

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE PETITION TO AMEND THE)
ENERGY EFFICIENCY RULE 17.7.2 NMAC) Case No. 19-00168-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 consider the adoption of the proposed rule or alternatives pertaining proposed changes to the Energy Efficiency Rule to bring that Rule into conformance with the 2019 amendments to the Efficient Use of Energy Act. A copy of the proposed rule is attached hereto as Exhibit 1 (the “Proposed Rule”). Being duly informed in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. Pursuant to the New Mexico Constitution, Article XI, § 2; §§ 8-8-16, 63-3-1, 62-8-6, 62-17-1 *et. seq.*, NMSA 1978; State Rules Act, NMSA 1978, § 14-4-1, *et seq.* and the Public Regulation Commission Act, NMSA 1978, § 8-8-1 through 8-8-21; the Commission has jurisdiction to promulgate amendments pertaining to the Energy Efficiency Rule.

2. On June 10, 2019, the Commission opened docket No. 19-00168-UT, captioned *In the Matter of the Petition to Amend the Energy Efficiency Rule 17.7.2 NMAC*. The purpose of the Rulemaking was to propose changes to the Energy Efficiency Rule.

3. The Commission finds that the Commission should initiate this rulemaking to repeal and replace proposed changes to rules 17.7.2 NMAC insofar as it pertains to the Efficient Use of Energy Act, attached as Exhibit 1 to this Order and Notice.

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

5. The Commission will accept written comments concerning the proposed 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 May 21, 2021. Any response comments shall be filed June 4, 2021. 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.

6. Currently, due to the COVID-19 pandemic and orders of the governor pertaining thereto, the commission has adopted emergency electronic filing procedures, which may or may not be in place at the time that comments are filed in this docket. In the alternative, the commission may revert to the filing procedures in place before the emergency electronic filing procedures were instituted, in which case such filings shall be made with the commission's records bureau at P.O. Box 1269, Santa Fe, NM 87504-1269. For information as to how to file at the time of filing, please contact Melanie Sandoval, the commission's records bureau chief at melanie.sandoval@state.nm.us or (505)670-4830.

7. 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 public comment hearings on the following date and at the following time and place: June

21, 2021 at 2:00 p.m. via Zoom platform. The Commission's Office of General Counsel will email a Zoom invitation to the persons who sign up to participate by contacting Isaac Sullivan-Leshin. The Zoom invitation will include a call-in number for those participants who are unable to access the Zoom platform via computer. Any member of the public who wishes to make a comment at the hearing must contact Isaac Sullivan-Leshin at (505)670-4830 or isaac.sullivan-leshin@state.nm.us by no later than 12:00pm on June 18, 2021 in order to be placed upon the public comment listing.

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

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

10. 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, July 5, 2021. 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.

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

IT IS THEREFORE ORDERED:

A. The Rule Pertaining to changes to the Energy Efficiency Rule, attached to this Order as Exhibit 1, is proposed for adoption as provided by this Order.

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 Rulemaking may do so by submitting written comments no later than May 21, 2021. Any person wishing to respond to comments may do so by submitting written response comments no later than June 4, 2021. 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 provided in a form consistent with that of the Proposed Rule. Commenters' deletions shall be indicated by striking through the language to be deleted, and commenters' additions shall be underlined. Any proposed additions and deletions shall be provided upon an integrated or clean version of the Proposed Rule. 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 in accordance with NMPRC rules of procedure 1.2.2 NMACF or information as to how to file at the time of filing, please contact Melanie Sandoval, the commission's records bureau chief at melanie.sandoval@state.nm.us.

F. A public hearing on the Proposed Amendment to the Energy Efficiency 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 June 21, 2021**, at the offices of the Commission, via Zoom platform. The Commission's Office of General Counsel will email a Zoom invitation to the persons on the official service list in this matter prior to the hearing. The Zoom invitation will include a call-in number for those participants who are unable to access the Zoom platform via computer. Any member of the public who wishes to make a comment at the hearing must contact Isaac Sullivan-Leshin at (505)670-4830 or isaac.sullivan-leshin@state.nm.us by no later than 12:00pm on May 28, 2021 in order to be placed upon the public comment listing. 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.**

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. The Commission finds that date shall be fourteen (14) days following the **June 21, 2021 Public Hearing**, that is **July 5, 2021**. 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 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.

H. 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 Isaac Sullivan-Leshin at (505)670-4830 or isaac.sullivan-leshin@state.nm.us at least 48 hours prior to the commencement of the hearing.

I. 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.

J. The *Notice of Proposed Rulemaking*, Exhibit 2, 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.

K. Copies of this Order, 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.

L. 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.

M. This Notice and Order is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 24th day of
March, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

NO VOTE CAST

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 1 (redlined proposed amendments)

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 7 ENERGY CONSERVATION
PART 2 ENERGY EFFICIENCY

17.7.2.1 ISSUING AGENCY: The New Mexico Public Regulation Commission.
[17.7.2.1 NMAC - Rp. 17.7.2.1 NMAC, 9/26/2017]

17.7.2.2 SCOPE: This rule applies to all electric, gas and distribution cooperative utilities subject to the commission's jurisdiction.
[17.7.2.2 NMAC - Rp. 17.7.2.2 NMAC, 9/26/2017]

17.7.2.3 STATUTORY AUTHORITY: Sections 8-8-16, ~~623~~-3-1, 62-8-6, 62-17-1 *et. seq.*, NMSA 1978.
[17.7.2.3 NMAC - Rp. 17.7.2.3 NMAC, 9/26/2017]

17.7.2.4 DURATION: Permanent.
[17.7.2.4 NMAC - Rp. 17.7.2.4 NMAC, 9/26/2017]

17.7.2.5 EFFECTIVE DATE: [~~September 26, 2017~~] _____, ~~2021~~~~19~~. Applications filed prior to this effective date shall be governed by the specific orders related to those applications.
[17.7.2.5 NMAC - Rp. 17.7.2.5 NMAC, 9/26/2017]

17.7.2.6 OBJECTIVE: The purpose of this rule is to implement the Efficient Use of Energy Act and establish criteria to evaluate and implement cost-effective measures or programs that reduce energy demand and energy consumption. The rule also specifies how annual program funding is to be determined; how the public utility's prior commission approved total portfolio of programs will be cost-effective; how the public utility's total new portfolio of programs will be cost-effective; and establishes annual incentive criteria for a public utility.
[17.7.2.6 NMAC - Rp. 17.7.2.6 NMAC, 9/26/2017]

17.7.2.7 DEFINITIONS: In addition to the definitions used in Section 62-17-4 NMSA 1978, the following definitions apply to this rule:

- A. application** means a utility application for commission approval of proposed energy efficiency measures or programs and load management measures or programs;
- B. estimate or estimated** means a projection or forecast utilizing well known, commercially available or standard engineering, economic and financial calculations, ratings and simulations, or other reasonable means;
- C. life-cycle basis** means utilizing the expected useful life of the energy efficiency and load management measures or programs and applying ~~the~~ a net present value methodology that does not adjust a discount rate for taxes in order to estimate the associated monetary costs and avoided monetary costs of the measure or program being evaluated;
- D. low income customer** means a customer with an annual household income at or below two hundred percent of the federal poverty level, as published annually by the United States department of health and human services;
- E. measure or program** means an energy efficiency measure or program or a load management measure or program;
- F. measurement and verification** means an analysis performed by an independent evaluator that estimates, consistent with Subsection B of 17.7.2 NMAC, reductions of energy usage or peak demand and determines any actual reduction of energy usage or peak demand that directly results from the utility's implementation of particular energy efficiency measures or programs or of particular load management measures or programs;
- G. plan year** means the calendar year for which commission approval is being sought;
- H. plan year overage** means the public utility's actual prior plan year expenditures that exceeded the same plan year's actual collections;
- I. plan year underage** means the public utility's actual prior plan year collections that exceeded the same plan year's actual expenditures.

[17.7.2.7 NMAC - Rp. 17.7.2.7 NMAC, 9/26/2017]

17.7.2.8 PUBLIC UTILITY FILING REQUIREMENTS FOR APPLICATIONS AND ANNUAL REPORTS:

A. Timing. Beginning in the year specified below, each public utility shall file an application every three years:

2021 ¹⁸	2022 ¹⁹	2023 ⁰
<u>El Paso Electric Company (and its successors)</u>	<u>Southwest Public Service Company (and its successors)</u>	<u>Public Service Company of New Mexico (and its successors)</u>
<u>Zia Natural Gas Company (and its successors)</u>	<u>New Mexico Gas Company (and its successors)</u>	<u>Raton Natural Gas Company (and its successors)</u>
		<u>Any other public utility</u>

Each of the three years covered by an application shall, for the purposes of 17.7.2.7 NMAC, be treated as a plan year. Each public utility may, but is not required to, file an application prior to the year specified in this subsection. If a utility does not elect to file an application prior to the year specified in this subsection, the measures, programs and incentive approved in the utility’s last energy efficiency case shall continue in effect until modified or terminated. If a utility does elect to file an application prior to the year specified in this subsection, the measures, programs and incentive approved in that case shall continue in effect as provided by the commission. All utilities shall file their annual reports each year and in the same docket as the application that covered the period of the annual report. Public ~~S~~^Service ~~C~~^Company of New Mexico (and its successors) shall file its application and its annual reports on April 15 of the applicable year. Southwestern ~~P~~^Public ~~S~~^Service ~~C~~^Company (and its successors) shall file its application and its annual reports on May 15 of the applicable year. El Paso ~~E~~^Electric ~~C~~^Company (and its successors) shall file its application and its annual reports on June 1 of the applicable year. A natural gas company shall file its annual report on or before July 1 of each year, and shall file its application on or before August 31 of the applicable year in which it is required to file an application. If a specified filing date falls on a weekend or legal holiday, the public utility shall file on the next business day.

B. Compliance with pre-filing requirements. Applications shall describe how the public utility has met the pre-filing requirements of Subsection E of Section 62-17-5 NMSA 1978, including descriptions of the process used to solicit non-binding recommendations, and any competitive bids required by the commission for good cause. The public utility shall identify by name, association, and contact information, each interested party that participated in the process, including commission staff, the attorney general, and the energy, minerals and natural resources department. The public utility shall summarize each participant's non-binding recommendation on the design, implementation, and use of third-party energy service contractors through competitive bidding for programs and measures.

C. The public utility shall identify within its application, its estimated plan year funding for energy efficiency and load management program costs for each year during the plan period.

(1) Estimated plan year funding for electric public utilities’ energy efficiency and load management program costs shall be expressed in dollars and shall be no less than three percent and no more than five percent of billing revenues from all of its customers’ bills that the public utility estimates to be billed during the plan year to customer classes with the opportunity to participate, excluding:

- a) gross receipts taxes and franchise and right-of-way access fees;
- b) revenues that the public utility estimates to bill during the plan year to any single customer that exceed seventy five thousand (\$75,000);
- c) any customer’s plan year self-directed program credits approved by the public utility or by a commission approved self-direct administrator; and
- d) any customer’s plan year self-directed program exemptions approved by the public utility or by a commission approved self-direct administrator.

~~(1) Estimated plan year funding for electric public utilities’ energy efficiency and load management program costs shall be expressed in dollars and shall be no less than three percent and no more than five percent of billing revenues from all of its customers’ bills that the public utility estimates to be billed during the plan year, excluding:~~

~~(a) gross receipts taxes and franchise and right of way access fees;~~

~~(b) revenues that the public utility estimates to bill during the plan year to any single customer that exceed seventy five thousand (\$75,000);~~

~~(c) any customer's plan year self directed program credits approved by the public utility or by a commission approved self direct administrator; and~~

~~(d) any customer's plan year self directed program exemptions approved by the public utility or by a commission approved self direct administrator.~~

(2) Estimated plan year funding for gas public utilities' energy efficiency and load management program costs shall be expressed in dollars and shall not exceed ~~three~~ five percent of customers' bills that the public utility estimates to be billed during the plan year, excluding:

(a) gross receipts taxes and franchise and right-of-way access fees;

(b) revenues that the public utility estimates to bill during the plan year to any single customer that exceed seventy five thousand (\$75,000);

(c) any customer's plan year self-directed program credits approved by the public utility or by a commission-approved self-direct administrator; and

(d) any customer's plan year self-directed program exemptions approved by the public utility or by a commission-approved self-direct administrator.

D. The public utility's application shall calculate and provide the difference between its actual prior plan year expenditures for measures and programs and the same plan year's applicable funding required by statute. At the end of each plan year, the public utility shall calculate the following applicable values:

(1) any plan year overage; or

(2) any plan year underage.

E. In each plan year, a public utility shall make its best efforts to expend its applicable plan funding as calculated in Subsection C of 17.7.2.8 NMAC above subtracting any applicable prior plan year overage or adding any applicable prior plan year underage; provided, however, that a public utility may periodically adjust its plan year expenditures by an amount not greater than ten percent of the approved applicable funding level required by statute if the adjustment will result in aligning plan year expenditures more closely with projected plan year collections ~~under the utility's energy efficiency rider~~. By motion in the docket of its most recent energy efficiency case a utility may seek approval to adjust its plan year expenditures by more than ten percent of the applicable approved funding level required by statute.

F. The application shall include an executive summary to facilitate commission review.

G. The utility shall utilize well known, commercially available or standard engineering, economic and financial calculations, ratings, and simulations, or other reasonable methods, to determine monetary costs and avoided monetary costs of measures and programs.

H. For each proposed measure or program, including previously approved measures and programs submitted for reauthorization, the application shall provide:

(1) the public utility's statement that the measure or program is estimated to be cost-effective and meets the utility cost test;

(2) a detailed description of the proposed measure or program;

(3) the expected useful life of the measure or program;

(4) any participation requirements and restrictions of the measure or program;

(5) the time period during which the measure or program will be offered;

(6) a description of any competitive bid process for utility measures or programs;

(7) the estimated number of measure or program participants, supported by written testimony and exhibits;

(8) the estimated economic benefit to the participants attributable to the measure or program, supported by written testimony and exhibits;

(9) the estimated annual energy savings and the estimated energy savings over the useful life for the measure or program (expressed in kilowatt hours and dollars for electric utilities or in therms and dollars for gas utilities), supported by written testimony and exhibits;

(10) the estimated annual demand savings and the estimated demand savings over the useful life for the measure or program (expressed in kilowatts and dollars), supported by written testimony and exhibits;

(11) the proposed program costs to be incurred by the utility to support more than one measure or program, along with the associated allocation of this cost to each measure or program, and the method used to determine each allocation, supported by written testimony and exhibits;

(12) a detailed separate measure or program budget that identifies the estimated monetary program costs to be incurred by the public utility in acquiring, developing, and operating each measure and program on a life cycle basis, for each year of the expected useful life of the measure or program;

(13) the estimated monetary program costs to be incurred by the public utility in acquiring, developing, and operating each measure or program on a life cycle basis, supported by written testimony and workpapers that:

(a) demonstrate and justify how the estimated monetary program costs will be equal to or greater than the actual monetary program costs; and

(b) explain the public utility's rationale and methodology used to determine the estimated monetary program costs.

(14) the estimated avoided monetary cost associated with developing, acquiring and operating associated supply side resources, supported by written testimony and exhibits that:

(a) demonstrate and justify how the estimated avoided monetary cost will be equal to or greater than the actual avoided monetary cost; and

(b) explain the public utility's rationale and methodology used to estimate the avoided monetary cost associated with acquiring, developing, and operating the associated supply side resource.

(15) supporting documentation, underlying data, calculations, estimates and other items shall be presented in a manner that facilitates the preparation of a measurement and verification report by an independent program evaluator, along with compilation and preparation of the public utility's reporting requirements, and that facilitates a simple comparison of measure or program estimated results to actual results, including the public utility's cost of capital and discount rate; and

(16) if the utility cost test is not met, justify why the utility is proposing to implement the program within its portfolio of proposed programs.

I. The public utility shall demonstrate, and has the burden to demonstrate, that it has evaluated and determined that the proposed measure or program is cost-effective and will reduce energy usage or energy demand or both, if approved by the commission and implemented by the utility.

J. The public utility shall demonstrate that its portfolio of proposed measures and programs are cost-effective, meets the utility cost test as defined by Subsection C of Section 62-17-4 NMSA 1978 and are designed to provide every affected customer class with the opportunity to participate and benefit economically.

K. The public utility shall demonstrate that no less than five percent of the funding for measure and program costs shall be specifically directed to measures or programs for low-income customers.

L. ~~As stated in Subsection F of Section 62-17-5 NMSA 1978, applications may include a proposal for an opportunity to earn a profit on cost effective energy efficiency and load management resource development that, with satisfactory program performance, is financially more attractive to the public utility than a supply side utility resource. Accordingly, A~~any application that includes a proposed annual incentive award shall:

(1) be based on the utility's costs;

(2) be based on satisfactory performance of measures and programs;

(3) be supported by written testimony and exhibits; and

(4) shall not exceed the product (expressed in dollars) of:

(a) its weighted cost of capital (expressed as a percent), and

(b) its approved annual program costs.

M. For each approved large customer self-directed program, the utility's application shall describe, in an annual report, the process that enabled the utility to determine that a large customer self-directed program met the cost-effective definition set forth in Subsection B of Section 62-17-9 NMSA 1978 and merited the credit or exemption.

N. The commission shall act expeditiously on the public utility's request for approval of its energy efficiency and load management measures and programs.

[17.7.2.8 NMAC - Rp. 17.7.2.8 NMAC, 9/26/2017]

17.7.2.9 RESIDENTIAL PROGRAMS:

A. The programs should enable residential customers or households to conserve energy, reduce demand, or reduce residential energy bills.

B. Provided that the public utility's total portfolio of programs remains cost-effective, no less than five percent of the amount received by the public utility for program costs shall be specifically directed to energy efficiency programs for low-income customers.

(1) A public utility may coordinate with existing community resources, including affordable housing programs, and low-income weatherization programs managed by other utilities and federal, state, county, or local governments. This section does not preclude the public utility from designing and proposing other low-income programs.

(2) Whenever possible, providers of low-income energy efficiency measures or programs should have demonstrated experience and effectiveness in the design, administration and provision of low-income measures and programs, along with experience in identifying and conducting outreach to low-income households. In the absence of qualified independent agencies, a public utility that does not provide measures or programs directly, may solicit qualified competitive bids for these services.

(3) Public utilities shall notify customers experiencing ability-to-pay problems of the availability of energy efficiency and load management measures and programs, as well as hardship funds. Public utilities shall also identify customers that have life-safety code violations that preclude energy efficiency and load management measure and notify appropriate low-income program and community resource providers of the need to rectify such code violations.

(4) In developing the utility cost test for energy efficiency and load management measures and programs directed to low-income customers, unless otherwise quantified in a commission proceeding, the public utility shall assume that twenty percent of the calculated energy savings is the reasonable value of reductions in working capital, reduced collection costs, lower bad-debt expense, improved customer service, effectiveness, and other appropriate factors qualifying as utility system economic benefits.

[17.7.2.9 NMAC - Rp. 17.7.2.9 NMAC, 9/26/2017]

17.7.2.10 SELF-DIRECTED PROGRAM CREDITS FOR LARGE CUSTOMERS: The following criteria apply to large customer utility credits for self-directed programs.

A. The expenditures made by the large customer at its facilities shall be cost-effective according to the utility cost test.

B. Projects that have received rebates, financial or other program support from a utility are not eligible for a credit.

C. Eligible expenditures must have a simple payback period of more than one year but less than seven years.

D. Large customers shall seek and receive approval for credits from the utility or a commission-approved self-direct administrator.

E. Large customers applying for an investor-owned electric utility bill credit must meet the electricity consumption size criteria set forth in Subsection G of Section 62-17-4 NMSA 1978 and the utility cost test.

F. Large customers applying for gas utility bill credit must meet the gas consumption criteria as set forth in Subsection G of Section 62-17-4 NMSA 1978 and the utility cost test.

G. Large customers seeking a credit shall provide, to the public utility or the commission-approved self-direct program administrator, access to all relevant engineering studies and documentation needed to verify energy savings of the project, and allow access to its site for reasonable inspections, at reasonable times. All records relevant to a self-direct program shall be maintained by the large customer for the duration of that program, which shall be evaluated in accordance with 17.7.2.15 NMAC, subject to appropriate protections for confidentiality.

H. The utility shall designate a qualified representative to review, approve, or disapprove large customer requests for credits.

I. The commission may appoint a "commission-approved" self-direct program administrator to review, approve, or disapprove large customer requests for credits.

J. Approvals or disapprovals by the utility representative or administrator shall be subject to commission review. Within 30 business days of the action, the utility representative or administrator shall file and serve notice of each self-direct program review, approval, or disapproval with the commission, and on all interested parties. Notice of an appeal of a utility or administrator approval or disapproval of a large customer credit request shall be filed with the commission within 30 calendar days of the approval or disapproval action by Staff, the large customer or any interested party.

K. Once approved, the credit may be used to offset up to seventy percent of the tariff rider authorized by the Efficient Use of Energy Act, until said credit is exhausted.

L. Any credit not fully utilized in the year it is received shall carry over to subsequent years.

M. Implementation of credits shall be designed to minimize utility administrative costs.

N. Self-direct program participants, or large customers seeking exemption, shall submit qualified in-house or contracted engineering studies, and such other information as may be reasonably required by the utility or program administrator, to demonstrate qualification for self-direct program credits.

O. Large customers must respond to reasonable utility or administrator information requests and allow the utility or an administrator to perform necessary site visits.

P. The utility or administrator shall act in a timely manner on requests for self-direct program approval.

Q. For investor-owned electric utilities, the equivalent amount of energy savings associated with a large customer's self-directed program will be accounted for in calculating its compliance with minimum required energy savings.

R. Large customer expenditures incurred to produce electric energy savings or electric demand savings are only eligible for an electric utility bill credit. Large customer expenditures incurred to produce natural gas energy savings or natural gas demand savings are only eligible for a gas utility bill credit. Large customer expenditures incurred to produce both electric and natural gas energy savings, both electric and natural gas demand savings, or any combination of energy savings and demand savings for both electric and natural gas are eligible for both an electricity bill credit and a gas utility bill credit, provided that the same energy efficiency expenditures or load management expenditures cannot be accounted for twice.

S. Upon written request by the large customer, the information provided by that customer to the utility or program administrator, program evaluator, or others, shall remain confidential, except as otherwise ordered by the commission.

[17.7.2.10 NMAC - Rp. 17.7.2.10 NMAC, 9/26/2017]

17.7.2.11 SELF-DIRECTED PROGRAM EXEMPTIONS FOR LARGE CUSTOMERS: The following criteria apply to utility exemptions to large customers for self-directed programs.

A. To receive approval for an exemption to paying seventy percent of the tariff rider, a large customer must demonstrate to the reasonable satisfaction of the utility or self-direct program administrator that it has exhausted all cost-effective energy efficiency measures at its facility.

B. Projects that have received rebates, financial or other program support from a utility are not eligible for an exemption.

C. Eligible expenditures must have a simple payback period of more than one year but less than seven years.

D. Large customers shall seek and receive approval for exemptions from the utility or a commission-approved self-direct administrator.

E. Large customers applying for an investor-owned electric utility bill exemption must meet the electricity consumption size criterion set forth in Subsection G of Section 62-17-4 NMSA 1978.

F. Large customers applying for a gas utility bill exemption must meet the gas consumption criterion set forth in Subsection G of Section 62-17-4 NMSA 1978.

G. The utility shall designate a qualified representative to review and approve, or disapprove, large customer requests for exemptions.

H. The commission may appoint a "commission-approved" self-direct program administrator to review and approve, or disapprove, large customer requests for exemptions.

I. Approvals or disapprovals by the utility representative or administrator shall be subject to commission review. Within 30 business days of the action, the utility representative or administrator shall file and serve notice of each self-direct program approval or disapproval with the commission, and on all interested parties. Notice of an appeal of a utility or administrator approval or disapproval of a large customer exemption request shall be filed with the commission within 30 calendar days of the approval or disapproval action by staff, the large customer or any interested party.

J. Self-direct program participants, or large customers seeking an exemption shall provide, to the public utility or the commission approved self-direct program administrator, access to all relevant engineering studies and documentation needed to verify energy saving of the project, and allow access to its site for reasonable inspections, at reasonable times. All records relevant to a self-direct program shall be maintained by the large customer for the duration of that program, which shall be evaluated in accordance with 17.7.2.15 NMAC, subject to appropriate protections for confidentiality.

K. Self-direct program participants, or large customers seeking exemption, shall submit qualified in-house or contracted engineering studies, and such other information as may be reasonably required by the utility or program administrator, to demonstrate qualification for self-direct program exemptions.

L. Large customers must respond to reasonable utility or administrator information requests and allow the utility or an administrator to perform necessary site visits.

M. The utility or administrator shall act in a timely manner on requests for self-direct program approval.

N. For investor-owned electric utilities, the equivalent amount of energy savings associated with a large customer's self-directed program will be accounted for in calculating its compliance with minimum required energy savings.

O. Large customer expenditures incurred to produce electric energy savings or electric demand savings are only eligible for an electric utility bill credit. Large customer expenditures incurred to produce natural gas energy savings or natural gas demand savings are only eligible for a gas utility bill credit. Large customer expenditures incurred to produce both electric and natural gas energy savings, both electric and natural gas demand savings or any combination of energy savings and demand savings for both electric and natural gas are eligible for both an electricity bill credit and a gas utility bill credit, provided that the same energy efficiency expenditures or load management expenditures cannot be accounted for twice.

P. Upon written request by the large customer, the information provided by large customers to the utility or program administrator, program evaluator or others shall remain confidential, except as otherwise ordered by the commission.

[17.7.2.11 NMAC - Rp. 17.7.2.11 NMAC, 9/26/2017]

17.7.2.12 MODIFICATION OR TERMINATION OF PROGRAMS: Within each plan year, the utility, commission staff, attorney general, energy, minerals and natural resources department, or any other interested party, may petition the commission to modify or terminate a measure or program, or to approve a new program, for good cause by filing a motion in the same docket in which the public utility filed its most recent application. Program modification or termination shall not nullify any preexisting obligations of the utility, alternative energy efficiency provider, or contractor, for performance or failure to perform. Termination of a program or programs shall be accomplished in a manner that allows the utility to fully recover its prudent and reasonable program costs.

[17.7.2.12 NMAC - Rp. 17.7.2.12 NMAC, 1/1/2015, A, 9/26/2017, 9/26/2017]

17.7.2.13 FILING REQUIREMENTS FOR COST RECOVERY:

A. Public-Electric utility recovery of program costs shall only be from customer classes with an opportunity to participate in approved measures and programs, and shall be three to five percent (3% to 5%) of customers' bills or seventy-five thousand dollars (\$75,000) per customer per plan year, whichever is less. For gas utilities, recovery of program costs shall be no more than five percent (up to 5%) of total annual revenues adjusted to maximize the impact on any single customer to \$75,000 per plan year.

B. The public utility, at its option, may recover its prudent and reasonable program costs and approved incentives, either through an approved tariff rider, in base rates or by combining recovery through a tariff rider and base rates.

C. If a public utility seeks recovery of costs through a tariff rider, a utility shall present the proposed ratemaking treatment to the commission for approval. The proposal shall reconcile recovery of any costs currently being recovered through a tariff rider or in base rates, or by a combination of the two, as well as any new costs proposed to be recovered through a tariff rider or in base rates, or by a combination of the two.

(1) The tariff rider shall be applied on a monthly basis, unless otherwise allowed by the commission.

(2) Unless otherwise ordered by the commission, a tariff rider approved by the commission shall require language on customer bills explaining program benefits.

(3) A public utility seeking approval of a tariff rider shall file an advice notice containing the information required by 17.1.2.210.11 NMAC and served upon the individuals and entities set forth in that rule. The proposed tariff rider shall go into effect 30 days after filing, unless suspended by the commission for a period not to exceed 180 days. If the commission has not acted to approve or disapprove the tariff rider by the end of an ordered suspension period, or within 30 days of filing, it shall be deemed approved as a matter of law.

D. If base rate recovery of costs is sought, a utility shall present the proposed ratemaking treatment to the commission for approval. The proposal shall reconcile recovery of any costs currently being recovered through a tariff rider or in base rates, or by a combination of the two, as well as any new costs proposed to be recovered through a tariff rider or in base rates, or by a combination of the two.

E. Program costs and incentives may be deferred for future recovery through creation of a regulatory asset. Prior commission approval is required for the public utility to create a regulatory asset and to establish any associated carrying charge.
[17.7.2.13 NMAC - Rp. 17.7.2.13 NMAC, 9/26/2017]

17.7.2.14 ANNUAL REPORT:

A. Annual reports shall provide information relating to the public utility's actions to comply with the Efficient Use of Energy Act.

B. Each public utility shall post its annual report on a publicly accessible website.

C. Annual reports shall include the following for each measure and program:

(1) documentation of program expenditures and estimates of the program expenditures expected in the next year, including documentation of any adjustments to expenditures in the plan year and expected adjustments to the next plan year;

(2) estimated and actual customer participation levels;

(3) estimated and actual energy savings;

(4) estimated and actual demand savings;

(5) estimated and actual monetary costs of the public utility;

(6) estimated and actual avoided monetary costs of the public utility;

(7) an evaluation of its cost-effectiveness; and

(8) an evaluation of the cost-effectiveness and pay-back periods of self-directed programs.

D. Annual reports also shall include the following:

(1) the most recent measurement and verification report of the independent program evaluator, which includes documentation, at both the portfolio and individual program levels of expenditures, savings, and cost-effectiveness of all energy efficiency measures and programs and load management measures and programs, expenditures, savings, and cost-effectiveness of all self-direct programs, and all assumptions used by the evaluator;

(2) a listing of each measure or program expenditure not covered by the independent measurement and verification report and related justification as to why the evaluation was not performed;

(3) a comparison of estimated energy savings, demand savings, monetary costs and avoided monetary costs to actual energy savings, demand savings, actual monetary costs, and avoided monetary costs for each of the utility's approved measures or programs by year;

(4) a listing of the number of program participants served for each of the utility's approved measures or programs by year;

(5) a listing of the calculated economic benefits for each of the utility's approved measures or programs by year;

(6) information on the number of customers applying for and participating in self-direct programs, the number of customers applying for and receiving exemptions, measurement and verification of self-direct program targets, payback periods and achievements, customer expenditures on qualifying projects, oversight expenses incurred by the utility representative or administrator; and

(7) any other information required by the commission.

[17.7.2.14 NMAC - Rp. 17.7.2.14 NMAC, 9/26/2017]

17.7.2.15 MEASUREMENT AND VERIFICATION:

A. Every energy efficiency and load management program shall be independently evaluated at least every three years. Every year, a public utility shall submit to the commission a comprehensive measurement, verification and program evaluation report prepared by an independent program evaluator.

(1) The independent program evaluator shall, at a minimum determine and verify energy and demand savings;

(a) determine and verify energy and demand savings;

(b) determine program cost effectiveness by applying the monetary values contained in the utility's approved plan year application;

(c) assess the public utility's performance in implementing energy efficiency and load management programs;

(d) assess whether the utility has failed to meet its requirements under the Efficient Use of Energy Act or has not operated in good faith;

(e) provide recommended improvements on program performance for commission directed modification;

(f) confirm that commission approved measures and programs were installed or implemented, meet reasonable quality standards, and are operating fully and correctly;

(g) utilize applicable international performance measurement and verification protocols, describe any deviation from those protocols, and explain the reason for that deviation; and

(h) fulfill any other measurement and verification statutory requirements not specifically delineated herein.

(2) The public utility shall cooperate with the independent program evaluator and commission staff in making information and personnel available to facilitate the independent program evaluator's proper evaluation of each public utility and completion of a comprehensive measurement, verification and program evaluation report.

B. The commission, through its staff, will select and direct an independent program evaluator to prepare and submit a comprehensive measurement, verification and program evaluation report to the commission. Staff, to fulfill its obligation under Subsection B of this Section, may consult with public utilities and other interested parties.

C. Staff shall:

(1) undertake a competitive bid process and abide by state purchasing rules and commission policies in selecting a sole independent program evaluator to evaluate public utility compliance with the Efficient Use of Energy Act;

(2) develop a request for proposals ("RFP"), including the scope, terms of work, and evaluation process to score the RFP responses;

(3) receive, review, score and rank the RFP responses;

(4) subsequently rank and recommend competitive qualified bidders to the commission;

(5) negotiate a contract with the competitive bidder awarded the contract; and

(6) administer the contract, including: confirming that contract deliverables are met, reviewing invoices and related contract performance, and approving utility invoices after staff's review and approval.

D. Funding for services of the independent program evaluator's completion of a comprehensive measurement and verification report will be paid initially by the public utility and treated as a regulatory asset; to be recovered through rates established in the public utility's next general rate proceeding.

E. Self-direct measures, programs, expenditures, credits and exemptions shall be evaluated and reported in the utility's annual report by the independent program evaluator using the same measurement and verification standards applied to utility measures and programs by the utility or commission-approved self-direct program administrator.

F. Upon written request by the large customer, the information provided by large customers to the utility or program administrator, program evaluator, or others, shall remain confidential except as otherwise ordered by the commission.

G. The commission may require other information.

[17.7.2.15 NMAC - Rp. 17.7.2.15 NMAC, 9/26/2017]

17.7.2.16 RURAL ELECTRIC COOPERATIVES:

A. Distribution cooperative utilities shall, within 24 months after the effective date of this rule, and every 24 months thereafter, examine potential customer assistance in reducing energy consumption or peak electricity demand in a cost-effective manner. Based on these studies, distribution cooperative utilities shall establish and implement energy efficiency and load management targets and programs that are economically feasible and practical for their members and customers. Approval for such programs shall reside with the governing body of each distribution cooperative utility rather than the commission.

B. Each distribution cooperative utility shall simultaneously file with the commission its annual report by May 1st, along with a report describing the cooperative's examination of efficiency potential set forth in Subsection A of Section 17.7.2.18 NMSA 1978. The distribution cooperative utility's report will also address all of its programs or measures that promote energy efficiency, conservation or load management. The report shall set forth the costs of each of the programs or measures for the previous calendar year and the resulting effect on electricity consumption. In offering or implementing energy efficiency, conservation or load management programs, a distribution cooperative utility shall attempt to minimize any cross-subsidies between customer classes.

C. Each distribution cooperative utility shall include in the report required by Subsection B of Section 17.7.2.18 NMSA 1978, a description of all planned programs or measures to promote energy efficiency, conservation or load management and the anticipated implementation date.

D. Costs resulting from programs or measures to promote energy efficiency, conservation or load management may be recovered by the distribution cooperative utility through its general rates. In requesting approval to recover such costs in general rates, the distribution cooperative utility may elect to use the procedure set forth in Subsection G of Section 62-8-7 NMSA 1978.

E. The commission may develop necessary compliance forms.
[17.7.2.16 NMAC - Rp. 17.7.2.16 NMAC, 9/26/2017]

~~[17.7.2.17] **REGULATORY DISINCENTIVES:** The commission shall, upon petition or its own motion, identify regulatory disincentives or barriers for public utility expenditures on energy efficiency and load management measures and ensure that they are removed in a manner that balances the public interest, consumers' interests and investors' interests. Public utility petitions for regulatory disincentive removal shall be supported by testimony and exhibits.]~~

[17.7.2.17 NMAC - Rp. 17.7.2.17 NMAC, 9/26/2017]

~~[17.7.2.18]~~ **17.7.2.17 AUDIT:** The commission may order a public utility to submit to an audit that examines whether the public utility's energy efficiency and load management program costs are prudent, reasonable and being properly assigned to programs in accordance with this rule, commission orders, and other applicable requirements and standards. The cost of such audit shall be considered recoverable program costs, unless it results in a commission order containing findings of the public utility's malfeasance, in which case, audit costs shall not be recoverable from the public utility's customers.

[17.7.2.18 NMAC - Rp. 17.7.2.18 NMAC, 9/26/2017]

~~[17.7.2.19]~~ **17.7.2.18 VARIANCES:** Written applications for a variance from any of the provisions of this guideline shall:

- A. state the reason(s) for the variance request;
- B. identify each of the sections of this guideline for which a variance is requested;
- C. describe the effect the variance will have, if granted, on compliance with this guideline;
- D. describe how granting the variance will not compromise, or will further, the purposes of this guideline; and
- E. indicate why the proposed variance is a reasonable alternative to the requirements of this guideline.

[17.7.2.19 NMAC - N, 9/26/2017]

HISTORY OF 17.7.2 NMAC:

Pre NMAC History: none.

History of Repealed Material:

17.7.2 NMAC, Energy Efficiency (filed 2/2/2007), repealed 5/3/2010.

17.7.2 NMAC, Energy Efficiency (filed 4/16/2010), repealed 1/1/2015.

17.7.2 NMAC, Energy Efficiency, filed (04/16/2010) - Repealed effective 9/26/2017.

NMAC History:

17.7.2 NMAC, Energy Efficiency (filed 2/2/2007) was replaced by 17.7.2 NMAC, Energy Efficiency, effective 5/3/2010.

17.7.2 NMAC, Energy Efficiency, (filed 04/16/2010) was replaced by 17.7.2 NMAC, Energy Efficiency, effective 9/26/2017.

EXHIBIT 2

NOTICE OF PROPOSED RULEMAKING CASE NO. 19-00168-UT

The New Mexico Public Regulation Commission (the “commission”) gives notice of its initiation of a proposed rulemaking to amend sections of (or alternatively repeal and replace) **Rule 17.7.2 NMAC “Energy Efficiency”**. 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 explanatory statement: The commission is considering amending sections of rule 17.7.2 NMAC. The commission is considering changes to many sections of the rule. In particular, the commission is considering changes regarding changes to the Energy Efficiency Rule in conformance with the 2019 amendments to the Efficient Use of Energy Act.

Constitutional and statutory authority: New Mexico Constitution, Article XI, Sec. 2; Paragraph 10 of Subsection B of Section 8-8-4 NMSA 1978 (1998), Section 8-8-15 NMSA 1978 (1999, amended 2001), and Sections 8-8-16, 62-3-1, 62-8-6, 62-17-1 *et. seq.*, 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. 19-00168-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 in accordance with NMPRC rules of procedure 1.2.2 NMAC. For information as to how to file at the time of filing, please contact Melanie Sandoval, the commission’s records bureau chief at (505) 470-8538 or melanie.sandoval@state.nm.us. Written initial comments shall be filed no later than **May 21, 2021** and written response comments shall be filed no later than **June 4, 2021**. Comments shall refer to Case No. 19-00168-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 21, 2021, beginning at 2:00 p.m.** via Zoom platform. Any member of the public who wishes to make a comment at the hearing must contact Isaac Sullivan-Leshin at (505) 670-4830 or Isaac.Sullivan-Leshin@state.nm.us by no later than 12:00 pm on June 18, 2021 in order to be placed upon the public comment listing and to receive the Zoom invitation. The Zoom invitation will include a call-in number for those participants who are unable to access the Zoom platform via computer. The purpose of the hearing is to give interested persons an opportunity to give oral comments. The commission may limit the time for each comment to five minutes.

The record of this case will close on **July 5, 2021**.

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

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE PETITION TO AMEND THE)
ENERGY EFFICIENCY RULE 17.7.2 NMAC)**

Case No. 19-00168-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 by the New Mexico Public Regulation Commission on March 24th, 2021 was sent via email to the parties indicated below on March 25th, 2021:

Stacey J. Goodwin	Stacey.Goodwin@pnmresources.com ;
Mark Fenton	Mark.Fenton@pnmresources.com ;
Steve Schwebke	Steven.Schwebke@pnm.com ;
Jefferey Albright	JA@Jalblaw.com ;
Nancy Burns	Nancy.burns@epelectric.com ;
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Zoe Lees Zoe.e.lees@xcelenergy.com;
Bradford Borman Brad.borman@state.nm.us;

DATED this 25th day of March, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed

Isaac Sullivan-Leshin, Paralegal

Isaac.sullivan-leshin@state.nm.us

19-00168-UT; Filing Submission

Sullivan-Leshin, Isaac, PRC

Thu 3/25/2021 12:57 PM

To:Records, PRC, PRC <PRC.Records@state.nm.us>;

 1 attachment

19-00168-UT, Order Initiating Proposed Rulemaking and Notice of Proposed Rulemaking.pdf;

IN THE MATTER OF THE PETITION TO AMEND THE ENERGY EFFICIENCY)	
RULE 17.7.2 NMAC)	Case No. 19-00168-UT
)	

-
Please file the attached ORDER INITIATING PROPOSED RULEMAKING AND NOTICE OF PROPOSED RULEMAKING into the above captioned case.

Thank you.