

**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 – N, xx-xx-2006]

**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 Service Commission [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, including those contained in .4 thru 570.9 and 570.16 through 570.26 [Subsections A - F of 17.9.570.9 NMAC and Subsections A - D of 17.9.570.11 NMAC through Subsections A - G of 17.9.570.12 NMAC] hereof, 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 shall continue in full force and effect unless the Commission specifically rescinds any such variance.  
[17.9.570.2 NMAC – N, xx-xx-2006]

**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 – N, xx-xx-2006]

**17.9.570.4 DURATION:** Permanent.  
[17.9.570.4 NMAC – N, xx-xx-2006]

**17.9.570.5 EFFECTIVE DATE:** December XX, 2006, 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 – N, xx-xx-2006]

**17.9.570.6 OBJECTIVE:**

A. 17.9.570 NMAC is promulgated 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 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.  
[17.9.570.6 NMAC – N, xx-xx-2006]

**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 A - D 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. "Interruptible Power" means power supplied by an electric utility subject to interruption by the electric utility under specified conditions.

E. "Maintenance Power" means power supplied by an electric utility during scheduled outages of the qualifying facility.

F. "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:

- (1) construction of or participation in new generating facilities,
- (2) augmenting the capacity of or extending the life of existing generating facilities through capital improvements, or
- (3) entering into new contracts or exercising options in existing contracts which will result in additional capacity.

G. "New Capacity Addition" does not include the following:

- (1) renegotiation of existing contracts for anything other than increasing capacity in the resource mix,

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

(3) seasonal uprating in capacity achieved without any capital improvements to existing generating facilities.

H. "Power" means electric energy or capacity or both.

I. "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.

J. "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.

K. "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. '

L. "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.

M. "Tariff" means the document filed by a utility with the Commission pursuant to 17.9.570 NMAC containing that utility's rules, regulations, practices, and forms authorized for use in service by the utility including the application form for interconnection referred to in Subsection C of 17.9.570.9 NMAC, the rates and other terms for the purchase of energy referred to in Subsection B of 17.9.570.11 NMAC, the rates and services offered to support qualifying facilities referred to in Subsections A - G of 17.9.570.12 NMAC, and the interconnection and safety standards referred to in .Subsection H of 17.9.570.12 NMAC.  
[17.9.570.7 NMAC – N, xx-xx-2006]

#### **17.9.570.8 [TABLE OF CONTENTS:]**

A. General Provisions

- (1) Purpose [17.9.570.6 NMAC]
- (2) Application [17.9.570.2 NMAC]
- (3) Definitions [17.9.579.7 NMAC]

B. Procedure for Interconnection [17.9.570.9 NMAC]

- (1) General
- (2) Conditions of Interconnection
- (3) Applications for Interconnection
- (4) Contract
- (5) Interconnection and Operation
- (6) Costs of Interconnection
- (7) Obligation of Purchase

C. Metering Options [17.9.570.10 NMAC]

- (1) General
- (2) Load Displacement Option
- (3) Net Metering Option
- (4) Separate Load Metering (simultaneous buy/sell) Option
- (5) Metering Configurations

- D. Determination of Rates for Purchasers from Qualifying Facilities [17.9.570.11 NMAC]
    - (1) General
    - (2) Energy Rate
    - (3) Avoided Capacity Costs
    - (4) Negotiations
  - E. Obligation to Sell [17.9.570.12 NMAC]
    - (1) Rates to be Offered
    - (2) Supplementary Power
    - (3) Backup Power '
    - (4) Maintenance Power
    - (5) Interruptible Power
    - (6) Customer Charges
    - (7) Exceptions
    - (8) Interconnection and Safety Requirements
  - F. Periods When Purchases and Sales are Not Required [17.9.570.13 NMAC]
    - (1) System Emergencies
    - (2) Operational Circumstances
    - (3) Notification Requirements
    - (4) Penalty
    - (5) Wheeling of Power
    - (6) Distribution Cooperative
    - (7) Requirements to File Electric Utility System Data
    - (8) Filing of Tariff
    - (9) Complaints and Investigations
    - (10) Severability
    - (11) Amendment
    - (12) Exemption or Variance
    - (13) Motion for Stay Pending Amendment, Exemption, or Variance
    - (14) Appendix A: Standard Interconnection Agreement
- [17.9.570.8 NMAC – N, xx-xx-2006]

**17.9.570.9 PROCEDURE FOR INTERCONNECTION:**

A. General: Unless otherwise specifically provided for in the Standard Interconnection Agreement referred to in Paragraph 2 of Subsection D of 17.9.570.9 NMAC, the procedures in .Subsections B through F of 17.9.570.9 NMAC for applications for interconnection, contracts, and interconnections shall be followed.

B. Conditions of Interconnection: A utility shall interconnect with any cogenerator or small power producer which:

- (1) is in its service area,
- (2) is a qualifying facility,
- (3) files a written notice to interconnect in accordance with 17.9.570 NMAC,
- (4) meets the utility's system safety standards,
- (5) has paid the estimated costs of interconnection (if applicable),

(6) has entered into a contract with the utility pursuant to Subsection D of 17.9.570.9 NMAC,

(7) has substantially completed a facility that is capable of operating safely and commencing the delivery of power into the utility system, and

(8) has provided a statement from a licensed professional electrical engineer certifying that the design of the qualifying facility and its interconnection equipment comply with utility requirements and with reasonable interconnection safety and design standards and prudent electrical practices.

C. Applications for Interconnection.

(1) Each utility shall develop and file a proposed form of application for interconnection as a part of its tariff filing required by 17.9.570 NMAC. A qualifying facility shall make its application for interconnection to a utility on the form of application for interconnection which shall be provided by the utility. A utility shall provide a blank form of application for interconnection within ten (10) days of a written request for such form. Such form of application shall provide for the submission by a qualifying facility of reasonable and adequate technical information and detail to enable the utility to comply with its interconnection obligations.

(2) Unless a longer period of time is agreed to in writing by the qualifying facility, within thirty (30) days of receipt of a written application for interconnection a utility shall furnish to the qualifying facility a good faith, detailed list of required interconnection equipment and an itemized estimate of the costs that the qualifying facility will have to pay the utility for interconnection. Once the utility provides the qualifying facility with the list of required interconnection equipment the list shall not change substantially other than in response to changes in design, location of equipment, and/or intended operation of the equipment of the qualifying facility.

(3) If an application for interconnection fails to comply with the requirements in 17.9.570 NMAC or is otherwise insufficient, the utility shall attempt to obtain the required information to complete the application by telephone. If the utility cannot so obtain the complete information, the utility shall within fifteen (15) days of receipt of the application for interconnection notify the qualifying facility and the Commission specifying the deficiencies in the application.

(4) If the qualifying facility disagrees with the utility's determination that the application for interconnection is insufficient, it may within fifteen (15) days of such notification initiate a proceeding before the Commission pursuant to the complaint process of 17.9.570 NMAC wherein the utility shall respond and support its rejection. The utility shall have the burden to establish that the rejection was justified.

D. Contract.

(1) After receiving the estimated costs of interconnection the qualifying facility shall file a written notice with the utility of its intent to enter into a contract. Within thirty (30) days of receipt of such notice of intent to contract the utility shall offer a contract to the qualifying facility which complies with the terms and conditions of 17.9.570 NMAC. Any final terms and conditions shall be negotiated between the utility and the qualifying facility within thirty (30) days after submission of the contract unless otherwise agreed to in writing. If the parties are unable to reach agreement within the said thirty-day period, the qualifying facility may initiate a proceeding before the Commission pursuant to the complaint process of 17.9.570 NMAC.

(2) Where the utility's avoided costs do not contain payment for capacity, the Standard Interconnection Agreement for qualifying facilities with a design capacity of 100 kilowatts or less (attached to 17.9.570 NMAC as Exhibit A and incorporated herein) shall be offered by the utility to any person wishing to interconnect a qualifying facility of 100 kilowatts or less to the utility system. The utility shall substitute its name or acronym for the bracketed portions of the standard agreement, as appropriate. Should the small power producer refuse the standard agreement, negotiations may take place consistent with 17.9.570 NMAC. For qualifying facilities with a design capacity of over 100 kilowatts the contract shall be negotiated in accordance with the provisions of Paragraph 1 of Subsection D of 17.9.570.9 NMAC.

(3) When the utility's avoided costs contain payment for capacity, the utility and the qualifying facility should negotiate a contract in accordance with the provisions of Paragraph 1 of subsection D of 17.9.570.9 NMAC.

(4) If the qualifying facility desires to sell its power to a utility other than the utility in whose service territory the qualifying facility is located, the qualifying facility may negotiate whatever arrangements it can with the second utility under 17.9.570 NMAC provided that the first utility agrees in writing that it will wheel the qualifying facility's power to the second utility.

(5) The qualifying facility and the utility must coordinate the maintenance schedule of the qualifying facility. Any disputes concerning the establishment of the maintenance schedule shall be submitted to the Commission pursuant to the complaint process of 17.9.570 NMAC.

(6) All qualifying facilities are strongly urged to obtain liability insurance to cover risks, liabilities, and consequences which may arise as a result of interconnection with a utility system. A utility may require qualifying facilities larger than 50 kW to obtain general liability insurance not to exceed \$1,000,000 before the qualifying facility starts actual operation. In extraordinary cases and for good cause shown the Commission may require a qualifying facility to obtain a greater amount of general liability insurance.

#### E. Interconnection and Operation.

(1) 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 of the facility, and the date the qualifying facility anticipates 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 facility at the appropriate energy rate pursuant to Subsection B of 17.9.570.11 NMAC.

(2) 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) days of receipt of the ' notice to interconnect notify the qualifying facility and the Commission 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 17.9.570 NMAC and the utility shall respond and support its position. 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 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.

F. Costs of Interconnection: Payment for all costs of interconnection (determined in accordance with the definition of "Interconnection Costs" in 17.9.570.7 NMAC shall be the responsibility of the owner or operator of the qualifying facility. If the utility incurs any of the costs of interconnection, the qualifying facility shall reimburse the utility for such costs. The estimated costs for interconnection referred to in Paragraph 2 of Subsection C of 17.9.570.9 NMAC hereof shall be paid prior to interconnection. Upon completion of the interconnection the actual costs of interconnection shall be determined in a verifiable form by the utility, and any actual costs in excess of the estimated costs shall be paid by the qualifying facility to the utility within thirty (30) days. If the estimated costs exceed actual costs the utility shall refund the difference to the qualifying facility within thirty (30) days.

G. Obligation to Purchase: 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.  
[17.9.570.9 NMAC – N, xx-xx-2006]

#### **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 17.9.570.11.B. 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 17.9.570.11.B. 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 – N, xx-xx-2006]

**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 from the issuance of Third Revised General Order No. 37 (codified by 17.9.570 NMAC) each electric utility subject to the Order 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 A - D 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 from the effective date of Third Revised General Order No. 37 (codified by 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 – N, xx-xx-2006]

#### **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 Subsections A - G of 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 factor 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.

H. Interconnection and Safety Requirements.

(1) Each utility shall develop and file with the Commission proposed general safety standards governing the installation, operation, and maintenance of the protective equipment required to integrate qualifying facilities into the utility's electric system (if any such equipment is required). These general safety standards may contain reasonable provisions for case-by-case standards for certain qualifying facilities based on their size and/or location. These standards shall be reasonable and nondiscriminatory and shall be designed to assure system and personnel safety.

(2) Nothing in 17.9.570 NMAC shall be construed to preclude a utility from evaluating each request for interconnection on its own merits and requesting and obtaining a variance from the Commission which would modify the general standards developed pursuant Subsection H of 17.9.570.12 NMAC to reflect the result of such an evaluation.

(3) The qualifying facility's output to the utility will meet the following interconnection standards.

(a) The voltage will be that voltage normally available on the utility system at the qualifying facility's site or such other standard voltage as may be agreed to by the qualifying facility and utility. These voltages are covered by A.N.S.I. Standards.

(b) The frequency will be 60 Hertz.

(c) The number of phases of the produced voltage will be compatible with the phases available on the utility system at the qualifying facility site. Normally the number of phases shall be the same as those of the utility system.

(d) When the output of the qualifying facility is single phase, connection to the utility's system shall only be allowed if the output does not result in an unacceptable current imbalance. If the output of the qualifying facility is single phase and connected to the secondary side of a single phase service distribution transformer, the output capacity of the qualifying facility shall not exceed ten kVA.

(e) The protective devices connected between the output of the qualifying facility and the utility system must be rated for the maximum available fault current which the utility's system may be capable of developing at the point of interconnection. Such devices shall disconnect the qualifying facility's generation from the utility's system in the event of a fault on the system belonging to the qualifying facility in order to maintain continuity of service to other customers connected to the secondary of the distribution transformer or other portions of the utility's system.

(f) Recognizing that voltage quality varies widely on various distribution systems, the qualifying facility generator output shall not affect the utility's distribution system. This includes but is not limited to:

- (i) overload of distribution equipment,
  - (ii) abnormal harmonic currents or voltages,
  - (iii) interference with automatic voltage regulation equipment,
- and
- (iv) electronic noise that would interfere with communications.

(g) The system of the qualifying facility shall be capable of protecting itself from damage resulting from impact loading and/or overloading under both normal operating conditions and emergency conditions.

(4) This shall include the ability to synchronize on connecting to the utility system to avoid voltage decay or out-of-phase connection. The controls of the qualifying facility shall be capable of disconnecting the qualifying facility's output to the utility or otherwise limiting the qualifying facility's input to avoid overload of any of the utility system components or undesirable transient voltage or frequency fluctuations in the event of a fault on the utility's system or under conditions of large motor start or capacitor switching operations on the utility system to which qualifying facility is interconnected. These devices must be coordinated with the utility's protective system. The qualifying facility must meet the following Safety Standards.

(a) The qualifying facility's interconnection must meet the requirements of the National Electrical Safety Code, National Electrical Code, and the State of New Mexico Electrical Code.

(b) The qualifying facility's interconnection must automatically disconnect from the utility's system if the utility service is interrupted. The qualifying facility will coordinate automatic reenergization in the utility's system with the utility's standard protection practices. The utility may discontinue service to or from a qualifying facility if it has been determined that continuation of service would contribute to such emergency.

(c) There must be a load break disconnect between the qualifying facility's interconnection and the utility which can be controlled and operated by the utility. Where the qualifying facility is a customer of the utility, the disconnect or disconnects shall disconnect the qualifying facility's generator output without interrupting

utility service to the customer's other load unless otherwise agreed. This disconnect must provide a visible air gap which will assure disconnection of the qualifying facility before a utility employee does any work on the circuit or circuits to which the interconnection is made. The meter socket or secondary connection compartment or bus compartment may be provided by the utility or provision may be required of the qualifying facility as is presently provided for in the case of each component by the rules and regulations filed with the Commission in the case of the specific utility. In any event the capacity and the connection arrangements of the specific device must be approved by the utility if the qualifying facility is required to provide the device. (Note: Where a device is now provided by a customer under the filed rules and regulations of a utility, standard drawings or a list of approved devices are normally available from the utility.)

[17.9.570.12 NMAC – N, xx-xx-2006]

**17.9.570.13 PERIODS WHEN PURCHASES AND SALES ARE NOT REQUIRED:**

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 Subsection G of 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 Subsections A through D of 17.9.570.11. 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 Subsections A through D of 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: 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 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 17.1.2.18 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. Exception 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 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 – N, xx-xx-2006]

**17.9.570.14 [HISTORY:** Recodified at 17.9.570 NMAC effective 12/31/01. Codified by NMPSC Case No. 2086, order dated June 30, 1988, amended by NMPSC Case No. 2232 order dated December 19, 1988. Formerly adopted as Third Revised General Order

No. 37, effective March 10, 1988, superseded for purposes of rule reorganization and codification.]  
[17.9.570.14 NMAC – N, xx-xx-2006]

**17.9.570.15 APPENDIX A: STANDARD INTERCONNECTION AGREEMENT FOR QUALIFYING FACILITIES WITH A DESIGN CAPACITY OF 100 KILOWATTS OR LESS:**

A. Preamble:

(1) This AGREEMENT is made as of the \_\_\_\_ day of \_\_\_\_, 19\_\_, by and between a \_\_\_\_\_ [partnership] [a single person] [husband and wife] ("Producer") and \_\_\_\_\_ ([Utility], [Tri-State]) hereinafter referred to collectively as "Parties" and singularly as "Party".

(2) [WHEREAS, the Producer receives electric service from [Utility];]

(3) [WHEREAS, the Producer receives electric service from \_\_\_\_\_ Electric Cooperative, Inc. ("Distribution Cooperative"), which is a member of Tri-State, receives its full requirements wholesale electric service from Tri-State and has retained all rights and obligations concerning continued electric service to the Producer;]

(4) WHEREAS, [Utility] [Tri-State] is subject to the [limited] jurisdiction of the New Mexico Public Service Commission ("NMPSC"), and [Utility] [Tri-State] desires to [purchase] [accept] and the Producer desires to [sell] [provide] all the electric energy produced by the Qualifying Facility ("QF") that is not consumed by the Producer, and the NMPSC has adopted 17.9.570 NMAC governing this transaction and [Utility] [Tri-State] [Distribution Cooperative] has filed its Tariff thereunder, a copy of which is annexed hereto and incorporated herein by reference and is subject to change by the NMPSC; and

(5) WHEREAS, the Producer represents and warrants that the facility is a QF as defined by 17.9.570 NMAC having an installed capacity of 100 kilowatts or less.

(6) NOW, THEREFORE, for and in consideration of the mutual undertakings herein contained and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Producer and [Utility] [Tri-State] agree as follows:

B. SECTION 1: 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 of an installed capacity of 100 kilowatts or less which meets the criteria for qualification contained in 18 C.F.R. Section 292.203.

(5) "Interconnection Costs" means those costs set forth in Section 1.3C of Third Revised General Order No. 37. Section 1.6.

(6) "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 Producer is to [sell and] deliver electric energy pursuant to this Agreement or pursuant to a separate wheeling agreement.

(7) "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.

(8) "Suspension" means suspension of the obligation of [The Utility] [Tri-State] [Tri-State and/or the Distribution Cooperative] to interconnect with and purchase electricity from the Producer.

C. SECTION 2: Facilities to be Provided.

(1) Unless otherwise provided for herein, [Utility] [Tri-State] will [purchase] [accept] and the Producer will [sell] [provide] all the electric energy produced by the QF that is not consumed by the Producer. Upon execution of this Agreement, the Producer shall, at its expense, design, construct, install, operate, and maintain to and at the Point of Delivery the QF which is described in Exhibit A, attached hereto and hereby incorporated by reference.

(2) The Point of Delivery shall be located as described on Exhibit B, attached hereto and hereby incorporated by reference, which shall include the following information:\_\_\_\_\_.

(3) The OF shall meet all applicable Federal, state and local code, all provisions of the National Electrical Code and the National Electrical Safety Code, as such codes now exist, and all Prudent Electrical Practices.

(4) The Producer shall submit all specifications and drawings of its proposed QF to [Utility] [Tri-State] for tentative written approval prior to connecting the OF to the [Utility's] [Distribution Cooperative's] system. [Utility's] [Tri-State's] review of the Producer's specifications and drawings be provided within a reasonable time.

(5) Tentative approval shall not be construed as permission to operate the facilities without written authorization from [Utility] [Tri-State] after inspection of the completed facilities.

(6) Within 60 days of the execution of this Agreement and receipt of necessary rights-of-way, easements and materials, unless such period is extended by the NMPSC, [Utility] [Tri-State] shall design, construct, install, operate, and maintain the Interconnection Facilities described on Exhibit C, attached hereto and hereby incorporated by reference. The Producer shall reimburse\_\_\_\_\_ for all costs incurred by\_\_\_\_\_ for Interconnection Costs, an estimate of which costs is set out on Exhibit C attached hereto. Terms of reimbursement shall be\_\_\_\_\_.

(7) The Producer shall furnish, install and maintain a clearly labeled load break disconnect switch in a visible outside, readily accessible location for the purpose of isolating Producer's generation from the [Utility's] [Distribution Cooperatives] [Tri-State's] system. The load break disconnect switch must disconnect the Producer's generator from the [Utility's] [Tri-State's] [Distribution Cooperative's] system without interrupting other types of service to the Producer. The Producer shall provide a map of

suitable scale showing the exact location of the switch. Such map shall be included in Exhibit B attached hereto and incorporated herein by reference. The switch shall be a securable type switch. Ingress and egress to this switch by [Utility] [Tri-State's] [Tri-State's or Distribution Cooperative's] personnel shall be provided at all times by the Producer. The load break disconnect switch must comply with the Interconnection and Safety Standards attached as Exhibit D hereto and incorporated herein by reference.

(8) [Utility's] [Tri-State's] review of the Producer's specifications, drawings and maps, inspection of or authorization to operate the QF or approval of any modification thereto shall be construed neither as its confirmation or endorsement of the design of QF nor as an endorsement, warranty, guarantee or representation concerning the safety, operating characteristics, durability or reliability of the QF. Notwithstanding such review, inspection, authorization or approval, or the failure to make the same, [Utility] [Tri-State and/or the Distribution Cooperative] shall not be responsible or liable for the strength, details of design, defects, outages, adequacy, operation or capacity of the QF to Producer or any third party[ies].

D. SECTION 3: 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 the Producer. Termination of this Agreement during and after the original term requires written notice to [the utility], (Tri-State and/or the Distribution Cooperative) that this Agreement will terminate in ninety (90) days. The Producer may terminate this Agreement without showing good cause.

(2) Termination by [the Utility], [Tri-State], [the Distribution Cooperative]. Termination of this Agreement during and after the original term requires written notice to the Producer that this Agreement will terminate in ninety (90) days, unless otherwise provided. [The Utility], [Tri-State], [the Distribution Cooperative], in the exercise of this right, must show good cause for the termination. Good cause shall include, but is not limited to, the specific provisions contained in Paragraphs 3 and 4 of Section 3 and Section 12 of Appendix A.

(3) At any time the QF is sold, leased, assigned, or otherwise transferred, the seller or lessor of the QF shall notify (Utility) [Tri-State] and this Agreement may be terminated at [Utility's] [Tri-State'] option 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] [Tri-State).

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

E. SECTION 4: Easements and Right-of-Way.

(1) The Producer hereby agrees to grant at no expense to [Utility] [Tri-State and the Distribution Cooperative], all easements and rights-of-way necessary for [Tri-State and the Distribution Cooperative] [Utility] to install, operate, maintain, replace,

and remove [Tri-State's and the Distribution Cooperative's] (Utility's) metering and Interconnection Facilities, including, but not limited to, adequate and continuous access rights to property owned by the Producer.

(2) The Producer agrees to execute and deliver all documents [Utility] [Tri-State] shall deem necessary to enable [Utility] [Tri-State] to obtain and record such easements and rights-of-way.

(3) If any part of the Interconnection Facilities is to be installed on property owned by any person who is not a party to this Agreement, the Producer shall, at its expense, obtain from the owner of such property in the name of [Utility] [Tri-State] [Tri-State and/or the Distribution Cooperative] [Tri-State and the Distribution Cooperative], and in a form satisfactory to [Utility] [Tri-State] [Tri-State and/or Distribution Cooperative] (Tri-State and the Distribution Cooperative), all necessary easements and rights-of-way for [Utility] [Tri-State] [Tri-State and/or the Distribution Cooperative] [Tri-State and the Distribution Cooperative] to install, operate, maintain, replace, and remove the Interconnection Facilities.

(4) [Utility] [Tri-State] shall have no duty or responsibility to acquire any easements or rights-of-way necessary to connect the OF to [Utility's] [Tri-State's] [Distribution Cooperative] system. If necessary easements and rights-of-way are not obtained on terms agreeable to [Utility] [Tri-State] [Tri-State and the Distribution Cooperative], this Agreement may be terminated by [Utility] [Tri-State] by giving written notice of such intention to the Producer within a reasonable time from the date of this Agreement.

F. SECTION 5: Meter Installation: The Producer will be metered by a meter or meters as determined by [Utility] [Tri-State]. [Utility] [Tri-State] may install, at its option and expense, magnetic tape recorders in order to obtain load research information. The Producer shall supply, at its own expense, a suitable location for all meters and associated equipment. Such location must conform to [Utility's] (Tri-State's) [Tri-State's and/or Distribution Cooperative's] meter location policy. The following metering options will be offered by [Utility] [Tri-State]:

(1) Load Displacement Option: [Utility] [Tri-State] will interconnect with the customer using a single meter which will be ratcheted and would only measure the flow of energy to the Producer. Billing to the Producer will be at [Utility's] [Distribution Cooperative's] approved tariff rate applicable to the service provided to the QF. There will be no additional customer charge and no payment by [Utility] [Tri-State] for any excess power which might be generated by the QF.

(2) Net Metering Option:

(a) [Utility] [Tri-State] shall install the metering necessary to determine the net energy delivered from Producer to [Utility] [Tri-State] or the net energy delivered from [Utility] [Tri-State] to Producer 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 Producer to [Utility] [Tri-State] shall be purchased by [Utility] [Tri-State] at [Utility] [Tri-State]'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. Producer shall be billed for all net energy delivered from [Utility] [Tri-State] in accordance with the tariff that is applicable to the Producer 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] [Tri-State] shall net all charges owed to [Utility] [Tri-State] by Producer and all payments owed by [Utility] [Tri-State] to Producer. If a net amount is owed to Producer 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 Producer and is \$50 or more, [Utility] [Tri-State] shall make payment to Producer 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, the Producer shall pay all incremental costs associated with installing the more costly metering equipment and facilities.

(3) Simultaneous Buy/Sell Option:

(a) [Utility] [Tri-State] will install the metering necessary to determine separately 1) all of the energy produced by Producer's generator and 2) all of the power consumed by the Producer's loads. [Utility] [Tri-State] [the Distribution Cooperative] will purchase all energy produced at [Utility] [Tri-State]'s applicable time-of-use or single period energy rate, as described in Subsection B of 17.9.570.11, for such purchases, and as filed with and approved by the NMPRC. The Producer 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, the Producer shall pay all incremental costs associated with installing the more costly metering equipment and facilities.

(4) All meter standards and testing shall be in compliance with [Utility's] [Tri-State's and/or Distribution Cooperative's] rules and regulations as approved by the NMPSC. The metering configuration shall be one of [Utility's] [Tri-State's and/or Distribution Cooperative's) standard metering configurations as set out in Exhibit E and mutually agreeable to the parties or any other metering configuration mutually agreeable to the parties. The agreed upon configuration is shown on Exhibit A. [Service by the Distribution Cooperative to the Producer shall be in accordance with the Distribution Cooperative's articles, bylaws and regulations and in accordance with its tariffs filed with the NMPSC, the terms and conditions of which shall be unaffected by this Agreement].

G. SECTION 6: Operation: The Producer shall notify [Utility] [Tri-State] before the initial energizing and start-up testing of the Facility, and [Utility] [Tri-State and/or Distribution Cooperative] shall have the right to have a representative present at such test. In the event the QF and the Producer are in compliance with all provisions of this Agreement, [Utility] [Tri-State] shall give written authorization to the Producer to operate the QF. Written authorization to operate the QF or approval of any modification thereto shall be construed neither as a confirmation or endorsement of the design of the QF nor as an endorsement, warranty, guarantee or representation concerning the safety, operating characteristics, durability or reliability of the QF. Notwithstanding such

authorization, or the failure to give the same, [Utility] [Tri-State and/or the Distribution Cooperative] shall not be responsible or liable for the strength, details of design, defects, outages, adequacy, operation or capacity of the QF to Producer or any third party[ies]. Each Party shall construct, operate and maintain its system and facilities in compliance with the Interconnection and Safety Standards as set out in Exhibit D.

(1) Suspension: The load break disconnect switch provided by the Producer may be opened and secured with a [Utility] [Tri-State and/or Distribution Cooperative] owned padlock by [the Utility] [Tri-State and/or Distribution Cooperative] without prior notice to the Producer in the event of:

(a) [Utility] [Tri-State and/or Distribution Cooperative) system emergency.

(b) Evidence showing the Producer's QF to be hazardous to [the utilities] [Tri-State and/or the Distribution Cooperative's] system or customers.

(2) [Utility] [Tri-State and/or Distribution Cooperative] will endeavor to notify the Producer of its intent to open the switch if:

(a) There is evidence that the Producer's QF is interfering with service to other [Utility's] [Tri-State' and/or Distribution Cooperative's] customers or interfering with the operation of [Utility's] [Tri-State's and/or Distribution Cooperative's] equipment. The Producer may be reconnected by [Utility] [Tri-State and/or Distribution Cooperative] when the Producer makes the necessary changes to comply with the standards required by this Agreement.

(b) There is a failure of the Producer to adhere to this Agreement.

(c) it is necessary to assure safety of [Utility's] [Tri-State's and/or Distribution Cooperative's] personnel.

(d) if suspension of service is otherwise necessary and allowed under [Utility's] [Tri-State] Rules and Regulations as approved by the NMPSC. The Producer shall notify [Utility] [Tri-State] prior to making any modifications to the QF or to the interconnection between the QF and [Utility] [Tri-State]. The Producer must receive approval from [Utility] [Tri-State] prior to proceeding with such modifications. As a result of such modifications, the Producer shall permit [Utility] [Tri-State and/or Distribution Cooperative), 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 the above shall be borne by the Producer. Approval of a modification of a QF shall be construed neither as a confirmation or endorsement of the modification nor as an endorsement, warranty, guarantee or representation concerning the safety, operating characteristics, durability or reliability of the QF. Notwithstanding such approval, or the failure to give the same, [Utility] [Tri-State and/or the Distribution Cooperative] shall not be responsible or liable for the strength, details of design, defects, outages, adequacy, operation or capacity of the QF to Producer or any third party[ies]. [Utility] [Tri-State and/or Distribution Cooperative] shall have the right to disconnect the QF if it has been modified without [Utility] [Tri-State] authorization. The Producer shall cooperate with load management plans and techniques as ordered or approved by the NMPSC, and the service to be furnished by [the Utility] [Tri-State and/or the Distribution Cooperative] hereunder may be modified as required to conform thereto.

H. SECTION 7: 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 subparagraph 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.]

I. SECTION 8: Indemnity:

(1) Each Party shall indemnify and save the other Party harmless 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. [The indemnity in favor of Tri-State shall extend to and indemnify the Distribution Cooperative, its officers, directors, agents, employees and contractors.] Provided, however, that:

(a) 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;

(b) [The Utility] [Tri-State and the Distribution Cooperative] [Tri-State] shall not be liable for any loss of earnings, revenues, indirect or consequential damages or injury which may occur to the Producer as a result of interruption or partial interruption (single-phasing) in delivery of service hereunder to Producer or by failure to receive service from Producer by reason of any cause whatsoever, including negligence; and

(c) the provisions of this section 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.

(2) 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.

J. SECTION 9: 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.

K. SECTION 10: Status of Producer: In performing under this Agreement, the Producer shall operate as or have the status of an independent contractor and shall not act as or be an agent, servant, or employee of [the Utility] [Tri-State] [Tri-State or the Distribution Cooperative].

L. SECTION 11: Waiver: Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter.

M. SECTION 12: 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. Producer shall not assign this Agreement or any part hereof without the prior written consent of [the Utility] [Tri-State], otherwise this Agreement may be terminated pursuant to Section 3.3 [Paragraph 3 of Subsection D of this Appendix] of this Agreement.

N. SECTION 13: 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:

To or upon Producer: \_\_\_\_\_ New Mexico \_\_\_\_\_ (Zip Code)

To or upon [the Utility] \_\_\_\_\_ [Tri-State] [Tri-State and the Distribution Cooperative]: \_\_\_\_\_ 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.

O. SECTION 14: 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 attached hereto and made a part hereof by reference. Producer has selected \_\_\_\_\_ metering option which is more fully explained in Section 5 [Subsection F of this Appendix]. 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.

P. SECTION 15: Insurance: In the event the NMPSC or other regulatory body allows [its jurisdictional utilities] [Tri-State] to require the Producer to carry liability insurance covering the QF, the Producer agrees to obtain such insurance. If insurance is required, the same requirement will be invoked for all Producers in a non-discriminatory manner. **ALL PRODUCERS ARE STRONGLY URGED TO OBTAIN LIABILITY INSURANCE TO COVER RISKS, LIABILITIES AND CONSEQUENCES**

WHICH MAY ARISE AS A RESULT OF INTERCONNECTING A QF TO A UTILITY SYSTEM.

Q. SECTION 16: 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.

In witness thereof, the Parties have executed this Agreement on the date set forth herein above.

Date: \_\_\_\_\_ By: \_\_\_\_\_.

Date: \_\_\_\_\_ PRODUCER \_\_\_\_\_ By: \_\_\_\_\_.

[17.9.570.15 NMAC – N, xx-xx-2006]

**HISTORY OF 17.9.570 NMAC:**

Recompiled effective 12/31/01 as 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. 4/1/81.

First Revised General Order 37, Rules And Regulations Governing Cogeneration And Small Power Production; 12/30/82.

G.O. 37 General Order 37, Second Revised, Rules And Regulations Governing Cogeneration And Small Power Production; 12/3/86.

G.O. 37 General Order 37, Second Revised, Rules And Regulations Governing Cogeneration And Small Power Production, 1/5/87.

G.O. 37 Second Revised General Order 37, Governing Cogeneration And Small Power Production; 3/3/87.

G.O. 37 Third Revised General Order 37, Governing Cogeneration And Small Power Production; 3/11/88.

NMSPC Rule 570 Governing Cogeneration And Small Power Production; 6/30/88.

History of Revised Material: Revised effective December xx, 2006.