paragraph D. of Section 12 of the Proposed Rule. EPE contended that “bid ranking” is unclear as used in Paragraph D as bids will not have been received at that point in the process. EPE argued that the term “any other details” in 17.7.3.12(D)(2) of the Proposed Rule is overbroad and would lead to guesswork by the utility. EPE argued that 17.7.3.12(D)(3) of the Proposed Rule would be difficult to comply with because the cost of transmission “depends in large part on the location of the facility chosen,” and the number and size of projects that are in the utility’s transmission study queue. EPE argued that 17.7.3.12(D)(3) of the Proposed Rule is problematic because the “future costs of transmission” covers an unspecified time period. Further, EPE objected to the inclusion of proposed contracts to acquire resources in the RFP on the basis that the requirement is “unreasonable and overly burdensome.” EPE suggested that the Commission require term sheets in lieu of contracts in

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285 EPE Initial at 19.
286 Id.
287 Id. at 20.
288 Id.
289 Id.
290 Id.
291 Id. at 21.
292 Id.

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17.7.3.12(D)(5) of the Proposed Rule. EPE claimed that the inclusion of the discount rate in 17.7.3.12(D)(7) of the Proposed Rule is unnecessary because utilities typically apply their weighted average cost of capital to proposed projects, a figure which is publicly available. EPE noted that the anti-discrimination clause in 17.7.3.12(D)(10) of the Proposed Rule should be a requirement in the Proposed Rule itself instead of a “requirement” in the RFP document. EPE further argued that 17.7.3.12(D)(11) of the Proposed Rule contains an overbroad catch-all that burdens the utility with more guesswork when the Commission certainly has the experience to clearly define specific requirements.

209. EPE suggested that 17.7.3.12(E)(1) of the Proposed Rule is unclear and perhaps should be rewritten to specify to whom the utility must provide a confidential information log. EPE objected to the use of the term “all-source” RFP in 17.7.3.12(F) of the Proposed Rule for lack of internal consistency. EPE noted that paragraph F. of Section 12 of the Proposed Rule mentions “all-source RFP” where as the rest of the Section doesn’t. EPE argued that 17.7.3.12(G) of the Proposed Rule is flawed because the sharing of bid information would deter bidders and EPE opposes allowing access to modeling software for similar reasons as it earlier opposition to the same requirement in Section 9 of the Proposed Rule. EPE commented that the criteria for ranking bids should be ranked by priority or clarified that it’s at the utility’s discretion to prioritize.

293 Id.
294 Id.
295 Id.
296 Id. at 22.
297 Id.
298 Id.
299 Id.
300 Id. at 22, 23.
301 Id. at 23.
210. EPE “strongly” disagreed with Staff’s position that the Commission should not approve an RFP.\textsuperscript{302} EPE argued that given the “degree of control” over the RFP process that the Proposed Rule would allow, utilities should benefit from an irrebuttable presumption of “Commission approval” of the RFP process in subsequent proceedings.\textsuperscript{303} EPE responded that Interwest’s proposed edits to the Proposed Rule would let the Commission insert itself into the RFP process.\textsuperscript{304} EPE responded that Onward conflated two separate analyses that use separate models.\textsuperscript{305} EPE disagreed with Onward that the utility should be required to respond to non-bidders about the RFP process in writing.\textsuperscript{306}

211. EPE replied to NMAG that the Commission should not mandate all-source RFPs because a utility’s action plan might not call for an all-source RFP.\textsuperscript{307} EPE also replied that the RFP should not precede the IRP, because bidders will be reluctant to participate.\textsuperscript{308} Finally, EPE replied with proposed rule language to effectuate its comments in this rulemaking.\textsuperscript{309}

212. Interwest proposed several redline edits to the proposed rule to meet the Commission’s objectives of fair and robust competition as well as increased transparency.\textsuperscript{310} Interwest proposed that a utility’s weighting and ranking of the price and non-price criteria, and the resulting ranking of bids, should be included in paragraph H. of Section 12 of the Proposed Rule.\textsuperscript{311} Interwest noted that the bid evaluation in paragraph I. of Section 12 should include the

\textsuperscript{302} EPE Response at 14.
\textsuperscript{303} Id.
\textsuperscript{304} Id. at 15.
\textsuperscript{305} Id.
\textsuperscript{306} Id.
\textsuperscript{307} EPE Reply at 15.
\textsuperscript{308} Id.
\textsuperscript{309} Id., Attach. A.
\textsuperscript{310} Interwest Initial at 4-6; id., Exhibit A at 5-7.
\textsuperscript{311} Interwest Initial at 6.
cost and environmental impact of transmission upgrades for each portfolio of resources.\textsuperscript{312} Interwest suggested that confidentiality protections for bid information should be noted in the Proposed Rule.\textsuperscript{313} Interwest specified that transmission costs should be evaluated at the portfolio level, and bids should first be analyzed without transmission costs in to develop a portfolio of bids.\textsuperscript{314} Interwest noted that including a portfolio of bids first without transmission costs, and then with the addition of transmission costs, allows for both transparency and the selection of the most cost-effective bids.\textsuperscript{315}

213. Interwest replied to the utility-commenters that the Proposed Rule does not permit the Commission to invade on a utility’s managerial prerogative.\textsuperscript{316}

The Commission’s review of RFPs and the participation of the IM can result in recommendations to the utility rather than approval or disapproval of an RFP. The substance of the RFP is at discretion of the utility, however failure to incorporate reasonable recommendations of the Commission to comply with the [Proposed] Rule would not warrant a rebuttable presumption of prudence of the procurement. The utility would retain the burden to demonstrate prudence in a subsequent procurement case.\textsuperscript{317}

214. NMAG stated, “The Proposed Rule will integrate, and therefore streamline the IRP and RFP processes, and claims that the process is too inflexible and will create reliability problems are unfounded.”\textsuperscript{318} NMAG asserted that Section 12 of the Proposed Rule is appropriate for developing the most cost-effective resource portfolio over a long-term development horizon.\textsuperscript{319} “Resource planning by definition requires that planners make assumptions about future energy and capacity needs and resource options. The proposed multi-phase process allows for confirmation or

\textsuperscript{312} Id.
\textsuperscript{313} Id. at 5.
\textsuperscript{314} Id.
\textsuperscript{315} Id.
\textsuperscript{316} Interwest Reply at 3.
\textsuperscript{317} Id. at 3, 4.
\textsuperscript{318} NMAG Response at 2.
\textsuperscript{319} Id. at 5.
revision of those assumptions as necessary, through acquiring information directly from the marketplace, to pursue the most cost-effective portfolio.”\textsuperscript{320} NMAG disagreed with NMAREA’s assertion that the Proposed Rule could create reliability issues give the material event notification procedures.\textsuperscript{321}

215. NMAG responded that it disagrees with PNM on cutting “all-source” from 17.7.3.12(F) of the Proposed Rule.\textsuperscript{322} NMAG proposed that the Proposed Rule require that RFPs be all-source RFPs, and that they precede, and therefore inform, the development of the statement of need and action plan.\textsuperscript{323} NMAG commented that need should be driven by what the market can offer, and RFP data is a critical input in the planning process.\textsuperscript{324} NMAG asked the Commission to clarify how Sections 10, 11, and 12 of the Proposed Rule intersect.\textsuperscript{325}

216. NMAREA supports regulation IOU’s RFP processes so that there is a level playing field between third-party and utility-owned projects.\textsuperscript{326} NMAREA commented that “there is a need to update the current IRP rule in some respects and to consider appropriate regulations to ensure that IOUs' RFP processes are fair and competitive.”\textsuperscript{327} “The need for a rule to regulate the procurement practices of the State's IOUs has long been apparent.”\textsuperscript{328} NMAREA stated its support for an earlier suggestion from EPE to bifurcate the IRP and RFP portions of the rulemaking into

\textsuperscript{320} Id.
\textsuperscript{321} Id.
\textsuperscript{322} Id. at 6.
\textsuperscript{323} Id. at 3.
\textsuperscript{324} Id. at 6, 7.
\textsuperscript{325} Id. at 3.
\textsuperscript{326} NMAREA Initial at 15.
\textsuperscript{327} Id. at 5.
\textsuperscript{328} Id. at 14.

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separate dockets.\textsuperscript{329} NMAREA claimed that the rule is overbroad because it does not state when the RFP process is needed or not needed.\textsuperscript{330}

217. NMAREA responded that Section 12 of the Proposed Rule provides needed transparency by establishing RFP process standards, however, it cautions against disregarding the practices that the utilities have developed to fit their own specific needs and that “best suit the needs of their customers.”\textsuperscript{331} NMAREA responded that given the breadth of new requirements and the number of Commission decision points in the Proposed Rule, there is likely to be many delays and choke-points.\textsuperscript{332}

218. NMLCG proposed to delete “all-source” from 17.7.3.12(F) of the Proposed Rule given that the RFP is not described as “all-source” in other parts of Section 12.\textsuperscript{333} NMLCG responded to SPS, stating,

SPS raises concerns with the potential lack of follow through on the part of a winning bidder and the potential cost impacts as a result. The NMLCG shares these concerns. The proposed rules are intended to make the bidding process as transparent to potential bidders as possible, giving them all the necessary information to submit an informed bid. Bidders have historically been given outs due to unknown information at the time of bid preparation. However, if the utility complies with the proposed rules and makes all the required information and modeling available to bidders, the bidders should have substantially sufficient information to provide a comprehensive proposal.\textsuperscript{334}

NMLCG, in response to EPE, stated that a utility’s failure to heed recommendations of the Commission should operate to remove any rebuttable presumption of prudence that could be awarded.\textsuperscript{335}

\begin{footnotesize}
\begin{enumerate}
\item Id. at 6.
\item Id. at 6, 7.
\item NMAREA Response at 8.
\item See id. at 12-14.
\item NMLCG Initial at 4.
\item NMLCG Response at 11.
\item Id. at 12.
\end{enumerate}
\end{footnotesize}
219. Onward commented that it is “very supportive” of the Proposed Rule, which, in its view, is critically needed and will streamline the RFP process and make it more transparent.\footnote{Onward Initial at 3.} Onward requested that the Commission extend the deadline for comment on a utility’s proposed RFP from 21 days to 30 days.\footnote{\textit{Id.} at 4.} Additionally, Onward proposed that utilities be required to respond to RFP comments in writing.\footnote{\textit{Id.}} Onward requested three detailed modeling standards be included in the Proposed Rule to make modeling consistent and comparable.\footnote{\textit{Id.} at 4, 5.} Onward responded that the Proposed Rule overhauls the RFP process “to provide many more opportunities for the public, stakeholders, and the Commission to better understand a utility’s planning needs and the underlying data supporting the utility’s business decisions.”\footnote{Onward Response at 7.} Onward responded that it disagrees with Staff’s concern over the Commission’s legal exposure, because the Proposed Rule is sufficiently clear and defined.\footnote{\textit{Id.} at 8.}

220. PNM commented that Section 12 of the Proposed Rule invades “utility prerogatives.”\footnote{PNM Initial at 12.} PNM claimed that the Proposed Rule is not clear on how it interacts with other regulatory filings.\footnote{\textit{Id.} at 4, 5.} PNM commented that the Proposed Rule is not entirely clear if the RFP process is mandatory, given that it would be possible for a utility to not have a procurement need as stated in its statement of need and action plan.\footnote{\textit{Id.} at 13.} PNM commented that the use of the term “intervenors” suggests the Commission may open a new docket for the RFP process and is
otherwise confusing.\textsuperscript{345} PNM alleged that the Proposed Rule allows bidders to play a substantive role in the RFP process.\textsuperscript{346}

221. PNM argued that the Proposed Rule should contain exceptions for unique procurements that don’t meet a “significant” resource standard, as used in Utah.\textsuperscript{347} PNM alleged that the “inflexible” Proposed Rule may preclude beneficial opportunities that may arise outside of the formal procurement process or it may make it difficult for utilities to react to changed circumstances.\textsuperscript{348} PNM argued that the RFP process in the Proposed Rule would increase costs for customers.\textsuperscript{349} PNM claimed that 17.7.3.12(K) of the Proposed Rule would allow third parties to use utility property against the utility’s will, and alleged that it could amount to a taking.\textsuperscript{350} PNM proposed rule language amendments to reduce the RFP comment deadline to 15 days.\textsuperscript{351} PNM commented that 17.7.3.12(D)(3) of the Proposed Rule relating to transmission costs in the RFP is unrealistic.\textsuperscript{352} PNM commented that 45 days is too short a time to rank bids, rather, it should be 150 to 180 days.\textsuperscript{353}

222. PNM agreed with Staff that the Commission should not approve the RFP.\textsuperscript{354} PNM disagreed with Interwest that Commission comments be required to be incorporated into the RFP, as that would be a \textit{per se} approval.\textsuperscript{355} PNM responded that Onward’s recommendations would exacerbate issues with Section 12 of the Proposed Rule.\textsuperscript{356} PNM generally agreed with EPE’s and

\begin{footnotesize}
\textsuperscript{345} Id.
\textsuperscript{346} Id. at 14.
\textsuperscript{347} See id. at 15, 16.
\textsuperscript{348} Id. at 17, 18.
\textsuperscript{349} Id. at 18.
\textsuperscript{350} Id.
\textsuperscript{351} Id., Exhibit A at 8.
\textsuperscript{352} Id.
\textsuperscript{353} Id. at 9, 10.
\textsuperscript{354} PNM Response at 7.
\textsuperscript{355} Id. at 9.
\textsuperscript{356} Id. at 14.
\end{footnotesize}
SPS’s comments.\textsuperscript{357} PNM replied that it agrees with NMAREA to “de-link” the IRP provisions from the RFP provisions.\textsuperscript{358} PNM agreed with NMAREA’s allegation that the bid ranking criteria in Section 12 of the Proposed Rule do not rest on a foundation of evidence.\textsuperscript{359} PNM disagreed with NMAG that the RFP should precede the IRP, because its practical to determine needs before seeking resources.\textsuperscript{360}

223. SPS commented that the Proposed Rule prioritizes matters other than cost-effectiveness and creates conditions that will likely lead to litigation by unsuccessful bidders and increased costs.\textsuperscript{361} SPS commented that the Proposed Rule leaves utility managers “no ability to choose.”\textsuperscript{362} SPS argued that the approval process for the action plan and the RFP process are significant impediments to procuring resources.\textsuperscript{363} SPS argued that no rulemaking is necessary to provide developers access to SPS’s transmission network, because of SPS’s membership in the Southwest Power Pool.\textsuperscript{364}

224. SPS accused 17.7.3.12(J) of the Proposed Rule as violative of the Constitution’s takings clause.\textsuperscript{365} SPS lists seven questions that supposedly portray ambiguities in the Proposed Rule, such as whether Section 12 of the Proposed Rule transfers “transmission rights.”\textsuperscript{366} SPS commented that there is nothing in the Proposed Rule to ensure that bidders will follow-through.\textsuperscript{367} SPS commented that the timing and approval requirements of 17.7.3.12(C) of the Proposed Rule

\textsuperscript{357} \textit{Id.} at 12, 13, 18, 19.
\textsuperscript{358} PNM Reply at 4.
\textsuperscript{359} \textit{Id.}
\textsuperscript{360} \textit{Id.} at 6.
\textsuperscript{361} SPS Initial at 9.
\textsuperscript{362} \textit{Id.} at 10.
\textsuperscript{363} \textit{Id.}
\textsuperscript{364} \textit{Id.} at 19.
\textsuperscript{365} \textit{Id.} at 14.
\textsuperscript{366} \textit{Id.} at 15.
\textsuperscript{367} \textit{Id.} at 20, 21.

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would create a high likelihood of litigation over the RFP.\textsuperscript{368} SPS argued that sub-hourly optimization requirements of 17.7.3.12(F) of the Proposed Rule is impractical.\textsuperscript{369} SPS claimed that 45 days is not sufficient time to rank bids, and 120 days may not be sufficient.\textsuperscript{370} SPS commented that bid evaluation criteria listed in 17.7.3.12(I) of the Proposed Rule should be at the utility’s discretion.\textsuperscript{371}

225. SPS responded that Interwest’s recommendations should be rejected.\textsuperscript{372} SPS replied that it supports PNM’s and EPE’s recommendations to bifurcate this rulemaking into IRP and RFP portions, due to “complexities” and “other issues.”\textsuperscript{373}

226. Staff commented that the Proposed Rule should not afford the Commission any power to approve, or imply approval of, an RFP, because that could “create the opportunity for future legal exposure for the Commission should performance of contractual obligations, resulting from a Commission-approved RFP process, come into question.”\textsuperscript{374} Staff responded, without further explanation, that it “does not agree with the Request for Proposal . . . requirements currently under consideration.”\textsuperscript{375}

227. REIA, Sierra Club, and Vote Solar did not submit comments on Section 12 of the Proposed Rule.

228. CLC is mistaken to question the “timing” of Section 12 of the Proposed Rule, because those issues are necessarily incorporated into the action plan – meaning that the action plan should describe the number of RFPs that may need to be issued and at what intervals, if any.

\textsuperscript{368} \textit{Id.} at 29.
\textsuperscript{369} \textit{Id.} at 29, 30.
\textsuperscript{370} \textit{Id.} at 30.
\textsuperscript{371} \textit{Id.}
\textsuperscript{372} SPS Response at 5.
\textsuperscript{373} SPS Reply at 3.
\textsuperscript{374} Staff Initial at 4.
\textsuperscript{375} Staff Response at 1.

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need to be issued at all, for the relevant four year period. Regarding all-source RFPs, CLC may be reading additional requirements into the Proposed Rule that do not exist. The utilities shall retain the discretion to devise their RFPs – whether or not RFPs issue as all-source or not is up to each utility. CLC’s argument that IRP modeling assumptions will have a greater impact on costs borne by customers than the actual bid results of the RFP process makes no logical sense. It is difficult to fathom that generic modeling cost assumptions that pre-date actual bid results could provide better or more persuasive evidence as to cost of resources than actual bid results. The Commission agrees with CLC that the Proposed Rule should take transmission and distribution costs in to consideration, and notes that the Proposed Rule already does so.

229. The Commission agrees with EPE that Section 12 of the Proposed Rule as attached to the NOPR should be written to allow for times when a utility’s action plan does not require an RFP. The Commission sees merit in EPE’s position that RFP documents could be disseminated widely, however, such a requirement may be overly prescriptive when in reality, only Staff and intervening parties will be participating in the dockets. The Commission advises EPE that there are no stated consequences for not adopting comments on its RFP pursuant to 17.7.3.12(C) NMAC (proposed Nov. 3, 2021), and EPE should not invent any for sake of argument.

230. The Commission agrees with EPE that “bid ranking” in paragraph D. of Section 12 should be clarified. The Commission disagrees with EPE that the broadly worded phrase “any other details” as used in Paragraph D. of Section 12 is detrimental, rather, such broadly worded phrases may give the utilities more discretion to act (lack of discretion is a common complaint of the utilities) within the confines of the Proposed Rule. The Commission agrees with EPE that 17.7.3.12(D)(3) of the Proposed Rule would be difficult for a utility to comply with and has revised that language, however, the Commission reminds EPE and others that bid ranking criteria

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incorporates, in part, the costs of transmission upgrades. The Commission disagrees with EPE that providing *proposed* contracts in the RFP is overly burdensome, because the Proposed Rule is not requiring the utility to draft contracts for all different types of resources as EPE seems to think, rather, it requires the utility to provide them *if it intends to propose them*. If the utility does not have any proposed contracts for the acquisition of resources at the time of the RFP issuance, then it goes to reason that it would not have to provide them in the RFP.

231. The Commission agrees with EPE that the anti-discrimination clause of Paragraph D of Section 12 of the Proposed Rule should be a rule requirement rather than an RFP requirement. The Commission agrees with EPE that 17.7.3.12(E)(1) of the Proposed Rule as attached to the NOPR was confusing and should be rewritten. The Commission agrees with EPE that Paragraph F. of Section 12 contained flaws and should be deleted. The Commission is not persuaded by EPE to adopt a priority hierarchy for bid ranking criteria, rather, leaving the bid ranking criteria up to the utility preserves the utility’s managerial discretion as requested by the utility-commenters in this rulemaking. EPE’s argument that it should receive an irrebuttable presumption of Commission approval of the RFP process is a fiction and is flatly rejected. Irrebuttable presumptions are contrary to the due process rights of any who would challenge the utility’s RFP process. Further, the Proposed Rule does not assert Commission “control” over the RFP process as alleged by EPE, rather, the Proposed Rule functions to increase transparency and fairness while preserving the utility’s managerial discretion.

232. Interwest’s comments are well taken, and some are adopted as can be seen on Exhibit C, however, the Commission has adopted many amendments to Section 12 of the Proposed Rule proposed by other commenters, and as such, the Commission is unable to simultaneously accept some of Interwest’s more significant amendments.
233. The Commission largely agrees with NMAG’s comments on Section 12 of the Proposed Rule, however, the Commission is not persuaded to revise the RFP process of the Proposed Rule to lead with a solicitation. The Commission recognizes the merits of NMAG’s suggestion, however, the RFP process as proposed and amended by this Final Order is preferable for having been fully vetted in this docket. The Commission agrees with NMAG that sections 10, 11, and 12 of the Proposed Rule lack procedural flow, and edits have been incorporated in to the Proposed Rule to correct that, as can be seen on Exhibit C.

234. The Commission disagrees with NMAREA that the RFP and IRP portions of the Proposed Rule should be bifurcated as that is fundamentally at odds with the intent of the rulemaking to combine planning and procurement. The Commission agrees with NMAREA that the Proposed Rule should clarify when the RFP process is not needed, and has adopted multiple carve-outs in Sections 12 and 17 of the Proposed Rule. The Commission disagrees with NMAREA that the Proposed Rule would disregard the utilities’ experience and practices, because the Proposed Rule contains catch-all provisions that allow the utility discretion within the RFP process. Additionally, the Commission notes that there has been little to no suggestion in the record of this rulemaking, other than NMAREA’s conclusory comments, that the utility’s developed practices are in the best interests of their customers. The Commission agrees with NMAREA that the Proposed Rule as presented in the NOPR contains potential for many choke-points, and has thus made revisions to the procedures of the rule to eliminate points of litigation and Commission decision-making, as can be seen on Exhibit C.

235. The Commission agrees with NMLCG that the words “all-source” should be deleted as they were left-over descriptors from earlier drafts of the Proposed Rule, however, the Commission is adopting amendments that would entirely eliminate 17.7.3.12(F) from the Proposed
Rule, because the Commission believes that the mandatory modeling phase should occur during the facilitated stakeholder process. The Commission need not consider NMLCG’s proposal that prudence presumptions be lifted for utilities that do not heed Commission recommendations during the RFP process, because the rebuttable presumption provision of the Proposed Rule has been rescinded, as can be seen on Exhibit C and as discussed in Part D.xiii. of this Final Order.

236. The Commission appreciates and concurs with Onward’s general comments. Specifically, the Commission declines to extend the RFP comment deadline by nine days because the Commission does not want to significantly delay the RFP process. The Commission is not persuaded to require a utility to respond to comments in writing, as that would be burdensome and could potentially delay the RFP process. The Commission does not have the modeling expertise to evaluate Onward’s detailed modeling standards proposal, however, the Commission notes that EPE opposed including such standards because Onward “conflated” separate analyses.

237. PNM alleged many conclusory criticisms of the Proposed Rule in its initial comments that are unsubstantiated. For example, PNM’s assertion that Section 12 of the Proposed Rule invades utility prerogatives because the Commission is substituting its judgment for that of utility management is unsupported. PNM has not credibly, and could not if it sought to do so, identified any specific areas of the Proposed Rule in which the Commission substitutes its judgment for that of the utility. PNM’s claims are conclusory. Even so, the Commission has adopted many amendments to the Proposed Rule to address PNM’s and the other utilities’ concerns that the Proposed Rule is overly prescriptive, because the Commission does take them seriously.

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376 PNM Initial at 12-14.
377 See PNM Initial at 7, 8 (showing broad allegations against Section 12 of the Proposed Rule without pinpoint cites.)
238. The Commission advises PNM that it is not typical for Commission rules to explain how they “interact” with other “regulatory filings,” and any accusation by PNM to that effect is a red herring. Rules typically exist and operate individually and in harmony with other Commission rules. However, since clarity was requested by PNM and the other utilities, the Commission has amended Section 12 of the Proposed Rule to state, “Nothing in this rule shall be construed to prevent a public utility from procuring resources as required by the REA, NMSA 1978, Section 62-16-4 (2019), and the EUEA, NMSA 1978, Section 62-17-5 (2020). Such procurements shall be included in the utility’s forecasting, statement of need, and action plan.”

239. The Commission agrees with PNM that use of the term “intervenors” in Section 12 of the Proposed Rule is confusing and should be amended. The Commission agrees with PNM that not every procurement should be subject to the Proposed Rule and has thus provided amendments to the Proposed Rule for carve-outs as discussed in Part D.xvi. this Final Order.

240. The Commission disagrees with PNM that the Proposed Rule could prevent utilities from capitalizing on special procurement opportunities or reacting to changed circumstances, because a utility will always be allowed to either file a variance from the Proposed Rule or cite a material event in order to bypass any perceived restrictions of the Proposed Rule or the utility’s action plan. PNM’s argument that the Proposed Rule would increase costs for customers is conclusory and unsupported. PNM’s takings argument need not be addressed because 17.7.3.12(K) of the Proposed Rule has been rescinded, as can be seen on Exhibit C. The Commission is not persuaded to reduce the RFP comment deadline to 15 days, as other parties asked to increase the same deadline, the Commission’s original proposal seems to fall in the middle. The Commission

378 Exhibit C. at 8.

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is persuaded by PNM that 17.7.3.12(D)(3) of the Proposed Rule may be unrealistic and has adopted amendments to shift the burden of providing transmission cost estimates on bidders. The Commission agrees with PNM that 45 days is not enough time for a utility to rank bids and has adopted amendments to extend that deadline, as can be seen on Exhibit C.

241. SPS comments that the Proposed Rule prioritizes matters other than cost-effectiveness and creates conditions that will likely lead to litigation by unsuccessful bidders and increased costs are conclusory and unsupported. Additionally, SPS assumes the meaning of cost-effectiveness without defining it or providing a legal argument why the Commission cannot define it. Further, SPS assertion that the Proposed Rule leaves utility managers without any discretion is farcical in context of Section 12 of the Proposed Rule. The utility is afforded the discretion to make choices at every step of the RFP process; specifically, the utility shall make choices at the following points: Section 12 (as amended by this Final Order), paragraphs B., C., D., E., F., G., H., I., K., L., and M.379

242. The Commission understands SPS’s concerns that action plan approval could be an impediment to an efficient process, and has amended the Proposed Rule to reflect an acceptance procedure. As stated herein, the Commission does not agree that a transparent RFP process could be an impediment, given that utilities’ are currently conducting their own, non-transparent RFP processes before procuring resources. SPS’s claim that its own processes would be significantly more efficient than the Section 12 of the Proposed Rule are unsubstantiated.

243. SPS’s takings argument need not be addressed herein because the Commission has withdrawn the accused paragraphs of the Proposed Rule. SPS’s list of “grave ambiguities” is

379 Exhibit C. at 6-8.
actually a list of red herring questions that aren’t justified by SPS’s comments and questions about provisions that have been deleted from the Proposed Rule. SPS’s claim about its membership in the Southwest Power Pool negating the need for an IRP rule is confusing and unsupported. IRPs are mandated by statute, and the Proposed Rule does not seek to regulate transmission access. The Commission is unpersuaded by SPS’s apparent request for the Commission to regulate third-party bidders due to a lack of jurisdiction. The risk that bidder does not follow-through on a bid is not an issue specific to the Proposed Rule’s RFP process.

244. SPS’s concern regarding litigation of the RFP is unfounded, given that the Proposed Rule does not provide a litigated format for the RFP. Section 12 of the Proposed Rule simply provides transparency in to the utility-led process. SPS’s arguments that sub-hourly optimization as contemplated in the Proposed Rule is not practical are well taken. The Commission agrees that 45 days in insufficient to rank bids and has increased the bid ranking period to 75 days, as can be seen on Exhibit C. The Commission agrees with SPS that utilities should retain discretion to rank bids, and notes that the Proposed Rule does not force any priority on the bid ranking criteria, rather it is left open to the interpretation of the utilities to implement.

245. Staff’s comments on Section 12 of the Proposed Rule are without merit, as there is nothing in the Proposed Rule that states that the Commission has approval authority for the Commission over a utility’s RFP, and, as set forth herein, the Proposed Rule adopted in this Final Order cement that conclusion.

246. Finally, a “scope and purpose” paragraph was included in response to comments of Commissioner Joseph Maestas at the August 24, 2022 open meeting, as can be seen on Exhibit C.
xiii. 17.7.3.13 NMAC – Cost Recovery; Evidence of Consistency; Rebuttable Presumption

247. Section 13 of the Proposed Rule as attached to the NOPR would have given an evidentiary presumption to a utility that could show that, in a subsequent resource procurement proceeding, the procurement is consistent with its approved statement of need and action plan.

248. As discussed in detailed as follows, the Commission finds that the rebuttable presumption provision shall be withdrawn from the Proposed Rule as attached to the NOPR, and this Section of the Proposed Rule shall be solely related to cost recovery, for which no comments were submitted.

249. CLC commented that the Proposed Rule should be revised to guarantee a full evidentiary hearing for IRP approval, or a rebuttable presumption should not be granted to a utility to protect the due process rights of parties.\(^{380}\) CLC’s fear is that the Commission could accept a utility’s IRP, thereby, waiving any kind of hearing, and award the utility a rebuttable presumption of prudence.\(^{381}\)

250. EPE commented that utilities should not have to make a showing that a procurement is consistent with the statement of need or action plan to gain the presumption of prudence.\(^{382}\) Going further, EPE recommended that, if the Commission is confident the Proposed Rule will produce good outcomes, then the presumption should be irrebuttable.\(^{383}\) EPE disagreed with NMLCG’s comments that the rebuttable presumption could be excised from the Proposed Rule, because, even though the rebuttable presumption is “weak” according to EPE, it is still a benefit

\(^{380}\) CLC Reply at 4.  
\(^{381}\) See id.  
\(^{382}\) EPE Initial at 23.  
\(^{383}\) EPE Response at 5.
to the utilities. EPE commented that the strength of the presumption should be inversely correlated to the extent of the Commission’s oversight and approval during the IRP phase. Interwest commented that it sees merit in the argument that a more substantive rule should be met with more substantive results, thus, a utility should earn a rebuttable presumption if it complies with the Proposed Rule. Interwest supports the inclusion of a rebuttable presumption in the Proposed Rule as long as the Proposed Rule remains substantive, but if it ever were to revert to a check-the-box rule, then a rebuttable presumption would no longer be proper. Interwest opposes any proposal, such as EPE’s, to change the rebuttable presumption to an irrebuttable presumption. Interwest commented that the rebuttable presumption provision of the Proposed Rule would not eliminate the need for procurement proceedings, but it could render those proceedings less contentious. Interwest proposed language that would increase the filing burden for utilities to earn the rebuttable presumption, by requiring a utility to show that it complied with the RFP portion of the Proposed Rule and that the underlying bid data is not stale.

NMAG commented that if there is to be a rebuttable presumption awarded to the utility, then the IRP process needs to be expanded to allow for a full evaluation of all resources.

NMAREA noted that the Commission, in Case No. 17-00198-UT, removed language from the IRP Rule that created a presumption of reasonableness for resources consistent with an approved IRP for lack of authority. NMAREA commented that the Commission has not...

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384 See EPE Reply at 11.
385 Id. at 12.
386 Interwest Reply at 7.
387 Id.
388 Id.
389 Id. at 7, 8.
390 Interwest Reply, Exhibit A at 7, 8.
391 NMAG Response at 13.
392 NMAREA Initial at 8, 9.
cited to any statutory change that would lead an appellate court to differ from the Commission’s previous conclusion.\textsuperscript{393} Further, NMAREA commented that the Commission should not adopt EPE’s or PNM’s proposals.\textsuperscript{394} NMAREA argued that, the creation of a presumption of prudence could result in less than optimal resources given that technologies change over the four year planning horizon, and that the Commission should retain flexibility with respect to approvals.\textsuperscript{395}

254. NMLCG proposed to include the term “statement of need” in Section 17.7.3.13(A) of the Proposed Rule and the term “action plan” in Section 17.7.3.13(B) of the Proposed Rule to make it consistent with other parts of the Proposed Rule.\textsuperscript{396} NMLCG commented that, if there is a material change in circumstances, then the Proposed Rule is ambiguous as to the result, \textit{i.e.}, whether a utility may then still receive a rebuttable presumption.\textsuperscript{397} NMLCG proposed that a utility should not receive a rebuttable presumption if a utility’s proposed resource is the product of materially changed circumstances.\textsuperscript{398} Lastly, NMLCG commented that if the rebuttable presumption would create unnecessary and protracted litigation, then the Commission should just remove it from the Proposed Rule.\textsuperscript{399}

255. Onward responded to Comments of NMAREA regarding Section 17.7.3.13 of the Proposed Rule.\textsuperscript{400} Onward commented that a utility should be entitled to a presumption of prudence given the robust, material modifications proposed to be made to the Existing Rule.\textsuperscript{401} Onward noted that the Commission, in a previous case, removed a similar rebuttable presumption

\textsuperscript{393} NMAREA Response at 7.
\textsuperscript{394} 21-00128-UT, The New Mexico Affordable Reliable Energy Alliance’s Reply Comments On NOPR (“NMAREA Reply") (Mar. 22, 2022) at 2.
\textsuperscript{395} Id.
\textsuperscript{396} NMLCG Initial at 4-6.
\textsuperscript{397} Id. at 5, 6.
\textsuperscript{398} Id. at 6.
\textsuperscript{399} NMLCG Response at 9.
\textsuperscript{400} Onward Response at 7, 8.
\textsuperscript{401} Id. at 7.
from the language of the IRP Rule, however, Onward noted that the Commission’s previous action was never interpreted by the New Mexico Supreme Court and the current elected Commission is entitled to reconsider its previous actions and/or rely on new or different reasoning.\textsuperscript{402} Onward views the rebuttable presumption of the Proposed Rule as an incentive to motivate the utilities to fully engage during the IRP planning stage.\textsuperscript{403}

256. PNM commented that for the Proposed Rule to have more weight, and to make the IRP more than just a planning tool, the Commission must be willing to assign binding weight to Commission approval, however, the Proposed Rule as written is unclear and lacks meaningful weight.\textsuperscript{404} PNM pointed to Nevada as an example of how a presumption of prudence can be effective.\textsuperscript{405} In Nevada, as PNM described, projects and programs in a utility’s action plan are presumed prudent, and if circumstances change and the utility does not update the Nevada Commission, then the presumption ceases.\textsuperscript{406} PNM also points to Colorado as an example to follow.\textsuperscript{407} PNM proposed edits to Section 17.7.3.13 of the Proposed Rule to make the presumption automatic, yet retained the showing of consistency, and eliminated the rebuttable quality.\textsuperscript{408} PNM agreed with Staff that the Commission’s Proposed Rule is inconsistent with its prior decisions, however, PNM disagreed with Staff that the Proposed Rule conflicts with statute.\textsuperscript{409} PNM commented that NMLCG’s proposals should be rejected as being inconsistent with PNM’s.\textsuperscript{410}

\textsuperscript{402} \textit{Id.}
\textsuperscript{403} \textit{Id.} at 7, 8.
\textsuperscript{404} PNM Response at 3, 4.
\textsuperscript{405} \textit{Id.} at 4.
\textsuperscript{406} \textit{Id.}
\textsuperscript{407} \textit{Id.}
\textsuperscript{408} \textit{Id.} at 5.
\textsuperscript{409} See \textit{id.} at 7, 8.
\textsuperscript{410} \textit{Id.} at 15.

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257. Sierra Club and Vote Solar jointly focused their comments on Section 17.7.3.13 of the Proposed Rule.\textsuperscript{411} They commented broadly that utility IRPs often produce results that are later not supported by Commission approvals.\textsuperscript{412} Sierra Club and Vote Solar point out that, if the Proposed Rule had been in effect in previous CCN cases, the utility would have entered those cases with a rebuttable presumption that the proposed resources were needed.\textsuperscript{413} Continuing, they contend that the IRP process is insufficient for due process, thus, the Commission must not grant any evidentiary presumptions.\textsuperscript{414} Finally, Sierra Club and Vote Solar commented that even a fair and supervised RFP process is not a panacea, pointing to the failure of EPE’s independent evaluator in Case No. 19-00349-UT.\textsuperscript{415}

258. SPS commented that the Commission would be pre-determining the utility’s actions by following the Proposed Rule, thus, only awarding a presumption of prudence is inappropriate, rather, the presumption should be irrebuttable, and cost recovery should be fully guaranteed.\textsuperscript{416}

259. Staff commented that the Proposed Rule reverts the language back to the 2007 version of the Rule.\textsuperscript{417} Staff stated that it agrees with the Commissions holding in Case No. 17-00198-UT that the IRP is a planning tool, therefore, providing a presumption of prudence would conflict with Section 62-17-10 of the Efficient Use of Energy Act.\textsuperscript{418} Staff also proposes to clarify Section 17.7.3.13(B) of the Proposed Rule by adding “purchased power agreement proceeding” to

\textsuperscript{411} 21-00128-UT, Initial Comments Of Sierra Club And Vote Solar (Jan. 10, 2022).
\textsuperscript{412} \textit{Id.} at 4, 5.
\textsuperscript{413} \textit{Id.} at 5.
\textsuperscript{414} \textit{Id.} \textit{at} 7.
\textsuperscript{415} \textit{Id.}
\textsuperscript{416} SPS Initial at 9, 10, 30.
\textsuperscript{417} Staff Initial at 5.
\textsuperscript{418} \textit{Id.}
the list of proceedings in which a utility may seek to recover costs incurred to implement the action plan.\textsuperscript{419}

260. REIA did not submit comments on Section 17.7.3.13 of the Proposed Rule.

261. The Commission finds that it should not create a litigated approval process for the statement of need and action plan. Consequently, it would not be proper to award an evidentiary presumption to the outcomes of a process that is not subject to litigation and approval. Thus, the Proposed Rule shall be amended to remove the rebuttable presumption.

262. In response to CLC, it should be noted that the presumption of prudence to have been gained from the Proposed Rule was rebuttable, and any utility benefiting from it would have been subject to scrutiny on any subsequent application for approval of resources, as is the normal course. CLC claims that the Proposed Rule allows for arbitrary and capricious decisions whereby the Commission, for one utility, waives a hearing and awards a presumption, but for another utility, holds a full hearing and does not award a presumption.\textsuperscript{420} On this last point, however, CLC is mistaken – the Commission’s case-by-case application of the rule to unique fact patterns and coming up with different results would be reasonable and expected.

263. The Commission disagrees with EPE – making the presumption of prudence irrebuttable would have violated the due process rights of intervenors and the public. Strengthening the rebuttable presumption would only exacerbate issues of protracted litigation for no claimed public benefit.

264. The Commission is not persuaded by Interwest to increase the filing burden for utilities.

\textsuperscript{419} Id. at 5, 6.
\textsuperscript{420} CLC Reply at 4.
265. The NMAG’s concern that there needs to be enough time to fully evaluate any resources proposed by a utility is prudent, however, it is unfounded as it relates to the Proposed Rule. The Proposed Rule does not provide for an approval process for specific resources. Such approvals would be attained by a utility in a corresponding CCN, PPA, or rate case, and consequently, sufficient time for the evaluation of any resource and litigation is provided-for in those types of dockets.

266. The Commission disagrees with NMAREA’s assertion that the Commission is bound to its previous decisions in Case No. 17-00198-UT given the changed circumstances in law, fact, and New Mexico’s regulatory posture since 2017. The Commission is not bound by stare decisis, nor prohibited from changing its procedure, given the numerous legislative directives enacted since then as discussed previously. “Although a Commission should be able to change its procedure, it should not arbitrarily or capriciously do so without good reasons.” S. Union Gas Co. v. New Mexico Pub. Serv. Comm'n, 1972-NMSC-072, ¶ 9. The Commission is additionally awarded broad discretion to act. Five years later, in 2022, circumstances have changed, facts have changed, law has changed, the Commission has changed, and the Proposed Rule is substantially different than any other amendments to the IRP Rule that the Commission has considered previously. Four of the five current commissioners were not sitting at the time the Commission ruled on Case No. 17-00198-UT. Further, the State Supreme Court, on any appeal of this case, would evaluate the Commission’s decisions and actions in this case, but it would not evaluate the Commission’s decisions and actions in a prior case not under review.

267. The Commission agrees and adopts NMLCG’s first proposal to include the term “statement of need” in Section 17.7.3.13(A) of the Proposed Rule.

268. The Commission agrees with Onward’s comments.
269. To protect the due process rights of intervenors and the public, the Commission shall not create an automatic prudence determination in the Proposed Rule as requested by PNM, nor shall it remove any party’s ability to rebut an evidentiary presumption. The Commission is satisfied with the evidentiary weight as was assigned to the rebuttable presumption in the Proposed Rule as originally written, and the Commission is not persuaded to make the prudence presumption “binding” as requested by PNM. However, to reiterate, the Commission is withdrawing the presumption of prudence from the Proposed Rule.

270. Sierra Club’s and Vote Solar’s most poignant comment cuts against their arguments: they described a previous case in which SPS’s IRP was, in their view, inaccurate and erroneous, yet they determined that the approval of that IRP did not foreclose their issues from being fully and fairly litigated in a subsequent CCN docket. The Proposed Rule’s rebuttable presumption would not have changed that reality; any issues that a party has with a utility’s proposed procurement may be fully and fairly litigated in that proposed procurement’s approval docket, i.e., due process is afforded. Any such litigation opposed to the procurement should, per se, attempt to rebut any presumption if one exists. Rebutting prima facie evidence is not a high bar. Further, Sierra Club’s and Vote Solar’s examples and hypothetical scenarios do not take into account the full context of the Proposed Rule, thus, they are not persuasive.

271. SPS proposed edits to the Proposed Rule would have made the presumption of prudence automatic and irrebuttable, but they would have retained the showing of consistency, and would have mandated cost recovery in a general rate case. Because SPS relies on the “usurping” role of the Commission as a foundation for its arguments against Section 17.7.3.13 of the Proposed

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421 SC/VS Initial at 4.
422 SPS Initial, Exhibit 1 at 6.
Rule, and the Commission disagrees with SPS on that issue for the reasons stated in Part C. of this Final Order, SPS’s arguments must fail here.

272. Staff failed to note in its analysis that the Proposed Rule differs greatly in form and substance than the previous IRP rules and amendments. The Proposed Rule will transform the IRP process into an enhanced planning process with an actual purpose; it will create a pragmatic planning process that helps define and resolve procurement and abandonment issues early, engage stakeholders when their input has the most impact, and support better resource acquisitions. These changed circumstances, as well as there being a different sitting Commission and no binding precedent, compelled the Commission to be able to, once again, pursue the rebuttable presumption issue.

273. The Commission finds that the language in Section 17.7.3.13(B) of the Proposed Rule captures purchased power agreement approval proceedings in the term “resource acquisition proceeding.” Therefore, the Commission is not persuaded to adopt Staff’s recommendations to include that term.

274. The Commission finds, for the reasons stated herein and to be consistent with prior revisions to preceding sections of the Proposed Rule, the Commission shall retract the proposal to create a rebuttable presumption in the Proposed Rule.
xiv. 17.7.3.14 NMAC – Independent Monitor

275. The Proposed Rule states that the Commission shall appoint an independent monitor (“IM”) to oversee the conduct of a utility’s competitive procurement process and to report to the commission regarding the utility’s conformance with the approved statement of need and action plan, and the sufficiency, reasonableness, and competitive fairness and completion of that process.

276. NMAREA cautioned that use of an IM “should not be so intrusive that it supplants or second guesses the planning efforts of the specific IOU.” NMAREA appeared to suggest that a Commission requirement to use an IM might not be necessary, and it pointed to an agreement by PNM to employ an IM in case 20-00222-UT, indicating that “reasonable accommodation can be reached through a good faith negotiations . . . .” NMAREA argued that an IM would not be necessary for large customer’s voluntary renewable energy program procurements because they have special rates and are knowledgeable and sophisticated enough to protect their own interests.

277. CLC raised potential legal and practical concerns about perceived conflicts of interest for the Commission should a procurement decision go to appeal, but these are largely hypothetical issues. CLC noted that insulating the IM from discovery requests exacerbate “plausible” legal objections, however, CLC did not elaborate what those might be. More

423 NMAREA Initial at 15.
424 Id.
425 NMAREA Response at 9.
426 CLC Reply at 9.
427 Id. at 10.
practically, CLC questioned whether ratepayers should be paying for the use of both an IM and an independent evaluator (“IE”), citing EPE’s prior hiring of an IE to oversee procurements.\textsuperscript{428}

278. Some commenters have misconstrued the role of the IM with that of an IE that would actively conduct, score, and rank the utility’s resource procurements. For example, in comments on the Draft Rule, EPE substantially overstated the role and intent of an “independent monitor to intervene in and direct the procurement process and to prejudge the outcome.”\textsuperscript{429} Further, EPE claimed in the same argument, “the use of the IE could cloud the impartiality of the Commission as the ultimate fact-finder and raises the specter of prejudgment of the merits of the procurement.”\textsuperscript{430}

279. The utility commenters added the use of an IM to their list of provisions in the Proposed Rule that they claim lack statutory authority. Part C. of this Final Order deals with the Commission’s authority and will not be repeated here.

280. PNM, in early comments initially stated, “PNM supports the Commission’s proposal to add an independent entity to review certain utility procurements and appreciates the simplicity of the Proposed Rule’s requirement.”\textsuperscript{431} However, in response comments on February 1, 2022, PNM supported Utility Division Staff’s recommendation “to remove the IM from the Proposed Rule entirely.”\textsuperscript{432} Apparently, PNM at some point, changed its position from the IM provision was not a matter of “simplicity” but instead was “unnecessarily cumbersome” and should

\begin{footnotesize}
\footnotesize\textsuperscript{428} Id.
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\footnotespace\textsuperscript{429} 21-00128-UT, El Paso Electric Company’s July 15, 2021 Comments (Jul. 15, 2021) at 21.
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\footnotespace\textsuperscript{430} Id. (emphasis added).
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\footnotespace\textsuperscript{431} 21-00128-UT, Public Service Company of New Mexico’s Comments on Proposed Rule (Jul. 15, 2021) at 23.
\footnotespace
\footnotespace\textsuperscript{432} PNM Response at 2, 8.
\end{footnotesize}
be stricken from the Proposed Rule.\textsuperscript{433} Notwithstanding this apparent change in position, the utility noted that it “has nonetheless committed to using an IM in its future resource procurements.”\textsuperscript{434}

281. Additionally, both Staff and the utilities appeared to object to the Proposed Rule’s proposal that the use of an IM be required by the Commission. Staff recommended that an IM for the procurement process should be at the discretion of the utility, not subject to Commission oversight, arguing that Commission “could be put at risk of potential conflicts of interest in future cases that may involve this procurement.”\textsuperscript{435} While SPS cited its own successful use of an IM in its recent IRP, it stated, “Utilities should choose the IM, with advice from the Commission.”\textsuperscript{436}

282. PNM also argued that use of an IM should be at the utility’s discretion and agreed with Staff that the IM section of the Rule should be deleted.\textsuperscript{437}

283. EPE focused on eliminating the IM role in several procurements as “unnecessary” and questioned the Commission’s “statutory authority to appoint such an entity . . . .”\textsuperscript{438}

284. On the other hand, Interwest argued that an IM “can help verify that the portfolios were developed using accurate modeling assumptions and fair bid review processes, in accordance with the Commission’s orders requiring various comparison methodologies issued in the initial IRP review process” and that “this type of modeling is followed in other states, including Colorado, and by PacifiCorp throughout its service territory.”\textsuperscript{439}

285. NMAG in response comments supported the use of an IM, stating it would be “appropriate and likely to lead to fair and competitive procurement.”\textsuperscript{440} However, NMAG said the

\textsuperscript{433} PNM Initial at 11.
\textsuperscript{434} PNM Response at 8.
\textsuperscript{435} Staff Initial at 6.
\textsuperscript{436} SPS Initial at 31.
\textsuperscript{437} PNM Response at 8.
\textsuperscript{438} EPE Reply at 13, 14.
\textsuperscript{439} Interwest Reply at 5, 6
\textsuperscript{440} NMAG Response at 4.
Commission should be certain to “clarify how the RFP, the Statement of Need, the Action Plan, and the hiring of an IM all intersect.”\footnote{Id. at 3.} NMAG “disagrees with parties’ assertions that the use of an IM would add undue burden and introduce bias to the procurement process. The use of an IM is in line with resource procurement best practices.”\footnote{Id. at 4.} This Final Order addresses the intersection as noted by NMAG in Part B.

286. Onward showed general support for the Proposed Rule’s IM provisions and declared that “proposed use of an Independent Monitor is a common feature in many other jurisdictions and a potentially useful tool” and that “any suggestion that the Independent Monitor would somehow interfere with the Commission’s impartiality in proceedings before it appears to be pure speculation and based only upon hypotheticals.”\footnote{Onward Response at 4, 5.}

No provision of the IPR Rule delegates any statutory obligations or oversight authority from the Commission to the Independent Monitor. The assertion that the involvement of an Independent Monitor in the IRP process would result in the Commission losing its impartiality in administering the cases before it is an affront on the integrity of the Commission and should be rejected.\footnote{Id. at 5.}

287. REIA “supports the approach presented in the NOPR to have an independent monitor oversee the procurement process for competitive resource procurement by public utilities.”\footnote{REIA Initial at 3.}

288. NMLCG, Sierra Club, and Vote Solar did not submit comments on Section 17.7.3.14 of the Proposed Rule.
289. Accordingly, the Commission rejects any implication that the use of an IM, as described in the Proposed Rule, would “cloud” the impartiality of the Commission or “prejudge” the outcome of its resource approval process.

290. The Commission also rejects any contention that an IM is supposed to be independent of the Commission. Section 17.7.3.14(D) of the Proposed Rule explicitly states that prospective IMs “demonstrate independence from public utilities supplying electric service in the state, their affiliates, and likely bidders.”

291. The IM would be an agent of the Commission, acting solely to ensure that the procurement processes and results are fair to all competitors, not that a pre-ordained result should apply. To provide assurance of the IM’s impartiality, the Proposed Rule is amended to state, “The IM shall notify the commission and utility of any perceived or actual conflicts that arise during the course of the procurement process.”

292. The Commission is unpersuaded by EPE’s claim that reliance on the IM’s report on the procurement process without subjecting the IM to cross-examination in a hearing amounts to “denying the utility and other stakeholders the right to perform discovery regarding the conclusions in that report and to cross-examine the Independent Monitor.” As stated in the Proposed Rule, the IM’s report may be cited or responded to by parties in a hearing, but the IM is not itself a party and is not therefore subject to challenge or confrontation by the utilities.

293. Finally, the Commission agrees with the utilities that the matter of cost reimbursement should be clarified. The Proposed Rule is modified to state, “Funding for the services of the IM shall be paid by the utility and treated as a regulatory asset to be recovered.

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446 EPE Reply at 14.
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through rates established in the utility’s next general rate proceeding.” 17.7.3.14(E) NMAC (proposed Nov. 3, 2021) (emphasis added).

294. Further, Section 14 of the Proposed Rule has undergone several other amendments from that which was proposed in the NOPR, as can be seen on Exhibit C. These amendments include but are not limited to: IM appointment procedures, IM reporting procedures, numerous language amendments, and a “scope and purpose” paragraph that was included in response to comments of Commissioners at the August 24, 2022 open meeting.
xv. 17.7.3.15 NMAC – Confidentiality of Information

295. Section 15 of the Proposed Rule is largely unchanged from the Existing Rule, except that the Proposed Rule incorporates more defined numbering of the information, and it includes an added provision regarding the disclosure of bid information requested confidential by a non-winning bidder.

296. EPE commented that the Proposed Rule may deter some bidders from submitting bids during the RFP process because the transparency created by the Proposed Rule may allow competitors to acquire confidential information used to develop rival bids.447 EPE proposed one addition to paragraph 17.7.3.15(B)(2) of the Proposed Rule, which is to add the clause “provided, however, that bidders or potential bidders shall not have access to competitively sensitive information of other bidders or potential bidders.”448

297. Interwest commented that it would be important to protect commercially sensitive information of bidders in the RFP process, and that the Colorado public utility commission’s confidentiality rule provides a good example to follow.449 Interwest’s proposed redlines of Section 17.7.3.15 of the Proposed Rule are allegedly modeled after the Colorado rule.450 Interwest’s edits would require the Commission to develop internal procedures to protect confidential information from disclosure.451 They would dictate who shall receive confidential information and how that information shall be used and referenced.452 Interwest’s edits would permit sealed portions of a

447 EPE Initial at 11.
448 EPE Reply at 9.
449 Interwest Reply at 4.
450 Id.
451 Interwest Reply, Exhibit A at 9.
452 Id. at 9, 10.

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record to be forwarded to any court of competent jurisdiction.\textsuperscript{453} And finally, its edits would dictate how confidential materials are retrieved and retained by Staff and parties.\textsuperscript{454}

298. NMLCG did not submit comments on Section 15 of the Proposed Rule, however, NMLCG supports the Proposed Rule.\textsuperscript{455}

299. Onward did not submit comments on Section 15 of the Proposed Rule, however, Onward commented that it is “very supportive” of the Proposed Rule, which, in its view, is critically needed and will streamline the IRP process and make it more transparent.\textsuperscript{456}

300. PNM commented that it is concerned that the two-year confidentiality period, contained in Section 17.7.3.15(B)(1) of the Proposed Rule, might be problematic for bidders, because procurement often requires more than two years to complete.\textsuperscript{457} That paragraph of the Proposed Rule stated, “Any information submitted under seal pursuant to this paragraph shall remain under seal for a period of \textit{two} years, after which time it shall become public unless the utility seeks and obtains further protection from the commission.” 17.7.3.15(B)(1) NMAC (proposed Nov. 3, 2021) (emphasis added).

301. CLC, NMAG, NMAREA, REIA, Sierra Club, SPS, Staff, and Vote Solar did not submit comments on this Section of the Proposed Rule.

302. The Commission finds that EPE’s comments are well taken and the Commission is persuaded to adopt EPE’s proposed language for Section 17.7.3.15(B)(2) of the Proposed Rule.

303. As revised, the Proposed Rule puts the onus of claiming confidentiality on the utility and, in-part, bidders. It empowers the protective orders and confidentiality agreements filed

\textsuperscript{453} \textit{Id.} at 10.
\textsuperscript{454} \textit{Id.}
\textsuperscript{455} NMLCG Response at 1.
\textsuperscript{456} Onward Initial at 3.
\textsuperscript{457} PNM Initial, Exhibit A at 11.

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and approved in the cases to be the controlling standard by which the Commission and parties interpret claims of confidentiality. Each IRP case may have unique facts and issues that differentiate it from other IRP cases, thus, the Commission, utility, and parties may craft a protective order and confidentiality agreement befitting of the unique circumstances of a respective case. A rule, however, is a one-size-fits-all solution. The Commission is satisfied that the Proposed Rule, along with EPE’s and PNM’s edits, allows for the necessary level of confidentiality protections. Therefore, the Commission is not persuaded to adopt Interwest’s proposal to follow the Colorado rules, which are laudable, but lack flexibility.

304. PNM’s comments on the duration of confidentiality protections are well made and the Commission is persuaded to increase the period to three years. The Commission, however, reminds the utilities that the Proposed Rule allows for the utilities to pursue further confidentiality protections after the three-year period.
xvi. **17.7.3.16 NMAC – Exemptions**

305. Section 16 of the Proposed Rule is unchanged, substantively, from the Existing Rule.

306. EPE commented that Section 17.7.3.16 of the Proposed Rule does not contain enough detail to explain how to resolve conflicts between the rule and a multi-jurisdictional utility.\(^{458}\) EPE proposes that the Commission should provide further details in this Section of the Proposed Rule to “describe how it envisions utilities will resolve conflicts….”\(^{459}\) Alternatively, EPE would have the Proposed Rule be optional for multi-jurisdictional utilities.\(^{460}\)

307. Interwest did not submit comments on Section 16 of the Proposed Rule, however, Interwest submitted a redline edit to add several new provisions.\(^{461}\) Interwest proposed automatic exemptions for specific types of resource procurements.\(^{462}\)

308. NMAREA, NMLCG, and PNM did not submit comments on Section 16 of the Proposed Rule, however, each mentioned the need for the rule to have carve-outs for specific types of resource procurements.\(^{463}\)\(^{464}\)\(^{465}\)

309. Onward did not submit comments on Section 16 of the Proposed Rule, however, Onward commented that it is “very supportive” of the Proposed Rule, which, in its view, is critically needed and will streamline the IRP process and make it more transparent.\(^{466}\)

\(^{458}\) EPE Reply, Attachment A at 9.

\(^{459}\) *Id.*

\(^{460}\) *Id.*

\(^{461}\) Interwest Reply, Exhibit A at 10, 11.

\(^{462}\) *See Id.*

\(^{463}\) *See NMAREA Reply at 3.*

\(^{464}\) *See NMLCG Response at 12, 13.*

\(^{465}\) *See PNM Initial at 16, 17.*

\(^{466}\) Onward Initial at 3.
310. SPS commented that members of a regional transmission organization should be allowed an exemption from the entirety of Proposed Rule. SPS filed significant comments which it claims are relevant to sub-part “B.” of Section 16 of the Proposed Rule, alleging generally that it is incompatible with the obligations of multi-jurisdictional utilities. SPS claims that it would be compelled to use the Proposed Rule’s procedures to add supply to its portfolio to serve customers in Texas. SPS claims the proposed rule would dictate Texas’s resource selection and violate Constitutional principles of interstate commerce. SPS commented that the Proposed Rule could force it to acquire resources on a jurisdiction-specific basis. For these reasons, SPS requests that multi-jurisdictional utilities be exempted from the Proposed Rule.

311. CLC, NMAG, REIA, Sierra Club, Staff, and Vote Solar did not submit comments on Section 16 of the Proposed Rule.

312. First, the Commission will not deregulate a utility subject to its jurisdiction upon the fact that it operates in multiple jurisdictions. It is the utility’s responsibility to meet its legal burdens wherever it serves, at a minimum. The Commission cannot cede its legal authority to a neighboring state for the benefit of the utility and the detriment of its New Mexico customers and is prohibited to do that under the mandates of the PUA and the New Mexico Constitution.

313. Second, EPE does not claim any specific conflicts exist, and EPE does not attempt to analyze potential conflicts that could arise in the future. SPS claims there are specific conflicts, and in the same breath undermines its argument by providing a solution for such conflicts.

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467 SPS Initial at 32.
468 See id. at 23-25, 32.
469 Id. at 23.
470 Id.
471 Id. at 24.
472 Id. at 25.

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(jurisdiction-specific procurements). Another provision of the Proposed Rule, Section 17.7.3.8, actively gives to the utilities the tools to guide the issue of coordinating its resource planning requirements in other states, and the Commission is statutorily bound to consider it and work with multi-jurisdictional utilities to resolve any conflict. § 62-17-10 requires that 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.” § 62-17-10 does not provide that multi-jurisdictional utilities may be exempted from the Proposed Rule for the sake that it may be difficult to coordinate its legal burdens in multiple states, however, it does specifically state that multi-jurisdictional utilities shall file IRPs that coordinate the requirements of multiple jurisdictions. The Statute and Propose Rule call for proactive coordination contrary to the comments of EPE and SPS which simply request to be exempt from New Mexico’s requirements.

314. Further, the “Exemptions” section of the Proposed Rule is identical to the Existing Rule currently on the books, except for non-substantive changes. The Existing Rule has been in effect since 2007. EPE and SPS have had 15 years to evaluate and address the multi-jurisdictional utility issue, or, they have had 15 years of experience to rely on to provide a cogent response to the Proposed Rule and proposal for the Commission to consider. Neither EPE nor SPS provide a remedy for their concerns in this case, thus, the Commission does not deign to conjure one for them.

315. The Commission agrees with commenters that more carve-outs are needed, however, the Commission disagrees that those carve-outs should be housed in the “Exemptions”
section of the Proposed Rule. The Commission addresses carve-outs for specific types of resource procurements as variance requests applied for by the utility in Part D.xvii. of this Final Order which covers Section 17.7.3.17 of the Proposed Rule.
xvii. 17.7.3.17 NMAC – Variances and Amendments

316. Section 17 of the Proposed Rule is changed from the existing Rule, in that the Proposed Rule incorporates more defined numbering of the information, and it includes added provisions related to seven (7) types of procurements that may be exempted from the procurement or other rule requirements as variances applied for by utilities.

317. EPE commented that the Commission should clarify the Proposed Rule so that resource acquisitions for which the IRP and RFP processes are not needed can be excluded.474 EPE lists the following types of procurements for exclusion: small or below a certain benchmark; short-term for specific needs; for individual utility customers; required by a regional transmission organization; emergency; and dedicated to another jurisdiction.475

318. Interwest did not submit comments on Section 17 of the Proposed Rule, however, Interwest did submit a redline edit to eliminate paragraph (D) which stated, “Emergency procurements shall be presented to the commission as a variance pursuant to 17.7.3.17 NMAC.”476 Without further justification, the Commission is not persuaded to eliminate the emergency procurement carve-out in the Proposed Rule.

319. NMAREA commented that the Proposed Rule is overbroad.477 It continued that an extensive planning and procurement process is not necessary for small and/or short-term procurements needed to address specific needs, not necessary for procurements made to provide for voluntary renewable customers, and not necessary for procurements required by a regional

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474 EPE Response at 6.
475 Id.
476 Interwest Reply at 11.
477 NMAREA Initial at 6, 7.
transmission organization.\textsuperscript{478} NMAREA states that the commenters in this case may agree that Section 17.7.3.17 of the Proposed Rule should be clarified.\textsuperscript{479}

320. NMLCG agrees that the Proposed Rule should contain specific carve-outs or exemptions for resources to be excluded from the IRP and RFP processes for two reasons: to reduce filings and conserve party resources, and certain utility decisions have little impact on customers.\textsuperscript{480} NMLCG would support rule exemptions for several circumstances, including: emergency maintenance or repairs; capacity and/or energy of 20 megawatts or less or for PPAs for two years or less; improvements or modifications that alter the production of a generation facility by 20 megawatts or less and for which costs are not more than $20 million; interruptible service; PPA modifications that do not extend the agreements for more than four years and/or do not increase capacity by more than 20 megawatts; and utility administered demand-side programs.\textsuperscript{481}

321. Onward did not submit comments on Section 17 of the Proposed Rule, however, Onward commented that it is “very supportive” of the Proposed Rule, which, in its view, is critically needed and will streamline the IRP process and make it more transparent.\textsuperscript{482}

322. PNM commented that the Proposed Rule is flawed because it contains no affirmative exceptions from the rule, rather, the Proposed Rule requires the utility to seek a variance\textsuperscript{483} which provides less certainty.\textsuperscript{484} PNM references a study from 2008 which proposes that procurements of less than 100 megawatts or for durations of less than one year should be exempted from regulations so that it avoids excessive administrative burden on common

\textsuperscript{478} Id.
\textsuperscript{479} See NMAREA Response at 6.
\textsuperscript{480} NMLCG Response at 12.
\textsuperscript{481} Id. at 12, 13.
\textsuperscript{482} Onward Initial at 3.
\textsuperscript{483} PNM Initial, Exhibit A at 1.
\textsuperscript{484} PNM Initial at 16
purchases.\textsuperscript{485} PNM also references Utah’s regulatory scheme which provides waivers for solicitations in cases of clear emergencies, time-limited commercial or technical opportunities, or when it is in the public interest.\textsuperscript{486} PNM states that Utah requires a prudence review for such a waiver.\textsuperscript{487} PNM explains that Oregon has a similar rule, and Florida has a general rule that gives it power to exempt a utility if it can demonstrate that a proposal would reduce the cost of service.\textsuperscript{488}

323. SPS commented that there is no specific timeline for seeking and obtaining a variance, and that process could cause delays in the utility meeting service obligations.\textsuperscript{489} SPS noted that paragraph (D) of Section 17.7.3.17 of the Proposed Rule was not clear on whether the variance applies to the Rule, IRP, or action plan. The Commission notes that the action plan is part of the IRP, and the IRP is so intertwined with the Rule that a variance from a specific part of the Rule would have the effect of negating or nullifying the specific, corresponding part of the IRP; so it seems that SPS is making a distinction without a difference.

324. CLC, NMAG, REIA, Sierra Club, Staff, and Vote Solar did not submit comments on Section 17 of the Proposed Rule.

325. The Commission is persuaded by EPE, NMAREA, NMLCG, and PNM to include further carve-outs as variance requests in the Proposed Rule for smaller and other resource additions to a utility’s portfolio that otherwise would not make sense to be subject to the Proposed Rule’s IRP and RFP processes. However, the Commission believes that these carve-outs should not be automatic, rather, they should be submitted to the Commission as a variance so that the Commission may retain the appropriate level of regulatory oversight and notice with respect to the

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\textsuperscript{485} Id.
\textsuperscript{486} Id.
\textsuperscript{487} Id.
\textsuperscript{488} See id. at 12, 13.
\textsuperscript{489} SPS Initial at 22.
utility’s resource portfolio. As PNM pointed out in Utah and Florida, other state’s public utility commissions require that the utility seek the exemption from the rule rather than it occurring automatically. The Proposed Rule has been amended to include further types of procurements that may be granted a variance from the Proposed Rule as shown on Exhibit C. Additionally, in response to comments of Commissioners at the August 24, 2022 open meeting, the amendments to the Proposed Rule have been further clarified by adding scope and purpose provisions.
E. Conclusion

326. The Proposed Rule transforms the IRP process from an inefficient and time-consuming planning exercise with little impact on utility operations to a relevant, timely, and productive process for utilities, stakeholders, and regulators alike.

327. Timeframes are shortened to eliminate past issues with stale data. The large, growing, and integral role of transmission and distribution investments is acknowledged and better incorporated into the planning process. Stakeholders are provided a meaningful, early voice which creates new opportunities to define and resolve issues proactively. Three-year action plans are tied directly to an RFP process ensuring the commitment of participants and relevance of the plan. The *de facto* existence of one “on-the-shelf” IRP for regulators and a separate but hidden “real” IRP at the utility is eliminated. Transparency for regulators and stakeholders is enhanced. And numerous past issues with unfair and non-competitive procurement practices are addressed.

328. By better harmonizing the IRP with procurement and existing PRC rules, encouraging early issue resolution, and minimizing opportunities for litigation, the Proposed Rule should reduce workloads and redundancies for all participants at each stage of the regulatory process.

329. Finally, the Proposed Rule purposefully leaves final decisions on the statement of need, action plan, and RFP structure in the hands of utilities. Stakeholders are given the ability to use modelling tools, give input on the plan, and document disagreements with utilities early in the process so utilities can make timely adjustments. Utilities choosing not to incorporate input will have early warning about potential challenges in future CCN, PPA, or other procurement and ratemaking proceedings. Thus, the Proposed Rule enables timely negotiation in an information
rich environment. In short, the Proposed Rule preserves utility management prerogatives while rewarding collaboration over litigation.

330. The Commission finds that the Proposed Rule is a first step towards combining, streamlining, and simplifying all Commission processes for more timely decisions and better outcomes.

331. The Commission has the authority to promulgate and adopt the Proposed Rule under: the New Mexico Constitution, Article XI, Section 2; the Public Regulation Commission Act, § 8-8-4(B)(10) (1999), § 8-8-15 (2001); the Public Utility Act, Articles 1 to 6 and 8 to 13, § 62-3-1 (2008), § 62-3-2 (1985), § 62-3-3(H) (2009), § 62-6-4 (2003), § 62-8-1 (1953), and § 62-8-13 (2021); the Efficient Use of Energy Act, § 62-17-10 (2005); the Renewable Energy Act, § 62-16-1 to -10 (2004, as amended through 2021); the Energy Transition Act, § 62-18-1 to -23 (2019); the grid modernization statute, § 62-8-13 (2021); and the Community Solar Act, § 62-16B-1 to -8 (2021).

332. The Commission has jurisdiction over this matter.

333. The Commission finds that the Notice of Proposed Rulemaking, issued on November 4, 2021 in this case, satisfied format, publication, and public notice requirements pursuant to the State Rules Act (“SRA”), NMSA 1978, §§ 14-4-1 to -11 (1967, as amended through 2017), and the Public Regulation Commission Act, § 8-8-15.

334. The Commission finds that the formal and informal workshop proceedings, and formal public hearing, held so far in this matter have satisfied stakeholder outreach.

335. The Commission finds that the record closed on April 12, 2022.
336. In response to comments filed in this docket and comments made at the workshops and public hearing, the Commission has revised the Proposed Rule as originally proposed on November 4, 2021, as shown on Exhibit C.

337. Exhibit B, attached hereto, portrays the Proposed Rule as it amends the Existing Rule (current as of August 29, 2017).

338. The Commission finds that this Final Order should adopt the amendments as set forth herein.

339. The Commission finds that the Proposed Rule, as amended by the findings and conclusions of this Final Order, attached hereto as Exhibit A, should be adopted by the Commission.
IT IS THEREFORE ORDERED:

A. The Proposed Rule, attached hereto as Exhibit A, amending 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.

B. The Proposed Rule 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.

C. 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.

D. The Commission’s advisory staff and Office of General Counsel are hereby authorized to make non-substantive changes to the Proposed Rule as necessary for the purposes of proofing and formatting prior to publication.

E. The record shall remain closed.

F. Copies of this Final Order, 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.

G. This Order is effective immediately.
ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 14th day of September, 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
17.7.3.1  ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.7.3.1 NMAC - N, 4/16/2007]

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 - N, 4/16/2007; A, 9/14/2022]

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, Sections 8-8-4(B)(10) and 8-8-15 NMSA 1978; the Public Utility Act, Section 62-3-1 NMSA 1978, et seq., Section 62-3-2, Section 62-3-3(H), Section 62-6-4, Section 62-8-1, and Section 62-8-13; the Efficient Use of Energy Act, Section 62-17-1 NMSA 1978, et seq., and Section 62-17-10; the Renewable Energy Act, Section 62-16-1 NMSA 2004, as amended 2021, et seq.; the Energy Transition Act, 62-18-1 NMSA 2019 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 - N, 4/16/2007; A, 8/29/2017; A, 9/14/2022]

17.7.3.4  DURATION: Permanent.
[17.7.3.4 NMAC - N, 4/16/2007]

17.7.3.5  EFFECTIVE DATE: April 16, 2007, unless a later date is cited at the end of a section.
[17.7.3.5 NMAC - N, 4/16/2007]

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 – N, 4/16/2007; A, 9/14/2022]

17.7.3.7  DEFINITIONS: When used in this rule, unless otherwise specified the following definitions shall apply:
A. action plan means the proposed process and specific actions the utility shall carry out to implement the integrated resource plan spanning a three (3) year period following the filing of the utility’s integrated resource plan;
B. **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;

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. **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;

E. **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;

F. **derating** means a temporary or permanent reduction in the expected power output of a generating facility;

G. **distributed energy resource** (DER) means the equipment used by an interconnection customer to generate and/or store electricity that operates in parallel with the electric distribution system. DER may include, but is not limited to: an electric generator and/or 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. DER may not always be interconnected with the bulk power system. 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. DER may be capable of exporting active power to an electric power system. DER includes the customer’s interconnection facilities but shall not include the area electric power system operator’s interconnection facilities;

H. **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.

I. **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;

J. **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. Specifically, it means a commercially available technology that:

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

      (a) 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

      (b) 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;

   (2) is composed of stationary equipment;

   (3) 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

   (4) 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;

K. **facilitated stakeholder process** means the statutory public advisory process pursuant to NMSA 1978, Section 62-17-10 (2005), 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;

L. **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;
M. 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;

N. 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;

O. 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. 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. 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;

P. 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;

Q. load forecasting means the prediction of the demand for electricity and energy over the planning period for the utility;

R. 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;

S. 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;

T. 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;

U. net load means the difference between forecasted load and expected electricity production from variable generation resources;

V. planning period means the future period for which a utility develops its IRP, which, for purposes of this rule, is 20 years;

W. 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;

X. 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;

Y. renewable energy means electrical energy generated by use of renewable energy resources and delivered to a public utility;

Z. renewable energy resource means the following energy resources, with or without energy storage:
   (1) solar, wind and geothermal;
   (2) hydropower facilities brought in service on or after July 1, 2007;
   (3) 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:
      (a) be of appropriate scale to have sustainable feedstock in the near vicinity;
      (b) have zero life cycle carbon emissions; and
      (c) meet scientifically determined restoration, sustainability and soil nutrient principles;
   (4) fuel cells that do not use fossil fuels to create electricity; and
   (5) landfill gas and anaerobically digested waste biogas; and

AA. statement of need means a description and explanation of the amount and type of new resources, expressed in terms of energy and/or capacity, necessary to reliably meet an identified level of electricity demand in the planning horizon and to effect state policies

[17.7.3.7 NMAC - N, 4/16/2007; A, 8/29/2017; A, 9/14/2022]
INTEGRATED RESOURCE PLANS FOR ELECTRIC UTILITIES:

A. A public utility supplying electric service to customers shall file with the commission every three (3) 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;
      (a) new load and facilities arising from special service agreements, economic development projects, and affiliate transactions;
   (4) identification of resource options, see Appendix A;
   (5) statement of need, see 17.7.3.10 NMAC;
   (6) determination of the resource portfolio, see Appendix A; and
   (7) 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 (2) 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.

FACILITATED STAKEHOLDER PROCESS; IRP PROCESS:

A. At least six (6) 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, not to exceed five (5) 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. Not later than six (6) 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 and/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, 9/14/2022]

17.7.3.10 STATEMENT OF NEED:

A. The statement of need is a description and explanation of the amount and type of new resources, expressed in terms of energy and/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 and/or 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, 9/14/2022]

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 (3) 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 (2) reports describing the utility’s implementation of the action plan. These reports shall be filed in the existing IRP docket one (1) year after the filing of the IRP, and two (2) 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, 9/14/2022]
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 (5) 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, evaluating, and ranking 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 paragraph 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 and ranking 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 ranking 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 75 days after the utility receives bids for its projected needs, the utility shall provide the IM with a ranking 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 rank 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/or 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 and/or create long-term waste disposal issues;
6. resource dispatchability and/or operational flexibility benefits or constraints;
7. the utility shall include in its evaluation the estimated cost and/or environmental impact of transmission upgrades or distribution infrastructure upgrades necessary to deliver the project’s energy, capacity, or services;
(a) 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

(b) 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 ranking 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 17.7.3.11(D) NMAC.

M. Nothing in this rule shall be construed to prevent a public utility from procuring resources as required by the REA, NMSA 1978, Section 62-16-4 (2019), the EUEA, NMSA 1978, Section 62-17-5 (2020), or Rule 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, 9/14/2022]

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, 9/14/2022]

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 (4) 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 paragraph 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 17.7.3.12(C) 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 through -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, ranking 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 and/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 paragraph 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 paragraph G(1)(b) 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 17.7.3.14(I)(1) NMAC.

L. The commission shall not appoint an independent monitor for a utility’s procurement for which the commission grants a variance pursuant to paragraph D of 17.7.3.17 NMAC.

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 paragraph 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 (3) 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.

17.7.3.16 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. 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.

17.7.3.17 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) emergency procurements;
      (2) capacity and/or energy from newly-constructed, utility-owned, supply-side resources with a nameplate rating of 20 megawatts or less;
      (3) 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;
(4) 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;

(5) interruptible service provided to the utility’s electric customers;

(6) modification to, or amendment of, existing power purchase agreements provided that the modification or amendment does not extend the agreement more than four (4) 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

(7) utility administered demand-side programs.

[17.7.3.17 NMAC - N, 4/16/2007; A, 9/14/2022]

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:


Other History:
Only that applicable portion of NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities (filed 06-30-1988) was renumbered, reformatted and replaced by 17.7.3 NMAC, Integrated Resource Plans for Electric Utilities, effective 4/16/2007.
APPENDIX A

DESCRIPTION OF EXISTING RESOURCES:

A. The mandate of the energy transition act to incorporate 80% renewable energy onto the grid by 2040 requires utilities operating in New Mexico to develop flexible management of grid resources. Utilities may categorize resources into the following four functional groups to reflect their role in serving this need:

1. load modifying resources – includes but not limited to energy efficiency, distributed generation, and time of use tariffs;
2. renewable load serving resources – includes both utility scale solar and wind technologies;
3. conventional load serving resources – includes coal, nuclear, and gas technologies; and
4. grid balancing resources – includes demand response, storage technologies, natural gas combustion engines, and reciprocating engines.

B. The utility’s description of its existing resources used to serve its jurisdiction load shall include:

1. name(s) and location(s) of utility-owned generation facilities;
2. rated capacity of utility-owned generation facilities;
3. fuel type, heat rates, annual capacity factors, and availability factors projected for utility-owned generation facilities over the planning period;
4. cost information, including capital costs, fixed and variable operating and maintenance costs, fuel costs, and purchased power costs;
5. existing generation facilities’ expected retirement dates;
6. amount of capacity obtained or to-be-obtained through existing purchased power contracts or agreements relied upon by the utility, including the fuel type, if known, and contract duration;
7. estimated in-service dates for utility-owned generation facilities for which certificates of public convenience and necessity (CCN) have been granted but which are not in-service;
8. amount of capacity and, if applicable, energy purchased via the utility’s participation in regional energy markets;
9. description of existing demand-side resources, including:
   a. demand-side resources deployed at the time the IRP is filed; and
   b. demand-side resources approved by the commission, but not yet deployed at the time the IRP is filed;
      i. information provided concerning existing demand-side resources shall include, at a minimum, the expected remaining useful life of each demand-side resource and the energy savings and reductions in peak demand, as appropriate, made by the demand-side resource;
10. description of each existing energy storage resource, including energy storage resources approved but not yet deployed at the time the IRP is filed, and at a minimum, the expected remaining useful life of the resource, its maximum capacity, dispatch characteristics, and operating costs;
11. reserve margin and reserve reliability requirements with which the utility must comply, and the methodology used to calculate its reserve margin;
12. existing transmission capabilities:
   a. the utility shall report its existing and under-construction transmission facilities of 115 kV and above, including associated switching stations and terminal facilities;
   b. the utility shall specifically identify the location and extent of transfer capability limitations on its transmission network that may affect the future siting of supply-side resources; and
   c. the utility shall describe all transmission planning or coordination groups to which it is a party, including state and regional transmission groups, transmission companies, and coordinating councils with which the utility may be associated;
13. existing distribution capabilities:
   a. the utility shall report its existing distribution facilities, under-construction distribution facilities, or distribution facilities approved but not-yet-deployed at the time the IRP is filed, including all substations, switching stations, power lines and other equipment, below 115 kV, including associated transformers and feeder lines;
   b. the utility shall specifically identify the location and extent of capability limitations on its distribution network that may affect the future siting of distributed energy resources; and
   c. the utility shall describe all distribution planning or coordination groups to which it is a party;
14. details of any planned or anticipated transmission and distribution network upgrades;
environmental impacts of existing supply-side resources:

(a) the utility shall provide the percentage of megawatt-hours generated by each fuel used by the utility on its existing system for the latest year for which such information is available;

(b) to the extent feasible, for each existing supply-side resource on its system, the utility shall present emission rates (expressed in pounds emitted per megawatt-hour generated) of criteria pollutants as well as carbon dioxide and mercury; and

(c) to the extent feasible, for each existing supply-side resource on its system, the utility shall present the water consumption rate;

(15) a summary of back-up fuel capabilities and options; and

(16) an assessment of the critical facilities susceptible to supply-source disruptions, extreme weather events, or other failures.

CURRENT LOAD FORECAST:
A. The IRP shall contain a load forecast for each year of the planning period.
B. The load forecast shall incorporate the following information and projections:

(1) annual sales of energy, net load, and reliability reserves on a system-wide basis, by customer class, and disaggregated among commission jurisdictional sales, FERC jurisdictional sales, and sales subject to the jurisdiction of other states;

(2) weather normalization adjustments;

(3) assumptions for economic and demographic factors relied on in load forecasting;

(4) expected capacity and energy impacts of existing and proposed demand-side resources; and

(5) typical historic day and week load patterns on a system-wide basis for each major customer class.
C. The utility shall develop an expected growth forecast, a high-growth forecast, and a low-growth forecast, or an alternative forecast that provides an assessment of uncertainty (e.g., probabilistic techniques).
D. Required detail.

(1) The utility shall explain how the utility’s load forecasts account for the demand-side savings attributable to actions other than the utility-sponsored demand-side resources for each major customer class, as well as the effect of those utility-sponsored demand-side resources for each major customer class on the load forecasts.

(2) The utility shall compare the annual forecast in its most recently filed resource plan to the annual forecast in the current resource plan.

(a) In its initial IRP filing, the utility shall provide information demonstrating how well its forecasts predicted demand (during the preceding four years.)

(3) The utility shall explain and document the assumptions, methodologies, and any other inputs upon which it relied to develop its load forecast.

LOAD AND RESOURCES TABLE:
A. The IRP shall contain a table of the utility’s existing loads and resources at the time of filing.
B. The load and resources table, to the extent practical, shall contain the appropriate components from the load forecast.
C. Resources shall include:

(1) utility-owned generation;

(2) energy storage resources;

(3) existing and future contracted-for purchased power, including qualifying facility purchases;

(4) purchases through net metering programs, as appropriate;

(5) demand-side resources, as appropriate; and

(6) other resources relied upon by the utility, such as pooling, wheeling, or coordination agreements effective at the time the IRP is filed.

IDENTIFICATION OF RESOURCE OPTIONS:
A. The utility shall identify additional resource options in its IRP that it evaluated for selection as part of the utility’s portfolio.
B. In identifying additional resource options, the utility should consider all supply-side, energy storage, and demand-side resources.
C. The utility shall describe the assumptions and methodologies used in evaluating its resource options, including, as applicable:
D. For supply-side resource options, the utility shall identify the assumptions actually used for capital costs, fixed and variable operating and maintenance costs, fuel costs forecast by year, and purchased power demand and energy charges forecast by year, fuel type, heat rates, annual capacity factors, availability factors and, emission rates (expressed in pounds emitted per kilowatt-hour generated) of criteria pollutants as well as carbon dioxide and mercury.

E. The utility shall describe its existing rates and tariffs that incorporate load management or load modifying concepts. The utility shall also describe how changes in rate design might assist in meeting, delaying or avoiding the need for new capacity.

F. In identifying resource options, the utility shall include a description of the projected emissions of carbon dioxide for any resources proposed to be owned by the utility and for any new generic resources included in the utility’s modeling for its resource plan;

DETERMINATION OF THE RESOURCE PORTFOLIO:

A. To identify the most cost-effective resource portfolio, utilities shall evaluate all supply-side resources, energy storage, and demand-side resource options on a consistent and comparable basis, taking into consideration risk and uncertainty, including but not limited to financial, competitive, operational, fuel supply, price volatility, downstream impacts on transmission and distribution investments, extreme-weather events, and anticipated environmental regulation costs.

B. The utility shall evaluate the cost of each resource through its projected life with a life-cycle or similar analysis.

C. The utility shall consider and describe ways to mitigate ratepayer risk.

D. Each electric utility shall provide a summary of how the following factors were considered in, or affected, the development of resource portfolios:

(1) load management or modification and energy efficiency requirements;
(2) renewable energy portfolio requirements;
(3) existing and anticipated environmental laws and regulations, and, if determined by the commission, the standardized cost of carbon emissions;
(4) fuel diversity;
(5) susceptibility to fuel interdependencies;
(6) transmission or distribution constraints; and
(7) system reliability and planning reserve margin requirements.

E. Alternative portfolios. In addition to the detailed description of what the utility determines to be the most cost-effective resource portfolio, the utility shall develop alternative portfolios by altering risk assumptions and other parameters developed by the utility.
17.7.3.1 ISSUING AGENCY: New Mexico Public Regulation Commission.

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.

17.7.3.3 STATUTORY AUTHORITY: This rule is adopted under the authority vested in this commission by the New Mexico Public Regulation Commission Act, Section 8-8-15 NMSA 1978; the Public Utility Act, Section 62-3-1 NMSA 1978, et seq.; and the Efficient Use of Energy Act, Section 62-17-1 NMSA 1978, et seq.

17.7.3.4 DURATION: Permanent.

17.7.3.5 EFFECTIVE DATE: April 16, 2007, unless a later date is cited at the end of a section.

17.7.3.6 OBJECTIVE: The purpose 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. For resources whose costs and service quality are equivalent, the utility should prefer resources that minimize environmental impacts.

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.
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.

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

A. 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. 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;
C. demand-side resources means energy efficiency and load management, as those terms are defined in the Efficient Use of Energy Act;
D. 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 amount or quality of energy services;
E. 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;
F. heat rate means the ratio of energy inputs used by a generating facility expressed in BTUs (British thermal units), to the energy output of that facility expressed in kilowatt-hours;
G. 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;
H. load forecasting means the prediction of the demand for electricity over the planning period for the utility;
I. 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;
J. 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;
K. planning period means the future period for which a utility develops its IRP; for purposes of this rule, the planning period is 20 years;
L. 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;
M. renewable energy means electrical energy generated by means of a low or zero emissions generation technology with substantial long-term production potential and generated by use of renewable energy resources that may include solar, wind, hydropower, geothermal, fuel cells that are not fossil fueled and biomass resources; biomass resources are fuels, such as agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas and anaerobically digested waste biomass; renewable energy does not include fossil fuel or nuclear energy.

17.7.3.8 GENERAL PROVISIONS: The commission adopts this rule in order to fulfill the requirements of Section 62-17-10 NMSA 1978.

A. action plan means the proposed process and specific actions the utility shall carry out to implement the integrated resource plan spanning a three (3) year period following the filing of the utility’s integrated resource plan;
B. 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;
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. 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;

E. 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;

F. derating means a temporary or permanent reduction in the expected power output of a generating facility;

G. distributed energy resource (DER) means the equipment used by an interconnection customer to generate and/or store electricity that operates in parallel with the electric distribution system. DER may include, but is not limited to: an electric generator and/or 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. DER may not always be interconnected with the bulk power system. 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. DER may be capable of exporting active power to an electric power system. DER includes the customer’s interconnection facilities but shall not include the area electric power system operator’s interconnection facilities;

H. 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.

I. 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;

J. 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. Specifically, it means a commercially available technology that:

(1) uses mechanical, chemical, or thermal processes to:
   (a) 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
   (b) 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;

(2) is composed of stationary equipment;

(3) 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

(4) 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;

K. facilitated stakeholder process means the statutory public advisory process pursuant to NMSA 1978, Section 62-17-10 (2005), 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;

L. 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;

M. 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;

N. 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;

O. 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. 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. 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;

P. 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;

Q. load forecasting means the prediction of the demand for electricity and energy over the planning period for the utility;

R. 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;

S. 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;

T. 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;

U. net load means the difference between forecasted load and expected electricity production from variable generation resources;

V. planning period means the future period for which a utility develops its IRP, which, for purposes of this rule, is 20 years;

W. 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;

X. 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;

Y. renewable energy means electrical energy generated by use of renewable energy resources and delivered to a public utility;

Z. renewable energy resource means the following energy resources, with or without energy storage:

1. solar, wind and geothermal;
2. hydropower facilities brought in service on or after July 1, 2007;
3. 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:
   a. be of appropriate scale to have sustainable feedstock in the near vicinity;
   b. have zero life cycle carbon emissions; and
   c. meet scientifically determined restoration, sustainability and soil nutrient principles;
4. fuel cells that do not use fossil fuels to create electricity; and
5. landfill gas and anaerobically digested waste biogas; and

AA. statement of need means a description and explanation of the amount and type of new resources, expressed in terms of energy and/or capacity, necessary to reliably meet an identified level of electricity demand in the planning horizon and to effect state policies.

[17.7.3.7 NMAC - N, 4/16/2007; A, 8/29/2017; A, 9/14/2022]
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(3) load and resources table;
(4) identification of resource options;
(5) description of the resource and fuel diversity;
(6) identification of critical facilities susceptible to supply-source or other failures;
(7) determination of the most cost effective resource portfolio and alternative portfolios;
(8) description of public advisory process;
(9) action plan; and
(10) other information that the utility finds may aid the commission in reviewing the utility’s planning processes.

C. Description of existing resources. The utility’s description of its existing resources used to serve its jurisdictional retail load at the time the IRP is filed shall include:

1. name(s) and location(s) of utility-owned generation facilities;
2. rated capacity of utility-owned generation facilities;
3. fuel type, heat rates, annual capacity factors and availability factors projected for utility-owned generation facilities over the planning period;
4. cost information, including capital costs, fixed and variable operating and maintenance costs, fuel costs, and purchased power costs;
5. existing generation facilities’ expected retirement dates;
6. amount of capacity obtained or to be obtained through existing purchased power contracts or agreements relied upon by the utility, including the fuel type, if known, and contract duration;
7. estimated in-service dates for utility-owned generation facilities for which a certificate of public convenience and necessity (CCN) has been granted but which are not in-service;
8. amount of capacity and, if applicable, energy, provided annually to the utility pursuant to wheeling agreements and the duration of such wheeling agreements;
9. description of existing demand-side resources, including
   (a) demand-side resources deployed at the time the IRP is filed; and
   (b) demand-side resources approved by the commission, but not yet deployed at the time the IRP is filed; information provided concerning existing demand-side resources shall include, at a minimum, the expected remaining useful life of each demand-side resource and the energy savings and reductions in peak demand, as appropriate, made by the demand-side resource.
10. description of each existing and approved energy storage resources, to include, at a minimum, the expected remaining useful life of the resource, its maximum capacity and dispatch characteristics, and operating costs;
11. reserve margin and reserve reliability requirements (e.g. FERC, power pool, etc.) with which the utility must comply and the methodology used to calculate its reserve margin;
12. existing transmission capabilities:
   (a) the utility shall report its existing, and under-construction, transmission facilities of 115 kV and above, including associated switching stations and terminal facilities; the utility shall specifically identify the location and extent of transfer capability limitations on its transmission network that may affect the future siting of supply-side resources;
   (b) the utility shall describe all transmission planning or coordination groups to which it is a party, including state and regional transmission groups, transmission companies, and coordinating councils with which the utility may be associated.
13. environmental impacts of existing supply-side resources:
   (a) the utility shall provide the percentage of kilowatt-hours generated by each fuel used by the utility on its existing system, for the latest year for which such information is available;
   (b) to the extent feasible, for each existing supply-side resource on its system, the utility shall present emission rates (expressed in pounds emitted per kilowatt-hour generated) of criteria pollutants as well as carbon dioxide and mercury;
   (c) to the extent feasible, for each existing supply-side resource on its system, the utility shall present the water consumption rate.
14. a summary of back-up fuel capabilities and options.

D. Current load forecast.

(1) The utility shall provide a load forecast for each year of the planning period; the load forecast shall incorporate the following information and projections:
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(a) annual sales of energy and coincident peak demand on a system-wide basis, by customer class, and disaggregated among commission jurisdictional sales, FERC jurisdictional sales, and sales subject to the jurisdiction of other states;

(b) annual coincident peak system losses and the allocation of such losses to the transmission and distribution components of the system;

(c) weather normalization adjustments;

(d) assumptions for economic and demographic factors relied on in load forecasting;

(e) expected capacity and energy impacts of existing and proposed demand-side resources; and

(f) typical historic day or week load patterns on a system-wide basis for each major customer class.

(2) The utility shall develop base-case, high-growth and low-growth forecasts, or an alternative forecast that provides an assessment of uncertainty (e.g., probabilistic techniques).

(3) Required detail.

(a) The utility shall explain how the demand-side savings attributable to actions other than the utility-sponsored demand-side resources for each major customer class are accounted for in the utility’s load forecast and the effect, as appropriate, on its load forecast of the utility-sponsored demand-side resources on each major customer class.

(b) The utility shall compare the annual forecast of coincident peak demand and energy sales made by the utility to the actual coincident peak demand and energy sales experienced by the utility for the four years preceding the year in which the plan under consideration is filed. In addition, the utility shall compare the annual forecast in its most recently filed resource plan to the annual forecast in the current resource plan. In its initial IRP filing, the utility shall provide information demonstrating how well its forecasts during the preceding four years predicted demand.

(c) The utility shall explain and document the assumptions, methodologies, and any other inputs upon which it relied to develop its load forecast.

E. Load and resources table. The utility shall provide a load and resources table of its existing loads and resources at the time of its IRP filing. The load and resources table, to the extent practical, shall contain the appropriate components from the load forecast. Resources shall include:

(1) utility-owned generation;

(2) energy storage resources;

(3) existing and future contracted-for purchased power including qualifying facility purchases;

(4) purchases through net metering programs, as appropriate;

(5) demand-side resources, as appropriate; and

(6) other resources relied upon by the utility, such as pooling, wheeling, or coordination agreements effective at the time the plan is filed.

F. Identification of resource options.

(1) In identifying additional resource options, the utility shall consider all feasible supply-side, energy storage, and demand-side resources. The utility shall describe in its plan those resources it evaluated for selection to its portfolio and the assumptions and methodologies used in evaluating its resource options, including, as applicable: life expectancy of the resources, the recognition of whether the resource is replacing/adding capacity or energy, dispatchability, lead-time requirements, flexibility and efficiency of the resource.

(2) For supply-side resource options, the utility shall identify the assumptions actually used for capital costs, fixed and variable operating and maintenance costs, fuel costs forecast by year, and purchased power demand and energy charges forecast by year, fuel type, heat rates, annual capacity factors, availability factors and, to the extent feasible, emission rates (expressed in pounds emitted per kilowatt-hour generated) of criteria pollutants as well as carbon dioxide and mercury.

(3) The utility shall describe its existing rates and tariffs that incorporate load management or load shifting concepts. The utility shall also describe how changes in rate design might assist in meeting, delaying or avoiding the need for new capacity.

G. Determination of the most cost effective resource portfolio and alternative portfolios.

(1) To identify the most cost effective resource portfolio, utilities shall evaluate all feasible supply, energy storage, and demand-side resource options on a consistent and comparable basis, and take into consideration risk and uncertainty (including but not limited to financial, competitive, reliability, operational, fuel supply, price volatility and anticipated environmental regulation). The utility shall evaluate the cost of each
resource through its projected life with a life-cycle or similar analysis. The utility shall also consider and describe ways to mitigate ratepayer risk.

(2) Each electric utility shall provide a summary of how the following factors were considered in, or affected, the development of resource portfolios:
   (a) load management and energy efficiency requirements;
   (b) renewable energy portfolio requirements;
   (c) existing and anticipated environmental laws and regulations, and, if determined by the commission, the standardized cost of carbon emissions;
   (d) fuel diversity;
   (e) susceptibility to fuel interdependencies;
   (f) transmission constraints; and
   (g) system reliability and planning reserve margin requirements.

(3) Alternative portfolios. In addition to the detailed description of what the utility determines to be the most cost-effective resource portfolio, the utility shall develop a reasonable number of alternative portfolios by altering risk assumptions and other parameters developed by the utility and the public advisory process.

II. Public advisory process. Public input is critical to the development and implementation of integrated resource planning in New Mexico. A utility shall incorporate a public advisory process in the development of its IRP. At least one year prior to the filing date of its IRP, a utility shall initiate a public advisory process to develop its IRP. The purpose of this process shall be to receive public input, solicit public commentary concerning resource planning and related resource acquisition issues. This process shall be administered as follows:

(1) The utility shall initiate the process by providing notice at least 30 days prior to the first scheduled meeting to the commission, interveners in its most recent general rate case, and participants in its most recent renewable energy, energy efficiency and IRP proceedings; the utility shall at the same time, also publish this notice in a newspaper of general circulation in every county which it serves and in the utility’s billing inserts; this notice shall consist of:
   (a) a brief description of the IRP process;
   (b) time, date and location of the first meeting;
   (c) a statement that interested individuals should notify the utility of their interest in participating in the process; and
   (d) utility contact information.

(2) Upon receipt of the initial notice, the commission may designate a facilitator to assist the participants with dispute resolution.

(3) The utility or its designee shall chair the public participation process, schedule meetings, and develop agendas for these meetings. With adequate notice to the utility, participants shall be allowed to place items on the agenda of public participation process meetings.

(4) Meetings held as part of the public participation process shall be noticed and scheduled on a regular basis and shall be open to members of the public who shall be heard and their input considered as part of the public participation process. Upon request, the utility shall provide an executive summary containing a non-technical description of its most recent IRP.

(5) The purposes of the public participation process are for the utility to provide information to, and receive and consider input from, the public regarding the development of its IRP. Topics to be discussed as part of the public participation process include, but are not limited to, the utility’s load forecast; evaluation of existing supply- and demand side resources; the assessment of need for additional resources; identification of resource options; modeling and risk assumptions and the cost and general attributes of potential additional resources; and development of the most cost-effective portfolio of resources for the utility’s IRP.

(6) In its initial IRP advisory process, the utility and participants shall explore a procedure to coordinate the IRP process with renewable energy procurement plans and energy efficiency and load management program proposals. Any proposed procedure shall be designed to conserve commission, participant and utility resources and shall indicate what, if any, variances may be needed to effectuate the proposed procedure.

I. Action plan.

(1) The utility’s action plan shall detail the specific actions the utility will take to implement the integrated resource plan spanning a four-year period following the filing of the utility’s IRP. The action plan will include a status report of the specific actions contained in the previous action plan.

(2) 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.
A. A public utility supplying electric service to customers shall file with the commission every three (3) 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;
   (a) new load and facilities arising from special service agreements, economic development projects, and affiliate transactions;
   (4) identification of resource options, see Appendix A;
   (5) statement of need, see 17.7.3.10 NMAC;
   (6) determination of the resource portfolio, see Appendix A; and
   (7) 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 (2) 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.

FACILITATED STAKEHOLDER PROCESS; IRP PROCESS:

A. At least six (6) 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, not to exceed five (5) 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. Not later than six (6) 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 and/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, 9/14/2022]

17.7.3.10 OBLIGATION TO NOTIFY OF MATERIAL CHANGES AND UPDATE ACTION PLAN:
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 IRP had those events been recognized when the IRP was developed. As part of this notification, the utility shall explain how this event(s) has changed the action plan.

[17.7.3.10 NMAC - N, 4/16/2007]

17.7.3.10 STATEMENT OF NEED:
A. The statement of need is a description and explanation of the amount and type of new resources, expressed in terms of energy and/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 and/or 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, 9/14/2022]

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 (3) 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 (2) reports describing the utility’s implementation of the action plan. These reports shall be filed in the existing IRP docket one (1) year after the filing of the IRP, and two (2) 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.
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 (5) 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, evaluating, and ranking 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 paragraph 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 and ranking 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 ranking 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 75 days after the utility receives bids for its projected needs, the utility shall provide the IM with a ranking 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 rank 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/or 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 and/or create long-term waste disposal issues.
(6) resource dispatchability and/or operational flexibility benefits or constraints;
(7) the utility shall include in its evaluation the estimated cost and/or environmental impact of transmission
upgrades or distribution infrastructure upgrades necessary to deliver the project’s energy, capacity, or
services;
(a) 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
(8) 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 ranking 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 17.7.3.11(D) NMAC.
M. Nothing in this rule shall be construed to prevent a public utility from procuring resources as required by the
17.9.570 NMAC. Such procurements shall be included in the utility’s forecasting, statement of need, and
action plan.

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.

17.7.3.14 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 (4) 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 designated, 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 paragraph 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 17.7.3.12(C) 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 through -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, ranking 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 and/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 paragraph 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. 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.
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.

The communications log shall be contained in the IM’s report to the commission pursuant to paragraph G(1)(b) 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 12.3.9 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 17.7.3.14(I)(1) NMAC.

L. The commission shall not appoint an independent monitor for a utility’s procurement for which the commission grants a variance pursuant to paragraph D of 17.7.3.17 NMAC.

CONFIDENTIALITY OF INFORMATION:

The utility may submit any portions of its IRP under seal to the extent the utility deems specific information to be confidential. 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. Any information submitted under seal pursuant to this paragraph shall remain under seal for a period of two years, after which time it shall become public unless the utility seeks and obtains further protection from the commission. 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.

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 paragraph 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 (3) 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.

COMMISSION REVIEW, ACCEPTANCE AND ACTION:

The commission will review the utility’s proposed IRP for compliance with the procedures and objectives set forth herein. Written public comments may be filed within 20 days of the utility’s filing of the proposed IRP in support or in opposition of the proposed IRP as filed. The utility shall file, within 40 days of the utility’s filing of the proposed IRP, a written response to all written public comments that were timely filed in support or in opposition, stating whether or not it will incorporate any of the written comments into its proposed IRP and state its reasons why or why not. The commission’s utility division staff shall review the utility’s proposed IRP as filed and shall consider the filed written public comments in support or in opposition and the utility’s written response and shall file a written recommendation to the commission within 60 days of utility’s filing as to whether or not the IRP complies with the procedures and objectives of this rule and whether or not it recommends that the commission accept the proposed IRP as filed. If the commission has not acted within 90 days after the filing of the proposed IRP, that IRP is deemed accepted as compliant with this rule. If the commission determines the proposed IRP does not comply with the requirements of this rule, the commission will identify the deficiencies and return it to the utility with instructions for re-filing.
17.7.3.13 **ADDITIONAL INVESTIGATIONS AND INFORMATION:** The commission may conduct an investigation of any matters pertaining to a public utility's IRP where it deems appropriate and may require additional information to be filed.

[17.7.3.13 NMAC – N, 4/16/2007]

17.7.3.164 **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. 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.

[17.7.3.14 NMAC - N, 4/16/2007; A, 9/14/2022]

17.7.3.175 **VARIANCES AND AMENDMENTS:** A utility may file a request for a variance from the requirements of this rule. Such application shall describe the situation which necessitates the variance; set out the effect of complying with this rule on the utility and its customers if the variance is not granted; identify the section(s) of this rule for which the variance is requested; describe the expected result which the request will have if granted; and state how the variance will aid in achieving the purposes of this rule. The commission may grant a request for a procedural variance through an order issued by the chair, a commissioner or a designated hearing examiner. Other variances shall be presented to the commission as a body for determination.

[17.7.3.15 NMAC – N, 4/16/2007]

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) emergency procurements;
   (2) capacity and/or energy from newly-constructed, utility-owned, supply-side resources with a nameplate rating of 20 megawatts or less;
   (3) 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;
   (4) 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;
   (5) interruptible service provided to the utility’s electric customers;
   (6) modification to, or amendment of, existing power purchase agreements provided that the modification or amendment does not extend the agreement more than four (4) 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
   (7) utility administered demand-side programs.

[17.7.3.17 NMAC - N, 4/16/2007; A, 9/14/2022]

**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:


Other History: Only that applicable portion of NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities (filed 06-30-1988) was renumbered, reformatted and replaced by 17.7.3 NMAC, Integrated Resource Plans for Electric Utilities, effective 4/16/2007.
17.7.3.1 **ISSUING AGENCY:** New Mexico Public Regulation Commission.

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.

17.7.3.3 **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, Sections 8-8-4(B)(10) and 8-8-15 NMSA 1978; the Public Utility Act, Section 62-3-1 NMSA 1978, et seq., Section 62-3-2, Section 62-3-3(H), Section 62-6-4, Section 62-8-1, and Section 62-8-13; the Efficient Use of Energy Act, Section 62-17-1 NMSA 1978, et seq.; and Section 62-17-10; the Renewable Energy Act, Section 62-16-1 NMSA 2004, as amended 2007, et seq.; the Energy Transition Act, 62-18-1 NMSA 2007, et seq.; the Grid Modernization Act, Section 62-8-13 NMSA 1978; and the Community Solar Act, Section 62-16B-1 NMSA 1978, et seq.

17.7.3.4 **DURATION:** Permanent.

17.7.3.5 **EFFECTIVE DATE:** April 16, 2007, unless a later date is cited at the end of a section.

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 influence 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 ensures promotes fair and robust competition in selection of plans/resources to ensure their 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. In considering proposed resources, Utilities shall prioritize consider the following resources, including but not limited to: distributed energy resources, demand response, energy efficiency, renewable energy, and flexible generation, including but not limited to, low-emission fueled or zero carbon resources, energy storage systems, and transmission and distribution grid improvements.
DEFINITIONS: When used in this rule, unless otherwise specified the following definitions shall apply:

A. **action plan** means the proposed process and specific actions the utility shall undertake to implement the integrated resource plan spanning a three-four (3) -year period following the approval filing of the utility’s integrated resource plan;

B. **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;

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. **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;

E. **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;

F. **demand-side management** means the planning, implementation, and monitoring by a utility of its activities designed to influence the customer’s use of electricity in ways that will produce desired changes in the utility’s load shape, i.e., changes in the pattern and magnitude of a utility’s load, resulting in a beneficial reduction in the total cost of meeting electric energy service needs by reducing, or shifting in time, electricity usage;

G. **derating** means a temporary or permanent reduction in the expected power output of a generating facility;

H. **distributed energy resource** (DER) means physical and virtual assets that are deployed across the distribution grid, generally close to load and behind the meter, which can be used individually or in the aggregate to provide value to the grid, aggregators, individual customers, or combinations thereof means the equipment used by an interconnection customer to generate and/or store electricity that operates in parallel with the electric distribution system. DER may include, but is not limited to: an electric generator and/or 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. DER may not always be interconnected with the bulk power system. 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. DER may be capable of exporting active power to an electric power system. DER includes the customer’s interconnection facilities but shall not include the area electric power system operator’s interconnection facilities;

I. **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.

J. **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;

K. **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. Specifically, it means a commercially available technology that:

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

      (a) 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

      (b) 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;

   (2) is composed of stationary equipment;

   (3) 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

   (4) 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;

(d) K. facilitated stakeholder process means the statutory public advisory process pursuant to NMSA 1978, Section 62-17-10 (2005), 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;

L. 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;

M. 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;

N. 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;

O. 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. 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. 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;

P. independent monitor (IM) means a person or entity appointed by the commission in accordance with this rule to oversee the conduct of a utility’s competitive procurement process as addressed in this rule and to report to the commission regarding the utility’s conformance with the most recently approved accepted statement of need and action plan, in accordance with sections 10 and 11 of this rule, and the sufficiency, reasonableness, and competitive fairness and completeness of that process, as provided in section 14 of this rule;

Q. load forecasting means the prediction of the demand for electricity and energy over the planning period for the utility;

R. 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;

S. 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;

T. 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;

U. net load means the difference between forecasted load and expected electricity production from variable generation resources;

V. optimization means the process whereby system assets and distributed resources are managed optimally to minimize total system costs;

W. V. planning period means the future period for which a utility develops its IRP, which, for purposes of this rule, is 20 years;

X. W. 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;

Y. refurbish means to rebuild or substantially modify an existing electricity generating resource of 30 megawatts or greater.

Z. X. 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;

AA. renewable energy means electrical energy generated by use of renewable energy resources and delivered to a public utility; means of a low- or zero-emissions generation technology with substantial long-term...
production potential and generated by use of renewable energy resources that may include solar, wind, hydropower, geothermal, fuel cells that are not fossil fueled, and biomass resources;

(1) biomass resources are fuels, such as agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas, and anaerobically digested waste biomass; and

(2) renewable energy does not include fossil fuel or nuclear energy; and

Z. renewable energy resource means the following energy resources, with or without energy storage:

(1) solar, wind and geothermal;
(2) hydropower facilities brought in service on or after July 1, 2007;
(3) 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:
   (a) be of appropriate scale to have sustainable feedstock in the near vicinity;
   (b) have zero life cycle carbon emissions; and
   (c) meet scientifically determined restoration, sustainability and soil nutrient principles;
(4) fuel cells that do not use fossil fuels to create electricity; and
(5) landfill gas and anaerobically digested waste biogas; and

BB.AA. statement of need means a description and assessment explanation of the amount and type of new resources, expressed in terms of energy and/or capacity, necessary to reliably meet an identified level of electricity demand in the planning horizon and to effect state policies.

[17.7.3.7 NMAC - N, 4/16/2007; A, 8/29/2017; A, 9X/14XX/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 or four (3) years a proposed integrated resource plan (IRP) to meet the service needs of its customers over the planning period following a facilitated stakeholder process. The plan shall show the resource options the utility believes it might 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 generically, unless a commitment to a specific resource exists at the time of the filing. The utility shall also discuss 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;
   (3)(a) new load and facilities arising from special service agreements, economic development projects, and affiliate transactions;
(4) identification of resource options, see Appendix A;
(5) statement of need, see 17.7.3.10 NMAC;
(6) determination of the resource portfolio, see Appendix A; and
(7) 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.

C-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 proposal of how it is coordinating for how to coordinate the IRP with its out-of-state resource planning requirements.
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 approved or accepted.

1. The utility shall, within two (2) 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 approved or 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, state whether it requires a filing requesting a variance from the commission’s order pursuant to 1.2.2.40 NMAC.

17.7.3.9  FACILITATED STAKEHOLDER PROCESS; IRP PROCESS:

A. At least six (6) 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, not to exceed five (5) 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. Not later than six (6) 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
17.7.3.10 STATEMENT OF NEED:

A. The statement of need is a description and explanation of the amount and type of new resources, expressed in terms of energy and/or capacity, necessary to reliably meet an identified level of electricity demand in the planning horizon and to effect state policies.

B. The forecast statement of need shall not be solely 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 and/or 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.

If the utility issues a request for proposals pursuant to 17.7.3.12 prior to a final order on the proposed statement of need, then no presumption of prudence shall apply in a subsequent case for cost recovery.

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 approved by the Commission; and
   (3) include a status report of the specific actions contained in the previous action plan.

B. The utility shall provide the commission with an annual update of its activities to implement the action plan, to be filed by the first anniversary of the final order issued by the commission and annually thereafter, spanning a four-year period. 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.

If the utility issues a request for proposals pursuant to 17.7.3.12 prior to a final order on the proposed action plan, then no presumption of prudence shall apply in a subsequent case for cost recovery.

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, if any, 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 following the commission’s approval 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 intervenors parties to the utility’s pending IRP case with the documents and
contracts that shall constitute the RFP solicitation (RFP documents) and a timeline for soliciting, accepting, evaluating, and ranking 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 approved accepted statement of need and action plan and is not unduly discriminatory, which comments shall be considered, and may be incorporated, by the utility prior to the issuance of the RFP. Within 15 days following the comment period, the commission may request the utility to make modifications. Thereafter, the utility may issue the proposed RFP.

C-E. The utility may issue the RFP after comments are submitted on the independent monitor’s design report pursuant to paragraph 1 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.

D-F. The proposed RFP(s) shall include:

1. bid evaluation and ranking criteria and bid ranking;
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, if relevant, including a detailed description of how the costs of future transmission will likely apply to bid resources;
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 ranking period, and the expected selection period;
9. all security requirements and the rationale behind them, and a requirement that the utility cannot 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;
10. any other information necessary to implement a competitive RFP process.

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

1. lists of a description of information that the utility claims is confidential:
   a. claims is confidential;
   b. shall provide to developers of a potential resource in RFP documents;
2. descriptions of proposed protection methods for:
   a. bid prices; and
   b. other bid details;
3. information on a resource proposed for self-build and rate base treatment; and
4. descriptions of alternative plans as directed by the commission.

F. Upon receiving bid results from issuance of the all-source RFP, the utility shall perform software-modelled computer analysis runs, using software providing sub-hourly optimization, on a reasonable number of resource portfolios selected from the bids, including a base case and a reasonable number of alternative portfolios.

G. Contemporaneously with actions in subsection F., the utility shall share all bid information with the commission utility division staff and intervenors, and provide or arrange for access to the same modelling software used by the utility, for the purpose of permitting the commission utility division staff and intervenors to conduct a reasonable number of runs of alternative resource portfolios on equal footing as the utility.

H. Not later than 45-75 days after the utility receives bids for its projected needs, the utility shall provide the IM with a ranking of proposals that meet the above stated criteria, a detailed description of price and non-price criteria, its preferred portfolio of resources, and any alternative portfolio(s) designed to meet the identified needs within the planning period, along with a timeline for resource development.

I. The utility shall rank 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;
Exhibit C

(2) cost of the resource that would be borne by ratepayers, described in terms of the net present value of capacity cost and/or 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 and/or create long-term waste disposal issues;

(6) resource dispatchability and/or operational flexibility benefits or constraints;

(7) the utility shall include in its evaluation the estimated cost and/or environmental impact of transmission upgrades or distribution infrastructure upgrades necessary to deliver the project’s energy, capacity, or services;

(a) each bidder shall be responsible for all costs associated with interconnecting its project to the transmission grid or, if applicable, local distribution facilities; and

(8) 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.

9. Additional criteria used by the utility for ranking 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.

J. The utility’s competitive procurement processes shall not prevent bidders from proposing, or the utility from considering, a resource owned by an independent power producer through a purchased power agreement at a site owned or controlled by the utility.

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 required by the utility’s action plan or if prudent following a material event pursuant to 17.7.3.11(D) NMAC.

M. Nothing in this rule shall be construed to prevent a public utility from procuring resources as required by the REA, NMSA 1978, Section 62-16-4 (2019), the EUEA, NMSA 1978, Section 62-17-5 (2020), or Rule 17.9.570 NMAC. Such procurements shall be included in the utility’s forecasting, statement of need, and action plan.
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 section 17 of this rule.

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
   (4) 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.

B.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 (4) years.

G. Duties of the Independent Monitor
   F.(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 section 17.7.3.12(CB) NMAC. The IM’s objective in reporting to the Commission shall be to review and 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 through -12 NMAC section 10 of this rule and are otherwise reasonable, competitively fair, and 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, applicable law and in the public interest as identified by the public utility’s integrated resource plan as approved by the commission.
   (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 all models, modeling assumptions, inputs and methods used by the utility in its solicitation, evaluation, and procurement processes, including but not limited to bid screening, comparison, ranking evaluation, and short-listing criteria.
The IM shall report to the commission in a timely manner following the public utility’s conclusion of its RFP process pursuant to section 12 of this rule. The IM’s objective in reporting to the Commission shall be to state whether:

(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 sections 11 and 12 of this rule.

(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 and/or energy, price range by resource type, and were otherwise reasonable, competitively fair, and designed to identify the public utility’s most cost-effective options among resource alternatives to meet its service needs in compliance with applicable law; and (ii) 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.

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 paragraph GF of 17.7.3.14 NMAC this section.

The commission may rely on that opinion to request the utility to make modifications in a timely manner.

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.

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.

The public utility, commission utility division staff, and any parties to the public utility’s most recent IRP docket may comment on each report of the IM within 14 days of their submittal on each report of the IM within 14 days of their submittal of the design report to the public record.

After the design report comment deadline of 14 days, the utility may issue the RFP.

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 section 12 of this rule, 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.

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

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.

The communications log shall be contained in the IM’s report to the commission pursuant to subsection paragraph GE(13)(b) of 17.7.3.14 NMAC.

The independent monitor shall serve as an advisor to the commission and shall not be a party to the proceedings in accordance with Rule 1.2.3.9 NMAC. As such, the independent monitor shall not be subject to discovery or 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 subsection H(1) of 17.7.3.14(I)(1) NMAC.

The commission shall not appoint an independent monitor for a utility’s procurement for which the commission grants a variance pursuant to paragraph D of 17.7.3.17 NMAC.

[17.7.3.149 NMAC - N, 9X/14XX/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 paragraph 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 two (2) three (3) 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.

17.7.3.16 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. 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.

17.7.3.17 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 chairman, a commissioner, or a designated hearing examiner.

D. Emergency procurements: 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) emergency procurements;

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

(3) 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;

(4) 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;

(5) interruptible service provided to the utility’s electric customers;

(6) modification to, or amendment of, existing power purchase agreements provided that the modification or amendment does not extend the agreement more than four (4) 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

(7) utility administered demand-side programs.
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:


Other History:
Only that applicable portion of NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities (filed 06-30-1988) was renumbered, reformatted and replaced by 17.7.3 NMAC, Integrated Resource Plans for Electric Utilities, effective 4/16/2007.
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 was sent via email to the following parties on the date indicated below:

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DATED this 15th day of September, 2022.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ LaurieAnn Santillanes, electronically signed
LaurieAnn Santillanes, Law Clerk
17.7.3.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.7.3.1 NMAC - N, 4/16/2007]

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 - N, 4/16/2007; A, 9/14/2022]

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, Sections 8-8-4(B)(10) and 8-8-15 NMSA 1978; the Public Utility Act, Section 62-3-1 NMSA 1978, et seq., Section 62-3-2, Section 62-3-3(H), Section 62-6-4, Section 62-8-1, and Section 62-8-13; the Efficient Use of Energy Act, Section 62-17-1 NMSA 1978, et seq., and Section 62-17-10; the Renewable Energy Act, Section 62-16-1 NMSA 2004, as amended 2021, et seq.; the Energy Transition Act, 62-18-1 NMSA 2019 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 - N, 4/16/2007; A, 8/29/2017; A, 9/14/2022]

17.7.3.4 DURATION: Permanent.
[17.7.3.4 NMAC - N, 4/16/2007]

17.7.3.5 EFFECTIVE DATE: April 16, 2007, unless a later date is cited at the end of a section.
[17.7.3.5 NMAC - N, 4/16/2007]

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 – N, 4/16/2007; A, 9/14/2022]

17.7.3.7 DEFINITIONS: When used in this rule, unless otherwise specified the following definitions shall apply:
A. action plan means the proposed process and specific actions the utility shall carry out to implement the integrated resource plan spanning a three (3) year period following the filing of the utility’s integrated resource plan;
B. 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;

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. 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;

E. 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;

F. derating means a temporary or permanent reduction in the expected power output of a generating facility;

G. distributed energy resource (DER) means the equipment used by an interconnection customer to generate and/or store electricity that operates in parallel with the electric distribution system. DER may include, but is not limited to: an electric generator and/or 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. DER may not always be interconnected with the bulk power system. 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. DER may be capable of exporting active power to an electric power system. DER includes the customer’s interconnection facilities but shall not include the area electric power system operator’s interconnection facilities;

H. 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.

I. 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;

J. 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. Specifically, it means a commercially available technology that:

1. uses mechanical, chemical, or thermal processes to:
   a. 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
   b. 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;

2. is composed of stationary equipment;

3. 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

4. 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;

K. facilitated stakeholder process means the statutory public advisory process pursuant to NMSA 1978, Section 62-17-10 (2005), 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;

L. 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;
M. 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;

N. 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;

O. 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. 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. 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;

P. 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;

Q. load forecasting means the prediction of the demand for electricity and energy over the planning period for the utility;

R. 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;

S. 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;

T. 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;

U. net load means the difference between forecasted load and expected electricity production from variable generation resources;

V. planning period means the future period for which a utility develops its IRP, which, for purposes of this rule, is 20 years;

W. 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;

X. 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;

Y. renewable energy means electrical energy generated by use of renewable energy resources and delivered to a public utility;

Z. renewable energy resource means the following energy resources, with or without energy storage:

1. solar, wind and geothermal;
2. hydropower facilities brought in service on or after July 1, 2007;
3. 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:
   a. be of appropriate scale to have sustainable feedstock in the near vicinity;
   b. have zero life cycle carbon emissions; and
   c. meet scientifically determined restoration, sustainability and soil nutrient principles;
4. fuel cells that do not use fossil fuels to create electricity; and
5. landfill gas and anaerobically digested waste biogas; and

AA. statement of need means a description and explanation of the amount and type of new resources, expressed in terms of energy and/or capacity, necessary to reliably meet an identified level of electricity demand in the planning horizon and to effect state policies.

[17.7.3.7 NMAC - N, 4/16/2007; A, 8/29/2017; A, 9/14/2022]
INTEGRATED RESOURCE PLANS FOR ELECTRIC UTILITIES:

A. A public utility supplying electric service to customers shall file with the commission every three (3) 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;
      (a) new load and facilities arising from special service agreements, economic development projects, and affiliate transactions;
   (4) identification of resource options, see Appendix A;
   (5) statement of need, see 17.7.3.10 NMAC;
   (6) determination of the resource portfolio, see Appendix A; and
   (7) 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 (2) 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 - N, 4/16/2007; A, 12/31/2012; A 8/29/2017; A 9/14/2022]

FACILITATED STAKEHOLDER PROCESS; IRP PROCESS:

A. At least six (6) 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, not to exceed five (5) 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.

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

B. Not later than six (6) 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 and/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.

STATEMENT OF NEED:
A. The statement of need is a description and explanation of the amount and type of new resources, expressed
in terms of energy and/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 and/or 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.

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 (3) 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 (2) reports describing the utility’s implementation of
the action plan. These reports shall be filed in the existing IRP docket one (1) year after the filing of the IRP,
and two (2) 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.

STATEMENT OF NEED:

ACTION PLAN:
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 (5) 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, evaluating, and ranking 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 paragraph 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 and ranking 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 ranking 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 75 days after the utility receives bids for its projected needs, the utility shall provide the IM with a ranking 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 rank 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/or 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 and/or create long-term waste disposal issues;
   (6) resource dispatchability and/or operational flexibility benefits or constraints;
   (7) the utility shall include in its evaluation the estimated cost and/or environmental impact of transmission upgrades or distribution infrastructure upgrades necessary to deliver the project’s energy, capacity, or services;
(a) 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
(b) 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 ranking 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 17.7.3.11(D) NMAC.
M. Nothing in this rule shall be construed to prevent a public utility from procuring resources as required by the REA, NMSA 1978, Section 62-16-4 (2019), the EUEA, NMSA 1978, Section 62-17-5 (2020), or Rule 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, 9/14/2022]

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, 9/14/2022]

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 (4) years.

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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 paragraph 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 17.7.3.12(C) 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 through -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, ranking 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 and/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 paragraph 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 paragraph G(1)(b) 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 17.7.3.14(I)(1) NMAC.

L. The commission shall not appoint an independent monitor for a utility’s procurement for which the commission grants a variance pursuant to paragraph D of 17.7.3.17 NMAC.

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 paragraph 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 (3) 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.

17.7.3.16 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. 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.

17.7.3.17 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) emergency procurements;

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

(3) 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;
(4) 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;

(5) interruptible service provided to the utility’s electric customers;

(6) modification to, or amendment of, existing power purchase agreements provided that the modification or amendment does not extend the agreement more than four (4) 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

(7) utility administered demand-side programs.

[17.7.3.17 NMAC - N, 4/16/2007; A, 9/14/2022]

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:


Other History:
Only that applicable portion of NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities (filed 06-30-1988) was renumbered, reformatted and replaced by 17.7.3 NMAC, Integrated Resource Plans for Electric Utilities, effective 4/16/2007.
APPENDIX A

DESCRIPTION OF EXISTING RESOURCES:

A. The mandate of the energy transition act to incorporate 80% renewable energy onto the grid by 2040 requires utilities operating in New Mexico to develop flexible management of grid resources. Utilities may categorize resources into the following four functional groups to reflect their role in serving this need:

1. load modifying resources – includes but not limited to energy efficiency, distributed generation, and time of use tariffs;
2. renewable load serving resources – includes both utility scale solar and wind technologies;
3. conventional load serving resources – includes coal, nuclear, and gas technologies; and
4. grid balancing resources – includes demand response, storage technologies, natural gas combustion engines, and reciprocating engines.

B. The utility’s description of its existing resources used to serve its jurisdiction load shall include:

1. name(s) and location(s) of utility-owned generation facilities;
2. rated capacity of utility-owned generation facilities;
3. fuel type, heat rates, annual capacity factors, and availability factors projected for utility-owned generation facilities over the planning period;
4. cost information, including capital costs, fixed and variable operating and maintenance costs, fuel costs, and purchased power costs;
5. existing generation facilities’ expected retirement dates;
6. amount of capacity obtained or to-be-obtained through existing purchased power contracts or agreements relied upon by the utility, including the fuel type, if known, and contract duration;
7. estimated in-service dates for utility-owned generation facilities for which certificates of public convenience and necessity (CCN) have been granted but which are not in-service;
8. amount of capacity and, if applicable, energy purchased via the utility’s participation in regional energy markets;
9. description of existing demand-side resources, including:
   a. demand-side resources deployed at the time the IRP is filed; and
   b. demand-side resources approved by the commission, but not yet deployed at the time the IRP is filed;
      i. information provided concerning existing demand-side resources shall include, at a minimum, the expected remaining useful life of each demand-side resource and the energy savings and reductions in peak demand, as appropriate, made by the demand-side resource;
10. description of each existing energy storage resource, including energy storage resources approved but not yet deployed at the time the IRP is filed, and at a minimum, the expected remaining useful life of the resource, its maximum capacity, dispatch characteristics, and operating costs;
11. reserve margin and reserve reliability requirements with which the utility must comply, and the methodology used to calculate its reserve margin;
12. existing transmission capabilities:
   a. the utility shall report its existing and under-construction transmission facilities of 115 kV and above, including associated switching stations and terminal facilities;
   b. the utility shall specifically identify the location and extent of transfer capability limitations on its transmission network that may affect the future siting of supply-side resources; and
   c. the utility shall describe all transmission planning or coordination groups to which it is a party, including state and regional transmission groups, transmission companies, and coordinating councils with which the utility may be associated;
13. existing distribution capabilities:
   a. the utility shall report its existing distribution facilities, under-construction distribution facilities, or distribution facilities approved but not-yet-deployed at the time the IRP is filed, including all substations, switching stations, power lines and other equipment, below 115 kV, including associated transformers and feeder lines;
   b. the utility shall specifically identify the location and extent of capability limitations on its distribution network that may affect the future siting of distributed energy resources; and
   c. the utility shall describe all distribution planning or coordination groups to which it is a party;
14. details of any planned or anticipated transmission and distribution network upgrades;
environmental impacts of existing supply-side resources:

(a) the utility shall provide the percentage of megawatt-hours generated by each fuel used by the utility on its existing system for the latest year for which such information is available;

(b) to the extent feasible, for each existing supply-side resource on its system, the utility shall present emission rates (expressed in pounds emitted per megawatt-hour generated) of criteria pollutants as well as carbon dioxide and mercury; and

(c) to the extent feasible, for each existing supply-side resource on its system, the utility shall present the water consumption rate;

(16) a summary of back-up fuel capabilities and options; and

(17) an assessment of the critical facilities susceptible to supply-source disruptions, extreme weather events, or other failures.

CURRENT LOAD FORECAST:

A. The IRP shall contain a load forecast for each year of the planning period.

B. The load forecast shall incorporate the following information and projections:

(1) annual sales of energy, net load, and reliability reserves on a system-wide basis, by customer class, and disaggregated among commission jurisdictional sales, FERC jurisdictional sales, and sales subject to the jurisdiction of other states;

(2) weather normalization adjustments;

(3) assumptions for economic and demographic factors relied on in load forecasting;

(4) expected capacity and energy impacts of existing and proposed demand-side resources; and

(5) typical historic day and week load patterns on a system-wide basis for each major customer class.

C. The utility shall develop an expected growth forecast, a high-growth forecast, and a low-growth forecast, or an alternative forecast that provides an assessment of uncertainty (e.g., probabilistic techniques).

D. Required detail.

(1) The utility shall explain how the utility’s load forecasts account for the demand-side savings attributable to actions other than the utility-sponsored demand-side resources for each major customer class, as well as the effect of those utility-sponsored demand-side resources for each major customer class on the load forecasts.

(2) The utility shall compare the annual forecast in its most recently filed resource plan to the annual forecast in the current resource plan.

(a) In its initial IRP filing, the utility shall provide information demonstrating how well its forecasts predicted demand (during the preceding four years.)

(3) The utility shall explain and document the assumptions, methodologies, and any other inputs upon which it relied to develop its load forecast.

LOAD AND RESOURCES TABLE:

A. The IRP shall contain a table of the utility’s existing loads and resources at the time of filing.

B. The load and resources table, to the extent practical, shall contain the appropriate components from the load forecast.

C. Resources shall include:

(1) utility-owned generation;

(2) energy storage resources;

(3) existing and future contracted-for purchased power, including qualifying facility purchases;

(4) purchases through net metering programs, as appropriate;

(5) demand-side resources, as appropriate; and

(6) other resources relied upon by the utility, such as pooling, wheeling, or coordination agreements effective at the time the IRP is filed.

IDENTIFICATION OF RESOURCE OPTIONS:

A. The utility shall identify additional resource options in its IRP that it evaluated for selection as part of the utility’s portfolio.

B. In identifying additional resource options, the utility should consider all supply-side, energy storage, and demand-side resources.

C. The utility shall describe the assumptions and methodologies used in evaluating its resource options, including, as applicable:
D. **For supply-side resource options, the utility shall identify the assumptions actually used for capital costs, fixed and variable operating and maintenance costs, fuel costs forecast by year, and purchased power demand and energy charges forecast by year, fuel type, heat rates, annual capacity factors, availability factors and, emission rates (expressed in pounds emitted per kilowatt-hour generated) of criteria pollutants as well as carbon dioxide and mercury.**

E. **The utility shall describe its existing rates and tariffs that incorporate load management or load modifying concepts. The utility shall also describe how changes in rate design might assist in meeting, delaying or avoiding the need for new capacity.**

F. **In identifying resource options, the utility shall include a description of the projected emissions of carbon dioxide for any resources proposed to be owned by the utility and for any new generic resources included in the utility’s modeling for its resource plan;**

### DETERMINATION OF THE RESOURCE PORTFOLIO:

A. To identify the most cost-effective resource portfolio, utilities shall evaluate all supply-side resources, energy storage, and demand-side resource options on a consistent and comparable basis, taking into consideration risk and uncertainty, including but not limited to financial, competitive, operational, fuel supply, price volatility, downstream impacts on transmission and distribution investments, extreme-weather events, and anticipated environmental regulation costs.

B. **The utility shall evaluate the cost of each resource through its projected life with a life-cycle or similar analysis.**

C. **The utility shall consider and describe ways to mitigate ratepayer risk.**

D. Each electric utility shall provide a summary of how the following factors were considered in, or affected, the development of resource portfolios:

1. load management or modification and energy efficiency requirements;
2. renewable energy portfolio requirements;
3. existing and anticipated environmental laws and regulations, and, if determined by the commission, the standardized cost of carbon emissions;
4. fuel diversity;
5. susceptibility to fuel interdependencies;
6. transmission or distribution constraints; and
7. system reliability and planning reserve margin requirements.

E. **Alternative portfolios. In addition to the detailed description of what the utility determines to be the most cost-effective resource portfolio, the utility shall develop alternative portfolios by altering risk assumptions and other parameters developed by the utility.**
17.7.3.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.7.3.1 NMAC - N, 4/16/2007]

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 - N, 4/16/2007; A, 9/14/2022]

17.7.3.3 STATUTORY AUTHORITY: This rule is adopted under the authority vested in this commission by the New Mexico Public Regulation Commission Act, Section 8-8-15 NMSA 1978; the Public Utility Act, Section 62-3-1 NMSA 1978, et seq.; the Efficient Use of Energy Act, Section 62-17-1 NMSA 1978, et seq. 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, Sections 8-8-4(B)(10) and 8-8-15 NMSA 1978; the Public Utility Act, Section 62-3-1 NMSA 1978, et seq., Section 62-3-2, Section 62-3-3(H), Section 62-6-4, Section 62-8-1, and Section 62-8-13; the Efficient Use of Energy Act, Section 62-17-1 NMSA 1978, et seq., and Section 62-17-10; the Renewable Energy Act, Section 62-16-1 NMSA 2004, as amended 2021, et seq.; the Energy Transition Act, 62-18-1 NMSA 2019 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 - N, 4/16/2007; A, 8/29/2017; A, 9/14/2022]

17.7.3.4 DURATION: Permanent.
[17.7.3.4 NMAC - N, 4/16/2007]

17.7.3.5 EFFECTIVE DATE: April 16, 2007, unless a later date is cited at the end of a section.
[17.7.3.5 NMAC - N, 4/16/2007]

17.7.3.6 OBJECTIVE: The purpose 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. For resources whose costs and service quality are equivalent, the utility should prefer resources that minimize environmental impacts.
[17.7.3.6 NMAC - N, 4/16/2007]

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.

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

A. 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. 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;

C. demand-side resources means energy efficiency and load management, as those terms are defined in the Efficient Use of Energy Act;

D. 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 amount or quality of energy services;

E. 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;

F. heat rate means the ratio of energy inputs used by a generating facility expressed in BTUs (British thermal units), to the energy output of that facility expressed in kilowatt-hours;

G. 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;

H. load forecasting means the prediction of the demand for electricity over the planning period for the utility;

I. 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;

J. 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;

K. planning period means the future period for which a utility develops its IRP, for purposes of this rule, the planning period is 20 years;

L. 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;

M. renewable energy means electrical energy generated by means of a low or zero-emissions generation technology with substantial long-term production potential and generated by use of renewable energy resources that may include solar, wind, hydropower, geothermal, fuel cells that are not fossil fueled and biomass resources; biomass resources are fuels, such as agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas and anaerobically digested waste biomass; renewable energy does not include fossil fuel or nuclear energy.

17.7.3.8 GENERAL PROVISIONS: The commission adopts this rule in order to fulfill the requirements of Section 62-17-10 NMSA 1978.

A. action plan means the proposed process and specific actions the utility shall carry out to implement the integrated resource plan spanning a three (3) year period following the filing of the utility’s integrated resource plan;

B. 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;

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. 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;

E. 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;

F. derating means a temporary or permanent reduction in the expected power output of a generating facility;

G. distributed energy resource (DER) means the equipment used by an interconnection customer to generate and/or store electricity that operates in parallel with the electric distribution system. DER may include, but is not limited to: an electric generator and/or 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. DER may not always be interconnected with the bulk power system. 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. DER may be capable of exporting active power to an electric power system. DER includes the customer's interconnection facilities but shall not include the area electric power system operator's interconnection facilities;

H. 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;

I. 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;

J. 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. Specifically, it means a commercially available technology that:

1. uses mechanical, chemical, or thermal processes to:
   a. 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
   b. 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;

2. is composed of stationary equipment;

3. 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

4. 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;

K. facilitated stakeholder process means the statutory public advisory process pursuant to NMSA 1978, Section 62-17-10 (2005), 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;

L. 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;

M. 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;

N. 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;

O. 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. 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. 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;

P. 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;

Q. load forecasting means the prediction of the demand for electricity and energy over the planning period for
the utility;

R. 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;

S. 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;

T. 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;

U. net load means the difference between forecasted load and expected electricity production from variable
generation resources;

V. planning period means the future period for which a utility develops its IRP, which, for purposes of this
rule, is 20 years;

W. 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;

X. 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;

Y. renewable energy means electrical energy generated by use of renewable energy resources and delivered to
a public utility;

Z. renewable energy resource means the following energy resources, with or without energy storage:
(1) solar, wind and geothermal;
(2) hydropower facilities brought in service on or after July 1, 2007;
(3) 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:
   (a) be of appropriate scale to have sustainable feedstock in the near vicinity;
   (b) have zero life cycle carbon emissions; and
   (c) meet scientifically determined restoration, sustainability and soil nutrient principles;
(4) fuel cells that do not use fossil fuels to create electricity; and
(5) landfill gas and anaerobically digested waste biogas; and

AA. statement of need means a description and explanation of the amount and type of new resources, expressed
in terms of energy and/or capacity, necessary to reliably meet an identified level of electricity demand in the
planning horizon and to effect state policies

[17.7.3.7 NMAC - N, 4/16/2007; A, 8/29/2017; A, 9/14/2022]
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(3) load and resources table;
(4) identification of resource options;
(5) description of the resource and fuel diversity;
(6) identification of critical facilities susceptible to supply-source or other failures;
(7) determination of the most cost effective resource portfolio and alternative portfolios;
(8) description of public advisory process;
(9) action plan; and
(10) other information that the utility finds may aid the commission in reviewing the utility’s
planning processes.

C. Description of existing resources. The utility’s description of its existing resources used to serve
its jurisdictional retail load at the time the IRP is filed shall include:

(1) name(s) and location(s) of utility-owned generation facilities;
(2) rated capacity of utility-owned generation facilities;
(3) fuel type, heat rates, annual capacity factors and availability factors projected for utility-
owned generation facilities over the planning period;
(4) cost information, including capital costs, fixed and variable operating and maintenance
costs, fuel costs, and purchased power costs;
(5) existing generation facilities’ expected retirement dates;
(6) amount of capacity obtained or to be obtained through existing purchased power
contracts or agreements relied upon by the utility, including the fuel type, if known, and contract duration;
(7) estimated in-service dates for utility-owned generation facilities for which a certificate of
public convenience and necessity (CCN) has been granted but which are not in service;
(8) amount of capacity and, if applicable, energy, provided annually to the utility pursuant to
wheeling agreements and the duration of such wheeling agreements;
(9) description of existing demand-side resources, including
(a) demand-side resources deployed at the time the IRP is filed; and
(b) demand-side resources approved by the commission, but not yet deployed at the
time the IRP is filed; information provided concerning existing demand-side resources shall include, at a minimum,
the expected remaining useful life of each demand-side resource and the energy savings and reductions in peak
demand, as appropriate, made by the demand-side resource.
(10) description of each existing and approved energy storage resources, to include, at a
minimum, the expected remaining useful life of the resource, its maximum capacity and dispatch characteristics, and
operating costs;
(11) reserve margin and reserve reliability requirements (e.g. FERC, power pool, etc.) with
which the utility must comply and the methodology used to calculate its reserve margin;
(12) existing transmission capabilities:
(a) the utility shall report its existing, and under-construction, transmission facilities
of 115 kV and above, including associated switching stations and terminal facilities; the utility shall specifically
identify the location and extent of transfer capability limitations on its transmission network that may affect the
future siting of supply-side resources;
(b) the utility shall describe all transmission planning or coordination groups to
which it is a party, including state and regional transmission groups, transmission companies, and coordinating
councils with which the utility may be associated.
(13) environmental impacts of existing supply-side resources:
(a) the utility shall provide the percentage of kilowatt-hours generated by each fuel
used by the utility on its existing system, for the latest year for which such information is available;
(b) to the extent feasible, for each existing supply-side resource on its system, the
utility shall present emission rates (expressed in pounds emitted per kilowatt-hour generated) of criteria pollutants as
well as carbon dioxide and mercury;
(c) to the extent feasible, for each existing supply-side resource on its system, the
utility shall present the water consumption rate.
(14) a summary of back-up fuel capabilities and options.

D. Current load forecast.

(1) The utility shall provide a load forecast for each year of the planning period; the load
forecast shall incorporate the following information and projections:
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(a) annual sales of energy and coincident peak demand on a system-wide basis, by customer class, and disaggregated among commission jurisdictional sales, FERC jurisdictional sales, and sales subject to the jurisdiction of other states;

(b) coincident peak system losses and the allocation of such losses to the transmission and distribution components of the system;

(c) weather normalization adjustments;

(d) assumptions for economic and demographic factors relied on in load forecasting;

(e) expected capacity and energy impacts of existing and proposed demand-side resources; and

(f) typical historic day or week load patterns on a system-wide basis for each major customer class.

(2) The utility shall develop base-case, high-growth and low-growth forecasts, or an alternative forecast that provides an assessment of uncertainty (e.g., probabilistic techniques).

(3) Required detail.

(a) The utility shall explain how the demand-side savings attributable to actions other than the utility-sponsored demand-side resources for each major customer class are accounted for in the utility’s load forecast and the effect, as appropriate, on its load forecast of the utility-sponsored demand-side resources on each major customer class.

(b) The utility shall compare the annual forecast of coincident peak demand and energy sales made by the utility to the actual coincident peak demand and energy sales experienced by the utility for the four years preceding the year in which the plan under consideration is filed. In addition, the utility shall compare the annual forecast in its most recently filed resource plan to the annual forecast in the current resource plan. In its initial IRP filing, the utility shall provide information demonstrating how well its forecasts during the preceding four years predicted demand.

(c) The utility shall explain and document the assumptions, methodologies, and any other inputs upon which it relied to develop its load forecast.

E. Load and resources table. The utility shall provide a load and resources table of its existing loads and resources at the time of its IRP filing. The load and resources table, to the extent practical, shall contain the appropriate components from the load forecast. Resources shall include:

(1) utility-owned generation;

(2) energy storage resources;

(3) existing and future contracted-for purchased power including qualifying facility purchases;

(4) purchases through net metering programs, as appropriate;

(5) demand-side resources, as appropriate; and

(6) other resources relied upon by the utility, such as pooling, wheeling, or coordination agreements effective at the time the plan is filed.

F. Identification of resource options.

(1) In identifying additional resource options, the utility shall consider all feasible supply-side, energy storage, and demand-side resources. The utility shall describe in its plan those resources it evaluated for selection to its portfolio and the assumptions and methodologies used in evaluating its resource options, including, as applicable: life expectancy of the resources, the recognition of whether the resource is replacing/adding capacity or energy, dispatchability, lead-time requirements, flexibility and efficiency of the resource.

(2) For supply-side resource options, the utility shall identify the assumptions actually used for capital costs, fixed and variable operating and maintenance costs, fuel costs forecast by year, and purchased power demand and energy charges forecast by year, fuel type, heat rates, annual capacity factors, availability factors and, to the extent feasible, emission rates (expressed in pounds emitted per kilowatt-hour generated) of criteria pollutants as well as carbon dioxide and mercury.

(3) The utility shall describe its existing rates and tariffs that incorporate load management or load shifting concepts. The utility shall also describe how changes in rate design might assist in meeting, delaying or avoiding the need for new capacity.

G. Determination of the most cost effective resource portfolio and alternative portfolios.

(1) To identify the most cost effective resource portfolio, utilities shall evaluate all feasible supply, energy storage, and demand-side resource options on a consistent and comparable basis, and take into consideration risk and uncertainty (including but not limited to financial, competitive, reliability, operational, fuel supply, price volatility and anticipated environmental regulation). The utility shall evaluate the cost of each
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resource through its projected life with a life-cycle or similar analysis. The utility shall also consider and describe ways to mitigate ratepayer risk.

(2) Each electric utility shall provide a summary of how the following factors were considered in, or affected, the development of resource portfolios:

(a) load management and energy efficiency requirements;
(b) renewable energy portfolio requirements;
(c) existing and anticipated environmental laws and regulations, and, if determined by the commission, the standardized cost of carbon emissions;
(d) fuel diversity;
(e) susceptibility to fuel interdependencies;
(f) transmission constraints; and
(g) system reliability and planning reserve margin requirements.

(3) Alternative portfolios. In addition to the detailed description of what the utility determines to be the most cost-effective resource portfolio, the utility shall develop a reasonable number of alternative portfolios by altering risk assumptions and other parameters developed by the utility and the public advisory process.

H. Public advisory process. Public input is critical to the development and implementation of integrated resource planning in New Mexico. A utility shall incorporate a public advisory process in the development of its IRP. At least one year prior to the filing date of its IRP, a utility shall initiate a public advisory process to develop its IRP. The purpose of this process shall be to receive public input, solicit public commentary concerning resource planning and related resource acquisition issues. This process shall be administered as follows.

(1) The utility shall initiate the process by providing notice at least 30 days prior to the first scheduled meeting to the commission, interveners in its most recent general rate case, and participants in its most recent renewable energy, energy efficiency and IRP proceedings; the utility shall at the same time, also publish this notice in a newspaper of general circulation in every county which it serves and in the utility’s billing inserts; this notice shall consist of:

(a) a brief description of the IRP process;
(b) time, date and location of the first meeting;
(c) a statement that interested individuals should notify the utility of their interest in participating in the process; and
(d) utility contact information.

(2) Upon receipt of the initial notice, the commission may designate a facilitator to assist the participants with dispute resolution.

(3) The utility or its designee shall chair the public participation process, schedule meetings, and develop agendas for these meetings. With adequate notice to the utility, participants shall be allowed to place items on the agenda of public participation process meetings.

(4) Meetings held as part of the public participation process shall be noticed and scheduled on a regular basis and shall be open to members of the public who shall be heard and their input considered as part of the public participation process. Upon request, the utility shall provide an executive summary containing a non-technical description of its most recent IRP.

(5) The purposes of the public participation process are for the utility to provide information to, and receive and consider input from, the public regarding the development of its IRP. Topics to be discussed as part of the public participation process include, but are not limited to, the utility’s load forecast; evaluation of existing supply and demand side resources; the assessment of need for additional resources; identification of resource options; modeling and risk assumptions and the cost and general attributes of potential additional resources; and development of the most cost-effective portfolio of resources for the utility’s IRP.

(6) In its initial IRP advisory process, the utility and participants shall explore a procedure to coordinate the IRP process with renewable energy procurement plans and energy efficiency and load management program proposals. Any proposed procedure shall be designed to conserve commission, participant and utility resources and shall indicate what, if any, variances may be needed to effectuate the proposed procedure.

I. Action plan.

(1) The utility’s action plan shall detail the specific actions the utility will take to implement the integrated resource plan spanning a four-year period following the filing of the utility’s IRP. The action plan will include a status report of the specific actions contained in the previous action plan.

(2) 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.
A. A public utility supplying electric service to customers shall file with the commission every three (3) 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;
      (a) new load and facilities arising from special service agreements, economic development projects, and affiliate transactions;
   (4) identification of resource options, see Appendix A;
   (5) statement of need, see 17.7.3.10 NMAC;
   (6) determination of the resource portfolio, see Appendix A; and
   (7) 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 (2) 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.

[17.7.3.9 NMAC - N, 4/16/2007; A, 12/31/2012; A 8/29/2017; A 9/14/2022]
(2) Nothing in this section shall preclude commission utility division staff from providing an analysis based on an alternative, open-source modeling software.

B. Not later than six (6) 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 and/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, 9/14/2022]

17.7.3.10 OBLIGATION TO NOTIFY OF MATERIAL CHANGES AND UPDATE ACTION PLAN:
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 IRP had those events been recognized when the IRP was developed. As part of this notification, the utility shall explain how this event(s) has changed the action plan.

[17.7.3.10 NMAC - N, 4/16/2007]

17.7.3.10 STATEMENT OF NEED:
A. The statement of need is a description and explanation of the amount and type of new resources, expressed in terms of energy and/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 and/or 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, 9/14/2022]

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 (3) 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 (2) reports describing the utility’s implementation of the action plan. These reports shall be filed in the existing IRP docket one (1) year after the filing of the IRP, and two (2) 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, 9/14/2022]

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 (5) 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, evaluating, and ranking 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 paragraph 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 and ranking 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 ranking 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 75 days after the utility receives bids for its projected needs, the utility shall provide the IM with a ranking 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 rank 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/or 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 and/or create long-term waste disposal issues.

17.7.3 NMAC 10
(6) resource dispatchability and/or operational flexibility benefits or constraints;
(7) the utility shall include in its evaluation the estimated cost and/or environmental impact of transmission
upgrades or distribution infrastructure upgrades necessary to deliver the project’s energy, capacity, or
services;
(a) 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
(8) 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 ranking 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 17.7.3.11(D) NMAC.

M. Nothing in this rule shall be construed to prevent a public utility from procuring resources as required by the
17.9.570 NMAC. Such procurements shall be included in the utility’s forecasting, statement of need, and
action plan.

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.

17.7.3.14 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 (4) 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 paragraph 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 17.7.3.12(C) 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 through -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, ranking 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 and/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 paragraph 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 paragraph G(1)(b) 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 17.7.3.14(D)(1) NMAC.

L. The commission shall not appoint an independent monitor for a utility’s procurement for which the commission grants a variance pursuant to paragraph D of 17.7.3.17 NMAC.

17.7.3.14 NMAC - N, 9/14/2022

17.7.3.151 CONFIDENTIALITY OF INFORMATION: The utility may submit any portions of its IRP under seal to the extent the utility deems specific information to be confidential. 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. Any information submitted under seal pursuant to this paragraph shall remain under seal for a period of two years, after which time it shall become public unless the utility seeks and obtains further protection from the commission. 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.

17.7.3.11 NMAC - N, 4/16/2007; A, 8/29/2017

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 paragraph 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 (3) 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 - N, 4/16/2007; A, 8/29/2017; A, 9/14/2022

17.7.3.12 COMMISSION REVIEW, ACCEPTANCE AND ACTION: The commission will review the utility’s proposed IRP for compliance with the procedures and objectives set forth herein. Written public comments may be filed within 20 days of the utility’s filing of the proposed IRP in support or in opposition of the proposed IRP as filed. The utility shall file, within 40 days of the utility’s filing of the proposed IRP, a written response to all written public comments that were timely filed in support or in opposition, stating whether or not it will incorporate any of the written comments into its proposed IRP and state its reasons why or why not. The commission’s utility division staff shall review the utility’s proposed IRP as filed and shall consider the filed written public comments in support or in opposition and the utility’s written response and shall file a written recommendation to the commission within 60 days of utility’s filing as to whether or not the IRP complies with the procedures and objectives of this rule and whether or not it recommends that the commission accept the proposed IRP as filed. If the commission has not acted within 90 days after the filing of the proposed IRP, that IRP is deemed accepted as compliant with this rule. If the commission determines the proposed IRP does not comply with the requirements of this rule, the commission will identify the deficiencies and return it to the utility with instructions for re-filing.

17.7.3.12 NMAC – N, 4/16/2007; A, 8/29/2017; A, 01/30/2018
17.7.3.13 ADDITIONAL INVESTIGATIONS AND INFORMATION: The commission may conduct an investigation of any matters pertaining to a public utility's IRP where it deems appropriate and may require additional information to be filed.

[17.7.3.13 NMAC - N, 4/16/2007]

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. Multi-State Resource Planning: The commission shall consider 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.

[17.7.3.14 NMAC - N, 4/16/2007; A, 9/14/2022]

17.7.3.17 VARIANCES AND AMENDMENTS: A utility may file a request for a variance from the requirements of this rule. Such application shall describe the situation which necessitates the variance; set out the effect of complying with this rule on the utility and its customers if the variance is not granted; identify the section(s) of this rule for which the variance is requested; describe the expected result which the request will have if granted; and state how the variance will aid in achieving the purposes of this rule. The commission may grant a request for a procedural variance through an order issued by the chairman, a commissioner or a designated hearing examiner. Other variances shall be presented to the commission as a body for determination.

[17.7.3.15 NMAC - N, 4/16/2007]

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) emergency procurements;
   (2) capacity and/or energy from newly-constructed, utility-owned, supply-side resources with a nameplate rating of 20 megawatts or less;
   (3) 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;
   (4) 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;
   (5) interruptible service provided to the utility’s electric customers;
   (6) modification to, or amendment of, existing power purchase agreements provided that the modification or amendment does not exceed the agreement more than four (4) 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
   (7) utility administered demand-side programs.

[17.7.3.17 NMAC - N, 4/16/2007; A, 9/14/2022]

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:

Other History:
Only that applicable portion of NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities (filed 06-30-1988) was renumbered, reformatted and replaced by 17.7.3 NMAC, Integrated Resource Plans for Electric Utilities, effective 4/16/2007.
17.7.3.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.7.3.1 NMAC - N, 4/16/2007]

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 - N, 4/16/2007; A, 9X/14XX/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, Sections 8-8-4(B)(10) and 8-8-15 NMSA 1978; the Public Utility Act, Section 62-3-1 NMSA 1978, et seq.; Section 62-3-2, Section 62-3-3(H), Section 62-6-4, Section 62-8-1, and Section 62-8-13; the Efficient Use of Energy Act, Section 62-17-1 NMSA 1978, et seq.; Section 62-17-10; the Renewable Energy Act, Section 62-16-1 NMSA 2004, as amended 2017, et seq.; the Energy Transition Act, 62-18-1 NMSA 2019, et seq.; the Grid Modernization Act, Section 62-8-13 NMSA 1978; and the Community Solar Act, Section 62-16B-1 NMSA 1978, et seq.
[17.7.3.3 NMAC - N, 4/16/2007; A, 8/29/2017; A, 9X/14XX/2022]

17.7.3.4 DURATION: Permanent.
[17.7.3.4 NMAC - N, 4/16/2007]

17.7.3.5 EFFECTIVE DATE: April 16, 2007, unless a later date is cited at the end of a section.
[17.7.3.5 NMAC - N, 4/16/2007]

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 influence 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 ensures promotes fair and robust competition in selection of resources to ensure their 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. In considering proposed resources, Utilities shall prioritize the following resources, including but not limited to: distributed energy resources, demand response, energy efficiency, renewable energy, and flexible generation, including but not limited to, low-emission fueled or zero carbon resources, energy storage systems, and transmission and distribution grid improvements.
[17.7.3.6 NMAC – N, 4/16/2007; A, 9X/14XX/2022]
17.7.3.7 DEFINITIONS: - When used in this rule, unless otherwise specified the following definitions shall apply:

A. **action plan** means the proposed process and specific actions the utility shall undertake to implement the integrated resource plan spanning a three-year (3) -year period following the approval filing of the utility’s integrated resource plan;

B. **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;

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. **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;

E. **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;

F. **demand-side management** means the planning, implementation, and monitoring by a utility of its activities designed to influence the customer’s use of electricity in ways that will produce desired changes in the utility’s load shape, i.e., changes in the pattern and magnitude of a utility’s load, resulting in a beneficial reduction in the total cost of meeting electric energy service needs by reducing, or shifting in time, electricity usage;

G. **derating** means a temporary or permanent reduction in the expected power output of a generating facility;

H. **distributed energy resource** (DER) means physical and virtual assets that are deployed across the distribution grid, generally close to load and behind the meter, which can be used individually or in the aggregate to provide value to the grid, aggregators, individual customers, or combinations thereof means the equipment used by an interconnection customer to generate and/or store electricity that operates in parallel with the electric distribution system. DER may include, but is not limited to: an electric generator and/or 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. DER may not always be interconnected with the bulk power system. 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. DER may be capable of exporting active power to an electric power system. DER includes the customer’s interconnection facilities but shall not include the area electric power system operator’s interconnection facilities;

I. **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.

J. **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;

K. **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. Specifically, it means a commercially available technology that:

1. uses mechanical, chemical, or thermal processes to:
   a. 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
   b. 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;

2. is composed of stationary equipment;

3. 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

4. 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;

**K. facilitated stakeholder process** means the statutory public advisory process pursuant to NMSA 1978, Section 62-17-10 (2005), 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;

**L. 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;

**M. 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;

**N. 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;

**O. 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. 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. 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;

**P. independent monitor (IM)** means a person or entity appointed by the commission in accordance with this rule to oversee the conduct of a utility’s competitive procurement process as addressed in this rule and to report to the commission regarding the utility’s conformance with the most recently approved accepted statement of need and action plan, in accordance with sections 10 and 11 of this rule, and the sufficiency, reasonableness, and competitive fairness, and completeness of that process, as provided in section 14 of this rule;

**Q. load forecasting** means the prediction of the demand for electricity and energy over the planning period for the utility;

**R. 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;

**S. 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;

**T. 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;

**U. net load** means the difference between forecasted load and expected electricity production from variable generation resources;

**V. optimization** means the process whereby system assets and distributed resources are managed optimally to minimize total system costs;

**W. V. planning period** means the future period for which a utility develops its IRP, which, for purposes of this rule, is 20 years;

**X. W. 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;

**Y. refurbish** means to rebuild or substantially modify an existing electricity-generating resource of 30 megawatts or greater;

**Z. X. 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;

**AA. renewable energy** means electrical energy generated by use of renewable energy resources and delivered to a public utility; means of a low- or zero-emissions generation technology with substantial long-term
production potential and generated by use of renewable energy resources that may include solar, wind, hydropower, geothermal, fuel cells that are not fossil fueled, and biomass resources;

(1) renewable energy resources are fuels, such as agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas, and anaerobically digested waste biomass; and

(2) renewable energy does not include fossil fuel or nuclear energy; and

Z. renewable energy resource means the following energy resources, with or without energy storage:

(1) solar, wind and geothermal;

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

(3) 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:

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

(b) have zero life cycle carbon emissions; and

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

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

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

BB.AA. statement of need means a description and assessment explanation of the amount and type of new resources, expressed in terms of energy and/or capacity, necessary to reliably meet an identified level of electricity demand in the planning horizon and to effect state policies.

[17.7.3.7 NMAC - N, 4/16/2007; A, 8/29/2017; A, 9X/14XX/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 (3) years a proposed integrated resource plan (IRP) to meet the service needs of its customers over the planning period following a facilitated stakeholder process. The plan shall show the resource options the utility believes it might 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 generically 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;

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

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

(5) statement of need, see 17.7.3.10 NMAC;

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

(7) 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.

C.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 proposal description of how it is coordinating the IRP with its out-of-state resource planning requirements.
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 approved or accepted.

1. The utility shall, within two (2) 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 approved or 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, state whether it requires a filing requesting a variance from the commission’s order pursuant to 1.2.2.40 NMAC.

17.7.3.9 FACILITATED STAKEHOLDER PROCESS: IRP PROCESS:

A. At least six (6) 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, not to exceed five (5) 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. Not later than 6 months after the facilitated stakeholder process commences, the IRP, including the resolved and unresolved issues, shall be filed with the commission as an application to approve or modify and approve the statement of need and action plan. The commission may call for briefings on unresolved issues or conduct a hearing, as needed, leading to a determination that approves the implementation of the action plan. The commission shall make this determination within 4 months.

1. The utility shall provide commission utility division staff and stakeholders reasonable access to the same modeling software used by the utility on equal footing as the utility in accordance with commission precedent, and the utility shall share all modeling information.

B. Not later than six (6) 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 and/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, 9X/14XX/2022]

17.7.3.10 STATEMENT OF NEED:
A. The statement of need is a description and explanation of the amount and type of new resources, expressed in terms of energy and/or capacity, necessary to reliably meet an identified level of electricity demand in the planning horizon and to effect state policies, an assessment of the amount and type of new resources, expressed in terms of energy and/or capacity, necessary to reliably meet an identified level of electricity demand, as established by utility load forecasting results during the defined planning period.
B. The forecast statement of need shall not be solely 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 and/or 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.

If the utility issues a request for proposals pursuant to 17.7.3.12 prior to a final order on the proposed statement of need, then no presumption of prudence shall apply in a subsequent case for cost recovery.

[17.7.3.104 NMAC - N, 9X/14XX/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 approved by the Commission; and
   (3) include a status report of the specific actions contained in the previous action plan.
B. The utility shall provide the commission with an annual update of its activities to implement the action plan, to be filed by the first anniversary of the final order issued by the commission and annually thereafter, spanning a four-year period. The utility shall update the commission by filing two (2) reports describing the utility’s implementation of the action plan. These reports shall be filed in the existing IRP docket one (1) year after the filing of the IRP, and two (2) 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.

If the utility issues a request for proposals pursuant to 17.7.3.12 prior to a final order on the proposed action plan, then no presumption of prudence shall apply in a subsequent case for cost recovery.

[17.7.3.116 NMAC - N, 9X/14XX/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, as described in the statement of need, if any, 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 (5) months following the commission’s approval 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 intervenors parties to the utility’s pending IRP case with the documents and
contracts that shall constitute the RFP solicitation (RFP documents) and a timeline for soliciting, accepting, evaluating, and ranking 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 approved-accepted statement of need and action plan and is not unduly discriminatory, which comments shall be considered, and may be incorporated, by the utility prior to the issuance of the RFP. Within 15 days following the comment period, the commission may request the utility to make modifications. Thereafter, the utility may issue the proposed RFP.

**C-E.** The utility may issue the RFP after comments are submitted on the independent monitor’s design report pursuant to paragraph 1 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.

**D-F.** The proposed RFP(s) shall include:

1. Bid evaluation and ranking criteria and bid ranking;
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, if relevant, including a detailed description of how the costs of future transmission will likely apply to bid resources;
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 ranking period, and the expected selection period;
9. All security requirements and the rationale behind them; anda requirement that the utility cannot 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;
10. Any other information necessary to implement a competitive RFP process.

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

1. Lists of a description of information that the utility claims is confidential;
   a. Claims is confidential;
   b. Shall provide to developers of a potential resource in RFP documents;
2. Descriptions of proposed protection methods for:
   a. Bid prices; and
   b. Other bid details;
   c. Information on a resource proposed for self-build and rate base treatment; and
3. Descriptions of alternative plans as directed by the commission.

**F.** Upon receiving bid results from issuance of the all-source RFP, the utility shall perform software-modelled computer analysis runs, using software providing sub-hourly optimization, on a reasonable number of resource portfolios selected from the bids, including a base case and a reasonable number of alternative portfolios.

**G.** Contemporaneously with actions in subsection F., the utility shall share all bid information with the commission utility division staff and intervenors, and provide or arrange for access to the same modelling software used by the utility, for the purpose of permitting the commission utility division staff and intervenors to conduct a reasonable number of runs of alternative resource portfolios on equal footing as the utility.

**H.** Not later than 45-75 days after the utility receives bids for its projected needs, the utility shall provide the IM with a ranking of proposals that meet the above stated criteria, a detailed description of price and non-price criteria, its preferred portfolio of resources, and any alternative portfolio(s) designed to meet the identified needs within the planning period, along with a timeline for resource development.

**I.** The utility shall rank 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.
Exhibit C

(2) cost of the resource that would be borne by ratepayers, described in terms of the net present value of capacity cost and/or 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 and/or create long-term waste disposal issues;

(6) resource dispatchability and/or operational flexibility benefits or constraints;

(7) the utility shall may include in its evaluation the estimated cost and/or environmental impact of transmission upgrades or distribution infrastructure upgrades necessary to deliver the project’s energy, capacity, or services;

(a) 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

(8) 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;

(9) additional criteria used by the utility for ranking may not establish a preference for utility ownership or for projects proposed by a utility-affiliated company; and

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.

(10) 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.

J. The utility’s competitive procurement processes shall not prevent bidders from proposing, or the utility from considering, a resource owned by an independent power producer through a purchased power agreement at a site owned or controlled by the utility.

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 required by the utility’s action plan or if prudent following a material event pursuant to 17.7.3.11(D) NMAC.

M. Nothing in this rule shall be construed to prevent a public utility from procuring resources as required by the REA, NMSA 1978, Section 62-16-4 (2019), the EUEA, NMSA 1978, Section 62-17-5 (2020), or Rule 17.9.570 NMAC. Such procurements shall be included in the utility’s forecasting, statement of need, and action plan.

17.7.3.13 COST RECOVERY; EVIDENCE OF CONSISTENCY; REButtable PRESUMPTION:

A. Approval 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 approved action plan shall be considered in a general rate case, resource acquisition proceeding, or appropriate application for a CCN.

(1) However, in a proceeding concerning the utility’s request for a CCN for a new utility resource, or in other proceedings concerning the utility’s resource acquisition implementing the action plan, the utility shall present evidence that the requested resource is consistent with the commission-approved statement of need unless material changes have occurred that would warrant a different utility course of action. Such evidence shall create a rebuttable presumption that the proposed procurements in the action plan, to the extent that they are competitively procured, are required by the public convenience and necessity.

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 approval 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 section 12 of this rule. The independent monitor, as provided in this section, shall assist the commission in ensuring that all such processes are
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.

B. 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 (4) 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.

C. The commission, through its designee, shall develop a standard form of contract between an IM and the public utility 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 a public utility 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 paragraph GF of this 17.7.3.14 NMAC rule.

D. The commission shall confer with the public utility on the selection of the IM and shall retain sole discretion to select the IM.

E. 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

F. 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 section 17.7.3.12(CB) NMAC. The IM’s objective in reporting to the Commission shall be to review and 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 through -12 NMAC section 10 of this rule and are otherwise reasonable, competitively fair, and 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 applicable law and in the public interest as identified by the public utility’s integrated resource plan as approved by the commission.

(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 modeling, assumptions, inputs and methods used by the utility in its solicitation, evaluation, and procurement processes, including but not limited to bid screening, comparison, ranking evaluation, and short-listing criteria.
The IM shall report to the commission in a timely manner following the public utility’s conclusion of its RFP process pursuant to section 12 of this rule. The IM’s objective in reporting to the Commission shall be to state whether:

(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 sections 11 and 12 of this rule.

(ii) 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 sections 11 and 12 of this rule, and were otherwise reasonable, competitively fair, and designed to identify the public utility’s most cost-effective options among resource alternatives to meet its service needs in compliance with applicable law; 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 paragraph (ii) of 17.7.3.14 NMAC this section.

(3) The commission may rely on that opinion to request the utility to make modifications in a timely manner.

G.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.

H.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.

- The public utility, commission utility division staff, and any parties to the public utility’s most recent IRP docket may comment on each report of the IM within 14 days of the filing of the design report to the public record.

1. 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 section 12 of this rule, 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.

I.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 subsection paragraph (ii) 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 Rule 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 subsection (I)(I) of 17.7.3.14 NMAC.

L.M. The commission shall not appoint an independent monitor for a utility’s procurement for which the commission grants a variance pursuant to paragraph D of 17.7.3.17 NMAC.

[17.7.3.14 NMAC - N, 9/14/2022]

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 paragraph 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 two-three (3) 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.

[17.7.3.1520 NMAC - N, 4/16/2007; A, 8/29/2017; A, 9X/14XX/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. 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.

[17.7.3.164 NMAC - N, 4/16/2007; A, 9/14/2022]

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 chairman, a commissioner, or a designated hearing examiner.

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

(1) emergency procurements;

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

(3) 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;

(4) 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;

(5) interruptible service provided to the utility’s electric customers;

(6) modification to, or amendment of, existing power purchase agreements provided that the modification or amendment does not extend the agreement more than four (4) 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

D.(7) utility administered demand-side programs.

[17.7.3.1723 NMAC - N, 4/16/2007; A, 9X/14XX/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:


Other History:
Only that applicable portion of NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities (filed 06-30-1988) was renumbered, reformatted and replaced by 17.7.3 NMAC, Integrated Resource Plans for Electric Utilities, effective 4/16/2007.
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 was sent via email to the following parties on the date indicated below:

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DATED this 15th day of September, 2022.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ LaurieAnn Santillanes, electronically signed
LaurieAnn Santillanes, Law Clerk