

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF AN INQUIRY)
INTO THE PROVISION OF)
NET METERING SERVICES)
BY ELECTRIC UTILITIES)**
_____)

Case No. 06-00241-UT

ORDER AMENDING 17.9.570 NMAC

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission” or NMPRC”) upon the Notice of Proposed Rulemaking (“NOPR”) issued on September 7, 2006, and upon the record developed in this case.

Statutory and Regulatory Background

1. Commission rules currently authorize the provision of net metering services by electric utilities to qualifying facilities (“QFs”) as defined by federal law.¹ See 17.9.570.1 NMAC *et seq.*, especially 17.9.570.10(C) NMAC, and 17.9.571.1 NMAC *et seq.*

2. The Commission issued 17.9.570.1 NMAC *et seq.* in order, among other things, to implement Federal Energy Regulatory Commission (“FERC”) regulations related to its implementation of the Public Utility Regulatory Policies Act of 1978 (“PURPA”). NMAC § 17.9.570.6 (Objective).

3. Congress’ express purposes in enacting PURPA’s retail regulatory policies for electric utilities were three-fold: “(1) conservation of energy supplied by electric utilities, (2) the optimization of the efficiency of use of facilities and resources by electric utilities; and (3)

¹ As defined by the Federal Energy Regulatory Commission (“FERC”), qualifying facilities are (a) small power production facilities, 80 megawatts (“MW”) or smaller, using biomass, waste, renewable or geothermal resources as their primary fuel source and (b) cogeneration facilities, sequentially producing electric energy and forms of useful thermal energy, and meeting certain efficiency standards. 18 CFR § 292.202-204.

equitable rates to electric consumers.” PURPA, PL 95-617 (HR 4018), Section 101, November 9, 1978, codified at 16 U.S.C.A. § 2611.

4. 17.9.570 NMAC, Governing Cogeneration and Small Power Production, describes the net metering option as such: “The utility shall install an additional meter to measure separately the energy generated by the qualifying facility and then calculate net energy consumed or supplied by the qualifying facility. The qualifying facility shall be paid for energy supplied above the amount consumed at the utility’s energy rate. ...” 17.9.570.10(C) NMAC.

5. In addition, the Commission adopted 17.9.571 NMAC, Net Metering of Customer-Owned Qualifying Facilities of 10kW or Smaller, “to simplify the interconnection requirements for Qualifying Facilities of 10 kW or smaller and encourage the use of small-scale customer-owned renewable or alternative energy resources ... [,]” and to otherwise supplement 17.9.570 NMAC. 17.9.571(6) and 17.9.571(9) NMAC. Among other things, 17.9.571 NMAC simplifies the interconnection requirements for the smaller QFs. *See*, for example, 17.9.571.10(D)-(E) NMAC.

6. 17.9.571 NMAC authorizes the use of a single, bidirectional meter and provides that, in calculating net-metered bills, utilities will bill customers for electricity supplied by the utility in excess of the electricity generated by the customer during the billing period at the retail rate. 17.9.571.11(A)-(B) NMAC. For the 10 kW or smaller facilities, the utility may either pay or credit the customer for the net kilowatt-hours of energy supplied to the utility; the utility will carry credits forward month to month, to be paid when the customer leaves the system at the utility’s energy rate. 17.9.571.11(C)(2) NMAC.

7. Finally, the Energy Policy Act of 2005 (“EPAct 2005”) amended PURPA to include a net metering standard that state regulatory authorities must *consider* in order to

determine whether or not it is appropriate to implement this standard to achieve PURPA's standards or to adopt another standard instead. 16 U.S.C.A. § 2621(a)-(c). EPAAct 2005 defines "net metering" as a "service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility ... during the applicable billing period." 16 U.S.C.A. § 2621(d).

8. In order to develop rules on the provision of net metering services by electric utilities, the Commission issued its Notice of Inquiry ("NOI") on June 27, 2007, in which it determined to hold workshops, at which the following issues were to be addressed:

- a. Who are the electric customers, if any, with generating capabilities who are excluded from net metering services under 17.9.570 and 17.9.571 NMAC, but who would nevertheless benefit from such services?
- b. Would the provision of net metering services to any excluded customers or customer groups advance the objectives of PURPA? If so, how would it do so?
- c. Would extending the coverage of net metering services facilitate the utilities' compliance with PURPA? If so, how would it do so?
- d. Would extending the coverage affect non-eligible customer groups in any way and, if so, how?
- e. Are the simplified interconnection procedures found in 17.9.571 NMAC appropriate for facilities larger than 10 kW and, if so, why should the capacity be increased? If increased, should the Commission set a new maximum capacity for these streamlined interconnection requirements? Would this outer limit be 50 kW, 100 kW, 500 kW, 1 MW, 2 MW, or other specified limit and why would such a specified limit be advisable?
- f. Loads above 50 kW typically have demand charges. Should the proposed rule or rules address demand measurements, charges and credits and, if so, how should these issues be addressed?
- g. What are the metering problems or issues, if any, that should be addressed in the revision of net metering programs?

- h. Are single phase and three phase issues addressed adequately? If not, what else needs to be done?
- i. What are the interconnection standards, if any, that the Commission should consider within this Notice of Inquiry?
- j. What are the other enhancements, if any, which the Commission should consider in order to better fulfill the purposes of PURPA?

9. Pursuant to the NOI, an initial workshop was conducted by Hearing Examiner William Herrmann on July 7, 2006. Additional workshops were conducted on August 9, 17 and 23, 2006, facilitated by Mr. Herrmann.

10. Also pursuant to the NOI, eleven entities filed comments on or before July 21, 2006 which were considered at the workshops. Comments were filed by: Public Service Company of New Mexico (“PNM”); El Paso Electric Company (“EPE”); Southwestern Public Service Company (“SPS”); New Mexico Rural Electric Cooperative Association (“NMRECA”); Farmers’ Electric Cooperative, Inc.; Central Valley Electric Cooperative, Inc.; New Mexico Industrial Energy Consumers (“NMIEC”); Coalition for Clean Affordable Energy (“CCAIE”); Vote Solar Initiative (“VSI”); Regional Development Corporation; and New Mexico Energy, Minerals and Natural Resources Department (“NMEMNRD”). Reply Comments were filed on or before August 2, 2006, by CCAIE, NMEMNRD, VSI, PNM, and EPE.

11. As a result of the workshops, and in compliance with the requirements of the NOI, Staff of the Utility Division of the Commission filed its Status Report on August 30, 2006, reporting the results of the workshops and proposing consensus amendments to the net metering provisions of 17.9.570 NMAC for adoption by the Commission.

12. The rule presented by Staff would amend 17.9.570 NMAC to extend net metering to qualifying facilities up to 80 MW in capacity, to provide for an amended standard contract for QFs of capacities 100 kW or smaller, and to provide necessary clarification on billing

procedures. The proposed rule presented by Staff was attached to the Notice of Proposed Rulemaking (“NOPR”), issued on September 7, 2006, as Exhibit 1. This Proposed Rule represented the consensus of the parties who participated in the workshops.

13. The NOPR also provided a schedule for filing comments on September 28, 2006, and reply comments on October 13, 2006, and scheduled a public comment hearing for November 15, 2006. The NOPR set the date for closing the record as November 20, 2006. However, in response to the oral comments at the hearing, the Commission issued a Bench Request for additional information on November 15, 2006, with responses due on November 20, 2006, and allowing for reply filings to be made through the close of business on November 28, 2006. Therefore, the record in this proceeding closed on November 28, 2006.

14. Comments on the proposed rule were filed on September 28, 2006, by SPS, PNM, EPE, NMRECA, VSI, and NMIEC. Reply Comments and Supplemental Reply Comments were filed on October 13, 2006, by CCAE, NMIEC, EPE and PNM.

15. In response to the November 15, 2006, Bench Request, PNM, NMECA, SPS, EPE, and NMEMNRD provided Responses on November 20, 2006. On November 22, 2006, EPE filed its Revision to response to Commission Bench Request. On November 28, 2006, CCAE and EPE filed Replies to the Responses to Bench Request. On November 29, 2006, SPS filed its Clarification to its Response to Bench Request for Additional Information.

16. At the public comment hearing, in addition to those filing written materials, Doug Antoon on behalf of Historic Hotel/Goodman Group, Randy Sadewic on behalf of Positive Energy, and Robb Thomson on behalf of Interfaith Alliance for Environmental Stewardship made oral comments.

Substantive Issues

The only issues that the commenters addressed were: 1) whether a utility should be required to carry forward a credit balance of net excess generation from a qualifying facility on the QF's account through a period of a year, with a true-up or cash out to occur only at the end of the calendar year, or whether the utility should be allowed to true-up or cash out the account on a monthly basis; and 2) whether the Commission should consider the adoption of technical standards for the interconnection of QFs up to 80 MW in capacity in this proceeding, or open a new docket where the technical standards could be considered in complete detail.

In order to determine whether annual true-ups should be mandatory, rather than allowing monthly true-ups, the issue of the cost impact to utilities of requiring only annual true-ups for net metering arose. This issue came up as a result of the filed comments and of the oral comments at the public comment hearing.

VSI proposed in its filed Comments on the NOPR that annual true-ups be mandatory. VSI suggested that this would reduce the complexity and administrative overhead associated with generating, accounting for, delivering and tracking checks on both sides and encourages net metering as a means of reducing customer load. In its written Reply comments, CCAE supported VSI's proposal with the modification that annual true-ups be optional. NMEMNRD recognized that there could be cost impacts on utilities of this proposal. The other parties who filed written reply comments opposed VSI's proposal on the grounds that it would impose costs on utilities, that it would create equity and cross-subsidization concerns, and that it would create opportunities for gaming the system.

At the public comment hearing, the representative of NMEMNRD voiced his support for VSI's proposal, as did CCAE's representative. In addition, Robb Thomson and Doug Antoon

spoke in favor of annual true-ups. Utility representatives noted that annual true-ups would create additional costs for utilities.

Therefore, a Bench Request was issued to the utilities that were participating in the case, asking for information as to the cost impact on the utility of net metering using three technology scenarios (wind, solar, and cogeneration) at 50% load factor, and designed either to meet the customer's minimum load or to meet the customer's peak load. Each respondent was to compare the impact of a monthly true-up with an annual true-up.

As noted, SPS, EPE, PNM and NMRECA filed responses to the Bench Request. The responses were consistent, and showed that the greatest potential for cost impact on the utility was for a QF sized for minimum load, and where the load has a large seasonal component. A QF could apparently generate excess energy during times when its load is low, sell that excess back to the utility, and, with an annual true-up, consume energy against the credit during a time of year when its peak load occurs, when energy could be more expensive for the utility to provide to the QF. The information given by the parties providing the responses did not show impacts that were of huge magnitudes. However, although CCAE's representative commented in favor of annual true-ups at the public comment hearing, CCAE implicitly withdrew its support for this option and stated its support for the consensus rule in its Reply to responses to Bench Request. VSI did not make any further comments after filing its initial Comments on the NOPR.

While the financial impact on a utility may not have been shown to be substantial in most scenarios, the Commission agrees that in some instances mandatory annual true-ups as opposed to monthly true-ups could provide opportunities for gaming the system for QFs. In order to eliminate those opportunities, the Commission will not adopt VSI's proposal to make annual true-ups mandatory.

PNM advocated that certain typographical errors be corrected in the Standard Interconnection Agreement for Qualifying facilities with a Design Capacity of 100 Kilowatts of Less (“Standard Agreement”) included as part of 17.9.570.15 NMAC to provide consistency with the net metering requirements of 17.9.570.10(C) NMAC. Other commenters supported PNM’s proposed changes, did not object to them, or did not address them. The Commission finds that the proposed typographical changes do not change the meaning of the Standard Agreement and should be accepted.

In all other respects, the commenters supported the consensus Proposed Rule. The other person making oral comments at the public comment hearing did not specifically address the substance of the Proposed Rule. Rather, he stated generally that he favors making renewable energy economically feasible, but did not state how provisions of the Proposed Rule should be changed to improve the prospects of doing so.

Therefore, the Commission should adopt the Proposed Rule with the typographical changes proposed by PNM.

In the NOPR in this case, the Commission asked interested persons to comment on issues concerning interconnection standards, and whether they should be addressed in this proceeding. *See, e.g.*, ¶ 8. e., h., and i., above. VSI proposed in its Comments that the Commission initiate a new proceeding to consider interconnection standards. VSI stated that 17.9.570 NMAC contains some general guidelines for interconnection, but that a more in-depth investigation should be undertaken in order to prescribe detailed standards. Other commenters agreed or did not comment.

The Commission agrees that a new proceeding should be initiated to consider interconnection standards and procedures. Other states have recently undertaken such

proceedings, and the IEEE has recently promulgated a new engineering standard for interconnection, IEEE Standard 1547. This is the engineering standard that should form the basis for this Commission's technical interconnection standard. We should also consider a standard set of procedures to streamline the interconnection process between a utility and all customer-owned generation facilities. We believe that the workshop process that we have used in previous rulemaking proceedings will be the most appropriate and efficient for the formulation of a proposed rule.

Other Comments

To the extent that the parties suggested other changes to the Proposed Rules, those changes are hereby rejected.

THE COMMISSION FINDS AND CONCLUDES:

1. The foregoing statements and discussion are hereby adopted as Findings and Conclusions of the Commission.
2. The Commission has jurisdiction over the parties and subject matter of this case.
3. It is in the public interest for the amended rules Governing Cogeneration and Small Power Production to be adopted and approved as provided by this Order, and as set out in the Rules attached to this Order as Exhibit 1.
4. The Commission has the jurisdiction and authority to adopt and issue these amended rules pursuant to NMSA 1978, §§ 8-8-15, 62-6-4, 62-6-19, 62-6-24, 62-8-2, and 16 USCA Section 2621.
5. Due and proper notice has been given.

IT IS THEREFORE ORDERED:

- A. The amendments to the rules Governing Cogeneration and Small Power

Production are hereby adopted and approved as provided by this Order. As so adopted and approved, the amended rules Governing Cogeneration and Small Power Production are attached to this Order as Exhibit 1.

B. A new proceeding shall be initiated to consider interconnection standards and procedures, under Case No. 07-00014-UT, *In the Matter of an Inquiry into Interconnection Standards for Electric Utilities*. IEEE Standard 1547 shall form the basis for this Commission's technical interconnection standard. The Commission shall also consider a standard set of procedures to streamline the interconnection process between a utility and all customer-owned generation facilities. The workshop process that the Commission has used in previous rulemaking proceedings shall be used for the formulation of a proposed rule.

C. The amended rules Governing Cogeneration and Small Power Production approved by this Order shall be filed and published in the New Mexico Register as required by the State Rules Act and implementing rules and shall be effective March 1, 2007.

D. This Order is effective immediately.

E. Copies of this Order shall be served on all persons on the attached Certificate of Service. Staff shall cause the amended rules Governing Cogeneration and Small Power Production approved by this Order to be posted on the Commission's official web site.

F. This Docket is closed.

