

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 9 ELECTRIC SERVICES
PART 572 RENEWABLE ENERGY FOR ELECTRIC UTILITIES

17.9.572.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.9.572.1 NMAC - Rp. 17.9.572.1 NMAC, _____]

17.9.572.2 SCOPE:
This rule applies to all electric investor owned public utilities under the commission’s jurisdiction.
[17.9.572.2 NMAC - Rp. 17.9.572.2 NMAC, _____]

17.9.572.3 STATUTORY AUTHORITY: Sections 62-13-13.1, 62-16-3, 62-16-4, 62-16-5, 62-16-6, 62-16-7, 62-16-8 and 62-16-9 NMSA 1978, as amended.
[17.9.572.3 NMAC - Rp. 17.9.572.3 NMAC, _____]

17.9.572.4 DURATION: Permanent.
[17.9.572.4 NMAC - Rp. 17.9.572.4 NMAC, _____]

17.9.572.5 EFFECTIVE DATE: _____, 2021, unless a later date is cited at the end of a section.
[17.9.572.5 NMAC - Rp. 17.9.572.5 NMAC, _____]

17.9.572.6 OBJECTIVE: The purpose of this rule is to implement the Renewable Energy Act Section 62-16-1, et seq. NMSA 1978, as amended, and to bring significant economic development and environmental benefits to New Mexico.
[17.9.572.6 NMAC - Rp. 17.9.572.6 NMAC, _____]

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

- A. Definitions beginning with “A”:** [RESERVED]
- B. Definitions beginning with “B”:** [RESERVED]
- C. Definitions beginning with “C”:** [RESERVED]
- D. Definitions beginning with “D”:** [RESERVED]
- E. Definitions beginning with “E”:** **emissions** means all emissions regulated by state or federal authorities including, but not limited to, all criteria pollutants and hazardous air pollutants, methane, mercury, and carbon dioxide;
- F. Definitions beginning with “F”:** **financial incentive** means money that a public utility is authorized to collect from ratepayers by the commission to encourage certain behaviors or actions that would not otherwise have occurred. The financial incentive, or monetary benefit, motivates certain behaviors or actions;
- G. Definitions beginning with “G”:** [RESERVED]
- H. Definitions beginning with “H”:** [RESERVED]
- I. Definitions beginning with “I”:** [RESERVED]
- J. Definitions beginning with “J”:** [RESERVED]
- K. Definitions beginning with “K”:** **kWh** means kilowatt-hour;
- L. Definitions beginning with “L”:** [RESERVED]
- M. Definitions beginning with “M”:** **MW** means one megawatt;
- N. Definitions beginning with “N”:** [RESERVED]
- O. Definitions beginning with “O”:** [RESERVED]
- P. Definitions beginning with “P”:**
 - (1) **plan year** means the calendar year for which approval is being sought;
 - (2) **plan year total retail energy sales** means weather adjusted retail energy sales in kWh projected for the plan year adjusted for projected energy efficiency reductions based on approved energy efficiency and load management programs in effect at the time of the filing, less energy sales to voluntary program participants under Section 62-16-7 NMSA 1978 (2019);
 - (3) **plan year total revenues** means plan year projected total retail revenues including the sum of:
 - (a) plan year total retail energy sales multiplied by the company’s approved base fuel and non-base fuel retail rates by rate class;

- (b) projected fuel clause revenues; and
- (c) all projected rider revenues, not including:
 - (i) projected plan year renewable portfolio revenue requirements, and
 - (ii) projected undergrounding rider contributions in aid of construction;

(4) **political subdivision of the state** means a division of the state made by proper authorities thereof, acting within their constitutional powers, for purpose of carrying out a portion of those functions of the state which by long usage and inherent necessities of government have always been regarded as public;

(5) **procure or procurement** means a process conducted by an investor-owned electric utility for soliciting and evaluating proposals for any new, additional or amended resource, in order to generate or purchase renewable energy or to commit to generate or purchase renewable energy, including but not limited to, instructions to bidders, bid specifications, conditions, forms or other requirements included in a request for proposals and all methods, practices and assumptions used by an investor owned electric utility to model or evaluate such proposals or to negotiate with bidders.

(6) **public utility** means investor owned electric utility certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act and does not include rural electric cooperatives;

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

R. Definitions beginning with “R”:

(1) **reasonable cost threshold** means an average annual levelized cost of \$60.00 per megawatt-hour at the point of interconnection on the renewable energy resource with the transmission systems, adjusted for inflation after 2020;

(2) **renewable energy** means electric energy generated by use of renewable energy resources and delivered to a public utility;

(3) **renewable energy certificate** means a certificate or other record, in a format approved by the commission, that represents all the environmental attributes from one megawatt-hour of electricity generated from renewable energy;

(4) **renewable energy resource** means the following energy resources with or without energy storage:

- (a) solar, wind, and geothermal;
- (b) hydropower facilities brought in service on or after July 1, 2007;
- (c) biomass resources, limited to agriculture of animal waste, small diameter timber,

not to exceed eight inches, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico: provided that these resources are from facilities certified by the energy, minerals and natural resources department to:

(i) be of appropriate scale to have sustainable feedstock in the near vicinity;

(ii) have zero life cycle carbon emissions; and

(iii) meet scientifically determined restoration, sustainability and soil nutrient principles;

(d) fuel cells that do not use fossil fuels to create electricity; and

(e) landfill gas and anaerobically digested waste biogas;

(5) **renewable portfolio standard (RPS)** means the minimum percentage of retail sales of electricity by a public utility to electric consumers in New Mexico that is required by the Renewable Energy Act to be from renewable energy;

(6) **renewable purchased power agreement** means an agreement that binds an entity generating power from renewable energy resources to provide power at a specified price and binds the purchaser to that price;

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

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

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

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

W. Definitions beginning with “W”: **WREGIS** means the western renewable energy generation information system;

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

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

Z. Definitions beginning with “Z”:

(1) **zero carbon resource** means an electricity generation resource that emits no carbon dioxide into the atmosphere, or that reduces methane emitted into the atmosphere in an amount equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere, as a result of electricity production;

(2) **zero carbon resource standard** means providing New Mexico public utility customers with electricity generated from one hundred percent zero carbon resources.
[17.9.572.7 NMAC - Rp. 17.9.572.7 NMAC, _____]

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

[17.9.572.8 NMAC - Rp. 17.9.572.8 NMAC, _____]

17.9.572.9 RELATIONSHIP TO OTHER COMMISSION RULES: Unless otherwise specified, this rule does not supersede any other rule of the commission but supplements rules applying to public utilities.

[17.9.572.9 NMAC - Rp. 17.9.572.9 NMAC, _____]

17.9.572.10 RENEWABLE PORTFOLIO STANDARD:

A. Each public utility must develop an annual Renewable Energy Act plan to comply with the renewable portfolio standard during the plan year. The plan shall demonstrate reasonable and consistent progress toward meeting the renewable portfolio standard to be effective following the end of the plan year. Renewable energy resources that are in a public utility’s electric energy supply portfolio on July 1, 2004 shall be counted in determining compliance with this rule. However, renewable energy sold to customers through a voluntary renewable energy program tariff approved by the commission shall not be counted in determining compliance with this rule. Other factors being equal, preference shall be given to renewable energy generated in New Mexico.

B. Renewable portfolio standards. The renewable portfolio standard shall consist of:

(1) no less than 15 percent for each plan year from 2015 through 2019 of the utility’s plan year total retail energy sales;

(2) no less than 20 percent for each plan year from 2020 through 2024 of the utility’s plan year total retail energy sales;

(3) no less than 40 percent for each plan year from 2025 through 2029 of the utility’s plan year total retail energy sales;

(4) no less than 50 percent for each plan year from 2030 through 2039 of the utility’s plan year total retail energy sales;

(5) no less than 80 percent for each plan year from 2040 and thereafter of the utility’s plan year total retail energy sales, provided that compliance with this standard until December 31, 2047 shall not require the public utility to displace zero carbon resources in the utility’s generation portfolio as of July 15, 2019; and

(6) no later than January 1, 2045, zero carbon resources shall supply one hundred percent of all retail sales of electricity in New Mexico for each public utility.

C. Demonstration of Compliance. In accordance with Section 62-16-5 NMSA 1978 (2019):

(1) Compliance with this standard is demonstrated by the retirement of renewable energy certificates, provided that the associated renewable energy is delivered to the public utility and assigned to the public utility’s New Mexico customers; and

(2) A public utility shall not retire renewable energy certificates associated with renewable energy from generation resources for which it has traded, sold or transferred the associated renewable energy certificate for purposes of compliance with the renewable portfolio standard.

[17.9.572.10 NMAC - Rp. 17.9.572.10 NMAC, _____]

17.9.572.11 ZERO CARBON STANDARD FOR GENERATION PORTFOLIOS: Each public utility must develop an annual Renewable Energy Act plan which over time demonstrates reasonable and consistent progress to supplying 100 percent of the utility’s total retail energy sales with zero carbon resources no later than January 1, 2045. No later than January 1, 2045, zero carbon resources shall supply one hundred percent of all retail sales of electricity in New Mexico for each public utility. Reasonable and consistent progress shall be made over time by each public utility.

[17.9.572.11 NMAC - Rp. 17.9.572.11 NMAC, _____]

17.9.572.12 COMMISSION DUTIES AND REPORTING REQUIREMENTS:

A. Administration of 80 percent RPS and zero carbon standards: In administering the renewable portfolio standard as set forth in this rule and section 62-16-4 A. NMSA 1978 (2019), the commission shall comply with all provisions of section 62-16-4 B. C. and D. NMSA 1978 (2019). After consultation with the department of environment, the commission may not approve a public utility's annual Renewable Energy Act plan that result in material increases to greenhouse gas emissions from entities not subject to commission oversight and regulation.

B. Commission reporting requirement: In consultation with applicable balancing authorities, the commission shall issue reports to the legislature in accordance with section 62-16-4 B (7) (a-c) NMSA 1978 (2019). [17.9.572.12 NMAC - Rp. 17.9.572.12 NMAC, _____]

17.9.572.13 REASONABLE COST THRESHOLD:

A. The reasonable cost threshold is a customer protection mechanism that limits the customer bill impact resulting from annual Renewable Energy Act plans.

B. The reasonable cost threshold in any plan year is an annual average levelized cost of \$60.00 per megawatt-hour at the point of interconnection of the renewable energy resource with the transmission system, adjusted for inflation starting in 2021 by the amount of the cumulative increase change in the consumer price index, urban, all items, published by the bureau of labor statistics between January 1, 2020 and January 1 of the procurement plan year. Each public utility shall include in its annual Renewable Energy Act plan a reasonable cost threshold analysis by procurement, existing or proposed, for the plan year for which it seeks commission approval. This analysis should show how each procurement compares for that plan year with inflation adjusted reasonable cost threshold. To the extent a procurement is greater than the reasonable cost threshold and results in excess costs, the public utility shall explain why it proposes to incur those excess costs. To the extent a procurement of renewable energy is at or below the reasonable cost threshold, the public utility shall explain the extent to which such procurement contributes toward exceeding the renewable portfolio standard. The public utility shall further explain in detail why the public utility cannot procure resources at a cost less than the reasonable cost threshold along with a demonstration of the public utility's efforts to obtain to procure renewable energy at or below the reasonable cost threshold.

C. In any given year, if the average annual levelized cost of renewable energy that would need to be procured or generated for purposes of compliance with the renewable portfolio standard is greater than the reasonable cost threshold, a public utility shall not be required to incur that excess cost or to procure that resource, provided that the condition excusing performance under the renewable portfolio standard in any given year will not operate to delay the annual increases in the renewable portfolio standard in subsequent years.

D. A public utility that believes its procurement will exceed the reasonable cost threshold shall file with the commission a request for waiver of the renewable portfolio standard for the applicable plan year. The waiver request shall:

- (1) explain in detail why the public utility cannot procure resources at a cost less than the reasonable cost threshold;
- (2) include an explanation and evidence of all efforts the public utility undertook to procure resources at a cost within the reasonable cost threshold; and
- (3) be deemed granted if not acted upon within 90 days of the date the waiver request was filed.

E. In accordance with section 62-16-4 NMSA 1978 (2019), when a public utility can generate or procure renewable energy at or below the reasonable cost threshold it shall be required to do so to the extent necessary to meet the applicable renewable portfolio, however, the public utility is not precluded from proposing a procurement for commission approval that exceeds the reasonable cost threshold. To the extent a procurement is greater than the reasonable cost threshold and results in excess costs, the public utility shall explain in detail why the public utility cannot procure resources at a cost less than or equal to the reasonable cost threshold along with a demonstration of the public utility's efforts to obtain to procure renewable energy at or below the reasonable cost threshold.

[17.9.572.13 NMAC - Rp. 17.9.572.13 NMAC, _____]

17.9.572.14 RESOURCE SELECTION: The utility shall select resources to satisfy the renewable portfolio standard through a competitive resource selection process that included opportunities for bidders to propose purchased power, facility self-build or facility build-transfer options. The utility shall determine all commercially available resources available through a competitive procurement process for approval in the procurement plan that

are necessary to make reasonable and consistent progress toward the renewable portfolio standard and zero-carbon standard over time. The utility shall use the net present value methodology to identify the costs of a proposed new renewable resource necessary to stratify the renewable portfolio standard.

[17.9.572.14 NMAC - Rp. 17.9.572.14 NMAC, _____]

17.9.572.15 ANNUAL RENEWABLE ENERGY ACT PLAN: An annual Renewable Energy Act plan shall include plan year and next plan year data. The plan year shall be presented for commission approval and the next plan year shall be presented for informational purposes.

A. On or before July 1 of each year, each public utility must file with the commission an annual Renewable Energy Act plan. The filing schedule shall be staggered, each of the investor owned utility filings shall occur one month apart, the last filing to be made July 1 of each year. The utilities shall file alphabetically each year (El Paso Electric Company shall file on or before May 1; Public Service Company of New Mexico shall file June 1; and Southwestern Public Service Company shall file July 1 each year).

B. The annual Renewable Energy Act plan is to include:

(1) testimony and exhibits providing a full explanation of the utility's determination of the plan year and next plan year renewable portfolio standard and reasonable cost threshold;

(2) the cost of procurement in the plan year and the next plan year for all new renewable energy resources required to comply with the renewable portfolio standard selected by the utility pursuant to Section 14 of this rule;

(3) the amount of renewable energy the public utility plans to provide in the plan year and the next plan year required to comply with the renewable portfolio standard;

(4) testimony and exhibits demonstrating how the cost and amount specified in Paragraphs (2) and (3) of this subsection were determined;

(5) testimony and exhibits demonstrating the plan year and next plan year procurement amounts and costs expected to be recovered by the utility;

(6) the capital, operating and fuel costs on a per-megawatt-hour basis during the preceding calendar year of each nonrenewable generation resource rate-base by the utility, or dedicated to the utility through a power purchase agreement of one year or longer, and the nonrenewable generation resources' carbon dioxide emissions on a per-megawatt-hour basis during that same year;

(7) testimony and exhibits demonstrating the plan year and next plan year procurement amounts and costs expected to be recovered by the utility if limited by the reasonable cost threshold;

(8) testimony demonstrating that the cost of the proposed procurement is reasonable compared with the price of electricity from renewable resources in the bids received by the public utility to recent prices for comparable energy resources elsewhere in the southwestern United States;

(9) testimony regarding strategies used to minimize costs of renewable energy integration, including location, diversity, balancing area activity, demand-side management and load management;

(10) testimony demonstrating that the portfolio procurement plan is consistent with the integrated resource plan and explaining any material differences;

(11) testimony demonstrating that acceptable system reliability will be maintained with the proposed new renewable resource additions;

(12) testimony demonstrating that the cost of the proposed procurement process is reasonable by comparing the price of electricity from renewable resources in the bids received by the public utility with recent prices for comparable energy resources elsewhere in the southwestern United States;

(13) information, including exhibits, as applicable, that demonstrates that the proposed procurement was the result of a competitive procurement process that included opportunities for bidders to propose purchased power, facility self-build or facility build-transfer options; and

(14) demonstration that the plan is otherwise in the public interest, considering factors such as overall cost and economic development opportunities.

C. A public utility shall serve notice and a copy of its annual renewable energy plan filing by first class mail on renewable resource providers requesting such notice from the commission, the New Mexico attorney general, and the intervenors in the public utility's most recent rate case. A public utility shall also post on its website the most recent and the pending annual Renewable Energy Act plans.

[17.9.572.15 NMAC - Rp. 17.9.572.15 NMAC, _____]

17.9.572.16 COST RECOVERY FOR RENEWABLE ENERGY AND CARBON DIOXIDE EMISSIONS REDUCTIONS:

A. A public utility shall recover the reasonable costs of complying with this rule through the rate making process, including its reasonable interconnection and transmission costs, costs to comply with electric industry reliability standards and other costs attributable to acquisition and delivery of renewable energy and zero carbon energy to retail New Mexico customers.

B. Costs that are consistent with commission-approved annual Renewable Energy Act plans are deemed to be reasonable.

C. A public utility that is permitted to defer the recovery of renewable energy costs pursuant to commission order may, through the ratemaking process, recover from customers that are not subject to the rate impact limitations of Section 62-16-4 C. NMSA 1978 (2019) the cumulative sum of those deferred amounts, plus a carrying charge on those amounts.

D. Any financial benefits resulting to customers qualified pursuant Section 62-14-4C NMSA 1978 (2019) shall accrue to the customer immediately as of July 1, 2019 and shall be reflected in customer bills each month, subject to annual true-up and reconciliation.

E. Any renewable energy procurement costs recovered through the utility's fuel clause shall be separately identified in its monthly and annual fuel and purchased power clause adjustment filings and its continuation filings.

F. The commission shall not disallow the cost associated with any expired renewable energy certificate.

G. If a public utility has been granted a certificate of public convenience and necessity prior to January 1, 2015 to construct or operate an electric generation facility and the investment in that facility has been allowed recovery as part of the utility's rate-base, the commission may require the facility to discontinue serving customers within New Mexico if the replacement has less or zero carbon dioxide emissions into the atmosphere provided that no order of the commission shall disallow recovery of any undepreciated investments or decommissioning costs associated with the facility.

[17.9.572.16 NMAC - Rp. 17.9.572.16 NMAC, _____]

17.9.572.17 CUSTOMERS QUALIFIED PURSUANT TO SECTION 62-16-4C NMSA 1978 (2019): Any customer that is a political subdivision of the state, or any educational institution designated in Article 12, Section 11 of the New Mexico constitution with an enrollment of twenty thousand students or more during the fall semester on its main campus, with consumption exceeding 20 million kilowatt-hours per year at any single location or facility, and that owns renewable energy generation or hosts such facilities through a renewable purchased power agreement, shall not be charged by the utility for power purchases of one year or less or fuel on the amount of electricity purchased from the utility equal to the amount of renewable energy produced or hosted by the customer, if that customer certifies to the state auditor and notifies the commission and its serving utility, of the amount of renewable energy produced at the customer-owned or customer-hosted facilities that generate renewable energy. That customer shall also certify that it will retire all renewable energy certificates associated with the energy produced from by those facilities.

A. The notice to the commission and the customer's serving utility shall:

(1) be timely;

(2) state the plan year during which the renewable energy is expected to be produced or

hosted;

(3) quantify the amount of renewable energy expected to be produced or hosted; and

(4) shall include a copy of the customer's certification to the state auditor.

B. This section only exempts customers from charges for power purchases of one year or less or fuel on the amount of electricity purchased from the utility equal to the amount of renewable energy produced or hosted by the customer. This section shall not prevent the utility from recovering all of its reasonable and prudent fuel and purchased power costs.

C. A public utility shall not retire any renewable energy certificates retired per the certification of a customer made pursuant to Section 62-16-4 C. NMSA 1978 (2019) for renewable portfolio standard or voluntary renewable energy program compliance.

[17.9.572.17 NMAC - Rp. 17.9.572.17 NMAC, _____]

17.9.572.18 RENEWABLE ENERGY CERTIFICATES:

A. Each public utility shall annually establish its compliance with the renewable portfolio standard through the filing of an annual report, as provided in 17.9.572.19 NMAC, documenting the retirement of renewable energy certificates.

- B.** Non-WREGIS registered renewable energy certificates shall contain the following information:
- (1) the name and contact information of the renewable energy generating facility owner or operator;
 - (2) the name and contact information of the public utility or rural electric distribution cooperative purchasing the renewable energy certificate;
 - (3) the type of generator technology and fuel type;
 - (4) the generating facility's physical location, nameplate capacity in MW, location and ID number of revenue meter and date of commencement of commercial generation;
 - (5) the public utility to which the generating facility is interconnected;
 - (6) the control area operator for the generating facility; and
 - (7) the quantity in kWh and the date of the renewable energy certificate creation.
- C.** Renewable energy certificates:
- (1) are owned by the generator of the renewable energy unless:
 - (a) the renewable energy certificates are transferred to the purchaser of the energy through specific agreement with the generator;
 - (b) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the public utility purchaser of the renewable energy unless retained by the generator through specific agreement with the public utility purchaser of the energy; or
 - (c) a contract for the purchase of renewable energy is in effect prior to January 1, 2019, in which case the purchaser of the energy owns the renewable energy certificates for the term of such contract.
 - (2) may be traded, sold or otherwise transferred by their owner to any other party, unless
 - (a) the certificates are from a rate-based public utility plant, in which case the entirety of the renewable energy certificates from that plant shall be retired by the utility on behalf of itself or its customers; or
 - (b) the certificates are from a renewable energy purchased power agreement entered into by a public utility on or after July 1, 2019, in which case the entirety of the renewable energy certificates from the purchased power agreement shall be retired by the utility on behalf of itself or its customers or transferred to a retail customers for retirement under a voluntary program;
 - (3) that are used once by a public utility to satisfy the renewable portfolio standard and are retired shall not be further used by the public utility.
 - (4) that are not used by a public utility to satisfy the renewable portfolio standard may be carried forward for up to four years from the date of creation and, if not used by that time, shall be retired by the public utility.
- D.** Public utilities are responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources and has not been retired, traded, sold or otherwise transferred to another party. Public utilities shall maintain records sufficient to meet the demonstration requirement of this subsection.
- E.** The acquisition, sale or transfer, and retirement of any renewable energy certificates used to meet renewable portfolio standards on or after January 1, 2008 shall be registered with the western renewable energy generation information system (WREGIS) or its direct successor(s), except as provided in Subsection F of this section. Certificates whose retirement has been registered by the public utility with WREGIS shall be deemed to meet the requirements of Subsection D of this section.
- F.** Renewable energy certificates representing electricity delivered to the public utility and assigned to the public utility's New Mexico customers and registered with a tracking system other than WREGIS may be used to meet renewable portfolio standards so long as WREGIS lacks the capability to import certificates from that other tracking system.

[17.9.572.18 NMAC - Rp. 17.9.572.18 NMAC, _____]

17.9.572.19 VOLUNTARY RENEWABLE TARIFFS:

- A.** Each public utility may offer a voluntary renewable energy tariff for those customers who want the option to purchase additional renewable energy.
- B.** The voluntary renewable tariff may also include provisions to enable consumers to purchase renewable energy within certain energy blocks and by source of renewable energy. Additionally, each public utility must develop an educational program on the benefits and availability of its voluntary renewable energy program. The tariff, along with the details of the consumer education program, shall be on file with the commission.

C. All renewable energy purchased by a retail customer through an approved voluntary program shall not be subject to charges by the public utility to recover costs of complying with the renewable portfolio standard requirements.

D. The commission may require that a public utility offer its retail customers a voluntary program for purchasing renewable energy that is in addition to electricity provided by the public utility pursuant to the renewable portfolio standard, under rates and terms that are approved by the commission.

E. All renewable energy purchased by a retail customer through an approved voluntary program shall:

(1) have all associated renewable energy certificates retired by the retail customer, or on that customer's behalf, by the public utility, and the certificates shall not be used to meet the public utility's renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978 (2019);

(2) be excluded from the total retail sales to New Mexico customers used to determine the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978 (2019); and

(3) not be subject to charges by the public utility to recover costs of complying with the renewable portfolio standard requirements pursuant to Subsection A of section 62-16-4 NMSA 1978 (2019).
[17.9.572.19 NMAC - Rp. 17.9.572.19 NMAC, _____]

17.9.572.20 ANNUAL RENEWABLE ENERGY PORTFOLIO REPORT: Concurrent with the filing of an annual renewable energy plan, each public utility must file with the commission a report on its renewable energy generation or purchases of renewable energy during the prior plan year. This report shall:

A. itemize all renewable energy generation or renewable energy certificate purchases and sales;

B. list, and include copies of, all renewable energy certificates, including acquired, issued or retired certificates;

C. document from WREGIS or its successor the renewable energy certificates acquired, sold, retired, transferred, or expired; such documentation shall include reports from WREGIS or its successor which allow the commission to determine, by fuel type, the number of RECs in each calendar year:

(1) acquired;

(2) sold;

(3) retired;

(4) transferred; and

(5) expired;

D. describe the retirements made to meet renewable portfolio standard compliance based on actual retail sales and procurement costs, for the most recent reporting period including, the reductions, if any, to the RPS for:

(1) purchases by retail customers through an approved voluntary program;

(2) or due to the reasonable cost threshold;

(3) explain and demonstrate how the reduction was determined; and

(4) quantity of renewable energy certificates banked for future compliance use.

E. describe and quantify the implementation of the voluntary renewable tariff requirements in 17.9.572.18 NMAC; and

F. present a full explanation of approved recovery mechanisms for approved annual renewable energy plan costs and a complete accounting of all collected and deferred amounts.
[17.9.572.20 NMAC - Rp. 17.9.572.20 NMAC, _____]

17.9.572.21 REVIEW BY COMMISSION:

A. Interested parties wishing to protest an annual Renewable Energy Act plan shall do so by stating the bases for the protest within 30 days after the filing of the utility's annual renewable energy plan.

B. The commission shall approve or modify annual Renewable Energy Act plans within 90 days and may approve such plans without a hearing, unless a protest is filed that demonstrates to the commission's reasonable satisfaction that a hearing is necessary.

C. The commission may modify a plan after notice and hearing, and may, for good cause, extend the time to approve an annual Renewable Energy Act plan for an additional 90 days.

D. If the commission has not acted within the 90 day period, a plan is deemed approved.

E. The commission may reject a plan, within forty days of filing, if the commission finds that the plan does not contain the required information; upon such rejection the public utility's obligation to procure

additional resources will be suspended for the time necessary to file a revised plan. In such instances, the total amount of renewable energy to be procured by the public utility will not change.
[17.9.572.21 NMAC - Rp. 17.9.572.21 NMAC, _____]

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

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

[17.9.572.22 NMAC - Rp. 17.9.572.22 NMAC, _____]

17.9.572.23 FINANCIAL INCENTIVE OR OTHER INCENTIVE

A. In accordance with Section 62-16-4 (D) NMSA 1978 (2019), a public utility or any other person, may apply by a motion or application, requesting that the commission provide the public utility with a financial incentive or other incentives to encourage public utilities to produce or acquire renewable energy that exceeds the applicable annual renewable portfolio standard set forth in Section 62-16-4 NMSA 1978 (2019); results in reductions in carbon dioxide emissions earlier than required by Section 62-16-4 (A) NMSA 1978 (2019); or causes a reduction in the generation of electricity by coal-fired generating facilities, including coal-fired generating facilities located outside of New Mexico.

B. The utility has the burden to prove by the preponderance of evidence, the amount and duration of the financial incentive or other incentive, in accordance with the formula set forth in this rule. The financial incentive include additional earnings and capital investment opportunities for resources used in furtherance of the outcomes described in this rule.

C. The formula for calculating the financial incentive for each percent the utility exceed the applicable annual renewable portfolio standard; for each month the utility reduces carbon dioxide emissions earlier than required; or for each kw hour per year reduction in the generation of electricity by coal-fired generating facilities, including coal-fired generating facilities located outside of New Mexico.

D. **Formula:**

(1) (insert here)

(2) **PLEASE NOTE: THE NMPRC DOES NOT HAVE A PROPOSED FORMULA**

FOR CALCULATING A FINANCIAL INCENTIVE AT THIS TIME; IT IS REQUESTED THAT ALL COMMENTS INCLUDE A PROPOSAL ON HOW BEST TO CALCULATE A FINANCIAL INCENTIVE.

[17.9.572.23 NMAC - Rp. 17.9.572.23 NMAC, _____]

HISTORY OF 17.9.572 NMAC:

Pre-NMAC History: None.

History of Repealed Material:

17 NMAC 10.572, Renewable Energy Development Program (filed 11-30-98) repealed 7-1-03.

17.9.572 NMAC, Renewable Energy as a Source of Electricity (filed 6-16-03) repealed 1-14-05.

17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 12-29-04) repealed 8-30-07.

17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 8-15-07) repealed 5-31-13.

Other History:

17 NMAC 10.572, Renewable Energy Development Program (filed 11-30-98) replaced by 17.9.572 NMAC,

Renewable Energy as a Source of Electricity, effective 7-1-03, 17.9.572 NMAC, Renewable Energy as a Source of Electricity (filed 6-16-03) replaced by 17.9.572, Renewable Energy for Electric Utilities, effective 1-14-05.

17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 12-29-04) replaced by 17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 8-15-07) replaced by 17.9.572 NMAC, Renewable Energy for Electric Utilities effective 5-31-13.