

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

17.9.570.6 OBJECTIVE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~H. new capacity addition:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. **Definitions beginning with "A":**

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

(2) **As available power** means [REDACTED];

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

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

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

E. **Definitions beginning with "E": [RESERVED]**

F. **Definitions beginning with "F": firm power** means [REDACTED];

G. **Definitions beginning with "G": [RESERVED]**

H. **Definitions beginning with "H": [RESERVED]**

I. **Definitions beginning with "I":**

(1) **Interconnection costs** means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to

the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources.

Interconnection costs do not include any costs included in the calculation of avoided costs;

(2) **Interruptible power** means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions;

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”: **Locational marginal price** means the price for energy at a particular location as determined in the Western energy imbalance market;

Legally enforceable obligation means a public utility’s obligation to purchase as-available energy from a qualified facility and is created when the criteria set forth in 17.9.570.9 NMAC are met.

M. Definitions beginning with “M”: **Maintenance power** means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility;

N. Definitions beginning with “N”:

(1) **Net metering** means the difference between the energy produced by the qualifying facility’s generation and the energy that would have otherwise been supplied by the utility to the qualifying facility absent the qualifying facility’s generation;

(2) **New capacity addition:**

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

(i) construction of or participation in new generating facilities;

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

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

(b) new capacity addition does not include the following:

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

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

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

O. Definitions beginning with “O”: [RESERVED]

P. Definitions beginning with “P”:

(1) **Point of common coupling (PCC)** means the point where the interconnection facilities connect with the utility’s system;

(2) **Power** means electric energy or capacity or both;

(3) **Power conversion unit (PCU)** means an inverter or AC generator, not including the energy source;

(4) **Purchase** means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility;

Q. Definitions beginning with “Q”:

(1) **Qualifying facility** means a cogeneration facility or a small power production facility that is a qualifying facility under Subpart B of this part;

(a) A qualifying facility may include transmission lines and other equipment used for interconnection purposes (including transformers and switchyard equipment), if:

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

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

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

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

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

S. Definitions beginning with “S”:

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

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

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

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

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

V. Definitions beginning with “V”: [RESERVED]

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

X. Definitions beginning with “X”: [RESERVED]

Y. Definitions beginning with “Y”: [RESERVED]

Z. Definitions beginning with “Z”: [RESERVED]

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

17.9.570.9 OBLIGATION TO PURCHASE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[17.9.570.9 NMAC - Rp, 17.9.570.9 NMAC, 10-15-08; A/E, __ / __ /2021]

17.9.570.11 DETERMINATION OF RATES FOR PURCHASES FROM QUALIFYING FACILITIES:

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

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

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

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

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

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

~~C. Avoided capacity costs.~~

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

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

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

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

B. Energy rate.

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

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

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

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

(i) Locational marginal prices, if any are available;

(ii) Market hub prices;

(iii) Formulas based on natural gas prices; or

(iv) Competitive solicitations.

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

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

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

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

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

(2) Within 60 days of the effective date of revised 17.9.570 NMAC each electric utility subject to the rule shall file with the commission the schedule containing rates to be offered along with detailed

supporting workpapers showing the input data and calculations, if applicable. After the first submittal each utility shall update its filing within 30 days from the last day of its fiscal year.

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

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

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