

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 7 ENERGY CONSERVATION
PART 2 ENERGY EFFICIENCY

17.7.2.1 ISSUING AGENCY: The New Mexico public regulation commission.
[17.7.2.1 NMAC - Rp, 17.7.2.1 NMAC, 8/26/2025]

17.7.2.2 SCOPE: This rule applies to all electric, gas, and distribution cooperative utilities subject to the Efficient Use of Energy Act and the commission's jurisdiction.
[17.7.2.2 NMAC - Rp, 17.7.2.2 NMAC, 8/26/2025]

17.7.2.3 STATUTORY AUTHORITY: Sections 62-3-1, 62-8-6, and 62-17-1 to -11 NMSA 1978.
[17.7.2.3 NMAC - Rp, 17.7.2.3 NMAC, 8/26/2025]

17.7.2.4 DURATION: Permanent.
[17.7.2.4 NMAC - Rp, 17.7.2.4 NMAC, 8/26/2025]

17.7.2.5 EFFECTIVE DATE: August 26, 2025, unless a later date is cited at the end of a section.
[17.7.2.5 NMAC - Rp, 17.7.2.5 NMAC, 8/26/2025]

17.7.2.6 OBJECTIVE: The objective of this rule is to implement the Efficient Use of Energy Act's requirements for public utilities to acquire a portfolio of cost-effective energy efficiency and load management and to establish criteria to evaluate and implement a portfolio of cost-effective energy efficiency and load management that reduces energy demand and energy consumption.
[17.7.2.6 NMAC - Rp, 17.7.2.6 NMAC, 8/26/2025]

17.7.2.7 DEFINITIONS: In addition to the definitions provided in Section 62-17-4 NMSA 1978, the following definitions shall apply.

A. Definitions beginning with "A": [RESERVED]
B. Definitions beginning with "B": [RESERVED]
C. Definitions beginning with "C": [RESERVED]
D. Definitions beginning with "D": "decoupling" means a rate adjustment mechanism to remove regulatory disincentives to ensure that the revenue per customer approved by the commission in a general rate case proceeding is recovered by a public utility without regard to the quantity of electricity or natural gas actually sold by the public utility subsequent to the date the rate took effect.

E. Definitions beginning with "E": "estimate" means a projection or forecast utilizing well known, commercially available, or standard engineering, economic, and financial calculations, ratings, and simulations, or other reasonable means.

F. Definitions beginning with "F": [RESERVED]

G. Definitions beginning with "G": [RESERVED]

H. Definitions beginning with "H": [RESERVED]

I. Definitions beginning with "I": [RESERVED]

J. Definitions beginning with "J": [RESERVED]

K. Definitions beginning with "K": [RESERVED]

L. Definitions beginning with "L":

(1) "life-cycle basis" means utilizing the expected useful life of the energy efficiency and load management and applying a net present value methodology that does not adjust a discount rate for taxes in order to estimate the associated monetary costs and avoided monetary costs of the measure or program being evaluated; and

(2) "low-income customer" means a customer with an annual household income at or below two hundred percent of the federal poverty level, as published annually by the United States department of health and human services.

M. Definitions beginning with “M”: “measurement and verification” means an analysis performed by an independent evaluator that estimates, consistent with Subsection B of 17.7.2 NMAC, reductions of energy usage or peak demand, and determines any actual reduction of energy usage or peak demand that directly results from the utility’s implementation of particular energy efficiency or load management measures or programs.

N. Definitions beginning with “N”: “net benefits” means the difference between the present value of costs and the present value of benefits.

O. Definitions beginning with “O”: [RESERVED]

P. Definitions beginning with “P”:

(1) “plan period” means the three years comprising the triennial plan;

(2) “plan year” means a calendar year for which commission approval is requested or granted;

(3) “plan year overage” means the prior plan year’s actual expenditures that exceeded actual collections at the approved funding level; and

(4) “plan year underage” means the prior plan year’s actual collections at the approved funding level that exceeded actual expenditures.

Q. Definitions beginning with “Q.”: [RESERVED]

R. Definitions beginning with “R”: “RFP” means “request for proposals.”

S. Definitions beginning with “S”: [RESERVED]

T. Definitions beginning with “T”: “triennial plan” means a utility’s plan to evaluate and implement, over a plan period, a portfolio of cost-effective energy efficiency and load management that reduces energy demand and consumption.

U. Definitions beginning with “U”: [RESERVED]

V. Definitions beginning with “V”: [RESERVED]

W. Definitions beginning with “W”: [RESERVED]

X. Definitions beginning with “X”: [RESERVED]

Y. Definitions beginning with “Y”: [RESERVED]

Z. Definitions beginning with “Z”: [RESERVED]

[17.7.2.7 NMAC - Rp, 17.7.2.7 NMAC, 8/26/2025]

17.7.2.8 REQUIREMENTS FOR TRIENNIAL PLANS:

A. A public utility that is not a distribution cooperative utility shall file an application seeking approval of a triennial plan three years from the filing date of its previous application.

B. Compliance with pre-filing requirements: A public utility’s triennial plan shall:

(1) describe how the public utility has met the pre-filing requirements of Subsection E of Section 62-17-5 NMSA 1978, including descriptions of the process used to solicit non-binding recommendations, and any competitive bids required by the commission for good cause;

(2) identify by name, association, and contact information, each stakeholder that participated in the pre-filing process, including commission staff, the attorney general, and the energy, minerals and natural resources department; and

(3) summarize each stakeholder’s non-binding recommendation on the design, implementation, and use of third-party energy service contractors through competitive bidding for programs and measures.

C. Plan year funding; costs; expenditures:

(1) A triennial plan shall include the estimated plan year funding for energy efficiency and load management portfolio costs for each plan year during the plan period.

(2) Estimated plan year funding for an electric public utility’s triennial plan costs shall be expressed in dollars and shall be no less than three percent and no more than five percent of billing revenues from all of its customers’ bills that the electric public utility estimates to be billed during the plan year to customer classes with the opportunity to participate, excluding:

(a) gross receipts taxes, franchise fees, and right-of-way access fees;

(b) revenues that the electric public utility estimates to bill during the plan year to any single customer that exceed \$75,000.00;

(c) any customer’s plan year self-directed program credits approved by the electric public utility or by a commission approved self-directed program administrator; and

(d) any customer’s plan year self-directed program exemptions approved by the electric public utility or by a commission approved self-directed program administrator.

(3) Estimated plan year funding for a gas public utility's triennial plan costs shall be expressed in dollars and shall not exceed five percent of customers' bills that the gas public utility estimates to be billed during the plan year, excluding:

- (a) gross receipts taxes, franchise fees, and right-of-way access fees;
- (b) revenues that the gas public utility estimates to bill during the plan year to any single customer that exceed \$75,000.00;
- (c) any customer's plan year self-directed program credits approved by the gas public utility or by a commission-approved self-directed program administrator; and
- (d) any customer's plan year self-directed program exemptions approved by the gas public utility or by a commission-approved self-directed program administrator.

(4) A triennial plan shall include a calculation of the difference between the prior plan year's actual plan expenditures and the prior plan year's applicable funding required by statute.

(5) In each plan year, a public utility shall make its best efforts to expend its approved triennial plan funding while seeking to maximize cost-effective energy efficiency and load management.

(a) A public utility may periodically adjust its plan year expenditures by an amount not greater than ten percent of the approved funding level if the adjustment will result in aligning plan year expenditures more closely with projected plan year collections.

(b) A public utility may seek approval, by motion in its most recent triennial plan approval docket, to adjust its plan year expenditures by more than ten percent of the approved funding level.

(6) The public utility shall utilize well known, commercially available, or standard engineering, economic and financial calculations, ratings, and simulations, or other reasonable methods, to determine monetary costs and avoided monetary costs at the portfolio and program levels.

D. A triennial plan shall include an executive summary.

E. For each proposed measure or program, including a previously approved measure or program submitted for reauthorization, a triennial plan shall contain:

- (1) a detailed description of the measure or program;
- (2) the expected useful life of the measure or program;
- (3) any participation requirements and restrictions of the measure or program;
- (4) the time period during which the measure or program will be offered;
- (5) a description of any competitive bid process for the measure or program;
- (6) the estimated number of measure or program participants, supported by testimony and exhibits;
- (7) the estimated economic benefit to participants attributable to the measure or program, supported by testimony and exhibits;
- (8) the estimated annual energy savings for, and the estimated energy savings over the useful life of, program, supported by written testimony and exhibits, expressed in:
 - (a) kilowatt hours and dollars for electric utilities; and
 - (b) therms and dollars for gas utilities;
- (9) the estimated annual demand savings for, and the estimated demand savings over the useful life of, the measure or program, expressed in kilowatts and dollars, supported by testimony and exhibits;
- (10) a detailed budget that identifies the estimated monetary program costs to be incurred by the public utility in acquiring, developing, and operating each measure or program on a life-cycle basis and for each year of the expected useful life of the measure or program;
- (11) the estimated monetary program costs to be incurred by the public utility in acquiring, developing, and operating each measure or program on a life-cycle basis, supported by testimony and exhibits that:
 - (a) demonstrate and justify how the estimated monetary program costs will be equal to or greater than the actual monetary program costs; and
 - (b) explain the public utility's rationale and methodology used to determine the estimated monetary program costs;
- (12) the estimated avoided monetary cost associated with developing, acquiring, and operating associated supply side resources, supported by testimony and exhibits that:
 - (a) demonstrate and justify how the estimated avoided monetary costs will be equal to or greater than the actual avoided monetary costs; and
 - (b) explain the public utility's rationale and methodology used to estimate the avoided monetary cost associated with acquiring, developing, and operating the associated supply side resource; and

(13) supporting documentation, underlying data, calculations, estimates, and other items, presented in a manner that facilitates the preparation of a measurement and verification report by an independent program evaluator, along with compilation and preparation of the public utility's reporting requirements that facilitates a simple comparison of estimated results to actual results, including the public utility's cost of capital and discount rate.

F. A triennial plan shall include an evaluation and determination that it will reduce energy usage, energy demand, or both.

G. A triennial plan shall include an analysis showing that the portfolio is cost-effective by meeting the utility cost test and is designed to provide every affected customer class with the opportunity to participate and benefit economically.

H. A public utility may request approval of an annual incentive award in its application requesting approval of a triennial plan. An annual incentive award shall:

- (1) be based on the utility's costs or net benefits;
- (2) be based on satisfactory performance of the triennial plan in a given plan year, which may be shown by the utility meeting or exceeding the energy savings requirements of this rule;
- (3) be supported by testimony and exhibits; and
- (4) not exceed the product (expressed in dollars) of:
 - (a) its weighted cost of capital (expressed as a percent) plus two percent, and
 - (b) its approved plan year funding.

I. For each approved large customer self-directed program, the utility's triennial plan shall describe the process that enabled the utility to determine that a large customer self-directed program met the cost-effective definition set forth in Subsection B of Section 62-17-9 NMSA 1978 and merited the credit or exemption.

J. The commission shall act expeditiously on a request for approval of a triennial plan. If a public utility requests approval of a tariff rider simultaneously with its triennial plan, then the review procedures of 17.7.2.13 NMAC shall control.

[17.7.2.8 NMAC - Rp, 17.7.2.8 NMAC, 8/26/2025]

17.7.2.9 RESIDENTIAL PROGRAMS:

A. Energy efficiency and load management programs directed to residential customers shall enable residential customers or households to conserve energy, reduce demand, or reduce residential energy bills.

(1) A public utility may stack its incentives with other state or federal programs as available to make energy efficiency and load management more attractive to residential customers.

(2) A public utility shall not be penalized through the independent program evaluation process for stacking incentives or programs, such as receiving free-ridership penalties or less than full credit for energy efficiency.

B. A public utility shall direct at least ten percent of its plan year funding, during each year of the plan period, to programs for low-income customers.

(1) The commission may approve a public utility to deviate from the ten percent low-income spending requirement if the public utility's portfolio is not cost-effective overall.

(2) A public utility may coordinate with existing community resources, including affordable housing programs, and low-income weatherization programs managed by other utilities and federal, state, county, or local governments. This section does not preclude the public utility from designing and proposing other low-income programs.

(3) A public utility shall prefer utilizing providers with experience in the effective design, administration, and provision of low-income energy efficiency and load management measures and programs, along with experience in identifying and conducting outreach to low-income households. In the absence of qualified providers, a public utility that does not provide measures or programs directly may solicit qualified competitive bids for these services.

(4) In developing the utility cost test for energy efficiency and load management directed to low-income customers, unless otherwise quantified in a commission proceeding, the public utility shall assume that twenty percent of the calculated energy savings is the reasonable value of:

- (a) reductions in working capital;
- (b) reduced collection costs;
- (c) bad-debt expense;
- (d) improved customer service effectiveness; and
- (e) other appropriate factors qualifying as utility system economic benefits.

17.7.2.10 SELF-DIRECTED PROGRAM CREDITS FOR LARGE CUSTOMERS:

- A.** A large customer may be eligible to receive a credit equal to the expenditures that the large customer makes at its facilities toward cost-effective energy efficiency and load management projects.
- (1) A large customer's expenditures shall meet the utility cost test as a condition to receiving approval for a credit.
- (2) The credit may be used to offset up to seventy percent of an energy efficiency tariff rider.
- (3) Eligible expenditures shall have a simple payback period of more than one year but less than seven years.
- (4) Projects that have received rebates, financial support, or other substantial program support from a utility are not eligible for a credit.
- (5) Any credit not fully utilized in the year it is received shall carry over to subsequent years.
- B.** Large customers shall seek and receive approval for credits from the utility or a commission-approved self-direct administrator.
- C.** Large customers applying for an investor-owned electric utility bill credit shall meet the electricity consumption size criteria set forth in Subsection G of Section 62-17-4 NMSA 1978 and the utility cost test.
- D.** Large customers applying for gas utility bill credit shall meet the gas consumption criteria as set forth in Subsection G of Section 62-17-4 NMSA 1978 and the utility cost test.
- E.** Large customers seeking a credit shall provide, to the public utility or the commission-approved self-direct program administrator, access to all relevant engineering studies and documentation needed to verify energy savings of a project, and allow access to its site for reasonable inspections at reasonable times. All records relevant to a self-directed program shall be maintained by the large customer for the duration of the program, and evaluated in accordance with this rule, subject to appropriate protections for confidentiality.
- F.** The utility shall designate a qualified representative to review, and approve or disapprove, requests for credits.
- G.** The commission may appoint a program administrator to review, and approve or disapprove, requests for credits.
- H.** Approvals or disapprovals by the utility representative or administrator shall be subject to commission review.
- (1) Within 30 business days, the utility representative or administrator shall file each self-directed program review, approval, or disapproval with the commission, and serve notice on all interested parties.
- (2) Notice of an appeal of a utility or administrator approval or disapproval of a large customer credit request shall be filed with the commission within 30 calendar days of the approval or disapproval action.
- I.** Implementation of credits shall be designed to minimize utility administrative costs.
- J.** Self-directed program participants, or large customers seeking exemption, shall submit qualified in-house or contracted engineering studies, and such other information as may be reasonably required by the utility or program administrator, to demonstrate qualification for self-directed program credits.
- K.** The public utility or administrator shall act expeditiously on requests for self-direct program approval.
- L.** For investor-owned electric utilities, the equivalent amount of energy savings associated with a large customer's self-directed program shall be accounted for in calculating its compliance with minimum required energy savings.
- M. Credit eligibility:**
- (1). Large customer expenditures incurred to produce electric energy savings or electric demand savings are only eligible for an electric utility bill credit.
- (2) Large customer expenditures incurred to produce natural gas energy savings or natural gas demand savings are only eligible for a gas utility bill credit.
- (3) Large customer expenditures incurred to produce electric and natural gas energy savings, electric and natural gas demand savings, or any combination of energy savings and demand savings for both electric and natural gas, are eligible for an electricity bill credit and a gas utility bill credit, provided that the same energy efficiency expenditures or load management expenditures shall not be double counted.
- [17.7.2.10 NMAC - Rp, 17.7.2.10 NMAC, 8/26/2025]

17.7.2.11 SELF-DIRECTED PROGRAM EXEMPTIONS FOR LARGE CUSTOMERS:

A. To receive approval for an exemption to paying seventy percent of the tariff rider, a large customer shall demonstrate, to the reasonable satisfaction of the public utility or self-directed program administrator, that it has exhausted all cost-effective energy efficiency and load management projects at its facilities.

(1) Projects that have received rebates, financial support, or other program support from a utility are not eligible for an exemption.

(2) Eligible expenditures shall have a simple payback period of more than one year but less than seven years.

B. Large customers shall seek and receive approval for exemptions from the utility or a commission-approved self-direct administrator.

C. Large customers applying for an investor-owned electric utility bill exemption shall meet the electricity consumption size criterion set forth in Subsection G of Section 62-17-4 NMSA 1978.

D. Large customers applying for a gas utility bill exemption shall meet the gas consumption criterion set forth in Subsection G of Section 62-17-4 NMSA 1978.

E. The utility shall designate a qualified representative to review, and approve or disapprove, requests for exemptions.

F. The commission may appoint a program administrator to review, and approve or disapprove, requests for exemptions.

G. Approvals or disapprovals by the utility representative or administrator shall be subject to commission review.

(1) Within 30 business days, the utility representative or administrator shall file each self-directed program approval or disapproval with the commission, and serve notice on all interested parties.

(2) Notice of an appeal of a utility or administrator approval or disapproval of a large customer exemption request shall be filed with the commission within 30 calendar days of the approval or disapproval action.

H. Self-directed program participants, or large customers seeking an exemption shall provide, to the public utility or the commission approved self-direct program administrator, access to all relevant engineering studies and documentation needed to verify energy saving of a project, and allow access to its site for reasonable inspections, at reasonable times. All records relevant to a self-directed program shall be maintained by the large customer for the duration of the program, and evaluated in accordance with this rule, subject to appropriate protections for confidentiality.

I. Self-directed program participants, or large customers seeking exemption, shall submit qualified in-house or contracted engineering studies, and such other information as may be reasonably required by the utility or program administrator, to demonstrate qualification for self-directed program exemptions.

J. The utility or administrator shall act expeditiously on requests for self-direct program approval.

K. For investor-owned electric utilities, the equivalent amount of energy savings associated with a large customer's self-directed program shall be accounted for in calculating its compliance with minimum required energy savings.

L. Credit eligibility:

(1) Large customer expenditures incurred to produce electric energy savings or electric demand savings are only eligible for an electric utility bill credit.

(2) Large customer expenditures incurred to produce natural gas energy savings or natural gas demand savings are only eligible for a gas utility bill credit.

(3) Large customer expenditures incurred to produce electric and natural gas energy savings, electric and natural gas demand savings, or any combination of energy savings and demand savings for electric and natural gas, are eligible for an electricity bill credit and a gas utility bill credit, provided that the same energy efficiency expenditures or load management expenditures shall not be double counted.

[17.7.2.11 NMAC - Rp, 17.7.2.11 NMAC, 8/26/2025]

17.7.2.12 MODIFICATION OR TERMINATION:

A. Within each plan year, the commission may, or any party may move the commission to, modify a program, terminate a program, or approve a new program.

(1) A motion to modify, terminate, or approve a program shall be filed in the public utility's most recent triennial plan approval docket.

(2) The commission's modification or termination of a program shall occur only after an adequate period of implementation has elapsed and the commission determines that the program is not sufficiently meeting its goals and purposes.

(3) Program modification or termination shall not nullify any preexisting obligations of the utility, alternative energy efficiency provider, or contractor for performance or failure to perform.

(4) Program termination shall be accomplished in a manner that allows the utility to fully recover its prudent and reasonable program costs.

B. Within each plan year, a public utility may modify, terminate, or add measures in its portfolio; modify customer incentive levels; or make other adjustments to an approved measure or program if necessary to maintain the overall success of the measure or program; so long as the portfolio remains cost-effective under the utility cost test.

[17.7.2.12 NMAC - Rp, 17.7.2.12 NMAC, 8/26/2025]

17.7.2.13 REQUIREMENTS FOR COST RECOVERY:

A. An electric utility shall only recover energy efficiency and load management costs from customer classes with an opportunity to participate in approved programs.

B. A public utility, at its option, may recover its prudent and reasonable program costs and approved incentives, either through an approved tariff rider, in base rates or a combination of both.

C. If a public utility seeks recovery of costs through a tariff rider, the utility shall file an advice notice and present the proposed ratemaking treatment to the commission for approval in its application for approval of its triennial plan.

(1) The public utility's tariff rider ratemaking treatment proposal shall reconcile recovery of any costs currently being recovered through a tariff rider or in base rates, or by a combination of the two, as well as any new costs proposed to be recovered through a tariff rider or in base rates, or by a combination of the two.

(2) Unless otherwise ordered by the commission, the public utility shall:

(a) apply the tariff rider on a monthly basis; and

(b) include language on customer bills explaining program benefits.

D. If a public utility seeks base rate recovery of costs, the utility shall present the proposed ratemaking treatment to the commission for approval in a general rate case.

(1) The public utility's base rate ratemaking treatment proposal shall reconcile recovery of any costs currently being recovered through a tariff rider or in base rates, or by a combination of the two, as well as any new costs proposed to be recovered through a tariff rider or in base rates, or by a combination of the two.

(2) The commission shall not reduce a public utility's return on equity based on approval of profit incentives pursuant to the Efficient Use of Energy Act.

E. The commission may approve a public utility to defer program costs and incentives for future recovery through creation of a regulatory asset with carrying charges.

F. Commission review of tariff rider:

(1) A tariff rider proposed by a public utility to fund approved energy efficiency and load management costs shall go into effect 30 days after filing, unless suspended by the commission for a period not to exceed 180 days.

(2) If the tariff rider to fund approved programs is not approved or suspended within 30 days after filing, it shall be deemed approved.

(3) If the commission suspends the effective date of a tariff rider to fund approved programs, but the commission does not act to approve or disapprove the tariff rider by the end of the suspension period, the tariff rider shall be deemed approved.

(4) The commission shall act expeditiously on a public utility's request for approval of a tariff rider to fund new programs.

(5) Annual reconciliation:

(a) A public utility shall annually reconcile its approved tariff rider, accounting for any plan year overage or underage.

(b) The public utility shall include its reconciliation in the public utility's annual report, supported by appropriate exhibits, workpapers, or other documentation necessary to understand the reconciliation.

(c) Commission staff shall evaluate the public utility's tariff rider reconciliation upon filing and notify the commission if staff identifies any issues or proposes any corrective instructions.

(d) If the commission does not act to approve or disapprove, with corrective instructions, a reconciliation within 30 days, it shall be deemed approved.

(e) If a public utility's annual reconciliation would result in changes to the utility's tariff if approved, the annual reconciliation shall additionally be filed as an advice notice.

G. Funding for the services of an independent program evaluator shall be paid by the public utility and treated as a regulatory asset to be recovered through rates established in the public utility's next general rate proceeding.

[17.7.2.13 NMAC - Rp, 17.7.2.13 NMAC, 8/26/2025]

17.7.2.14 ANNUAL REPORT:

A. A public utility shall file a report annually detailing its actions taken to comply with and fulfill the Efficient Use of Energy Act, this Rule, and its triennial plan approved for the reported year.

(1) The public utility shall file its annual report on the calendar date anniversary of the filing of its triennial plan in each plan year of the plan period.

(2) The public utility shall file its annual report in the docket associated with the triennial plan covering the plan year subject of the report.

(3) The public utility shall make its annual report publicly accessible on its website.

B. A public utility shall include the following information for each program in its annual report:

(1) documentation of expenditures in the reported plan year, and estimates of expenditures expected in the next plan year, including documentation of any adjustments to expenditures in the reported plan year and expected adjustments to the next plan year;

(2) estimated and actual customer participation levels for the reported plan year;

(3) estimated and actual energy savings for the reported plan year;

(4) estimated and actual demand savings for the reported plan year;

(5) estimated and actual monetary costs for the reported plan year;

(6) estimated and actual avoided monetary costs for the reported plan year;

(7) an evaluation of its cost-effectiveness;

(8) for a self-directed program, an evaluation of its cost-effectiveness and pay-back period;

and

(9) a comparison of estimated energy savings, demand savings, monetary costs and avoided monetary costs to actual energy savings, demand savings, actual monetary costs, and avoided monetary costs by year.

C. A public utility shall also include the following information in its annual report:

(1) the most recent measurement and verification report of the independent evaluator;

(2) a listing of each program expenditure not covered by the independent measurement and verification report and related justification as to why the evaluation was not performed;

(3) a listing of the total number of triennial plan participants served by year;

(4) the total number of customers applying for and participating in self-directed programs;

(5) the total number of customers applying for and receiving self-directed program exemptions;

(6) measurement and verification of self-directed program targets,

(7) self-directed program payback periods and achievements;

(8) self-directed program customer expenditures on qualifying projects;

(9) self-directed program oversight expenses incurred by the utility representative or administrator;

(10) if unable to comply, an explanation of why the public utility cannot achieve the minimum requirements of 17.7.2.19 NMAC, and a proposal for alternative requirements for acquiring cost-effective and achievable energy efficiency and load management;

(11) a reconciliation of the public utility's commission-approved tariff rider;

(12) a calculation of any plan year overage or underage; and

(13) any other information that may be required by the commission.

[17.7.2.14 NMAC - Rp, 17.7.2.14 NMAC, 8/26/2025]

17.7.2.15 MEASUREMENT AND VERIFICATION:

A. Every energy efficiency and load management program shall be independently evaluated at least every three years.

B. A public utility shall submit to the commission with its annual report for that year, a comprehensive measurement, verification, and program evaluation report prepared by an independent program evaluator.

- (1) Commission staff shall select and direct an independent program evaluator to prepare and submit a comprehensive measurement, verification, and program evaluation report to the commission.
 - (2) Commission staff shall:
 - (a) undertake a competitive bid process and abide by State purchasing rules and commission policies in selecting an independent program evaluator;
 - (b) develop an RFP, including the scope, terms of work, and evaluation process to score the RFP responses;
 - (c) receive, review, score, and rank the RFP responses;
 - (d) rank and recommend competitive qualified bidders to the commission;
 - (e) negotiate a contract with the competitive bidder who is awarded the bid; and
 - (f) administer the contract, including:
 - (i) confirming that contract deliverables are met;
 - (ii) reviewing invoices and related contract performance; and
 - (iii) approving utility invoices after review.
 - (3) Commission staff shall consult with the public utility and other interested stakeholders in the selection of the independent program evaluator.
- C.** An independent program evaluator shall:
- (1) measure and verify energy and demand savings;
 - (2) determine program cost-effectiveness by utilizing the data contained in the utility's approved triennial plan;
 - (3) assess the public utility's performance in implementing its triennial plan;
 - (4) assess whether the utility has complied with its requirements under the Efficient Use of Energy Act and this rule, and whether it has operated in good faith;
 - (5) provide recommended improvements for program performance;
 - (6) confirm that programs were implemented, meet reasonable quality standards, and are operating fully and correctly;
 - (7) utilize applicable international performance measurement and verification protocols, describe any deviation from those protocols, and explain the reason for such deviation;
 - (8) evaluate self-directed programs, expenditures, credits, and exemptions using the same measurement and verification standards applied to utility measures and programs by the utility or commission-approved self-directed program administrator; and
 - (9) fulfill any other measurement and verification duties required by law.
- D.** The independent program evaluator shall provide all information and documentation at the portfolio and program levels, and all assumptions utilized in its evaluation.
- E.** The public utility shall cooperate with the independent program evaluator and commission staff in making information and personnel available to facilitate the independent program evaluator's report.
- F.** Upon written request by a large customer, the information provided by the large customer to the utility or program administrator, independent program evaluator, or others, shall remain confidential except as otherwise ordered by the commission.
- G.** The independent evaluation process, including net-to-gross and free-ridership calculations, should be independent of other state and federal incentives as to not penalize a public utility for stacking incentives or programs.
- [17.7.2.15 NMAC - Rp, 17.7.2.15 NMAC, 8/26/2025]

17.7.2.16 DISTRIBUTION COOPERATIVES:

- A.** Every 24 months, a distribution cooperative utility shall examine the potential to assist its customers in reducing energy consumption or peak electricity demand in a cost-effective manner.
- (1) Based on these studies, a distribution cooperative utility shall establish or update energy efficiency and load management savings targets, and it shall implement or update cost-effective energy efficiency and load management programs that are economically feasible and practical for its members and customers.
 - (2) The governing body of the distribution cooperative utility, rather than the commission, shall have the authority to approve or deny energy efficiency and load management savings targets and programs.
 - (3) In offering or implementing energy efficiency, conservation or load management programs, a distribution cooperative utility shall attempt to minimize any cross-subsidies between customer classes.
- B.** A distribution cooperative utility shall file a report by May 1st annually, describing all of its programs or measures that promote energy efficiency, conservation, or load management.

(1) The report shall set forth the costs of each measure or program for the previous calendar year and the resulting effect on electricity consumption.

(2) The report shall include a description of all planned programs or measures to promote energy efficiency, conservation, or load management, and the planned implementation dates.

C. Costs resulting from programs or measures to promote energy efficiency, conservation, or load management may be recovered by the distribution cooperative utility through its general rates. In requesting approval to recover such costs in general rates, the distribution cooperative utility may elect to use the procedure set forth in Subsection G of Section 62-8-7 NMSA 1978.

[17.7.2.16 NMAC - Rp, 17.7.2.16 NMAC, 8/26/2025]

17.7.2.17 AUDIT:

A. The commission may audit a public utility to examine whether the public utility's triennial plan costs are prudent, reasonable, and properly assigned to programs in accordance with the Efficient Use of Energy Act, this rule, commission orders, and other applicable requirements and standards.

B. The cost of an audit may be considered a recoverable program cost unless it results in a commission finding of the public utility's malfeasance or misfeasance; in which case, audit costs may not be recoverable from the public utility's customers.

[17.7.2.17 NMAC - Rp, 17.7.2.18 NMAC, 8/26/2025]

17.7.2.18 ENERGY SAVINGS TARGETS FOR ELECTRIC UTILITIES:

A. A public utility providing electricity service to New Mexico customers shall acquire or implement, over plan years 2026-2030, a portfolio of cost-effective and achievable energy efficiency and load management available in its service territory that shall produce a savings, by plan year 2030, of at least five percent of its 2025 total retail kilowatt-hour sales to New Mexico customer classes that had the opportunity to participate.

B. If the commission determines, after public hearing on an electric utility's triennial plan, that the minimum requirements of this section exceed the achievable amount of energy savings available to the electric utility, or that the costs to achieve the minimum requirements of this section are neither prudent nor reasonable, the commission shall establish lower minimum energy savings requirements for the utility based on the maximum amount of energy savings that the commission determines may be achievable for the utility.

C. The commission-provided incentives for an electric utility's compliance with this section shall be the same as that which the commission provides for a triennial plan pursuant to Subsection H of 17.7.2.8 NMAC.

[17.7.2.18 NMAC - N, 8/26/2025]

17.7.2.19 DECOUPLING:

A. A public utility may petition the commission for approval of a decoupling rate adjustment mechanism.

(1) A public utility shall separately calculate regulatory disincentives removed through a rate adjustment mechanism for the rate class or classes to which the mechanism applies.

(2) A public utility shall collect or refund regulatory disincentives removed through a rate adjustment mechanism through a separate tariff rider than that for which the commission approved the public utility to collect triennial plan costs and incentives.

(3) A public utility's petition shall be included in a general rate case filing.

B. Burden of proof:

(1) The public utility petitioner shall bear the burden to prove that the proposed decoupling rate adjustment mechanism will result in just and reasonable rates.

(2) The public utility petitioner shall bear the burden to prove that rate regulation has created regulatory disincentives or barriers to the utility's expenditures on energy efficiency and load management that will be alleviated through the adoption of a decoupling rate adjustment mechanism.

(3) The public utility petitioner shall bear the burden to prove that the proposed decoupling rate adjustment mechanism will remove regulatory disincentives or barriers for public utility expenditures on energy efficiency and load management.

(4) The public utility petitioner may not prove its need for a decoupling rate adjustment mechanism by citing revenue losses resulting from business risks or other factors not specified in this rule.

C. Commission review:

(1) The commission shall review the public utility's petition to ensure that the decoupling rate adjustment mechanism balances the interests of the public, consumers, and investors, and results in just and reasonable rates.

(2) The commission shall approve a public utility's petition for a decoupling rate adjustment mechanism unless the commission finds it to be unjust or unreasonable. If the commission finds the petition to be unjust or unreasonable, the commission may:

(a) modify the proposed decoupling rate adjustment mechanism; or

(b) deny the petition pursuant to Subsection D of Section 62-8-7 NMSA 1978.

(3) The commission shall not reduce a public utility's return on equity based on approval of a decoupling rate adjustment mechanism.

D. A public utility that receives commission approval for a decoupling rate adjustment mechanism:

(1) shall be eligible to earn an increased annual incentive award capped at fifteen percent of its approved plan year funding pursuant to Subsection H of 17.7.2.8 NMAC; and

(2) may seek a variance from the plan year funding requirements of Paragraphs (2) and (3) of Subsection C of 17.7.2.8 NMAC.

[17.7.2.19 NMAC - N, 8/26/2025]

HISTORY OF 17.7.2 NMAC:

Pre NMAC History: none.

History of Repealed Material:

17.7.2 NMAC, Energy Efficiency (filed 2/2/2007), repealed 5/3/2010.

17.7.2 NMAC, Energy Efficiency (filed 4/16/2010), repealed 1/1/2015.

17.7.2 NMAC, Energy Efficiency, filed (04/16/2010) - Repealed effective 9/26/2017.

17.7.2 NMAC, Energy Efficiency, filed (9/14/2017) - Repealed effective 8/26/2025.

NMAC History:

17.7.2 NMAC, Energy Efficiency (filed 2/2/2007) was replaced by 17.7.2 NMAC, Energy Efficiency, effective 5/3/2010.

17.7.2 NMAC, Energy Efficiency, (filed 04/16/2010) was replaced by 17.7.2 NMAC, Energy Efficiency, effective 9/26/2017. 17.7.2 NMAC, Energy Efficiency, (filed 9/14/2017) was replaced by 17.7.2 NMAC, Energy Efficiency, effective 8/26/2025.