

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF POTENTIAL AMENDMENTS TO)
NMPRC RULE 17.9.570 NMAC, ENTITLED GOVERNING) Case No. 20-00175-UT
COGENERATION AND SMALL POWER PRODUCTION)**

**ORDER AND NOTICE OF PROPOSED RULEMAKING AMENDING NMPRC RULE
17.9.570 TO COMPLY WITH FERC ORDER 872-A**

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission”) upon the Petition filed by El Paso Electric Company (“EPE”) to initiate a rulemaking proceeding to amend NMPRC Rule 17.9.570 NMAC (“Rule 570”) (the “Petition”) and upon the September 2, 2020 Initial Order requesting comments and setting the date of the initial workshop. **NOTICE** is hereby given that the Commission is commencing a rulemaking proceeding to consider promulgating Amendments to Rule 17.9.570 NMAC to comply with FERC Order 872- which revised the federal regulations implementing Public Utility Regulatory Policies Act of 1978 (“PURPA”). A copy of the proposed Amendments to Rule 17.9.570 NMAC are attached hereto as Exhibit A. Being duly informed in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. On August 28, 2020, El Paso Electric Company (“EPE”) filed a Petition requesting that the Commission open a docket to consider amendments to Rule 570 which EPE states are necessary to conform parts of Rule 570 to new regulations approved by the Federal Energy Regulatory Commission (“FERC”) in July 2020¹.

2. The Commission has jurisdiction and authority to amend Rule 570 under the Public Regulation Act, NMSA 1978, Sections 8-8-4 and 8-8-15. As the Petition stated, potential

¹ *Qualifying Facility Rates and Requirements*, Order No. 872, 172 FERC ¶ 61,041 (July 16, 2020).

conforming amendments would affect the purchase by any New Mexico “electric utility” of energy and capacity from cogeneration facilities and qualifying small power production facilities (“QF”).²

3. The Petition specifically requested that the Commission amend Rule 570 to set forth: (1) the prices that electric utilities must pay for energy and capacity acquired from qualifying facilities; and (2) the conditions that a qualifying facility must satisfy in order to create a legally enforceable obligation under New Mexico law. EPE stated that FERC Order No. 872 revised the FERC regulations in several other respects, but those other changes do not require changes to other parts of Rule 570.

4. **Background to Rule 570:** As EPE detailed in its Petition, Congress enacted the Public Utility Regulatory Policies Act of 1978 (“PURPA”) to respond to the energy crisis of the late 1970s.³ PURPA’s stated purpose was “to reduce the dependence of electric utilities on foreign oil and natural gas, in part by encouraging development of alternative energy sources such as cogeneration and small power production facilities.”⁴ To accomplish this goal, PURPA requires that electric utilities purchase the energy generated by QFs at a price equal to or less than the utilities’ “incremental cost of alternative electric energy” also known as “avoided cost”⁵ which is the cost that the utility would have incurred if it had generated the energy itself or had purchased the energy from another source.⁶ Congress directed FERC to promulgate “such rules as it deems necessary to encourage cogeneration and small power production.”⁷ FERC issued Order No. 69, which contained the initial FERC regulations implementing PURPA⁸ stating that the FERC

² The term “electric utility” in Rule 570 applies to investor-owned utilities, rural electric cooperatives, municipal utilities, and any other entity providing wholesale rates and services. Rule 570.2(A).

³ *FERC v. Mississippi*, 456 U.S. 742, 757, 102 S. Ct. 2126 (1982).

⁴ *Power Resource Group v. Public Utility Comm’n of Tex.*, 422 F.3d 231, 233 (5th Cir. 2005); *see also Northern Laramie Range Alliance v. FERC*, 733 F.3d 1030, 1032 (10th Cir. 2013).

⁵ 16 U.S.C. § 824a-3(b).

⁶ 16 U.S.C. § 824a-3(d).

⁷ 16 U.S.C. § 824a-3(a).

⁸ *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility*

regulations would “afford the state regulatory authorities . . . great latitude in determining the manner of implementation of the [FERC’s] rules, provided that the manner chosen is reasonably designed to implement the requirements of FERC’s regulations.”⁹

5. On April 1, 1981, the Commission issued adopted the first version of Rule 570 as the New Mexico regulations that were designed to implement PURPA and the FERC regulations.¹⁰ Since 1981, Rule 570 has been amended several times, last in 2008.

6. On September 19, 2019, FERC issued a NOPR to amend its own PURPA regulations.¹¹

7. On July 16, 2020, FERC issued Order No. 872¹² containing FERC’s new PURPA regulations.

8. The new regulations implementing PURPA, approved by FERC in Order No. 872, were proposed to be become effective 120 days after the date on which they were published in the Federal Register.

9. On November 19, 2020, FERC issued Order 872-A, the final rule published in the federal register which rule was effective forty-five days later on December 31, 2020.

10. EPE’s Petition summarized FERC’s amendments to its PURPA regulations as follows: i) competitive market prices to be used as-available avoided cost rates;¹³ ii) Locational Marginal Prices (“LMP”) to be used for certain as-available avoided cost rates;¹⁴ iii) market hub

Regulatory Policies Act of 1978, Order No. 69, 45 Fed. Reg. 12214 (Feb. 25, 1980). The FERC regulations implementing PURPA are codified in 18 C.F.R. Section 292.

⁹ Order No. 69, 45 Fed. Reg. at 12230-31.

¹⁰ Case No. 1616, General Order No. 37 (Apr. 1, 1981)

¹¹ *Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, 168 FERC ¶ 61184 (2019).

¹² Order No. 872, 172 FERC ¶ 61,041 (July 16, 2020).

¹³ Order No. 872, 172 FERC ¶ 61,041 at ¶ 114.

¹⁴ Order No. 872, 172 FERC ¶ 61,041 at ¶ 151.

prices to be used as avoided cost rates for certain as-available energy sales;¹⁵ iv) formulas based on natural gas prices to be used to establish avoided cost rates for certain as-available energy sales;¹⁶ v) forecasted values of the estimated stream of market revenues at the time a legally enforceable obligation is incurred to be used to establish the energy rate component of a contract;¹⁷ vi) variable energy rates to be used in qualifying facility contracts;¹⁸ vii) competitive solicitations to be used to determine avoided energy and capacity costs;¹⁹ viii) state regulatory commissions are provided with more flexibility to establish the prices paid to qualifying facilities; ix) criteria are established to determine whether nominally separate qualifying facilities are actually a single facility;²⁰ x) clarified the certification process for qualifying facilities;²¹ xi) created rebuttable presumptions of nondiscriminatory access to wholesale markets;²² and xii) identified the types of criteria that state regulatory commissions can prescribe to determine whether a qualifying facility is entitled to form a legally enforceable obligation.²³

11. On September 2, 2020, the Commission issued an Initial Order opening this docket which found that, due to the amendments promulgated by FERC to implement PURPA: a) EPE's Petition should be granted and b) that a docket should be opened to receive comments about potential amendments to Rule 570 to comport with the amended PURPA regulations.

12. On September 9, 2020, Utility Division Staff Legal Counsel filed initial comments which concurred with the findings of the Commission's September 2nd Initial Order that Rule 570 should be amended to comport with FERC's Order 872-A. The proposed amendments, according

¹⁵ Order No. 872, 172 FERC ¶ 61,041 at ¶ 201.

¹⁶ Order No. 872, 172 FERC ¶ 61,041 at ¶ 211.

¹⁷ Order No. 872, 172 FERC ¶ 61,041 at ¶ 227.

¹⁸ Order No. 872, 172 FERC ¶ 61,041 at ¶ 253.

¹⁹ Order No. 872, 172 FERC ¶ 61,041 at ¶ 411.

²⁰ Order No. 872, 172 FERC ¶ 61,041 at ¶ 466.

²¹ Order No. 872, 172 FERC ¶ 61,041 at ¶ 547.

²² Order No. 872, 172 FERC ¶ 61,041 at ¶ 625.

²³ Order No. 872, 172 FERC ¶ 61,041 at ¶ 684.

to Staff, should include criteria for establishing and defining a legally enforceable obligation which is when a project becomes commercially viable and where a financial commitment exists to construct a QF in compliance with the amended FERC PURPA regulations. Staff also concurred with the Initial Order that Rule 570 should also be amended to comport with Order 872-A to provide more transparency into avoided cost calculations and to ensure that the amounts paid to QFs do not exceed utilities' actual avoided costs.

13. On September 11, 2020, Lea County Electric Cooperative and on September 14, 2020 Western Farmers Electric Cooperative, the New Mexico Rural Electric Cooperative Association, Inc., Public Service Company of New Mexico, Southwestern Public Service Company and EPE submitted comments that concurred with Staff and the Initial Order.

14. On October 4, 2020, a workshop was conducted via zoom with the public and the above referenced commenters in attendance.

15. For these reasons and based upon the comments received, the Commission finds that it should amend current Rule 570 to comport with the Order 872-A's amendments to FERC's PURPA regulations in the following areas: a) **Avoided Costs:** The newly adopted FERC regulations permit state regulatory commissions, such as the NMPRC, to establish avoided costs, using a variety of options, including using publicly available indexes. The goal of draft potential amendments to Rule 570 are to provide more transparency into avoided cost calculations and to ensure that the amounts paid to QFs do not exceed utilities' actual avoided costs.²⁴ b) **Formation of a Legally Enforceable Obligation:** The current version of Rule 570.9(A) provides that "[e]ach utility shall purchase power from a qualifying facility from the date of interconnection at the

²⁴ Order No. 872, 172 FERC ¶ 61,041 at ¶ 31 ("Using transparent market prices to establish as-available avoided cost rates allows QFs, utilities, and the states to avoid the expenditure of the time and resources involved in litigating administratively-set avoided cost rates, and allows those rates to automatically adjust—up and down—as avoided costs change.").

utility's avoided cost." The Commission has interpreted this provision to mean that a utility's purchase obligation – and hence a legally enforceable obligation – arises on the date that a qualifying facility is "ready" to be interconnected to the utility's transmission or distribution system.²⁵ Since Rule 570.9(A) has been – and continues to be – the subject of regulatory and judicial challenges, the Commission finds it should amend Rule 570.9 (A) to comport with Order 872-A.²⁶ In particular Order 872-A acknowledged that the state regulatory commission rules defining when and how a legally enforceable obligation arises vary widely, and that FERC's own prior silence on that issue has left "QFs uncertain as to when this key right has been established."²⁷ To remove that uncertainty, FERC's new PURPA regulations provide parameters as to when a legally enforceable obligation has arisen:

A qualifying facility must demonstrate commercial viability and financial commitment to construct its facility pursuant to criteria developed by the state regulatory authority or nonregulated electric utility as a prerequisite to a qualifying facility obtaining a legally enforceable obligation. Such criteria must be objective and reasonable.²⁸

16. For these reasons, the Commission proposes amendments to Rule 570, contained in Exhibit A hereto, in order to specify the "objective and reasonable" criteria that a qualifying facility must satisfy as a prerequisite to forming a legally enforceable obligation because current Rule 570 does not contain any such criteria. The Proposed Amendments are intended to comport with Order 872-A and to define objective and reasonable criteria for determining when and how a legally enforceable obligation is created under New Mexico law in compliance with federal regulations.

²⁵ *In the Matter of the Formal Complaint of Great Divide Wind Farm 2 and Great Divide Wind Farm 3 Against El Paso Electric Company*, Case No. 18-00268-UT, Final Order Dismissing Complaint Without Prejudice at 9 (Nov. 7, 2018); *Western Water and Power Production Limited, LLC v. Public Service Company of New Mexico*, Case No. 11-00466-UT, Final Order Dismissing Complaint at 4 (Aug. 3, 2016).

²⁶ In two separate complaint proceedings at FERC, the Commission has defended the validity of Rule 570.9 in a federal district court case and in an appeal that is currently pending before the United States Court of Appeals for the Tenth Circuit.

²⁷ Order No. 872, 172 FERC ¶ 61,041 at ¶ 33.

²⁸ Order No. 872, 172 FERC ¶ 61,041 at 433.

17. Interested persons should contact the Commission to confirm the date, time and place of any public meeting or hearing, because meetings and hearings are occasionally rescheduled. Meeting/hearing announcements are posted on the Commission's website at www.nmprc.state.nm.us.

18. The Commission will accept written comments on the Proposed Amendments contained in Exhibit A and proposed in this Notice of Proposed Rulemaking from any interested person. Interested persons shall file their written initial comments on the proposed rules no later than May 10, 2021 and written response comments no later than May 24, 2021. All comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be in legislative format. All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and Docket Number contained at the top of this Notice. Written comments, containing the Docket Number in this matter, shall be sent to: Melanie Sandoval, New Mexico Public Regulation Commission, Attention: Case No. 20-00175-UT, P.O. Box 1269, Santa Fe, NM 87504 or filed electronically.

19. Copies of the proposed rules may be downloaded from the Commission's web site, www.nmprc.state.nm.us.

20. The Commission will review all timely submitted written initial and response comments and will hold a public comment hearing on June 28, 2021 at 2:00 p.m. which shall be accomplished through zoom, see the NMPRC home webpage for instructions to connect, <http://www.nmprc.state.nm.us>.

21. Interested persons should contact the Commission to confirm the date, time and place of any public hearing because hearings are occasionally rescheduled.

22. Any person with a disability requiring special assistance in order to participate in a hearing should contact Jim Williamson at (505) 467-9116 at least 48 hours prior to the commencement of the hearing.

23. Commission Rule 1.2.3.7(B) (“Ex Parte Communications”) draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as “ex parte communications.” In order to assure compliance with 1.2.3.7(B) NMAC, the Commission sets June 30, 2021 as the date of record closure.

24. Copies of this Notice should be sent to all persons on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. The Proposed Amendments Rule 17.9.570 NMAC to comply with FERC Order 872-A which revised the federal regulations implementing PURPA are attached to this Notice of Proposed Rulemaking as Exhibit A, are proposed for adoption as provided by this Notice.

B. The Notice of Proposed Rulemaking, attached hereto as Exhibit B, constitutes due and lawful notice to all potentially interested persons.

C. Any person wishing to comment on the Proposed Amendments may do so by submitting initial written comments no later than May 10, 2021 and written response comments. Comments on May 24, 2021 and may suggest changes to the Proposed Amendments. All such comments shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific

proposed language changes to the Proposed Amendments shall be provided in a form consistent with that of the Proposed Amendments. Commenters' deletions shall be indicated by striking through the language to be deleted, and commenters' additions shall be underlined. The Staff of the Commission's Utility Division shall file written initial and written response comments as provided in this paragraph.

D. All pleadings, including comments, shall bear the above caption and case number of this matter and shall be filed with the Commission's Records Division, at the address set forth below: Melanie Sandoval, NMPRC Records Management Bureau, P.O. Box 1269, Santa Fe, New Mexico 87504-1269 or filed electronically.

E. A public hearing on June 28, 2021 at 2:00 p.m. shall be held and shall be accomplished through zoom or another digital platform, see the NMPRC home webpage for instructions to connect <http://www.nmprc.state.nm.us>.

F. The public hearing will be held in order to receive oral comments. Any individual who wants to provide oral comments shall be limited to five minutes to express those comments, subject to the Commission's discretion. The Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.

G. Commission Rule 1.2.3.7(B) NMAC (Ex Parte Communications) draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines

only the latter as “ex parte communications.” In order to ensure compliance with Rule 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed.

H. The Commission finds that the record shall close on June 30, 2021.

I. Interested persons should contact the Commission to confirm the date, time, and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the hearing should contact Jim Williamson at (505) 467-9116 at least 48 hours prior to the commencement of the hearing.

J. At least thirty (30) days prior to the hearing date, this Order, including Exhibit A, shall be mailed to all persons who have made a written request for advance notice.

K. The Notice of Proposed Rulemaking, Exhibit B, shall be published without Exhibit A, in at least two newspapers of general circulation in New Mexico and in the NEW MEXICO REGISTER. Affidavits attesting to the publication of the Notice of Proposed Rulemaking as described above shall be filed in this docket. In accordance with the State Rules Act 14-4-1 etseq. NMSA 1978, the Commission shall to provide notice to the public in the manner as set forth in the State Rules Act. Section 14-4-2 (E) NMSA 1978.

L. Copies of this Order, including Exhibit A, 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.

M. Copies of any forthcoming final order adopting a new rule shall be mailed or emailed, along with copies of the new rule, to all persons and entities appearing on the Certificate of Service as it exists at the time of issuance of the final order in this docket, to all commenters in this case, and to all individuals requesting such copies.

N. This Notice and Order is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 19th day of
January, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Cynthia B. Hall, electronically signed

CYNTHIA B. HALL, COMMISSIONER DISTRICT 1

/s/ Jefferson L. Byrd, electronically signed

JEFFERSON L. BYRD, COMMISSIONER DISTRICT 2



/s/ Joseph M. Maestas, electronically signed

JOSEPH M. MAESTAS, COMMISSIONER DISTRICT 3

/s/ Theresa Becenti-Aguilar, electronically signed

THERESA BECENTI-AGUILAR, COMMISSIONER DISTRICT 4

/s/ Stephen Fischmann, electronically signed

STEPHEN FISCHMANN, COMMISSIONER DISTRICT 5

EXHIBIT A Proposed Amendments²⁹

These are Proposed Amendments to 17.9.570 NMAC, Sections 6, 9 and 11 effective __/__/2021.

17.9.570.6 OBJECTIVE:

A. 17.9.570 NMAC is to govern the purchase of power from and sale of power to qualifying facilities by:

~~(1) enabling the development of a market for the power produced by qualifying facilities;
(2) establishing guidelines for the calculation of utilities' avoided costs, and
(3) providing meaningful access to critical cost information from utilities.]~~

~~(1) enabling the development of a market for the power produced by qualifying facilities;
(2) establishing reasonable and objective criteria to determine when a legally enforceable obligation arises;~~

~~(3) establishing guidelines for the calculation of utilities' avoided costs, including the option to use market-based methods to calculate avoided energy and capacity costs; and~~

~~(4) providing meaningful access to critical cost information from utilities.~~

B. 17.9.570.14 NMAC is intended to simplify the metering procedures for qualifying facilities up to and including 10kW and encourage the use of small-scale customer-owned renewable or alternative energy resources in recognition of the beneficial effects the development of such resources will have on the environment of New Mexico.

~~[C. 17.9.570 NMAC is intended to implement regulations of the federal energy regulatory commission, 18 C.F.R. Section 292, promulgated pursuant to the Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat. 3117 (codified as amended starting at 16 U.S.C. Section 824) and the New Mexico Public Utility Act, NMSA 1978, Sections 62-3-1 et. seq., as amended.]~~

~~C. 17.9.570 NMAC is intended to implement regulations of the federal energy regulatory commission, 18 C.F.R. Section 292, as amended, promulgated pursuant to the Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat. 3117 (codified as amended starting at 16 U.S.C. Section 824) and the New Mexico Public Utility Act, NMSA 1978, Sections 62-3-1 et. seq., as amended.~~

D. The standards and procedures for the interconnection of generating facilities with rated capacities up to and including 10 MW are set forth in 17.9.568 NMAC. The standards and procedures for the interconnection of generating facilities with rated capacities greater than 10 MW are set forth in 17.9.569 NMAC.

[17.9.570.6 NMAC - Rp, 17.9.570.6 NMAC, 10-15-08; A/E, __/__/2021]

17.9.570.7 [DEFINITIONS: ~~When used in 17.9.570 NMAC unless otherwise specified the following definitions will apply:~~

~~A. avoided costs means the incremental costs to the electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, the utility would generate itself or purchase from another source; avoided costs are the costs computed in accordance with Subsections B and C of 17.9.570.11 NMAC;~~

~~B. backup power means electric energy or capacity or both supplied by an electric utility during an unscheduled outage of the qualifying facility to replace energy ordinarily supplied by a qualifying facility's own generation equipment;~~

~~C. interconnection costs means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administration incurred by the electric utility which are directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations but instead generated an equivalent amount of power itself or purchased an equivalent amount of power from other sources; interconnection costs do not include any costs included in the calculation of avoided costs;~~

²⁹ Throughout the Order and Notice, the term "Amendment" includes the "repeal and replace" an entire section of any rule or adding new sections to any of these rules, in cases where the State Records and Archives requires the Commission repeal and replace or add a new section in lieu of amending.

~~_____ D. _____ design capacity means the total AC nameplate power rating of the power conversion unit(s) at the point of common coupling;~~

~~_____ E. _____ interruptible power means power supplied by an electric utility subject to interruption by the electric utility under specified conditions;~~

~~_____ F. _____ maintenance power means power supplied by an electric utility during scheduled outages of the qualifying facility;~~

~~_____ G. _____ net metering means the difference between the energy produced by the qualifying facility's generation and the energy that would have otherwise been supplied by the utility to the qualifying facility absent the qualifying facility's generation;~~

~~_____ H. _____ new capacity addition:~~

~~(1) _____ new capacity addition means the capacity added to a utility's resource mix after the effective date of 17.9.570 NMAC through normal utility resource procurement activities which shall include but not necessarily be limited to:~~

~~(a) _____ construction of or participation in new generating facilities;~~

~~(b) _____ augmenting the capacity of or extending the life of existing generating facilities through capital improvements; or~~

~~(c) _____ entering into new contracts or exercising options in existing contracts which will result in additional capacity;~~

~~(2) _____ new capacity addition does not include the following:~~

~~(a) _____ renegotiation of existing contracts for anything other than increasing capacity in the resource mix;~~

~~(b) _____ renegotiation of existing full power requirements contract between a distribution cooperative and its full power requirements supplier; and~~

~~(c) _____ seasonal uprating in capacity achieved without any capital improvements to existing generating facilities;~~

~~_____ I. _____ point of common coupling (PCC) means the point where the interconnection facilities connect with the utility's system;~~

~~_____ J. _____ power means electric energy or capacity or both;~~

~~_____ K. _____ power conversion unit (PCU) means an inverter or AC generator, not including the energy source;~~

~~_____ L. _____ qualifying facility means a cogeneration facility or a small power production facility which meets the criteria for qualification contained in 18 C.F.R. Section 292.203;~~

~~_____ M. _____ rate means any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale by the utility of power or purchase of power from the qualifying facility;~~

~~_____ N. _____ supplementary power means power which is regularly used by a consumer, supplied by the electric utility, in addition to that power which may be supplied by a qualifying facility;~~

~~_____ O. _____ system emergency means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property;~~

~~_____ P. _____ tariff means the document filed by a utility with the commission pursuant to 17.9.570 NMAC containing that utility's rules, rates, services and forms;~~

~~_____ Q. _____ utility means a utility or public utility as defined in NMSA 62-3-3 (G) serving electric customers subject to the jurisdiction of the commission.]~~

DEFINITIONS: Terms defined in the Public Utility Regulatory Policies Act of 1978 (PURPA) shall have the same meaning for purposes of this rule as they have under PURPA, unless further defined in 18 CFR 292.101. The following definitions apply for purposes of this rule:

A. Definitions beginning with "A":

(1) Avoided costs means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source;

(2) As available power means _____;

B. Definitions beginning with "B": Back-up power means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility;

C. Definitions beginning with "C": Commission means New Mexico public regulation commission;

D. Definitions beginning with "D": design capacity means the total AC nameplate power rating of the power conversion unit(s) at the point of common coupling;

- E. Definitions beginning with “E”: [RESERVED]**
- F. Definitions beginning with “F”: firm power means** _____ **;**
- G. Definitions beginning with “G”: [RESERVED]**
- H. Definitions beginning with “H”: [RESERVED]**
- I. Definitions beginning with “I”:**
- (1) Interconnection costs** means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs;
- (2) Interruptible power** means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions;
- J. Definitions beginning with “J”: [RESERVED]**
- K. Definitions beginning with “K”: [RESERVED]**
- L. Definitions beginning with “L”: Locational marginal price** means the price for energy at a particular location as determined in the Western energy imbalance market;
Legally enforceable obligation means a public utility’s obligation to purchase as-available energy from a qualified facility and is created when the criteria set forth in 17.9.570.9 NMAC are met.
- M. Definitions beginning with “M”: Maintenance power** means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility;
- N. Definitions beginning with “N”:**
- (1) Net metering** means the difference between the energy produced by the qualifying facility’s generation and the energy that would have otherwise been supplied by the utility to the qualifying facility absent the qualifying facility’s generation;
- (2) New capacity addition:**
- (a) new capacity addition** means the capacity added to a utility's resource mix after the effective date of 17.9.570 NMAC through normal utility resource procurement activities which shall include but not necessarily be limited to:
- (i) construction of or participation in new generating facilities;**
- (ii) augmenting the capacity of or extending the life of existing generating facilities through capital improvements; or**
- (iii) entering into new contracts or exercising options in existing contracts which will result in additional capacity;**
- (b) new capacity addition does not include the following:**
- (i) renegotiation of existing contracts for anything other than increasing capacity in the resource mix;**
- (ii) renegotiation of existing full power requirements contract between a distribution cooperative and its full power requirements supplier; and**
- (iii) seasonal uprating in capacity achieved without any capital improvements to existing generating facilities;**
- O. Definitions beginning with “O”: [RESERVED]**
- P. Definitions beginning with “P”:**
- (1) Point of common coupling (PCC)** means the point where the interconnection facilities connect with the utility’s system;
- (2) Power** means electric energy or capacity or both;
- (3) Power conversion unit (PCU)** means an inverter or AC generator, not including the energy source;
- (4) Purchase** means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility;
- Q. Definitions beginning with “Q”:**
- (1) Qualifying facility** means a cogeneration facility or a small power production facility that is a qualifying facility under Subpart B of this part;
- (a) A qualifying facility may include transmission lines and other equipment used for interconnection purposes (including transformers and switchyard equipment), if:**

(i) Such lines and equipment are used to supply power output to directly and indirectly interconnected electric utilities, and to end users, including thermal hosts, in accordance with state law; or

(ii) Such lines and equipment are used to transmit supplementary, standby, maintenance and backup power to the qualifying facility, including its thermal host meeting the criteria set forth in Union Carbide Corporation, 48 FERC ¶ 61,130, reh'g denied, 49 FERC ¶ 61,209 (1989), aff'd sub nom., Gulf States Utilities Company v. FERC, 922 F.2d 873 (D.C. Cir. 1991); or

(iii) If such lines and equipment are used to transmit power from other qualifying facilities or to transmit standby, maintenance, supplementary and backup power to other qualifying facilities;

(b) The construction and ownership of such lines and equipment shall be subject to any applicable Federal, state, and local siting and environmental requirements;

R. Definitions beginning with "R": Rate means any price, rate, charge, or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity;

S. Definitions beginning with "S":

(1) **Sale** means the sale of electric energy or capacity or both by an electric utility to a qualifying facility;

(2) **Supplementary power** means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself;

(3) **System emergency** means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property;

T. Definitions beginning with "T": Tariff means the document filed by a utility with the commission pursuant to 17.9.570 NMAC containing that utility's rules, rates, services and forms

U. Definitions beginning with "U": Utility means a utility or public utility as defined in NMSA 62-3-3 (G) serving electric customers subject to the jurisdiction of the commission;

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

W. Definitions beginning with "W": Western energy imbalance market (or EIM) means the real-time energy imbalance market operated by the California Independent System Operator Corporation;

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

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

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

[17.9.570.7 NMAC - Rp, 17.9.570.7 NMAC, 10-15-08; A/E, __/__/2021]

17.9.570.9 OBLIGATION TO PURCHASE:

~~**A.** Each utility shall purchase power from a qualifying facility from the date of interconnection at the utility's avoided cost. An electric utility is obligated to purchase power from a qualifying facility at the utility's avoided cost regardless of whether the electric utility making such purchase is simultaneously selling power to the qualifying facility.~~

~~**B.** The qualifying facility shall give the utility at least sixty (60) days written advance notice to interconnect. Such notice shall specify the date the qualifying facility will be ready for interconnection, the date the qualifying facility will be able to commence testing, and the anticipated date of operation after testing. The qualifying facility shall pay the estimated costs of interconnection in full at the time the notice to interconnect is given. The utility shall pay a qualifying facility for any energy produced during testing of the qualifying facility at the appropriate energy rate pursuant to Subsection B of 17.9.570.11 NMAC.~~

~~**C.** If the utility determines that it cannot interconnect the qualifying facility within the time set in the notice to interconnect because adequate interconnection facilities are not available, it shall, within fifteen (15) business days of receipt of the notice to interconnect, notify the qualifying facility specifying the reasons it cannot interconnect as requested by the qualifying facility and specifying the date interconnection can be made. If the qualifying facility objects to the date for interconnection specified by the utility, objects to the utility's determination that adequate interconnection facilities are not available, or disputes the good faith efforts of the utility to interconnect, the qualifying facility may initiate a proceeding before the commission pursuant to the complaint process of this 17.9.570 NMAC. If the commission finds that the utility's position on the time for interconnection or~~

~~unavailability of interconnection facilities was not justified, the qualifying facility shall be deemed to have been interconnected and the qualifying facility shall be deemed to have otherwise complied with its contractual duties on the sixtieth (60th) day following the notice to interconnect and payments by the utility to the qualifying facility shall commence at the appropriate power rate which shall be applied to the amount of imputed or expected power as if the qualifying facility were producing, provided that the qualifying facility's power was available.]~~

A. If a qualifying facility elects to sell power to the utility on an as-available basis, the utility shall purchase power from the qualifying facility from the date the qualifying facility begins providing as-available power to the utility.

B. If a qualifying facility elects to sell power to the utility in accordance with a legally enforceable obligation, the legally enforceable obligation arises on the date that the qualifying facility demonstrates compliance with all of the following prerequisites:

(1) The qualifying facility has filed an interconnection application with the appropriate entity and has tendered all required fees to that entity;

(2) The qualifying facility has taken meaningful steps to obtain site control to construct the entire qualifying facility, which the qualifying facility may demonstrate through the production of executed agreements and through similar measures;

(3) The qualifying facility has applied for all required federal, state, and local permits and licenses necessary to construct and operate the facility, and has tendered all required fees to the appropriate governmental authorities;

(4) The qualifying facility has authorized all environmental studies and other actions necessary to support permit and license applications;

(5) The qualifying facility has obtained or applied for financing of the proposed project, as evidenced by loan application documents or other types of financing applications; and

(6) The qualifying facility has provided the utility with a construction plan and timeline for the construction of the facility, including construction cost quotes.

C. After receipt of a qualifying facility's request that the utility acknowledge that an obligation to purchase from the qualifying facility has arisen, the utility shall provide a response to the qualifying facility within 30 calendar days. If the utility rejects the qualifying facility's request or otherwise fails to acknowledge the request within 30 calendar days, the qualifying facility may file an application with the commission seeking a determination that the utility has an obligation to purchase power from the qualifying facility, with the date of such obligation to be fixed by the commission.

D. Regardless of when a legally enforceable obligation arises, the utility's obligation to begin paying for power provided under a legally enforceable obligation begins on the date the qualifying facility begins delivering power to the utility.

E. An electric utility is obligated to purchase power from a qualifying facility at the utility's avoided cost, as calculated under 17.9.570.11 NMAC, regardless of whether the electric utility making such purchase is simultaneously selling power to the qualifying facility.

F. The qualifying facility shall give the utility at least 60 days written advance notice to interconnect. Such notice shall specify the date the qualifying facility will be ready for interconnection, the date the qualifying facility will be able to commence testing, and the anticipated date of operation after testing. The qualifying facility shall pay the estimated costs of interconnection in full at the time the notice to interconnect is given. The utility shall pay a qualifying facility for any energy produced during testing of the qualifying facility at the appropriate energy rate pursuant to Subsection B of 17.9.570.11 NMAC.

G. If the utility determines that it cannot interconnect the qualifying facility within the time set in the notice to interconnect because adequate interconnection facilities are not available, it shall, within 15 business days of receipt of the notice to interconnect, notify the qualifying facility specifying the reasons it cannot interconnect as requested by the qualifying facility and specifying the date interconnection can be made. If the qualifying facility objects to the date for interconnection specified by the utility, objects to the utility's determination that adequate interconnection facilities are not available, or disputes the good faith efforts of the utility to interconnect, the qualifying facility may initiate a proceeding before the commission pursuant to the complaint process of this 17.9.570 NMAC. If the commission finds that the utility's position on the time for interconnection or unavailability of interconnection facilities was not justified, the qualifying facility shall be deemed to have been interconnected and the qualifying facility shall be deemed to have otherwise complied with its contractual duties on the 60th day following the notice to interconnect and payments by the utility to the qualifying facility shall commence at the appropriate power rate which shall be applied to the amount of imputed or expected power as if the qualifying facility were producing, provided that the qualifying facility's power was available.

17.9.570.11 DETERMINATION OF RATES FOR PURCHASES FROM QUALIFYING FACILITIES:

~~**A.** General. A utility shall pay a qualifying facility avoided costs for power purchased from the qualifying facility. Avoided costs are defined in Subsection A of 17.9.570.7 NMAC. The energy rate represents avoided energy costs for the purposes of 17.9.570 NMAC. The energy rate and the avoided capacity costs to be paid to the qualifying facility for the power it sells to the utility shall be developed pursuant to Subsections B and C of 17.9.570.11 NMAC, respectively.~~

~~**B.** Energy rate. The energy rate to be paid for the energy supplied by the qualifying facility in any month shall be that respective month's rate from the utility's current schedule on file with the commission. Each utility shall file with the commission its schedule containing monthly energy rates that will be applicable to the next twelve month period. These monthly energy rates shall be listed for each voltage level of interconnection and shall be expressed in cents/kWh. Each month's energy rate contained in the schedule shall be the average of the economy energy purchases by the utility for the corresponding month of the immediately preceding twelve month period. In the event a utility does not engage in economy energy purchases in any given month, the energy rate to be included in its schedule for that month shall be either: the monthly average of hourly incremental energy costs including variable operation and maintenance expenses for generating utilities, or the energy charge of the highest energy cost contract as adjusted for appropriate retail fuel and purchase power pass through for nongenerating utilities.~~

~~(1) In addition to the schedule described above, those utilities with retail time of use rates on file with the commission shall file schedules reflecting monthly energy rates calculated for peak periods only and off peak periods only which shall be applied to qualifying facilities whose generation is limited to peak periods only or off peak periods only. Peak and off peak periods shall be as defined in the utility's retail tariffs on file with the commission.~~

~~(2) Within sixty (60) days of the effective date of 17.9.570 NMAC each electric utility subject to the rule shall file with the commission the schedule containing rates to be offered along with detailed supporting workpapers showing the input data and calculations. After the first submittal each utility shall update its filing within thirty (30) days from the last day of its fiscal year.~~

~~(3) Variable operation and maintenance rates used for the above computations shall be the basis for requested variable operation and maintenance rates in the utility's future rate cases.~~

~~(4) The schedules containing energy rates developed pursuant to Subsections B and C of 17.9.570.11 NMAC shall be part of the tariff to be filed pursuant to Subsection H of 17.9.570.13 NMAC. The energy rate contained in the schedules shall include the savings attributable to the avoidance of losses due to transmission, distribution, and transformation as applicable for different voltage levels of interconnection. These transmission, distribution, and transformation loss avoidance savings for different voltage levels of interconnection shall be obtained from the utility's filing in the last commission decided rate case, and those figures shall be shown in the utility's submittal.~~

~~**C.** Avoided capacity costs.~~

~~(1) A qualifying facility is entitled to receive payments for capacity when such capacity purchase by the utility from the qualifying facility enables the utility to avoid procurement of new capacity. The avoided capacity costs of a utility will be determined by the commission on a case by case basis based on the costs associated with a "new capacity addition" for the utility.~~

~~(2) Within sixty (60) days of the effective date of 17.9.570 NMAC each utility subject to the provisions of 17.9.570 NMAC shall file a schedule with the commission showing capacity, capital costs, and fixed operation, maintenance, and demand charges, as applicable, of the existing capacity resources by generating unit and by contract. After the first submittal each utility shall update its filing within thirty (30) days from the last day of every fiscal year. Utilities transferring their purchase obligation pursuant to Subsection F of 17.9.570.13 NMAC need not file this schedule. A utility which has obtained a limited variance from the provisions of Subsection F shall note that the variance obtained applies to qualifying facilities contracting to supply energy only. Each utility subject to the provisions of 17.9.570 NMAC shall notify the commission of any planned "new capacity addition" with relevant details on timing, size, capital costs, fixed operation and maintenance costs, property taxes, insurance, energy costs, variable operation and maintenance costs, and capital carrying costs if the "new capacity addition" is to be made by the utility's own generation. If the "new capacity addition" is made by a power sales agreement or other such agreement, the utility shall give the relevant details of the transaction such as demand and energy charges and term of the agreement. Notification to the commission shall be made as soon as possible after the utility's decision but in no case later than one (1) year prior to the date of a "new capacity addition". Failure to provide adequate~~

~~notice may result in the utility being unable to recover the costs of the “new capacity addition” in rates even if such an addition meets all the other regulatory criteria for recoverability.~~

~~_____ (3) Based on the information contained in the utility's notification and subject to a hearing thereon, the commission will determine the avoided capacity costs for that utility. The utility shall be obligated to make payments for capacity only up to the amount of capacity associated with the “new capacity addition”.]~~

~~_____ A. General. A utility shall pay a qualifying facility avoided costs for power purchased from the qualifying facility. Avoided costs are defined in Subsection A of 17.9.570.7 NMAC. The energy rate represents avoided energy costs for the purposes of 17.9.570 NMAC. The energy rate and the avoided capacity costs to be paid to the qualifying facility for the power it sells to the utility shall be developed pursuant to Subsections B-D of 17.9.570.11 NMAC.~~

~~_____ B. Energy rate.~~

~~_____ (1) Within one year of the approval of this rule, each utility subject to the Commission's jurisdiction shall apply for approval of a tariff that specifies one of the following methods to establish the avoided energy cost rates paid by that utility to qualifying facilities.~~

~~_____ (a) A utility participating in the Western EIM may establish the energy rate to be paid for power supplied by a qualifying facility by reference to the appropriate Western EIM locational marginal price if such locational marginal price is representative of the utility's avoided cost. To implement this option for the avoided cost energy rate, the utility must set forth in its current tariff on file with the commission the applicable Western EIM pricing location.~~

~~_____ (b) A utility participating in the SPP may establish the energy rate to be paid for power supplied by a qualifying facility by reference to the appropriate SPP locational marginal price if such locational marginal price is representative of the utility's avoided cost. To implement this option for the avoided cost energy rate, the utility must set forth in its current tariff on file with the commission the applicable SPP pricing location.~~

~~_____ (c) A utility that does not participate in the Western EIM or the SPP may establish avoided energy cost rates based on:~~

- ~~_____ (i) Locational marginal prices, if any are available;~~
- ~~_____ (ii) Market hub prices;~~
- ~~_____ (iii) Formulas based on natural gas prices; or~~
- ~~_____ (iv) Competitive solicitations.~~

~~_____ (2) In its application for approval of the tariff, each utility applying for approval of a method to calculate avoided energy cost rates for purchases shall specify the method to be used and explain why it results in an accurate approximation of the utility's avoided energy costs.~~

~~_____ (3) The avoided energy cost rates calculated in accordance with the method approved under 17.9.570.11(B)(1) NMAC shall be applied to both energy acquired on an as-available basis and energy acquired pursuant to a legally enforceable obligation.~~

~~_____ (4) Until the Commission approves a utility's tariff under 17.9.570.11(B)(1) NMAC, the utility shall pay avoided cost rates calculated under 17.9.570.11(C) NMAC for both energy purchased on an as-available basis and energy purchased pursuant to a legally enforceable obligation. After the approval of the utility's tariff under 17.9.570.11(B)(1) NMAC, the utility shall pay the avoided cost rates calculated under the approved tariff for both energy purchased on an as-available basis and energy purchased pursuant to a legally enforceable obligation.~~

~~_____ C. Until approval of a utility's tariff under 17.9.570.11(B)(1) NMAC, the avoided cost rate to be paid for the energy supplied by a qualifying facility in any month shall be that respective month's rate from the utility's current schedule on file with the commission. Each utility shall file with the commission its schedule containing monthly energy rates that will be applicable to the next twelve-month period. These monthly energy rates shall be listed for each voltage level of interconnection and shall be expressed in cents/kWh. Each month's energy rate contained in the schedule shall be the average of the economy energy purchases by the utility for the corresponding month of the immediately preceding twelve-month period. In the event a utility does not engage in economy energy purchases in any given month, the energy rate to be included in its schedule for that month shall be either: the monthly average of hourly incremental energy costs including variable operation and maintenance expenses for generating utilities, or the energy charge of the highest energy cost contract as adjusted for appropriate retail fuel and purchase power pass through for nongenerating utilities.~~

~~_____ (1) As applicable, those utilities with retail time-of-use rates on file with the commission shall file schedules reflecting monthly energy rates calculated for peak periods only and off-peak periods only which~~

shall be applied to qualifying facilities whose generation is limited to peak periods only or off- peak periods only. Peak and off-peak periods shall be as defined in the utility's retail tariffs on file with the commission.

(2) Within 60 days of the effective date of revised 17.9.570 NMAC each electric utility subject to the rule shall file with the commission the schedule containing rates to be offered along with detailed supporting workpapers showing the input data and calculations, if applicable. After the first submittal each utility shall update its filing within 30 days from the last day of its fiscal year.

(3) To the extent applicable, variable operation and maintenance rates used for the above computations shall be the basis for requested variable operation and maintenance rates in the utility's future rate cases.

(4) The energy rate contained in the schedules shall include the savings attributable to the avoidance of losses due to transmission, distribution, and transformation as applicable for different voltage levels of interconnection. These transmission, distribution, and transformation loss avoidance savings for different voltage levels of interconnection shall be obtained from the utility's filing in the last commission-decided rate case, and those figures shall be shown in the utility's submittal.

D. Negotiations. Notwithstanding the provisions of 17.9.570 NMAC, a utility and qualifying facility may at the qualifying facility's option negotiate rates for the power to be supplied by the qualifying facility. Such negotiated rates shall be filed with the commission within thirty (30) days of the execution of the contract. The contract shall not contain any rate which is higher than the utility's avoided costs as defined in 17.9.570 NMAC. [17.9.570.11 NMAC - Rp, 17.9.570.11 NMAC, 10-15-08; A/E, __/__/2021]

EXHIBIT B

NOTICE OF PROPOSED RULEMAKING CASE NO. 20-00175-UT

In the matter of potential amendments to NMPRC rule 17.9.570 NMAC, entitled governing cogeneration and small power production

The New Mexico Public Regulation Commission (the “commission”) gives notice of its initiation of a proposed rulemaking to amend or repeal and replace **17.9.570 NMAC**. The rules which may be adopted as the final rules in this proceeding may include all, part, or none of the language in the proposed rules issued by the commission. The commission may also consider alternative proposals for amending or replacing the current rules.

Concise statement of proposed rule: The proposed amendments to Sections 6, 9 and 11 of 17.9.570 NMAC, are proposed to be adopted for the purpose of to comply with FERC Order 872-A which effective December 30, 2020, revised the federal regulations implementing Public Utility Regulatory Policies Act of 1978 (“PURPA”) to add criteria for the establishment of a legally enforceable obligation and clarifying avoided costs.

Constitutional and statutory authority: New Mexico Constitution, Article XI, Section 2; the New Mexico Public Utility Act, Sections 62-3-1 et seq., NMSA 1978; and the Public Regulation Commission Act, Section 8-8-1 through 8-8-21 NMSA 1978, Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978.

A copy of the full text of the proposed rules may be obtained from the Rulemaking Proceedings section of the Commission’s website at <http://www.nmprc.state.nm.us> under Case No. 20-00175-UT or by calling Isaac Sullivan-Leshin in the Office of General Counsel at (505) 670-4830.

Written initial comments and written response comments shall be filed by the deadlines below. Currently, due to the COVID-19 pandemic and orders of the governor pertaining thereto, in-person filing of comments is not allowed. Comments can be filed in accordance with the commission’s emergency rule on electronic filing by emailing comments in PDF format to PRC.Records@state.nm.us or can be filed by mailing to the commission’s records bureau at P.O. Box 1269, Santa Fe, NM 87504-1269. For more information on how to file, please contact Melanie Sandoval, the commission’s records bureau chief, at melanie.sandoval@state.nm.us or (505) 827-6968. Written initial comments shall be filed no later than **May 10, 2021**. Written response comments shall be filed no later than **May 24, 2021**. Comments shall refer to Case No. 20-00175-UT. All written comments will be posted on the commission’s website within three days of their receipt by the records bureau.

A public hearing will be held on **June 28, 2021** at 2:00 p.m. which shall be accomplished through zoom or another digital platform, see the NMPRC home webpage <http://www.nmprc.state.nm.us> for instructions to connect. The purpose of the hearing is to receive oral comments. Any individual who wants to provide oral comments shall be limited to five minutes to express those comments, subject to the Commission’s discretion. The Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.

The record of this case will close on June 30, 2021.

Interested persons should contact the Commission to confirm the date, time, and place of this public hearing because hearings are occasionally rescheduled. If you are an individual with a disability and you require assistance or an auxiliary aid (such as a sign language interpreter) to participate in any aspect of this process, please contact Jim Williamson at (505) 467-9116 at least 48 hours prior to the commencement of the hearing.

caBEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF POTENTIAL AMENDMENTS TO)
NMPRC RULE 17.9.570 NMAC, ENTITLED GOVERNING) Case No. 20-00175-UT
COGENERATION AND SMALL POWER PRODUCTION)**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the **Order and Notice of Proposed Rulemaking Amending NMPRC Rule 17.9.570 to Comply with FERC Order 872-**

A issued by the New Mexico Public Regulation Commission on January 19th, 2021 was sent via email to the following parties:

Benjamin Phillips	Ben.phillips@pnmresources.com;
Mark Fenton	Mark.fenton@pnmresources.com;
Bradford Borman	Bradford.borman@pnmresources.com;
Heather Lawrie	Heather.lawrie@pnmresources.com;
Les Montoya	L.Montoya@morasaniguel.coop;
Carey Salaz	Carey.salaz@pnmresources.com;
Stacey Goodwin	Stacey.goodwin@pnmresources.com;
Jeffrey Fornaciari	jfornaciari@hinklelawfirm.com;
Evan D. Evans	Evan.d.evans@xcelenergy.com;
Gerard Ortiz	Gerard.ortiz@pnmresources.com;
Sunny Nixon	Snixon@rodey.com;
Keven Groenewold	Kgroenewold@nmelectric.coop;
Thomas Domme	tdomme@tecoenergy.com;
Rebecca Carter	racarter@tecoenergy.com;
Mary Homan	Mary.homan@nmgco.com;
Tom Olson	tolson@montand.com;
Ken Reif	kreif@tristategt.org;
Rhonda Mitchell	rmitchell@tristategt.org;
Nancy Burns	nancy.burns@epelectric.com;
Patricia Griego	patricia.griego@epelectric.com;
Tony Apodaca	tony.apodaca@epelectric.com;
Matthew Collins	mcollins@cnmec.coop;
Gary Alsup	alsuplaw@plateautel.net;
Charles Pinson	cpinson@cvecoop.org;
Chris Martinez	chrism@col-coop.com;
David Spradlin	spradlin@springercoop.com;
Ruth Sakya	ruth.m.sakya@xcelenergy.com;
Robert Castillo	rcastillo@cdec.coop;
Lance Adkins	lance@fecnm.org;
Luis Reyes	lreyes@kitcarson.com;
Jimmy Capps	jcapps@secpower.com;
Joseph Herrera	jherrera@socorroelectric.com;

Gary Hurse
Gary Rinker
Benjamin Leyba
Steve Lunt
Paul O'Dair
Mario Romero
Jerry W. Partin
Linda Hudgins
Joan Drake
Zoe E. Lees
Perry Robinson
Hal Grieg
Cholla Khoury
Judith Amer-PRC
Charles Gunter-PRC
Bradford Borman-PRC
Gayle L. Gouker
Ryan Jerman
Stacey Goodwin
Ryan Anderson
Carey Salaz
Sayuri Yamada
Matthew Jaramillo
Adam Alvarez
Carlos Lucero
Brian Buffington
Mark Fenton
Matthew Loftus
Dana S. Hardy
William A. Grant
Mario A. Contreras
Ruth Sakya
Phillip Oldham
Melissa Trevino
Jeffrey Pollock
Katherine Coleman
Michael P. Gorman
Amanda Alderson
TKLaw office
Will DuBois
Jeffrey L. Fornaciari
Linda Hudgins
Amy Shelhamer
Sonya Mares
Bernarr Treat
Damon Withrow
Brad Baldrige
Zoe E. Lees

ghurse@lcecnet.com;
grinker@swec-coop.org;
bleyba@noraelectric.org;
stevel@dvec.org;
podair@navopache.org;
marior@ote-coop.com;
parting@rcec.coop;
linda.l.hudgins@xcelenergy.com;
jdrake@modrall.com;
zel@modrall.com;
perry.robinson@urenco.com;
hgrieg@plateautel.net;
khoury@nmag.gov;
judith.amer@state.nm.us;
charles.gunter@state.nm.us;
Bradford.borman@state.nm.us;
ggouker@navopache.org;
Ryan.Jerman@pnmresources.com;
Stacey.Goodwin@pnmresources.com;
Ryan.Anderson@pnm.com;
Carey.Salaz@pnm.com;
sayuri.yamada@pnmresources.com;
Matthew.Jaramillo@pnmresources.com;
Adam.Alvarez@pnm.com;
carlos.lucero@pnm.com;
brian.buffington@pnm.com;
Mark.Fenton@pnm.com;
matthew.p.loftus@xcelenergy.com;
dhardy@hinklelawfirm.com;
william.a.grant@xcelenergy.com;
Mario.a.contreras@xcelenergy.com;
Ruth.sakya@xcelenergy.com;
phillip.oldham@tklaw.com;
Melissa_Trevino@oxy.com;
jcp@pollockinc.com;
katie.coleman@tklaw.com;
mgorman@consultbai.com;
aalderson@consultbai.com;
tk.eservice@tklaw.com;
Will.w.dubois@xcelenergy.com;
jfornciari@hinklelawfirm.com;
linda.l.hudgins@xcelenergy.com;
ashelhamer@courtneylawfirm.com;
smares@hinklelawfirm.com;
Bernarr.R.Treat@xcelenergy.com
damon.withrow@xcelenergy.com;
brad.baldrige@xcelenergy.com;
zoe.e.lees@xcelenergy.com;

Mike D'Antonio	michael.a.d'antonio@xcelenergy.com;
Casey Settles	casey.settles@xcelenergy.com;
Mark Walker	Mark.a.walker@xcelenergy.com;
Nancy Burns	Nancy.burns@epelectric.com;
Patricia Griego	Patricia.griego@epelectric.com;
Curtis Hutcheson	Curtis.hutcheson@epelectric.com;
Linda pleasant	Linda.pleasant@epelectric.com;
Laura Rodriguez	laura.rodriguez@epelectric.com;
James Schichtl	James.Schichtl@epelectric.com;
Jennifer Ortiz	Jennifer.Ortiz@epelectric.com;
Linda Barker	linda.barker@epelectric.com;
Wayne Soza	wayne.soza@epelectric.com;
Alejandra Chavira	Alejandra.Chavira@epelectric.com;
Patrick Reinhart	patrick.reinhart@epelectric.com;
Ricardo Gonzales	rico.gonzales@epelectric.com;
Carol Clifford	carol@thejonesfirm.com;
Keven Groenewold	kgroenewold@nmelectric.coop;
Ed Rougemont	erougemont@nmelectric.coop;
Daniel Najjar	dnajjar@virtuelaw.com;
Central New Mexico Electric	cnmecboard@cnmec.org;
Matthew Collins	matthew.collins@cnmec.org;
Central Valley Electric	ajolsen@h2olawyers.com;
Charles T. Pinson	cpinson@cvecoop.org;
Wade Nelson	WNelson@cvecoop.org;
Columbus Electric	general@col-coop.com;
Chris Martinez	chrism@col.coop.com;
Randy Massey	masseyfarm@vtc.net;
Continental Divide Electric	bob@rf-lawfirm.com;
Robert Castillo	rcastillo@cdec.coop;
Corina Sandoval	csandoval@cdec.coop;
Farmers' Electric Cooperative, Inc.	fec@fecnm.org;
Lance Adkins	lance@fecnm.org;
Kit Carson Electric	hrpr@kitcarson.com;
Luis Reyes	lreyes@kitcarson.com;
Andrew Gonzales	agonzales@kitcarson.com;
Jose Lovato	jlovato@kitcarson.com;
M. Poche	mpoche@kitcarson.com;
Nadine Varela	nvarela@kitcarson.com;
Lea County Electric	mnewell@newellawnm.com;
Bobby Ferris	bferris@lcecnet.com;
Mora-San Miguel Electric	lwiggin@wwwlaw.us;
Les Montoya	lmontoya@morasanmiguel.coop;
Robert Quintana	quintanafarms@msn.com;
Northern Rio Arriba Electric	nora@noraelectric.org;
Benjamin Leyba	bleyba@noraelectric.org;
Otero County Electric	s.t.overstreet.law@gmail.com;
Mario Romero	marior@ote-coop.com;
Charles Mulcock	charliem@ote-coop.com;

Roosevelt County Electric	rcec@rcec.coop;
Antonio Sanchez	sancheza@rcec.coop;
Sierra Electric	sierra@secpower.com;
Denise Barrera	deniseb@secpower.com;
Socorro Electric	service@socorroelectric.com;
Joseph Herrera	jherrera@socorroelectric.com;
Anne Dorough	district5@socorroelectric.com;
Ernesto Gonzales	egonzales@jemezcoop.org;
Southwestern Electric	gary@alsuplawoffice.com;
Travis Sullivan	tsullivan@swec-coop.org;
Springer Electric	dsmith9346@zialink.com;
David Spradlin	spradlin@springercoop.com;
Tri-State Generation and Transmission	kreif@tristategt.org;
Mike McInnes	mmcinnnes@tristategt.org;
Gary Roulet	g_roulet@wfec.com;
Duncan Valley Electric	kimberly@dvec.org;
Steven Lunt	stewel@dvec.org;
Navopache Electric	ggouker@navopache.org;
Chuck Moore	cmoore@navopache.org;
Jemez Mountain Electric	ajchavez@jemezcoop.org;
Nathan Duran	nduran@jemezcoop.org;
April Elliott	april.elliott@westernresources.org;
Pat O'Connell	pat.oconnell@westernresources.org;
Mariel Nanasi	Mariel@seedsbeneaththesnow.com;
Vincent Martinez	vmartinez@tristategt.org;
Carla Najjar	csnajjar@virtuelaw.com;
John Bogatko	John.bogatko@state.nm.us;
Dhiraj Solomon	Dhiraj.solomon@state.nm.us;
Mark Tupler	Marc.Tupler@state.nm.us;
Milo Chavez	milo.chavez@state.nm.us;
John Reynolds	john.reynolds@state.nm.us;
Jason Montoya	JasonN.Montoya@state.nm.us;
Peggy Martinez-Rael	Peggy.Martinez-Rael@state.nm.us;
Elizabeth Ramirez	Elizabeth.Ramirez@state.nm.us;
Gilbert Fuentes	GilbertT.Fuentes@state.nm.us;
John Reynolds	John.Reynolds@state.nm.us;
Jack Sidler	Jack.Sidler@state.nm.us;
Timothy Martinez	Timothy.Martinez@state.nm.us;
Alicia Armijo	Aarmijo@nmag.gov;
Elisha Leyba-Tercero	Elisha.Leyba-Tercero@state.nm.us;
Gabriella Dasheno	Gabriella.Dasheno@state.nm.us;
Nicholas Koluncich	nkoluncich@slo.state.nm.us;
Jeremy Lewis	jlewis@slo.state.nm.us;
Cholla Khoury	ckhoury@nmag.gov;
Gideon Elliot	gelliot@nmag.gov;
A. Minard	aminard@nmag.gov;
Robert Lundin	rlundin@nmag.gov;
Elaine Heltman	Eheltman@nmag.gov;

Michaelene Kyrala
Rikki-Lee Chavez
Amy Nerison
Greg Ridgley
Kyle J. Smith
Maj. Andrew J. Unsicker
Mr. Thomas Jernigan
Capt. Lanny Zieman
Capt. Natalie Cepak
Ms. Ebony Payton
TSgt Arnold Braxton
Maj Scott Kirk
Capt Robert L. Friedman
TSgt Ryan Moore
Rishi Garg
WRA - Steve Michel
WRA-Glenda Murphy
CCAE- Charles Noble
CCAE-Megan O'Reilly
Prosperity Works- Ona Porter
Dahl Harris
Jim Dittmer
AARP – Eugene Varela
NMIEC- Peter Gould
Kelly Gould
NMIEC-Richard C. Mertz
NMIEC- James Dauphinais
Greg R. Meyer
CFREC CLEANENERGY
SierraClub- Travis Richie
SierraClub- Zach Pierce
SierraClub – Ramona Blaber
EJ-Sara Gersen
EJ-Charles Carter Hall
Charles F. Noble
Stephanie Dzur
Ramona Blaber
Don Hancock
Julia Broggi
Katelyn Hart
Kitty Turner
Austin Rueschhoff
Jeff Wernert
Steve Seelye
Matthew Dunne
Maureen Reno
Thorvald A. Nelson
Nikolas Stoffel

Michaelene.Kyrala@state.nm.us;
rikkilee@theemissarygroup.net;
amy@theemissarygroup.net;
Greg.Ridgley@state.nm.us;
Kyle.j.smith124.civ@mail.mil;
Andrew.Unsicker@us.af.mil;
Thomas.Jernigan.3@us.af.mil;
Lanny.Zieman.1@us.af.mil;
Natalie.Cepak.2@us.af.mil;
Ebony.Payton.ctr@us.af.mil;
Arnold.Braxton@us.af.mil;
scott.kirk.2@us.af.mil;
Robert.Friedman.5@us.af.mil;
Ryan.Moore.5@us.af.mil;
rishi.garg@hq.doe.gov;
smichel@westernresources.org;
gmurphy@westernresources.org;
noble.ccae@gmail.com;
Oreilly.ccae@gmail.com;
Ona@Prosperityworks.net;
dahlharris@hotmail.com;
jimdittmer@utilitech.net;
evarela@aarp.org;
pgouldlaw@gmail.com;
Kellydarshan@gmail.com;
rcmertz7@outlook.com;
jdauphinais@consultbai.com;
gmeyer@consultbai.com;
cfrecleanenergy@yahoo.com;
Travis.ritchie@sierraclub.org;
Zach.pierce@sierraclub.org;
Ramona.blaber@sierraclub.org;
sgersen@earthjustice.org;
Chall@earthjustice.org;
noble.ccae@gmail.com;
Stephanie@Dzur-Law.com;
Ramona.blaber@sierraclub.org;
Sricdon@earthlink.net;
jbroggi@hollandhart.com;
katelyn.hart@gknet.com;
KAT@jpollockinc.com;
darueschhoff@hollandhart.com;
jwernert@theprimegroupllc.com;
sseelye@theprimegroupllc.com;
Mdunne337@gmail.com
mreno@reno-energy.com;
tnelson@hollandhart.com;
nsstoffel@hollandhart.com;

Adele Lee
Holland Hart
B. Hart
Richard Alvidrez
Robert Clark
Jeffrey H. Albright
Amanda Edwards
Larry Blank
Matthew Miller
Andrea Crane
EJ-Jill Tauber
Rick Gilliam
Bruce Throne
April Elliott
Pat O'Connell
Mariel Nanasi
Rick Gilliam
Joe Herz
Andrew Harriger
Chris Dizon
Lisa Tormoen Hickey
Jason Marks
Vote Solar
NMSU General Counsel
Alton Looney
Tim Dobson
Mayane Barudin
Charles Garcia
Marta Tomic
Cydney Beadles
Art Terreasa
NMSU- Doug Gegax
Jane L. Yee
Danyel Mayer
Michael I. Garcia
Tony A. Gurule
Saif Isamil
Kelsey Rader
Saul J. Ramos
Nann M. Winter
Keith Herrmann
Tom Figart
Nelson Goodin
Tim Glasco
Anastasia S. Stevens
Nelson Goodin
Fred Kennon
Stuart C. Ed
aclee@hollandhart.com;
glgarganoamari@hollandhart.com;
Joshua.smith@sierraclub.org;
ralvidrez@mstlaw.com;
rclark@mstlaw.com;
JA@JalbLaw.com;
AE@JalbLaw.com;
lb@tahoeeconomics.com;
Matthew.miller@sierraclub.org;
ctcolumbia@aol.com;
jtauber@earthjustice.org;
Rick@votesolar.org;
bthroneatty@newmexico.com;
april.elliott@westernresources.org;
pat.oconnell@westernresources.org;
Mariel@seedsbeneaththesnow.com;
rick@votesolar.org;
jaherz@sawvel.com;
akharriger@sawvel.com;
Chris.dizon@endlessenergy.solar;
lisahickey@newlawgroup.com;
lawoffice@jasonmarks.com;
lawoffice@jasonmarks.com;
gencounsel@nmsu.edu;
alooney@ad.nmsu.edu;
tdobson@ad.nmsu.edu;
mayane@votesolar.org;
cgarcia@cuddymccarthy.com;
marta@votesolar.org;
cydney.beadles@westernresources.org;
art@votesolar.org;
dgegax@nmsu.edu;
jyee@cabq.gov;
dmayer@cabq.gov;
MikGarcia@bernco.gov;
Tgurule@cabq.gov;
sismail@cabq.gov;
Kramer@cabq.gov;
sramos@doeal.gov;
nwinter@stelznerlaw.com;
kherrmann@stelznerlaw.com;
tomf@donaanacounty.org;
nelsong@donaanacounty.org;
Ta.glasco@lacnm.us;
astevens.law@gmail.com;
nelxong@donaanacounty.org;
fredk@donaanacounty.org;
sed@las-cruces.org;

Jorge A. Garcia
Jose F. Provencio
Jennifer Vega-Brown
William Templeman
Michael J. Moffett
Mayor Trujillo
Joshua L. Smith
Marcia B. Driggers
Merrie Lee Soules
Judith Parsons
Curtis Hitcheson
Nancy Burns
Patricia Griego
Ron Moss
Matthew Caves
Leslie Padilla

JAG@las-cruces.org;
Jprovencio@las-cruces.org;
Jvega-brown@las-cruces.org;
wtempleman@cmtisantafe.com;
mmoffett@cmtisantafe.com;
mayortrujillo@cityofanthonym.org;
Jsmith.watsonlawlc@gmail.com;
marcyd@las-cruces.org;
mlsoules@hotmail.com;
Judith.parsons@epelectric.com;
Curtis.hutcheson@epelectric.com;
Nancy.burns@epelectric.com;
Patricia.griego@epelectric.com;
rhmos@winstead.com;
matt.caves@wfec.com;
leslie.padilla@pnmresources.com;

DATED this 19th day of January, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed

Isaac Sullivan-Leshin, Paralegal

Isaac.sullivan-leshin@state.nm.us