

This is an amendment to 17.7.3 NMAC, Sections 9, 10, 12, 14, 16, 17, effective 11/29/2022.

17.7.3.9 FACILITATED STAKEHOLDER PROCESS; IRP PROCESS:

A. At least six months prior to the filing of its IRP, the utility shall notify the commission, members of the public, the New Mexico attorney general, and all parties to its most recent base rate case and most recent IRP case of its intent to file an IRP. The commission, upon notification, shall initiate a facilitated process for the utility, commission utility division staff, and stakeholders to reach a potential agreement on a proposed statement of need pursuant to 17.7.3.10 NMAC and an action plan pursuant to 17.7.3.11 NMAC. The commission, aside from utility division staff and the appointed facilitator, shall not participate in the facilitated stakeholder process.

(1) The utility shall provide commission utility division staff and stakeholders who have signed a confidentiality agreement reasonable access to the same modeling software used by the utility on equal footing as the utility, and shall perform a reasonable number of modeling runs [~~not to exceed five modeling runs~~] per staff or a stakeholder, if requested by staff or a stakeholder, in accordance with commission precedent, and the utility shall share all modeling information.

(2) Nothing in this Section shall preclude commission utility division staff from providing an analysis based on an alternative, open-source modeling software.

B. In selecting the facilitator, the commission, through its designee, may solicit recommendations of the names of independent firms or individuals that demonstrate independence from public utilities supplying electric service in the state, their affiliates, and likely bidders, and demonstrate the qualifications, expertise, and experience to perform the functions of a facilitator as provided in this rule. The commission shall comply with the New Mexico procurement code in its solicitation of a facilitator.

(1) The facilitator shall provide a statement of interest to the commission which discloses any contracts or other economic arrangements of any kind between the facilitator and any investor-owned electric utility or affiliate within the last four years.

(2) The facilitator shall notify the commission and utility of any perceived or actual conflicts that arise during the course of the facilitation process.

C. The commission, through its designee, shall develop a standard form of contract between the facilitator and the commission that requires the facilitator, in consultation with the utility, to issue notice of facilitated stakeholder meetings, and to host and moderate facilitated stakeholder meetings, including but not limited to, preparing the agenda, and acting as the coordinator between the utility's presentation and the stakeholders' questions and comments.

D. Funding for the services of the facilitator shall be paid by the utility and treated as a regulatory asset to be recovered through rates established in the utility's next general rate proceeding.

~~**B.**~~ **E.** Not later than six months after the facilitated stakeholder process commences, the utility shall file the IRP with the commission, explaining all resolved and unresolved issues resulting from the facilitated process.

(1) Written public comments may be filed within 30 days of the utility's filing of the IRP.

(a) Written public comments may include the commenter's own draft statement of need and action plan for commission review.

(b) Written public comments shall be made part of the utility's IRP as addendums.

(2) The utility shall file, within 60 days of the utility's filing of the IRP, a written response to all timely filed written public comments, stating whether it adopts any of the written comments as amending the IRP and the reasons why or why not.

(3) The commission's utility division staff shall consider the filed written public comments and the utility's written responses and shall file a statement with the commission within 90 days of utility's filing of the IRP as to whether the statement of need and action plan comply with the policies and procedures of this rule.

(4) If the commission has not acted within 120 days of the filing of the IRP, the statement of need and action plan are deemed accepted as compliant with this rule. If the commission determines that the statement of need or action plan do not comply with the requirements of this rule, the commission shall identify the deficiencies and return it to the utility with instructions for re-filing.

[17.7.3.9 NMAC - N, 10/27/2022; A, 11/29/2022]

17.7.3.10 STATEMENT OF NEED:

A. The statement of need is a description and explanation of the amount and the types [type] of new resources, including the technical characteristics of any proposed new resources, to be procured, expressed in terms of energy or capacity, necessary to reliably meet an identified level of electricity demand in the planning horizon and to effect state policies.

B. The statement of need shall not solely be based on projections of peak load. The need may be attributed to, but not limited by, incremental load growth, renewable energy customer programs, or replacement of existing resources, and may be defined in terms of meeting net capacity, providing reliability reserves, securing flexible resources, securing demand-side resources, securing renewable energy, expanding or modifying transmission or distribution grids, or securing energy storage as required to comply with resource requirements established by statute or commission decisions.

[17.7.3.10 NMAC - N, 10/27/2022; A, 11/29/2022]

17.7.3.12 REQUEST FOR PROPOSALS PROCESS:

A. Scope and purpose: Unless the commission grants a public utility's variance application pursuant to 17.7.3.17 NMAC for a variance from Section 12 of this rule, the utility shall follow the request for proposals process to ensure cost competitiveness and fairness in procurement by comparing proposals among bidders through a transparently designed and monitored request for proposals.

B. To address the utility's procurement need, if any, as described in the statement of need, and to fulfill the objectives of the utility's action plan, the utility shall issue a request for proposals (RFP) in the current IRP docket, within five months of the commission's acceptance of its statement of need and action plan.

C. Prior to the utility's commencement of an RFP solicitation, the utility shall provide the commission, the IM, and parties to the utility's pending IRP case with the documents and contracts that constitute the RFP solicitation (RFP documents) and a timeline for soliciting, accepting, and evaluating [and ranking] bids.

D. Within 21 days of receipt of the RFP documents, commissioners, commission utility division staff, and intervenors may submit comments to the utility, including on whether its proposed RFP conforms with its accepted statement of need and action plan and is not unduly discriminatory. Comments shall be considered, and may be incorporated, by the utility prior to the issuance of the RFP.

E. The utility may issue the RFP after comments are submitted on the independent monitor's design report pursuant to Subsection I of 17.7.3.14 NMAC. The utility shall file a notice with the commission of any final changes to the RFP design upon issuance.

F. The proposed RFP(s) shall include:

- (1) bid evaluation [and ranking] criteria;
- (2) the overall amount and duration of power the utility is soliciting and any other details concerning its resource needs;
- (3) a request for bidders' reasonable estimates of any new transmission costs and transmission upgrade costs for resources, if known;
- (4) the extent and degree to which resources shall be dispatchable, including the requirement, if necessary, that resources be able to operate under automatic dispatch control;
- (5) the utility's proposed contract(s) for the acquisition of resources;
- (6) proposed contract term lengths;
- (7) the applicable discount rate;
- (8) the timeline, including the solicitation period, the [ranking] evaluation period, and the expected selection period;
- (9) all security requirements and the rationale behind them; and
- (10) any other information necessary to implement a competitive RFP process.

G. For a proposed RFP, each utility shall provide:

- (1) a description of information that the utility claims is confidential;
- (2) descriptions of proposed protection methods for:
 - (a) bid prices; and
 - (b) other bid details.

H. Not later than [75] 120 days after the utility receives bids for its projected needs, the utility shall provide the IM with [a ranking] an evaluation of proposals that meet the above stated criteria, a detailed description of price and non-price criteria, its preferred portfolio of resources, along with a timeline for resource development.

I. The utility shall [rank] evaluate bids submitted in response to an RFP using the following price and non-price criteria:

- (1) consistency with the terms and requirements of the Efficient Use of Energy Act and the Renewable Energy Act; and other public policies regarding resource preferences adopted by New Mexico or the federal government;
- (2) cost of the resource that would be borne by ratepayers, described in terms of the net present value of capacity cost and lifetime cost of energy calculation;
- (3) resource effect on system operations and reliability, credit, and financial risks to the utility;
- (4) any risks imposed on ratepayers, including assessment of relative amounts of risk inherent among different technologies, fuel sources, or financing arrangements;
- (5) environmental impacts including, but not limited to, those associated with resources that emit carbon dioxide or create long-term waste disposal issues;
- (6) resource dispatchability and operational flexibility benefits or constraints;
- (7) the utility shall include in its evaluation the estimated cost and environmental impact of transmission upgrades or distribution infrastructure upgrades necessary to deliver the project's energy, capacity, or services;
- (8) each bidder shall be responsible for all costs associated with interconnecting its project to the transmission grid or, if applicable, to local distribution facilities; and
- (9) completeness and credibility of a detailed critical path schedule, and ability to meet scheduled construction start date and commercial operational date, including completing the interconnection process.

J. Additional criteria used by the utility for [ranking] evaluation may not establish a preference for utility ownership or for projects proposed by a utility-affiliated company. The utility shall not unreasonably discriminate between proposals for a utility-owned or utility affiliate-owned resource and proposals for a resource owned by an independent power producer through a purchased power agreement.

K. The bid evaluation shall ensure that all bids are compared and evaluated on a consistent basis that is competitive, fair, and shall be subject to review by the commission.

L. The utility may issue additional RFPs in the current IRP docket, adhering to the processes and procedures described in 17.7.3.12 NMAC, if prudent following a material event pursuant to Subsection D of 17.7.3.11 NMAC.

M. Nothing in this rule shall be construed to prevent a public utility from procuring resources as required by the REA, Section 62-16-4 NMSA 1978, the EUEA, Section 62-17-5 NMSA 1978, or 17.9.570 NMAC. Such procurements shall be included in the utility's forecasting, statement of need, and action plan. [17.7.3.12 NMAC - N, 10/27/2022; A, 11/29/2022]

17.7.3.14 INDEPENDENT MONITOR:

A. Scope and purpose: The independent monitor's role is to help the commission determine that the request for proposals design and execution is fair, competitive, and transparent. The independent monitor shall advise the commission and report on the RFP process, but the independent monitor shall not make or participate in the public utility's decisions regarding the procurement process or the selection of resources.

B. Following commission acceptance of a public utility's statement of need and action plan, the commission shall appoint an independent monitor to monitor the procurement process of a public utility for competitive resource procurements pursuant to 17.7.3.12 NMAC. The independent monitor, as provided in this Section, shall assist the commission in ensuring that all such processes are reasonable and competitively fair and shall report to the commission regarding those matters as provided in this rule. The commission may appoint an IM for emergency procurements pursuant to 17.7.3.17 NMAC.

C. The commission shall, through its designee:

- (1) undertake a process consistent with state purchasing rules and commission policies in recommending a pool of qualified IMs;
- (2) develop an 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) confer with the public utility on the recommendation of the IM;
- (5) recommend qualified bidders to the commission for appointment as the IM; and
- (6) administer the contract with the appointed IM, including: confirming that contract deliverables are met, reviewing invoices and related contract performance, and approving utility invoices after staff's review and approval.

D. In selecting the IM, the commission, through its designee, may solicit recommendations of the names of independent firms or individuals that demonstrate independence from public utilities supplying electric service in the state, their affiliates, and likely bidders, and demonstrate the qualifications, expertise, and experience to perform the functions of an IM as provided in this rule.

(1) The IM shall provide a statement of interest to the commission which discloses any contracts or other economic arrangements of any kind between the IM and any investor-owned electric utility or affiliate within the last four years.

(2) The IM shall notify the commission and utility of any perceived or actual conflicts that arise during the course of the procurement process.

E. The commission, through its designee, shall develop a standard form of contract between an IM and the commission that requires the IM to perform the functions of an IM as provided in this rule in a manner that is not subject to the control of the public utility. The standard form of contract between an IM and the commission for IM services as provided for in this rule shall include, but shall not be limited to, the identification of the IM's functions and scope of work as provided in Subsection G of 17.7.3.14 NMAC.

F. Funding for the services of the IM shall be paid by the utility and treated as a regulatory asset to be recovered through rates established in the utility's next general rate proceeding.

G. Duties of the independent monitor:

(1) The IM shall file a minimum of two reports with the commission. The first report shall analyze the RFP design (design report). The final report shall review the fairness of the RFP execution (final report).

(a) In the design report, the IM shall report to the commission on RFP design within 28 days of the public utility's provision of RFP documents pursuant to Subsection C of 17.7.3.12 NMAC. The IM shall analyze the proposed RFP, including but not limited to its scope, instructions, conditions for eligible proposals, specifications, time schedules, disclosure of bid evaluation methods, and term sheets. The RFP design report shall state whether the contents of the proposed RFP comply with the requirements of 17.7.3.10 NMAC through 17.7.3.12 NMAC and are otherwise reasonable, competitively fair, designed to promote a robust bid response, and designed to identify a utility's most cost-effective option among resource alternatives to meet its service needs in compliance with this rule.

(b) In the final report, the IM shall, within 30 days of the utility's submission of its shortlist to the IM, review and report on the reasonableness, competitiveness, and fairness of the utility's solicitation, evaluation, and procurement processes, including but not limited to bid screening, comparison, [ranking] evaluation, and short-listing criteria.

(i) The IM shall state whether the RFP process implemented by the public utility complied with the requirements of 17.7.3.11 NMAC and 17.7.3.12 NMAC.

(ii) The IM's report shall also provide summary information on the results of the bids, including the number of bids sorted by the following criteria: by resource type, capacity or energy, price range by resource type, and whether there were any deficiencies in those respects that should be addressed by the commission in a future proceeding for approval of the solicited projects. The commission may rely on that opinion to request that the utility make modifications in a timely manner.

(2) At any point during the public utility's RFP process the IM may notify the commission and the utility of any deficiency as contemplated in Subsection G of 17.7.3.14 NMAC.

H. The public utility shall provide the IM with prompt and continuing access to all documents, data, assumptions, models, specific model inputs, bidding and weighting criteria used, and any other relevant information reviewed, produced, or relied on by the public utility in the preparation and conduct of its competitive resource procurement process.

I. All communications, including but not limited to reports pursuant to this Section, provided by the IM to the commission, shall be made part of the commission's public records in a timely manner in the public utility's most recent IRP docket.

(1) The public utility, commission utility division staff, and any parties to the public utility's most recent IRP docket may comment within 14 days of the filing of the design report to the public record. After the design report comment deadline of 14 days, the utility may issue the RFP.

(2) In any proceeding filed by a public utility for approvals stemming from its solicitation made pursuant to the RFP process as described in 17.7.3.12 NMAC, the commission may rely upon any reports or findings of the IM assigned to monitor that solicitation as evidence, provided that such evidence shall not be conclusive as to whether or not a resource proposed by the utility shall be approved.

J. All communications between the public utility and any bidders shall be shared at the same time with the IM. Commission utility division staff and any parties are restricted from initiating contacts with the

independent monitor. The independent monitor may initiate contact with the utility, commission utility division staff, and any parties.

(1) For all contacts with the public utility, commission utility division staff, and any parties in the resource plan proceeding, the independent monitor shall maintain a log that briefly identifies the entities communicating with the IM, the date and duration of the communication, the means of communication, the topics discussed, and the materials exchanged, if any.

(2) The communications log shall be contained in the IM's report to the commission pursuant to Subparagraph (b) of Paragraph (1) of Subsection G of 17.7.3.14 NMAC.

K. The independent monitor shall serve as an advisor to the commission and shall not be a party to the proceedings in accordance with 1.2.3.9 NMAC. As such, the independent monitor shall not be subject to discovery nor cross-examination at hearing, if one is held, but the public utility, commission utility division staff, and any parties shall have the opportunity to respond to any reports or findings of the IM pursuant to Paragraph (1) of Subsection I of 17.7.3.14 NMAC.

L. The commission shall not appoint an independent monitor for a utility's procurement for which the commission grants a variance pursuant to Subsection D of 17.7.3.17 NMAC.

[17.7.3.14 NMAC - N, 10/27/2022; A, 11/29/2022]

17.7.3.16 EXEMPTIONS:

A. Motion for exemption from rule: Upon motion by a utility and for good cause shown, the commission may exempt public utilities with fewer than five thousand customers and distribution-only public utilities from the requirements of this rule.

B. Filing of a notice of exemption from rule: Upon the filing of a notice of exemption in the utility's most recent IRP docket, a utility shall be exempted from the requirements of 17.7.3.12 and 17.7.3.14 NMAC for the following procurements:

(1) emergency procurements; and
(2) capacity or energy from the generation facilities of other utilities or from non-utility generators pursuant to agreements for a two year term or less (including renewal terms) or for 20 megawatts of capacity or less;

~~[B.]~~ C. Multi-state resource planning: The commission shall take into account a public utility's resource planning requirements in other states and shall authorize utilities that operate in multiple states to implement plans that coordinate the applicable state resource planning requirements.

[17.7.3.16 NMAC - Rp, 17.7.3.14 NMAC, 10/27/2022; A, 11/29/2022]

17.7.3.17 VARIANCES AND AMENDMENTS:

A. A utility may file a request for a variance from the requirements of this rule.

B. Such application shall:

(1) describe the situation which necessitates the variance;

(2) set out the effect of complying with this rule on the utility and its customers if the variance is not granted;

(3) identify the section(s) of this rule for which the variance is requested;

(4) describe the expected result which the request shall have if granted; and

(5) state how the variance shall aid in achieving the purposes of this rule.

C. The commission may grant a request for a procedural variance through an order issued by the chair, a commissioner, or a designated hearing examiner.

D. The following types of procurements that deviate from the utility's commission-accepted action plan shall be submitted to the commission as an application for a variance pursuant to 17.7.3.17 NMAC:

~~(1) emergency procurements;~~

~~(2) capacity or energy from newly constructed, utility-owned, supply-side resources with a nameplate rating of 20 megawatts or less;~~

~~(3) capacity or energy from the generation facilities of other utilities or from non-utility generators pursuant to agreements for a two year term or less (including renewal terms) or for 20 megawatts of capacity or less;~~

~~(4) improvements or modifications to existing utility generation facilities that change the production capability of the generation facility site in question by 20 megawatts or less based on the utility's share of the total power generation at the facility site and that have an estimated cost of \$20 million or less;~~

~~(5) interruptible service provided to the utility's electric customers;~~

~~_____ (6) _____ modification to, or amendment of, existing power purchase agreements provided that the modification or amendment does not extend the agreement more than four years, does not add more than 20 megawatts of nameplate capacity to the utility's system, and is cost effective in comparison to other supply-side alternatives available to the utility; and~~

~~_____ (7) _____ utility administered demand-side programs.]~~

_____ (1) _____ capacity or energy from newly-constructed, utility-owned, supply-side resources with a nameplate rating of 20 megawatts or less;

_____ (2) _____ improvements or modifications to existing utility generation facilities that change the production capability of the generation facility site in question by 20 megawatts or less based on the utility's share of the total power generation at the facility site and that have an estimated cost of \$20 million or less;

_____ (3) _____ interruptible service provided to the utility's electric customers;

_____ (4) _____ modification to, or amendment of, existing power purchase agreements provided that the modification or amendment does not extend the agreement more than four years, does not add more than 20 megawatts of nameplate capacity to the utility's system, and is cost effective in comparison to other supply-side alternatives available to the utility; and

_____ (5) _____ utility administered demand-side programs.

[17.7.3.17 NMAC - Rp, 17.7.3.15 NMAC, 10/27/2022; A, 11/29/2022]