

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF A COMMISSION RULEMAKING )  
REGARDING NMPRC RULE 17.9.572 NMAC ) Case No. 20-00158-UT  
RENEWABLE ENERGY FOR ELECTRIC UTILITIES )**

**ORDER**

**THIS MATTER** comes before the New Mexico Public Regulation Commission (the "Commission" or "NMPRC") upon the October 27, 2021 Order On Responses, Initiating Rulemaking, Scheduling Workshop and Changing Caption ("October 27<sup>th</sup> Order") that revised the caption to reflect the Commission's determination to initiate a rulemaking to amend NMPRC Rule 17.9.572 NMAC regarding Renewable Energy for Electric Utilities and to schedule an initial workshop; wherefore; being duly informed in the premises,

**THE COMMISSION FINDS AND CONCLUDES:**

1. The October 27<sup>th</sup> Order set an initial workshop date of December 2, 2021 at 1:30 p.m. to discuss proposed draft revisions to the Commission Rule 17.9.572 NMAC.
3. The Initial Order provided that the Commission would provide a proposed draft rule to all persons listed on the Certificate of Service for discussion purposes at the initial workshop and would designate a presiding officer for the initial workshop.
4. For these reasons, attached hereto as Exhibit A, is the draft containing proposed revisions to 17.9.572 NMAC for discussion purposes at the initial workshop as well as an order of designation of presiding officer for the initial workshop.

**IT IS THEREFORE ORDERED:**

A. Judith Amer, Associate General Counsel, NMPRC is hereby designated to preside at the initial workshop presently scheduled for December 2, 2021 at 1:30 p.m. pursuant to 1.2.2.29 NMAC.

B. Attached as Exhibit A hereto is a draft proposed rule revising 17.9.572NMAC for discussion purposes at the initial workshop.

C. Utility Division Staff shall and interested persons may file written comments regarding Exhibit A in Case No. 21-00158-UT via its Records Bureau's email address at: [prc.records@state.nm.us](mailto:prc.records@state.nm.us) on or before December 29, 2021. Persons interested in providing oral public comment at the initial workshop must request a Zoom invitation by emailing at [robert.lundin@state.nm.us](mailto:robert.lundin@state.nm.us) by no later than 5:00 p.m. MT on December 1, 2021.

D. The public may participate by clicking on the NMPRC webpage link for viewing public hearings.

E. This Order is effective immediately.

F. This Order is issued by the Chair of the Commission as authorized by 1.2.2.30(B)(3) NMAC of the Commission's Rules on Procedure.

G. A copy of this Order shall be served upon all persons listed on the attached certificate of service via email, to the extent that email addresses are known, and if not known, then by regular mail.

**ISSUED at Santa Fe, New Mexico this 24th day of November, 2021.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

***/s/ Stephen Fischmann, electronically signed***  
**COMMISSIONER STEPHEN FISCHMANN**



IT

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES**  
**CHAPTER 9 ELECTRIC SERVICES**  
**PART 572 RENEWABLE ENERGY FOR ELECTRIC UTILITIES**

**17.9.572.1 ISSUING AGENCY:** New Mexico Public Regulation Commission.  
 [17.9.572.1 NMAC - Rp, 17.9.572.1 NMAC, 5/4/2021]

**17.9.572.2 SCOPE:**  
 This rule applies to all electric investor-owned public utilities under the commission’s jurisdiction.  
 [17.9.572.2 NMAC - Rp, 17.9.572.2 NMAC, 5/4/2021]

**17.9.572.3 STATUTORY AUTHORITY:** Sections 62-13-13.1, 62-16-3, 62-16-4, 62-16-5, 62-16-6, 62-16-7, 62-16-8 and 62-16-9 NMSA 1978.  
 [17.9.572.3 NMAC - Rp, 17.9.572.3 NMAC, 5/4/2021]

**17.9.572.4 DURATION:** Permanent.  
 [17.9.572.4 NMAC - Rp, 17.9.572.4 NMAC, 5/4/2021]

**17.9.572.5 EFFECTIVE DATE:** May 4, 2021, unless a later date is cited at the end of a section.  
 [17.9.572.5 NMAC - Rp, 17.9.572.5 NMAC, 5/4/2021]

**17.9.572.6 OBJECTIVE:** The purpose of this rule is to implement the Renewable Energy Act Section 62-16-1, et seq. NMSA 1978 (2019), and to bring significant economic development and environmental benefits to New Mexico.  
 [17.9.572.6 NMAC - Rp, 17.9.572.6 NMAC, 5/4/2021]

**17.9.572.7 DEFINITIONS:** Unless otherwise specified, as used in this rule:

**A. Definitions beginning with “A”:** ~~[RESERVED]~~ average annual levelized cost means a calculation of the present value of the total cost of building and operating a new resource over an assume lifetime. Average annual levelized cost is calculated by dividing the present value of the assume lifetime total cost of a new resources by the present value of the assumed lifetime generation production of that new resource. The equation for

$$\frac{\sum_{t=1}^n \frac{I_t + M_t + F_t}{(1+r)^t}}{\sum_{t=1}^n \frac{E_t}{(1+r)^t}}$$

calculating average annual levelized cost is as follows:

whereas, I<sub>t</sub> equals investment expenditures in year t (including financing) in nominal dollars; M<sub>t</sub> equals operations and maintenance expenditures in year t in nominal dollars; F<sub>t</sub> equals fuel expenditures and variable operations and maintenance in year t in nominal dollars; E<sub>t</sub> equals electricity generated in year t including any degradation; r equals discount rate; and n equals assumed lifetime of the system.

**B. Definitions beginning with “B”:** [RESERVED]

**C. Definitions beginning with “C”:** [RESERVED]

**D. Definitions beginning with “D”:** [RESERVED]

**E. Definitions beginning with “E”:** **emissions** means all emissions regulated by state or federal authorities, including but not limited to all criteria pollutants and hazardous air pollutants; methane; mercury; and carbon dioxide (CO<sub>2</sub>).

**F. Definitions beginning with “F”:** **financial incentive** means money or additional earnings that a public utility is authorized to collect from ratepayers by the commission or capital investment opportunities to encourage certain behaviors or actions that would not otherwise have occurred in order to further the outcomes described Section 62-16-4 NMSA 1978 (2019). The financial incentive, or monetary benefit, motivates certain behaviors or actions.

**G. Definitions beginning with “G”:** **greenhouse gas emissions** means emissions of gases including carbon dioxide, methane, nitrous oxide, fluorinated gases, or other gases that trap heat in the atmosphere.

**H. Definitions beginning with “H”:** [RESERVED]

**I. Definitions beginning with “I”:** **IRP** means integrated resource plan.

- J. Definitions beginning with “J”: [RESERVED]
- K. Definitions beginning with “K”: [RESERVED]
- L. Definitions beginning with “L”: [RESERVED]
- M. Definitions beginning with “M”: [RESERVED]
- N. Definitions beginning with “N”: [RESERVED]
- O. Definitions beginning with “O”: [RESERVED]
- P. Definitions beginning with “P”:

(1) **plan year** means the calendar year for which approval is being sought;

(2) **plan year total retail energy sales** means retail energy sales in ~~kWh~~ kilowatt-hours projected for the plan year adjusted for projected energy efficiency reductions based on approved energy efficiency and load management programs in effect at the time of the filing, less energy sales to voluntary program participants under Section 62-16-7 NMSA 1978;

(3) **political subdivision of the state** means a division of the state made by proper authorities thereof, acting within their constitutional powers, for purpose of carrying out a portion of those functions of the state which by long usage and inherent necessities of government have always been regarded as public;

(4) **procure or procurement** means a competitive process conducted by an investor-owned electric utility for soliciting and evaluating purchased power, facility self-build or facility build-transfer options as proposals for any new, additional or amended renewable energy resource, including but not limited to, instructions to bidders, bid specifications, conditions, forms or other requirements included in a request for proposals and all methods, practices and assumptions used by an investor-owned electric utility to model or evaluate such proposals or to negotiate with bidders, in order to generate or purchase any renewable energy resource or to commit to generate or purchase any renewable energy resource;

(5) **public utility** means investor-owned electric utility certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act and does not include rural electric cooperatives or municipalities.

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

R. Definitions beginning with “R”:

(1) **reasonable cost threshold (RCT)** means an average annual levelized cost of \$60.00 per megawatt-hour at the point of interconnection of the renewable energy resource with the transmission systems, adjusted for inflation after 2020;

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

(3) **renewable energy certificate (REC)** means a certificate or other record, in a format approved by the commission, that represents all the environmental attributes from one megawatt-hour of electricity generated from renewable energy delivered to a public utility and assigned to its New Mexico customers;

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

(a) solar, wind, and geothermal;

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

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

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

(ii) have zero life cycle carbon emissions; and

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

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

(e) landfill gas and anaerobically digested waste biogas.

(5) **renewable portfolio standard (RPS)** means the minimum percentage of retail sales of electricity by a public utility to electric consumers in New Mexico that is required by the Renewable Energy Act to be from renewable energy.

(6) **renewable purchased power agreement** means an agreement that binds an entity generating power from renewable energy resources to provide power at a specified price, for a specified term, and binds the purchaser to that price.

- S. **Definitions beginning with “S”:** [RESERVED]
- T. **Definitions beginning with “T”:** [RESERVED]
- U. **Definitions beginning with “U”:** [RESERVED]
- V. **Definitions beginning with “V”:** [RESERVED]
- W. **Definitions beginning with “W”:** WREGIS means the western renewable energy generation information system.

- X. **Definitions beginning with “X”:** [RESERVED]
- Y. **Definitions beginning with “Y”:** [RESERVED]
- Z. **Definitions beginning with “Z”:**

(1) **zero carbon resource** means an electricity generation resource that emits no carbon dioxide into the atmosphere, or that reduces methane emitted into the atmosphere in an amount equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere, as a result of electricity production;

(2) **zero carbon resource standard** means providing New Mexico public utility customers with electricity generated from one hundred percent zero carbon resources.

[17.9.572.7 NMAC - Rp, 17.9.572.7 NMAC, 5/4/2021; [A, XX/XX/2022](#)]

**17.9.572.8 LIBERAL CONSTRUCTION:** This rule shall be liberally construed to carry out its intended purposes. If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, the remainder of the rule, or the application of such provision to other persons or circumstances, shall not be affected thereby.

[17.9.572.8 NMAC - Rp, 17.9.572.8 NMAC, 5/4/2021]

**17.9.572.9 RELATIONSHIP TO OTHER COMMISSION RULES:** Unless otherwise specified, this rule does not supersede any other rule of the commission but supplements rules applying to public utilities.

[17.9.572.9 NMAC - Rp, 17.9.572.9 NMAC, 5/4/2021]

**17.9.572.10 RENEWABLE PORTFOLIO STANDARD:**

A. Each public utility must shall develop an annual Renewable Energy Act plan to comply with the renewable portfolio standard during the plan year. The plan shall demonstrate reasonable and consistent progress toward meeting the renewable portfolio standard to be effective following the end of the plan year. Renewable energy resources that are in a public utility’s electric energy supply portfolio on July 1, 2004 shall be counted in determining compliance with this rule. However, renewable energy sold to customers through a voluntary renewable energy program tariff approved by the commission shall not be counted in determining compliance with this rule. Other factors being equal, preference shall be given to renewable energy generated in New Mexico.

B. **Renewable portfolio standards:** For public utilities other than rural electric cooperatives and municipalities, requirements of the renewable portfolio standard are:

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

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

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

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

(5) no later than January 1, 2040, renewable energy resources shall supply no less than eighty percent of all retail sales of electricity in New Mexico, provided that compliance with this standard until December 31, 2047 shall not require the public utility to displace zero carbon resources in the utility’s generation portfolio as of June 14, 2019; and

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

C. **Demonstration of compliance:** In accordance with Section 62-16-5 NMSA 1978 (2019):

(1) compliance with the renewable portfolio standard ~~is shall be~~ demonstrated by the retirement of renewable energy certificates, provided that the associated renewable energy is delivered to the public utility and assigned to the public utility’s New Mexico customers; and

(2) a public utility shall not retire renewable energy certificates associated with renewable energy from generation resources for which it has traded, sold or transferred the associated renewable energy certificate for purposes of compliance with the renewable portfolio standard.

[17.9.572.10 NMAC - Rp, 17.9.572.10 NMAC, 5/4/2021; [A, XX/XX/2022](#)]

**17.9.572.11 COMMISSION ADMINISTRATION OF RPS AND ZERO CARBON STANDARDS:** After consultation with the department of environment, the commission may not approve a public utility's annual Renewable Energy Act plan that results in material increases to greenhouse gas emissions from entities not subject to commission oversight and regulation.

[17.9.572.11 NMAC - Rp, 17.9.572.11 NMAC, 5/4/2021; [A, XX/XX/2022](#)]

**17.9.572.12 REASONABLE COST THRESHOLD:**

**A.** The reasonable cost threshold is a customer protection mechanism that limits the customer bill impact resulting from annual Renewable Energy Act plans.

**B.** The reasonable cost threshold in any plan year is an annual average levelized cost of \$60.00 per megawatt-hour at the point of interconnection of the renewable energy resource with the transmission system, adjusted for inflation starting in 2021 by the amount of the cumulative increase change in the consumer price index, urban, all items, published by the bureau of labor statistics between January 1 of the year prior to the procurement plan year and January 1 of the procurement plan year. Each public utility shall include in its annual Renewable Energy Act plan a reasonable cost threshold analysis by procurement, existing or proposed, for the plan year for which it seeks commission approval. This analysis ~~should~~ shall show how each procurement compares for that plan year with the inflation adjusted reasonable cost threshold.

**C.** If, in any given year, a public utility determines that the average annual levelized cost of renewable energy that would need to be procured or generated for purposes of compliance with the renewable portfolio standard would be greater than the reasonable cost threshold, the public utility shall not be required to incur that excess cost; provided that the existence of this condition excusing performance under the renewable portfolio standard in any given year shall not operate to delay compliance with the renewable portfolio standard in subsequent years. The provisions of this rule ~~do~~ preclude a public utility from accepting a project with a cost that would exceed the reasonable cost threshold. When a public utility can generate or procure renewable energy resources at or below the reasonable cost threshold, it shall be required to do so to the extent necessary to meet the applicable renewable portfolio standard. To the extent a procurement is greater than the reasonable cost threshold and results in excess costs, the public utility shall explain in detail why the public utility cannot procure renewable energy resources at a cost less than or equal to the reasonable cost threshold along with a demonstration of the public utility's efforts to obtain to procure renewable energy resources at or below the reasonable cost threshold.

**D.** A public utility that believes its procurement will exceed the reasonable cost threshold may file with the commission a request for waiver of the renewable portfolio standard for the applicable plan year. The waiver request shall:

(1) explain in detail why the public utility cannot procure resources at a cost less than the reasonable cost threshold;

(2) include an explanation and evidence of all efforts the public utility undertook to procure resources at a cost within the reasonable cost threshold; and

(3) be deemed granted if not acted upon within 60 days of the date the waiver request was filed.

[17.9.572.12 NMAC - Rp, 17.9.572.12 NMAC, 5/4/2021; [A, XX/XX/2022](#)]

**17.9.572.13 RESOURCE SELECTION:** The utility shall select resources to satisfy the renewable portfolio standard through a competitive resource selection process that includes opportunities for bidders to propose purchased power, facility self-build or facility build-transfer options. The utility shall determine all commercially available resources available through a competitive procurement process that are necessary to make reasonable and consistent progress toward the renewable portfolio standards and the zero-carbon standard. The utility shall, at a minimum, use the net present value methodology to identify the costs of a proposed new renewable energy resource necessary to satisfy the renewable portfolio standard. The utility may propose additional methodologies to identify the costs of a proposed new renewable energy resource.

[17.9.572.13 NMAC - Rp, 17.9.572.13 NMAC, 5/4/2021]

**17.9.572.14 ANNUAL RENEWABLE ENERGY ACT PLAN:** An annual Renewable Energy Act plan shall include plan year and next plan year data. The plan year shall be presented for commission approval and the next plan year shall be presented for informational purposes.

A. On or before July 1 of each year, each public utility ~~must~~ shall file with the commission an annual Renewable Energy Act plan. The filing schedule shall be staggered, as follows, with each of the investor-owned utility filings ~~occurring~~ occurring one month apart, the last filing to be made July 1 of each year. The utilities shall file alphabetically each year (el paso electric company shall file on May 1; public service company of New Mexico shall file on June 1; and southwestern public service company shall file on July 1 each year).

B. The annual Renewable Energy Act plan ~~is to~~ shall include:

- (1) testimony and exhibits providing a full explanation of the utility's determination of the plan year and next plan year renewable portfolio standard and reasonable cost threshold;
- (2) the cost of procurement in the plan year and the next plan year for all new renewable energy resources required to comply with the renewable portfolio standard selected by the utility pursuant to 17.9.572.10 NMAC;
- (3) the amount of renewable energy the public utility plans to provide in the plan year and the next plan year required to comply with the renewable portfolio standard;
- (4) testimony and exhibits demonstrating how the cost and amount specified in Paragraphs (2) and (3) of this subsection were determined;
- (5) testimony and exhibits demonstrating the plan year and next plan year procurement amounts and costs expected to be recovered by the utility;
- (6) the capital, operating and fuel costs on a per-megawatt-hour basis during the preceding calendar year of each nonrenewable generation resource rate-base by the utility, or dedicated to the utility through a power purchase agreement of one year or longer, and the nonrenewable generation resources' carbon dioxide emissions on a per-megawatt-hour basis during that same year;
- (7) testimony and exhibits demonstrating the plan year and next plan year procurement amounts and costs expected to be recovered by the utility if limited by the reasonable cost threshold;
- (8) testimony demonstrating that the cost of the proposed procurement is reasonable compared with the price of electricity from renewable resources in the bids received by the public utility to recent prices for comparable energy resources elsewhere in the southwestern united states;
- (9) testimony regarding strategies used to minimize costs of renewable energy integration, including location, diversity, balancing area activity, demand-side management, rate design and load management;
- (10) testimony demonstrating that the portfolio procurement plan is consistent with the integrated resource plan and explaining any material differences;
- (11) testimony demonstrating that acceptable system reliability will be maintained with the proposed new renewable resource additions;
- (12) information, including exhibits, as applicable, that demonstrates that the proposed procurement was the result of a competitive procurement that included opportunities for bidders to propose purchased power, facility self-build or facility build-transfer options;
- (13) demonstration that the plan is otherwise in the public interest, considering factors such as overall cost and economic development opportunities;
- (14) testimony demonstrating consistency with the last filed IRP and if not explain why it is inconsistent; and
- (15) any other information the commission may deem necessary.

C. In addition to electronically filing and serving in accordance with 1.2.2 NMAC, a public utility shall serve notice and a copy of its annual renewable energy plan filing by first class mail on renewable resource providers requesting such notice from the commission, the New Mexico attorney general, and the intervenors in the public utility's most recent rate case. A public utility shall also post on its website the most recent and the pending annual Renewable Energy Act plans.

[17.9.572.14 NMAC - Rp, 17.9.572.14 NMAC, 5/4/2021; [A, XX/XX/2022](#)]

**17.9.572.15 COST RECOVERY FOR RENEWABLE ENERGY AND EMISSIONS REDUCTIONS:**

A. A public utility shall recover the reasonable costs of complying with this rule through the rate making process, including its reasonable interconnection and transmission costs, costs to comply with electric industry reliability standards and other costs attributable to acquisition and delivery of renewable energy and zero carbon energy to retail New Mexico customers.

**B.** Costs that are consistent with commission-approved annual Renewable Energy Act plans are deemed to be reasonable.

**C.** A public utility that is permitted to defer the recovery of renewable energy costs pursuant to commission order may, through the ratemaking process, recover from customers that are not subject to the rate impact limitations of Subsection C of Section 62-16-4 NMSA 1978 the cumulative sum of those deferred amounts, plus a carrying charge on those amounts.

**D.** Any financial benefits resulting to customer's qualified pursuant Subsection C of Section 62-16-4 NMSA 1978 shall accrue to the customer immediately as of June 14, 2019 and shall be reflected in customer bills each month, subject to annual true-up and reconciliation.

**E.** The financial incentive established pursuant to 17.9.572.22 NMAC shall be recovered or credited through a separate rider during the calendar year following the determination of the financial incentive, and subject to reconciliation for under- or over-recovery in a subsequent calendar year.

**F.** Any renewable energy procurement costs recovered through the utility's fuel clause shall be separately identified in its monthly and annual fuel and purchased power clause adjustment filings and its continuation filings.

**G.** The commission shall not disallow the cost associated with any expired renewable energy certificate.

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

**I.** [A public utility that utilizes a rate rider to recover the reasonable costs of complying with this rule shall, beginning with its Annual Renewable Energy Act Plan filing due for plan year 2023 pursuant to 17.9.572.14 NMAC, include a transition plan demonstrating how the public utility shall transition from utilizing a rate rider to recover the reasonable costs of complying with this rule, to recovering costs through a general rate case filing and/or its fuel and purchased power cost adjustment clause. The public utility shall not utilize a rate rider to recover the reasonable costs of complying with this rule by no later than plan year 2024.](#)  
[17.9.572.15 NMAC - Rp, 17.9.572.15 NMAC, 5/4/2021; A, XX/XX/2022]

#### **17.9.572.16 CUSTOMERS QUALIFIED PURSUANT TO SUBSECTION C OF SECTION 62-16-4**

**NMSA 1978:** Any customer that is a political subdivision of the state, or any educational institution designated in Article 12, Section 11 of the constitution of New Mexico with an enrollment of 20 thousand students or more during the fall semester on its main campus, with consumption exceeding 20 million kilowatt-hours per year at any single location or facility, and that owns renewable energy generation or hosts such facilities through a renewable purchased power agreement, shall not be charged by the utility for power purchases of one year or less or fuel on the amount of electricity purchased from the utility equal to the amount of renewable energy produced or hosted by the customer. The customer shall annually certify to the state auditor and notify the commission and the customer's serving electric utility of the amount of renewable energy produced at the customer-owned or customer-hosted facilities that generate renewable energy. The customer shall also certify to the state auditor and notify the commission that the customer will retire all renewable energy certificates associated with the renewable energy produced by those facilities. Any financial benefits as a result of the provisions of this subsection shall accrue to the customer immediately upon June 14, 2019 and shall be reflected in customer bills each month subject to annual true-up and reconciliation. The provisions of this rule shall not prevent the utility from recovering all of its reasonable and prudent fuel and purchased power costs. That customer shall also certify that it will retire all renewable energy certificates associated with the energy produced by those facilities.

**A.** The notice to the commission and the customer's serving utility shall:

- (1) be timely;
- (2) state the plan year during which the renewable energy is expected to be produced or hosted;
- (3) quantify the amount of renewable energy expected to be produced or hosted; and
- (4) shall include a copy of the customer's certification to the state auditor.

**B.** This section only exempts customers from charges for power purchases of one year or less or fuel on the amount of electricity purchased from the utility equal to the amount of renewable energy produced or hosted



by the customer. This section shall not prevent the utility from recovering all of its reasonable and prudent fuel and purchased power costs.

C. A public utility shall not retire any RECs retired per the certification of a customer made pursuant to Subsection C of Section 62-16-4 NMSA 1978 for the renewable portfolio standard or voluntary renewable energy program compliance.

[17.9.572.16 NMAC - Rp, 17.9.572.16 NMAC, 5/4/2021]

#### **17.9.572.17 RENEWABLE ENERGY CERTIFICATES:**

A. Each public utility shall annually establish its compliance with the renewable portfolio standard through the filing of an annual report, as provided in 17.9.572.19 NMAC, documenting the retirement of renewable energy certificates.

B. Non-WREGIS registered RECs shall contain the following information:

- (1) the name and contact information of the renewable energy generating facility owner or operator;
- (2) the name and contact information of the public utility or rural electric distribution cooperative purchasing the renewable energy certificate;
- (3) the type of generator technology and fuel type;
- (4) the generating facility's physical location, nameplate capacity in [MWh megawatts](#), location and ID number of revenue meter and date of commencement of commercial generation;
- (5) the public utility to which the generating facility is interconnected;
- (6) the control area operator for the generating facility; and
- (7) the quantity in [kWh kilowatt-hours](#) and the date of the renewable energy certificate creation.

C. Renewable energy certificates:

- (1) ~~are shall be~~ owned by the generator of the renewable energy unless:
  - (a) the renewable energy certificates are transferred to the purchaser of the energy through specific agreement with the generator;
  - (b) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the public utility purchaser of the renewable energy unless retained by the generator through specific agreement with the public utility purchaser of the energy; or
  - (c) a contract for the purchase of renewable energy is in effect prior to January 1, 2019, in which case the purchaser of the energy owns the renewable energy certificates for the term of such contract; and
- (2) may be traded, sold or otherwise transferred by their owner, unless the certificates are from a rate-based public utility plant, in which case the entirety of the renewable energy certificates from that plant shall be retired by the utility on behalf of itself or its customers. Any contract to purchase renewable energy entered into by a public utility on or after July 1, 2019 shall include conveyance to the purchasing utility of all renewable energy certificates, and the entirety of those certificates shall be retired by that utility on behalf of itself or its customers or subsequently transferred to a retail customer for retirement under a voluntary program for purchasing renewable energy approved by the commission;
- (3) that are used once by a public utility to satisfy the renewable portfolio standard and are retired shall not be further used by the public utility; and
- (4) that are not used by a public utility to satisfy the renewable portfolio standard may be carried forward for up to four years from the date of creation and, if not used by that time, shall be retired by the public utility.

D. Public utilities ~~are shall be~~ responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources and has not been retired, traded, sold or otherwise transferred to another party. Public utilities shall maintain records sufficient to meet the demonstration requirement of this subsection.

E. The acquisition, sale or transfer, and retirement of any renewable energy certificates used to meet renewable portfolio standards on or after January 1, 2008 shall be registered with the western renewable energy generation information system (WREGIS) or its direct successor(s), except as provided in Subsection F of this section. Certificates whose retirement has been registered by the public utility with WREGIS shall be deemed to meet the requirements of Subsection D of this section.

F. Renewable energy certificates representing electricity delivered to the public utility and assigned to the public utility's New Mexico customers and registered with a tracking system other than WREGIS may be used to meet renewable portfolio standards so long as WREGIS lacks the capability to import certificates from that other tracking system.

[17.9.572.17 NMAC - Rp, 17.9.572.17 NMAC, 5/4/2021; [A, XX/XX/2022](#)]

**17.9.572.18 VOLUNTARY RENEWABLE TARIFFS:**

A. The commission may require that a public utility offer its retail customers a voluntary program for purchasing renewable energy that is in addition to electricity provided by the public utility pursuant to the renewable portfolio standard, under rates and terms that are approved by the commission.

B. The voluntary renewable tariff may also include provisions to enable consumers to purchase renewable energy within certain energy blocks and by source of renewable energy. Additionally, each public utility ~~must~~ shall develop an educational program on the benefits and availability of its voluntary renewable energy program. The tariff, along with the details of the consumer education program, shall be on file with the commission.

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

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

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

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

[17.9.572.18 NMAC - Rp, 17.9.572.18 NMAC, 5/4/2021; [A, XX/XX/2022](#)]

**17.9.572.19 ANNUAL RENEWABLE ENERGY PORTFOLIO REPORT:** Concurrent with the filing of an annual renewable energy plan, each public utility ~~must~~ shall file with the commission a report on its renewable energy generation or purchases of renewable energy during the prior plan year. This report shall:

A. itemize all renewable energy generation or renewable energy certificate purchases and sales;

B. list, and include copies of, all renewable energy certificates, including acquired, issued or retired certificates;

C. document from WREGIS or its successor the renewable energy certificates acquired, sold, retired, transferred, or expired; such documentation shall include reports from WREGIS or its successor which allow the commission to determine, by fuel type, the number of RECs in each calendar year:

(1) acquired;

(2) sold;

(3) retired;

(4) transferred; and

(5) expired;

D. describe the retirements made to meet renewable portfolio standard compliance based on actual retail sales and procurement costs, for the most recent reporting period including, the reductions, if any, to the RPS for:

(1) purchases by retail customers through an approved voluntary program; or

(2) due to the reasonable cost threshold;

(3) explain and demonstrate how the reduction was determined; and

(4) quantity of renewable energy certificates banked for future compliance use;

E. describe and quantify the implementation of the voluntary renewable tariff requirements in 17.9.572.18 NMAC; ~~and~~

F. present a full explanation of approved recovery mechanisms for approved annual renewable energy plan costs and a complete accounting of all collected and deferred amounts; ~~and~~

G. ~~d~~Describe and tabulate the utility's compliance with its renewable portfolio standard for a given report year and describe how the compliance relates to the first year a new renewable portfolio standard becomes effective as established in Subsection A of Section 62-16-4 NMSA 1978 (2019) and Subsection A of 17.9.572.10 NMAC and describe how the compliance relates the first year of the next new renewable portfolio standard. The report shall include the following to demonstrate compliance with the renewable portfolio standard:

(1) report year total utility renewable portfolio standard requirement in megawatt-hours;

- (2) report year total utility renewable portfolio standard compliance in megawatt-hours;
- (3) report year total utility renewable portfolio standard provided by eligible renewable energy resources in megawatt-hours listed by resource and totaled;
- (4) percentage of report year total utility renewable portfolio standard megawatt-hours provided by eligible renewable energy resources; and
- (5) report ~~y~~ear ~~kWh~~kilowatt-hour generation by facility from coal-fired generating facilities allocated to New Mexico retail customers.

[17.9.572.19 NMAC - Rp, 17.9.572.19 NMAC, 5/4/2021; [A, XX/XX/2022](#)]

**17.9.572.20 REVIEW BY COMMISSION:**

- A. Interested parties wishing to protest an annual Renewable Energy Act plan shall do so by stating the bases for the protest within 30 days after the filing of the utility’s annual renewable energy plan.
- B. The commission shall approve or modify annual Renewable Energy Act plans within 90 days and may approve such plans without a hearing, unless a protest is filed that demonstrates to the commission’s reasonable satisfaction that a hearing is necessary.
- C. The commission may modify a plan after notice and hearing, and may, for good cause, extend the time to approve an annual Renewable Energy Act plan for an additional 90 days.
- D. If the commission ~~has not acted~~does not act within the 90 day period, a plan is deemed approved.
- E. The commission may reject a plan, within 40 days of filing, if the commission finds that the plan does not contain the required information; upon such rejection the public utility’s obligation to procure additional resources will be suspended for the time necessary to file a revised plan. In such instances, the total amount of renewable energy to be procured by the public utility will not change.

[17.9.572.20 NMAC - Rp, 17.9.572.20 NMAC, 5/4/2021; [A, XX/XX/2022](#)]

**17.9.572.21 EXEMPTION AND VARIANCE:** The commission, upon its own motion, ~~and or~~ any interested person may file an application for an exemption or a variance from the requirements of this rule. Such motion or application shall:

- A. identify the section of this rule for which the exemption or variance is requested;
- B. describe the situation that necessitates the exemption or variance;
- C. set out the effect of complying with this rule on the public utility and its customers if the exemption or variance is not granted;
- D. define the result the request will have if granted;
- E. state how the exemption or variance will be consistent with the purposes of this rule;
- F. state why no other reasonable alternative is preferable; and
- G. state why the proposed alternative is in the public interest.

[17.9.572.21 NMAC - Rp, 17.9.572.21 NMAC, 5/4/2021; [A, XX/XX/2022](#)]

**17.9.527.22 FINANCIAL INCENTIVE:**

- A. In accordance with Subsection D of Section 62-16-4 NMSA 1978 (2019), a public utility or any other person, may apply by a motion or application, requesting that the commission provide the public utility with a financial or other incentives to encourage ~~the public utilities~~utility to produce or acquire renewable energy that:
  - (1)        exceeds the applicable annual renewable portfolio standard set forth in Section 62-16-4 NMSA 1978 (2019);
  - (2)        results in reductions in carbon dioxide emissions earlier than required by Subsection A of Section 62-16-4 NMSA 1978 (2019); or
  - (3)        causes a reduction in the generation of electricity by coal-fired generating facilities, including coal-fired generating facilities located outside of New Mexico.

Public utilities shall file any motion or application under this section concurrently with their annual Renewable Energy Act plan.

- B. A financial or other incentive proposed under this section ~~must~~shall be related to ~~measures implemented by the utility~~the public utility producing or acquiring renewable energy after May 4, 2021 ~~the effective date of this rule~~ to accomplish at least one of the following purposes:

- (1) exceeding the public utility’s annual RPS requirements;
- (2) reducing carbon dioxide emissions earlier than required by Subsection A of Section 62-16-4 NMSA 1978; or

(3) reducing the generation of electricity by coal-fired generating facilities, including coal-fired generating facilities located outside of New Mexico that serve the utility's customers.

C. The public utility or other person requesting a financial or other incentive ~~has~~ shall have the burden to prove by a preponderance of evidence that the terms and duration of the proposed incentive meet the requirements of this rule and are just and reasonable in light of the utility's costs, its authorized return, and the magnitude of any other incentives that have been authorized by the commission. Any application or motion requesting a financial or other incentive shall be supported by written testimony and exhibits.

D. No incentive ~~will~~ shall be awarded under this section with respect to a particular investment if the cost of that investment exceeds the demonstrable value of the corresponding reduction in carbon dioxide or other emissions. A utility requesting a financial or other incentive under this rule ~~must~~ shall establish that the benefits of achieving the goals set out in Subsection B of this section above are not exceeded by the costs it incurred to achieve them. To establish this, the utility ~~must~~ shall provide detailed analysis for each applicable period, including but not limited to:

- (1) the utility's total carbon dioxide emissions;
- (2) the reduction in the utility's carbon dioxide emissions attributable to the measures described in Subsection B of this section;
- (3) the estimated value of the reduction in carbon dioxide emissions described in Paragraph (2) of this subsection based on an analysis of relevant carbon dioxide markets;
- (4) the cost of the measures implemented by the utility that resulted in the lower carbon dioxide emissions identified in Paragraph (2) of this subsection and the dates when each measure was implemented; and
- (5) any other costs necessary to implement each of the measures identified in Subsection B of this section.

E. The total financial incentive authorized for recovery in rates pursuant to this section shall not exceed the product (expressed in dollars) of:

- (1) the utility's annual weighted average cost of capital (expressed as a percent); and
- (2) the cost of the measures described in Subsection B of this section.

F. A financial incentive shall only be used to incentivize the production or acquisition of renewable energy to accomplish the requirements of rule 17.9.527.22(A)(1)-(3), and it shall not be utilized to incentivize only a closure of a carbon dioxide emitting generating resource.

[17.9.527.22 NMAC - N, 5/4/2021; A, XX/XX/2021]

### **17.9.527.23 [RESERVED]**

[17.9.527.23 NMAC - Repealed, 5/4/2021]

### **HISTORY OF 17.9.572 NMAC:**

**Pre-NMAC History:** None.

### **History of Repealed Material:**

17 NMAC 10.572, Renewable Energy Development Program (filed 11/30/1998) repealed 7/1/2003.

17.9.572 NMAC, Renewable Energy as a Source of Electricity (filed 6/16/2003) repealed 1/14/2005.

17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 12/29/2004) repealed 8/30/2007.

17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 8/15/2007) repealed 5/31/2013.

17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 5/10/2013) repealed 5/4/2021.

### **Other History:**

17 NMAC 10.572, Renewable Energy Development Program (filed 11-30-98) replaced by 17.9.572 NMAC, Renewable Energy as a Source of Electricity, effective 7/1/2003, 17.9.572 NMAC, Renewable Energy as a Source of Electricity (filed 6/16/2003) replaced by 17.9.572, Renewable Energy for Electric Utilities, effective 1/14/2005.

17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 12/29/2004) replaced by 17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 8/15/2007) replaced by 17.9.572 NMAC, Renewable Energy for Electric Utilities effective 5/31/2013.

Renewable Energy for Electric Utilities (filed 5/10/2013) replaced by 17.9.572 NMAC, Renewable Energy for Electric Utilities effective 5/4/2021.

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF A COMMISSION RULEMAKING )  
REGARDING NMPRC RULE 17.9.572 NMAC ) Case No. 20-00158-UT  
RENEWABLE ENERGY FOR ELECTRIC UTILITIES )**

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**CERTIFICATE OF SERVICE**

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

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**DATED** this 24<sup>th</sup> day of November, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

*/s/ Isaac Sullivan-Leshin, electronically signed*

Isaac Sullivan-Leshin, Paralegal

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