

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES**  
**CHAPTER 9 ELECTRIC SERVICES**  
**PART 551 PRIOR APPROVAL OF PURCHASED POWER AGREEMENTS**

**17.9.551.1 ISSUING AGENCY:** New Mexico Public Regulation Commission.  
[17.9.551.1 NMAC – N, 7-31-12]

**17.9.551.2 SCOPE:** This rule applies to the investor owned electric utility operating within New Mexico subject to the jurisdiction of the New Mexico public regulation commission and to purchased power agreements entered into after the the effective date of this rule. This rule shall not supersede or modify requirements pertaining to an electric utility’s purchased power agreements with its affiliates as set by New Mexico public regulation commission orders.  
[17.9.551.2 NMAC – N, 7-31-12]

**17.9.551.3 STATUTORY AUTHORITY:** Public Regulation Commission Act, Sections 8-8-1 et. seq. NMSA 1978, Public Utility Act, Sections 62-3-1, 62-6-4, and 62-6-19 NMSA 1978.  
[17.9.551.3 NMAC – N, 7-31-12]

**17.9.551.4 DURATION:** Permanent.  
[17.9.551.4 NMAC – N, 7-31-12]

**17.9.551.5 EFFECTIVE DATE:** July 31, 2012, unless a later date is cited at the end of a section.  
[17.9.551.5 NMAC – N, 7-31-12]

**17.9.551.6 OBJECTIVE:** To establish review and approval procedures for purchased power agreements.  
[17.9.551.6 NMAC – N, 7-31-12]

**17.9.551.7 DEFINITIONS:**

**A. “Capacity cost”** means a charge separately identified and incurred under a purchased power agreement for capacity or the reservation of capacity.

**B. “Commission”** means the New Mexico public regulation commission.

**C. “Electric utility”** means an entity certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act Sections 62-13-1, et seq. NMSA 1978, but does not include rural electric cooperatives.

**D. “Fixed cost”** means a charge separately identified and incurred under a purchased power agreement that does not vary with changes in amount used, volume consumed, or units purchased. A fixed cost includes, but is not limited to, administrative fees, accounting fees, facilitation fees, minimum payment amounts, and similar charges.

**E. “Long term purchased power agreement”** or **“LTPPA”** means a purchased power agreement with a term of five (5) years or more and for which an electric utility seeks or intends to seek rate recovery from its New Mexico retail customers. The term shall be inclusive of the base term and any automatic or option extensions.

**F. “Purchased power agreement”** means a agreement for the purchase of energy or capacity, or both, by an electric utility with a term of any length and for which an electric utility seeks or intends to seek rate recovery from its New Mexico retail customers, but does not include agreements to purchase renewable energy subject to commission review and approval under the Renewable Energy Act Sections 62-16-1, et seq. NMSA 1978, or agreements to purchase energy or capacity from a qualifying facility pursuant to Section 17.9.570 NMAC.

[17.9.551.7 NMAC – N, 7-31-12]

**17.9.551.8 GENERAL REQUIREMENTS FOR FILING AN APPLICATION FOR APPROVAL OF A LONG TERM PURCHASED POWER AGREEMENT:**

**A.** No electric utility shall become irrevocably obligated under an LTPPA without first obtaining the commission’s written approval of the agreement.

**B.** An electric utility shall file at the commission within thirty (30) days after the execution of a LTPPA, an application for the commission’s review and approval of the LTPPA. The proceeding to consider the application shall be a proceeding concerning a utility’s resource acquisition under Subsection B of 17.7.3.12 NMAC.

**C.** Copies of the application shall be served on commission staff, the New Mexico attorney general and parties in the electric utility's most recent general electric rate case, in accordance with Subsection C of 1.2.2.10 NMAC.

**D.** An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide:

- (1) a copy of the LTPPA; and
- (2) an explanation of the key terms and conditions of the LTPPA containing:
  - (a) the term of the LTPPA including any options to extend the agreement;
  - (b) the size in MW of capacity and the amount of energy in MWh or kWh per month and any conditions regarding the minimum or maximum amount of energy or capacity made available or required to be purchased;
  - (c) the price or pricing formula under which the electric utility will pay for the power and energy contracted for, including identification of when charges begin to be incurred, any price reopeners and any price escalation provisions;
  - (d) obligations by the electric utility to pay for any fixed or variable administrative, transactional or operation and maintenance costs incurred through the operation of the generation facility, including start-up costs, taxes, insurance, environmental or reclamation-related costs, fuel costs and any other costs that the electric utility may incur; and
  - (e) provisions relating to non-performance by the counter-party and the remedies provided;
- (3) a description of transmission costs the electric utility will incur or pay to receive the purchased power, which may include the costs of third-party transmission wheeling, or construction of transmission to facilitate purchases under the LTPPA or both;
- (4) an explanation of how the electric utility proposes to recover from ratepayers the costs incurred and an estimate of the effect on rates to customers;
- (5) a general description of:
  - (a) the generating facility or facilities that will generate the purchased power; or
  - (b) if the power is to be generated from one or more specific generating units to be constructed outside New Mexico, a description of the anticipated siting of the generating unit, expected construction time and the expected commercial operation date; and
  - (c) if the power is to be generated from one or more specific generating units to be constructed within New Mexico, a description of:
    - (i) the approvals required to construct and operate the generating unit, including air quality and other environmental permits;
    - (ii) the expected construction time;
    - (iii) the expected commercial operation date;
    - (iv) the fuel type and supply sources; and
    - (v) other provisions addressing the electric utility's ownership options for the generating unit during or after the term of the agreement;
- (6) evidence that entering into the LTPPA is consistent with the provision of safe and reliable electric utility service at the lowest reasonable cost, considering both short and long-term costs and all other relevant factors;
- (7) evidence of the LTPPA's impact on the electric utility's financial condition and financial metrics;
- (8) evidence that the LTPPA is consistent with the electric utility's most recent commission-accepted integrated resource plan unless, as described in Section 17.7.3.10 NMAC, material changes that would warrant a different course of action by the electric utility have occurred; in which case, the testimony shall include justification for deviation from the integrated resource plan;
- (9) evidence addressing whether a utility-owned generation resource could have been constructed as an alternative to the LTPPA with greater benefit to ratepayers;
- (10) evidence addressing the methodology and criteria by which the purchased power agreement was selected; and
- (11) any other information or evidence that the electric utility believes will assist the commission in its review of the LTPPA.

**E.** The electric utility may, as set forth in Subsection D of 17.9.551.8 NMAC, submit any portion of its application and supporting documentation under seal, to the extent that the electric utility deems the specific information to be confidential. The electric utility shall seek a protective order under Subsection B of 1.2.2.8 NMAC for the information it considers confidential.

[17.9.551.8 NMAC – N, 7-31-12]

**17.9.551.9 RATEMAKING TREATMENT FOR ALL PURCHASED POWER AGREEMENTS:**

**A.** The following ratemaking treatment shall apply to all purchased power agreements unless otherwise expressly authorized by order of the commission:

(1) energy costs incurred under a purchased power agreement are recoverable through a fuel and purchased power cost adjustment clause (“FPPCAC”) according to the provisions of the FPPCAC approved for the electric utility; and

(2) capacity costs and fixed costs incurred under a purchased power agreement, as well as energy costs incurred by an electric utility without an approved FPPCAC, may be recoverable through base rates when the commission issues an order authorizing a change in base rates that includes recovery of the capacity costs and fixed costs, and energy costs in the case of an electric utility without an approved FPPCAC.

**B.** An electric utility may include in an application for approval of an LTPPA a request that the commission determine other ratemaking principles and treatment that will apply to the LTPPA.

**C.** If a request for a determination of other ratemaking principles and treatment is made, the commission shall determine the appropriate ratemaking treatment and principles that will apply to the LTPPA during its term and include that determination in the order granting approval of the LTPPA.

[17.9.551.9 NMAC – N, 7-31-12]

**17.9.551.10 PROCESS FOR APPROVAL OF A LONG-TERM PURCHASED POWER AGREEMENT:**

**A.** The commission may approve an application for approval of an LTPPA without a formal hearing if no protest is filed within sixty (60) days after the date that notice is given pursuant to a commission order.

**B.** The commission shall issue its final order acting on the application within six (6) months after the date the application was filed. A final order denying an application shall be without prejudice. The electric utility may re-file a previously denied application at any time after that denial. If the commission does not issue its final order within six (6) months after the date that the application was filed by the electric utility, the application shall be deemed to be approved.

[17.9.551.10 NMAC – N, 7-31-12]

**17.9.551.11 INFORMATIONAL FILING REQUIREMENTS FOR A PURCHASED POWER AGREEMENT WITH A TERM OF TWO (2) YEARS OR MORE BUT LESS THAN FIVE (5) YEARS:**

**A.** An electric utility may, but is not required to, request approval or request ratemaking treatment other than as provided in Subsection A of 17.9.551.9 NMAC, for a purchased power agreement with a term of two (2) years or more but less than five (5) years, by filing the same type of application applicable to a LTPPA. The provisions in 17.9.551.10 NMAC shall apply to an application regarding a purchased power agreement with a term of two (2) years or more but less than five (5) years.

**B.** An electric utility entering into a purchased power agreement with a term of two (2) years or more but less than five (5) years for which the utility intends to seek rate recovery either in base rates or its fuel and purchased power cost adjustment clause, shall file with the commission a notice of purchased power agreement within thirty (30) days of execution.

**C.** A notice of purchased power agreement shall include a copy of the agreement and:

(1) an explanation of the key terms and conditions of the agreement, including:

(a) its term;

(b) its size in MW of capacity and any conditions regarding the minimum or maximum amount of energy or capacity made available or required to be purchased;

(c) the price or pricing formula, including any escalation provisions, and, if applicable, any obligations of the utility to pay for any fixed or variable operation and maintenance costs incurred through the operation of any generation facility providing service under the agreement, including start-up costs, taxes, insurance, environmental or reclamation-related costs and fuel costs; and

(d) any other costs for which the public utility is obligated;

(2) a description of transmission costs the utility will incur or pay to receive the purchased power and any impact on the transmission system of the agreement, including any needed construction of transmission facilities to facilitate purchases under the agreement;

(3) an explanation of how the utility intends to recover costs incurred under the agreement from ratepayers;

(4) an explanation of the impact of the agreement on the electric utility’s financial condition or financial metrics;

(5) an explanation of how entering into the agreement is consistent with the provision of safe and reliable electric utility service at the lowest reasonable cost, considering both short- and long-term costs and all other relevant factors;

(6) an explanation of whether the agreement will result in the deferment or delay of any capacity addition by the public utility, and whether the agreement is consistent with the utility's most recent commission-accepted integrated resource plan;

(7) evidence addressing the methodology and criteria by which the purchased power agreement was selected; and

(8) any information that the electric utility believes will assist the commission in its review of the agreement.

[17.9.551.11 NMAC – N, 7-31-12]

**17.9.551.12 VARIANCES:**

**A.** An electric utility may file a request for a variance from the requirements of this rule with service of the request to the same parties on whom the application must be served; such request shall:

(1) identify the sections of this rule for which the variance is requested;

(2) describe the reasons for the variance;

(3) set out the effect of complying with this rule on the parties and the electric utility's customers if the variance is not granted;

(4) describe the expected result that the request will have if granted; and

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

**B.** The commission may grant a request for a procedural variance through an order issued by a single commissioner or a designated hearing examiner. Other variances shall be presented to the commission for its determination.

[17.9.551.12 NMAC - N, 7-31-12]

History of 17.9.551 NMAC: [Reserved]