

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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IN THE MATTER OF THE PETITION OF THE)
UTILITY DIVISION STAFF OF THE)
PUBLIC REGULATION COMMISSION FOR)
RULEMAKING, ADOPTING NMPRC RULE 573,)
ESTABLISHING DISCLOSURE OF GENERATION)
SOURCE, FUEL MIX AND EMISSIONS FOR)
COMPETITIVE POWER SUPPLIERS UNDER) Utility Case No. 3349
THE RESTRUCTURING ACT,)
)
UTILITY DIVISION STAFF OF THE)
PUBLIC REGULATION COMMISSION,)
)
Petitioner.)
_____)

COMMENTS OF THE COALITION FOR CLEAN AFFORDABLE ENERGY

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The Coalition for Clean Affordable Energy (“CCAЕ”), pursuant to the Commission’s Notice of Proposed Rulemaking issued on May 16, 2000, hereby submits its comments on the proposed rule establishing disclosure requirements under the Electric Utility Industry Restructuring Act of 1999. CCAЕ is a coalition of eight environmental and public interest groups active in New Mexico, and the broader Rocky Mountain and Desert Southwest region, that was formed in 1997 to promote environmental and clean energy interests in the restructuring of New Mexico’s electric utility industry. CCAЕ consists of the Conservation Voters Alliance, the Land and Water Fund of the Rockies, the National Parks and Conservation Association, New Mexico Citizens for Clean Air & Water, the New Mexico Public Interest Research Group, the New Mexico Solar Energy Association, the Rio Grande Chapter of the Sierra Club and the Southwest Research and Information Center. The organizations comprising CCAЕ have over 10,000 members who live in New Mexico. Organization descriptions are provided in Attachment A.

I. Support of the Commission’s Proposed Rule

CCAЕ strongly supports the Commission’s proposed disclosure rule. We believe disclosure of generation source and emissions characteristics of electricity is informative, educational and valuable to electricity consumers. Given the significant environmental impacts of electricity production, this type of information is essential if consumers are to make informed choices in New Mexico’s emerging competitive electricity market.

We are pleased that the Commission’s proposed rule requires that information be provided on both fuel source mix and emissions in a simple graphic format which is readily accessible to and easily understood by the general public. In addition, CCAЕ finds the explanation of environmental impacts on the disclosure label to be clear, concise and informative.

We support the Commission’s efforts to balance the need for accurate data with the potential cost and difficulty in obtaining such data by identifying EPA’s E-GRID database as an acceptable source for generation source, fuel mix and emissions information. CCAЕ believes that this will facilitate compliance with the rule. We also support this rule’s applicability to all competitive power suppliers in New Mexico, including suppliers of standard offer service. We believe this ensures fairness to all consumers and power suppliers.

Finally, CCAE is pleased that this rule generally follows the Model Rule on Consumer Disclosure proposed by the Committee on Regional Electric Power Cooperation (CREPC) and the Western Conference of Public Service Commissioners. We believe following the outline of the CREPC model rule will help promote consistency on disclosure rules among western states.

II. Suggested Clarifications and Changes to the Rule

While CCAE strongly supports the core provisions of the rule we do have a number of suggested clarifications and changes. First, we suggest that, in the fuel mix disclosure section, the renewables category be broken down into specific renewable energy type subcategories, regardless of total percentage of power supplied by renewables. Second, we believe that the reference baseline for comparison of both fuel mix and emissions characteristics should be regional rather than national. Third, we recommend more frequent reporting to consumers. Fourth, while we believe that defining net system power based on the self-generation and wholesale purchases of the investor owned utilities (“IOUs”) operating in the state of New Mexico is reasonable (especially in the early years of the competitive market when the IOU’s are likely to remain the dominant market players) we recommend that the Commission review this definition annually and adjust it as necessary if the IOU’s share of the New Mexico electric market decreases over time. Fifth, we recommend that power suppliers be required to disclose mercury emissions as soon as the rule becomes effective. Finally, we note that while spent nuclear fuel is included as a required disclosure item in the disclosure tables, it was not included in the bar charts. We believe it should also be included in the bar charts.

The remainder of comments discuss our recommendations in more detail. Attachment B includes a red-line version of the rule with language to incorporate our recommended changes.

A. Renewable Resources in the Fuel Mix Disclosure

Although renewable energy is currently a small part of the New Mexico resource mix it is likely to increase over time. As written, the fuel mix section of the rule allows energy suppliers to aggregate distinct renewable energy types into a single renewable energy category if the total renewable energy component of their supply is less than 10%. Only if the renewable energy component of their supply is greater than 10% are suppliers required to list specific types of renewable resources. CCAE believes that regardless of the total percent composition of renewable energy in the supplier’s fuel mix, it is important that each renewable resource type (i.e. biomass, wind, solar, geothermal and hydro) be explicitly identified on the disclosure label since different renewable resource types have different environmental signatures. This will provide a more complete set of information to consumers and will better allow them to make informed electricity choices. Moreover, requiring suppliers to disclose information on the amount of specific renewable resource types in their power supply will require no additional cost or effort on the part of the suppliers since this information must already be collected to calculate the aggregate renewable energy category.

B. Comparison of Fuel Mix and Emissions with a Regional rather than National Average

The draft rule requires New Mexico power suppliers to provide a comparison of their fuel mix and emissions with the national average. While CCAE strongly agrees with the need for a reference point for purpose of comparison, we believe that a regional, rather than national average, should be used. Given the differences in available fuel types and emissions characteristics of the power supply between the eastern and western United States, and the fact that transmission constraints prevent power from flowing between the eastern and western regions of the country, we believe that a western regional average will give New Mexico electric customers a better reference point with which to compare their power supply. CCAE recommends using the average fuel mix and emissions characteristics of the Western Systems Coordinating Council (WSCC) as the regional baseline. The WSCC region is typically used to characterize the western section of the national electric grid and average fuel mix and emissions characteristics for the WSCC are readily available

from the E-GRID database.

C. Monthly Reporting to Consumers

The proposed disclosure rule calls for information to be disclosed at the time of the initial offer of service and annually thereafter. CCAE strongly believes that in order to provide consumers an opportunity to reconsider decisions and continually make informed choices as new options become available they require more frequent than annual reporting of the disclosure information. CCAE recommends that, in addition to being provided at the time of the initial service offering, the fuel mix and emissions data should be disclosed monthly, either on the utility bill or as a bill stuffer. The monthly bill is a regular point of contact with the customer and is the logical means for providing information on a frequent basis. We emphasize that CCAE is not suggesting that the emissions and fuel mix be recalculated on a monthly basis, but only that the annually calculated figures be reported each month so that customers have the opportunity to review them more often.

D. Definition of Net System Power

The proposed rule defines net system power based on using the owned generation and purchased power of New Mexico's investor-owned utilities (IOUs). At this time, CCAE believes that this is a reasonable assumption. However, as the market opens to new suppliers, there is a potential for the contribution of the IOUs to the system to decrease. Thus, over time, using the IOUs' resource mix as the proxy for net system power may be less appropriate. As such, CCAE recommends that the Commission annually review the appropriateness of using the IOUs' resource mix as the proxy for net system power and if necessary consider revising the definition of net system power.

E. Inclusion of Mercury Emissions

CCAЕ supports the Commission's inclusion of mercury emissions as part of disclosure provisions. However, as mercury emissions from electrical generating sources may have significant health and environmental impacts, CCAE recommends that suppliers be required to disclose information on mercury at the rule's effective date, rather than waiting for the data to become available on E-GRID. The EPA's Toxics Release Inventory (TRI) currently reports mercury emissions from electrical generating sources. Thus, the data is readily available for inclusion in the disclosure label and there is no reason it should not be included as soon as the rule becomes effective.

F. Disclosure of Spent Nuclear Fuel on the Information Label

CCAЕ applauds the Commission in including disclosure of spent nuclear fuel in the disclosure label. We note however that while the rule requires power suppliers to report information on spent nuclear fuel in the emissions tables, it did not require showing spent nuclear fuel on the bar charts. CCAE recommends that it spent nuclear fuel also be shown on the bar chart portion of the disclosure label.

CCAЕ appreciates the opportunity to provide comments on these important issues and looks forward to working with the Commission and other interested parties on the implementation of the disclosure rule.

Respectfully submitted,

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ATTORNEY FOR THE COALITION FOR CLEAN AFFORDABLE ENERGY

Attachment A: Description of CCAE Member Organizations

The Coalition for Clean Affordable Energy consists of the following organizations:

New Mexico Conservation Voters Alliance (CVA) is a non-profit organization with a network of environmental groups and leaders in New Mexico and members and supporters totaling 4,800. It provides public education, training opportunities of its members on a variety of environmental skills, lobbying the state legislature and tracking votes of elected leaders.

The Land and Water Fund of the Rockies is a regional environmental law center serving the Rocky Mountain and Desert Southwest states. Using an interdisciplinary team of lawyers, economists, engineers and analysts, the LAW Fund's Energy Project works to make it financially possible for the region's electric power providers to engage in sustainable energy practices.

The National Parks and Conservation Association (NPCA) is America's only national, non-profit citizen organization dedicated to promoting the protection, enhancement, and public understanding of the National Park Service. Founded in 1919, NPCA has a national membership of more than 450,000.

New Mexico Citizens for Clean Air & Water is a citizen's organization dedicated to protecting and enhancing the quality of New Mexico's air and water. Founded in 1969, the NMCCA&W has a long history of involvement in New Mexico environmental and energy issues and has previously participated in proceedings before the New Mexico Public Utility Commission.

The New Mexico Public Interest Research Group is a non-profit, non-partisan public interest consumer and environmental watchdog with several thousand members throughout the state of New Mexico.

The New Mexico Solar Energy Association is a non-profit whose primary goal is to further solar and related arts, sciences and technologies with concern for the ecological, social and economic fabric of the region. It serves to inform public, institutional and government bodies and seeks to raise the level of public awareness of its purposes.

The Rio Grande Chapter of the Sierra Club has more than 6,000 members in New Mexico. The chapter is active in legislative, judicial and other avenues on behalf of the environment.

The Southwest Research and Information Center (SRIC) is a non-profit public interest organization representing low- and fixed-income residential ratepayers. SRIC is also active in environmental issues and has participated in past Commission proceedings with environmental implications.

Attachment B

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES

CHAPTER 10 ELECTRIC SERVICES

PART 573 DISCLOSURE OF GENERATION SOURCE, FUEL MIX AND EMISSIONS UNDER THE RESTRUCTURING ACT

17.10.573.1 ISSUING AGENCY: New Mexico Public Regulation Commission ("Commission"), 224 East Palace Avenue, Santa Fe, NM 87501-2013.

17.10.573.2 SCOPE: This rule applies to every competitive power supplier, public utility and distribution cooperative utility subject to the jurisdiction of the New Mexico Public Regulation Commission pursuant to the Electric Utility Industry Restructuring Act of 1999 ("Restructuring Act"), NMSA 1978, Section 62-3A-1 et seq. (1999).

A. Public utilities that acquire and deliver standard offer service shall provide disclosure of the generation source, fuel mix and emissions of standard offer service to standard offer service customers. Public utilities are subject to and must comply with all requirements of this rule when providing disclosure to standard offer service customers. Public utilities are responsible for ensuring that the supplier(s) of standard offer service provide adequate information to the public utility to enable the public utility to provide this disclosure.

B. If a distribution cooperative utility elects a business method other than load aggregator, the distribution cooperative utility shall provide disclosure of the generation source, fuel mix and emissions of standard offer service to standard offer service customers. A distribution cooperative utility that elects a business method other than load aggregator is subject to and must comply with all requirements of this rule when providing disclosure to standard offer service customers. A distribution cooperative utility that elects a business method other than load aggregator is responsible for ensuring that the supplier(s) of standard offer service provide adequate information to the distribution cooperative utility to enable the distribution cooperative utility to provide this disclosure.

17.10.573.3 STATUTORY AUTHORITY: The New Mexico Constitution, art. XI, Section 2, the Public Regulation Commission Act, NMSA 1978, Section 8-8-1 et seq., in particular Section 8-8-4 NMSA 1978, and the Electric Utility Industry Restructuring Act of 1999, NMSA 1978, Section 62-3A-1 et seq., in particular Sections 9(F), 12, 16, and 20 (1999).

17.10.573.4 DURATION: Permanent.

17.10.573.5 EFFECTIVE DATE: _____, unless a later date is cited at the end of a section.

17.10.573.6 OBJECTIVE: The objective of this rule is to establish uniform standards for competitive power suppliers to disclose generation source, fuel mix and emissions characteristics to potential customers.

17.10.573.7 DEFINITIONS: In addition to the definitions contained in the Electric Utility Industry Restructuring Act of 1999, as used in this rule:

A. advertising or marketing is any communication or activity designed or intended to increase the recipient's likelihood of purchasing a competitive service.

B. biomass means an electric power source derived from combustible residues or gasses from logging, forest products manufacturing, agricultural and orchard crops, black pulping liquor, waste products from livestock and poultry operations and food processing, urban wood waste, municipal liquid waste treatment operations, and landfill gas.

C. claim or claims based sale means a claim made to customers by a competitive power supplier for the purpose of marketing any competitive service that identifies any of a competitive power supplier's electricity sources as different from net system power or a claim that a sale is based on or related to one or more specific purchases or power supplies and that contains either:

(1) a reference to the type of fuel used to generate the competitive service offered for sale by the competitive power

supplier, other than disclosure of net system power; or

(2) a reference, directly or indirectly, to use of a renewable resource to generate, in part or in whole, the competitive service offered for sale by the competitive power supplier, other than disclosure of net system power; or

(3) a statement that either a specific attribute of the competitive service or of its use creates or is associated with an environmental effect.

D. coal means a power source from burning coal or coal wastes.

E. competitive power supplier has the meaning given in the Restructuring Act but also includes, only for the purpose of providing disclosure to standard offer service customers as required by this rule, a public utility that acquires and delivers standard offer service and a distribution cooperative utility that elects a business method other than load aggregator.

F. competitive service means any supply service or energy-related service available to customers from multiple suppliers on an unregulated basis. Competitive service does not include any energy-related service or electric supply service which was not subject to the jurisdiction of the Public Regulation Commission or its predecessor prior to passage of the Restructuring Act, including but not limited to, the sale, lease, installation, or operation and maintenance of equipment to or for a customer for the generation and/or distribution of electric power on customer-owned or leased property or in a customer-acquired right-of-way using customer-owned distribution facilities or the provision of any energy-related service to a customer on the customer's side of a public utility's service meter which does not require use of a public utility's distribution facilities. Competitive service also includes standard offer service acquired and delivered by a public utility or distribution cooperative utility that elects a business method other than load aggregator, only for the purpose of providing disclosure to standard offer service customers as required by this rule.

G. disclosure means disclosure to a customer in accordance with these rules.

H. disclosure label means the prescribed format for disclosure of information under this rule to customers.

I. E-GRID is the United States Environmental Protection Agency's Emissions & Generation Resource Integrated Database, which is a comprehensive database of environmental attributes of electric power systems. E-GRID is based on available plant specific data for all U.S. electricity generating plants that provide power into an integrated electric power grid. Data reported includes generation, resource mix, emissions (for CO₂, SO₂, and NO_x), emission rates in both pounds per megawatt-hour (lbs/MWh) and pounds per million Btu (lbs/MMBtu) for CO₂, SO₂, and NO_x, heat input (in MMBtu) and capacity (in MW). E-GRID currently reports this information on an annual basis.

J. energy-related service means, for purposes of this rule, only those ancillary services available from multiple suppliers at market-based rates that are necessary to support the provision of supply service.

K. Environmental Protection Agency ("EPA") means the United States Environmental Protection Agency.

L. fuel mix means the actual or imputable sources of electricity sold at retail, expressed in terms of percentage contributions by the various fuels or technologies (such as coal or solar) used to generate electricity. The total fuel mix included in each disclosure shall total one hundred percent (100%).

M. geothermal means an electric power source derived from thermal energy naturally produced within the earth.

N. hydro or hydropower means a power source created when water flows from a higher elevation to a lower elevation and such flow is converted to electrical energy in one or more generators at a single facility.

O. laundering means to channel through an intermediate person in order to conceal the generation source, fuel mix or emissions.

P. natural gas means a power source from burning natural gas, ethane or propane.

Q. net system power means, for a particular calendar year, the owned generation and purchased power of New Mexico's investor owned utilities weighted by the amount of that electricity sold at retail in New Mexico. The owned generation of the investor owned utilities is weighted by the average percent sold in New Mexico and assigned the New Mexico resource and emissions mix. The purchases of the investor owned utilities are weighted by the average percent sold in New Mexico and divided equally before being assigned the Texas and Arizona resource and emissions mix. The average weighted resource and emissions mix for both generation and purchases for investors owned utilities are summed to create net system power.

On an annual basis, the Commission will review using the generation and purchased power of New Mexico's investor owned utilities as the proxy for net system power. Based on the findings of this review, the Commission will revise the

[definition of net system power as necessary.](#)

R. nuclear means a power source from nuclear fission or fusion.

S. offering competitive service means conveying an offer to sell competitive service, as that term is defined in NMSA 1978, Section 62-3A-3(F), that by its terms, invites acceptance and, if accepted, forms a contract to supply competitive service in accordance with the Restructuring Act.

T. oil means an electric power source derived from a liquid fossil fuel.

U. product specific advertising or marketing means any advertising or marketing that contains words describing a specific competitive service being advertised, marketed or offered in New Mexico and that is distributed or provided to customers in New Mexico.

V. small business customer means a customer who purchases less than 200,000 kWh per year or at a demand level that does not exceed 50 kW. For purposes of this rule, a small business customer is an existing customer whose actual usage has not exceeded 200,000 kWh in the immediately preceding twelve months or whose demand has not exceeded 50 kW in any month during the immediately preceding twelve months, or a new customer whose usage, as estimated by the utility, will not exceed 200,000 kWh during the next 12 months or whose demand will not exceed 50 kW during the next 12 months.

W. solar means an electric power source that is derived from radiation from the sun that is directly or indirectly converted to electrical energy.

X. specific purchase means a transaction claimed by a competitive power supplier to document the source of supply, consisting of the purchase of a stated quantity of electricity, directly or indirectly, from a specified generation facility; or purchase of the right to trace a stated quantity of electricity to generation of an equal amount by a specified generation facility.

Y. unspecified fossil fuel means, when used in the context of generation source or fuel mix, a power source that cannot be categorized as a specified renewable, coal, natural gas, oil, or nuclear source.

Z. unspecified renewable means, when used in the context of generation source or fuel mix, a renewable power source that cannot be categorized as biomass, geothermal, hydro, solar or wind.

AA. wind means an electric power source created by movement of air that is converted to electrical energy.

17.10.573.8 RELATIONSHIP TO OTHER COMMISSION RULES: This rule does not supersede any other rule of the Commission but supplements rules applicable to competitive power suppliers and public utilities, including but not limited to, NMPRC Rules 410 (Residential Customer Service), 591 (Standard Offer Service), 592 (Customer Protection) and 593 (Competitive Power Supplier Licensing). This rule is intended to primarily deal with the disclosure of generation source, fuel mix and emissions.

17.10.573.9 REQUIRED DISCLOSURE TO CUSTOMERS.

A. A competitive power supplier shall make a generation source, fuel mix and emissions disclosure to each customer including the following information:

(1) Generation source by fuel type as required by 17.10.573.11 NMAC.

(2) Emission characteristics for the competitive service offered for sale, as required by 17.10.573.12 NMAC.

B. Disclosure to each customer shall be provided in the form of a disclosure label in the format reflected in Appendix A and an explanation of environmental impacts in the form presented in Appendix B.

C. Each competitive power supplier shall disclose the information required in this section to customers as follows:

(1) This disclosure shall be provided to the customer at the time the competitive power supplier offers competitive services to the customer. Pursuant to 17.10.592 NMAC, the disclosure must be provided as part of the letter of agency.

(2) Competitive power suppliers shall continue to provide the most recently updated disclosure to each customer no less often than

~~annually~~ monthly. The competitive power supplier may provide the ~~annual-monthly~~ disclosure ~~in a separate mailing on the electric bill~~ or, pursuant to 17.10.592 NMAC, may provide the disclosure as a bill stuffer.

(3) Competitive power suppliers shall provide a toll free telephone number and Internet site where customers can contact the competitive power supplier to obtain the disclosure label.

- (4) Direct telephone marketing shall include the toll free number or Internet site required by this section and upon customer request shall make an abbreviated generation source, fuel mix and emissions disclosure to the customer.
- (5) Product specific advertising or marketing appearing in television, radio or printed form, including newspapers, magazines, direct mail and Internet advertisements, shall include the toll free number or Internet site required by this section.
- (6) Competitive power suppliers shall provide the disclosure label to a customer free of charge if a customer requests information on generation source, fuel mix or emissions. Providing the disclosure label on the competitive power supplier's Internet site is sufficient to satisfy this requirement, unless the customer requests to receive the disclosure label by mail.

17.10.573.10 SOURCE OF DATA AND CALCULATIONS FOR DISCLOSURE:

A. Historical Or Forecasted Disclosure: A competitive power supplier shall provide a disclosure for each competitive service using the most recent available calendar year historical information. Notwithstanding the requirement to use historical information, a competitive power supplier may modify the historical information if,

- (1) The competitive power supplier shows that it will be supplying a competitive service produced by a new generation source for which there is no historical information or
- (2) The competitive power supplier shows that it will be supplying a competitive service produced by an existing generation source which has been modified to reduce the associated emissions or
- (3) The competitive power supplier has purchased/sold sufficient generation facilities to significantly alter its historical generation profile or
- (4) The competitive power supplier is making a claims based sale.

A disclosure based on a mix of historical and forecasted information shall use the weighted percentages of the generation source, fuel mix and emission characteristics associated with the historical information and the forecasted information.

B. Historical Information: For purposes of calculating the disclosure based on historical information,

- (1) **Supplier Owned Generation:** A competitive power supplier that provides a competitive service from a generation source which it owns, or has partial ownership, shall use the generation source, fuel mix and emission characteristics of that generation source.
- (2) **Purchased Power:** A competitive power supplier that provides a competitive service through purchased power shall, at the competitive power supplier's option, use the average generation source, fuel mix and emissions characteristics of net system power or calculate the disclosure based on the actual historical purchases of the competitive power supplier.

A competitive power supplier shall not use a mix of actual historical purchases and net system power to calculate the disclosure. If the competitive power supplier calculates the disclosure based on historical purchases,

- (a) For a specific purchase from a known generation source, the competitive power supplier shall use the average generation source, fuel mix and emissions characteristics of the specific generation source.
- (b) For a specific purchase which was not from a known generation source but was supplied from one wholesale supplier which generated the purchased power, the competitive power supplier shall use the average generation source, fuel mix and emissions characteristics of the wholesale supplier's owned generation.

(3) **Combination of Supplier Owned Generation and Purchased Power:** A competitive power supplier that provides a competitive service through both purchased power and supplier-owned generation shall use the weighted percentages of the generation source, fuel mix and emissions characteristics associated with the purchases and the supplier-owned generation to produce the disclosure.

C. Forecasted Information: For purposes of calculating a disclosure based on forecasted information,

- (1) **Supplier Owned Generation:** A competitive power supplier that intends to provide a competitive service from a generation source which it owns, or has partial ownership, shall use the forecasted generation source, fuel mix and emissions characteristics of that generation source to produce the disclosure.
- (2) **Purchased Power:** A competitive power supplier that intends to provide a competitive service through purchased power shall use the generation source, fuel mix and emissions characteristics of that purchased power to produce the disclosure. For purposes of calculating the disclosure on intended purchases,

- (a) For a specific purchase from a known generation source, the competitive power supplier shall use the forecasted average generation source, fuel mix and emissions characteristics of the specific generation source.
- (b) For a specific purchase which will not be out of a known generation source but will be supplied from one wholesale supplier which generated the purchased power, the competitive power supplier shall use the forecasted average generation source, fuel mix and emissions characteristics of the wholesale supplier's owned generation.
- (3) **Combination of Supplier Owned Generation and Purchased Power:** A competitive power supplier that intends to provide a competitive service through both purchased power and supplier-owned generation must use the weighted percentages of the forecasted generation source, fuel mix and emissions characteristics associated with the purchases and the supplier-owned generation used to supply the competitive service to produce the disclosure.
- (4) **Claims based-sales:** A competitive power supplier that offers a claims based sale shall compute the emissions based on the annual emission factors for the most recent calendar year data applied to the expected production level for each source of supply included in the competitive service.

D. Data for Generation Source, Fuel Mix and Emissions Characteristics: For purposes of calculating and producing the disclosure required by this rule, a competitive power supplier shall use one of the following sources for generation source, fuel mix and emissions information;

- (1) A competitive power supplier may obtain historical generation source, fuel mix and emissions information from the most recent E-GRID released by the EPA.
- (2) A competitive power supplier may obtain generation source, fuel mix and emissions information from its own data and calculations, in which case the competitive power supplier shall, to the fullest extent possible, use data that has been publicly reported (such as FERC Form 1) and provide the Commission with the data and calculations used to determine the disclosure.
- (3) A competitive power supplier may use a combination of the two methods above to calculate the disclosure.

E. General Disclosure Statement: A competitive power supplier may use the same disclosure for some or all of the competitive services that it offers by using its average generation source, fuel mix and emissions characteristics.

(Example 1: A competitive power supplier offers a dozen different competitive services depending on the usage characteristics of the customer. The supplier does not make any claims based sales. The competitive power supplier may therefore propose the same disclosure label for each of the competitive services by using the average generation source, fuel mix and emission characteristics associated with the supplier. Example 2: Same facts as above but the competitive power supplier offers renewable energy as one of its competitive services. The competitive power supplier could use a generic label for eleven of its competitive services (based on the average fuel mix and emissions, not included in the claims based sale) and a specific label for the renewable energy offering.)

17.10.573.11 FUEL MIX DISCLOSURE.

A. Applicability. Disclosure shall specify the fuel mix of the competitive service sold in accordance with 17.10.573.11 NMAC.

B. Each competitive power supplier shall disclose to customers the fuel mix of each competitive service offered as follows:

- (1) A competitive power supplier that makes a claims based sale shall:
 - (a) Disclose the fuel mix for the competitive service; and
 - (b) Include for comparison the fuel mix for the

~~United States national average~~ Western Systems Coordinating Council average during the corresponding time period.

(2) A competitive power supplier that supplies electricity without any claims-based-sales shall:

- (a) Disclose the fuel mix for the competitive service;
- (b) Include for comparison the fuel mix for the

~~United States national average~~ Western Systems Coordinating Council average during the corresponding time period; and

(c) Include a statement indicating that the customer's supply is provided by whatever electricity is available and reference the calendar year used to create the fuel mix disclosure. This statement must be the same as or substantially similar to that shown in Appendix A.

C. The disclosure shall include the following information about the fuel mix of the competitive service:

(1) Fuel mix information shall be provided as percentages of the total supply for the competitive service using the following applicable fuel type categories in the following order:

(a)

~~Renewable~~ (a) Biomass

(b)

Wind

(c) Solar

(d) Geothermal

(e) Hydro

~~(b)~~ (f) Coal

~~(e)~~ (g) Oil

~~(d)~~ (h) Natural gas

~~(e)~~ (i) Nuclear

(j) ~~(f)~~ Unspecified Fossil Fuel (specify for types over 1.5%)

(k) Unspecified Renewable (specify for types over 1.5%)

~~(2) — A competitive power supplier who claims to supply more than 10% of their fuel mix as renewable must include the applicable sub-categories of renewables as percentages of its total offering, in the following order:~~

~~(a) — Biomass~~

~~(b)~~

~~— Wind~~

~~(e) — Solar~~

~~(d) — Geothermal~~

~~(e) — Hydro~~

~~(f) — Unspecified Renewable (specify for types over 1.5%)~~

D. The percentage of each fuel type category or sub-category that is specified shall be calculated based on weighted contribution in kilowatt hours supplied from that fuel mix category over the relevant period. The competitive power supplier may round the percentage of fuel type to the nearest whole percentage. If the percentage of a fuel type rounds to zero, the fuel type may be omitted. The sum of the fuel type categories shall total one hundred percent.

17.10.573.12 EMISSIONS DISCLOSURE.

A. Applicability. Disclosure shall include disclosure of the emissions associated with the competitive service sold in accordance with 17.10.573.12 NMAC.

B. Each competitive power supplier shall disclose to customers the emissions associated with each competitive service offered as follows:

(1) A competitive power supplier that makes a claims based sale shall:

(a) Disclose the emissions for the competitive service; and

(b) Include for comparison the emissions for the

~~United States national average~~ Western Systems Coordinating Council average during the corresponding time period.

(2) A competitive power supplier that supplies electricity without any claims-based-sales shall:

(a) Disclose the emissions for the competitive service;

(b) Include for comparison the emissions for the

~~United States national average~~ Western Systems Coordinating Council average during the corresponding time period; and

C. Emissions Characteristics in grams or lbs per MWh. Each competitive power supplier shall disclose as shown in Appendix A, the emissions associated with the generation of the competitive service sold, as compared to the ~~United States national~~ Western Systems Coordinating Council average emissions for the corresponding calendar year, in grams or pounds for each form of pollutant per MWh. The disclosure shall include the following pollutants using their respective rate measurements:

(1) carbon dioxide, measured in lbs/MWh of CO² emissions

(2) sulfur dioxide, measured in lbs/MWh of SO² emissions

(3) nitrogen oxides, measured in lbs/MWh of NO_x emissions

(4) spent nuclear fuel, measured in g/MWh of spent fuel

(5) mercury, measured in g/MWh of mercury emissions

~~(Reporting of mercury emissions is contingent on, and only required when, the EPA begins reporting of mercury emissions in the E-GRID database.)~~

D. Bar Chart Disclosure. Each competitive power supplier shall disclose in the form of a bar chart, as shown in Appendix A, the emissions associated with the generation of the competitive service compared to the ~~United States national~~ Western Systems Coordinating Council average levels of such emissions. As shown in Appendix A, the bar chart shall reflect separate horizontal bars for each of the following emissions:

(1) carbon dioxide

(2) sulfur dioxide

(3) nitrogen oxides

(4) spent nuclear fuel, measured in g/MWh of spent fuel

~~(4)~~(5) mercury

~~(Reporting of mercury emissions is contingent on, and only required when, the EPA begins reporting of mercury emissions in the E-GRID database.)~~

E. Bar Chart Computations. The bar chart graph shall contain a vertical line which represents the ~~United States national~~ Western Systems Coordinating Council average level of emissions. For each emission the horizontal bar shall measure the greater or lesser percentage of that emission from the competitive service sold as compared to the ~~United States national~~ Western Systems Coordinating Council average level represented by the vertical line. For each emission, the percentage of emissions from the specified competitive service as compared to the ~~United States national average~~ Western Systems Coordination Council average shall be computed using the following rate measurements:

(1) carbon dioxide, measured in lbs/MWh of CO² emissions;

(2) sulfur dioxide, measured in lbs/MWh of SO² emissions;

(3) nitrogen oxides, measured in lbs/MWh of NO_x emissions

(4) spent nuclear fuel, measured in g/MWh of spent fuel

~~(4)~~(5) mercury, measured in g/MWh of mercury emissions

~~(Reporting of mercury emissions is contingent on, and only required when, the EPA begins reporting of mercury emissions in the E-GRID database.)~~

17.10.573.13 COMMISSION APPROVAL PROCEDURE. Competitive power suppliers shall file for Commission approval of the disclosure for each competitive service including generation source, fuel mix and emissions characteristics. Competitive power suppliers shall update the disclosure used for each competitive service no less often than annually. The filing by the competitive power supplier:

- A. shall provide a copy of the proposed disclosure.
- B. shall identify the generation source(s) to be used to provide the competitive service.
- C. shall identify the source of the fuel mix and emissions data and calculations used to generate the disclosure.
- D. shall identify whether the disclosure is based on historical or forecasted information.
- E. if the disclosure relies on any data or calculations pursuant to 17.10.573.10.D(2) NMAC, shall provide copies of all data and calculations used to create the disclosure. The data and calculations must be verified by affidavit attesting that the data and calculations are complete, true and accurate representations of the generation source, fuel mix and emission characteristics of the competitive service.
- F. shall provide evidence to support any claim of a specific purchase used to calculate the disclosure.
- G. shall fully explain the calculation of the proposed disclosure and verify this explanation by affidavit.
- H. shall provide the complete filing, including all data and calculations, in electronic form acceptable to the Commission.
- I. may request a protective order pursuant to 17.1.2 NMAC.
- J. is deemed approved within 30 days of filing unless the Commission suspends the application for further proceedings.

17.10.573.14 FORMAT. Disclosure of the competitive power supplier's generation source, fuel mix and emissions characteristics shall appear together in a format no larger than one page and shall be in a clearly legible font. The typeface of the main text shall be at least 8 points and the typeface of headings and titles shall be at least 10 points. Competitive power suppliers shall use the disclosure label format attached to these rules as Appendix A and Appendix B. Appendix B may be included on a second page or on the back side of Appendix A. Competitive power suppliers shall use the disclosure label shown in Appendix C for product specific advertising in printed media.

17.10.573.15 ENFORCEMENT AND RECORD KEEPING.

- A. **Tracking and Record Keeping.** Each competitive power supplier shall maintain calendar year records of all supplier-owned generation and purchased power used to supply each competitive service as is necessary to comply with this rule. These records must be maintained for a period of at least three (3) years.
- B. **Reconciliation reports.** No later than May 31st of each year, beginning in the year 2003, each competitive power supplier shall file with the Commission an annual reconciliation report, which is verified by affidavit. The competitive power supplier may request a protective order for this report pursuant to 17.1.2 NMAC. The report shall;
 - (1) identify all purchases and sales of power during the calendar year including the amount of power purchased/sold, the date of the purchase/sale, the identity of the seller/buyer, the amount of power exchanges, the date of power exchanges, and identity of the exchangers.
 - (2) compare actual calendar year data on generation source, fuel mix and emissions of the supplier's purchases and generation used to supply a competitive service with the generation source, fuel mix and emissions disclosed for the competitive service during that calendar year.

(3) if the competitive power supplier offers more than one competitive service, the report shall compare the competitive power suppliers average overall fuel mix and emission with the weighted average fuel mix and emissions reported for the sum of its competitive services.

C. Allowed deviations. In the event the percentage of any fuel type or emission relating to any competitive service sold during the calendar year deviates by more than plus or minus five percentage points from the actual percentage of that fuel type or emission delivered as shown by year end records,

- (1) The competitive power supplier shall report the deviation to the Commission in its reconciliation report.
- (2) If the deviation relates to a claims based sale, the competitive power supplier shall provide notice of the deviation to all customers purchasing the affected claims based service the previous year together with a statement that the customer may terminate and switch to another competitive power supplier with no charges or penalties from the competitive power supplier.

(3) If the deviation is due to a difference between net system power and the actual purchases made by the competitive power supplier, the competitive power supplier shall indicate the deviation is due to the use of net system power as a proxy for purchased power.

D. Penalties: The Commission may impose penalties for violation of this rule in accordance with NMSA 1978, § 62-3A-21 (1999). The Commission may consider aggravating factors when determining appropriate penalties including, without limitation, repeated violation of the rule, willful violation of the rule, double counting of power used to supply claims based sales or laundering of generated or purchased power. Nothing in this rule limits other remedies available to any party including the Commission.

17.10.573.16 EXEMPTION OR VARIANCE.

A. Any competitive power supplier may file an application for an exemption or a variance from the requirements of this rule. Such application shall:

- (1) describe the situation which necessitates the exemption or variance,
- (2) set out the effect of complying with this rule on the competitive power supplier and the competitive power supplier’s customers if the exemption or variance is not granted,
- (3) identify the section(s) of this rule for which the exemption or variance is requested,
- (4) define the result which the request will have if granted,
- (5) *state how the exemption or variance will promote the achievement of the purposes of this rule and the Restructuring Act,*
- (6) *include customer research or other evidence showing the effectiveness of the proposed variance, and*
- (7) state why the proposed alternative is a better alternative than that provided by the existing rule.

APPENDIX A

The disclosure must indicate whether it is based on historical data or a forecast.

FUEL MIX AND EMISSIONS DISCLOSURE	
The actual fuel mix and emissions associated with your energy purchase will vary depending on future operating conditions and could be substantially higher or lower. The information shown below is based on data obtained during a recent calendar year. The <u>national regional</u> average represents electric generation in all 50 states of the U.S <u>the 11 western states of the U.S.</u>	
FUEL MIX The electricity sold under this label is supplied from whatever electricity supply is available. [competitive power supplier] used these sources of electricity to supply this product from xx/yy to xx/yy. or [competitive power supplier] will	Error! Not a valid link.Error! Not a valid link.

use these electricit
supply this produ

AVERAGE EMIS

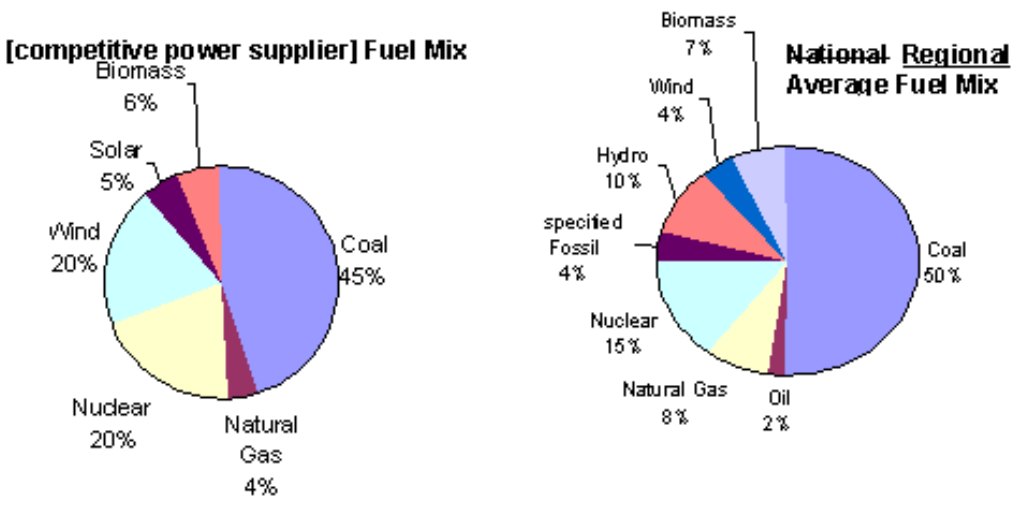
These emission lev
sources [competiti
supplier] used to s
product from xx/y

A 100 watt light b
10 hours uses 1 kW
1000 kWh of elect
MWh.

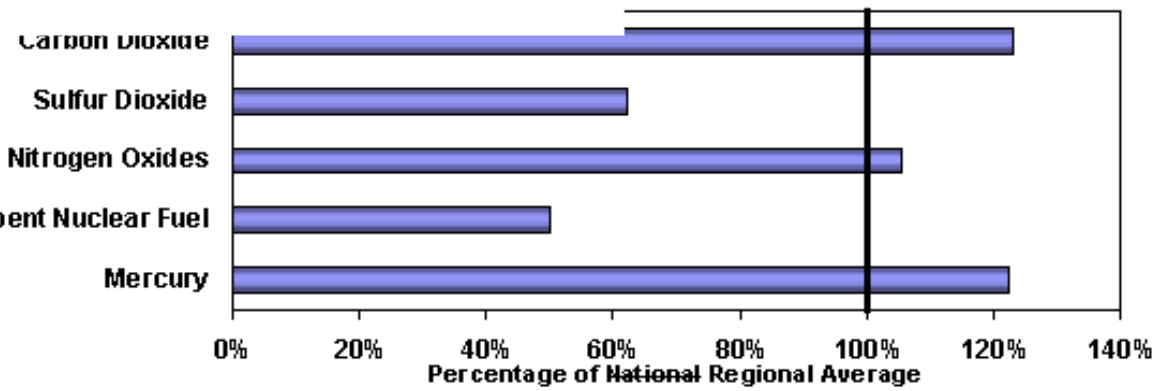
COMPARISON
NATIONAL-REG
EMISSIONS

Carbon dioxide (SO₂), ni
Spent Nuclear Fuel
(NO_x),
spent nuclear fu
emissions as a pe
regional average

Dioxid



nal Average bs/MWh)
470
.86
.92
nal Average grams/MWh)
I/A
006



APPENDIX B

Information on the Environmental Impacts of Electricity Generation.

Carbon Dioxide (CO₂) – Carbon dioxide is suspected to be a contributor to global climate change, which may cause droughts and floods, raise sea level, and threaten forests, crops, and fish and wildlife habitat. Coal and oil, and to a lesser extent natural gas, are the principal sources of CO₂ from power generation.

Sulfur Dioxide (SO₂) – Major health effects associated with SO₂ include asthma, respiratory illness and aggravation of cardiovascular disease. SO₂ combines with water and oxygen in the atmosphere to form acid rain, which increases acidity of lakes and streams, damages plants and accelerates decay of buildings and other structures. Coal is the principal source of SO₂ from power generation. In 1992 in the US, the electric utilities accounted for approximately 70% the SO₂ emissions.

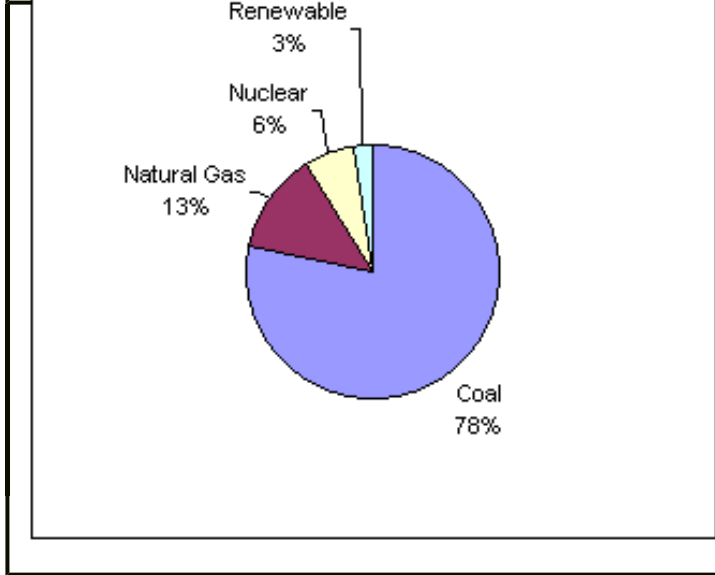
Nitrogen Oxides (NO_x) – Nitrogen oxides contribute to acid rain and ground-level ozone (smog), and may cause respiratory illness in children. NO_x also adds excess nutrients to lakes and coastal waters which are destructive to fish and other animal life. Coal, and to a lesser extent natural gas and biomass, are sources of NO_x from power generation. In 1992 in the US, the electric utilities accounted for approximately 32% the NO_x emissions.

Hydro Impacts – Some hydropower dams contribute to the decline of salmon and other fish and wildlife populations.

Spent Nuclear Fuel contains the most radioactive and long-lived waste formed during operation of nuclear power plants. Spent fuel is currently stored at nuclear power reactor sites. The U.S. has no permanent disposal site for high-level radioactive waste.

Mercury – Mercury is a heavy metal by-product of smokestack emissions primarily from coal burning power plants. It is an airborne emission that precipitates by rain onto lakes, streams, and the oceans. This toxic metal accumulates in the systems of aquatic plants, fish and animals and can be passed up the food chain to larger animals and people. High levels of mercury poisoning can cause nervous system damage and possibly death.

For more information on mercury emissions, please contact the EPA's website at <http://www.epa.gov> or the New Mexico Environment Department's website at <http://www.nmenv.state.nm.us>



New Mexico Market Average Emissions	
Emission	Emissions in (bs/MWh)
Carbon Dioxide (CO ₂)	2070.10
Sulfur Dioxide (SO _x)	5.08
Nitrogen Oxides (NO _x)	4.81
Emissions in (grams/MWh)	
Mercury	
Spent Nuclear Fuel	

APPENDIX C

For printed media including the toll free number or internet site prescribed in 17.10.573.9.C(5) NMAC, use one of the following, or substantially similar disclosure:

FUEL MIX AND EMISSIONS DISCLOSURE: For standardized information about this product's fuel mix and emissions, please contact [competitive power supplier] at 1-800-000-0000.

FUEL MIX AND EMISSIONS DISCLOSURE: FOR STANDARDIZED INFORMATION ABOUT THIS PRODUCT AND ITS ENVIRONMENTAL IMPACTS, visit [competitive power supplier]'s website at [www.\[competitiverpowersupplier\].com](http://www.[competitiverpowersupplier].com)