TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 9 ELECTRIC SERVICES
PART 570 GOVERNING COGENERATION AND SMALL POWER PRODUCTION

17.9.570.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.9.570.1 NMAC - Rp, 17.9.570.1 NMAC, 10-15-08]

17.9.570.2 SCOPE:

A. 17.9.570 NMAC applies to every electric utility (investor-owned, rural electric cooperative, municipal, or an entity providing wholesale rates and service) operating within the state of New Mexico that is subject to the jurisdiction of the New Mexico public regulation commission as provided by law.

B. It is intended that the obligations of utilities provided for in 17.9.570 NMAC shall extend to both production and consumption functions of qualifying facilities irrespective of whether the production and consumption functions are singly or separately owned. In situations where the production and consumption functions are separately owned, the qualifying facility or its operator may elect to enter into the contract with the utility.

C. All interconnection contracts between utilities and qualifying facilities existing at the time 17.9.570 NMAC is adopted shall automatically continue in full force and effect with no change in rates for the purchase of power from the qualifying facilities. Any changes made to the existing interconnection contracts shall be made by mutual agreement and shall conform to the provisions of 17.9.570 NMAC.

D. Variances which have been granted by the commission from earlier versions of general order no. 37 and under NMPSC rule 570 shall continue in full force and effect unless the commission specifically rescinds any such variance.
[17.9.570.2 NMAC - Rp, 17.9.570.2 NMAC, 10-15-08]

17.9.570.3 STATUTORY AUTHORITY: NMSA 1978, Sections 8-8-15, 62-6-4, 62-6-19, 62-6-24, and 62-8-2, and 16 USCA Section 2621.
[17.9.570.3 NMAC - Rp, 17.9.570.3 NMAC, 10-15-08]

17.9.570.4 DURATION: Permanent.
[17.9.570.4 NMAC - Rp, 17.9.570.4 NMAC, 10-15-08]

17.9.570.5 EFFECTIVE DATE: October 15, 2008, unless a later date is cited at the end of a section. Applications filed prior to this effective date shall be governed by the specific orders related to those applications.
[17.9.570.5 NMAC - Rp, 17.9.570.5 NMAC, 10-15-08]

17.9.570.6 OBJECTIVE:

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

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

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

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

D. The standards and procedures for the interconnection of generating facilities with rated capacities up to and including 10 MW are set forth in 17.9.568 NMAC. The standards and procedures for the interconnection of generating facilities with rated capacities greater than 10 MW are set forth in 17.9.569 NMAC.
[17.9.570.6 NMAC - Rp, 17.9.570.6 NMAC, 10-15-08]

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

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

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

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

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

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

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

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

H. new capacity addition:

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

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

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

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

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

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

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

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

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

J. power means electric energy or capacity or both;

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

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

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

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

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

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

Q. utility means a utility or public utility as defined in NMSA 62-3-3 (G) serving electric customers subject to the jurisdiction of the commission.
[17.9.570.7 NMAC - Rp, 17.9.570.7 NMAC, 10-15-08]

17.9.570.8 [RESERVED]

17.9.570.9 OBLIGATION TO PURCHASE:

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

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

C. If the utility determines that it cannot interconnect the qualifying facility within the time set in the notice to interconnect because adequate interconnection facilities are not available, it shall, within fifteen (15) business days of receipt of the notice to interconnect, notify the qualifying facility specifying the reasons it cannot interconnect as requested by the qualifying facility and specifying the date interconnection can be made. If the qualifying facility objects to the date for interconnection specified by the utility, objects to the utility's determination that adequate interconnection facilities are not available, or disputes the good faith efforts of the utility to interconnect, the qualifying facility may initiate a proceeding before the commission pursuant to the complaint process of this 17.9.570 NMAC. If the commission finds that the utility's position on the time for interconnection or unavailability of interconnection facilities was not justified, the qualifying facility shall be deemed to have been interconnected and the qualifying facility shall be deemed to have otherwise complied with its contractual duties on the sixtieth (60th) day following the notice to interconnect and payments by the utility to the qualifying facility shall commence at the appropriate power rate which shall be applied to the amount of imputed or expected power as if the qualifying facility were producing, provided that the qualifying facility's power was available.
[17.9.570.9 NMAC - Rp, 17.9.570.9 NMAC, 10-15-08]

17.9.570.10 METERING OPTIONS:

A. General.

(1) A qualifying facility contracting to provide power may displace its own load. The utility may require appropriate metering. Billing for any power from the utility will be at the utility's approved rate applicable to the service provided to the qualifying facility in accordance with Subsections A - G of 17.9.570.12 NMAC.

(2) The tariff filed by each utility pursuant to Subsection H of 17.9.570.13 NMAC shall include the offer to any qualifying facility that has not contracted to receive capacity payments, the metering options in Subsections B, C and D of 17.9.570.10 NMAC.

(3) The options of Subsections B, C and D of 17.9.570.10 NMAC may involve time-of-day metering if the utility has in effect time-differentiated rates and metering for the class of customer to which the qualifying facility belongs or if the parties negotiate time-differentiated payments to the qualifying facility.

B. Load displacement option. If the qualifying facility wishes primarily to serve its own load, the utility shall agree to interconnect with a single meter or meter set measuring flow from the utility to the qualifying facility; billing for any power from the utility will be at the utility's approved tariff applicable to the service provided to the qualifying facility; there will be no additional customer charge and no payment by the utility for any excess energy which might be generated by the qualifying facility.

C. Net metering option.

(1) The utility shall install the metering necessary to determine the net energy delivered from the qualifying facility to the utility or from the utility to the qualifying facility for each time-of-use or single rate period, as applicable, during a billing period; the net energy delivered to either the qualifying facility or to the utility is the difference between the energy produced by the qualifying facility's generation and the energy that would have otherwise been supplied by the utility to the qualifying facility absent the qualifying facility's generation.

(2) The net energy delivered from the qualifying facility to the utility shall be purchased by the utility at the utility's applicable time-of-use or single period energy rate as described in Subsection B of 17.9.570.11

NMAC; the qualifying facility shall be billed for the net energy delivered from the utility in accordance with the tariffs that are applicable to the qualifying facility absent the qualifying facility's generation; the qualifying facility shall also be billed for all demand and other charges in accordance with the applicable tariffs. At the end of the billing period the utility shall net all charges owed to the utility by the qualifying facility and all payments owed by the utility to the qualifying facility. If a net amount is owed to the qualifying facility for the billing period, and is less than $50, the payment amount may be carried over to the following billing period. If a net amount is owed to the qualifying facility and is $50 or more, the utility shall make payment to the qualifying facility prior to the end of the next billing period.

(3) If provision of the net metering option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for net metering, the qualifying facility shall pay all incremental costs associated with installing the more costly metering equipment and facilities. An additional customer charge to cover the added costs of billing and administration may be included in the tariff if supported with evidence of need for such charge.

D. Separate load metering (simultaneous buy/sell) option. The utility shall install the metering necessary to determine separately 1) all the energy produced by the qualifying facility's generator and 2) all of the power consumed by the qualifying facility's loads; the utility shall purchase all energy produced by the qualifying facility's generator at the utility's applicable time-of-use or single period energy rate as described in Subsection B of 17.9.570.11 NMAC. The qualifying facility shall purchase all power consumed at its normally applicable rate; an additional customer charge to cover the added costs of billing and administration may be included in the tariff if supported with evidence of need for such charge.

E. Metering configurations. Metering configurations used to implement the provisions of 17.9.570 NMAC shall be reasonable, nondiscriminatory, and shall not discourage cogeneration or small power production. [17.9.570.10 NMAC - Rp, 17.9.570.10 NMAC, 10-15-08]

17.9.570.11 DETERMINATION OF RATES FOR PURCHASES FROM QUALIFYING FACILITIES:

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

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

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

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

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

(4) The schedules containing energy rates developed pursuant to Subsections B and C of 17.9.570.11 NMAC shall be part of the tariff to be filed pursuant to Subsection H of 17.9.570.13 NMAC. The energy rate contained in the schedules shall include the savings attributable to the avoidance of losses due to transmission, distribution, and transformation as applicable for different voltage levels of interconnection. These transmission, distribution, and transformation loss avoidance savings for different voltage levels of interconnection shall be

obtained from the utility's filing in the last commission-decided rate case, and those figures shall be shown in the utility's submittal.

C. Avoided capacity costs.

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

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

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

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

17.9.570.12 OBLIGATION TO SELL:

A. Rates to be offered. Utilities are required to provide supplementary power, backup power, maintenance power, and interruptible power to qualifying facilities irrespective of whether the production and consumption functions of the qualifying facility are singly or separately owned. The rates for supplementary power, backup power, maintenance power, and interruptible power shall be calculated as provided for in this section (17.9.570.12 NMAC) and included in the tariff for each utility to be filed pursuant to 17.9.570 NMAC. Utilities may charge a facilities fee for equipment dedicated to the customer pursuant to the utility's rate schedules and rules governing the utility's practices for recovering such costs. The computation of the facilities fee shall take into account the costs of facilities already paid for by the customer before installing a qualifying facility.

B. Supplementary power.

(1) Qualifying facilities shall be entitled to supplementary power under the same retail rate schedules that would be applicable to those retail customers having power requirements equal to the supplementary power requirements of the qualifying facility. Any ratchet enforced through the "billing demand" provisions of such retail schedules shall also apply.

(2) To determine the amount of supplementary power required, supplementary power shall be measured to each qualifying facility through appropriate metering devices which are adequate to determine whether supplementary or backup power is being utilized. The demand interval used shall be the same as that contained in the applicable retail rate schedule.

C. Backup power.

(1) Qualifying facilities shall be entitled to backup power for forced outages under the same retail rate which would be applicable absent its qualifying facility generation. Rates for sale of backup power shall not contain demand charges in time periods when demand charges are not applicable to such retail rate schedule. Rates for backup power shall not contain demand ratchets or power factor penalties. If the utility can demonstrate that a particular qualifying facility has caused either a demand ratchet or a power factor penalty clause between the utility

and its power supplier(s) to be invoked because of the qualifying facility's operation, the utility may petition the commission to allow the allocable charges resulting from the demand ratchet or power f actor penalty which has been invoked to be included in the rates for that particular qualifying facility.

(2) In the months that backup power is not utilized by the qualifying facility the rates for backup power may contain a monthly reservation fee which shall not exceed ten percent (10%) of the monthly demand charge contained in the retail rate schedule which would be applicable to the consumer absent its qualifying facility generation. Such a reservation fee shall not be charged while a qualifying facility is taking backup power or while charges resulting from a power factor penalty and/or demand ratchet have/has been imposed pursuant to Paragraph (1) of Subsection C of 17.9.570.12 NMAC.

D. Maintenance power.

(1) Maintenance power shall be provided to qualifying facilities for periods of maintenance scheduled in advance with the concurrence of' the utility. A qualifying facility shall schedule such maintenance with the utility by giving the utility advance notice dependent on the length of the outage as follows:

Length of Outage*	**Advance Notice***
1 day	5 days
2 to 5 days	30 days
6 to 30 days	90 days
*All days are calendar days.	

(2) Maintenance power rates shall be the same as the retail rate which would be applicable to the qualifying facility absent its qualifying facility generation. The maintenance power demand charge shall be determined by multiplying the applicable retail demand charge by the ratio of the number of weekdays in which the maintenance power was taken to the number of weekdays in the month. No demand charge shall apply for maintenance power taken during off-peak hours as defined in the utility's retail tariffs. For those utilities which do not have time-of-use rates, off-peak hours are defined as 11:00 p.m. to 7:00 a.m. weekdays, twenty-four (24) hours per day on weekends and holidays.

(3) Maintenance power shall be available to qualifying facilities for a minimum period of thirty (30) days per year scheduled outside of the system peak period of the utility which is defined as the three-month period covering the peak month together with the preceding and succeeding months.

E. Interruptible power. All utilities shall file rates for interruptible power which shall be available to qualifying facilities. Rates for such interruptible power purchases shall reflect the lower costs, if any, which the utility incurs in order to provide interruptible power as opposed to what it would incur to provide firm power.

F. Customer charges. The customer charges from a utility for a qualifying facility shall be the same as the retail rate applicable to the customers in the same rate class absent its qualifying facility generation.

G. Exceptions. An electric utility shall not be required to provide supplementary power, backup power, maintenance power, or interruptible power to a qualifying facility if, after notice in the area served by the electric utility and after opportunity for public comment, the electric utility demonstrates and the commission finds that provision of such power would:

(1) impair the electric utility's ability to render adequate service to its customers; or

(2) place an undue burden on the utility.

[17.9.570.12 NMAC - Rp, 17.9.570.12 NMAC, 10-15-08]

17.9.570.13 PERIODS WHEN PURCHASES AND SALES ARE NOT REQUIRED AND GENERAL PROVISIONS:

A. System emergencies.

(1) During any system emergency a utility may discontinue on a nondiscriminatory basis:

(a) purchases from a qualifying facility if such purchases would contribute to such emergency, and

(b) sales to a qualifying facility provided that such discontinuance is on a previously established nondiscriminatory basis.

(2) A qualifying facility shall be required to provide power to a utility during a system emergency only to the extent:

(a) provided by agreement between the qualifying facility and the utility; or

(b) ordered pursuant to the provisions of the Federal Power Act, 16 U.S.C. Section 824a(c).

B. Operational circumstances. The utility may discontinue purchases from the qualifying facility during any period in which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases but instead generated an equivalent amount of energy itself; a claim by an electric utility that such a period has occurred or will occur is subject to verification by the commission; the utility shall maintain and make available sufficient documentation to aid the commission with verification proceedings.

C. Notification requirements. Any utility which disconnects and thereby discontinues purchases or sales from a qualifying facility for the reasons cited in Subsections A and B of 17.9.570.13 NMAC above shall notify the qualifying facility or facilities prior to the system emergency or operational circumstance if reasonably possible. If prior notice is not reasonably possible the utility shall notify the qualifying facility by telephone or personal contact within forty-eight (48) hours following the system emergency or operational circumstance followed by written communication if requested by the qualifying facility. Any notification shall include the specific reason for the system emergency or operational circumstance.

D. Penalty. Any utility which fails to comply with the notification requirements in Subsection C of 17.9.570.13 NMAC or fails to demonstrate the existence of a system emergency or operational circumstance which warrants the discontinuance of purchases shall pay for the qualifying facility's imputed or expected power at the applicable rate as if the system emergency or operational circumstance had not occurred. The utility may also be subject to a penalty under NMSA 1978, Section 62-12-4 as amended.

E. Wheeling of power. If the qualifying facility agrees, an electric utility which would otherwise be obligated to purchase power from the qualifying facility may transmit power to any other electric utility. Any electric utility to which power is transmitted shall purchase such power as if the qualifying facility were supplying power directly to such electric utility. The rate for purchase by the electric utility to which such power is transmitted shall be adjusted up or down to reflect line losses pursuant to 18 C.F.R. Section 292.304(e)(4) and shall not include any charges for transmission.

F. Distribution cooperatives.

(1) A distribution cooperative having a full power requirements contract with its supplier has the option of transferring the purchase obligation pursuant to Section 17.9.570.9 NMAC to its power supplier. The qualifying facility will be paid the capacity and energy payments, as applicable, by the supplier pursuant to Section 17.9.570.11 NMAC. A distribution cooperative that does not transfer the purchase obligation to its power supplier shall have the option to:

(a) pay qualifying facilities the energy and/or capacity charges including appropriate fuel and purchase power pass-throughs it pays to its power supplier, or

(b) pay the qualifying facility the energy and/or capacity charges which shall be determined in accordance with Section 17.9.570.11 NMAC.

(2) The obligation to interconnect and provide supplementary, backup, and maintenance power either on a firm or on an interruptible basis shall remain with the distribution cooperative.

(3) Any municipal electric utility that does not have generating capacity but is subject to the jurisdiction of the commission shall be considered a distribution cooperative for the purposes of 17.9.570 NMAC.

G. Requirements to file electric utility system data: not later than April 1 of each year each utility shall submit to the commission a report covering the previous calendar year which shall at a minimum provide:

(1) the name and address of each qualifying facility with which it is interconnected, with which it has a contract to interconnect, or with which it has concluded a wheeling agreement;

(2) annual purchases in kW and kWh from each qualifying facility with which it is interconnected and the amount of electricity wheeled on behalf of each qualifying facility;

(3) the price charged for any power wheeled on behalf of each qualifying facility;

(4) the methodology and assumptions used in the calculation of wheeling rates;

(5) amounts actually paid to each qualifying facility; and

(6) a list of all applications for interconnection which the utility has rejected or otherwise failed to approve together with the reasons therefor.

H. Filing of tariff.

(1) Within sixty (60) days of the adoption of this rule, each utility shall develop and file any changes to its tariffs on file with the commission needed to comply with the requirements set forth herein; such changes shall comply with all tariff filing requirements of the commission; such tariffs shall conform to the requirements of 17.1.210 NMAC, and shall become effective thirty (30) days after the filing thereof unless suspended by the commission pursuant to NMSA 1978, Section 62-8-7 as amended, or unless ordered effective at an earlier date by the commission.

(2) Within sixty (60) days of the adoption of the amendments to this rule, each utility shall develop and file tariffs for metering and billing consistent with this rule for generating facilities with rated capacities up to and including 10 kW; such tariffs shall comply with all tariff filing requirements of the commission; such tariffs shall conform to the requirements 17.1.210 NMAC, and shall become effective thirty (30) days after the filing thereof unless suspended by the commission pursuant to NMSA 1978, Section 62-8-7 as amended, or unless ordered effective at an earlier date by the commission.

I. Complaints and investigations. The procedures set forth in NMSA 1978, Sections 62-8-7 and 62-10-1 as amended, and the complaint provisions of 1.2.2 NMAC shall be applicable for the resolution of complaints and investigations arising out of the implementation and conduct of 17.9.570 NMAC.

J. Severability. If any part of 17.9.570 NMAC or any application thereof is held invalid, the remainder or the application thereof to other situations or persons shall not be affected.

K. Amendment. The adoption of 17.9.570 NMAC shall in no way preclude the commission, after notice and hearing, from altering or amending any provision hereof or from making any modification with respect to its application deemed necessary.

L. Exemption or variance.

(1) Any interested person may file an application for an exemption or a variance from the requirements of 17.9.570 NMAC. Such application shall:

(a) describe the situation which necessitates the exemption or variance;

(b) set out the effect of complying with 17.9.570 NMAC on the utility and its customers if the exemption or variance is not granted;

(c) identify the section(s) of 17.9.570 NMAC for which the exemption or variance is requested;

(d) define the result which the request will have if granted;

(e) state how the exemption or variance will promote the achievement of the purposes of 17.9.570 NMAC; and

(f) state why no other reasonable alternative is available.

(2) If the commission determines that the exemption or variance is consistent with the purposes of the rule as defined herein, the exemption or variance may be granted. The commission may at its option require an informal conference or formal evidentiary hearing prior to the granting of the variance.

M. Motion for stay pending amendment, exemption, or variance. An application for an amendment, exemption, or a variance may include a motion that the commission stay the application of the affected portion of 17.9.570 NMAC for the transaction specified in the motion.

[17.9.570.13 NMAC - Rp, 17.9.570.13 NMAC, 10-15-08]

17.9.570.14 NET METERING OF CUSTOMER-SITED QUALIFYING FACILITIES WITH A DESIGN CAPACITY UP TO AND INCLUDING 10KW:

A. Relationship to other commission rules. The standards and procedures for the interconnection of qualifying facilities subject to this section (17.9.570.14 NMAC) are set forth in 17.9.568 NMAC.

B. Use of a single meter. When the customer is billed under a rate structure that does not include time-of-use energy pricing, a single energy meter shall be used to implement net metering of a qualifying facility unless an alternate metering arrangement is agreed to by the customer and utility. If either the utility or the customer requests an alternate form of metering or additional metering that is not required to accomplish net metering or is for the convenience of the party, the party requesting the change in metering shall pay for the alternate or additional metering arrangement. If the customer elects to take electric service under any rate structure, including time-of-use, that requires the use of metering apparatus or a metering arrangement that is more costly than would otherwise be necessary absent the requirement for net metering, the customer shall be required to pay the additional incremental cost of the required metering equipment. Within ten (10) days of receiving notification from the customer of the intent to interconnect, the utility will notify the customer of any metering costs. Charges for special metering costs shall be paid by the customer, or arrangements for payment agreed to between the customer and utility, prior to the utility authorizing interconnected operation.

C. Net metering calculation. The utility shall calculate each customer's bill for the billing period using net metering and with the following conditions:

(1) Customers shall be billed for service in accordance with the rate structure and monthly charges that the customer would be assigned if the customer had not interconnected a qualifying facility. Net energy produced or consumed on a monthly basis shall be measured in accordance with standard metering practices.

(2) If electricity supplied by the utility exceeds electricity generated by the customer during a billing period, the customer shall be billed for the net energy supplied by the utility under the applicable rates.

(3) If electricity generated by the customer exceeds the electricity supplied by the grid during a billing period, the utility shall credit the customer on the next bill for the excess kilowatt-hours generated, by:

(a) crediting or paying the customer for the net energy supplied to the utility at the utility's energy rate pursuant to this 17.9.570 NMAC; or

(b) crediting the customer for the net kilowatt-hours of energy supplied to the utility. Unused credits shall be carried forward from month to month; provided that if a utility opts to credit customers and the customer leaves the system, customer's unused credits for excess kilowatt-hours generated shall be paid to the customer at the utility's energy rate pursuant to this 17.9.570 NMAC.

[17.9.570.14 NMAC - N, 10-15-08]

17.9.570.15 STANDARD METERING AND BILLING AGREEMENT FOR QUALIFYING FACILITIES WITH A DESIGN CAPACITY OF GREATER THAN 10 KW AND LESS THAN OR EQUAL TO 10 MW:

This AGREEMENT is made as of the_____ day of _____, 20____, by and between _____ ("customer") and_____ ("utility") also referred to collectively as "parties" and singularly as "party." Customer receives electric service from utility at _____ [location/address] under cccount _____. Customer has located at these premises a qualifying facility ("QF") as defined by 17.9.570 NMAC, having an installed capacity of greater than 10 kilowatts and up to and including 10 megawatts, which is interconnected to utility pursuant to an interconnection agreement, attached as Exhibit (1). For good and valuable consideration, customer desires to sell or provide electricity to utility from the QF and utility desires to purchase or accept all the energy produced by the QF that is not consumed by customer, and the parties agree to the following terms and conditions:

A. DEFINITIONS. Whenever used **in the agreement**, the following words and phrases shall have the following meanings:

(1) agreement shall mean this agreement and all schedules, tariffs, attachments, exhibits, and appendices attached hereto and incorporated herein by reference;

(2) interconnection facilities shall mean all machinery, equipment, and fixtures required to be installed solely to interconnect and deliver power from the QF to the utility's system, including, but not limited to, connection, transformation, switching, metering, relaying, line and safety equipment and shall include all necessary additions to, and reinforcements of, the utility's system;

(3) prudent electrical practices shall mean those practices, methods and equipment, as changed from time to time, that are commonly used in prudent electrical engineering and operations to operate electric equipment lawfully, and with safety, dependability, efficiency and economy;

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

(5) point of delivery means the geographical and physical location described on exhibit B hereto; such exhibit depicts the location of the QF's side of interconnection facilities where customer is to (sell and) deliver electric energy pursuant to this agreement or pursuant to a separate wheeling agreement;

(6) termination means termination of this agreement and the rights and obligations of the parties under this agreement, except as otherwise provided for in this agreement;

(7) suspension means suspension of the obligation of the Utility to interconnect with and purchase electricity from the customer.

B. TERM OF AGREEMENT. The original term of this agreement shall be for a period of five (5) years from the date of the execution of this agreement and shall continue thereafter from year to year until terminated as herein provided.

(1) Termination by customer. Termination of this agreement during and after the original term requires written notice to utility that this agreement will terminate in ninety (90) days. Customer may terminate this agreement without showing good cause.

(2) Termination by utility. Termination of this agreement during and after the original term requires written notice to customer that this agreement will terminate in ninety (90) days, unless otherwise provided. utility, in the exercise of this right, must show good cause for the termination.

(3) At any time the QF is sold, leased, assigned, or otherwise transferred, the seller or lessor of the QF shall notify utility and this agreement may be terminated at utility's option, for good cause, regardless of whether

such transfer occurs during the original term or any renewal thereof. Such termination may be made with five (5) days written notice by utility.

(4) Should the customer default in the performance of any of the customer's obligations hereunder, utility may suspend interconnection, purchases, or both and if the default continues for more than 90 days after written notice by utility to Customer, utility may terminate this agreement. Termination or suspension shall not affect the obligation of utility to pay for energy already delivered or of customer to reimburse interconnection costs, or any cost then accrued. Upon termination, all amounts owed to the utility will become payable immediately.

C. METER INSTALLATION, TESTING AND ACCESS TO PREMISES. Customer will be metered by a meter or meters as determined by utility to which utility is granted reasonable access.

(1) Customer shall supply, at its own expense, a suitable location for all meters and associated equipment. Customer shall provide a clearly understandable sketch or one-line diagram showing the qualifying facility, the interconnection equipment, breaker panel(s), disconnect switches and metering, to be attached to this agreement. Such location must conform to utility's meter location policy. The following metering options will be offered by utility: _____. Customer shall provide and install a meter socket and any related interconnection equipment per utility's requirements.

(2) Customer shall deliver the as-available energy to utility at utility's meter.

(3) Utility shall furnish and install a standard kilowatt-hour meter. Utility may install, at its option and expense, magnetic tape recorders in order to obtain load research information. Utility may meter the customer's usage using two meters for measurement of energy flows in each direction at the point of delivery.

(4) If either utility or customer requests an alternate form of metering or additional metering that is not required to accomplish net metering or is for the convenience of the party, the party requesting the change in metering shall pay for the alternate or additional metering arrangement. If customer elects to take electric service under any rate structure, including time-of-use, that requires the use of metering apparatus or a metering arrangement that is more costly than would otherwise be necessary absent the requirement for net metering, customer shall be required to pay the additional incremental cost of the required metering equipment. Within ten (10) days of receiving notification from customer of the intent to interconnect, utility will notify the customer of any metering costs. Charges for special metering costs shall be paid by customer, or arrangements for payment agreed to between customer and utility, prior to utility authorizing interconnected operation.

(5) All meter standards and testing shall be in compliance with utility's rules and regulations as approved by the NMPRC. The metering configuration shall be one of utility's standard metering configurations as set out in Subsection D of 17.9.570.15 NMAC and mutually agreeable to the parties or any other metering configuration mutually agreeable to the parties. The agreed upon configuration is shown on exhibit (2). (Service by the distribution cooperative to customer shall be in accordance with the distribution cooperative's articles, bylaws and regulations and in accordance with its tariffs filed with the NMPRC, the terms and conditions of which shall be unaffected by this agreement). If the interconnection facilities have been modified pursuant to the interconnection agreement, customer shall permit utility, at any time, to install or modify any equipment, facility or apparatus necessary to protect the safety of its employees or to assure the accuracy of its metering equipment, the cost of which shall be borne by customer. Utility shall have the right to disconnect the QF if it has been modified without utility's authorization.

(6) Utility may enter customer's premises to inspect at all reasonable hours customer's protective devices and read or test meter; and pursuant to the interconnection agreement to disconnect, without notice, the interconnection facilities if utility reasonably believes a hazardous condition exists and such immediate action is necessary to protect persons, or utility's facilities, or property of others from damage or interference caused by customer's facilities, or lack of properly operating protective devices.

D. ENERGY PURCHASE PRICE AND METERING OPTION. All electric energy delivered and service rendered hereunder shall be delivered and rendered in accordance with the applicable rate schedules and tariffs. Customer has selected the _____ metering option defined in this section. It is understood and agreed, however, that said rates are expressly subject to change by any regulatory body having jurisdiction over the subject matter of this agreement. If a new rate schedule or tariff is approved by the proper regulatory body, the new rate schedule or tariff shall be applicable to this agreement upon the effective date of such rate schedule or tariff.

(1) Load displacement option: Utility will interconnect with the customer using a single meter which will be ratcheted and would only measure the flow of energy to the customer. Billing to customer will be at utility's approved tariff rate applicable to the service provided to the QF. There will be no additional customer charge and no payment by utility for any excess power which might be generated by the QF.

(2) Net metering option.

(a) Utility shall install the metering necessary to determine the net energy delivered from customer to utility or the net energy delivered from utility to customer for each time-of-use or single rate period, as applicable, during a billing period. The net energy delivered to either the QF or to the utility is the difference between the energy produced by the QF generation and the energy that would have otherwise been supplied by the utility to the QF absent the QF generation.

(b) The net energy delivered from customer to utility shall be purchased by utility at utility's applicable time-of-use or single period energy rate, as described in Subsection B of 17.9.570.11 NMAC, and filed with the NMPRC. Customer shall be billed for all net energy delivered from utility in accordance with the tariff that is applicable to customer absent the QF generation. An additional customer charge to cover the added costs of billing and administration may be included in the tariff. At the end of the billing period, utility shall net all charges owed to utility by customer and all payments owed by utility to customer. If a net amount is owed to customer for the billing period, and is less than $50, the payment amount may be carried over to the following billing period. If a net amount is owed to customer and is $50 or more, utility shall make payment to customer prior to the end of the next billing period.

(c) If provision of the net metering option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for net metering, customer shall pay all incremental costs associated with installing the more costly metering equipment and facilities.

(3) Simultaneous buy/sell option.

(a) Utility will install the metering necessary to determine separately 1) all of the energy produced by customer's generator and 2) all of the power consumed by customer's loads. Utility will purchase all energy produced at utility's applicable time-of-use or single period energy rate, as described in Subsection B of 17.9.570.11 NMAC, for such purchases, and as filed with and approved by the NMPRC. Customer shall purchase all power consumed at its normally applicable tariff rate. An additional customer charge to cover the added costs of billing and administration may be included.

(b) If provision of the simultaneous buy/sell option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for simultaneous buy/sell metering, customer shall pay all incremental costs associated with installing the more costly metering equipment and facilities.

E. INTERRUPTION OR REDUCTION OF DELIVERIES.

(1) Utility shall not be obligated to accept or pay for and may require customer to interrupt or reduce deliveries of available energy under the following circumstances:

(a) it is necessary in order to construct, install, maintain, repair, replace, remove, investigate, or inspect any of its equipment or part of its system or if it reasonably determines that curtailment, interruption, or reduction is necessary because of emergencies, forced outages, force majeure, or compliance with prudent electrical practices; whenever possible, utility shall give customer reasonable notice of the possibility that interruption or reduction of deliveries may be required;

(b) there is evidence that customer's QF is interfering with service to other customers or interfering with the operation of Utility's equipment; customer may be reconnected by utility when customer makes the necessary changes to comply with the standards required by this agreement;

(c) it is necessary to assure safety of utility's personnel; notwithstanding any other provision of this agreement, if at any time utility reasonably determines that the facility may endanger utility personnel or other persons or property or the continued operation of customer's facility may endanger the integrity or safety of utility's electric system, utility shall have the right to disconnect and lock out customer's facility from utility's electric system; customer's facility shall remain disconnected until such time as utility is reasonably satisfied that the conditions referenced in this section have been corrected;

(d) there is a failure of customer to adhere to this agreement;

(e) if suspension of service is otherwise necessary and allowed under utility's rules and regulations as approved by the NMPRC.

(2) Customer shall cooperate with load management plans and techniques as ordered or approved by the NMPRC, and the service to be furnished by utility hereunder may be modified as required to conform thereto.

F. FORCE MAJEURE. Force majeure shall mean any cause beyond the control of the party affected, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, (labor dispute,) labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction, by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence, it shall be unable to

overcome. If either party, because of force majeure, is rendered wholly or partly unable to perform its obligations under this agreement, except for the obligation to make payments of money, that party shall be excused from whatever performance is affected by the force majeure to the extent so affected, provided that:

(1) the nonperforming party, within a reasonable time after the occurrence of the force majeure, gives the other party written notice describing the particulars of the occurrence;

(2) the suspension of performance is of no greater scope and of no longer duration than is required by the force majeure; and

(3) the nonperforming party uses its best efforts to remedy its inability to perform. This paragraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the party involved in the disputes.

G. INDEMNITY. Each party shall indemnify the other from liability, loss, costs, and expenses on account of death or injury to persons or damage or destruction of property occasioned by the negligence of the indemnifying party or its agents, officers, employees, contractors, licensees or invitees, or any combination thereof, except to the extent that such death, injury, damage, or destruction resulted from the negligence of the other party or its agents, officers, employees, contractors, licensees or invitees, or any combination thereof. Provided, however, that:

(1) each party shall be solely responsible for the claims or any payments to any employee or agent for injuries occurring in connection with their employment or arising out of any Workmen's Compensation Law or Occupational Disease Disablement Law;

(2) utility shall not be liable for any loss of earnings, revenues, indirect or consequential damages or injury which may occur to customer as a result of interruption or partial interruption (single-phasing) in delivery of service hereunder to customer or by failure to receive service from customer by reason of any cause whatsoever, including negligence; and

(3) the provisions of this subsection on indemnification shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of any valid insurance policy;

(4) the indemnifying party shall pay all costs and expenses incurred by the other party in enforcing the indemnity under this agreement including reasonable attorney fees.

H. DEDICATION. An undertaking by one party to another party under any provision of this agreement shall not constitute the dedication of such party's system or any portion thereof to the public or to the other party and any such undertaking shall cease upon termination of the party's obligations herein.

I. STATUS OF CUSTOMER. In performing under this agreement, customer shall operate as or have the status of an independent contractor and shall not act as or be an agent, servant, or employee of utility.

J. AMENDMENT, MODIFICATIONS OR WAIVER. Any amendments or modifications to this agreement shall be in writing and agreed to by both parties. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of the breach of any term or covenant contained in this agreement, whether by conduct or otherwise, shall be deemed to be construed as a further or continuing waiver of any such breach or a waiver of the breach of any other term or covenant unless such waiver is in writing.

K. ASSIGNMENT. This agreement and all provisions hereof shall inure to and be binding upon the respective parties hereto, their personal representatives, heirs, successors, and assigns. Customer shall not assign this agreement or any part hereof without the prior written consent of utility, otherwise this agreement may be terminated pursuant to paragraph (3) of Subsection B of 17.9.570.15 NMAC.

L. NOTICES. Any payments, notices, demands or requests required or authorized by this agreement shall be deemed properly given if personally delivered or mailed postage prepaid to:

Customer: _____

New Mexico_____(zip code)

Utility_____.

The designation of the persons to be notified, or the address thereof, may be changed by notice in writing by one party to the other. Routine notices and notices during system emergency or operational circumstances may be made in person or by telephone. Customer's notices to utility pursuant to this agreement shall refer to the customer's electric service account number set forth in this agreement.

M. MISCELLANEOUS. This agreement and any amendments thereto, including any tariffs made a part hereof, shall at all times be subject to such changes or modifications as shall be ordered from time to time by any regulatory body or court having jurisdiction to require such changes or modification. This agreement (and any tariffs incorporated herein) contains all the agreements and representations of the parties relating to the interconnection and purchases contemplated and no other agreement, warranties, understandings or representations relating thereto shall be binding unless set forth in writing as an amendment hereto.

N. GOVERNING LAW. This agreement shall be interpreted, governed, and construed under the laws of the state of New Mexico as if executed and to be performed wholly within the state of New Mexico.

O. ATTACHMENTS. This agreement includes the following exhibits as labeled and incorporated herein by reference:

(1) interconnection agreement;

(2) customer's sketch or one line diagram and site drawing, and generation and protection equipment specifications.

In witness thereof, the parties have executed this agreement on the date set forth herein above.

Date:_____

CUSTOMER_____By:_____.

Date: _____

UTILITY _____By:_____.
[17.9.570.15 NMAC - Rp, 17.9.570.15 NMAC, 10-15-08]

HISTORY OF 17.9.570 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records-state records center and archives.
PSC-GO 37 (General Order 37), Rules And Regulations Governing Cogeneration And Small Power Production filed 4/1/81.
First Revised General Order No. 37, Rules And Regulations Governing Cogeneration And Small Power Production filed 12/30/82.
G.O. 37; General Order 37, Second Revised, Rules And Regulations Governing Cogeneration And Small Power Production filed 12/3/86.
G.O. 37; General Order 37, Second Revised, Rules And Regulations Governing Cogeneration And Small Power Production filed 1/5/87.
G.O. 37; Second Revised General Order 37, Governing Cogeneration And Small Power Production filed 3/3/87.
G.O. 37; Third Revised General Order 37, Governing Cogeneration And Small Power Production filed 3/11/88.
NMSPC Rule 570, Governing Cogeneration And Small Power Production filed 6/30/88.

History of Repealed Material:
NMPSC Rule 570, Governing Cogeneration and Small Power Production (filed 06-30-1988) repealed 3-30-07.
17 NMAC 10.571, Net Metering of Customer-Owned Qualifying Facilities of 10kW or Smaller (filed 09/17/1999) repealed 10-15-08.
17.9.570 NMAC, Governing Cogeneration and Small Power Production (filed 03-16-2007) repealed 10-15-08.

Other History:
NMPSC Rule 570, Governing Cogeneration and Small Power Production (filed 06-30-1988) was renumbered, reformatted and replaced by 17.9.570 NMAC, Governing Cogeneration and Small Power Production, effective 3-30-07.
Only those applicable portions of 17 NMAC 10.571, Net Metering of Customer-Owned Qualifying Facilities of 10kW or Smaller (filed 09/17/1999) and 17.9.570 NMAC, Governing Cogeneration and Small Power Production

(filed 03-16-2007) were replaced by 17.9.570 NMAC, Governing Cogeneration and Small Power Production, effective 10-15-08.