

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 9 ELECTRIC UTILITIES
PART 573 RENEWABLE ENERGY AS A SOURCE OF ELECTRICITY

17.9.573.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.9.573.1 NMAC - N, 7-1-03]

17.9.573.2 SCOPE: This rule applies to every person generating or selling electric energy for ultimate consumption in New Mexico that is subject to the jurisdiction of the New Mexico Public Regulation Commission as provided by the Public Utility Act.
[17.9.573.2 NMAC - N, 7-1-03]

17.9.573.3 STATUTORY AUTHORITY: The New Mexico Constitution, Article XI, Section 2; NMSA 1978 Sections 8-8-4, 8-8-12A, 8-8-15, 62-3-1, 62-3A-2, 62-3A-19, 62-3A-20, 62-6-4, 62-6-19, 62-8-1, 62-8-2, and 62-8-7.
[17.9.573.3 NMAC - N, 7-1-03]

17.9.573.4 DURATION: Permanent.
[17.9.573.4 NMAC - N, 7-1-03]

17.9.573.5 EFFECTIVE DATE: July 1, 2003, unless a later date is cited at the end of a section.
[17.9.573.5 NMAC - N, 7-1-03]

17.9.573.6 OBJECTIVE: The purpose of this rule is to establish a process for promoting the use and development of renewable energy in New Mexico to assure that electric consumers obtain adequate and reliable electric services at just and reasonable rates. Encouraging the use of renewable resources will provide diversity and so strengthen the stability of electricity supply. It will also enhance the health and welfare of the state by preserving the environment, stimulating economic development, and conserving water and non-renewable resources, while reducing the state's reliance on fossil fuel resources and vulnerability to market fluctuations.
[17.9.573.6 NMAC - N, 7-1-03]

17.9.573.7 DEFINITIONS: Unless otherwise specified, as used in this rule:

A. biomass co-firing means the simultaneous combustion of biomass with a fossil fuel to produce electrical energy either at a new facility or at an existing facility modified to accept biomass fuels.

B. certifying source means a generator or seller of renewable energy who issues renewable energy certificates in accordance with the values established in paragraph 1 of subsection C of 17.9.573.10 NMAC, certifying that the output or energy supplies produced comply with the definition of renewable energy set forth in subsection E of this section.

C. procure means to contract for the purchase of renewable energy through renewable energy certificates from a certifying source for a period of at least ten (10) years.

D. renewable energy means electrical energy generated by means of a low- or zero-emissions generation technology that has substantial long-term production potential and may include, without limitation, solar, wind, hydropower, geothermal, biomass, including but not limited to agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas, anaerobically digested waste biomass or fuel cells that are not fossil fueled, but does not include fossil fuel or nuclear energy.

E. renewable energy certificate means a certificate issued by a certifying source which evidences the procurement or acquisition of renewable energy by a public utility to satisfy the portfolio standard requirement of this rule.

F. renewable portfolio standard means the amount of renewable energy required by this rule, expressed as a percentage of total energy, generated or procured, and distributed by a public utility to its retail New Mexico customers.

[17.9.573.7 NMAC - N, 7-1-03]

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

[17.9.573.8 NMAC - N, 7-1-03]

17.9.573.9 RELATIONSHIP TO OTHER COMMISSION RULES: This rule replaces a portion of NMPRC rule 591, whose implementation has been delayed by Laws 2001, Chapter 5. This rule repeals NMPRC rule 572, which had been suspended by Commission Order in Utility Case No. 2860 on August 25, 1999. This rule contemplates that the Commission will re-open Case Number 3312, the rulemaking proceeding for self-generation and interconnection standards in which the proposed rule is also numbered 572. Unless otherwise specified, this rule does not supersede any other rule of the Commission but supplements rules applying to public utilities, including, but not limited to, NMPRC rules 570 and 571. In the case of conflict, the provisions of this rule shall apply.

[17.9.573.9 NMAC - N, 7-1-03]

17.9.573.10 RENEWABLE ENERGY OFFER OF SERVICE:

A. Renewable portfolio standard.

(1) Each public utility shall develop an energy portfolio appropriate to its suppliers and customers. The portfolio shall include a progressively greater percentage of service from renewable sources, on a reasonable cost basis. The portfolio shall be diversified as to type of renewable resource, taking into consideration the overall reliability, availability, dispatch flexibility and cost of the various renewable resources made available by providers and generators. Other factors being equal, preference shall be given to renewable energy generated in New Mexico.

(2) By January 1, 2006, the renewable portfolio standard shall be at least five percent (5%) of retail jurisdictional energy sales. The renewable portfolio standard shall then increase by an amount of not less than one percent (1%) per year for each year until the renewable portfolio standard of ten percent (10%) is attained in the year 2011. Upon and after January 1, 2011 the renewable portfolio standard shall be at least ten percent (10%) of all retail jurisdictional energy sales.

B. Renewable energy preference. In procuring, acquiring or constructing facilities for its electric energy supply, a public utility shall prefer renewable energy over non-renewable sources if the life cycle costs of the renewable energy are similar to non-renewable sources on a net present value cost basis.

C. Renewable energy transactions. All transactions between public utilities and suppliers of renewable energy shall be documented through renewable energy certificates.

(1) Certificates shall be issued in the following values:

(a) Each kilowatt hour of electricity generated by wind or hydroelectric technologies, plants, or sources shall represent one (1) kilowatt hour toward compliance with the renewable portfolio standard.

(b) Each kilowatt hour of electricity generated by biomass, geothermal, landfill gas, or fuel cell technologies, plants, or sources shall represent two (2) kilowatt hours toward compliance with the renewable portfolio standard.

(c) Each kilowatt hour of electricity generated by solar technologies, plants or sources shall represent three (3) kilowatt hours toward compliance with the renewable portfolio standard.

(d) Only the biomass contribution to the electricity generated from a co-firing facility will be accepted as renewable energy generation for the purposes of meeting the renewable portfolio standard. Existing or new facilities that fuel-switch between biomass and other fuels can also contribute to the renewable portfolio standard. For a fuel-switching facility, only the biomass contribution to a facility's generation can count toward the renewable portfolio standard.

(e) A renewable energy source may be certified for purposes of this rule if it is developed in combination with a fossil fuel source; however, only the amount of energy from the renewable resource shall qualify for purposes of meeting the renewable portfolio standard.

(f) Hydroelectric generation shall be limited to new facilities of five (5) megawatts or less for the purposes of complying with the renewable portfolio standard.

(2) Renewable energy certificates are owned by producers of renewable energy in amounts corresponding to the total output available for actual delivery to customers in New Mexico in accordance with the values established in paragraph 1 of this subsection, until transferred by sale to a public utility.

(3) Renewable energy certificates may be traded, sold, or otherwise transferred by their owner to any other party. Such transfers do not require the physical delivery of electrical energy represented by the certificate, provided that the energy is metered in New Mexico in accordance with paragraph 9 of this subsection.

(4) Renewable energy certificates once used by a public utility to satisfy its renewable portfolio standard shall be retired. A retired certificate cannot be further transferred or used by any public utility to meet the renewable portfolio standard.

(5) Unless retired, a renewable energy certificate issued for any year that is not used by a public utility to satisfy its renewable portfolio standard may be carried forward for use in subsequent years. In no event shall any renewable energy certificate have a value beyond four (4) years from the date of its issuance.

(6) Renewable energy certificates shall state, at a minimum, the producer, the source, the location of the source, the date of original issue, and the value of the number of kilowatt hours in accordance with paragraph 1 of this subsection that are included in the transaction. All certificate transactions shall be documented by both the transferor and transferee in a manner that would allow the Commission to track the transactions and the certificates.

(7) The Commission shall examine the records of renewable energy certificates maintained by a public utility in its review of each public utility's annual portfolio summary as set forth in subsection C of 17.9.573.11 NMAC.

(8) Public utilities shall be responsible for demonstrating that any and all renewable energy certificates used to meet the renewable portfolio standard of this rule are derived from eligible resources, are valid, and have not been retired or transferred to another party.

(9) Each renewable energy certificate shall represent kilowatt hours of renewable energy produced by a certifying source and valued in accordance with paragraph 1 of this subsection that is metered in New Mexico.

D. Voluntary renewable tariffs.

(1) Each public utility shall offer a voluntary renewable energy tariff for those customers who want the option to purchase additional renewable energy. The tariff shall set out any applicable conditions as to price, quantity and term of agreement.

(2) The voluntary renewable tariff may also include provisions to enable consumers to purchase renewable energy within certain energy blocks and by source of renewable energy. Additionally, each public utility shall develop an educational program on the benefits and availability of its voluntary renewable energy program. The tariff, along with the details of the consumer educational program, shall be filed with the Commission not later than sixty (60) days after the effective date of this rule.

(3) Those investor-owned utilities that, as of December 17, 2002, have all-requirements contracts that expire after January 1, 2006 shall be exempt from the renewable portfolio standard until the earlier of the date of their next contract forward or the date on which the all-requirements contract is amended or renegotiated. [17.9.573.10 NMAC - N, 7-1-03]

17.9.573.11. PORTFOLIO FILINGS:

A. Renewable energy plan.

(1) By November 1, 2003, each public utility shall file with the Commission its general long-term strategy for satisfying the renewable portfolio standard set forth in subsection A of 17.9.573.10 NMAC. The plan shall provide a diversified renewable energy portfolio, incorporating reasonable levels of the following renewable resource types: wind, geothermal, solar, biomass, and hydro. The plan shall address the manner of generating or procuring energy and capacity from renewable resources and how the renewable energy resource preference requirements of subsection B of 17.9.573.10 NMAC are to be met and quantified. The plan shall also explain in detail, by type of renewable resource, the manner of assessing transmission capacity availability, the location of and transmission access to the renewable energy resource, the long and short term marginal costs of the renewable energy and capacity, the dispatch flexibility of the renewable energy and capacity, and the reliability, availability and environmental benefits of the renewable energy and capacity to be generated or procured. In addition, the plan may consider issues of timing, contracting, incentives, and cost recovery mechanisms.

(2) Notice and a copy of the renewable energy plan shall be served by first class mail on all interested persons, including renewable resource providers requesting such notice from the Commission, the Attorney General, and the intervenors in the public utility's most recent rate case, and shall be posted on the public utility's website. Any person challenging the renewable energy plan shall file its objections within fourteen (14) days after service of the notice, and set forth in detail the reasons for the objections. If the Commission finds probable cause to hold a hearing on the plan and objections, the Commission shall set the matter for hearing as provided by statute. If no objections are filed, the Commission shall approve or modify the renewable energy plan within sixty (60) days of the filing.

B. Portfolio filing.

(1) By October 1, 2004 and then by October 1 of each subsequent year, each public utility shall file with the Commission its specific proposed portfolio of power supply, including anticipated power, energy, and ancillary services requirements and power, energy, and ancillary services resources anticipated to be relied upon, including estimated costs, for the following calendar year. The portfolio filing shall set forth in detail:

- (a) the efforts by the public utility to ensure that the filing is consistent with the renewable energy plan; and
- (b) the cost impact on customers by customer class.

(2) Notice and a copy of the portfolio filing shall be served by first class mail on all interested persons, including renewable resource providers requesting such notice from the Commission, the Attorney General, and the intervenors in the public utility's most recent rate case, and shall be posted on the public utility's website. Any person challenging the portfolio filing shall file its objections within fourteen (14) days after service of the notice, and set forth in detail the reasons for the objections. If the Commission finds probable cause to hold a hearing on the filing and objections, the Commission shall set the matter for hearing as provided by statute. If no objections are filed, the Commission shall approve or modify the portfolio filing within sixty (60) days of the filing.

C. Annual portfolio summary. By July 1, 2004 and then by July 1 of each subsequent year, each public utility shall file with the Commission a report on its power supply for the previous calendar year. This report shall include an itemization of all power and energy purchases and sales, and a complete list, with copies, of all renewable energy certificates. This report shall set forth the renewable energy certificate purchases and sales, including those to be applied in future years, and shall indicate the seller's name, term of each transaction, quantity purchased, the purchase price, and other data useful to the Commission in evaluating the public utility's efforts to acquire power at the lowest reasonable price consistent with reliability, availability and portfolio requirements, including renewable resource diversity. The public utility shall be required to verify that all renewable energy procured as documented by renewable energy certificates is sold at retail or consumed in New Mexico. This report shall describe and quantify the implementation of the voluntary renewable tariff requirements set forth in subsection C of 17.9.573.10 NMAC. This report shall also include a reconciliation of the public utility's monthly purchased power adjustment factor, if any.

D. Review by Commission. The Commission shall review the renewable energy plan, portfolio filing and annual portfolio summary of each public utility. If the Electric Utility Restructuring Act of 1999 is not repealed, then prior to asset separation under that Act, approval of a portfolio filing or annual portfolio summary by the Commission means the public utility's actions to acquire renewable resources described in the portfolio filing or annual portfolio summary shall be deemed prudent through the date of that approval. The public utility shall be entitled to one hundred percent (100%) recovery of any resulting stranded costs.

E. Biennial review. By December 1, 2005, and by December 1 of every subsequent odd-numbered year, the Commission shall examine the progress of public utilities in achieving compliance with this rule, including but not limited to an examination of the renewable energy production market, the economic impact on the utilities' customers by class or otherwise, the use of renewable energy certificates as a market transaction system, the effectiveness of the weighted values established in paragraph (1) of subsection C of 17.9.573.10 NMAC, the need to specifically address new technologies or resources, and any other factor the Commission deems appropriate. [17.9.573.11 NMAC - N, 7-1-03]

17.9.573.12 EXEMPTION AND VARIANCE: Any interested person may file an application for an exemption or a variance from the requirements of this rule. Such application shall:

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

[17.9.573.12 NMAC - N, 7-1-03]

17.9.573.13 COMPLAINTS: Any interested person may file a complaint against any person who is alleged to be in violation of this rule or any public utility that allegedly refuses to negotiate in good faith regarding an offer

of sale of renewable energy. The Commission shall review complaints in accordance with Utility Division procedures.

[17.9.573.13 NMAC - N, 7-1-03]

17.9.573.14 RURAL ELECTRIC COOPERATIVES: Rural electric cooperatives shall be exempt from all provisions of this rule, except that rural electric cooperatives must offer a voluntary renewable energy tariff, but only to the extent that their suppliers under their all-requirements contracts make such renewable resources available. Rural electric cooperatives must report to the Commission by July 1 of each year concerning the annual demand for renewable energy pursuant to their voluntary tariff.

[17.9.573.14 NMAC - N, 7-1-03]

17.9.573.15 ENFORCEMENT: The Commission shall promulgate rules necessary for the administration and enforcement of this rule. The rules shall include enforcement mechanisms that are necessary and reasonable to ensure that each public utility complies with its renewable portfolio standard and shall include provisions governing the imposition of administrative fines.

[17.9.573.15 NMAC - N, 7-1-03]