BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE ADOPTION OF A PROPOSED RULE TO IMPLEMENT THE EFFICIENT USE OF ENERGY ACT NMSA 1978, SECTION 62-17-1 et seq.

NMPRC UTILITY DIVISION STAFF.

Petitioner.

Case No. 13-00310-UT

FINAL ORDER REPEALING AND REPLACING RULE 17.7.2 NMAC

This matter comes before the New Mexico Public Regulation Commission (the “Commission”) on the Petition to Initiate Rulemaking filed by the staff of the NMPRC Utility Division Staff (“Staff”) proposing that the Commission promulgate a new rule governing all public utility applications based on the Efficient Use of Energy Act, NMSA 1978, §§62-17-1, et seq. (“EUEA”). Having reviewed the Petition and being duly advised in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1) On September 23, 2013, Staff filed a Petition to Initiate Rulemaking which stated that in Attorney General v. New Mexico Public Regulation Commission, 2011-NMSC-034 (2011) (the "AG Opinion"), the New Mexico Supreme Court vacated the Commission’s order in Case No. 08-00024-UT which promulgated a replacement Rule 17.7.2 NMAC (hereinafter referred to as the “2010 Rule”). Because the 2010 Rule vacated by the Supreme Court remains on file with the State Records Center and is not consistent with the Supreme Court’s mandate in the AG Opinion, the Commission should enter an Order repealing and replacing the existing Rule 17.7.2 NMAC and publishing the proposed new Final Rule 17.7.2 NMAC consistent with the AG Opinion. Attached to the Petition was Staff’s Exhibit A, the proposed draft Rule 17.7.2 NMAC Final Order Repealing and Replacing 17.7.2 NMAC Case No. 13-00310-UT

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which Staff considered appropriate for public comment (hereinafter referred to as the “NOPR Rule”).

2) The NOPR Rule proposes to incorporate the 2013 legislation (HB 267) amendments to the EUEA, effective July 1, 2013, and to establish utility standards for the implementation of the EUEA.

3) Specifically, HB 267 amended the EUEA as follows and these changes are incorporated into the NOPR Rule:

- Adds a definition for the term “program costs” to mean the prudent and reasonable costs for developing and implementing energy efficiency and load management programs, but “program costs” does not include charges for incentives or the removal of regulatory disincentives;

- Replaces the definition for the test of cost effectiveness from “total resource cost test” to the “utility cost test” which means the monetary costs borne only by public utilities and not participants (i.e. customers/ratepayers) to develop, acquire and operate energy efficiency or load management resources on a life cycle basis are less than the avoided monetary costs associated with developing, acquiring and operating associated supply-side resources;

- Requires public utilities to acquire cost effective and achievable energy efficiency and load management resources and no longer requires utility companies to acquire “all” such resources. The EUEA Section 62-17-6A uses the phrase “portfolio of programs” and now does not require that every program be cost effective—only that the portfolio of programs are cost effective;

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- Reduces each electric utility's "savings" requirement from a minimum of 10% to a minimum of 8% of 2005 total retail kilowatt-hour sales to New Mexico customer in calendar year 2020;

- Allows the Commission to lower the "savings" requirement if it determines the program costs to achieve the minimum requirements would exceed those established in the "cost recovery" section of the EUEA;

- Caps the funding for program costs at 3% of customers' bill, excluding gross receipts taxes and franchise and right of way access fees or $75,000 per customer per plan year, whichever is less. The $75,000 per customer per calendar year cap is no longer the cap for electric utility customers. Program costs for gas utilities is worded differently such that funding is "up to 3% of annual revenues and charges shall not exceed $75,000 per natural gas customer per calendar year; and

- Requires that minimum of 5% of the funding received by the public utility for program costs be directed to energy efficiency programs for low income customers.

4) In additions to incorporating HB 267 amendments, the NOPR Rule proposes to:

- Keep the $75,000 cap for large electric utility customers;

- Set forth 7 definitions in addition to the established EUEA definitions;

- Stagger filing deadlines for annual applications and annual reports, including 3% measure and program funding requirements and incentives;

- Require utilities to describe in their annual applications how they met their pre-filing requirements, including a description of the process used to solicit non-binding recommendations;

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• Require utilities to estimate plan year revenue in their annual applications as the way to determine plan year costs and requires them to use their best efforts to spend the funded program cost on cost effective energy efficiency programs and measures;

• Provide a method to adjust prospective program funding to account for expenditures that exceeded actual funding and for actual funding that exceeded expenditures;

• Allow utilities to seek an incentive, as authorized by the EUEA, and specifies that the incentive be based on the utility’s costs, on satisfactory performance, be supported by testimony an documentation and that the incentive not exceed the product of its weighted cost of capital and its approved program costs;

• Require, for residential programs, that no less than five percent (5%) of the amount received by the public utility for program costs shall be specifically directed for low income customers;

• Set forth the filing requirements for cost recovery and recovery of regulatory disincentives;

• Set forth the process to select an independent program evaluator related to measurement and verification requirements and requires the utility to initially pay the program evaluator and subsequently collect the costs from its rate payers;

• Outline the methods for self-directed program credits and exemptions for large customers;

• Set forth how to accomplish program modification or termination;

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• Set forth the required information for annual reports;
• Set forth program requirements for rural electric cooperatives; and
• Set forth audit requirements

5) The proposed rulemaking is authorized by the Commission’s rulemaking authority provided by the New Mexico Constitution, Article XI, Section 2 (1996); NMSA 1978, §8-8-4(B) (10); the EUEA: and NMSA 1978, §§62-3-1, et seq.¹

6) A copy of Final Rule 17.7.2 NMAC is attached hereto as Exhibits A1 and A2, redline and clean versions.

7) On October 3, 2013, the Commission issued its Order Initiating Rulemaking.

8) On October 12, 2013, the Notice of Proposed Rulemaking ("NOPR") in Case No. 13-00310-UT was published in the *Albuquerque Journal* and the *Las Cruces Sun*. On October 31, 2013, the NOPR was published in the New Mexico Register.²

9) The NOPR provided notice that a public hearing would be held on November 20, 2013 at 1:00 p.m. at the office of the Commission located in the 4th floor of the PERA building. The purpose of the hearing would be to give interested individuals, who had not filed written comments or written responses an opportunity to give oral comments.

10) The NOPR stated that written initial comments were due no later than November 4, 2013 and written Response comment were due no later than November 13, 2013.

¹ Under the Public Regulation Commission Act, the Commission "may adopt such reasonable administrative, regulatory and procedural rules as may be necessary to carry out its powers and duties." NMSA 1978, § 8-8-4B (10) (1998). The Efficient Use of Energy Act must be implemented in harmony with the ratemaking provisions of the PUA. *AG Opinion, *¶ 15. Under the Public Utility Act, the Commission has the "general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and supervise regulations and...do all things necessary and convenient in the exercise of its power and jurisdiction. NMSA 1978, § 62-6-4A (2003).

² All as evidenced by affidavits of publication filed in this case.
11) The following written initial comments were filed:

a. New Mexico Gas Company, Inc.-November 1, 2013
b. Public Service Company of New Mexico ("PNM")-November 4, 2013
c. The New Mexico Attorney General initial comments-November 4, 2013
e. James Crawford, Los Lunas, New Mexico- November 4, 2013
f. The New Mexico Industrial Energy Consumers ("NMEIC")-November 4, 2013
g. El Paso Electric ("EPE")-November 4, 2013
h. Coalition for Clean Affordable Energy and Western Resource Advocates-November 4, 2013 ("CCAE/WRA")
i. Southwestern Public Service Company-November 4, 2013

12) The following written response comments were filed:

a. CCAE/WRA- November 13, 2013
b. NMEIC- November 13, 2013
c. Staff-November 13, 2013
d. EPE- November 13, 2013
e. SPS-November 13, 2013
f. PNM-November 13, 2013

13) A public hearing was held on November 20, 2013.\(^3\)

14) The Commission has jurisdiction over the parties and the subject matter of this case.

\(^3\) As evidenced by the filing of the transcript of the proceedings in this case.
15) Repealing and replacing Rule 17.7.2 NMAC and publishing a new Final Rule
17.7.2 NMAC is consistent with AG Opinion.

16) It is in the public interest to repeal and replace Rule 17.7.2 NMAC as shown in
Exhibits A1 and A2, redline and clean versions, attached to this Order.

17) Due and proper notice has been given.

**IT IS THEREFORE ORDERED:**

A. Rule 17.7.2 NMAC is hereby repealed and replaced with the Final Rule
17.7.2 NMAC as shown in Exhibits A1 and A2, redline and clean versions, attached to this
Order.

B. The Final Rule 17.7.2 NMAC as hereby approved and adopted by this
Order shall be filed and published in the *NEW MEXICO REGISTER* and shall be effective upon
such publication.

C. Copies of this Order shall be served on all persons on the attached
certificate of service via email if email addresses are known, and if not known, via regular mail.

D. This docket is closed.
EXHIBIT A1 TO FINAL ORDER

REDLINE VERSION WITH PROPOSED CHANGES TO NOPR RULE 17.7.2

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.

17.7.22 SCOPE: This rule applies to all electric, gas and rural-electric-distribution cooperative utilities subject to the commission's jurisdiction.

17.7.23 STATUTORY AUTHORITY: NMSA 1978, Sections 8-8-16, 63-3-1, 62-8-6, 62-17-1 et. seq.

17.7.24 DURATION: Permanent.

17.7.25 EFFECTIVE DATE: January 1, 2014. Applications filed prior to this effective date shall be governed by the specific orders related to those applications.

17.7.26 OBJECTIVE: The purpose of this rule is to implement the Efficient Use of Energy Act and establish criteria to by which public utilities and distribution cooperative utilities 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; requires that how the public utility's prior commission approved total portfolio of programs continue to will be cost-effective; requires that how the public utility's total new portfolio of programs will be cost-effective; and establishes annual- incentive criteria for a public utility.

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

A. application means an annual 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 performed with an expected relative confidence and within a reasonable projected standard deviation, or within a reasonable percentage error;

C. life cycle basis means utilizing the expected useful life of the energy efficiency and load management measures or programs; and applying the net present value methodology to the annual traditional revenue requirements approach for all resources, including regulatory assets, 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 150%200% 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 17.7.2.7.B NMAC, reductions of energy usage or peak demand with a high degree of certainty and/or determines the actual reductions 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;

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G. **plan year** means the calendar **period-year** for which commission approval is being sought.

H. **plan year average** means the public utility’s actual prior plan year expenditures that exceeded the same plan year’s actual commission authorized funding.

G.I. **plan year underage** means the public utility’s actual prior plan year commission authorized funding that exceeded the same plan year’s actual expenditures.

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PUBLIC UTILITY FILING REQUIREMENTS FOR ANNUAL APPLICATIONS AND ANNUAL REPORTS:

A. **Timing.** Each year, each public utility and natural gas utility shall simultaneously file an annual application and **annual** report, in the same docket, with the commission’s record’s bureau. Public Service Company of New Mexico (and its successors) shall file its application and report annually on March 1, beginning in 20154. Southwestern Public Service Company (and its successors) shall file its application and report annually on May 1, beginning in 20154. El Paso Electric Company (and its successors) shall file its application and report annually on July 1, beginning in 20154. A natural gas utility shall file its application and report annually on January 1, beginning in 20154. If a specified filing date falls on a weekend or 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 its the pre-filing requirements of Section 62-17-5 (E), 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 application shall identify its plan year funding estimate for measures and programs. Funding for program shall be for customer classes with an opportunity to participate in approved measures and programs. Funding for electric public utilities shall be three percent (3%) of customers’ bills, and funding for gas public utilities shall not exceed three percent (3%) of customer’s bills. To calculate plan year funding estimates, public utilities shall in the following order: estimate the total plan year revenues for program costs from all large customers projected to receive a self-directed program credit or exemption in the plan year; estimate the total plan year customer revenues for program costs from customers that are subject to the seventy-five thousand dollar ($75,000) plan year cap; excluding revenues for program costs from all large customers projected to receive a self-directed program credit or exemption in the plan year; estimate the total plan year projected customer revenues at a three percent (3%) rate rider, excluding revenues for gross receipts taxes and franchise and right of way access fees; and add the total plan year revenues from above items (1) through (3), to determine the public utility’s plan year funding estimate for program costs.

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

(1) Estimated plan year funding for electric public utilities’ energy efficiency and load management program costs shall be three percent (3%) of billing revenues from all of its customers’ bills that the public utility estimates to be billed during the plan year,

(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 $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 not exceed three percent (3%) 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 $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 its prior the same plan year’s commission authorized funding. At the end of each plan year, the public utility shall calculate the following applicable values:

1. any plan year overage (expenditures that exceeded its actual funding; or
2. any plan year underage (actual funding that exceeded expenditures).

E. In each plan year, a public utility shall make its best efforts to expend its available program-plan commission authorized funding as calculated in 17.7.2.8.C NMAC above subtracting any applicable prior plan year overage or adding any applicable prior plan year underage.

Available program funds shall be the greater of the utility’s:

plan year funding estimate, less any applicable prior plan year overage (expenditures that exceeded its actual funding); or

plan year funding estimate, plus any applicable prior plan year underage (actual funding that exceeded expenditures).

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 verified 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), 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;

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(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 why-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 why-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; and

(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.

(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 and/or both consumption, if approved by the commission and implemented by the utility;

J. The public utility shall demonstrate that its portfolio of proposed measures and programs is are cost-effective, meets the utility cost test as defined by Section 62-17-4 (C) 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 (5%) of the funding for measure and program costs shall be specifically directed to measures or programs for low-income customers.

L. As stated in Section 62-17-5 F. 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 resources. Accordingly, any Applications may that include 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) which shall not exceed the product (expressed in dollars) of:

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

(ii) 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 was met the cost-effective definition set forth in Section 62-17-9 B. 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.

17.7.2.9 RESIDENTIAL PROGRAMS:
A. The measures or programs should enable residential customers or households, including low-income customers, to conserve energy, reduce demand, or reduce residential energy bills.
B. Provided that the public utility's total portfolio of measures and programs remains cost-effective, no less than five percent (5%) 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 federal, state, county, or local governments. This section does not preclude the public utility from designing and proposing other low-income measures or 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.

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 (20%) 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.

17.7.2.10 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 (1), but less than seven (7) 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 Section 62-17-4 G. NMSA 1978 and the utility cost test.
F. Large customers applying for gas utility bill credit or a gas utility bill exemption must meet...
the gas consumption criteria as set forth in Section 62-17-4 G. 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 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.

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 five thirty (305) 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 thirty (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 (70%) 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 a 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.

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

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A. To receive approval for an exemption to paying seventy percent (70%) 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 (1) year but less
than seven (7) 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 Section 62-17-4 G. NMSA 1978
F. Large customers applying for gas utility bill credit or a gas utility bill exemption must meet
the gas consumption criterion set forth in Section 62-17-4 G. 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 thirty (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 thirty (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 a any combination of energy savings and demand savings for both electric and

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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.

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.

17.7.2.12 MODIFICATION OR TERMINATION OF PROGRAMS: 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 for good cause. 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.

17.7.2.13 FILING REQUIREMENTS FOR COST RECOVERY:
A. Public utility recovery of program costs shall only be from customer classes with an opportunity to participate in approved measures and programs and shall not exceed the lesser of three percent (3%) of customers' bills or seventy-five thousand dollars ($75,000) per customer per plan year whichever is less.
B. The public utility, at its option, may recover its prudent and reasonable program costs and approved incentives are eligible for recovery, either through an approved tariff rider, in base rates, or by combining recovery through a tariff rider and base rates, from customer classes with an opportunity to participate in approved measures and programs.
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 thirty (30) days after filing, unless suspended by the commission for a period not to exceed one hundred eighty (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 thirty (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.

Program costs and incentives may be deferred for future recovery through creation of a...

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regulatory asset. Prior commission approval is required for the public utility to create a regulatory asset and to establish any associated carrying charge.

17.7.2.14 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;
   (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.

17.7.2.15 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.

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(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 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 these 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. The commission will direct its staff to: 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

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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.

17.72.16 RURAL ELECTRIC COOPERATIVES:

A. Distribution cooperative utilities shall, within twenty-four (24) months after the effective date of this rule, and every twenty-four (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 Section 17.7.2.18(A) NMAC. 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 Section 17.7.2.18(B) NMAC, 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 NMSA 1978, Section 62-8-7(G).

E. The commission may develop necessary compliance forms.

17.72.17 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.

17.72.18 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.

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17.7.2.19 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.
EXHIBIT A2
CLEAN VERSION OF FINAL RULE IF ALL REDLINE CHANGES ARE APPROVED
BY THE COMMISSION

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.

17.7.2.2  SCOPE: This rule applies to all electric, gas and distribution cooperative utilities subject to the
commission's jurisdiction.

17.7.2.3  STATUTORY AUTHORITY: NMSA 1978, Sections 8-8-16, 63-3-1, 62-8-6, 62-17-1 et. seq.

17.7.2.4  DURATION: Permanent.

17.7.2.5  EFFECTIVE DATE: January 1, 2014. Applications filed prior to this effective date shall be
governed by the specific orders related to those applications.

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.

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

A.  Application means an annual 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 net present value methodology 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 200% 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 17.7.2.7.B 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 commission authorized funding.

I.  Plan year underage the public utility’s actual prior plan year commission authorized funding
that exceeded the same plan year’s actual expenditures.

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PUBLIC UTILITY FILING REQUIREMENTS FOR ANNUAL APPLICATIONS AND ANNUAL REPORTS:

A. Timing. Each year, each public utility and natural gas utility shall simultaneously file an annual application and annual report, in the same docket, with the commission's record's bureau. Public Service Company of New Mexico (and its successors) shall file its application and report annually on March 1, beginning in 2015. Southwestern Public Service Company (and its successors) shall file its application and report annually on May 1, beginning in 2015. El Paso Electric Company (and its successors) shall file its application and report annually on July 1, beginning in 2015. A natural gas utility shall file its application and report annually on January 1, beginning in 2015. If a specified filing date falls on a weekend or 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 Section 62-17-5 (E), 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.

(1) Estimated plan year funding for electric public utilities' energy efficiency and load management program costs shall be three percent (3%) 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 $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 not exceed three percent (3%) 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 $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 commission authorized funding. 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 plan commission authorized funding as calculated in 17.7.2.8.C NMAC above subtracting any applicable prior plan year overage or adding any applicable prior plan year underage.

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), 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:
   c. demonstrate and justify how the estimated avoided monetary cost will be equal to or greater than the actual avoided monetary cost; and
   d. 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;

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(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.

(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 Section 62-17-4 (C) 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 (5%) of the funding for
measure and program costs shall be specifically directed to measures or programs for low-income customers.

L. As stated in Section 62-17-5 F. 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 resources. Accordingly, 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:
   (i) its weighted cost of capital (expressed as a percent), and
   (ii) 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 Section 62-17-9 B. 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.

17.7.2.9 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 (5%) 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 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.

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 (20%) 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.

17.72.10 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 (1), but less than seven (7) 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 Section 62-17-4 G. 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 Section 62-17-4 G. 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 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.

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 thirty (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 thirty (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 (70%) 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 a 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.

17.7.2.11 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 (70%) 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 (1) year but less than seven (7) 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 Section 62-17-4 G. NMSA 1978.
F. Large customers applying for a gas utility bill exemption must meet the gas consumption criterion set forth in Section 62-17-4 G. 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 thirty (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 thirty (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 a 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.

17.7.2.12 MODIFICATION OR TERMINATION OF PROGRAMS: 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 for good cause. 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.

17.7.2.13 FILING REQUIREMENTS FOR COST RECOVERY:

A. Public 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 percent (3%) of customers’ bills or seventy-five thousand dollars ($75,000) per customer per plan year whichever is less.

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 thirty (30) days after filing, unless suspended by the commission for a period not to exceed one hundred eighty (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 thirty (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.

17.7.2.14 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;
   (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

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(3) measurement and verification report and related justification as to why the evaluation was not performed;
(4) 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;
(5) a listing of the number of program participants served for each of the utility's approved measures or programs by year;
(6) a listing of the calculated economic benefits for each of the utility's approved measures or programs by year;
(7) 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
(8) any other information required by the commission.

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 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.

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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.

17.7.2.16 RURAL ELECTRIC COOPERATIVES:

A. Distribution cooperative utilities shall, within twenty-four (24) months after the effective date of
   this rule, and every twenty-four (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 Section 17.7.2.18(A) NMAC. 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 Section 17.7.2.18(B)
   NMAC, 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

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requesting approval to recover such costs in general rates, the distribution cooperative utility may elect to use the procedure set forth in NMSA 1978, Section 62-8-7(G).

E. The commission may develop necessary compliance forms.

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.

17.7.2.18 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.

17.7.2.19 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.
BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE ADOPTION OF A PROPOSED RULE TO IMPLEMENT THE EFFICIENT USE OF ENERGY ACT
NMSA 1978, SECTION 62-17-1 et seq.

NMPRC UTILITY DIVISION STAFF, Petitioner.

Case No. 13-00310-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Final Order Repealing and Replacing Rule 17.7.2 NMAC, issued on October 8, 2014, was sent on October 9, 2014, as indicated below, to the following:

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NEW MEXICO PUBLIC REGULATION COMMISSION

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