

BEFORE THE PUBLIC NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PROPOSED)
AMENDMENTS TO THE INTEGRATED)
RESOURCE PLANNING RULES 17.7.3 NMAC)
_____)**

Case No. 17-00198-UT

001121740312

**CITIZENS FOR FAIR RATES AND THE ENVIRONMENT'S
RESPONSE TO NOTICE OF PROPOSED RULEMAKING**

COMES NOW, Citizens for Fair Rates and the Environment ("CFRE") and offers the following comments and suggestions in response to the Commission's Order Initiating Proposed Rule Making and Notice of Proposed Rulemaking ("Order").

CFRE notes that the Commission's concern appears to be the need for greater flexibility in resource procurement cases noting that changing conditions might warrant deviation from an Integrated Resource "Plan." CFRE fully supports the need for flexibility to address changes in conditions, but we are concerned that the approach proposed by the Commission would undermine the Integrated Resource ("IR") planning process.

CFRE does not see any inherent contradiction in Section 12 (B) and Section 62-17-10 of the EUEA. The IR planning process and the IRP constitute a "planning tool." As with any tool, this tool is utilized toward completion of actions or objectives. As noted, the IRP is a plan, we hope, a thoroughly evaluated plan, and the IRP rules already allow for deviation from that plan when there are material changes that necessitate deviation from that plan. In CFRE's view the reason that designation of a resource type in an IRP is considered prima facie evidence is because of the extensive process involved in obtaining a Commission approved IRP.

The IR planning process is designed to engage stakeholders in a substantive and meaningful process evaluating a utility's future resource needs and the best ways to fill those needs. This "public advisory process" is mandated by § 62-17-10 and by 17.7.3.9.H NMAC. The thoroughness of the process is additionally ensured by the opportunity for challenges to the Integrated Resource Plans ("IRPs") by means of protests and support through comments, and if the Commission finds it warranted, the Commission itself may initiate a case in order to review the IR planning process and the IRP. Ultimately, the Commission must accept or not accept an IRP. After these comprehensive processes, and if an Integrated Resource Plan is accepted by the Commission, deviation should not be taken lightly. CFRE contends 17.7.3.12 B., as written, reinforces the stakeholder process. Thus, this section of the IRP rule should remain in force.

However, as the Commission pointed out, an IRP is a "plan." Changes in conditions or circumstances may warrant or necessitate deviation from that "plan." CFRE fully agrees. Consequently, we turn our attention to the portion of the paragraph addressed by the Order wherein it states "... unless material changes, as described in Section 17.7.3.10 of this rule, have occurred that would warrant a different utility course of action."

CFRE asserts that the Commission's expressed concern should be addressed by a revision of Section 17.7.3.10 which is (in its current form) as follows:

17.7.3.10 OBLIGATION TO NOTIFY OF MATERIAL CHANGES AND UPDATE ACTION PLAN: The utility shall promptly notify the commission and participants of material events that would have the effect of changing the results of the utility's IRP had those events been recognized when the IRP was developed. As part of this notification, the utility shall explain how this event(s) has changed the action plan. [17.7.3.10 NMAC - N, 4-16-07]

It is CFRE's contention that the Commission can address its concern by amending the overly restrictive Section 17.7.3.10 to be more inclusive. We assert that other parties should also be readily able to notify the Commission of material changes that would warrant an update to an action plan or that would require consideration of deviation from a Commission approved IRP.

Therefore, CFRE suggests the following changes as per ¶ C. of the Order. Requested changes are underlined in the following paragraph:

17.7.3.12 B. Use in Resource Acquisition Proceedings. In a proceeding concerning a utility's request for a CCN for a new utility resource, or in other proceedings concerning a utility's resource acquisition, the utility shall present evidence that the requested resource is consistent with the commission-accepted utility IRP unless material changes, as described in Sections 17.7.3.10 A. and B. of this rule, have occurred that would warrant a different utility course of action. Evidence that the resource is consistent with the IRP, and that there have not been material changes that would warrant a different course of action by the utility, will constitute prima facie evidence that the resource type, but not the particular resource being proposed, is required by the public convenience and necessity.

17.7.3.10 OBLIGATION TO NOTIFY OF MATERIAL CHANGES AND UPDATE ACTION PLAN:

A. The utility shall promptly notify the commission and participants of material events that would have the effect of changing the results of the utility's IRP had those events been recognized when the IRP was developed. As part of this notification, the utility shall explain how this event(s) has changed the action plan.

B. Other parties may notify the commission and the parties of material events that would have the effect of changing the results of the utility's IRP had those events been recognized when the IRP was developed. As part of this notification, the parties shall include suggested changes to the utility's action plan.

The above suggested approach is one avenue to gain flexibility that would reinforce the stakeholder process instead of undermining it. CFRE points out that gaining flexibility as

described above would enable stakeholders to draw attention to material changes that a utility company has financial incentive (or perhaps other motivations) to ignore. These material changes could include, but would not be limited to, resource options that are currently more cost-effective. Unfortunately, a utility company's profit motive, all too often, seems to trump its responsibility to look for the most cost-effective resource options for ratepayers. The above suggestion would help to alleviate that concern while maintaining the integrity of the IR planning process.

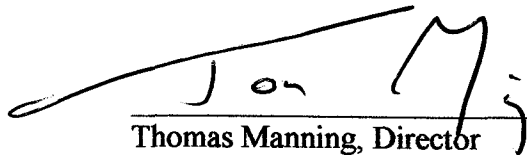
Whether or not the Commission chooses to pursue something similar to this particular suggestion, CFRE hopes that the Commission will not sacrifice the legislative intent of having strong and enforceable stakeholder involvement in the IR planning process.

CFRE thanks the Commission for this opportunity to submit comments on this proposed rule change.

Wherefore, for the reasons cited above, CFRE respectfully requests that the Commission pursue alternatives, such as those suggested above, in order to gain flexibility, but CFRE respectfully requests that the Commission *not* adopt the rule change as explored in Exhibit 1 to the Order or any similar change that would undermine the legislative intent of the IRP process.

Respectfully submitted this 16th day of October, 2017

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TO THE INTEGRATED RESOURCE PLANNING)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **CITIZENS FOR FAIR RATES AND THE ENVIRONMENT'S RESPONSE TO NOTICE OF PROPOSED RULEMAKING**, issued on October 17, 2017 will be sent on October 18, 2017 as indicated below, to the following:

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DATED this 17th day of October, 2017.

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