

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 9 ELECTRIC SERVICES
PART 561 CARBON DIOXIDE EMISSIONS MEASUREMENT AND COMPLIANCE

17.9.561.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.9.561.1 NMAC - N, 11/19/2024]

17.9.561.2 SCOPE: This rule applies to all qualifying utilities as that term is defined in the Energy Transition Act, Subsection T of Section 62-18-2 NMSA 1978, that receive approval of a financing order and issue sources of energy transition bonds.
[17.9.561.2 NMAC - N, 11/19/2024]

17.9.561.3 STATUTORY AUTHORITY: Subsection T of Section 62-18-2 NMSA 1978, Subsection D of Section 62-18-10 NMSA 1978, Paragraph (2) of Subsection B of Section 62-18-11 NMSA 1978, and Paragraph (5) of Subsection B of Section 62-19-9 NMSA 1978.
[17.9.561.3 NMAC - N, 11/19/2024]

17.9.561.4 DURATION: Permanent.
[17.9.561.4 NMAC - N, 11/19/2024]

17.9.561.5 EFFECTIVE DATE: November 19, 2024, unless a later date is cited at the end of a section.
[17.9.561.5 NMAC - N, 11/19/2024]

17.9.561.6 OBJECTIVE: The objective of this rule is to implement the requirements of, and to ensure compliance and consistency with, Subsection D of Section 62-18-10 NMSA 1978 of the Energy Transition Act.
[17.9.561.6 NMAC - N, 11/19/2024]

17.9.561.7 DEFINITIONS: Unless otherwise specified, as used in this rule:

- A. Definitions beginning with “A”:** [RESERVED]
- B. Definitions beginning with “B”:** [RESERVED]
- C. Definitions beginning with “C”:**
 - (1) “CO₂” means carbon dioxide; and
 - (2) “compliance period” means the triennial period over which the commission measures a qualifying utility’s compliance with Subsection D of Section 62-18-10 NMSA 1978. The first compliance period is January 1, 2023 to December 31, 2025, and subsequent compliance periods follow thereafter in three-year intervals.
- D. Definitions beginning with “D”:** [RESERVED]
- E. Definitions beginning with “E”:** “emissions” means the production and discharge of CO₂ from a qualifying utility’s fleet.
- F. Definitions beginning with “F”:** “fleet” means:
 - (1) the qualifying utility’s generation, and
 - (2) the qualifying utility’s sources of energy procured pursuant to power purchase agreements with terms of 24 months or longer, dedicated to serving the qualifying utility’s retail customers.
- 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”:** [RESERVED]
- M. Definitions beginning with “M”:** “MWh” means megawatt-hour(s).
- N. Definitions beginning with “N”:** [RESERVED]
- O. Definitions beginning with “O”:** [RESERVED]
- P. Definitions beginning with “P”:** [RESERVED]
- Q. Definitions beginning with “Q”:** [RESERVED]
- R. Definitions beginning with “R”:** [RESERVED]
- S. Definitions beginning with “S”:** [RESERVED]
- T. Definitions beginning with “T”:** [RESERVED]

- 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]

[17.9.561.7 NMAC - N, 11/19/2024]

17.9.561.8 CO2 EMISSIONS STANDARDS:

A. By January 1, 2023, until December 31, 2031, a qualifying utility’s fleet shall not emit, on average over a compliance period, more than 400 pounds of CO2 per MWh.

B. By January 1, 2032, and for every subsequent compliance period, a qualifying utility’s fleet shall not emit, on average over a compliance period, more than 200 pounds of CO2 per MWh.

[17.9.561.8 NMAC - N, 11/19/2024]

17.9.561.9 ANNUAL REPORT:

A. A qualifying utility shall file an annual report by March 15 for the preceding year’s data.

B. An annual report shall include the following data:

- (1) all fleet CO2 emissions;
- (2) all CO2 emissions resulting from bilateral wholesale market transactions and day-ahead and real-time regional market transactions, using the most specific data available when estimated;
- (3) an explanation of the qualifying utility’s progress toward compliance with Subsection D of Section 62-18-10 NMSA 1978 of the Energy Transition Act based on the current three-year compliance period;
- (4) sufficient detail for the Commission to verify the calculation of the CO2 emissions and energy required to be reported;
- (5) average CO2 emissions per MWh for each fleet facility greater than 10 MW;
- (6) calculations pursuant to Subsection B of 17.9.561.10 NMAC with and without off-system sales included; and
- (7) sufficient detail for the commission’s measurement and verification of the fleet CO2 emissions rate.

C. An annual report shall include the following data for informational purposes only:

- (1) all CO2 emissions and energy from sources of energy procured pursuant to power purchase agreements with terms of less than 24 months, including, but not limited to, all CO2 emissions from imported residual energy resulting from day-ahead and real-time regional market transactions;
- (2) all CO2 emissions and energy associated with off-system sales, including, but not limited to, all CO2 emissions from bilateral wholesale market exports and exported residual energy resulting from real-time and day-ahead regional market transactions;
- (3) forecasts of CO2 emissions and energy for the next three compliance periods; and
- (4) any actions that the utility plans take to achieve compliance in subsequent years.

D. The requirements of 17.9.561.10 NMAC are separate and distinct from the procedures of 17.9.561.9 NMAC.

[17.9.561.10 NMAC - N, 11/19/2024]

17.9.561.10 COMPLIANCE, MEASUREMENT, AND VERIFICATION:

A. For each compliance period, the commission shall, upon the filing of the third annual report of the compliance period, measure and verify a qualifying utility’s compliance with the CO2 emissions standards over the compliance period.

(1) Utility division staff shall evaluate the annual reports filed by the qualifying utility for the compliance period and file a recommendation for commission action within 30 days of filing of the third annual report.

(2) The qualifying utility and intervenors may file responses to staff’s recommendation within 14 days.

B. In determining a qualifying utility’s compliance with the CO2 emissions standards, the commission, qualifying utility, intervenors, and staff shall utilize the following formula to measure the qualifying utility’s fleet CO2 emissions rate: fleet CO2 emissions rate equals total fleet CO2 emissions in pounds during the compliance period divided by total fleet energy in MWh during the compliance period.

C. The commission shall measure all energy and CO2 emissions associated with fleet on and off-system sales in the fleet CO2 emissions rate formula.
[17.9.561.9 NMAC - N, 11/19/2024]

17.9.561.11 NON-COMPLIANCE:

A. After issuing an order to show cause to a qualifying utility and making a finding of non-compliance with the CO2 emissions standards of Subsection D of Section 62-18-10 NMSA 1978 and 17.9.561.9 NMAC, the commission may impose monetary and non-monetary regulatory sanctions on the qualifying utility at the commission's discretion.

B. Before the commission imposes monetary regulatory sanctions on a qualifying utility, the qualifying utility may propose an alternative use of funds, equivalent to the amount identified by the commission to be imposed, for the purposes of advancing the objectives of this rule and the Energy Transition Act.

(1) If the commission imposes monetary regulatory sanctions or approves the qualifying utility's proposed alternative use of the funds, such amounts shall not be eligible for rate recovery.

(2) If the commission denies the qualifying utility's proposed alternative use of the funds, the commission shall require the qualifying utility to pay the monetary regulatory sanctions for remittance to the state treasurer.

[17.9.561.11 NMAC - N, 11/19/2024]

HISTORY OF 17.9.561 NMAC - [RESERVED]