

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF AN INQUIRY INTO)	
INTERCONNECTION STANDARDS FOR)	Case No. 07-00014-UT
ELECTRIC UTILITIES,)	
)	
and)	
)	
IN THE MATTER OF A RULEMAKING)	
RELATING TO INTERCONNECTION)	
STANDARDS FOR ELECTRIC UTILITIES)	
AND THE REPEAL OF RULES)	Case No. 07-00422-UT
PROMULGATED PURSUANT TO THE)	
ELECTRIC UTILITY INDUSTRY)	
RESTRUCTURING ACT OF 1999.)	
_____)	

NOTICE OF PROPOSED RULEMAKING

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission”) upon the Status Report (“Status Report”) issued by Hearing Examiner William J. Herrmann on February October 17, 2007, and upon its own motion.

THE COMMISSION FINDS AND CONCLUDES:

1. On January 16, 2007, the Commission issued, on its own motion, its Notice of Inquiry (“Notice”) in Case No. 07-00014-UT, requesting public input and comment on standards for interconnection by electric utilities with customer-owned generation facilities. In that Notice, the Commission announced that it would consider detailed interconnection standards for electric utilities under its authority for the purpose of promulgating such reasonable rules and regulations as may be necessary to protect users of electricity from damage to their person or property. The Notice further established dates for a workshop on interconnection standards, designated William Herrmann as Hearing Examiner to preside over the workshop, to take all actions necessary and

convenient thereto within the limits of his authority, and to schedule additional workshops as he deemed necessary.

2. Pursuant to the Notice, the Hearing Examiner presided over numerous workshops (approximately 12) during the period March 20, 2007 and concluding on September 20, 2007. As the result of those workshops, which were attended by numerous parties, the Hearing Examiner recommends in the Status Report that the Commission initiate a rulemaking proceeding to adopt two new rules, that Part 570 of Title 17, Chapter 9 NMAC ("Rule 570") be repealed and replaced with a substantially modified Part 570, and repeal existing Part 571 of Title 17, Chapter 9 NMAC ("Rule 571").

3. The first of the two new rules recommended by the Status Report, which would be codified as Part 568 of Title 17, Chapter 9 NMAC ("Proposed Rule 568"), would establish interconnection standards and procedures for generating facilities with a rated capacity of up to and including 10 megawatts ("MW"). Proposed Rule 568 would also include the New Mexico Interconnection Manual and exhibits (collectively, "the Manual"), which would be appended to Proposed Rule 568 and be included as part of the Commission's regulations. The second of the two new rules, to be codified as Part 569, of Title 17, Chapter 9 NMAC ("Proposed Rule 569") would be used for interconnections to a utility's distribution system for generators greater than 10 MW. The revisions to Rule 570 are being proposed because the interconnection standards and procedures currently set forth in Rules 570 and 571 would be incorporated into Proposed Rules 568 and 569, and because the remaining provisions of Rules 570 and 571 would be combined into Rule 570. Proposed Rules 568 and 569, Rule 570, as amended, are attached to the Status Report.

4. The Hearing Examiner's proposed rules should be issued by the Commission as proposed rules, and are attached as NOPR Exhibit 1 to this Notice of Proposed Rulemaking.

5. In addition, the Commission, on its own motion, is proposing to repeal Parts 591 ("Rule 591") and 594 ("Rule 594") of Title 17, Chapter 9 NMAC. Rule 591 set forth certain requirements related to the provision of standard offer service for residential or small commercial customers who had not chose a competitive power supplier after customer choice under the Electric Utility Industry Restructuring Act of 1999 ("Restructuring Act"), NMSA 1978 §§ 62-3A-1, *et seq.*, became effective. Rule 594 established a code of conduct applicable to New Mexico public utilities when an affiliate became authorized to offer retail competitive service pursuant to the Restructuring Act. However, the Legislature, effective June 20, 2003, repealed the Restructuring Act in its entirety. *See* Laws 2003, ch. 336, § 9. Because the repeal of the Restructuring Act renders Rules 591 and 594 unnecessary and without purpose, the Commission is proposing to repeal those two rules. The proposed repeal of Rule 591 and 594 is attached as NOPR Exhibit 2 to this Notice of Proposed Rulemaking.

6. The Commission is proposing the foregoing rules pursuant to the authority vested in this Commission by the New Mexico Public Regulation Commission Act, NMSA 1978, Section 8-8-1 *et seq.*, the Public Utility Act, NMSA 1978, Section 62-3-1 *et seq.*

7. The Commission will accept written comments on the rules proposed in this Notice of Proposed Rulemaking from any interested person. Interested persons shall file their written comments on the proposed rule no later than December 21, 2007. Any response comments shall be filed no later than January 7, 2008. 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. Any proposed changes to the proposed rule shall be submitted in hard copy. All pleadings, including comments and suggested changes to the proposed rule, shall bear the caption and docket number contained at the top of this Notice.

8. Written comments or written response comments shall be sent to:

New Mexico Public Regulation Commission
Records Division
Attention: Case No. 07-00422-UT
224 East Palace Avenue, Marian Hall
Santa Fe, NM 87501
Telephone: (505) 827-6968

9. Copies of the proposed rule may be downloaded from the Commission's web site, www.nmprc.state.nm.us, under "Meetings," then "Public Notices."

10. The Commission will review all timely submitted written comments and will hold a public comment hearing on the following date and at the following time and place:

February 1, 2008	PERA Building
9:00 a.m.	4 th Floor Hearing Room
	1120 Paseo De Peralta
	Santa Fe, NM 87501

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

12. Any person with a disability requiring special assistance in order to participate in a hearing should contact Cecilia Rios at 827-4501 at least 48 hours prior to the commencement of the hearing.

13. 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 March 3, 2008. 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.

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

IT IS THEREFORE ORDERED:

A. Case No. 07-00422-UT is created and commenced for the purpose of developing a rule relating to energy efficiency and load management programs.

B. The proposed rules, attached to this Notice of Proposed Rulemaking as NOPR Exhibits 1 and 2, are proposed for adoption as a permanent rule as provided by this Notice of Proposed Rulemaking.

C. Initial and reply comments on the proposed rules must be filed as provided in this Notice of Proposed Rulemaking.

D. The record in this case, for purposes of 17.2.3.7(B) NMAC (“Ex Parte Communications”) shall be closed at 5:00 p.m. on March 3, 2008.

E. Public comment hearings shall be held as provided in this Notice of Proposed Rulemaking.

F. A copy of this Notice of Proposed Rulemaking, including NOPR Exhibits 1 and 2, shall be mailed to all persons listed on the attached Certificate of Service. This Notice of Proposed Rulemaking, excluding NOPR Exhibits 1 and 2, shall be published in two newspapers of general circulation in the State and in the New Mexico Register. The Commission shall provide the Notice by e-mail or facsimile transmission to any persons who so request, and shall post a copy of the proposed rules on the Commission's web site.

G. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, on November
20, 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION



BEN R. LUJAN, CHAIRMAN



JASON MARKS, VICE CHAIRMAN

EXCUSED

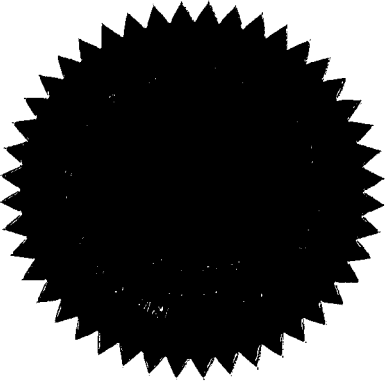
DAVID W. KING, COMMISSIONER

EXCUSED

CAROL K. SLOAN, COMMISSIONER



SANDY JONES, COMMISSIONER



NOPR EXHIBIT 1

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 9 ELECTRIC SERVICES
PART 570 GOVERNING COGENERATION AND SMALL POWER PRODUCTION

17.9.570.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.9.570.1 NMAC - Rp, NMPSC Rule 570, 3-30-07]

17.9.570.2 SCOPE:

A. 17.9.570 NMAC applies to every electric utility (investor-owned, rural electric cooperative, municipal, or an entity providing wholesale rates and service) operating within the state of New Mexico that is subject to the jurisdiction of the New Mexico public regulation commission as provided by law.

B. It is intended that the obligations of utilities provided for in 17.9.570 NMAC shall extend to both production and consumption functions of qualifying facilities irrespective of whether the production and consumption functions are singly or separately owned. In situations where the production and consumption functions are separately owned, the qualifying facility or its operator may elect to enter into the contract with the utility.

C. All interconnection contracts between utilities and qualifying facilities existing at the time 17.9.570 NMAC is adopted shall automatically continue in full force and effect with no change in rates for the purchase of power from the qualifying facilities. Any changes made to the existing interconnection contracts shall be made by mutual agreement and shall conform to the provisions of 17.9.570 NMAC.

D. Variances which have been granted by the commission from earlier versions of General Order No. 37 and under NMPSC Rule 570 shall continue in full force and effect unless the commission specifically rescinds any such variance.

[17.9.570.2 NMAC - Rp, NMPSC Rule 570.2, 3-30-07]

17.9.570.3 STATUTORY AUTHORITY: NMSA 1978, Sections 8-8-15, 62-6-4, 62-6-19, 62-6-24, and 62-8-2, and 16 USCA Section 2621.

[17.9.570.3 NMAC - N, 3-30-07]

17.9.570.4 DURATION: Permanent.

[17.9.570.4 NMAC - N, 3-30-07]

17.9.570.5 EFFECTIVE DATE: _____, 2007, unless a later date is cited at the end of a section. Applications filed prior to this effective date shall be governed by the specific orders related to those applications.

[17.9.570.5 NMAC - Rp, NMPSC Rule 570, 3-30-07]

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.

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.

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, NMPSC Rule 570.1, 3-30-07]

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;

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

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

F. 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;

G. 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;

H. power means electric energy or capacity or both;

I. 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;

J. 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;

K. 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;

L. 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;

M. 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;

N. Utility means a utility or public utility as defined in NMSA 62-3-3 (G) serving electric customer subject to the jurisdiction of the Commission.

[17.9.570.7 NMAC - Rp, NMPSC Rule 570.3, 3-30-07]

17.9.570.8 [RESERVED]

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 17.9.570.11(B) 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.

[17.9.570.9 NMAC - Rp, NMPSC Rule 570.4-10, 3-30-07]

17.9.570.10 METERING OPTIONS:

A. General.

(1) A qualifying facility contracting to provide power may displace its own load. The utility may require appropriate metering. Billing for any power from the utility will be at the utility's approved rate applicable to the service provided to the qualifying facility in accordance with Subsections A - G of 17.9.570.12 NMAC.

(2) The tariff filed by each utility pursuant to Subsection H of 17.9.570.13 NMAC shall include the offer to any qualifying facility that has not contracted to receive capacity payments, the metering options in Subsections B, C and D of 17.9.570.10 NMAC.

(3) The options of Subsections B, C and D of 17.9.570.10 NMAC may involve time-of-day metering if the utility has in effect time-differentiated rates and metering for the class of customer to which the qualifying facility belongs or if the parties negotiate time-differentiated payments to the qualifying facility.

B. Load Displacement Option. If the qualifying facility wishes primarily to serve its own load, the utility shall agree to interconnect with a single meter or meter set measuring flow from the utility to the qualifying facility; billing for any power from the utility will be at the utility's approved tariff applicable to the service provided to the qualifying facility; there will be no additional customer charge and no payment by the utility for any excess energy which might be generated by the qualifying facility.

C. Net Metering Option.

(1) The utility shall install the metering necessary to determine the net energy delivered from the qualifying facility to the utility or from the utility to the qualifying facility for each time-of-use or single rate period, as applicable, during a billing period; the net energy delivered to either the qualifying facility or to the utility is 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) The net energy delivered from the qualifying facility to the utility shall be purchased by the utility at the utility's applicable time-of-use or single period energy rate as described in Subsection B of 17.9.570.11 NMAC; the qualifying facility shall be billed for the net energy delivered from the utility in accordance with the tariffs that are applicable to the qualifying facility absent the qualifying facility's generation; the qualifying facility shall also be billed for all demand and other charges in accordance with the applicable tariffs. At the end of the billing period the utility shall net all charges owed to the utility by the qualifying facility and all payments owed by