

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PROPOSED
AMENDMENTS TO THE INTEGRATED
RESOURCE PLANNING RULES 17.7.3 NMAC**

Case No. 17-00198-UT

**ORDER INITIATING PROPOSED RULEMAKING AND NOTICE OF PROPOSED
RULEMAKING**

NOTICE is hereby given that the New Mexico Public Regulation Commission (the “Commission”), on its own Motion, is commencing a rulemaking proceeding to amend the Commission Rule on Integrated Resource Plans for Electric Utilities, 17.7.3 NMAC, (herein after referred to as the IRP Rule). A copy of the proposed amendments to the IRP Rule are attached hereto as Exhibit 1 (the “Proposed Amendments”). Being duly informed in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. The Commission’s IRP Rule was adopted in 2007 to implement the 2005 Efficient Use of Energy Act (EUEA), NMSA § 62-17-1 *et seq.* The IRP Rule, following the EUEA, require that investor-owned electric utilities engage in a resource planning process that evaluates all feasible supply side and demand side resources on a comparable and consistent basis.

2. Section 62-17-10 of the EUEA (2005), entitled **Integrated resource planning** provides in pertinent part: “Pursuant to the commission's rulemaking authority, public utilities supplying electric or natural gas service to customers shall periodically file an integrated resource plan with the commission. Utility integrated resource plans shall evaluate renewable energy, energy efficiency, load management, distributed generation and conventional supply-side

resources on a consistent and comparable basis and take into consideration risk and uncertainty of fuel supply, price volatility and costs of anticipated environmental regulations in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers...”

3. The Commission finds that it should consider amending the IRP Rule 17.7.3.12.B NMAC to delete or amend Section 12 (B), Use in Resource Acquisition Proceeding.

4. The Commission finds that Section 12 (B) should be removed from the IRP Rule for the following reason. Section 12 (B) states that a Commission-approved IR Plan (without any material changes) is granted a presumption that included resource types are necessary in subsequent resource acquisition proceedings or subsequent applications for a Certificate of Convenience and Necessity (“CCN”) proceeding. The Commission finds that this statement potentially conflicts with Section 62-17-10 of the EUEA which expressly states that the IRP is a *planning tool*. The plain meaning of the word “plan” is a proposed or intended course of action or an orderly or step by step conception or proposal for accomplishing an objective or a set of decisions about how to do something in the future.¹ At the time the IR Plan is approved by the Commission, the IR Plan contains only proposed or intended resource types. Therefore, the Commission-approved IR Plan, and its stated resource types, are not necessarily proof or prima facie evidence that the stated resource types (not the particular resource being proposed) are required by the public convenience and necessity. For this reason, Section 12 (B) is proposed to be deleted or amended to comport with the express and plain meaning of the word “plan” in Section 62-17-10 of the EUEA.

¹ <http://dictionary.cambridge.org/dictionary/english/plan>; <http://www.thefreedictionary.com/>.

5. The Commission finds that it should notice for public comment the proposed revision to the IRP Rule 17.7.3.12.B NMAC contained in Exhibit 1 and conduct a public hearing on the Proposed Amendments.

6. The Commission will accept written comments on the proposed changes to the IRP Rule contained in Exhibit 1 and proposed in this Notice of Proposed Rulemaking from any interested person. Interested persons shall file their written comments on the proposed rules no later than April 19, 2017. Any response comments shall be filed no later than October 18, 2017. 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.

7. Written comments or written response comments, containing the Docket Number in this matter, shall be sent to:

Melanie Sandoval
New Mexico Public Regulation Commission
Attention: Case No.
1120 Paseo de Peralta
Santa Fe, NM 87504

8. Copies of the proposed rules may be downloaded from the Commission's web site, www.nmprc.state.nm.us. The Commission will review all timely submitted written comments and will hold a public comment hearing on November 15, 2017 on the 4th Hearing Room, 1120 Paseo de Peralta, Santa Fe, New Mexico 8750, at 2:00 p.m.

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

10. Any person with a disability requiring special assistance in order to participate in a hearing should contact Ms. Kathleen Segura at 827-4501 at least 48 hours prior to the commencement of the hearing.

11. 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 should set a date on which it will consider the record to be closed. The Commission finds such date should be fourteen days (14) after the date of the public hearing (November 29, 2017 - date of record closure). The setting of that record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission’s proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

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

13. Additional Notice to “provide to the public” notice of this rulemaking shall comport with the 2017 amendments to the State Rules Act, Sections 14-4-1 *etseq.* NMSA 1978.

IT IS THEREFORE ORDERED:

A. The Proposed Amendments to the IRP Rule, attached to this Notice of Proposed Rulemaking as Exhibit 1, is proposed for adoption as provided by this Notice.

B. The *Notice of Proposed Rulemaking*, attached hereto as Exhibit 2 constitutes due and lawful notice to all potentially interested persons.

C. Any person wishing to comment on the Proposed Amendments to the IRP Rule may do so by submitting written comments no later than October 18, 2017. Any person wishing to respond to comments may do so by submitting written response comments no later than November 1, 2017. Comments suggesting changes to the Proposed Amendments to the IRP 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 Amendments to the IRP Rule shall be provided in a form consistent with that of the Proposed Amendments to the IRP Rule. 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 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 either of the addresses set forth below:

Melanie Sandoval for hand delivery
NMPRC Records Management Bureau
1120 Paseo de Peralta
Santa Fe, New Mexico 87501
or
NMPRC Records Management Bureau
PO Box 1269
Santa Fe, New Mexico 87504-1269

E. A public hearing on the Proposed Amendment to the IRP Rule, to be presided over by the Commission or its designee, to be appointed by subsequent single signature order of

the Commission, shall be held beginning at 2:00 p.m. on November 15, 2017, at the offices of the Commission, at the following location:

**4th Floor Hearing Room
1120 Paseo de Peralta
Santa Fe, New Mexico 87501
Tel. 505-827-4501**

The hearing will be held in order to receive oral comments only by those persons who did not file written comments or responses in any capacity. Because commenters are afforded the opportunity to submit written comments and written responses to the Commission, **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.**

F. 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. The Commission finds that date shall be fourteen (14) days following the **November 15, 2017, Public Hearing**, that is **November 29, 2017**. The setting of that record closure date will permit Commissioners and Commission counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission's Proposed Amendments to the IRP Rule or responses to any bench requests. However, this action should not be interpreted

as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

G. Interested persons should contact the Commission to confirm the date, time, and place of any public hearing, because hearings may need to be rescheduled to another room in the same building. Any person with a disability requiring special assistance in order to participate in the hearing should contact Ms. Kathleen Segura at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

H. At least thirty (30) days prior to the hearing date, this Order, including Exhibit 1, shall be mailed to all persons who have made a written request for advance notice.

I. The *Notice of Proposed Rulemaking*, Exhibit 2, shall be published without Exhibit 1 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.

J. Copies of this Order, including Exhibit 1, 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.


K. Copies of any forthcoming final order adopting a new rule shall be mailed, 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.

L. Additional Notice to “provide to the public” notice of this rulemaking shall comport with the 2017 amendments to the State Rules Act, Sections 14-4-1 *etseq.* NMSA 1978.

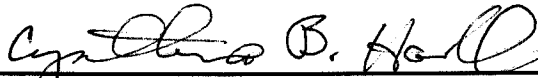
M. This Notice and Order is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 9th day of
August, 2017.

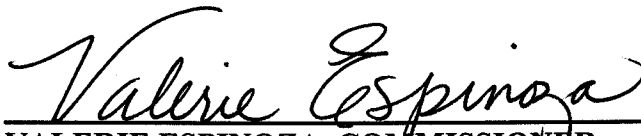
NEW MEXICO PUBLIC REGULATION COMMISSION



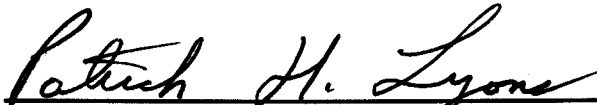
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CYNTHIA HALL, VICE CHAIR



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LYNDA LOVEJOY, COMMISSIONER

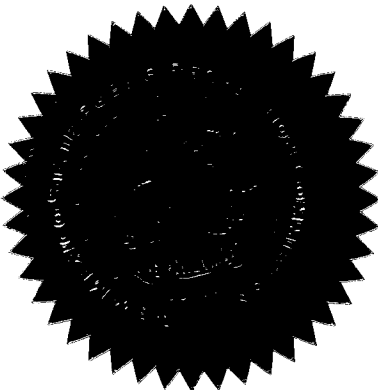


EXHIBIT 1

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

17.7.3.12 COMMISSION REVIEW, ACCEPTANCE AND ACTION:

A. Compliance Review. The commission will review the utility's proposed IRP for compliance with the procedures and objectives set forth herein. The commission may accept the proposed IRP as compliant with this rule without a hearing, unless a protest is filed that demonstrates to the commission's reasonable satisfaction that a hearing is necessary. Protests must be filed within thirty (30) days of the filing of the proposed IRP. If the commission has not acted within forty-five (45) days after the filing of the proposed IRP, that IRP is deemed accepted as compliant with this rule. If the commission determines the proposed IRP does not comply with the requirements of this rule, the commission will identify the deficiencies and return it to the utility with instructions for re-filing.

~~**B.** Use in Resource Acquisition Proceedings. In a proceeding concerning a utility's request for a CCN for a new utility resource, or in other proceedings concerning a utility's resource acquisition, the utility shall present evidence that the requested resource is consistent with the commission accepted utility IRP unless material changes, as described in Section 17.7.3.10 of this rule, have occurred that would warrant a different utility course of action. Evidence that the resource is consistent with the IRP, and that there have not been material changes that would warrant a different course of action by the utility, will constitute prima facie evidence that the resource type, but not the particular resource being proposed, is required by the public convenience and necessity.~~

[17.7.3.12 NMAC - N, 4-16-07]

EXHIBIT 2
NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Regulation Commission (NMPRC or Commission) gives notice of its proposed adoption of amendment to Rule 17.7.3 NMAC pertaining to Integrated Resource Planning (“IRP”) regulated by the Commission pursuant to the Efficient Use of Energy Act (EUEA), NMSA § 62-17-1 *et seq* **Summary of the full text of the proposed rule and short explanation of purpose:** The amendment would delete section 17.7.3.12..B NMAC pertaining to the use of the IRPs by utilities in subsequent resource acquisition proceedings in order to comply with § 62-17-10 of the EUEA. Copies of the Order Initiating Proposed Rulemaking containing the full text of the proposed rule, as well as additional information and filing instructions, may be downloaded from the Proposed Rulemaking section of the Commission’s website at <http://www.nmprc.state.nm.us> under Case No. 17-00198-UT or by calling the Commission’s Records Management Bureau at (505) 827-6968.

Written Initial Comments and written Response Comments shall be filed by the deadlines below with the Commission’s Records Management Bureau at P.O. Box 1269, Santa Fe, NM 87504- 1269 or by hand delivery to the NMPRC Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501 as follows: Written Initial Comments not later than October 18, 2017, and written Response Comments not later than November 1, 2017. Comments shall refer to Case No. 17-00198-UT. At the conclusion of the public hearing, the commission may permit or request additional filed written comments, due no later than the date of record closure.

A public hearing will be held on November 15, 2017, beginning at 2:00 p.m. at the offices of the Commission located in the 4th Floor Hearing Room of the old PERA Building, at 1120 Paseo de Peralta, in Santa Fe. The purpose of the hearing is to **receive oral comments**. Because commenters are afforded the opportunity to submit written comments and written responses to the Commission, **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 fourteen (14) days after the public hearing held on November 15, 2017 (date of record closure is November 29, 2017).

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 Ms. Kathleen Segura at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

Statutory Authority: New Mexico Constitution, Article XI, Sec. 2; NMSA 1978, §8-8-4(B)(10); the Efficient Use of Energy Act (EUEA), NMSA § 62-17-1 *et seq*.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PROPOSED AMENDMENTS)
TO THE INTEGRATED RESOURCE PLANNING)
RULES 17.7.3 NMAC)**

Case No. 17-00198-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order Initiating Proposed Rulemaking and Notice of Proposed Rulemaking**, issued on August 9, 2017, was sent on August 9, 2017 as indicated below, to the following:

Via Email to:

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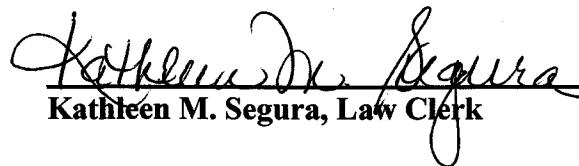
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NEW MEXICO PUBLIC REGULATION COMMISSION


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