

# **TITLE 17: PUBLIC UTILITIES AND UTILITY SERVICES**

## **CHAPTER 1: UTILITIES GENERAL PROVISIONS**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: UTILITY APPLICATIONS**

#### **17.1.2.1 ISSUING AGENCY:**

Public Regulation Commission.

[17.1.2.1 NMAC - Rp, 17 NMAC 1.2.1, 9-1-08]

#### **17.1.2.2 SCOPE:**

This rule applies to applications for approval of certificates of public convenience and necessity, securities, and new rates filed by utilities pursuant to the Public Utility Act, Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978.

[17.1.2.2 NMAC - Rp, 17 NMAC 1.2.2, 9-1-08]

#### **17.1.2.3 STATUTORY AUTHORITY:**

Section 8-8-4 NMSA 1978 and Section 62-8-3 NMSA 1978.

[17.1.2.3 NMAC - Rp, 17 NMAC 1.2.3, 9/1/2008; A, 12/27/2022]

#### **17.1.2.4 DURATION:**

Permanent.

[17.1.2.4 NMAC - Rp, 17 NMAC 1.2.4, 9-1-08]

#### **17.1.2.5 EFFECTIVE DATE:**

September 1, 2008, unless a later date is cited at the end of a section.

[17.1.2.5 NMAC - Rp, 17 NMAC 1.2.5, 9-1-08]

#### **17.1.2.6 OBJECTIVE:**

To establish procedures for filing applications for certificates of public convenience and necessity, new rates, and securities pursuant to the Public Utility Act.

[17.1.2.6 NMAC - Rp, 17 NMAC 1.2.6, 9-1-08]

#### **17.1.2.7 DEFINITIONS:**

As used in this rule:

**A. advice notice** means a listing by a utility of proposed changes in tariff schedules and proposed effective dates issued to the public and filed with the commission; and

**B. new rates** means either a change in an existing rate or rates or the institution of a rate or rates where none had existed previously.

[17.1.2.7 NMAC - Rp, 17 NMAC 1.2.7, 9-1-08]

#### **17.1.2.8 APPLICATIONS RELATING TO SECURITIES:**

##### **A. Annual informational financing filing:**

**(1)** For purposes of this section, the term "utility" shall include each person subject to Subsection B of Section 62-6-4 NMSA 1978 and each electric, gas, or combination utility subject to the jurisdiction of the commission.

**(2)** Each rural electric cooperative other than a generation and transmission cooperative shall not be required to file, correct or update an annual information filing, but shall file contemporaneously with the commission copies of all documentation submitted to the rural electrification administration supporting any loan application to that agency. The documents shall include, but are not limited to, a power requirements study, a financial forecast, and an engineering work plan.

**(3)** To assist the commission in reviewing applications relating to securities within the thirty (30) days required by statute, each utility shall file with the commission on an annual basis the information required by this rule.

**(a)** Such information shall be filed by the utility in the form of a written statement plus any pertinent exhibits. Such written statements and exhibits shall be filed by the utility with its annual report and cover the twelve month period between the filing of its current annual report and the date its next annual report is due to be filed.

**(b)** The commission or presiding officer may, subsequent to the filing of the statement, require that the utility attend a conference with staff and other parties to review the filing and discuss the utility's financing plan. The filing and any conference held are for informational purposes and no actions taken or statements made by staff

shall be deemed approval of an issuance of securities or in any way bind the commission or staff.

**(4)** A utility, for good cause, shall have a reasonable opportunity to cure its failure to file its annual informational financing filing in a timely manner and to cure any deficiencies contained in an annual informational financing filing. A utility has the duty to discover and cure any such deficiencies at the earliest possible time. A utility may also request, for good cause, an extension of time in which to make the annual filing.

**(5)** A utility which fails to make its annual informational financing filing may be subject to the imposition of sanctions as provided in Sections 62-12-1 NMSA 1978 et seq. and such other sanctions as are authorized by law. An application relating to securities may be dismissed if the utility's annual informational financing filings are not current and if the utility has not demonstrated good cause for its failure to make its annual filing when due.

**(6)** The following information must be provided in the annual informational financing filing:

**(a)** a general description of the anticipated annual capital requirements with an explanation of the amount which will be provided internally and the amount to be provided externally;

**(b)** a general description of all known and projected securities to be issued, assumed, or guaranteed during the twelve (12) month period between the filing of the utility's current annual report and the date its next annual report is due to be filed;

**(c)** the capital structure in dollar and percentage amounts expected to be achieved by the utility upon issuance of each of the known and projected securities, if approved by the commission;

**(d)** in the case of investor-owned utilities with common stock outstanding, a list of all stock plans available to employees, investors, or consumers; the number of shares issued by the utility under each plan; and the proceeds to the utility therefrom and any discounts available;

**(e)** the status of the securities described in the applications of the utility filed or approved during the reporting period preceding the period covered by the current report.

#### **B. Applications to issue, assume, or guarantee securities:**

**(1)** Except as otherwise provided in Subsection E of 62-6-6 NMSA 1978, before issuing, assuming or guarantying any securities, or creating a lien on its property situated within New Mexico, each utility or person subject to Subsection B of Section 62-6-4 NMSA 1978 shall file an application, and receive the commission's approval,

regarding such transactions. Applications relating to securities shall conform to the requirements of this rule regarding pleadings and shall include in written form direct testimony and supporting exhibits.

**(2)** Testimony shall explain the proposed transactions and specifically address in detail any features which may have significant impact on ratepayers or the commission's ability to regulate the utility.

**(3)** Drafts of all available transaction documents shall be filed with the application. Investment memoranda, prospectuses, information or registration statements or other documents produced to describe the transactions to potential funding sources shall also be included, if available.

**(4)** The proposed contents of transaction documents shall be summarized and included in testimony.

**(a)** Summaries shall specify those terms and conditions of the transaction that are firm.

**(b)** If any terms are not firm, ranges for interest rates and dollar amounts involved in the transactions and alternative terms and conditions of the transactions being negotiated shall be summarized in the application.

**(c)** Such terms shall include, but not be limited to, interest rates, maturities, terms of call and restrictions, necessity for security, manner of sale, and proposed purchasers.

**(d)** The commission or presiding officer may require more information.

**(e)** The utility shall serve notice of the filing of the application relating to securities on the attorney general at the time it files the application with the commission.

**(5)** The utility shall, to the extent that the annual informational financing filing is no longer accurate or that new information has been obtained which would have been included in the filing if known at the time of filing, include in its direct testimony and supporting exhibits a corrected or updated version of the annual informational financing filing, which document shall also be submitted in duplicate and separately as a compliance filing.

**(6)** The application shall show whether the financing for which approval is sought was reported in the annual informational financing filing and, if it was not reported, include a statement of the utility's reasons for not having reported it. Failure to report in the annual filing the financing for which approval is sought may be grounds for dismissing the application, except where the utility has demonstrated good cause for the omission.

(7) Final documents shall be submitted when available following the close of the transaction. Every change from the documents presented before the commission in the application to issue securities shall be identified.

**C. Procedure upon receipt of application relating to securities:**

(1) Upon receipt of an application relating to securities, the application will automatically be assigned on a rotating basis to a hearing examiner employed by the commission who shall preside over the proceedings and take all actions necessary and convenient thereto within the limits of his or her authority and 17.1.2.8 NMAC, unless otherwise ordered by the commission.

(2) The commission or presiding officer shall then determine whether or not a hearing should be required pursuant to Section 62-6-7 NMSA 1978 or should be held for good cause shown pursuant to Subsection B of Section 62-6-8 NMSA 1978.

(3) In the event the commission or presiding officer determines that a public hearing is not required, the commission will take public comment and dispose of the application at an open meeting.

(4) The commission will in all cases involving applications to issue securities dispose of such applications within thirty (30) days from the date of filing unless for good cause the commission or presiding officer determines and orders that a longer period is required.

**D. Notice of filing:**

(1) A utility filing an application relating to securities shall, at its expense, publish notice of the filing in a newspaper of general circulation available in the county where the principal New Mexico office of the utility is located, as directed by the presiding officer. The notice must appear at least once. The applicant shall ensure that an affidavit of publication is filed promptly with the commission upon publication of the notice.

(2) The notice required by Paragraph (1) of Subsection D of 17.1.2.8 NMAC shall include the following information:

(a) a statement of the nature, amount, and purpose of the filing of the application and the date of its filing;

(b) a statement that the commission is required by law to act promptly on the application;

(c) a statement of the date, time, and place of the hearing on the application or the open meeting at which comments will be taken and a further statement that any persons desiring to comment on the application or to intervene in the proceeding should

contact the commission for confirmation of the hearing or meeting date, time, and place, since hearings and open meetings are on occasion rescheduled;

(d) a statement that those persons desiring to intervene in a proceeding must file a motion to intervene under Subsections A and B of 1.2.2.23 NMAC before the commencement of the hearing, or by the date established by the commission or presiding officer;

(e) a statement that any interested person may appear at the time and place of hearing and make a written or oral comment at the hearing pursuant to this rule without becoming an intervenor, but that the comment will not be considered as evidence in the proceeding;

(f) a statement that the utility's application together with any exhibits and related papers may be examined at the main New Mexico office of the utility or at the offices of the commission in Santa Fe and indicating the addresses and telephone numbers of both the utility and the commission;

(g) a statement that this rule will apply to the proceeding except as modified by order of the commission or presiding officer in the proceeding; and

(h) a statement that further information can be obtained by contacting either the utility or the commission.

(3) At the time of the filing of the application the applicant shall submit a copy of the notice to the commission in the form prescribed by the commission. At the time of submission the notice shall be complete except as to the date, time, and place of the hearing or open meeting on the application, which information will be provided to the utility before it sends the notice to the newspaper for publication. The commission or presiding officer shall issue the form of notice to be published.

(4) The commission or presiding officer may by order require such other notice as is deemed proper under the circumstances.

(5) Failure to comply with the provisions of this Subsection D of 17.1.2.8 NMAC may result in a dismissal of the application.

#### **E. Securities subject to Section 62-6-8.1 NMSA 1978:**

(1) A utility proposing to issue, assume, or guarantee securities which are payable at periods of not more than eighteen (18) months after the date thereof and over which the commission has jurisdiction by virtue of Section 62-6-8.1 NMSA 1978 shall file with the commission a written statement setting forth:

(a) the anticipated total amount of such securities to be issued, assumed, or guaranteed during the twelve (12) month period between the filing of the utility's current annual report and the date its next annual report is due to be filed;

(b) the general purposes for which such securities will be issued, assumed, or guaranteed;

(c) the anticipated manner in which such securities will be refunded; and

(d) the status of the securities described in the written statement of the utility filed the prior fiscal year.

(2) Such statement shall be filed by the utility with its annual report and cover the twelve (12) month period between the filing of its current annual report and the date its next annual report is due to be filed.

(3) Not later than ten (10) days after such statement is filed with the commission, the commission may, upon a finding of good cause, set a hearing, but otherwise no hearing concerning such filing shall be required. The filing shall be deemed approved by the commission in the absence of an order setting such a hearing, which approval shall, at the request of the utility, be evidenced by confirming letter of the chief of staff.

(4) Notwithstanding the setting of a hearing, the utility shall be authorized to proceed with the proposed financing program until otherwise directed by the commission. The provisions of Subsection A of 17.1.2.8 NMAC, but not those of Subsections B, C and D of 17.1.2.8 NMAC, shall apply to the securities described in Subsection E of 17.1.2.8 NMAC.

[17.1.2.8 NMAC - Rp, 17 NMAC 1.2.51, 9-1-08]

#### **17.1.2.9 APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY:**

**A. Applications for certificates:** Applications for certificates of public convenience and necessity shall conform to the requirements of this rule regarding pleadings and shall include in written form all direct testimony and supporting exhibits intended to be introduced into evidence.

**B. Notice to other utilities:** The utility making the application for a certificate of public convenience and necessity shall determine whether Extensions, Improvements, Additions, and Cooperative Agreements Between or Among Utilities, 17.5.440 NMAC, requires notification to any other public utility and, if so, the applicant shall serve a copy of such application on such other public utility. Failure to so notify such other utility may be grounds for dismissal of the application.

**C. Procedure upon receipt of application for certificate of public convenience and necessity:** The commission, upon receipt of an application for a certificate of public convenience and necessity, shall fix a time for a public hearing.

**D. Notice of hearing:** Prior to the initial hearing on any application for a certificate of public convenience and necessity, the notice of such initial hearing shall be published in a newspaper of general circulation in the counties in which the applicant seeks to construct or operate the proposed facilities. Such publication must appear once, at least twenty (20) days prior to the date of initial hearing. The applicant shall bear the cost of such publication.

[17.1.2.9 NMAC - Rp, 17 NMAC 1.2.52, 9-1-08]

#### **17.1.2.10 APPLICATIONS FOR NEW RATES:**

**A. General:** This section applies to all filings seeking new rates, except as otherwise provided by statute or by commission rule or order.

##### **B. Filings seeking new rates:**

(1) Proceedings involving new rates shall be initiated by advice notice notifying the commission of the utility's intent to implement new rates by a certain date which may not be less than 30 days after the filing of such notice.

(a) The utility shall file with the advice notice direct testimony and supporting exhibits in written form, including any rate filing package required by commission rule or order.

(b) In a general rate case the utility shall also file a petition setting forth the concise statement, supported by direct testimony and exhibits, required by Subparagraph (c) of Paragraph (2) of Subsection B of 17.1.2.10 NMAC.

(c) All advice notices shall conform to the requirements of Schedule of Rates, Rules, and Forms, 17.1.210 NMAC.

(d) The utility shall serve a copy of the advice notice on the attorney general and all counsel of record and pro se parties in the utility's last rate case at the time it files the advice notice with the commission but need not accompany the copy with testimony and exhibits.

(2) The utility shall submit the following with its filing.

(a) A copy of the notice to be sent to ratepayers and published pursuant to Subsection C of 17.1.2.10 NMAC. At the time of submission the notice shall be complete except as to the date, time, and place of the hearing and the deadline for intervention, which information will be provided to the utility before it sends the notice to



newspapers and ratepayers. The notice shall be in the form prescribed by the commission and shall be subject to approval by the commission or presiding officer as to form. The commission or presiding officer shall provide the date, time, and place of the hearing and the deadline for intervention and issue its approval of or corrections to the form of notice within 20 days after the commission issues its order suspending the proposed rates and assigning the matter to a hearing examiner, if such assignment is made.

(b) A statement comparing the new rate or rates with the present rate or rates, which statement shall contain the information required in Subparagraphs (a) through (e) of Paragraph (2) of Subsection C of 17.1.2.10 NMAC.

(c) In general rate cases, a concise statement supported by the direct testimony and exhibits identifying:

(i) whenever the utility proposes to change the ratemaking treatment upon which the present rates are based, each proposed change, the reasons for the proposed change, and the impact in dollars of the proposed change on the rates being requested; and

(ii) any extraordinary event or circumstance, known or projected, which materially alters the utility's operating or financial condition from the condition existing during the utility's test period in its last rate case.

(3) Failure to abide by the requirements set forth in this subsection may be deemed grounds for rejection of the filing.

### **C. Notice of hearing:**

**(1) Notice to general public:** A utility filing for new rates shall cause notice of the hearing on the proposed rates to be published in a newspaper of general circulation available in every county where the utility provides service and in such other counties as the commission or presiding officer by order may determine.

(a) Such notice shall be published within 40 days of the date of the order of the commission or presiding officer setting the date, time, and place of the hearing and approving the form of notice.

(b) The notice shall appear at least once and shall contain the information set forth in Paragraph (2) of Subsection C of 17.1.2.10 NMAC.

(c) The utility making the application for new rates shall bear the cost of publication.

(d) The utility shall ensure that an affidavit of publication is filed promptly upon publication of the notice.

**(2) Notice to ratepayers:** Every utility seeking a change in rates shall notify affected customers of the pendency of the application for new rates. Such notice shall be given no later than 40 days after the date of the order of the commission or presiding officer setting the date, time, and place of the hearing and approving the form of notice and shall include the following information:

(a) the amount of the change requested, in both dollar amounts and percentage change;

(b) the customer classifications to which the rate change will apply;

(c) the present rates and the proposed rates for each customer class to which the proposed rates would apply;

(d) for residential customers without demand meters, the present bill and the anticipated bill for each of the following levels of consumption or closest reasonable equivalent units:

(i) for electric service: 0 kwh, 250 kwh, 500 kwh, 750 kwh, 1,000 kwh, and 2,000 kwh;

(ii) for gas service: 0 therms, 50 therms, 100 therms, 200 therms, and 300 therms;

(iii) for water service: 0 gallons, 5,000 gallons, 10,000 gallons, 15,000 gallons, and 25,000 gallons; and

(iv) for sewer service: 0 gallons, 5,000 gallons, 10,000 gallons, 15,000 gallons, and 25,000 gallons, or fixed charge if applicable;

(e) a statement that the rate changes stated by class and, for residential customers, by consumption levels are for informational purposes only and that the final rate design may vary the rates ultimately charged to each class and for each consumption level;

(f) the commission case number assigned to the proceeding and the schedule ordered by the commission or presiding officer for the proceeding including the date, time, and place of hearing as well as other procedural dates established by the commission or presiding officer together with the further statement that interested persons should contact the commission for confirmation of the hearing date, time, and place since hearings are on occasion rescheduled;

(g) the statement that any interested person may examine the rate filings together with any exhibits and related papers that may be filed at the main office of the utility or at the offices of the commission in Santa Fe, and indicating the addresses and telephone numbers of both the utility and the commission;

(h) a statement that a person may intervene by filing a motion for leave to intervene pursuant to this rule on or before a date to be stated in the notice, such date to correspond to the deadline established by this rule or ordered by the commission or presiding officer pursuant to this rule;

(i) a statement that any interested person may appear at the time and place of hearing and make a written or oral comment at the hearing pursuant to this rule without becoming an intervenor, but that the comment will not be considered as evidence in the proceeding;

(j) a statement that this rule will apply to the proceeding except as modified by order of the commission or presiding officer in the proceeding; and

(k) a statement that further information may be obtained by contacting either the utility or the commission.

(3) The commission or presiding officer may by order require such other notice of the proceeding as is deemed proper under the circumstances.

(4) Failure to comply with this section may result in a dismissal of the application.

[17.1.2.10 NMAC - Rp, 17 NMAC 1.2.53, 9/1/2008; A, 12/27/2022]

### **PART 3: FUTURE TEST YEAR PERIOD FILING REQUIREMENTS IN SUPPORT OF RATE SCHEDULES FOR INVESTOR-OWNED UTILITIES**

#### **17.1.3.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.1.3.1 NMAC – N, 2-14-13]

#### **17.1.3.2 SCOPE:**

The data requirements specified in this rule shall apply to the investor-owned utilities doing business in New Mexico that tender a new rate schedule or rate schedule based on a future test year period where the future test year period is not the 12 consecutive months following the last day of the base period.

**A.** Where the commission has promulgated a rule for filing requirements in support of rate schedules for investor-owned electric, gas, water or sewer utilities in New Mexico, and a provision of the rule is inconsistent with a provision in this rule, the provision in this rule shall apply.

**B.** Where the commission has promulgated a rule for filing requirements in support of rate schedules for investor-owned electric, gas, water or sewer utilities in New Mexico, and a provision of the rule is silent with respect to the subject matter of a provision of this rule, the provision of this rule shall apply.

[17.1.3.2 NMAC – N, 2-14-13]

**17.1.3.3 STATUTORY AUTHORITY:**

Sections 8-8-4, 8-8-15, 62-3-1 through 62-3-3, 62-6-4A, 62-6-4.3, 62-6-14, 62-6-16, 62-6-17, 62-6-26, 62-6-26.1, 62-6-28, 62-8-1, 62-8-6, 62-8-7, 62-9-1B, 62-9-2B, 62-13-13.2, 62-16-6, and 62-17-6 NMSA 1978.

[17.1.3.3 NMAC – N, 2-14-13]

**17.1.3.4 DURATION:**

Permanent.

[17.1.3.4 NMAC – N, 2-14-13]

**17.1.3.5 EFFECTIVE DATE:**

February 14, 2013, unless a later date is cited at the end of a section.

[17.1.3.5 NMAC – N, 2-14-13]

**17.1.3.6 OBJECTIVE:**

The purpose of 17.1.3 NMAC is to define and specify the different or additional minimum data requirements to be filed in support for a tendered new rate schedule or rate schedule based on a future test year period which will supersede, supplement, or otherwise change the provision of a rate schedule required to be on file with this commission. This rule is intended to provide for a complete and comprehensive rate case filing that, by including full explanations and justifications of changes in items between the adjusted base period, linkage data and future test year period as required by this rule should minimize the amount of discovery needed by commission staff (hereafter "staff") and intervenors to analyze a filing. This rule shall in no way, however, be construed to place any limits on discovery by staff and intervenors, nor to limit the utility's burden of proof under Section 62-8-7A NMSA 1978.

[17.1.3.6 NMAC – N, 2-14-13]

**17.1.3.7 DEFINITIONS:**

In addition to the definitions in 17.1.2 NMAC, 17.9.530 NMAC, 17.10.630 NMAC, 17.12.1 NMAC, 17.12.730 NMAC, 17.12.780 NMAC, 17.13.1 NMAC, 17.13.930 NMAC and 17.13.980 NMAC, as used in this rule:

**A. "adjusted base period"** means a utility's base period data that includes fully explained annualizations, normalizations and adjustments for known and measureable changes and regulatory requirements that occur within the base period; the primary purpose of including the adjusted base period year with these changes in the filing is to provide staff and intervenors the ability to test the validity of the information in the future test year period;

**B. "base period"** means a historical 12-month period terminating (1) at the end of a quarter and (2) no earlier than 150 days prior to the date of filing;

**C. "cost center"** means a department, division, or organizational grouping of departments or divisions at which operating expense planning and evaluation takes place;

**D. "cost driver"** means a factor that influences or contributes to the expense of a business activity or operation; a business activity or operation may have more than one cost driver attached to it;

**E. "data rules"** means rules 17.1.2 NMAC, 17.9.530 NMAC, 17.10.630 NMAC, 17.12.1 NMAC, 17.12.730 NMAC, 17.12.780 NMAC, 17.13.1 NMAC, 17.13.930 NMAC, and 17.13.980 NMAC;

**F. "elements of cost"** means types of cost such as labor, materials, outside services, contract costs, important clearings, and all other types of cost combined as one category;

**G. "future test year period"** means a 12-month period beginning no later than the date the proposed rate change is expected to take effect;

**H. "linkage data"** means a specific and detailed description of all line items for the period of time between the end of the base period and the beginning of the future test year period required by this rule to create a verifiable link between future test year period data and base period data; linkage data does not constitute a test period and is provided for the purpose of validating the information contained in the future test year period;

**I. "major plant additions"** means plant for which the utility is required to file:

- (1) an application for a certificate or public convenience and necessity; or
- (2) prior notice with the commission pursuant to 17.5.440 NMAC;

**J. "material change" or "material variance"** means a change or variance in cost between the adjusted base period and the future test year period for a cost center if budget estimates are being used and for a uniform system of accounts (USOA) account otherwise that:

(1) exceeds 6% and \$100,000 total company for investor-owned electric utilities;

(2) exceeds 6% and \$100,000 total company for investor-owned gas utilities with 250,000 or more customers;

(3) exceeds 6% and \$1,000 total company for investor-owned gas utilities with fewer than 250,000 customers;

(4) exceeds 6% and \$1,000 total company for investor-owned water utilities; and

(5) exceeds 6% and \$1,000 total company for investor-owned sewer utilities;

**K. "this rule"** means 17.1.3 NMAC;

**L. "total company"** means the costs of the utility's total operation without regard to jurisdiction.

[17.1.3.7 NMAC – N, 2-14-13]

#### **17.1.3.8 INCORPORATION INTO REQUIRED DATA REQUEST SCHEDULES:**

The minimum data standard requirements contained in the schedules in 17.9.530 NMAC, 17.10.630 NMAC, 17.12.730 NMAC and 17.13.930 NMAC shall be incorporated into any rate case application made under this rule, except:

**A.** for 17.9.530 NMAC schedules P-2(f), P-3(f), P-4(f), P-5(c)(iii), P-5(d)(ii), P-7(b)(ii), and P-10(e), the utility shall file the data for five years beyond the base period; and

**B.** for 17.10.630 NMAC schedules Q-2(f), Q-3(f), Q-4(h), Q-5(f) and Q-7(e), the utility shall file the data for five years beyond the base period.

[17.1.3.8 NMAC – N, 2-14-13]

#### **17.1.3.9 FAILURE TO COMPLY:**

The failure of the utility to fulfill the data requirements specified in this rule shall constitute sufficient cause for the commission to reject the utility's filing pursuant to 17.1.210 NMAC.

[17.1.3.9 NMAC – N, 2-14-13]

**17.1.3.10 VARIANCES:**

**A.** Pursuant to 17.1.2 NMAC and 17.1.210 NMAC, a utility unable to comply fully with any data request contained in this rule due to good and sufficient cause shall give notice in writing to the commission of the utility's inability to comply with the provisions of such data request at least 30 days prior to the actual filing of the minimum data requirements filing package.

**B.** Upon receipt of such notification and after consideration by the commission of the utility's stated reasons for failure to comply fully with the provisions of the data request, the commission shall within 15 days notify the utility in writing of its decision concerning the utility's notice of its inability to comply with the commission's data filing requirements.

[17.1.3.10 NMAC – N, 2-14-13]

**17.1.3.11 ELECTRONIC FILING REQUIRED:**

Base period, linkage data and future test year period data filed to support the rate application must be provided in fully functional electronic format so that amounts in schedules and supporting work papers required by this rule and the commission's data rules can be traced with relative ease to supporting, detailed data.

**A.** Fully functional electronic format allows staff and intervenors to make adjustments that would carry through to the jurisdictional revenue requirement.

**B.** If the inputs to the fully functioning electronic support for the future test year period are fed by systematic calculations within other programs that are not downloadable to fully functioning and executable spreadsheets, the utility will rerun such supporting programs for input changes reasonably required by the staff or intervenors so as to be able to capture the impact of such proposed input changes on the future test year period jurisdictional cost of service model.

**C.** The utility shall identify any data that is not provided in fully functional electronic format and provide the reason why the data is not provided in fully functional electronic format.

[17.1.3.11 NMAC – N, 2-14-13]

**17.1.3.12 CONTENTS OF RATE APPLICATION BASED ON FUTURE TEST YEAR PERIOD:**

The rate application shall include:

- A. a base period;
- B. an adjusted base period;
- C. a future test year period and;

D. verifiable information for the linkage data to allow commission staff and intervenors to assess the validity of the information contained in the future test year period described in Sections 15, 16, 17 and 18 of this rule;

E. all filed data and all data provided in response to discovery shall specify whether the amounts provided are total, jurisdictional, or based on some other identified and described method.

[17.1.3.12 NMAC – N, 2-14-13]

**17.1.3.13 HISTORIC DATA REQUIRED:**

The rate application shall present operating results and financial data that are prepared in the normal course of business for the three years preceding the base period.

[17.1.3.13 NMAC – N, 2-14-13]

**17.1.3.14 SUPPORTING TESTIMONY AND EXHIBITS REQUIRED:**

The required data shall be accompanied by testimony and exhibits explaining and justifying quantities, assumptions, expectations, activity changes, etc. and verifying that the amounts used to support the future test year period are the utility's most recently available data.

[17.1.3.14 NMAC – N, 2-14-13]

**17.1.3.15 CONFORMITY WITH UNIFORM SYSTEM OF ACCOUNTS REQUIRED:**

The base period, adjusted base period and future test year period, including rate base, shall be presented in conformity with the applicable USOA accounts prescribed by commission rule.

[17.1.3.15 NMAC – N, 2-14-13]

**17.1.3.16 BASE PERIOD, ADJUSTED BASE PERIOD, LINKAGE DATA AND FUTURE TEST YEAR PERIOD REQUIRED DATA:**

In addition to the requirements of Section 15 of this rule, base period, adjusted base period, linkage data and future test year period results and expectations shall be presented as set forth in this section. If budget estimates are used, the results and



expectations shall be presented by cost center and elements of cost. In addition, the base period, the adjusted base period, the linkage data and the future test year period shall be presented by cost categories in at least the following detail set forth in this section.

**A. Revenues.** Revenues shall be detailed by the accounts prescribed in the applicable commission rate classes by month. The utility shall also provide a breakdown of sales revenue by service classification and related volumes. For electric, water and sewer utilities, as has been the history in New Mexico, base period revenue shall not be weather normalized.

**B. Operating expenses.** Operation and maintenance expenses shall be broken down at least by USOA accounts and elements of cost, on both a total company and jurisdictional basis. In providing linkage data, the utility shall provide summary information using the future test year period jurisdictional allocators to provide a reasonable approximation of jurisdictional amounts for appropriate comparison purposes.

(1) The USOA accounts shall be further subdivided to the level necessary to identify the appropriate cost drivers and adequately demonstrate where the variations between base period and future test year period occur.

(2) Each subdivision-level estimate shall then be detailed into elements of cost.

(3) Any expenses for which the utility is not seeking recovery or which are excluded from recovery by the commission's data rules or commission order shall be clearly identified.

(4) Depreciation, operating taxes and income taxes shall be detailed in schedules breaking these items down into sufficient detail to be useful for making projections.

**C. Rate base.** Rate base shall be presented on both a total company and jurisdictional basis.

(1) For a future test year period that begins at least 12 months after the end of the base period, the average rate base shall be used, utilizing the projected 13-month average of the future test year period. In providing linkage data, the utility shall provide summary information using the future test year period jurisdictional allocators to provide a reasonable approximation of jurisdictional amounts for appropriate comparison purposes.

(2) Rate base shall be shown in the detail required by the commission's data rules for base period presentations.

**(3)** Major plant additions and retirements from the end of the base period shall be separately identified, indicating actual or estimated in-service dates.

**D. Cost of capital.**

**(1)** The required information shall be supplied at least for the base period, the linkage data, the future test year period and the adjusted base period.

**(2)** There shall also be comparable data for two subsequent calendar years; for example, if the future test year period ended December 31, 2010, projections shall be made for calendar years 2011 and 2012 ("forward-looking data").

**(a)** If the utility determines the forward-looking data needs to be protected to comply with SEC requirements, the filing shall clearly state the utility has made this determination.

**(b)** The forward-looking data shall be provided by the utility in discovery if requested to persons who have signed a confidentiality agreement in accordance with the protective order.

**(3)** To ensure that a complete and useful record is compiled, the following information shall be submitted at the time of the filing:

**(a)** estimated short-term debt balances and available lines of credit;

**(b)** external financing requirements, including:

**(i)** projected issues of debt; and

**(ii)** preferred and common equity, including sources such as dividend reinvestment and employee stock purchase plans as well as public offerings; and

**(c)** projected capitalized ratios and a statement of the utility's objectives.

**(4)** The equity and debt amounts for the future test year period shall be based upon an average calculated in the same manner as the rate base.

**(5)** Estimates of interest and preferred dividend coverages shall be computed in accordance with the applicable bond indenture or certificate of incorporation.

**(6)** The computations of ratios of earnings to fixed charges (or earnings to fixed charges and preferred dividends) normally found in SEC registration statements for public security issues shall be included.

**17.1.3.17 FUTURE TEST YEAR PERIOD ESTIMATES SHALL BE FULLY EXPLAINED:**

The future test year period estimates shall be fully explained and linked to the historic base period and any linkage data.

**A.** For any material changes between base period and future test year period, cost drivers shall be separately identified, explained and justified as well as linked to the historical base period and any linkage data.

**(1)** For example, for operation and maintenance expenses, changes in prices and in activity levels (e.g. number of employees, etc.) shall be fully explained and separately detailed by USOA account and elements of cost (segregated between labor and non-labor) and, if budget estimates are used, referenced to budget documentation by cost center.

**(2)** For revenues, taxes and rate base, an analysis of the change between the historical and forecast period shall be made that distinguishes between volume and cost/price changes to the extent practicable.

**(3)** For non-plant items, any material change shall be separately identified, explained and justified.

**B.** All assumptions of changes in cost/price inputs because of inflation or other factors or changes in activity levels due to modified work practices or other reasons shall be separately developed.

**C.** Staff and other parties in rate cases should be able to retrace projections back to their historical source, or the new basis for the estimate should be fully understandable.

**D.** All assumptions, escalation factors, contingency provisions and changes in activity levels shall be quantified and properly supported.

[17.1.3.17 NMAC – N, 2-14-13]

**17.1.3.18 FUTURE TEST YEAR PERIOD ESTIMATES SHALL BE SUPPORTED AND JUSTIFIED:**

The future test year period may be established by utilizing adjustments, forecasts, budgets or other reasonable methods; provided, however, that all future test year values, whether at the USOA account or sub-account level or at the cost center level, shall be fully described, justified, and supported through linkage data.

**A.** If budget estimates are used, the estimates shall still be fully supported, explained and justified in the context of this rule, with full budget process documentation. If a company uses a budget it shall:

- (1) substantiate how it derived its estimates, starting with the base period; and
- (2) the support provided shall allow staff and intervenors to evaluate the company's budget numbers in the future test period.

**B.** In addition, for each cost center if budget estimates are used or for each USOA account otherwise, future test year period expenditure estimates shall include side-by-side comparisons, with:

- (1) a column showing actual expenditures during the base period;
- (2) a column showing the estimated expenditures during the future test year period;
- (3) a column showing the variance between the two; and
- (4) a column providing an explanation (or a reference to the written testimony requirement under Subsection D of this section) for the differences between the base period data and the future test period estimates, including occurrences which took place in the linkage data.

**C.** Underlying the requirements contained in Subsection B of this section of this rule is the premise that estimated amounts frequently have origins in actual past amounts or in past experience.

**D.** In addition to the information required under Paragraph (4) of Subsection B of this section, material changes from base period to linkage data and future test year period amounts shall be fully explained in written testimony.

[17.1.3.18 NMAC – N, 2-14-13]

#### **17.1.3.19 CHANGES TO INITIAL RATE APPLICATION:**

**A.** During the rate proceeding, the commission shall consider the utility's proposed revisions, if any, to the originally filed future test year period. The utility shall timely notify the commission, staff and intervenors of any proposed revisions due to errors, changes in law or other changed circumstances that decrease or increase its requested revenue requirements by an amount that materially affects its original filing and shall provide detailed sufficient explanations for the proposed revisions. For purposes of this section, "materially affects" means proposed revisions that decrease or increase the utility's originally filed jurisdictional revenue deficiency or surplus by five percent (5%) or more.

**B.** If the utility's proposed revisions materially affect its original filing, it shall file a modification of its original filing with the commission. Modifications shall be approved only by order of the commission. If the commission approves the modification, the

original filing shall be rendered incomplete, and the suspension period of the proposed rates shall start anew. Any approved modification that results in an increase to rates above the amount that was originally filed shall require the utility to issue a new notice to customers consistent with the law.

**C.** Revisions provided by the utility through errata or in response to discovery requests that do not require the filing of a modification by the utility shall be incorporated into a comprehensive list (with detailed sufficient explanations for the revisions) filed and served on a date that: 1. is established by the presiding officer in the procedural schedule; 2. provides reasonable notice to all parties; and 3. is before the date staff and intervenor direct testimony is due to be filed under the procedural schedule. Such revisions shall be presented as adjustments to the utility's original presentation (rather than as a revised presentation) so that the adjustments are verifiable between the original presentation and the revised figures.

**D.** Nothing contained in this section shall be construed to prevent a utility from presenting revisions to its original filing through rebuttal testimony in response to staff or intervenor testimony or to correct errors discovered after the filing of the comprehensive list of revisions provided for in this section. The utility shall promptly notify the commission, staff and intervenors of any such errors.

[17.1.3.19 NMAC – N, 2-14-13]

## **PART 4-119: [RESERVED]**

## **PART 120: RULEMAKING PROCEDURES**

### **17.1.120.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission.

[Recompiled 12/30/01]

### **17.1.120.2 SCOPE:**

NMPSC Rule 120 [17.1.120 NMAC] shall apply to all rulemaking proceedings pursuant to the Public Utility Act.

[Recompiled 12/30/01]

### **17.1.120.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

### **17.1.120.4 DURATION:**

[Recompiled 12/30/01]

**17.1.120.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.1.120.6 OBJECTIVE:**

The purpose of NMPSC Rule 120 [17.1.120 NMAC] is to establish a rulemaking procedure which will enable the New Mexico Public Service Commission [New Mexico Public Regulation Commission] to secure the views and statements of all interested persons concerning rules and regulations adopted pursuant to the Public Utility Act, NMSA 1978, Section 62-6-1.

[Recompiled 12/30/01]

**17.1.120.7 DEFINITIONS:**

When used in NMPSC Rule 120 [17.1.120 NMAC] unless otherwise specified the following definitions shall apply.

A. "Commission" means the New Mexico Public Service Commission [New Mexico Public Regulation Commission].

B. "Rule" or "Regulation" means the whole or any part of every Commission rule concerning utilities under this Commission's jurisdiction, pursuant to the Public Utility Act, but shall not include statements of policy or interpretive rulings issued to clarify the policy of the Commission with respect to the Act.

[Recompiled 12/30/01]

**17.1.120.8 TABLE OF CONTENTS:**

- A. Preamble [17.1.120.6 NMAC]
- B. Applicability [17.1.120.2 NMAC]
- C. Definitions [17.1.120.7 NMAC]
- D. Rulemaking Prerequisites [17.1.120.9 NMAC]
- E. Rulemaking Hearings [17.1.120.10 NMAC]
- F. Hearing Examiner [17.1.120.11 NMAC]
- G. Record of the Rulemaking Hearing [17.1.120.12 NMAC]

H. Additional Comments [17.1.120.13 NMAC]

I. Order of Advance Notice of Rulemaking [17.1.120.14 NMAC]

J. Filing of Rules [17.1.120.15 NMAC]

[Recompiled 12/30/01]

#### **17.1.120.9 RULEMAKING PREREQUISITES:**

A. Prior to the adoption, amendment, or repeal of any rule the Commission shall publish notice of its proposed action in the New Mexico Register and at least forty-five (45) days prior to its proposed action:

(1) Publish notice of its proposed action in newspapers of general circulation in the State of New Mexico so as to achieve statewide circulation;

(2) Notify utilities under its jurisdiction by mail and any person or group filing a written request for such notification to the Public Service Commission [New Mexico Public Regulation Commission], notification being by mail to the last address specified by the person or group. Requests from such persons or groups shall be renewed in December of each year. Notification under this rule shall include a copy of the proposed rulemaking.

B. The notice described in (a) [Subsection A of 17.1.120.9 NMAC] above shall:

(1) Give the date, time, and place of any public hearing and state the manner in which comments may be submitted to the Commission by interested persons;

(2) Describe the substance of the proposed action;

(3) State a location where the proposed rule may be obtained or a written address from which the proposed rule may be procured by mail; and

(4) Include reference to the statutory authority under which the rule is proposed.

C. The Commission shall afford all interested persons reasonable opportunity to submit written data, views, or arguments in support of or opposition to a proposed rule. Any interested person seeking to modify a proposed rule in any way must submit a proposed modification in writing to the Commission within thirty (30) calendar days after notice is mailed along with views or arguments in support of the modification. If after review of the written data, views, or arguments in support of the proposed modification the Commission finds that further comments are necessary, it may take such statements at a public rulemaking hearing. The Commission shall consider fully all comments respecting the proposed rule prior to a final decision.

D. Written data, views, or arguments shall be legible (not less than elite typeface), not to exceed a width of 8 - 1/2 inches and a length of 13 inches. If a visual aid is used during an oral presentation, an exact reproduction of the visual aid must be submitted as stated above. If slide photographs are used during an oral presentation, photographic copies must be submitted.

E. Adoption of any rule will be through the issuance of an order of the Commission adopting the rule. The Commission shall include in its order a statement of reasons for adopting the rule. All persons heard or represented at any hearing or who submit any comments to be considered in connection with the proposed rule shall be delivered copies of the order and the rule adopted thereby.

[Recompiled 12/30/01]

#### **17.1.120.10 RULEMAKING HEARINGS:**

In the event the Commission decides to take additional comments at a hearing, rulemaking hearings shall be conducted as follows:

A. The rules of civil procedure and the rules of evidence shall not apply.

B. Unless the circumstances otherwise justify the order of appearance will be as follows:

- (1) Comments of Commission staff,
- (2) Comments of each proponent,
- (3) Comments of each opponent, and
- (4) Comments of other interested persons.

[Recompiled 12/30/01]

#### **17.1.120.11 HEARING EXAMINER:**

The Commission may appoint a Hearing Examiner to conduct the hearing and receive evidence. The Hearing Examiner will be authorized to make all rulings in the conduct of the proceedings and in the receipt of statements and supporting data. All utilities affected by the action of the Commission and other interested persons who have submitted data to the Hearing Examiner or who have otherwise participated in the proceedings shall be furnished a copy of the recommendations of the Hearing Examiner. Written comments regarding the Hearing Examiner's recommendations must be submitted directly to the Commission no later than fifteen (15) calendar days after the filing of said recommendations.



[Recompiled 12/30/01]

**17.1.120.12 RECORD OF THE RULEMAKING HEARING:**

A. A record shall be made at each proceeding, the cost of which shall be borne by the Commission. Transcript costs shall be paid by those persons requesting transcripts. The cost of providing transcripts to the Commission shall be borne by the Commission.

B. The record shall be closed at the conclusion of the proceeding unless the Commission or Hearing Examiner holds it open for no longer than thirty (30) days for the purpose of receiving additional written supporting data. Additional written supporting data shall be limited to those matters for which permission was expressly granted, and the Commission or Hearing Examiner may make provisions for response to the written supporting data by those persons who participated in the proceeding. Persons submitting additional written supporting data or responses to the written supporting data shall provide to the Commission seven (7) copies of each supporting data or response.

C. The court reporter shall provide an index in the front of each transcript which states:

- (1) The name of each individual;
- (2) The pages at which an individual's statements appear;
- (3) Identification of supporting data; and
- (4) The pages at which supporting data was introduced, was entered, and appears in the transcript.

[Recompiled 12/30/01]

**17.1.120.13 ADDITIONAL COMMENTS:**

At the conclusion of the hearing the Commission or Hearing Examiner may request participants to submit prepared findings of fact, conclusions of law, briefs, or other pertinent supporting information.

[Recompiled 12/30/01]

**17.1.120.14 ORDER OF ADVANCE NOTICE OF RULEMAKING:**

For purposes of developing proposed rules and regulations under NMPSC Rule 120 [17.1.120 NMAC], the Commission may order utilities under its jurisdiction to submit specific information reasonably required and pertinent to the rulemaking, may request attendance at informal meetings or workshops, and may invite participation in generic hearings. At least thirty (30) days' notice of the time, place, and date of such meetings,

workshops, or generic hearings shall be given to each affected utility and other interested parties requesting such information.

[Recompiled 12/30/01]

**17.1.120.15 FILING RULES:**

Each rule, amendment, or repeal thereof adopted by the Commission shall be filed with the State Records Center in accordance with NMSA 1978, Section 14-4-3 and with the New Mexico Register in accordance with NMSA 1978, Section 14-4-7.1.

[Recompiled 12/30/01]

**PART 121-209: [RESERVED]**

**PART 210: SCHEDULE OF RATES RULES AND FORMS**

**17.1.210.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

**17.1.210.2 SCOPE:**

[Recompiled 12/30/01]

**17.1.210.3 STATUTORY AUTHORITY:**

NMPSC Rule 210 [17.1.210 NMAC] is designed to provide for:

A. The general form and arrangement of Rates, Rules, and Forms showing in a uniform and convenient manner all rates, classifications of service, service rules, privileges, or conditions relating to rates and service, forms, the public inspection thereof, and adherence thereto, as provided by NMSA 1978, Sections 62-8-3, 62-8-4, and 62-8-5;

B. The procedure to be followed in the filing of rate sheets or changes thereto, as provided by NMSA 1978, Section 62-8-7;

C. The form and character of other information relative to public utility rates and service required by the Commission to be filed under the general authority contained in NMSA 1978, Section 62-6-4, consistent with effective exercise of the Commission's supervisory powers.

[Recompiled 12/30/01]

**17.1.210.4 DURATION:**

[Recompiled 12/30/01]

**17.1.210.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.1.210.6 OBJECTIVE:**

[Recompiled 12/30/01]

**17.1.210.7 DEFINITIONS:**

[Recompiled 12/30/01]

**17.1.210.8 TABLES OF CONTENTS:**

A. Permanent Schedule of Rates, Rules and Forms [17.1.210.9 NMAC]

- (1) General Application and Purpose [17.1.210.6 NMAC]
- (2) Time of Filing
- (3) Schedule of Rates, Rules, and Forms
- (4) Separate Schedule of Rates, Rules, and Forms for Separate Utility Services
- (5) Uniform Size Pages
- (6) Original and Four Copies Filed, One Conformed Copy Returned
- (7) Arrangement of Schedules

B. Content and Form of Current Schedule of Rates, Rules, and Forms [17.1.210.10 NMAC]

- (1) Table of Contents--Rates
- (2) Rate Pages
- (3) Rules--Tables of Contents by Page Number
- (4) Forms in General Use--Filing

C. Succeeding Changes and Additions to Rates, Rules, and Forms--Manner and Effect of Filing [17.1.210.11 NMAC]

- (1) New and Cancelled Rates, Rules, and Forms--How Shown
- (2) Advice Notice and Filing Testimony
- (3) Additional Information As to Effect of Proposed Rates
- (4) Corrections to Filings
- (5) Withdrawal of Filings
- (6) Incomplete Filings
- (7) Completed Filings
- (8) Rejection of Filings
- (9) Pre-filing Review

D. Special Provisions [17.1.210.12 NMAC]

- (1) Public Inspection of Rates, Rules, or Forms--Posting Notice
- (2) Effect of Rates, Rules, or Forms on Contracts
- (3) Contracts--Filing
- (4) Filing Fee
- (5) Effect of NMPSC Rule 210 [17.1.210 NMAC]

E. Attachment A - Electric Company Revised Rate Form

F. Attachment B - Example of "Advice Notice"

[\[Forms\]](#)

[Recompiled 12/30/01]

**17.1.210.9 PERMANENT SCHEDULE OF RATES, RULES AND FORMS:**

A. Time of Filing: Before engaging in utility operations each utility shall file with the Commission a "Schedule of Rates, Rules, and Forms," as that term is hereinafter defined, in the manner and form provided by NMPSC Rule 210 [17.1.210 NMAC] and

thereafter shall comply with all conditions and other requirements relating to such filed schedules.

B. Schedule of Rates, Rules, and Forms: The term "Schedule of Rates, Rules, and Forms" when employed in NMPSC Rule 210 [17.1.210 NMAC] shall mean the entire compilation of Rates, Rules, and Forms as collectively filed by a public utility and in effect at a given time. When such terms as "Rate," "Rule," or "Form" are employed they shall be taken to refer only to those particular parts of the compilation.

C. Separate Schedule of Rates, Rules, and Forms for Separate Utility Services: Any public utility engaged in rendering two or more of the kinds of utility service described in the Public Utility Act, such as both electric and water service, shall file with the Commission and keep open to public inspection a separate schedule of Rates, Rules, and Forms covering each kind of utility service rendered.

D. Uniform Size Pages:

(1) All pages included in the schedule of Rates, Rules, and Forms shall measure 8 1/2 inches in width, 11 inches in length, and shall be prepared on durable paper stock not less than 16 pound bond or its equivalent. The content of the page shall be contained with a minimum margin of 1 1/8 inches all around excluding the lower left hand corner, which shall contain a blank space for Commission use measuring at least 2 inches in height and 4 inches in width. Any holes for binding or filing shall be on the left-hand margin. All pages shall be typewritten or machine printed.

(2) Rate, Rule, and Form pages shall be filed in loose-leaf so that each complete schedule may be changed from time to time to reflect succeeding Rates, Rules, or Forms by removing a superseded page and substituting a new page. All pages shall be printed or typewritten.

(3) Each page in a schedule of Rates, Rules, and Forms shall indicate the Rate, Rule, or Form number and the applicable class of customer. If the Rate, Rule, or Form applies to all customers it shall so indicate. Approved revisions to original Rates, Rules, or Forms shall be denoted as 1st Revised (Rate, Rule, or Form) No. \_\_\_\_ Cancelling Original (Rate, Rule, or Form) No. \_\_\_\_; 2nd Revised (Rate, Rule, or Form) No. \_\_\_\_ Cancelling 1st Revised (Rate, Rule, or Form) No. \_\_\_\_ etc. Additional Rates, Rules, or Forms which create an entirely new Rate, Rule, or Form by customer classification or subject matter shall bear the next succeeding unused Rate, Rule, or Form number. Rates, Rules, or Forms shall bear a notation listing the page number and total number of pages. For example, the first page of Rate No. 1, which contains five (5) pages, shall be labeled "page 1 of 5" (see Attachment A).

E. Original and Four Copies Submitted and Filed, One Conformed Copy Returned: New schedules of Rates, Rules, and Forms and additions to or changes in existing schedules shall be filed as an original with four (4) copies and the Commission shall promptly acknowledge receipt of the submitted filing. After new or revised Rates, Rules,

or Forms have been determined complete, one (1) copy of such Rates, Rules, or Forms and of the accompanying Advice Notice will be returned to the utility showing the date the Rates, Rules, or Forms have been accepted and the statutory date the Rates, Rules, or Forms would otherwise become effective unless earlier suspended by the Commission for investigation and public hearing.

F. Arrangement of Schedules:

(1) The various subdivisions of the schedule shall be arranged and filed in the following order:

- (i) Rates,
- (ii) Rules,
- (iii) Forms.

(2) Each subdivision of a schedule shall contain a Table of Contents showing the sections included in the subdivision.

[Recompiled 12/30/01]

**17.1.210.10 CONTENT AND FORM OF CURRENT SCHEDULE OF RATES, RULES, AND FORMS:**

A. Table of Contents--Rates: A complete list shall be maintained of all rates, charges, and NMPSC Rule 570 [17.9.570 NMAC] buy-back rates filed in the rate subsection of the schedule of Rates, Rules, and Forms. This list shall be tabulated by rate number.

B. Rate Pages: Rate pages shall be substantially in the form provided in Attachment A, and each rate page shall include the following information as nearly as possible in the order shown:

- (1) Rate number;
- (2) Class of service, such as residential, commercial, industrial, etc., with each class of service in a separate rate on separate pages;
- (3) End-use such as heating, lighting, or power service;
- (4) Territory to which the rate is applicable;
- (5) Where more than one rate block is to be charged, the blocks listed in tabular form with the lowest block listed first;

(6) Minimum or customer charge and whether any usage is included in the minimum or customer charge; and

(7) Any general or special conditions, exceptions, or limitations regarding the rate and service provided by the rate, such as demand or ratchet provisions, etc., applicable to the rate.

C. Rules--Table of Contents by Rule Number:

(1) Each rule shall be numbered consecutively and shall have a title line briefly indicative of the section's contents. A separate rule number shall be used for each rule. Rules shall be on pages identical to those previously described in NMPSC Rule 210.5 [Subsection D of 17.1.210.9 NMAC] for schedules of rates. A Table of Contents for all rules shall appear at the front of the rules subsection of the schedule.

(2) The following subject categories and other subject categories, where necessary, shall be covered by rules included in the schedule for all services:

(i) Definitions--Clear and concise definitions of the principal terms used.

(ii) Character of Service--Full description of character of service rendered and standards of service maintained, including metering.

(iii) Application for Service--Procedure necessary to obtain service.

(iv) Deposits and Establishment of Credit--Procedure necessary to establish and reestablish credit, basis for requiring deposits, conditions precedent for return of deposits, and interest paid thereon.

(v) Rendering and Payment of Bills--Methods of rendering bills, billing periods, due dates, methods of payment, Budget Payment Plans.

(vi) Disputed Bills and Settlement Agreements--Methods of adjustment and time limitations, internal utility compliance procedures, meter testing procedures, notice of customer rights, and availability of schedules.

(vii) Discontinuance and Restoration of Service--Reasons for discontinuance, notification, time limitations, procedure necessary for restoration of service, and charges.

(viii) Temporary Service--Conditions precedent for rendering temporary service or service to construction projects.

(ix) Shortage of Supply--Interruption of delivery of service, notice to customers, apportionment of available service.

(x) Line Extensions and Service Hook-ups--Free extensions, advances, contributions and refunds, ownership, and maintenance.

(xi) Service Connection Made by Utility Employees--No other connections authorized.

(xii) Right of Ingress to and Egress from Customers' Premises--At all reasonable hours.

(3) Rules which have been filed and which by operation of NMSA 1978, Section 62-8-7B, have become effective without hearing at the expiration of thirty (30) days from the date of their filing shall not be construed to bear the approval of the Commission, but like any approved rule shall be subject to inquiry by the Commission at any time.

D. Forms in General Use--Filing:

(1) Sample copies of printed forms that are normally used in connection with customer services or which are required by the Commission, such as applications for service, regular bills for service, contract forms, delinquency notices, disconnect notices, deposit receipts, and similar forms, shall be included in a utility's schedule of forms. Each form shall be mounted on a separate page identical to that previously described in NMPSC Rule 210.5 [Subsection D of 17.1.210.9 NMAC] showing the name or title of the form. Such forms shall be numbered consecutively in the same manner as rates and rules. A Table of Contents shall appear at the front of the sample forms subsection of the schedule.

(2) Forms which have been filed and which by operation of NMSA 1978, Section 62-8-7B, have become effective without hearing at the expiration of thirty (30) days from the date of their filing shall not be construed to bear the approval of the Commission, but like any approved rule shall be subject to inquiry by the Commission at any time.

[Recompiled 12/30/01]

**17.1.210.11 SUCCEEDING CHANGES AND ADDITIONS TO RATES, RULES, AND FORMS--MANNER AND EFFECT OF FILING:**

A. New and Cancelled Rates, Rules, and Forms--How Shown:

(1) When any change is made in a Rate, Rule, or Form, or any part thereof, a new Rate, Rule, or Form shall be filed and attention shall be directed to the changes on the revised Rate, Rule, or Form by placing an "X" at the right-hand border on the line which contains the change (See Attachment A). When all or most of the Rates, Rules, or Forms are to be changed, the "X" may be placed near the top of the page below the schedule name with a notation to that effect.



(2) The new page shall bear the same Rate, Rule, or Form number and pertain to the same character of service as the page being replaced and shall take the place of and cancel the old one.

(3) Cancelled Rates, Rules, or Forms will not be destroyed but will be removed at the time they become obsolete and maintained as a separate subsection of the Schedule of Rates, Rules, and Forms.

#### B. Advice Notice and Filing of Testimony:

(1) Every new Rate, Rule, or Form submitted to the Commission for filing shall be accompanied by an original and four (4) copies of an "Advice Notice" listing the new Rates, Rules, or Form numbers and titles proposed thereby together with the numbers of all Rates, Rules, or Forms to be replaced in substantially the form set out in Attachment B. Advice Notices shall be numbered consecutively beginning with No. 1. Except for filings made in accordance with and pursuant to NMPSC Rule 540 [17.9.540 NMAC], the utility shall serve a copy of the Advice Notice on the Attorney General and all counsel of record and pro se parties in the utility's last rate case at the time it files the Advice Notice with the Commission but need not accompany the copy with testimony and exhibits. Every new Rate, Rule or Form submitted the Commission for filing shall also be accompanied by a certificate of service listing the recipients of the new Rate, Rule or Form and accompanying Advice Notice.

(2) In every case of a proposed change in rates the utility shall file together with the Advice Notice direct testimony from every witness it intends to present in support of the proposed rate change along with supporting exhibits in written form intended to be introduced into evidence. Failure to abide by the requirements set forth herein shall be deemed grounds for rejection of the filing.

C. Additional Information as to Effect of Proposed Rates: For the information of the Commission and the public, but not to be or become part of the permanent schedule on file, a concise statement shall accompany each Advice Notice of a new or changed rate showing the anticipated reduction or increase in annual revenue resulting therefrom, the number of customers in each rate class affected or likely to be affected thereby, and the impact on customers at a class average of consumption within each class as nearly as may be calculated.

D. Corrections to Filings: When typographical errors or incorrect Rate, Rule, Form, or Advice Notice numbers or other anomalies inconsistent with the Commission's rules or policy have been made in a filing, before such filing may be deemed complete corrected pages shall be submitted to the Commission with a letter of explanation.

E. Withdrawal of Filings: Except as provided in NMPSC Rule 210.15 [Subsection D of 17.1.210.11 NMAC], a filing which has been made with the Commission may not be withdrawn or changed in any manner without the Commission's approval. Such approval may be granted by the Commission in its discretion. Upon withdrawal all

copies of the Advice Notice and related Rates, Rules, or Forms shall be returned to the utility, and the Advice Notice numbers and Rate, Rule, or Form numbers shall be considered as never having been filed. The numbers withdrawn will therefore be available for use by the utility in its subsequent submissions. If a utility withdraws its filing after a hearing has been held on it, the Commission may recover costs against the party withdrawing the filing. The withdrawal of a filing after hearing shall be accompanied by an affidavit setting forth the reasons the filing should be withdrawn. This section shall not apply to filings ordered withdrawn after hearing or for any other reason ordered by the Commission.

F. Incomplete Filings: Filed Rates, Rules, or Forms which do not conform to the requirements specified in NMPSC Rule 210 [17.1.210 NMAC] shall not be determined complete until all requirements are met. In the event such filings are found to be incomplete, the Commission shall advise the filing utility of the deficiency of the filing within thirty (30) days of receipt and will hold the Rates, Rules, or Forms for a reasonable time until the additional information required or necessary corrections have been provided. All applications for a change in rates will be considered incomplete unless accompanied by an Advice Notice, direct testimony, exhibits, and appropriate filing fee as required by NMPSC Rules 210.17 and 210.13 [Subsections F and B of 17.1.210.11 NMAC]. No statutory deadline shall begin to be computed until the filing has been determined complete after notification to the utility of any deficiencies.

G. Completed Filings: Submitted incomplete Rates, Rules, or Forms shall be deemed to have been completed and acceptable when all required information and necessary corrections have been received by the Commission.

H. Rejection of Filings: Rates, Rules, or Forms which are not in substantial compliance with Commission rules, orders, or applicable statutes may be rejected. If rejected they will be returned with an indication of the deficiencies therein. Filed Rates, Rules, or Forms which have been rejected shall not be entered on the Commission's docket. Acceptance of a document for filing is not a determination that the document complies with all requirements of the Commission and is not a waiver of such requirements.

I. Pre-filing Review: As a means of facilitating the filing procedure for both the public utility and the Commission and to avoid misunderstanding and delay due to rejection, a draft copy of new or revised Rates, Rules, or Forms may be submitted to the Commission informally as a " Proposed Filing" for preliminary review by Commission staff. The staff's comments will be given to the utility prior to formal filing but shall in no way constitute approval by the Commission as to the reasonableness or lawfulness of any proposed Rates, Rules, or Forms.

[Recompiled 12/30/01]

#### **17.1.210.12 SPECIAL PROVISIONS:**

A. Public Inspection of Rates, Rules, or Forms--Posting Notice: Each public utility shall maintain a notice posted in a conspicuous location at each of its New Mexico business offices stating that its complete schedules are open to public inspection at its main and outlying business offices, at the office serving the particular territory in which the customer receives service, and at the offices of the New Mexico Public Service Commission [New Mexico Public Regulation Commission]. The notice shall give the location of such offices.

B. Effect of Rates, Rules, or Forms on Contracts: All contracts and agreements made between a public utility and its customers covering service rendered or to be rendered shall contain substantially the following provision: "This contract, including the attached rate schedule, shall at all times be subject to change or modification by order of the New Mexico Public Service Commission [New Mexico Public Regulation Commission]. You will receive notice in accordance with the Commission's requirements when we are requesting the Commission to take action which could cause a change in the terms of this contract."

C. Contracts--Filing: All special contracts dealing with Rates, Rules, or Forms shall be maintained by the utility and made available to Commission staff upon request. However, this provision shall not relieve a utility from the duty of filing rates concisely setting forth the terms and conditions applicable to any service rendered under such special contract.

D. Filing Fee: Every new or changed Rate, Rule, or Form submitted for filing shall be accompanied by a filing fee of one dollar (\$1.00) for each proposed Rate, Rule, or Form. Tables of Contents may be submitted for filing without fee. No filing governed by NMPSC Rule 210 [17.1.210 NMAC] is complete unless accompanied by its filing fee.

E. Effect of NMPSC Rule 210 [17.1.210 NMAC]: NMPSC Rule 210 [17.1.10 NMAC] and NMPSC Rule 110.40 [17.1.2.53 NMAC] shall be construed as consistent with each other to the extent possible. In the event of any inconsistencies NMPSC Rule 110.40 [17.1.2.53 NMAC] shall govern.

[Recompiled 12/30/01]

## **PART 211-329: [RESERVED]**

## **PART 330: UNIFORM TAX ADJUSTMENT CLAUSE IN RATE SCHEDULES**

### **17.1.330.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

### **17.1.330.2 SCOPE:**

[Recompiled 12/30/01]

**17.1.330.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

**17.1.330.4 DURATION:**

[Recompiled 12/30/01]

**17.1.330.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.1.330.6 OBJECTIVE:**

[Recompiled 12/30/01]

**17.1.330.7 DEFINITIONS:**

[Recompiled 12/30/01]

**17.1.330.8 TABLE OF CONTENTS:**

- A. Tax Adjustment Clause [17.1.330.9 NMAC]
- B. Surcharge or Inclusion in Billings [17.1.330.10 NMAC]
- C. Other Tax Adjustment Clause Not Permitted [17.1.330.11 NMAC]
- D. Special Contract Rate Schedules Exception [17.1.330.12 NMAC]
- E. Tariff Schedules on File [17.1.330.13 NMAC]

[Recompiled 12/30/01]

**17.1.330.9 TAX ADJUSTMENT CLAUSE:**

Any public utility electing to incorporate a tax adjustment clause in any rate schedule shall use the following language. Billings under this schedule may be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and of all other taxes, fees, or charges (exclusive of ad valorem, state, and federal income taxes) payable by the utility and levied or assessed by any governmental authority on the public utility service rendered, or on the right or privilege of rendering the service, or on any object or event incidental to the rendition of the service.

[Recompiled 12/30/01]

**17.1.330.10 SURCHARGE OR INCLUSION IN BILLINGS:**

Except for the Gross Receipts and Compensating Tax and local sales taxes, the filed rates and, consequently, the billings of public utilities operating in the State of New Mexico as of April 10, 1968 [the date of General Order No. 25, codified by NMPSC Rule 330] [17.1.330 NMAC] already included all federal, state, and local taxes, fees, and charges as of that date. Such school tax and local sales taxes, if any, together with includable taxes, fees, or charges subsequent to that date and elected to be included by any utility in its billings under any filed rate may either be added to its billings by surcharge or may be included in the billings with a reference on the face of the bill that the amount billed includes such taxes, fees, or charges.

[Recompiled 12/30/01]

**17.1.330.11 OTHER TAX ADJUSTMENT CLAUSE NOT PERMITTED:**

No tax adjustment clause inconsistent with that allowed by NMPSC Rule 330 [17.1.330 NMAC] may be used by any public utility in any rate schedule.

[Recompiled 12/30/01]

**17.1.330.12 SPECIAL CONTRACT RATE SCHEDULES EXCEPTION:**

NMPSC Rule 330 [17.1.330 NMAC] shall have no application to special contract rate schedules, filed or to be filed.

[Recompiled 12/30/01]

**17.1.330.13 TARIFF SCHEDULES ON FILE:**

Any tariff schedules on file and effective with the Commission on April 10, 1968 [the date of General Order No. 25, codified by NMPSC Rule 330] [17.1.330 NMAC], which referred to the New Mexico Emergency School Tax Act, shall be construed to refer to the Gross Receipts and Compensating Tax Act mentioned in NMPSC Rules 330.1 and 330.3 [17.1.330.9 NMAC and 17.1.330.11 NMAC].

[Recompiled 12/30/01]

**CHAPTER 2: UTILITIES CONDEMNATION  
PROCEDURES [RESERVED]**

# **CHAPTER 3: UTILITIES FINANCIAL ACCOUNTING AND REPORTING - GENERAL PROVISIONS**

## **PART 1: GENERAL PROVISIONS [RESERVED]**

## **PART 2-219: [RESERVED]**

## **PART 220: ENFORCEMENT OF REPORTING REQUIREMENTS**

### **17.3.220.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

### **17.3.220.2 SCOPE:**

A. NMPSC Rule 220 [17.3.220 NMAC] shall govern the reports required under Commission rules from electric, gas, water, and sewer utilities subject to the jurisdiction of the Commission.

B. NMPSC Rule 220 [17.3.220 NMAC] shall not govern reporting requirements required in compliance with Commission cases or other matters before the Commission other than those reporting requirements specifically required by Commission rules. NMPSC Rule 220 [17.3.220 NMAC] also shall not govern requirements of the Commission concerning the filing of applications for or approval of rates, securities, Certificates of Public Convenience and Necessity, changes of ownership, or other matters of Commission jurisdiction other than reports required by the Commission's rules.

[Recompiled 12/30/01]

### **17.3.220.3 STATUTORY AUTHORITY:**

NMPSC Rule 220 [17.3.220 NMAC] is adopted under the authority vested in the Commission pursuant to NMSA 1978, Sections 62-6-1, 62-6-18, and 62-12-4 to 62-12-6.

[Recompiled 12/30/01]

### **17.3.220.4 DURATION:**

[Recompiled 12/30/01]

### **17.3.220.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.3.220.6 OBJECTIVE:**

NMPSC Rule 220 [17.3.220 NMAC] is intended to improve the New Mexico Public Service Commission's [New Mexico Public Regulation Commission's] ability to monitor and enforce compliance with the reporting requirements set forth in the Commission's Code of Rules and Regulations.

[Recompiled 12/30/01]

**17.3.220.7 DEFINITIONS:**

When used in NMPSC Rule 220 [17.3.220 NMAC] unless otherwise specified the following definitions will apply:

A. "Commission" means the New Mexico Public Service Commission [New Mexico Public Regulation Commission].

B. "Executive Director" means the Executive Director of the New Mexico Public Service Commission [New Mexico Public Regulation Commission].

C. "Report" means a written document or oral notification as required by Commission rule containing certain information which a utility provides to the Commission on a regular basis or in response to a certain event or action as prescribed by a Commission rule. This does not include rate or security filings, applications, motions, or interrogatories nor does it include reports or information required by Order in an individual Commission case. "Annual Reports" means the reports required by NMPSC Rules 510, 610, and 720 [17.3.510 NMAC, 17.3.610 NMAC and 17.12.720 NMAC]. All reports will be typed or machine printed on 8 1/2 x 11 inch pages.

[Recompiled 12/30/01]

**17.3.220.8 TABLE OF CONTENTS:**

A. Purpose [17.3.220.6 NMAC]

B. Applicability [17.3.220.2 NMAC]

C. Authority [17.3.220.3 NMAC]

D. Definitions: [17.3.220.7 NMAC]

E. Utility Application for Extension of Due Date for Reports [17.3.220.9 NMAC]

F. Enforcement of Reporting Requirements [17.3.220.10 NMAC]

[Recompiled 12/30/01]

### **17.3.220.9 UTILITY APPLICATION FOR EXTENSION OF DUE DATE FOR REPORTS:**

For good cause shown a utility may request an extension of the due date of a given report provided that the request for extension is submitted in writing to the Executive Director at least ten (10) days prior to the due date of the report. The request for extension should include a specific date by which the utility proposes to file the report. For good cause shown the Executive Director may in his discretion grant the extension.

[Recompiled 12/30/01]

### **17.3.220.10 ENFORCEMENT OF REPORTING REQUIREMENTS:**

Strict compliance with the due dates of reports including Annual Reports is required of all utilities. Failure to file reports including Annual Reports required under the Commission's rules by the appropriate due date may subject a utility to penalties as prescribed in NMSA 1978, Sections 62-12-4, 62-12-5, and 62-12-6, including fines of no less than one hundred dollars (\$100) and no greater than ten thousand dollars (\$10,000) for each offense unless the utility has received an exemption, variance, or extension as outlined in NMPSC Rule 220 [17.3.220 NMAC] or other applicable rule of the Commission, and said exemption, variance, or extension would relieve the utility of the obligation of filing said report by the appropriate due date. Failure of a utility to fulfill the terms of an exemption, variance, or extension shall also subject a utility to the penalties described herein.

[Recompiled 12/30/01]

## **PART 221-309: [RESERVED]**

## **PART 310: PRESERVATION OF RECORDS**

### **17.3.310.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

### **17.3.310.2 SCOPE:**

[Recompiled 12/30/01]

### **17.3.310.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]



**17.3.310.4 DURATION:**

[Recompiled 12/30/01]

**17.3.310.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.3.310.6 OBJECTIVE:**

[Recompiled 12/30/01]

**17.3.310.7 DEFINITIONS:**

[Recompiled 12/30/01]

**17.3.310.8 TABLE OF CONTENTS:**

A. Preservation of Records by Rural Electric Cooperatives [17.3.310.9 NMAC]

B. Preservation of Records by Utilities Other Than Rural Electric Cooperatives [17.3.310.10 NMAC]

[Recompiled 12/30/01]

**17.3.310.9 PRESERVATION OF RECORDS BY RURAL ELECTRIC COOPERATIVES:**

The Rural Electrification Administration's MANUAL FOR PRESERVATION OF BORROWERS' RECORDS (ELECTRIC), March, 1957, REA Bulletin No. 180-2 with any subsequent revisions, is prescribed for all corporations organized under the New Mexico Rural Electric Cooperative Act subject to the Commission's jurisdiction. The said utilities shall preserve their records in compliance with the requirements of the said REA Bulletin No. 180-2.

[Recompiled 12/30/01]

**17.3.310.10 PRESERVATION OF RECORDS BY UTILITIES OTHER THAN RURAL ELECTRIC COOPERATIVES:**

The National Association of Railroad and Utilities Commissioners' REGULATIONS TO GOVERN THE PRESERVATION OF RECORDS OF ELECTRIC, GAS AND WATER UTILITIES, Revised 1963, with any subsequent revisions by the National Association of Regulatory Utility Commissioners (NARUC), is prescribed for all gas, water, sewer, and electric utilities subject to the Commission's jurisdiction except for corporations

organized under the New Mexico Rural Electric Cooperative Act. The said utilities shall preserve their records in compliance with the said Regulations.

[Recompiled 12/30/01]

**PART 311-319: [RESERVED]**

**PART 320: UNIFORM ACCOUNTING PROCEDURES FOR ACCELERATED AMORTIZATION, LIBERALIZED DEPRECIATION, AND TAX CREDITS**

This rules was filed as NMPSC Rule 320.

**17.3.320.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

**17.3.320.2 SCOPE:**

[Recompiled 12/30/01]

**17.3.320.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

**17.3.320.4 DURATION:**

[Recompiled 12/30/01]

**17.3.320.5 EFFCTIVE DATE:**

[Recompiled 12/30/01]

**17.3.320.6 OBJECTIVE:**

[Recompiled 12/30/01]

**17.3.320.7 DEFINITIONS:**

[Recompiled 12/30/01]

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A. Preamble [17.3.320.9 NMAC]

B. Accounting Procedures for Accelerated Amortization and Liberalized Depreciation [17.3.320.10 NMAC]

C. Accounting Procedures for Federal Investment Tax Credit [17.3.320.11 NMAC]

D. Relief [17.3.320.12 NMAC]

[Recompiled 12/30/01]

**17.3.320.9 PREAMBLE:**

A. Uniform accounting procedures shall be used by all public utilities for amounts certified by the federal government for accelerated amortization pursuant to Section 168 of the Internal Revenue Code and applicable regulations and for liberalized depreciation allowances pursuant to Section 167 of the Internal Revenue Code. Uniform accounting procedures shall be used by all public utilities for amounts certified by the federal government for federal investment tax credits pursuant to Section 46 of the Internal Revenue Code.

B. Pursuant to IRC Section 168 certificates of necessity were issued by the federal government only after evidence had been presented that the facilities were essential to the national effort and that there was probably future economic usefulness of the facilities. It is recognized that the amortization privilege assures only one thing, namely that the tax reduction will be realized during the period of amortization, which is usually five (5) years, instead of being spread over the life of the property.

C. Subsequently Congress and the Internal Revenue Service in IRC Section 167 and Treas. Reg. Section 1.167 have made provisions for liberalized depreciation allowances wherein the tax reduction benefits are similar in character to those of the accelerated amortization privilege. The tax reduction will be realized during the early years after the purchase and installation of the asset, and the taxes will increase in the later years of the asset's life.

[Recompiled 12/30/01]

**17.3.320.10 ACCOUNTING PROCEDURES FOR ACCELERATED AMORTIZATION AND LIBERALIZED DEPRECIATION:**

In order to insure proper accounting for accelerated amortization and liberalized depreciation a utility may take these allowances for tax purposes but shall continue to charge customary depreciation on the books. The utility shall make a further charge on the books equivalent to the tax reduction arising by reason of the allowances (instead of customary depreciation) and credit this to an accumulated deferred income tax account. After the allowance period, when the property has been fully amortized or depreciated through the application of accelerated amortization or liberalized depreciation, the reserve in the Accumulated Deferred Income Tax Account shall be used to pay taxes on

that income in excess of the income which would have been derived had customary depreciation been utilized.

[Recompiled 12/30/01]

**17.3.320.11 ACCOUNTING PROCEDURES FOR FEDERAL INVESTMENT TAX CREDIT:**

A. For gas utilities, accounting for the federal investment tax credit permitted by IRC Section 46 and applicable regulations shall be in accordance with the Federal Power Commission's Accounting Procedure for Investment Tax Credit, Order No. 289, as amended by Order No. 289-A issued November 2, 1964.

B. For electric and other utilities, accounting for the federal investment tax credit permitted by IRC Section 46 and applicable regulations shall be in accordance with the Federal Power Commission's Accounting Procedure for Investment Tax Credit, Order No. 290, issued December 17, 1964, all such orders having been issued under Federal Power Commission Docket Nos. R-231 and R-232.

C. Where the orders allow alternative accounting procedures, each utility shall advise the Commission which of the procedures it intends to use in accounting for tax benefits received because of the investment tax credit.

D. To the extent that NMPSC Rules 510, 610, and 710 [17.3.510 NMAC, 17.3.610 NMAC, and 17.12.1 NMAC] do not provide account numbers and titles for the accounting for the federal investment tax credit, the utility shall employ the account numbers and titles prescribed from time to time by the Federal Power Commission or its successor, the Federal Energy Regulatory Commission.

[Recompiled 12/30/01]

**17.3.320.12 RELIEF:**

Relief from the requirements of NMPSC Rule 320 [17.3.320 NMAC] on an appropriate showing may be obtained on written application to the Commission.

[Recompiled 12/30/01]

**PART 321-339: [RESERVED]**

**PART 340: AUTHORIZATION OF DEPRECIATION PRACTICES TO BE OBSERVED BY PUBLIC UTILITIES**

**17.3.340.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission]

[Recompiled 12/30/01]

**17.3.340.2 SCOPE:**

NMPSC Rule 340 [17.3.340 NMAC] shall apply to all electric, gas, steam, and water utilities under the jurisdiction of the Commission including municipally-owned utilities as provided by law.

[Recompiled 12/30/01]

**17.3.340.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

**17.3.340.4 DURATION:**

[Recompiled 12/30/01]

**17.3.340.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.3.340.6 OBJECTIVE:**

The purpose of NMPSC Rule 340 [17.3.340 NMAC] is to formulate for the State of New Mexico adequate requirements for determining depreciation accruals and reserves for public utilities.

[Recompiled 12/30/01]

**17.3.340.7 DEFINITIONS:**

When used in NMPSC Rule 340 [17.3.340 NMAC] unless otherwise specified the following definitions will apply:

A. "Accounts" means the accounts described or recognized by the New Mexico Public Service Commission [New Mexico Public Regulation Commission].

B. "Depreciation Accounting" means a system of accounting which aims to distribute the cost or other basic value of tangible capital assets less salvage (if any) over the estimated useful life of the unit (which may be a group of assets) in a systematic and rational manner. It is a process of allocation not of valuation.

C. "Amortization" means the gradual extinguishment of an amount in an account by distributing such amount over a fixed period of time, over the life of the asset or liability

to which it applies, or over the period during which it is anticipated the benefit will be realized.

D. "Commission" means the New Mexico Public Service Commission [New Mexico Public Regulation Commission].

E. "Cost of Removal" means the cost of demolishing, dismantling, removing, tearing down, or abandoning physical assets including the cost of transportation and handling incidental thereto.

F. "Accumulated Provision for Depreciation" means the summation of the annual provision for depreciation accruals recorded by the utility under a predetermined plan of accounting including charges for retirements and net salvage to recover the cost of the asset between the time it is first devoted to public use and retired from service.

G. "Annual Provision for Depreciation Accrual" means the annual amount charged to expense and/or clearing accounts.

H. "Group Plan" means the plan under which depreciation charges are accrued upon the basis of the original cost of the asset included in each depreciable plant account using the average service life thereof properly weighed, and upon retirement of any depreciable asset its original cost less net salvage is charged to the depreciation reserve whether or not the particular asset has attained or exceeded the average service life.

I. "Net Salvage" means salvage of property retired less the cost of removal.

J. "Original Cost" means the cost of property at the time it was first devoted to public service.

K. "Property Retired" means assets which have been removed, sold, abandoned, destroyed, or which for any cause have been withdrawn from service and the books of account.

L. "Salvage" means the amount received from assets retired less any expenses incurred in connection with the sale or in preparing the assets for sale; or if retained the amount at which the material recoverable is chargeable to materials and supplies or other appropriate accounts.

M. "Service Life" means the period between the date an asset is first devoted to public use and the date of its retirement from service.

N. "Straight-line Method" as applied to depreciation accounting means the plan under which the original cost adjusted for net salvage of the asset is charged to operating expenses and/or to clearing accounts and credited to the depreciation reserve through equal annual charges as nearly as may be during its service life.

O. "Utilities" means Classes A, B, C, and D as defined by the following table of annual operating revenues:

<u>Class D</u>	<u>Class A</u>	<u>Class B</u>	<u>Class C</u>
Electric			
and Gas	Exceeding	\$1,000,000 to	\$150,000 to
\$25,000 to			
	\$2,500,000	\$2,500,000	\$1,000,000
\$50,000.			
Water (annual revenues for 3 consecutive year periods)			
	Exceeding	Exceeding	\$50,000 to
Less than			
	\$500,000	\$500,000	\$500,000
\$50,000.			
Sewer (average annual revenues for 3 consecutive year periods)			
	<u>Class A</u>	<u>Class B</u>	<u>Class C</u>
	\$750,000	\$150,000 but	Less than
\$150,000			
	or more	less than \$750,000	

Annual operating revenues are those revenues recorded in the accounts of the utility resulting from all sales of commodities or services or from other uses of utility properties. For combination utilities departmental operating revenues shall be used for classification purposes. "Department" as used in NMPSC Rule 340 [17.3.340 NMAC] shall mean a responsibility center within a combination utility where revenues and costs are accumulated by commodity or service rendered.

P. "Detailed Study" means a determination of depreciation accruals, depreciation rates, and depreciation reserve requirements.

Q. "Annual Review" means a cursory examination to insure that no major changes have taken place which would call for a new detailed study.

R. "Survivor Curve" means a curve that shows the number of units or cost of a given group which is surviving in service at given ages.

S. "Probable Life Curve" means a curve that shows the probable average life of the survivors at any age from zero to maximum life.

T. "Frequency Curve" means a curve that shows in what manner retirements are distributed over the period from zero age to maximum life.

U. "Units of Production Method" means the process whereby an equal portion of an asset's depreciable cost is allocated to operating expense or clearing accounts based on each unit of production from the asset.

[Recompiled 12/30/01]

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- (2) Applicability [17.3.340.2 NMAC]
- (3) Concept of Depreciation [17.3.340.9 NMAC]
- (4) Definitions [17.3.340.7 NMAC]

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- (1) General
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(2) APPENDIX B: Summary of Annual Depreciation Accrual and Rate Determination Straight-Line Remaining Life Method

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(6) APPENDIX F: Computation of Estimated Depreciation Reserve Requirement and Annual Depreciation Accrual From a Survivor Curve Straight-Line Average

(7) APPENDIX G: Salvage Estimate

[Recompiled 12/30/01]

#### **17.3.340.9 CONCEPT OF DEPRECIATION:**

Depreciation as conceived by NMPSC Rule 340 [17.3.340 NMAC] is the process by which an equitable method of accounting will permit the recovery of the original cost less net salvage over the service life of a depreciable asset.

[Recompiled 12/30/01]

#### **17.3.340.10 REQUIREMENTS FOR RECORDS, STUDIES, REVIEWS, AND REPORTS:**

A. General: All Class A, B, C, and D electric, gas and water utilities and Class A, B and C sewer utilities in New Mexico shall maintain adequate accounts and records related to depreciation practices. Annual depreciation accruals by account shall be reported for each account. A separate reserve for each plant account shall be

maintained. The cost of depreciable plant adjusted for net salvage will thus be distributed over the estimated useful life of such plant in a systematic manner. The accounting entries must be made in a manner consistent with applicable Uniform Systems of Accounts.

B. Depreciation Rates: Each public utility company has the primary responsibility for determining the depreciation rates that may be used for each account. Any public utility may make application to the Commission and present justification for a depreciation method to be approved by the Commission for the accounts as contained in the utility's application as evidenced by order of the Commission. If no such application is made, a straight-line method or unit of production method shall be used. Class A and Class B utilities will determine service lives in accordance with NMPSC Rule 340.10 through 340.15 [17.3.340.11 NMAC].

C. Periodic Studies and Annual Reviews:

(1) Class A and Class B utilities shall annually make an internal review of all depreciation rates and other pertinent depreciation factors by accounts to determine whether the current depreciation rates are appropriate for the ensuing accounting year. As a result of each utility's annual review and subject to Commission approval, depreciation rates may be adjusted to reflect known factors which may affect depreciation rates.

(2) Subject to the Commission requiring or a utility requesting a different analysis period, each Class A and Class B utility shall, not less often than every five (5) years, conduct a detailed study of all accounts as to the property of service lives, survivor curves, recorded net salvage, and other pertinent factors affecting depreciation.

(3) Class C and Class D water, gas and electric utilities and Class C sewer utilities shall maintain depreciation records for each plant account but may determine average service lives either in accordance with NMPSC Rules 340.10 through 340.15 [17.3.340.11 NMAC] or by estimates based upon knowledge of local conditions, company policy with regard to retirement, other factors influencing service life, and the experience of other New Mexico utilities. When in the judgment of the Commission and after hearings, Class C and Class D water, gas and electric utilities and Class C sewer utilities may be required to use actuarial or simulated plant record methods for specified depreciation accounts.

(4) Class C and Class D gas, water and electric utilities and Class C sewer utilities shall annually review all depreciation rates by accounts. When required after hearings, studies shall be made so that within a five-year period or such other period as the Commission shall require all accounts shall have been analyzed. As a result of the annual review depreciation rates may be adjusted to reflect known factors which may tend to lengthen or shorten average service lives.

(5) Nothing in NMPSC Rule 340 [17.3.340 NMAC] shall prohibit the use of subaccounts for plant in separate geographic areas or where an account is large to separate and distinguish between certain classes of property. Where such subaccounts have been established, they shall be carried separately on the books of the utility and may be treated as separate accounts for depreciation purposes.

(6) The Commission may, after hearing, require Class A utilities to maintain certain subdivision of primary accounts for depreciation purposes.

D. Report to Commission: In all rate case filings all utilities shall provide reports to the Commission setting forth the depreciation rates. Class A and B utilities shall also file the results of the detailed depreciation study required by NMPSC Rule 340.7(b) [Paragraph 2 of Subsection C of 17.3.340.10 NMAC] with their next rate case following the completion of this study. In addition the utilities shall indicate on which accounts detailed studies have been undertaken during the previous year, summarized on a form containing all of the data which is contained on the sample enclosed in Appendix B and any other applicable sample appendices. The utility shall show proposed changes to depreciation rates it intends to use in the future and shall provide a justification for each change.

E. Commission Action: In the event the Commission should fail to issue an order approving or disapproving such proposed rates within sixty (60) days after the filing of the report, the utility may use the depreciation rates set forth in its report for the ensuing year.

[Recompiled 12/30/01]

### **17.3.340.11 ACCEPTABLE METHODS OF ESTIMATING SERVICE LIVES:**

#### **A. General:**

(1) Utilities may use any reasonable acceptable method for estimating service lives which includes the analysis of plant mortality by group accounts. It is recognized that over the years many such methods have been developed and used successfully. However, it is suggested that utilities restrict themselves to the use of the recognized methods outlined in the following section. The purpose of such voluntary restriction is to minimize the number of methods to be reviewed and to promote economy among the utilities and the regulatory agency in the review of procedures.

(2) Determination of average service lives involves the basic study of historical patterns by use of actuarial and/or simulated plant record methods for group accounts together with engineering estimates of the future effect of physical factors of wear and tear, decay, depletion of supply, action of the elements, and functional factors of inadequacy, obsolescence, and public requirement. In those cases where factors such as anticipated changes to plant, additions of new or improved kinds of plant, previously unanticipated requirements, specific changes in plans of management, or

other developments occur, they are to be given consideration in adjusting the average future service life of utility plant in service. The weight to be given past experience shall depend upon the extent to which conditions affecting service life in the future are expected to be similar to or different from those for the historical study period.

#### B. Actuarial Methods:

(1) Actuarial methods are generally similar to those developed by life insurance companies for the study of human mortality. The end result of the modification and application of these methods to utility plant is to determine estimates of average service life based upon the analysis of past plant retirements. These methods require that plant records be kept in sufficient detail so that the age of plant installed in any one year can be determined at all times.

(2) Utilities are urged to confine their use of actuarial methods to those which are discussed favorably in Public Utility Depreciation Practices, published December 1968 by the National Association of Regulatory Utility Commissioners, and any subsequent revisions. These methods include the "Gompertz-Makeham" as well as the survivor curves developed by the Engineering Research Institute of Iowa State University. These curves are frequently referred to as "Iowa Curves."

(3) Included in Appendix A to NMPSC Rule 340 [17.3.340 NMAC] is a chart entitled "Elements of a Survivor Curve," which contains the various elements related to service life of utility plant in service. The "Frequency Curve" at the bottom of the chart indicates the frequency of retirements related to annual additions. It is the curve which is used in the "Brennan Method" described in the text that follows.

(4) The second curve is the "Survivor Curve" which indicates the percent of the original plant surviving at any age throughout the life of the group account. It is usually smoothed and extended by mathematical means from a stub-survivor curve developed from actual observed experience.

(5) As early retirements take place the overall service life of the survivors becomes longer than the total of the group at the time of first installation. Therefore the third curve illustrated on the chart is the "Probable Life Curve" which always lies to the right of the "Survivor Curve."

(6) The "Average Service Life" is indicated by the vertical line which starts at the top of the "Probable Life Curve" intersecting the "Survivor Curve" at a point where the "age" of plant in service equals the average service life of the plant.

#### C. Simulated Methods:

(1) Where utilities lack sufficient records to develop actuarial data, the use of simulated methods such as those developed by Mr. Alex E. Bauhan or by Mr. Joseph F. Brennan are recommended.

(2) The Simulated Plant-Record Method developed by Mr. Bauhan analyzes an account to determine average service life and dispersion by using annual gross additions and yearly plant balances. Through a process of iteration utilizing survivor tables, such as those developed by the Engineering Research Institute of Iowa State University, an attempt is made to duplicate the year-by-year plant balances in the account by a series of simulated balances arrived at by the assumption that each year's actual additions were subsequently retired in accordance with the pattern demonstrated by a particular Iowa Curve being used in the analysis. The use of electronic computing equipment expedites this procedure.

(3) The method developed by Mr. Joseph F. Brennan which was initially described in February 1957 in an article entitled "Plant Mortality" in Electrical Engineering avoids iterations and gives satisfactory results. The calculations required are laborious if performed by hand; however, the method lends itself to electronic computer operation. It involves the parabolic relationships of retirements and relates them to annual additions.

(4) For either of the actuarial or simulated methods it is important that the plant balances, annual additions, and recorded retirements accurately reflect the situation for the year in which the accounting data was prepared. Consequently any accounting adjustments or erroneous entries should all be corrected in the appropriate year before the methods are employed.

D. Life Span Method: In classes of property consisting of large units which are expected to be retired at one time as a single unit, a method employing direct estimates adjusted for interim retirements of portions of the large units is useful. This method is referred to herein as the "Life Span Method". A form entitled "Life Span Calculation" is attached as Appendix D. The method assumes that interim retirements will take place at a relatively constant rate throughout the life of the major unit. The tendency of these interim retirements of small subunits of the major unit is to produce a shortening of the overall life of the major unit for depreciation purposes.

E. Salvage Estimate: A form has been included in Appendix G to aid in the preparation of estimated net salvage. This form takes advantage of historical experience and provides for the analysis by account of the dollars of plant retired in a series of years, the amount of gross salvage received, the cost of removal of the plant, and the resulting net salvage. Because salvage is a condition to be realized in the future, the bottom of the form provides for preparing estimates of future net salvage. It initially uses historical data together with an estimate of gross salvage or scrap value of the surviving plant. By use of these data together with consideration of cost of removal an estimate of future net salvage is determined. With the ever increasing cost of labor and subsequent increase in cost of removal it is recognized that negative salvage may be a factor to consider in estimating the net salvage of any account.

F. Alternative Methods: In each instance where a method other than that covered by the foregoing discussion is to be advanced by a utility, the utility shall first present its

proposal together with a justification for its use to the Commission for review. In submitting its request for authorization to use alternative methods the utility shall include specific reasons why it is unable to employ any of the methods previously discussed in NMPSC Rule 340 [17.3.340 NMAC] and the reason why the utility believes the proposed alternative method is superior for the specific application.

[Recompiled 12/30/01]

#### **17.3.340.12 RESERVE REQUIREMENTS STUDY:**

Adjustments to Depreciation Reserve: With the procedures outlined in NMPSC Rule 340 [17.3.340 NMAC] which require frequent reviews of depreciation rates and accruals there should not develop any serious over-or under-accruals of depreciation reserves. When a utility believes that at any time an over-or under-accrual in the depreciation reserve exists, the utility shall submit by formal application to the Commission a detailed reserve requirement study and request for adjustment. This reserve requirement study shall be reviewed by the Commission and the Commission will subsequently issue its final order approving, disapproving, or modifying the adjustment.

[Recompiled 12/30/01]

#### **17.3.340.13 HARDSHIP PROVISIONS:**

Application for Modification of Rule or Exemption: If unreasonable hardship to a Class C and Class D water utility or a Class C sewer utility would result from the application of NMPSC Rule 340 [17.3.340 NMAC] herein prescribed, an application may be made to the Commission for the modification of NMPSC Rule 340 [17.3.340 NMAC] for temporary or permanent exemption from its requirements.

[Recompiled 12/30/01]

### **PART 341-349: [RESERVED]**

### **PART 350: TREATMENT OF PUBLIC UTILITY ADVERTISING EXPENSES, CONTRIBUTIONS, DONATIONS, DUES, SUBSCRIPTIONS AND MEMBERSHIP FEES, AND LOBBYING EXPENSES IN RATE CASES**

#### **17.3.350.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission]

[Recompiled 12/30/01]

#### **17.3.350.2 SCOPE:**

NMPSC Rule 350 [17.3.350 NMAC] shall apply to all rate case proceedings including any pertinent applications for periodic rate adjustment filed in the Commission's offices.

[Recompiled 12/30/01]

**17.3.350.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

**17.3.350.4 DURATION:**

[Recompiled 12/30/01]

**17.3.350.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.3.350.6 OBJECTIVE:**

The purpose of NMPSC Rule 350 [17.3.350 NMAC] is to establish rules and regulations governing the treatment of certain operating expense items in setting rates as well as to address the federal standard on utility and advertising as set out in Section 113(b)(5) of the Public Utility Regulatory Policy Act of 1978, P.L. 95-617, 16 USC Section 2623.

[Recompiled 12/30/01]

**17.3.350.7 DEFINITIONS:**

[Recompiled 12/30/01]

**17.3.350.8 TABLE OF CONTENTS:**

- A. Preamble [17.3.350.6 NMAC]
- B. Applicability [17.3.350.2 NMAC]
- C. Advertising Expenses [17.3.350.9 NMAC]
- D. Contributions, Donations, Dues, Subscriptions, and Membership Fees [17.3.350.10 NMAC]
- E. Lobbying Expenses [17.3.350.11 NMAC]
- F. Variances [17.3.350.12 NMAC]

[Recompiled 12/30/01]

### **17.3.350.9 ADVERTISING EXPENSES:**

A. Definition: "Advertising Expenses" shall mean all expenses made for the development, publication, and/or dissemination of information to a utility's ratepayers, the public at large, or to utility stockholders including, but not limited to, publications in newspapers, magazines, information for use by the electronic media, bill enclosures, or other mailings to ratepayers, stockholders, or the public at large; salaries for in-house personnel engaged in advertising activities; live presentations other than before regulatory or legislative bodies.

B. Allowable Expenditures: Except as provided in (c) [C] below, advertising expenses which may be properly included in the cost of service shall be that advertising which is reasonable in amount and which:

- (1) Advises the ratepayers of matters of public safety, health or emergency situations;
- (2) Advocates to rate payers through factual data and advice their conservation of energy resources and reduction of peak demand;
- (3) Explains utility billing practices, services, and rates to ratepayers;
- (4) Must be filed with governmental agencies or financial institutions (including Annual Reports and stock prospectuses) other than advertisements filed pursuant to (6) below;
- (5) Advises customers of employment opportunities with the utility company;
- (6) Provides information required to be made available to customers or stockholders under state or federal law and regulation; or
- (7) Otherwise results in a measurable reduction of operating costs and more efficient utility service to ratepayers except as excluded by (c) [C] below.

C. Unallowable Expenditures: Advertising expenses which shall be properly excluded from cost of service are those which in whole or in any part:

- (1) Promote increases in the usage of energy or utility services;
- (2) Except as required by state or federal law or regulations promote the sale of any goods or services from any specific company including, but not limited to, the utility company or any subsidiary or affiliated company;
- (3) Seek to establish a favorable public image of the company other than by identifying it as the source of an allowable advertising expenditure as defined in subsection (b) [B];



(4) Advocate a position rather than providing factual information in any advertisement allowable under subsection (b) [B];

(5) Justify a request for higher rates, or the need for plant expansion, or for any particular addition to plant or service costs.

D. Burden of Proof: A utility seeking to include any advertising expenditures in determining its cost of service must affirmatively show through the presentation of clear and convincing evidence that each expenditure is allowable under the criteria established in (b) [B] below and that it is not excluded by any provision of (c) [C] above.

E. Advertisement Records: Every utility seeking to include advertising expenditures in its cost of service shall maintain a record of each advertisement including the complete text and an exact copy and the costs associated with its production and dissemination to the public. Such records shall be open to inspection by the Commission staff and shall be submitted as part of the company's rate case filing.

[Recompiled 12/30/01]

#### **17.3.350.10 CONTRIBUTIONS, DONATIONS, DUES, SUBSCRIPTIONS, AND MEMBERSHIP FEES:**

A. Contributions or donations to any political candidate, any political party, any religious cause, or any social, recreational, or fraternal organization shall not be allowed as a cost of service.

B. Dues in professional or trade associations and subscriptions to publications shall be allowed as a cost of service by a utility provided these dues contribute to the professional education and standing of the company's employees for whom the dues shall be paid.

C. Contributions, donations, dues, subscriptions, and membership fees other than those included in (a) [A] and (b) [B] above will not be included in the determination of cost of service unless a utility affirmatively demonstrates that such expenditures are reasonable. Maintenance of full and adequate accounting for each expense shall be a prerequisite to allowance of any expenditure in rates under this part. Maintenance of corporate good will or good corporate citizenship is an insufficient reason for inclusion of these expenditures in determining a utility's cost of service.

[Recompiled 12/30/01]

#### **17.3.350.11 LOBBYING EXPENSES:**

Expenses which directly or indirectly support utility or utility-related lobbying efforts on a local, state, regional, or national level shall not be allowable in determining a utility's cost of service. The utility company shall maintain complete records of all expenditures,

including portions of payments made for dues or other expenses, in support of utility or other lobbying efforts.

[Recompiled 12/30/01]

**17.3.350.12 VARIANCES:**

Any rural electric cooperative, municipal utility or association may file a variance under NMPSC Rule 350 [17.3.350 NMAC]. Upon a showing of good cause, the Commission may grant said variance.

[Recompiled 12/30/01]

**PART 351-359: [RESERVED]**

**PART 360: PROCEDURES FOR THE AUDIT AND EXAMINATION OF UTILITY BOOKS AND RECORDS OF ACCOUNTS**

**17.3.360.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

**17.3.360.2 SCOPE:**

[Recompiled 12/30/01]

**17.3.360.3 STATUTORY AUTHORITY:**

A. NMPSC Rule 360 [17.3.360 NMAC] is adopted under the authority vested in the Commission pursuant to NMSA 1978, Sections 62-6-1, 62-6-4A, 62-6-14, 62-6-16 and 62-6-17.

B. NMPSC Rule 360 [17.3.360 NMAC] shall apply to all electric, gas, water and sewer utilities subject to the jurisdiction of the Commission, including municipally-owned utilities which have elected to come within the jurisdiction of the Commission pursuant to NMSA 1978, Section 62-6-5.

[Recompiled 12/30/01]

**17.3.360.4 DURATION:**

[Recompiled 12/30/01]

**17.3.360.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.3.360.6 OBJECTIVE:**

A. NMPSC Rule 360 [17.3.360 NMAC] is intended to formalize the procedures to be followed by the Commission for the audit and examination of the books and records of a utility in order to insure that all utilities subject to the jurisdiction of the Commission are uniformly and correctly maintaining their accounting records in conformance with the Uniform System of Accounts as established and prescribed by the NMPSC Code of Rules and Regulations or as otherwise directed by the Commission.

B. An audit or examination undertaken by the Commission pursuant to Rule 360 [17.3.360 NMAC] is for the purpose of accumulating and evaluating evidence regarding quantifiable accounting information related to a specific utility in order to determine and report on the degree of correspondence between the quantifiable accounting information and the established criteria for the maintenance of that utility's records under the uniform system of accounts as prescribed for such utility.

C. The audit and examination procedures established by this rule are designed to review state utility regulatory information necessary for the Commission to carry out its duties as authorized by the Public Utility Act, NMSA 1978 Sections 62-3-2, et. seq., and are not intended to supersede or duplicate financial audits by any federal or other state regulatory agency which any utility is required to undergo by law.

[Recompiled 12/30/01]

**17.3.360.7 DEFINITIONS:**

Unless otherwise defined the following terms shall have the following meanings for the purposes of these rules of examination and auditing procedures.

A. "Accounts" means the uniform system of accounts for each utility as prescribed by the Code of Rules and Regulations of the New Mexico Public Service Commission [New Mexico Public Regulation Commission] or any other system of accounts maintained by the utility as ordered by the Commission [New Mexico Public Regulation Commission].

B. "Audit" or "Examination" means the process by which evidence is accumulated and evaluated.

C. "Audit report" means the final written report of the auditor's findings concerning the utility's compliance or non-compliance with the uniform system of accounts, and may, but is not required to, include any opinions and conclusions of the auditor in addition to the factual information contained therein.

D. "Auditor" means a member or members of the Staff of the New Mexico Public Service Commission [New Mexico Public Regulation Commission] as defined in the Code of Rules and Regulations of the NMPSC qualified and authorized to perform or assist in the performance of an audit undertaken pursuant to Rule 360 [17.3.360 NMAC].

E. "Evidence" means any information relied upon by the auditor to determine the degree of correspondence between quantifiable information and established criteria for the maintenance of the utility's records under the uniform system of accounts as prescribed for such utility.

F. "Routine audit" means any audit or examination undertaken pursuant to Rule 360 [17.3.360 NMAC], with the exception of Rule 360.7 [17.3.360.12 NMAC] which pertains only to special audits.

G. "Special audit" means any audit or examination undertaken pursuant to Rule 360.7 [17.3.360.12 NMAC], and the provisions of Rule 360.5 and 360.6 [17.3.360.10 NMAC and 17.3.360.11 NMAC] shall not apply to a special audit. All other provisions of Rule 360 [17.3.360 NMAC] are applicable to a special audit.

[Recompiled 12/30/01]

#### **17.3.360.8 TABLE OF CONTENTS:**

- A. Purpose [17.3.360.6 NMAC]
- B. Authority [17.3.360.3 NMAC]
- C. Definitions [17.3.360.7 NMAC]
- D. Access to Records [17.3.360.9 NMAC]
- E. Scope of Audit or Examination [17.3.360.10 NMAC]
- F. Notice of Routine Audit [17.3.360.11 NMAC]
- G. Special Audit [17.3.360.12 NMAC]
- H. Exit Conference [17.3.360.13 NMAC]
- I. Audit Report [17.3.360.14 NMAC]
- J. Variances [17.3.360.15 NMAC]

[Recompiled 12/30/01]

### **17.3.360.9 ACCESS TO RECORDS:**

A. In addition to the preservation of records as required by NMPSC Rule 310 [17.3.310 NMAC], each utility shall also maintain and make available to the Commission all records and documentation supporting the entries in the records of accounts, including but not limited to, minute books, stock books, reports, correspondence, memoranda and any other documentation which is relevant to the development of history of, or facts regarding, any transaction or entry in the records of accounts.

B. Consistent with applicable law governing the maintenance of the uniform system of accounts for each utility, no utility shall destroy or dispose of any books and records required to be maintained unless the destruction or disposition thereof is permitted by such applicable law.

[Recompiled 12/30/01]

### **17.3.360.10 SCOPE OF AUDIT OR EXAMINATION:**

The scope of any routine audit or examination of the records of a utility shall be determined consistent with Commission authority on a case-by-case basis, provided that the scope of the audit or examination shall be clearly identified and submitted to the utility at the time of notice of the audit or examination. The scope of a special audit shall be determined according to the provisions of Rule 360.7 [17.3.360.12 NMAC].

[Recompiled 12/30/01]

### **17.3.360.11 NOTICE OF ROUTINE AUDIT:**

A utility which is to be the subject of a routine audit or examination by the Commission shall be provided with no less than ten (10) working days notice prior to the date of performance of the audit or examination. All routine audits or examinations shall be conducted in a manner such as not to unreasonably disrupt the normal business of the utility.

[Recompiled 12/30/01]

### **17.3.360.12 SPECIAL AUDIT:**

A special audit or examination may be conducted at the Commission's discretion pursuant to NMSA 1978 Section 62-6-17, on a case-by-case basis. A special audit or examination shall not be subject to the notice provisions of 360.6 [17.3.360.11 NMAC]. The scope of the special audit shall be identified and provided to the utility at the beginning of the audit.

[Recompiled 12/30/01]

### **17.3.360.13 EXIT CONFERENCE:**

At the conclusion of any audit or examination undertaken pursuant to Rule 360 [17.3.360 NMAC], the auditor shall conduct an oral exit conference with the utility management in order to enter into preliminary discussions of the auditor's findings.

[Recompiled 12/30/01]

### **17.3.360.14 AUDIT REPORT:**

After any audit or examination undertaken pursuant to Rule 360 [17.3.360 NMAC] is concluded, a copy of the final audit report will be provided to the utility within five (5) days of the completion of the report. The utility will be given thirty (30) days to respond to the report in writing. After expiration of the thirty (30) day period, the audit report will be placed in the audit files at the Commission with the response, if any, from the utility. For good cause in accordance with NMPSC Rule 110.2 [17.1.2 NMAC], the utility may file a written request for a protective order protecting the report and response and all supporting documentation, if any.

[Recompiled 12/30/01]

### **17.3.360.15 VARIANCES:**

A. A utility may file a written request with the Commission seeking a variance from the provisions of Rule 360 [17.3.360 NMAC] for good cause shown. Each variance request shall identify the specific provision of Rule 360 [17.3.360 NMAC] from which a variance is requested, provide an explanation for the conditions requiring the variance, and an alternate proposal designed to achieve the purposes of the provisions of the rule to be waived and to be implemented for application to the condition(s) requiring the variance.

B. If the Commission determines that the variance requested is consistent with the purposes of NMPSC Rule 360 [17.3.360 NMAC] as defined herein, the variance may be granted.

[Recompiled 12/30/01]

## **PART 361-509: [RESERVED]**

## **PART 510: UNIFORM SYSTEMS OF ACCOUNTS AND ANNUAL REPORT FORMS FOR ELECTRIC UTILITIES**

### **17.3.510.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.3.510.1 NMAC - Rp, 17 NMAC 3.510.1, 12/27/2022]

**17.3.510.2 SCOPE:**

**[RESERVED]**

[17.3.510.2 NMAC - Rp, 17 NMAC 3.510.2, 12/27/2022]

**17.3.510.3 STATUTORY AUTHORITY:**

Sections 8-8-4 and 8-8-15 NMSA1978 of the Public Regulation Commission Act; and Sections 61-8-1 to 62-8-13 NMSA 1978, Duties and Restrictions Imposed Upon Public Utilities.

[17.3.510.3 NMAC - Rp, 17 NMAC 3.510.3, 12/27/2022]

**17.3.510.4 DURATION:**

Permanent.

[17.3.510.4 NMAC - Rp, 17 NMAC 3.510.4, 12/27/2022]

**17.3.510.5 EFFECTIVE DATE:**

December 27, 2022, unless a later date is cited at the end of a section.

[17.3.510.5 NMAC - Rp, 17 NMAC 3.510.5, 12/27/2022]

**17.3.510.6 OBJECTIVE:**

**[RESERVED]**

[17.3.510.6 NMAC - Rp, 17 NMAC 3.510.6, 12/27/2022]

**17.3.510.7 DEFINITIONS:**

**[RESERVED]**

[17.3.510.7 NMAC - Rp, 17 NMAC 3.510.7, 12/27/2022]

**17.3.510.8 TABLE OF CONTENTS:**

A. Classification of electric utilities [17.3.510.9 NMAC]

B. Uniform systems of accounts and annual report forms [17.3.510.10 NMAC]

C. Effect of adoption of uniform systems of accounts [17.3.510.11 NMAC]

D. Annual reporting [17.3.510.12 NMAC]

E. Quarterly reporting [17.3.510.13 NMAC]

[17.3.510.8 NMAC - Rp, 17 NMAC 3.510.8, 12/27/2022]

### **17.3.510.9 CLASSIFICATION OF ELECTRIC UTILITIES:**

Investor-owned electric public utilities shall be and are hereby classified in accordance with their annual operating revenues as follows:

CLASS	ANNUAL OPERATING REVENUES OF
A	\$2,500,000 or more.
B	\$1,000,000 or more, but less than \$2,500,000.
C	\$150,000 or more, but less than \$1,000,000.
D	\$25,000 or more, but less than \$150,000.
E	less than \$25,000.

[17.3.510.9 NMAC - Rp, 17 NMAC 3.510.9, 12/27/2022]

### **17.3.510.10 UNIFORM SYSTEMS OF ACCOUNTS AND ANNUAL REPORT FORMS:**

**A.** Class A and class B electric utilities as defined in 17.3.510.9 NMAC shall keep their books and records in compliance with the uniform system of accounts for public utilities and licensees (class A and class B), effective April 1, 1973, prescribed by the FPC with subsequent revisions prescribed by FERC, and shall use the current form of annual report for electric utilities and licensees (class A and class B) prescribed by FERC.

**B.** Class C electric utilities as defined in 17.3.510.9 NMAC shall keep their books and records in compliance with the uniform system of accounts for public utilities and licensees (class C), effective April 1, 1973, prescribed by the FPC with subsequent revisions prescribed by FERC, and shall use the current form of annual report for public utilities and licensees (class C and class D), prescribed by FERC.

**C.** Class D and class E electric utilities as defined in 17.3.510.9 NMAC shall keep their books and records in compliance with the uniform system of accounts for public utilities and licensees (class D) effective April 1, 1973, prescribed by the FPC with subsequent revisions prescribed by FERC, and shall use the current form of annual report for public utilities and licensees (class C and class D) prescribed by the FERC.



**D.** Rural electric cooperatives shall keep their books and records in compliance with the uniform system of accounts prescribed for electric borrowers of the rural electrification administration, REA bulletin 181-1. The form of rural electric cooperatives' annual report to the New Mexico public regulation commission shall be in the form provided by the commission. Rural electric cooperatives having an annual electric operating revenues and patrons' capital of \$150,000 or less for business transacted in the state of New Mexico shall have the option of filing FERC form No. 1 for electric utilities and licensees (class A and class B) as prescribed above, or they may file one copy each of REA form no. 7 and REA form no. 40 covering their New Mexico operations, and one copy each of REA form no. 7 and REA form no. 40 covering their total operations. A rural electric cooperative's reports shall reflect the operations for the year ending December 31.

[17.3.510.10 NMAC - Rp, 17 NMAC 3.510.10, 12/27/2022]

#### **17.3.510.11 EFFECT OF ADOPTION OF UNIFORM SYSTEMS OF ACCOUNTS:**

The adoption of the respective uniform systems of accounts by 17.3.510.10 NMAC shall not be construed as approval or acceptance of any item recorded pursuant to the said system of accounts on the books of any utility for the purpose of fixing rates or determining other matters before the commission. The uniform system of accounts is designed to record the facts of the operations of all electric utilities in a uniform manner, and when engaged in fixing rates or passing upon other matters before it the commission will determine what consideration shall be given to various items so recorded in the several accounts.

[17.3.510.11 NMAC - Rp, 17 NMAC 3.510.11, 12/27/2022]

#### **17.3.510.12 ANNUAL REPORTING:**

**A.** Each utility affected by 17.3.510 NMAC shall report to the commission annually for each calendar year not later than April 30 of the following year upon forms provided by the commission. Attached to this report shall be the company's most recently filed SEC form 10K, if applicable, 17.3.510 NMAC Form 1 regarding jurisdictional customer numbers, and the company's most recent load growth forecast, if such is prepared routinely by the company. Each utility shall retain one copy of the report in its files. If additional time beyond April 30 is required by any utility it shall request in writing such additional time as may be needed, and the commission in the exercise of its discretion may grant such additional time as it believes is reasonable and necessary.

**B.** Each utility affected by 17.3.510 NMAC which has not had a general rate case decided by a final order of the commission after a hearing on the merits of an unstipulated general rate case during the previous four year period prior to the filing of its annual report shall:

(1) for the company's total electric utility operations, and the company's New Mexico jurisdictional electric utility operations file, using actual unadjusted numbers, for both the current year and the figures approved by the commission in the company's last general rate case the following information:

- (a) revenues;
- (b) earnings;
- (c) return on equity (or margin);
- (d) amount of debt and average cost of debt;
- (e) capital structure;
- (f) generation plant-in-service, including for each plant;
  - (i) installed cost (including capital additions);
  - (ii) in-service date;
  - (iii) plant type (steam, combustion turbine, nuclear, etc.); and
  - (iv) fuel source(s);
- (g) transmission and sub-transmission plant-in-service;
- (h) distribution plant-in-service;
- (i) operation and maintenance expense (with fuel and purchased power, and nuclear and non-nuclear O&M shown separately);
- (j) deferred tax reserves;
- (k) peak demand; and
- (l) net energy sales (kWh);

(2) provide in detail the derivation of each number set forth above from actual measured numbers, including an explanation of the jurisdictional allocations used; and

(3) identify and explain any adjustment, factor or extraordinary item which the company believes would materially affect its return on equity as reflected above or prospectively.

**C.** Each utility affected by 17.3.510 NMAC shall provide a detailed report annually for each calendar year not later than April 30 of the following year setting forth and listing its compliance or failure to comply with each part of the commission's final order in each of the cases decided that the utility has a requirement of compliance ordered during the preceding five years or since the utility's last general rate case order, whichever period is longer.

**D.** The staff of the utility division will review the annual reports for compliance and will, in writing, request additional information from the utility if required. Staff will summarize the annual reports and the division director of the utility division will provide a written report to the commission on or before July 1 of the report year.

[17.3.510.12 NMAC - Rp, 17 NMAC 3.510.12, 12/27/2022]

### **17.3.510.13 QUARTERLY REPORTING:**

Any utility required to file SEC form 10Q and which is affected by 17.3.510 NMAC, shall file one copy of its completed SEC form 10Q with the commission at the same time the utility files this form with the SEC. Each utility shall retain one copy of the form 10Q in its files.

[17.3.510.13 NMAC - Rp, 17 NMAC 3.510.13, 12/27/2022]

## **PART 511-579: [RESERVED]**

## **PART 580: COST OVERRUN**

### **17.3.580.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

### **17.3.580.2 SCOPE:**

A. The provisions of NMPSC Rule 580 [17.3.580 NMAC] shall apply as indicated below to all electric public utilities other than rural electric cooperatives within the jurisdiction of the Commission and shall not apply to generation and transmission cooperatives whose rates are subject to the Commission's regulation under NMSA 1978, Section 62-6-4.

B. NMPSC Rule 580 [17.3.580 NMAC] shall be applicable whenever a utility has obtained or acquires a certificate of public convenience and necessity ("CCN") from the Commission to construct or operate an electric generating plant and has sought, is seeking, or anticipates seeking at any time to include the costs of construction as

defined in NMPSC Rule 580.5 [17.3.580.7 NMAC] in its New Mexico jurisdictional rates. NMPSC Rule 580 [17.3.580 NMAC] applies in those instances where:

(1) The construction costs had not been included in rates as of the date the Commission proposed General Order No. 49 (codified by this NMPSC Rule 580 ) [17.3.580 NMAC] and where the utility subsequently filed a rate application seeking to include these costs in rates and;

(2) The costs of construction had been included in rates as of the date General Order No. 49 was proposed but where the prudence of those costs had been explicitly identified as an unresolved issue in the order including those costs in rates or in any document, such as a stipulation or recommended decision, incorporated therein.

C. NMPSC Rule 580 [17.3.580 NMAC] applies whether the utility retains an ownership interest in the plant or has sold that interest and retained a leasehold interest in or is otherwise subject to the Commission's jurisdiction with respect to the management or operation of the plant or the power generated or made available thereby.

[Recompiled 12/30/01]

#### **17.3.580.3 STATUTORY AUTHORITY:**

NMPSC Rule 580 [17.3.580 NMAC] is adopted under the authority vested in the New Mexico Public Service Commission [New Mexico Public Regulation Commission] pursuant to the New Mexico Public Utility Act, NMSA 1978, Sections 62-3-1 et. seq., and in particular NMSA 1978, Sections 62-3-1, 62-3-2, 62-6-1, 62-6-4, 62-6-14, 62-6-17, 62-6-18, 62-8-1, 62-8-2, 62-8-7, 62-9-1 through 62-9-6, 62-10-1, and 62-10-2.

[Recompiled 12/30/01]

#### **17.3.580.4 DURATION:**

[Recompiled 12/30/01]

#### **17.3.580.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

#### **17.3.580.6 OBJECTIVE:**

A. The purpose of NMPSC Rule 580 [17.3.580 NMAC] is:

(1) To clarify and implement the Public Utility Act and applicable law by providing that no cost overruns incurred in construction of new electric generating plant

will be included in rates unless the Commission determines whether they were prudently incurred;

(2) To give all electric utilities notice of this requirement; and

(3) To ensure that all data that may be material to adjudication of the prudence of construction costs is available and maintained by a utility.

B. The intent of the Commission in promulgating NMPSC Rule 580 [17.3.580 NMAC] is to assure that New Mexico ratepayers receive adequate, efficient, and reasonable service at just and reasonable rates and to avoid unnecessary duplication and economic waste in plant construction and planning.

[Recompiled 12/30/01]

### **17.3.580.7 DEFINITIONS:**

When used in NMPSC Rule 580 [17.3.580 NMAC] unless otherwise specified the following definitions will apply:

A. "Certificated Estimated Cost" means the total cost of construction of electric generating plant for the utility, including Allowances for Funds Used During Construction ("AFUDC"), as estimated by the utility at the time of issuance by the Commission of the CCN for the plant and reflected in the order issuing the CCN.

B. "Commission" means the New Mexico Public Service Commission [New Mexico Public Regulation Commission].

C. "Construction Costs" or "Costs of Construction" means those costs to the utility, including AFUDC, incurred in the planning, management, design, design procurement, engineering, construction, start-up, and other activities required to complete an electric generating plant including costs reflected in lease payments or other financing arrangement.

D. "Construction Cost Overrun" or "Cost Overrun" in instances where an allowance for contingencies was included by the utility in the certificated estimated cost means that portion of the costs of construction which exceeds the certificated estimated cost by any amount, and in instances where no allowance for contingencies was included in the certificated estimated cost, means that portion of the costs of construction which exceeds the certificated estimated cost by ten percent (10%) or more.

E. "Plant" or "Electric Generating Plant" means an electric generating plant for which a certificate of public convenience and necessity has been obtained or is acquired from the Commission under NMSA 1978, Sections 62-9-1 through 62-9-6 or their predecessors, NMSA 1953, Sections 68-7-1 through 68-7-4. For multi-unit generating stations the term "Plant" refers either to fewer than all of the station's units or

to the entire station depending on whether the utility seeks rate recovery for the entire station or fewer than all of the station's units.

F. "Utility" or "Utilities" means an electric public utility or utilities under the jurisdiction of the Commission other than rural electric cooperatives or generation and transmission cooperatives subject to Commission regulation under NMSA 1978, Section 62-6-4.

[Recompiled 12/30/01]

**17.3.580.8 TABLE OF CONTENTS:**

- A. Title [17.3.580.9 NMAC]
- B. Purpose [17.3.580.6 NMAC]
- C. Applicability [17.3.580.2 NMAC]
- D. Authority [17.3.580.3 NMAC]
- E. General Definitions [17.3.580.7 NMAC]
- F. Preservation of Records [17.3.580.10 NMAC]
- G. Prudence Determination [17.3.580.11 NMAC]
- H. Waiver [17.3.580.12 NMAC]
- I. Powers of Commission Not Limited [17.3.580.13 NMAC]
- J. Duties of Utility Not Affected [17.3.580.14 NMAC]
- K. Relationship to Other Commission Rules [17.3.580.15 NMAC]
- L. Severability [17.3.580.16 NMAC]

[Recompiled 12/30/01]

**17.3.580.9 TITLE:**

NMPSC Rule 580 [17.3.580 NMAC] shall be known as the "Cost Overrun Rule."

[Recompiled 12/30/01]

**17.3.580.10 PRESERVATION OF RECORDS:**

Any utility to whom NMPSC Rule 580 [17.3.580 NMAC] is applicable shall preserve all data, books, records, memoranda, correspondence, notes of oral communications, other documents, and computer records under the utility's possession, custody, or control and pertaining to the planning, management, design, procurement, engineering, construction, start-up, and other activities required to complete a plant for which a CCN will be or has been obtained. The utility shall also keep records identifying by name, business address, and position all contractors, subcontractors, and persons functioning in a managerial capacity in the construction project and describing the nature of their involvement. Such records and information shall be preserved until such time as the Commission has issued a final order concerning prudence of construction costs which is nonappealable or from which all appeals have been exhausted and which is enforceable, unless NMPSC Rule 310 [17.3.310 NMAC] and the regulations incorporated therein prescribe a longer period, in which case that longer period shall govern, or unless otherwise ordered by the Commission.

[Recompiled 12/30/01]

**17.3.580.11 PRUDENCE DETERMINATION:**

No utility shall obtain rate recovery of any cost overrun in the construction of electric generating plant until the Commission determines, upon notice and hearing, whether those costs have been incurred prudently.

[Recompiled 12/30/01]

**17.3.580.12 WAIVER:**

In any proceeding in which prudence of any cost overrun may be determined by the Commission, the parties and Commission Staff may stipulate that the provisions of NMPSC Rule 580 [17.3.580 NMAC] should be waived. NMPSC Rule 580 [17.3.580 NMAC] will be waived upon such stipulation if the Commission determines, upon notice and hearing, that waiver is in the public interest and is otherwise in accordance with the Public Utility Act.

[Recompiled 12/30/01]

**17.3.580.13 POWERS OF COMMISSION NOT LIMITED:**

Nothing contained herein shall be construed to limit the Commission in its powers, duties, or authority under the Public Utility Act other than requiring specific determinations regarding the prudence of cost overruns pursuant to NMPSC Rules 580.7 and 580.8 [17.3.580.11 and 12 NMAC] as a condition precedent to rate recovery of such cost overruns. In particular nothing contained herein shall be construed to bind the Commission to any particular ratemaking methodology or to diminish the Commission's authority to review the prudence of all costs incurred by a utility, including

the certificated estimated cost of plant. All material provisions of the Public Utility Act shall apply to implementation of NMPSC Rule 580 [17.3.580 NMAC].

[Recompiled 12/30/01]

**17.3.580.14 OTHER DUTIES OF UTILITY NOT AFFECTED:**

Nothing contained herein shall be construed to relieve a utility of any of its duties under the laws of the state.

[Recompiled 12/30/01]

**17.3.580.15 RELATIONSHIP TO OTHER COMMISSION RULES:**

NMPSC Rule 580 [17.3.580 NMAC] does not supersede any other rule of the Commission but is to be construed as a supplement to such rules, including, but not limited to, NMPSC Rules 110, 210, 310, and 530 [17.1.2 NMAC, 17.1.210 NMAC, 17.3.310 NMAC and 17.9.530 NMAC].

[Recompiled 12/30/01]

**17.3.580.16 SEVERABILITY:**

If any part or application of NMPSC Rule 580 [17.3.580 NMAC] is held invalid, the remainder of its application shall not be affected.

[Recompiled 12/30/01]

**PART 581-609: [RESERVED]**

**PART 610: UNIFORM SYSTEMS OF ACCOUNTS AND ANNUAL REPORT FORMS**

**17.3.610.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.3.610.1 NMAC - Rp, 17 NMAC 3.610.1 NMAC, 12/27/2022]

**17.3.610.2 SCOPE:**

**[RESERVED]**

[17.3.610.2 NMAC - Rp, 17 NMAC 3.610.2 NMAC, 12/27/2022]

**17.3.610.3 STATUTORY AUTHORITY:**



Sections 8-8-4 and 8-8-15 NMSA1978 of the Public Regulation Commission Act; and Sections 61-8-1 to 62-8-13 NMSA 1978, Duties and Restrictions Imposed Upon Public Utilities.

[17.3.610.3 NMAC - Rp, 17.3.610.3 NMAC, 12/27/2022]

**17.3.610.4 DURATION:**

Permanent.

[17.3.610.4 NMAC - Rp, 17 NMAC 3.610.4 NMAC, 12/27/2022]

**17.3.610.5 EFFECTIVE DATE:**

December 27, 2022, unless a later date is cited at the end of a section.

[17.3.610.5 NMAC - Rp, 17 NMAC 3.610.5 NMAC, 12/27/2022]

**17.3.610.6 OBJECTIVE:**

**[RESERVED]**

[17.3.610.6 NMAC - Rp, 17 NMAC 3.610.6 NMAC, 12/27/2022]

**17.3.610.7 DEFINITIONS:**

**[RESERVED]**

[17.3.610.7 NMAC - Rp, 17 NMAC 3.610.7 NMAC, 12/27/2022]

**17.3.610.8 TABLE OF CONTENTS:**

- A. Classification of gas utilities - 17.3.610.9 NMAC.
- B. Uniform system of accounts and annual report forms for class A and class B utilities - 17.3.610.10 NMAC.
- C. Uniform system of accounts and annual report forms for class C utilities - 17.3.610.11 NMAC.
- D. Uniform system of accounts and annual report forms for class D and class E utilities - 17.3.610.12 NMAC.
- E. Effect of adoption of uniform systems of accounts - 17.3.610.13 NMAC.
- F. Annual reporting - 17.3.610.14 NMAC.

[17.3.610.8 NMAC - Rp, 17 NMAC 3.610.8 NMAC, 12/27/2022]

**17.3.610.9 CLASSIFICATION OF GAS UTILITIES:**

Gas public utilities are classified in accordance with their annual operating revenues as follows:

CLASS	ANNUAL OPERATING REVENUES OF
A	\$2,500,000 or more.
B	\$1,000,000 or more, but less than \$2,500,000.
C	\$150,000 or more, but less than \$1,000,000.
D	\$25,000 or more, but less than \$150,000.
E	less than \$25,000.

[17.3.610.9 NMAC - Rp, 17 NMAC 3.610.9 NMAC, 12/27/2022]

**17.3.610.10 UNIFORM SYSTEM OF ACCOUNTS AND ANNUAL REPORT FORMS FOR CLASS A AND CLASS B UTILITIES:**

Class A and class B gas public utilities as defined in 17.3.610.9 NMAC shall keep their books and records in compliance with the uniform system of accounts for natural gas companies (class A and class B), effective January 1, 1961, prescribed by the FPC with subsequent revisions by FERC, and shall use the current form of annual report for natural gas companies (class A and class B) prescribed by FERC; provided that any class A or class B gas public utility may at its option keep its books and records in compliance with the uniform system of accounts for class A and class B gas utilities, 1958, adopted by NARUC at its annual convention in 1958.

[17.3.610.10 NMAC - Rp, 17 NMAC 3.610.10 NMAC, 12/27/2022]

**17.3.610.11 UNIFORM SYSTEM OF ACCOUNTS AND ANNUAL REPORT FORMS FOR CLASS C UTILITIES:**

Class C and class D gas public utilities as defined in 17.3.610.9 NMAC shall keep their books and records in compliance with the uniform system of accounts for natural gas companies (class C), effective January 1, 1961, prescribed by the FPC with subsequent revisions by FERC, and shall use the current form of annual report for natural gas companies (classes C and D) prescribed by FERC; provided that any class C gas public utility may at its option keep its books and records in compliance with the uniform system of accounts for class C gas utilities, 1958, adopted by NARUC at its annual convention in 1958.

[17.3.610.11 NMAC - Rp, 17 NMAC 3.610.11 NMAC, 12/27/2022]

**17.3.610.12 UNIFORM SYSTEM OF ACCOUNTS AND ANNUAL REPORT FORMS FOR CLASS D AND CLASS E UTILITIES:**

Class D and class E gas public utilities as defined in 17.3.610.9 NMAC shall keep their books and records in compliance with the uniform system of accounts for natural gas companies (class D), effective January 1, 1961, prescribed by the FPC with subsequent revisions by FERC, and shall use the form of annual report provided by the commission; provided that any class D or class E gas public utility may at its option keep its books and records in compliance with the uniform system of accounts for class D gas utilities, 1958, adopted by NARUC at its annual convention in 1958.

[17.3.610.12 NMAC - Rp, 17 NMAC 3.610.12 NMAC, 12/27/2022]

**17.3.610.13 EFFECT OF ADOPTION OF UNIFORM SYSTEMS OF ACCOUNTS:**

The adoption of the respective uniform systems of accounts by 17.3.610 NMAC shall not be construed as approval or acceptance of any item recorded pursuant to the system of accounts on the books of any utility for the purpose of fixing rates or determining other matters before the commission. The systems of accounts are designed to record the facts of the operations of all gas utilities in a uniform manner. When engaged in fixing rates or passing upon other matters before it the commission will determine what consideration shall be given to various items recorded in the several accounts.

[17.3.610.13 NMAC - Rp, 17 NMAC 3.610.13 NMAC, 12/27/2022]

**17.3.610.14 ANNUAL REPORTING:**

**A.** Each utility affected by 17.3.610 NMAC shall report to the commission annually for each calendar year not later than April 30 of the following year upon forms provided by the commission. Attached to this report shall be SEC form 10K, if applicable, and 17.3.610 NMAC form 1 regarding jurisdictional customer numbers. Each utility shall retain one copy of the report in its files.

**B.** Each utility affected by 17.3.610 NMAC shall provide a detailed report annually for each calendar year not later than April 30 of the following year setting forth and listing its compliance or failure to comply with each part of the commission's final order in each of the cases decided that the utility has a requirement of compliance ordered in the preceding five years or since the utility's last general rate case order, whichever period is longer.

**C.** The staff of the utility division will review the annual reports for compliance and will, in writing, request additional information from the utility if required. Staff will

summarize the annual reports and the division director of the utility division will provide a written report to the commission on or before July 1 of the report year.

[17.3.610.14 NMAC - Rp, 17 NMAC 3.610.14 NMAC, 12/27/2022]

## **CHAPTER 4: UTILITY RIGHTS OF WAY AND EASEMENTS**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: REQUIREMENTS FOR OCCUPANCY OF STATE HIGHWAY SYSTEM RIGHT-OF-WAY BY UTILITY FACILITIES**

#### **17.4.2.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department, P.O. Box 1149, Santa Fe, New Mexico 87504-1149, (505) 827-5357,

[11/15/96; Recompiled 12/31/01]

#### **17.4.2.2 SCOPE:**

This utility accommodation policy shall apply to all publicly, privately, cooperatively, municipally or governmentally owned facilities used for the carriage, transmission or distribution of electric power, telephone, telecommunications, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, drainage, irrigation and similar lines, that are to be accommodated, adjusted or relocated within the right-of-way of highways, roads or streets under the jurisdiction of the New Mexico State Highway and Transportation Department.

**A.** This utility accommodation policy is provided for the regulation of the location, design and methods for installing, adjusting or relocating, accommodating and maintaining physical utility facilities on highway rights-of-way.

**B.** Where laws or orders of public authority or industry codes prescribe a higher degree of protection or construction than provided by this utility accommodation policy, such laws, orders or codes shall prevail.

[3/10/71, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 62-1-2, 67-3-12, 67-8-15, 67-8-1, 67-8-17, 67-8-18, 67-8-19, 67-8-20, 67-8-21, 67-8-22.

[3/10/71, 11/15/96; Recompiled 12/31/01]

**17.4.2.4 DURATION:**

Permanent.

[3/10/71, 11/15/96; Recompiled 12/31/01]

**17.4.2.5 EFFECTIVE DATE:**

November 15, 1996, unless a later date is cited at the end of a Section or Paragraph.

[11/15/96; Recompiled 12/31/01]

**17.4.2.6 OBJECTIVE:**

To prescribe conditions under which utility facilities may be accommodated on all public highway right-of-way under the jurisdiction of the New Mexico State Highway and Transportation Department improved by State or Federal funds and to set forth the regulations covering the relocation of utility facilities in conflict with the construction of highways. The principle objectives of these regulations are to achieve maximum public use of such right-of-way, consistent with the laws of New Mexico and to insure that utility relocations on highway construction projects are accomplished in accordance with New Mexico Statutes, Regulations and Federal Codes. These regulations shall also provide for maximum public safety, maintenance of the roadways, and should minimize future conflicts between the public highway systems of New Mexico and utilities serving the general public in this State.

[3/10/71, 11/15/96; Recompiled 12/31/01]

**17.4.2.7 DEFINITIONS:**

**A. AASHTO** -- American Association of State Highway and Transportation Officials.

**B. Access control** -- The condition where access rights of owners or occupants of abutting land adjacent to highways are fully or partially controlled or limited by public authority, with no right to obtain a driveway permit.

**C. Aerial facilities** -- Pole mounted utility lines or other above ground structures for the transmission or distribution of electric power, communications, traffic control lights and street lighting.

**D. Agreement** -- Pertains to the New Mexico State Highway and Transportation Department standard form Utility Relocation Agreement or other specifically written agreements pertaining to the relocation of utilities in conflict with highway construction, but not limited only for these purposes.

**E. Archaeological clearance** -- Legally required documented finding and/or field investigation procedure to insure the protection of known and unknown cultural/historic sites. It must be performed prior to any construction excavation, subsurface clearing or ground surface disturbance in connection with highway construction projects, or the accommodation of utilities or other facilities within public highway right-of-way.

**F. Average daily traffic** -- The average 24 hour vehicular traffic volume, derived from the total volume divided by the number of days in a one year (usually) period. Commonly abbreviated as ADT.

**G. Backfill** -- Placement and compaction of material around and/or over a structure such as a pipe, conduit, casing or gallery.

**H. Barrier** -- A device which provides a physical limitation through which a vehicle could not normally pass. It is intended to contain or redirect the movement of an errant vehicle away from roadside or median obstacles, ravines, ditches, etc.

**I. Bored or boring** -- A construction procedure for pushing or jacking a pipe or conduit under the highway, without disturbance to the highway structure or prism.

**J. Breakaway** -- A design feature which allows a device such as a utility pole, sign post, luminaire, or traffic signal support to yield or separate upon impact. The release mechanism may be slip plains, planes hinges, fracture elements, or a combination thereof.

**K. Cap** -- Rigid structural element surmounting a pipe, conduit, casing or gallery.

**L. Carrier** -- Pipe that directly contains a transmitted fluid (liquid or gas).

**M. Casing** -- A larger pipe enclosing a smaller pipe.

**N. Catch point** -- The point on the undisturbed ground surface where highway backslopes and foreslopes terminate after being cut or filled by construction equipment; usually established by a slope stake.

**O. CBC** -- Concrete Box Culvert.

**P. Clear roadside area or clear zone** -- That roadside border area, starting at the edge of the traveled way, available for use by errant vehicles, wherein no fixed obstruction or above ground utility facility may be placed unless protected by a barrier, or by incorporating a Department approved breakaway feature.

**Q. CMC** -- Corrugated Metal Culvert.

**R. CME** -- Construction and Maintenance Easement; document providing for use of non-Department owned land on which to construct and maintain permanent facilities.

**S. Coating** -- Protective material applied to, or wrapped around a pipe.

**T. Communication Facilities** -- Includes, but not limited to, telephone, telegraph, TV cable, microwave and fiberoptics.

**U. Compaction** -- A measure of the density of soil, achieved by mechanical means on highway surfaces and on backfill in trenches to harden the material to a predetermined density. Density is the soil weight maximum, in a measured (Modified Proctor Method "C" T-99) volume, with a pre-determined water content, plus a uniform compaction effort.

**V. Condemnation** -- The process by which private property is acquired for public purposes through legal proceedings, under the power of eminent domain.

**W. Conductor** -- Various types of electrical wire used for the transmission and distribution of electricity.

**X. Conduit or Duct** -- An enclosed tubular runway for protecting wires or cables.

**Y. Control number or CN** -- Four digit number assigned to specific highway projects and used for identification and tracking purposes.

**Z. Cost of relocation** -- The entire amount properly attributable to relocation of a utility facility after deducting therefrom the value of any betterment of the new facility and any salvage value derived from the old facility.

**AA. Cover** -- Depth to the top of a pipe, conduit, casing or gallery below the ground surface.

**AB. Cradle** -- Supporting structural element below a pipe.

**AC. Cultural resource study and clearance** -- To determine the impact of construction to any known or unknown cultural/historic sites; see Archaeological Clearance.

**AD. Density** -- Compaction of soil by mechanical means on highway surfaces and for backfill in trenches to harden the fill material to a predetermined density. Density is the soil weight maximum, in a measured volume, with a pre-determined water content, plus a uniform compaction effort.

**AE. Department** -- The New Mexico State Highway and Transportation Department, sometimes identified herein as NMSHTD, State Highway Department, State, and Highway Agency.

**AF. Direct burial** -- Installing a utility facility underground without trenching separately, i.e., plowing. A method usually used for installing flexible cable.

**AG. Distribution lines** -- Intermediate utility lines or arterials that supply natural gas, steam, electricity, telephone communications, water and TV cable services to local customers. These systems do not include the service connections.

**AH. District engineer** -- The engineer in charge of one of the Department's six construction and maintenance districts.

**AI. Drain** -- Appurtenance to discharge liquid contaminants from casings.

**AJ. Drop inlet (D.I.)** -- An underground storm water collector with surface grating at curbside, in medians or at other locations in and around highways and streets. It connects to storm water trunk lines usually running parallel to the highway.

**AK. Easement** -- The document that grants the right to use land (usually in corridors or strips) owned by others, and that defines the conditions of such use.

**AL. Eminent domain** -- The right of government, utilities and other public entities to take land for public use (upon the payment of just compensation) from land owners unwilling to sell the land after a negotiation for purchase has failed.

**AM. Encasement** -- A structural element surrounding a pipe. See Casing.

**AN. Encroachment** -- Unauthorized and illegal use of highway right-of-way or other lands owned or administered by the Department, State or other Public Agencies.

**AO. Engineer** -- Secretary of New Mexico State Highway and Transportation Department. Identified in the past as State Highway Engineer and Chief Highway Administrator, acting directly or through his/her designee.

**AP. Entrance ramp** -- A one-direction vehicular traffic lane for entering freeways, access controlled highways, and other highways at interchanges and at other authorized locations.

**AQ. Environmental impact statement (EIS)** -- A study that determines the total impact of any proposed construction on the environmental system, and the proposed action to mitigate the anticipated impacts.

**AR. Exit ramp** -- A one-direction vehicular traffic lane for exiting a freeway or controlled access highway, and other highways at interchanges and at other authorized locations.

**AS. Expressway** -- A divided arterial highway for through traffic with full or partial control of access, generally with grade separations (bridges) at major interSections.



**AT. Field design inspection** -- The Department's initial highway project inspection to insure agreement on design items and to furnish any additional design criteria.

**AU. Federal-aid highways** -- All roads constructed in whole or in part with federal aid.

**AV. FHWA** Federal Highway Administration.

**AW. Flexible pipe** -- A plastic, fiberglass, or metallic pipe having a large ratio of diameter to wall thickness that can be deformed without undue stress.

**AX. Frangible** -- A structure readily or easily broken upon impact.

**AY. Freeway** -- An expressway with full control of access.

**AZ. Frontage road** -- A local street or road auxiliary to, and located on the side of, an arterial highway for service to abutting property, adjacent areas, and to aid in maintaining access control of the adjoining arterial highway.

**BA. Force account** -- A daily record of expenditures. Records construction labor, materials, equipment usage, transportation costs and other costs such as commercial travel, per diem and other legitimate administrative costs incidental to utility relocation construction work performed by a utility with their own personnel, at actual costs incurred, without profit.

**BB. Gallery** -- An underpass (Concrete Box Culvert, or the like) for numerous utility lines, cables or pipes crossing beneath or running parallel under a street, highway or road.

**BC. Grade & drain inspection** -- The Department's highway project inspection to establish the final grade line, drainage design and review of the overall project design.

**BD. Grade separation structure** -- A highway, railroad or other type bridge, underpass or large culvert.

**BE. Grounded** -- Connected to earth or to some extended conducting body which serves as a conductor instead of the earth, whether the ground connection is intentional or accidental. Usually pertains to an electrical ground.

**BF. Grout** -- A cement mortar or a slurry of fine sand or clay.

**BG. HA** -- Highway Agency or State Highway Agency (SHA) or other named State Highway Organizations.

**BH. Highway, street or road** -- A general term denoting a public way for the purpose of vehicular and other modes of travel. The names usually apply to the entire area within the right-of-way limits.

**BI. Hot work** -- Work by field electricians on an electrical system that is energized and dangerous.

**BJ. I-Project** -- Interstate Highway Project.

**BK. Inlet** -- The graded and contoured approach to a storm water drainage system or culvert. The entrance through a drop inlet to a buried storm water pipeline drainage system.

**BL. Insert** -- A steel or cast iron cylinder with a female threaded hole in one end. These cylinders are installed in the concrete deck bottom of a bridge to suspend a threaded rod and suspension saddle to support pipelines and other conduits permitted on the bridge crossing.

**BM. Jacket** -- Encasement by concrete poured around a pipe.

**BN. Joint use agreement** -- An Agreement between the Department and a utility owner that provides for one future utility relocation and replacement right-of-way payment when a utility facility that occupies a private easement (corridor or strip of land) is taken for new highway right-of-way but no utility relocation is immediately necessary. The utility remains in place since there is no conflict with the highway features.

**BO. Longitudinal barrier** -- A barrier primarily to prevent penetration and safely redirect errant vehicles away from a roadside or median hazards, such as above ground utility structures.

**BP. Longitudinal installation** -- A utility facility or system located within or out of the right-of-way limits of a highway, where the facility runs parallel to the highway.

**BQ. MUTCD** -- Manual on Uniform Traffic Control Devices. The standard highway, street or road traffic marking and signing directive implemented by the U.S. Department of Transportation, for standard use throughout the United States.

**BR. Manhole** -- An opening to an underground utility that allows workmen to enter, repair and inspect the system.

**BS. Median** -- The portion of a divided highway separating the opposing traffic lanes.

**BT. Natural ground** -- Undisturbed ground not affected by construction or other disturbing factors.

- BU. Normal** -- Crossing at a right angle (90 degrees).
- BV. Oblique** -- Crossing at an acute angle.
- BW. Outlet** -- Downstream channel beyond the end of a drainage pipe or the end of the pipe itself.
- BX. P& PSheets** -- Construction plan and profile sheets.
- BY. PS & E review** -- Final plans, specifications and estimate reviews by the Department, just before letting a highway project to contract.
- BZ. Partial control of access** -- The condition where access rights of owners or occupants of abutting land adjacent to highways are partially controlled or limited by the public authorities.
- CA. Pavement structure** -- The combination of subbase, base course and surface course placed on a highway, street or road subgrade to support the traffic load.
- CB. Permit** -- Department document that provides for the occupancy of public right-of-way by utilities, entitled New Mexico Public Highway Utility Accommodation Permit, also called a use and occupancy agreement, in the references.
- CC. Pipe** -- A tubular steel, cast iron, concrete, plastic or other material product designed for the transmission of liquid or gaseous substances.
- CD. Plan in hand inspection** -- The Department's final field inspection to review the completed highway project plans.
- CE. Plowing** -- See, Direct Burial.
- CF. Police power** -- The right of government to legislate, regulate and limit the rights of individuals, corporations, companies and others when prompt and prudent action is necessary for the public good, health, safety or welfare. Its application to utility/highway relations is that certain New Mexico statutes provide the Department with specifically defined enforcement powers for utility relocation performance so that highway construction work can be completed without delay and with minimum legal conflict.
- CG. Private utility** -- A system owned by an individual, corporation, company or others not devoted to public service but for private use to deliver, transmit electricity, communications, natural gas, water or sewage disposal in a closed, private or confined area, such as an industrial site, mine, ranch, mobile home park or other remote location. The utility product(s) can be generated by the private owner or purchased from others (for example, a public utility) for delivery within the private entity.

**CH. Public highway** -- Any federal, state, county or city highway, street, road or other public way devoted to vehicular and other modes of travel including the entire area within the right-of-way.

**CI. Questionnaire** -- Utility Relocation Questionnaire. A Department standard form a utility owner uses to provide pertinent information concerning their eligibility to be reimbursed, construction method to be used, right-of-way ownership, and other information needed by the Department.

**CJ. Reimbursement** -- For the purposes of this regulation, shall mean payment by the Department for eligible costs properly attributable to the highway construction, pursuant to State and Federal regulations.

**CK. Relocation** -- Means and includes any horizontal or vertical movement of utility facilities intact and any protective measures taken or, where found by the Department to be necessary, the construction of new or additional facilities (with or without contemporaneous removal and salvage of old facilities) in this state, including, in any case, adjustment or protection of connecting off-highway utility lines to the extent necessary.

**CL. Right-of-way, R/W or R.O.W.** -- A general term or abbreviations for right-of-way, denoting land, property or interest therein; usually referring to a strip or corridor acquired for transportation or utility purposes.

**CM. Roadside** -- A general term denoting the area adjoining the outer edge of the roadway but within the right-of-way. Extensive areas between lanes of a divided highway may also be considered roadside.

**CN. Roadway prism** -- A road bed Section from toe of slope to toe of slope, or borrow ditch bottom, that includes the compacted subgrade, subbase and the paved surface of the highway.

**CO. Scenic overlook** -- A roadside area provided for motorists to stop their vehicles beyond the shoulder, usually with parking areas, primarily for viewing spectacular scenes.

**CP. Secondary highway** -- Minor roads, rural and/or urban, farm to market roads and the like that are designated secondary state highways, and are either paved or unpaved.

**CQ. Secretary** -- Secretary of the New Mexico State Highway and Transportation Department.

**CR. Semi-rigid pipe or rigid pipe** -- Pipe designed to tolerate from 1% to 3% (semi-rigid) diametric deflection or less than 1% (rigid).

**CS. Service drop or service connection** -- A utility service connection from a distribution line to a house, business or other entity.

**CT. Skew or skewed** -- Usually refers to a highway drainage structure set at oblique angles (not at 90 degrees) to the centerline of a highway. Could also be used to describe utility crossings.

**CU. Slab, floating** -- A concrete slab set between the ground surface and the top of a pipeline to protect the pipeline segment from static and dynamic load damage.

**CV. Sleeve** -- See Casing.

**CW. Specifications or "Specs"** -- Refers to technical design parameters written to define construction methods, materials quality and durability requirements, inspection and certification procedures, test procedures, and other mandatory procedures incidental to construction quality in general.

**CX. Special district** -- Any single or multipurpose district organized as a local public body of the state for the purpose of constructing and furnishing any urban-oriented service which another political subdivision of the state is authorized to perform, including but not limited to the services of water, sewage, garbage, refuse collection and recreation, but excluding the functions or services of drainage, irrigation, recreation, reclamation, soil and water conservation or flood control.

**CY. Storm sewer trunk line** -- Usually a large diameter storm water pipeline underground and parallel to the centerline or adjacent to the roadway or street, and fed by curb or median drop inlets.

**CZ. Structure** -- A bridge, drainage culvert or irrigation facility in highway usage, and a power or telephone pole in utility usage. Many other items are identified as structures in other industries.

**DA. Structure profile sheets** -- Construction plan sheets showing the size, depth and flow line gradient of proposed highway drainage culverts plus the inlet and outlet profiles.

**DB. Subsurface utility engineering or SUE** -- An engineering discipline, whereby records research, geophysical techniques and soft digging methods are used to accurately locate subsurface utilities. The process is intended to collect utility data very early in the design (FDI) process so as to mitigate conflicts between highway construction features and utilities.

**DC. Temporary construction permit (T.C.P.)** -- A land use agreement that terminates when the construction work within the permitted area is completed.

**DD. Termini** -- The written description of the location of a highway project.

**DE. Traffic control plan (T.C.P.)** -- A plan designed to guide drivers safely through a construction area; such plan must meet MUTCD minimum requirements.

**DF. Transmission system** -- Refers to a utility system which transmits a substantial volume of electric current, telephone calls, fluid or gaseous products from a generation location, source point, major storage point, well or the like to a location where actual distribution to the consumer will begin.

**DG. Traveled way** -- The portion of the roadway for the movement of vehicles, exclusive of the shoulders and auxiliary lanes.

**DH. Trenched** -- Installed in a narrow and open excavation.

**DI. Turn-out** -- A delineated roadway exit from a street or highway to allow access to private or other property; usually paved or improved with gravel.

**DJ. Use and occupancy agreement** -- See Permit.

**DK. Utility** -- All publicly, privately and cooperatively owned utilities, without distinction, for the rendition of water, electric power, sanitary sewer, storm sewer, steam, fuel gas, telephone or telegraph service through a system of pipes or wires devoted to public utility service. The systems can include natural gas; sanitary sewage collection systems; electricity; communication systems, including telephone, telegraph, TV cable, microwave, fiberoptics and others. The term "utility" does not apply to utility systems devoted solely to private use, or when the product of the private utility system is not for sale or for use by the general public as a whole.

**DL. Vent** -- Appurtenance to discharge gaseous contaminants from a pipe casing.

**DM. Vertical clearance** -- The difference in elevation, without obstruction, from the lowest point of the superstructure (bridge or box culvert, usually bottom of roof or deck bottom) or a wire conductor to the highest point of the traveled-way, river or railroad track, or below the bottom of a corrugated metal culvert or concrete box culvert or other utility underground facility to the top of another utility pipeline, conduit or cable built beneath the drainage structure or other utility facility.

**DN. Walled** -- Partially encased by concrete poured alongside the pipe.

**DO. Wet-bore** -- Illegal method of boring a hole beneath a highway using a water jet or sluicing method.

**DP. Work order system** -- A procedure for accumulating and recording all costs related to relocations into separate accounts.

**DQ. X-ing** -- Abbreviation for crossing. Refers to a railroad and/or utility crossing.

[3/10/71, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.8 ORGANIZATION:**

**A.** The Railroads and Utilities Section of the New Mexico State Highway and Transportation Department is managed by the Railroads and Utilities Section Manager who is directly responsible to the Right-of-Way Bureau Chief, and is a part of the Engineering Design Division, headed by the Division Director. The Section Manager is responsible for the direction of all work undertaken by the Railroads and Utilities Section, and for the supervision of the various Railroad and Utility Relocation Agents and other personnel who may be assigned to perform designated functions of the Section.

[3/10/71, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.9 FUNCTION:**

The Railroads and Utilities Section is responsible for the coordination and functional control pertaining to all aspects of public utility and railroad related construction considerations, accommodations and installations affecting the New Mexico State Highway and Transportation Department. These functions include, but are not limited to:

**A.** The relocation of utilities and railroad facilities in conflict with the construction of highway projects.

**B.** The control of utility occupation of public highway right-of-way, including utility permits, coordination, regulation and central administration.

**C.** General liaison with public and private utilities and railroad companies.

**D.** Assist other New Mexico State Highway and Transportation Department functionaries concerning matters pertaining to the administration of utility company occupation of public right-of-way, utility and railroad relocations on construction projects, and other matters relative to railroad safety.

**E.** Coordinate, develop and administer the Railroad Safety Program.

[3/10/71, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.10 GENERAL POLICY:**

It is the general policy of the Department to accord utilities certain legal rights pertaining to the occupation of public right-of-way as outlined below:

**A.** It is in the public interest for utilities to be accommodated within the public right-of-way of highways and, under limited conditions, within access controlled freeways, including interstates under the jurisdiction of the New Mexico State Highway and Transportation Department when such use does not adversely affect the highway features, aesthetic quality, public use, or safety of the traveling public. NMSA 1978, Section 67-8-15.

**B.** Public utilities have the power of eminent domain, which gives them a quasi-public status. In addition, a public utility operating in New Mexico has a legal right to install its facilities within highway right-of-way, subject to the regulations of this Department. Public utility facilities are not right-of-way encroachments, nor may they be treated as such. Therefore, the administrative intent of the Railroads and Utilities Section is to provide reasonable, efficient and economic solutions to conflicts between the requirements of highway design, construction operations and safety and the location of public utility facilities. Railroads and Utilities Section Agents, Technicians and other assigned personnel should engage in constant liaison with utilities and railroads, to ensure that the communication and interrelations with them are an on-going function of their work performance.

**C.** The location or the relocation of public utility facilities within existing New Mexico public highway right-of-way, or right-of-way to be acquired for highway construction purposes, shall be governed by all applicable State laws, rules and regulations, Federal Codes and the Department policy set forth herein.

[3/10/71, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.11 UTILITY ACCOMMODATION POLICY:**

**A. Application:** This utility accommodation policy shall apply to all publicly, privately, cooperatively, municipally, or governmentally owned facilities used for the carriage, transmission or distribution of electric power, communication facilities, water, gas, oil, petroleum products, steam, chemicals, sewage, drainage, irrigation and similar items, that are to be accommodated or relocated within the rights of way of highways, roads or streets under the jurisdiction of the New Mexico State Highway and Transportation Department.

**(1)** This utility accommodation policy is provided to regulate the location, design and methods for installing, accommodating and maintaining physical utility facilities within public highway rights-of-way. This Section provides for the continuation of past regulations, State law and modifies and adds new regulations where necessary to comply with new State Laws and/or Federal Codes pertaining to the accommodation and relocation of utilities on State and Federal Aid Projects. The accommodation policy does not address the financial responsibility for replacing right-of-way or relocating the facilities of utilities in conflict with planned highway construction. The reimbursement policy of this Department is set forth in Section 19 [now 17.4.2.19 NMAC] of this manual.



(2) When laws or orders of public authority or industry codes prescribe a higher degree of protection for utility facility construction than provided for in the accommodation procedures set forth in this regulation, such laws, orders, or codes shall prevail.

**B. General utility design requirements:** Except when a higher degree of protection is required by industry or governmental codes, laws, or by regulations of this Department, or orders of the public authority having jurisdiction over the utility, all utility facility installations on, over, along or under the surface of the rights-of-way of State highways, including attachments to highway structures shall, as a minimum, meet the following utility industry and governmental requirements:

(1) Electric power and communication facilities installations shall conform with the current applicable National Electric Safety Code.

(2) Water, sewage and other effluent lines shall conform with the requirements of the American Public Works Association or the American Water Works Association.

(3) Pressure pipelines shall conform with the current applicable Sections of the standard code of pressure piping of the American National Standards Institute, 49 CFR 192, 193 and 195, and/or applicable industry codes.

(4) Liquid petroleum pipelines shall conform with the current applicable recommended practice of the American Petroleum Institute for pipeline crossings under railroads and highways.

(5) Any pipeline carrying hazardous commodities shall conform to the rules and regulations of the U.S. Department of Transportation governing the transmission of such materials.

**C.** Pipelines located in casings, galleries, utility tunnels or highway structures shall be designed to withstand expected internal pressures, and to resist internal and external corrosion; casings or uncased pipelines shall be designed to withstand external pressures as well.

**D.** Joints in carrier pipe lines operating under pressure shall be of a mechanical or welded leak-proof construction.

**E.** Ground-mounted utility facilities shall be of a design compatible with the scenic quality of the specific highway segment being traversed.

**F.** All utility installations, on, over, along or under highway rights-of-way, and attachments to highway structures, shall be of durable materials, designed for a long service-life and relatively free from routine maintenance.

**G.** On new installations or relocation of existing facilities, provisions shall be made for expansion of the facilities, particularly those underground or attached to highway structures. These provisions shall be planned so as to avoid interference with highway traffic when additional facilities are installed in the future.

**H.** Utility installations that are required for highway purposes, such as highway lighting, traffic signals, pump stations, telecommunications services for rest areas, etc. shall be handled as highway project construction items on proposed highway projects. As such, coordination by the appropriate Department design unit and the affected utility is required so as to ensure that proper bid items are included in the highway construction plans/documents, and that appropriate agreements are developed for addressing service, maintenance and other costs. Where no highway project is proposed, but utility services for highway purposes are required, coordination between the Department unit requesting the service, the utility and the affected highway district shall be required, and appropriate documentation developed so as to outline the responsibilities of each party. In all cases, the location of such facilities within highway right of way shall be properly established and included in the District's utility data base.

**I.** The utility owner shall be responsible for compliance with industry code, the conditions and/or special provisions specified in the permit, applicable statutes and regulations of the State of New Mexico, and the U.S. Department of Transportation Code of Federal Regulations.

**J.** The utility shall be responsible for the design, construction, and maintenance of all facilities to be installed within highway rights-of-way. All elements of these facilities are subject to review and approval by the Department, particularly the materials, location and method of installation. The utility is responsible for, and will provide all measures as required to preserve the safe and free flow of traffic, structural integrity of the roadway or highway structure, ease of highway maintenance and appearance of the highway, resulting from their installation. Traffic Control Plans and signing shall be approved by the Department prior to any utility work within the highway right-of-way.

[3/10/71, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.12 GENERAL UTILITY CONSTRUCTION REQUIREMENTS:**

Disturbance of areas within highway rights of way by utility operations shall be kept to a minimum and restored to the satisfaction of this Department. All utility construction methods used within the highway right-of-way shall be performed in accordance with current Standard Specifications for Highway and Bridge Construction, the provisions of this regulation, and utility accommodation permit requirements. All unsatisfactory installation or construction work performed by the utility on highway right-of-way will be corrected or reconstructed upon written notification by the Department that identifies the deficiencies. The Utility shall promptly initiate the restoration work and shall work continuously until the installation complies with the regulations and specifications. If the

restoration is not performed within a reasonable specified time, the Department may perform the restoration work and the utility shall be responsible for all costs incurred.

**A.** The utility shall avoid disturbing or damaging existing highway drainage facilities and shall be responsible for repairs and restoration of any damage, including restoration of ditch flow lines, as determined by the Department. Wherever necessary, the utility shall provide drainage away from its own facilities to avoid damage to the highway. Construction or compaction by means of jetting, puddling, or water flooding is prohibited within all highway rights-of-way.

**B.** The utility is prohibited from spraying, cutting or trimming of trees or other landscaping elements, unless specific written permission is given by this Department. The approval of a utility accommodation permit does not include approval of such work, unless the cutting, spraying and trimming is clearly indicated on the permit application. In general, when permission is given, only light trimming will be permitted. When tree removal is approved, the stump shall be removed and the hole properly backfilled to natural ground density, and/or other Department approved landscape elements provided. The work site shall be left in a clean and trash free condition and all debris shall be removed. Reseeding shall be performed as per schedule outlined in Paragraph 12.5 [now Subsection E of 17.4.2.12 NMAC].

**C.** Traffic Control for utility construction and maintenance operations shall conform with the Manual on Uniform Traffic Control Devices (MUTCD). All utility construction and maintenance operations shall be planned to keep interference with traffic to an absolute minimum. On heavily traveled highways, utility operations interfering with traffic shall not be conducted during periods of peak traffic flow. All such work shall be planned so that closure of intersecting streets, road approaches or other access points is held to a minimum. Traffic Control Plans for each installation are mandatory and must be attached to each utility accommodation permit application. No utility installation work shall commence until the permit and Traffic Control Plans are approved by the District Engineer or his/her representative.

**D.** All utility facilities located on public rights-of-way shall be kept in an adequate state of repair. Minor maintenance of existing facilities may be performed without notification. However, any physical revisions, relocations, additions, excavations, impedance of traffic or other disturbances within the right-of-way shall require the submittal of a new utility accommodation permit application. No remedial work may commence until the new utility accommodation permit is approved. Repairs of an emergency nature, necessary for the safety of the traveling public, may be immediately performed without prior approval, to be followed by formal written notification to the appropriate District Engineer or his/her representative. When such emergency repairs may constitute a traffic hazard, the proper District Highway Office and the New Mexico State Police shall be officially notified to coordinate any safety measures required.

**E.** Restoration of the highway right-of-way disturbed by excavations or grading work performed by the utility shall include reseeded. This work shall consist of seeding all

areas which are denuded of vegetation during the utility's construction operations. The reseeded work by the utility will be subject to inspection and acceptance by a representative from the Department. All affected areas shall be treated with Class "A" seeding of standard Department specifications. Fertilizer shall be used on all areas at the rate of 200 pounds per acre, Department Specification 16-20-0. The various species, origin and seed required for each Highway District area are shown on the following schedule:

**(1) Districts 1 and 2**

**SANDY SOILS**

<b>Species</b>	<b>Origin</b>	<b>Pounds Pure</b>	
		<b>Live Seed</b>	
		<b>Per Acre</b>	
Lehman's Lovegrass	Any	2.0	
Sand Dropseed	New Mexico	2.0	
Sideoats Grama	Vaughn	4.0	
Fourwing Saltbrush	New Mexico	3.0	

**HEAVY CLAY SOILS**

Blue Grama	Lovington	2.0	
Sideoats Grama	Vaughn	6.0	
Fourwing Saltbrush	New Mexico	3.0	

**HIGHER RAINFALL**

Blue Grama	Lovington	2.0	
Sideoats Grama	Vaughn	6.0	
Western Wheatgrass	Arriba	6.0	

**(2) Districts 3 and 6**

**SANDY SOILS**

Pounds Pure

Live Seed

<b>Species</b>	<b>Origin</b>	<b>Per Acre</b>
Lehman's Lovegrass	Any	3.0
Indian Ricegrass	Paloma	4.0
Sand Dropseed	New Mexico	2.0

### **HEAVY CLAY SOILS**

Blue Grama	Lovington	2.0
Sideoats Grama	Vaughn	6.0
Fourwing Saltbrush	New Mexico	3.0

### **HIGHER RAINFALL**

Blue Grama	Lovington	2.0
Sideoats Grama	Vaughn	6.0
Western Wheatgrass	Arriba	6.0

### **(3) Districts 4 and 5**

### **SANDY SOILS**

Pounds Pure

Live Seed

<b>Species</b>	<b>Origin</b>	<b>Per Acre</b>
Indian Ricegrass	Paloma	3.0
Sand Dropseed	New Mexico	2.0
Sideoats Grama	Vaughn	5.0

### **HEAVY CLAYS**

Blue Grama	Lovington	2.0
Sideoats Grama	Vaughn	5.0
Alkali Sacaton	New Mexico	2.0
Fourwing Saltbrush	New Mexico	4.0

### **HIGHER RAINFALL**

Western Wheatgrass	Arriba	6.0
Blue Grama	Pastura	3.0
Sideoats Grama	Vaughn	4.0

### **FERTILIZER REQUIRED: ALL DISTRICTS**

200 pounds per acre, Specification 16-20-0.

**F. Scenic enhancement:** The following provisions for scenic enhancement shall apply for utility facility installation in cited areas:

(1) The type and size of the utility facilities and the manner and extent to which they are permitted within areas of scenic enhancement and natural beauty may materially alter the scenic quality, appearance and view of highway roadsides and adjacent areas. Such areas include scenic strips, overlooks, rest areas, recreation areas and the rights-of-ways and adjacent highways. Also included are Sections of highways which pass through public parks, recreation areas, wildlife and waterfowl refuges and historic sites. Whenever possible, new utility installations within all such strips overlooks and areas shall be avoided.

(2) New underground utility installations may be permitted within such strips, overlooks, scenic areas or in the adjacent rights-of-way when they do not require extensive removal or alteration of trees and other shrubbery visible to the highway user, or do not impair the scenic appearance of the area.

(3) New overhead (aerial) installations of communication and electric power lines are to be avoided at such locations unless there is no feasible and reasonable alternative. Any such installation shall be fully justified to the Department by demonstrating that:

(a) Other utility locations are not available or present unusually difficult construction constraints or are unreasonably costly or are less desirable from the standpoint of visual quality.

(b) The placing of underground utility facilities is not technically feasible or economical, or is more detrimental to the scenic appearance of the area.

(c) The proposed installation can be made at a location and in a manner that will not detract from the scenic quality of the area being traversed, utilizes suitable design, and uses materials aesthetically compatible to the scenic area.

(4) It is within the Department's sole discretion as to whether adequate justification has been demonstrated to it by the utility, which decision shall be final and accepted by the utility.

(5) When a utility desires to construct a facility through or within scenic enhancement areas, the request for a utility accommodation permit shall be submitted to the appropriate District Traffic Engineer, providing substantial leadtime, because the permit must be carefully evaluated to determine the impact upon the scenic area involved.

(6) Utility accommodation permit applications for installations in scenic enhancement areas must be accompanied by comprehensive and detailed supporting documentation. The design and materials should be aesthetically pleasing to the eye and the installation should not intrude in such a manner as to detract from the Scenic quality presented for viewing by the traveling public. Permits not adequately supported will be rejected by the Department.

(7) Utility installations through scenic enhancement areas that are required for highway purposes, such as highway lighting, service to weigh stations, rest and recreation areas, and other official sites shall be located and designed to conform with these scenic enhancement provisions. Such installations shall be coordinated with the utility, the appropriate Department design unit, and included as bid items in the highway construction plans if they involve a new highway project.

(8) **archaeological or cultural resources clearances:** To comply with the New Mexico State Law, The Cultural Properties Act, NMSA 1978, Sections 18-6-1 through 18-6-17 and specific Federal Law Historic Preservation Act of 1966, relating to the protection and preservation of historic and cultural resources, it shall be mandatory for utility facility owners to obtain an archaeological survey prior to any installation within highway right-of-way or property or new right-of-way to be acquired for highway construction. This survey shall be required for utility installations or relocations which include any utility structure, overhead or underground utility systems, either pipeline or ditch and/or any clearing operations, and any or all other ground surface disturbing construction activities across or through any obvious or suspected archaeological site. The survey report shall be submitted to the Department for its review and approval. No utility permit shall be issued without archeological clearance from the Department. No survey will be necessary if the utility has determined by inquiry and written substantiation from the Department that an acceptable archaeological survey was previously done by the Department or others approved by the Department.

**(9) environmental clearances:** It shall be the utility's responsibility to comply with all Federal, State, and local laws and regulations controlling pollution of the environment. Prior to the start of utility construction, the utility shall contact the Department's Environmental Section to establish if any action is necessary by the utility for adhering to air, noise, and water quality control regulations. It shall also be the responsibility of the utility owner to insure compliance with National Pollutant Discharge Elimination System (NPDES) Regulations on all utility work within highway right-of-way, where any ground disturbance activities involve areas exceeding five (5) acres. A Notice of Intent (NOI) must be filed with the Environmental Protection Agency (EPA) before the utility work can begin, and approval of the sediment control and reclamation plan from the NMSHTD Landscape Architect must be secured. The Landscape Architect shall also be responsible for final acceptance of permanently established vegetation as required by NPDES and as provided for by the utility owner. Information on these environmental regulations is available from the Roadside Environment Design Unit of the NMSHTD.

**G. New Mexico public highway utility accommodation permit:**

**(1) General requirements:** A utility owner who desires to install segments of their utility systems, or needs to relocate an existing facility already installed within the rights-of-way of public highways under the jurisdiction of the NMSHTD, must apply for a New Mexico Public Highway Utility Accommodation Permit. No utility construction shall commence on public highways right-of-way until the utility owner has obtained the approved permits, approval of their insurance, with coverages and face amounts shown in Paragraph 12.11 [now Subsection K of 17.4.2.12 NMAC], and added the NMSHTD as an additional insured. After receiving approval, the utility owner shall notify the Department in writing, five days in advance of the date their installation or relocation construction will commence.

**(2)** The utility owner seeking a utility permit must provide as-built plans, within thirty (30) days of completion of the installation pertaining to the location of the facility installed. The location must be tied by a survey, performed and certified by a registered New Mexico Land Surveyor, to the Department's monuments and referenced to Department's mileposts and/or to the highway construction project stationing. The Utility shall provide a map to the Department detailing location and elevation of each break point along the facility. Where utility owners fail to establish documentation and provide survey maps to the Department, and Department maintenance crews damage utilities, the utility shall be responsible for all costs associated with repair, but only if Department requested a utility locate prior to beginning maintenance activities.

**(3)** Information on the horizontal and vertical survey ties may be obtained from the Department's Aerial and Lands Survey Section, Monumentation Unit, located in the Department's General Office (G.O.); mailing address: NMSHTD, Aerial and Lands Survey Section, Monumentation Unit, P.O. Box 1149, Santa Fe, NM 87504-1149.



**(4)** Survey monumentation and project stationing survey information may also be obtained from the appropriate District Engineer, along with the New Mexico Public Highway Utility Accommodation Permit Forms. The Railroad and Utility Section of the G.O., in Santa Fe also can provide permit forms (see G.O. address in above Paragraph). The addresses and phone numbers of the Department's six District Offices are:

NMSHTD

District One Office

P.O. Box 231

Deming, NM 88031-0231

(505) 546-2603

NMSHTD

District Three Office

P.O. Box 91750

Albuquerque, NM 87119-1750

(505) 841-2700

NMSHTD

District Five Office

Box 4127, Coronado Sta.

Santa Fe, NM 87502-4127

(505) 827-9500

NMSHTD

District Two Office

P.O. Box 1457

Roswell, NM 88202-1457

(505) 624-3300

NMSHTD

District Four Office

Box 30

Las Vegas, NM 87701-0030

(505) 425-7527

NMSHTD

District Six Office

P.O. Box 2159

Milan, NM 87021

(505) 285-6623

**(5)** The utility owner applying to place utilities within the right-of-way of public highways must determine in which Highway District the installation will be constructed. Completed utility accommodation permit forms should be submitted to the appropriate District Engineer, to the attention of the District Permit Agent, at the address previously listed. The boundaries of each District may be obtained from the appropriate District Permit Agent.

**(6)** The utility seeking a utility accommodation permit from the Department will provide the Department with comprehensive plans that depict the utility installation by

plan view and profiles. Details that clarify complicated features of the installation shall be added as appropriate. In addition to the detailed plans, the utility owner shall provide all the information required on the permit form. Utility Permit Instructions are available to assist in preparation of all required documents.

(7) The utility who has received authorization to proceed with their installation/relocation shall strictly adhere to performing the work in accordance to the approved plans. No deviation from the plans, without prior written approval from the Department, shall be allowed.

(8) It shall be the responsibility of the utility owner to renew each permit prior to its expiration. The utility shall submit a renewal permit, along with plans that reflect the current location of the utility relative to existing roadway features. If the plans are as-built and reflect the actual current condition, a certification stating that this is the case shall accompany the as-built plans. Any costs to repair damage to utility facilities by highway maintenance crews due to inconsistencies between the as-built plans and the actual utility location shall be borne by the utility.

(9) All changes in ownership of a utility facility shall require the new owner to submit fully executed and approved assignment documents between the utility owners involved to the Department, along with new State utility permit applications and plans of the assigned facility located within Department's highway right-of-way. If the plans are as-built and reflect the actual current location of the facility, a certification stating that this is the case shall be required; otherwise new plans that reflect the actual location relative to existing roadway features shall be provided. Any requirements stipulated by the underlying fee owner in cases where a change of ownership occurs shall be the sole responsibility of the new facility owner and may require the new owner to obtain appropriate approvals from the fee owner. Any costs to repair damage to utility facilities by highway maintenance crews due to inconsistencies in the as-built plans and the actual utility location shall be borne by the utility.

(10) Utility work shall commence within six (6) months of the date of issuance of the utility permit, otherwise the permit shall become null and void. Any work not started within this six month period shall require new permit applications and associated documentation, as well as Department approval of the new submittal before the utility work can commence.

**H. Other required permits:** In areas where highways pass through land controlled by the U.S. Forest Service, Bureau of Land Management, U.S. Military Bases, Indian Lands and other designated Federally controlled lands, and certain New Mexico state lands under the jurisdiction of the New Mexico State Land Office, and/or other state agencies, the utility owner must also obtain a permit, written permission, or other documented authorization from these agencies for utility installations. This written authorization is required in addition to the Department's Utility Accommodation Permit, and shall accompany the Department's permit request for new installations, or as determined by the Department.

**I. Traffic control plans:** Utility owners shall provide Traffic Control Plans in accordance with the Manual on Uniform Traffic Control Devices, and shall comply with the approved Traffic Control Plan during the utility installation, relocation or maintenance work within the highway right-of-way. The Traffic Control Plan must be accompanied by an approved utility accommodation permit and utility construction authorization.

**J. Indemnification:** The utility owner must indemnify and hold harmless the Department from loss due to any negligent act of the utility, the utility's employees, any agent acting on the utility's behalf, and anyone else engaged by the utility to work on the utility installations, maintenance or relocations of their facilities. Any contractor or subcontractor engaged by the utility to perform utility installations or relocations in conjunction with or prior to highway construction must also indemnify and hold harmless the Department from loss due to any negligent act of the utility's contractor or subcontractor.

**K. Insurance requirements:** Utility owners shall carry insurance in amounts not less than those below specified and as outlined in Section 107.25 of the Standard Specifications for Highway and Bridge Construction, 1994 Edition, (hereinafter, "Specifications"), as may be updated from time to time. In the event of conflict between the specification, and this regulation, owner shall carry the larger amount of insurance. If a utility is self-insured, the utility shall provide an Owner's Protective Liability Insurance Policy, in favor of the Department, in the amounts below specified.

**(1) general liability:** Bodily injury liability and property damage liability insurance applicable to the utility installation or relocation work shall be provided as follows, which amounts may be changed, by the Department, from time to time: Insurance coverage in the amount of \$1,000,000.00 for each occurrence; \$1,000,000.00 aggregate for Bodily Injury Liability and \$500,000.00 each occurrence; \$1,000,000.00 aggregate for Property Damage Liability, written on a comprehensive General Liability Form or Commercial General Liability Form which must include the following:

**(a)** Coverage for liability arising out of the operation of independent contractors;

**(b)** Completed operations Coverage;

**(c)** Attachment of the Broad Form Comprehensive General Liability Endorsement.

**(2)** In the event that any use of explosives is required during the installation or relocation, the insurance shall include coverage for injury to or destruction of property arising out of: The collapse of, or structural injury to any building or structure due to excavation, including borrowing, filling or backfilling in connection therewith, or to tunneling cofferdam work or caisson work, or to moving or shoring, underpinning, raising or demolition of any building or structural support thereof.

**(3)** Coverage must be included for injury to or destruction of any property arising from injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property or any other apparatus in connection therewith below the ground. If such injury or destruction is caused by or during the use of mechanical equipment for the purpose of excavating, digging or injury to or destruction of property at any time resulting therefrom.

**(4) automobile liability insurance:** Coverage for the utility, its contractor or subcontractor (whether included in the policy providing General Liability insurance or in a separate policy) must provide liability for the ownership, operation and maintenance of owned, non-owned, and hired cars. The limits of liability for Automobile Liability insurance shall be provided in the following amounts, which amounts may be changed from time to time:

**(a)** Bodily Injury Liability \$500,000 each person; \$1,000,000 each occurrence.

**(b)** Property Damage Liability \$1,000,000 each occurrence.

**(5) Department as additional named insured:** The utility, its contractor or subcontractor shall have the New Mexico State Highway and Transportation Department added as an additional named insured on the Comprehensive General Liability Form or Commercial General Liability Form furnished by the Utility.

**(6) proof of insurance:** The utility shall provide to the appropriate Department District Engineer a certified copy of the utility owner's insurance policy and certificate of insurance, or in the event the utility is self-insured, a copy of the Owner's Protective Liability Insurance Policy or a Certificate of Insurance at the time the original utility accommodation permit application is submitted for approval. The utility owner shall also be responsible for and require that any contractor or subcontractor engaged by them shall provide the Department with a certified copy of their insurance policy or certificate of insurance in the amounts and with the provisions as herein provided. If a bond is required, the utility shall provide a proof of that bond to the appropriate Department District Engineer.

**(7) worker's compensation insurance:** The utility, its contractor or subcontractor shall also carry Worker's Compensation Insurance or otherwise comply with the provisions of the New Mexico Workmen's Compensation Act and Occupational Disease Disablement Law.

**(8) liability insurance, automobile liability insurance and worker's compensation Insurance:** For the utility, its contractor or subcontractor shall be kept in force for the duration of the utility facility installation, relocation, remedial or clean up work required due to Department authorized utility relocation or utility installation.

**(9) insurance required during utility relocations:** The insurance listed herein shall be provided by the utility, its contractor or subcontractor on all utility

relocation work authorized by the Department. If the utility owner is otherwise eligible for utility relocation reimbursement, the premium cost can be added to the utility's cost estimate; if not eligible for reimbursement, the premium(s) shall be paid by the utility owner. A certified copy of the utility owner's insurance policy(s), or a certificate of insurance for and covering the utility relocation work, shall be provided to the Section Head, Railroad and Utilities Section, NMSHTD, P.O. Box 1149, Santa Fe, NM 87504-1149.

**L. Compliance with regulations:** Any utility owner that installs its utility facilities within the Department rights-of-way shall comply with the provisions of these regulations. Violation of any regulation pertaining to the installation and maintenance of utility facilities placed within the Department rights-of-way may result, at the discretion of the Department, in:

(1) An order requiring the utility owner to make prompt corrections or take the appropriate remedial action as directed in writing by the Department;

(2) A written order declaring utility's New Mexico Public Highway Utility Accommodation Permit, applicable to the violation, as null and void. In such case, the utility owner may be required to vacate the public highway right-of-way if prompt remedial action is not completed by the utility owner. If the utility fails to correct the problem, all costs as a consequence of a vacation order, including the total cost of removal of the permitted facility, plus all administrative costs, shall be at the expense of the utility owner. Failure of the utility or its agent to comply with such order can result in the utility owner being denied further utility permits until they are able to satisfy the Department District Engineer or appropriate Department representative that they are in compliance or are making a good faith effort to comply;

(3) Violations may also preclude the issuance of additional utility permits until such time as the utility is in compliance.

[3/10/71, 11/15//96; Recompiled 12/31/01]

#### **17.4.2.13 PHYSICAL LOCATION OF FACILITIES:**

The following requirements apply to the physical location of utility facilities on non access-controlled highways; additional requirements for access-controlled highway facilities are set-out in Paragraph 17 [now 17.4.2.17 NMAC], "The Accommodation of Utility Facilities Within Freeway or Interstate Right-of-Way."

**A. Aerial facilities, parallel:** The proposed installation of aerial utility facilities parallel to a state highway shall be located no more than .3048 m (1 foot) within the right-of-way line on a uniform alignment, wherever practical. Down guys and anchors shall not project into the cut or fill slopes. Minor variations will be considered on an individual basis upon substantiation submitted by the utility.

**B. Aerial facilities crossing:** Proposed installations of aerial facilities crossing a highway shall cross the highway at an angle near ninety (90) degrees whenever practical. Poles, anchors and other appurtenances shall be located at, near, or outside the highway rights-of-way. No crossing components shall obtrude upon the roadway prism unless approved by the Department, and all vertical clearances shall conform to the National Electric Safety Code as a minimum, but shall not be less than twenty feet (20'). Minor variations will be considered on an individual basis, or upon substantiation submitted by the utility.

**C. Buried facilities, parallel:** The proposed installation of buried utility facilities parallel to a highway shall be located no more than 1.52 m (5 feet) within the right-of-way line, whenever practical. Surface components of buried facilities, i.e., valves, manholes, vents, etc., shall be located as close as possible to the right-of-way line. The high point of structural elements such as manholes, vaults and anchor blocks shall be at or below the grade of the right-of-way surface. Minor variations will be considered on an individual basis, on substantiation submitted by the utility. All buried facilities shall be installed at a minimum depth of .91 m (36 inches) from natural ground elevation to the top of the buried facility. All trenches and ditches will be backfilled and compacted to the satisfaction of the Engineer. All excavations outside the roadway foreslopes shall be compacted to a density equal to the surrounding undisturbed soil. All excavations within the toes of the foreslopes shall be compacted to 95% maximum dry density (modified Proctor method "C" T-99 or equivalent) as determined by an approved standard compaction test. Parallel trenches shall be backfilled and compacted during the same work period in which they are excavated. Excavations on or near the traveled way shall not remain open overnight.

**D. Buried facilities, crossing:** The proposed installation of buried utility facilities crossing a highway shall cross the highway at an angle of ninety (90) degrees, wherever practical. All Surface components or proposed buried facility crossings shall be located within 1.52 m (5 feet) of the right-of-way line. All buried facility crossings shall be installed at a minimum depth of .91 m (36 inches) or more from the lowest point of the right-of-way surface to the top of the facility. Minor variations will be considered on an individual basis, on substantiation submitted by the utility.

(1) Unless otherwise permitted, installation of buried facilities crossing a state highway shall be performed by boring or jacking under the roadway. Installations by open cut of the pavement structure may be permitted only where boring or jacking is not feasible due to soil conditions, or where the pavement structure is aged, deteriorated or in generally poor condition. Open cut installations will be considered on an individual basis, on substantiation submitted by the utility.

(2) In cases where the utility owner is allowed an open cut installation, the utility shall be responsible for the restoration and maintenance of the pavement structure, until such time that the Section of roadway is improved by resurfacing, as approved by the Department.

(3) All proposed buried carrier pipes crossing a state highway shall be constructed of steel, cast iron, or reinforced concrete and/or shall be cased (or encased), and shall be of such materials and design as may be approved by the Engineer. Each question of carrier pipe material and/or casement pipe requirements shall be considered on an individual basis, on design data submitted by the utility. As a minimum, the casement shall extend at least from just outside the toe of foreslope to just outside the toe of the opposite foreslope.

(4) The utility shall be responsible for the backfill, compaction and surface restoration of utility trenches outside the roadway prism, and for the restoration and protection of the pavement structure if open cut trenching across the existing roadway is approved by the Engineer, District Engineer or his/her representative. The utility is also responsible for the safety and progress of the traveling public. All backfill, compaction, materials, and pavement structure restoration shall be performed to the satisfaction of Engineer. Backfill in trenches excavated outside the roadway prism shall be compacted to a density equal to the surrounding undisturbed soil. All excavations within the roadway prism shall be compacted to 95% of maximum dry density (Modified Proctor, method "C", T-99 or equivalent) as determined by a standard compaction test. Any portion of the pavement structure which is broken, disturbed, cut or otherwise damaged in any way, shall be removed and replaced to a design equal to or better than the condition that existed prior to the damage to the pavement structure, as determined by the Department.

(5) Where the party making the installation either is not equipped or fails to properly repair any damage to the pavement structure, the Department will repair the damage and shall bill the utility the actual cost of restorations, plus administrative costs incurred.

(6) All buried utility facilities crossing Department maintained highways shall be identified by the installation of weather proof signs that provide the type of facility, the facility owner and a phone number where maintenance personnel may be contacted. The signs shall be set over the facility at both right-of-way lines.

[3/10/71, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.14 DEFINITIVE DESIGN REQUIREMENTS:**

**A. Pipeline installations; location and alignment:** From the highway viewpoint, there are sound reasons for requiring pipeline crossings at right angles to the roadway alignment. Oblique angle highway crossing pipeline installations have many detrimental characteristics as they increase the interference with traffic during construction, are more liable to conflict with highway drainage and structures, upset distribution of live loads to the subgrade and across pavement joints, are considerably harder to control as to line and grade when boring or jacking the pipeline beneath the highway, and they usually create more damage to the pavement structure and subgrade on open cut installations. Diagonal crossings usually require more maintenance and repairs;

therefore, all pipeline crossings shall be at or near ninety (90) degrees. Minor variations will only be considered on a case by case basis, upon justification submitted to the Department by the utility. Conditions which are generally unsuitable for pipeline crossings should be avoided, such as locations in deep cuts, across cuts and fills on steep slopes, near the footings of bridge piers, abutments, retaining walls and other structures, across interSections at grade or entrance and exit ramp terminals, at cross drains (transverse drop inlets) where flow may be obstructed, or in locations requiring extensive rock excavations to provide the minimum bury.

**B. Pipeline casings; encasement:** A carrier pipe is said to be cased (or encased) if it is installed freely inside in a larger diameter pipe. Encasement may also be complete or partial, designed to protect the carrier pipe, lighten its burden, facilitate its insertion and withdrawal and guarantee the integrity of the roadway structure or prism. Common types of casements are those carriers cased or sleeved inside a larger pipe, cradled by a continuous concrete seat fitting the pipe (cradling), walled by a continuous concrete sidefill (walling), boxed or jacketed by concrete completely surrounding the pipe (boxing), capped by a continuous concrete topping or slab (capping), coated or wrapped by a substantial girdling cover (wrapping), grouted by mortar filling borehole annulus and overbreak (grouting), or tunneled by installation in a utility subway.

(1) Of these methods, only the casing, tunnel, utility subway or gallery provide the complete independence of the carrier pipe from the surrounding roadway structure, and adequate protection to the roadway from leakage of the pipeline. These methods also provide means for insertion and replacement of carriers without access or disturbance to through-traffic roadways.

(2) The following encasement methods do not provide all of the above benefits, but may be utilized subject to individual approvals, on substantiation submitted by the utility: Concrete cradling enhances the load supporting capability of rigid pipes, but accomplishes little else. Walling does the same for semi-rigid and flexible pipes. Capping strengthens both rigid and flexible pipes, and somewhat protects from highway operations penetrating the overfill. When applied to weak or brittle pipes, concrete boxing or jacketing provides protection to the pipe from earth loads, leakage, corrosion or abrasion to some degree. Adequate coating or wrapping prevents contact with corrosive water, soil or vapors. Grouting aids in restoring the continuity and integrity of the earth supporting the pavement structure.

**C. Uncased carriers:** An uncased carrier crossing a highway becomes an integral part of the embankment supporting the pavement structure. Just as for a culvert, the Department must be assured of adequate structural design. All uncased carriers shall be designed to withstand all combinations of earth and live load, internal pressure, earth and live load plus internal pressure, and earth and live load plus alterations to full and zero internal pressure. Rigid carriers will generally be satisfactory, if they meet culvert design criteria and withstand the internal pressure. Semi-rigid and flexible carrier pipes shall be cased within a rigid pipe encasement.



**D. Hazardous transmittants:** Transmittants which are flammable, corrosive, expansive, unstable, at high pressure, and/or possibly hazardous to the traveling public or the roadway itself, shall be encased on all highway crossings of carrier pipes over 2 inches in diameter. Uncased crossings of welded steel pipelines may be permitted, provided additional protective measures are taken in lieu of encasement. Such measures may include higher safety factors in design, materials and construction, coating, and wrapping of carriers in accordance with industry standards, and cathodic protection, subject to the approval of the Engineer, District Engineer or his/her representative. Requirements for uncased carriers: Uncased hazardous or corrosive product pipeline crossings on state highways will be allowed provided they are:

- (1) welded steel pipelines;
- (2) cathodically protected;
- (3) coated in accordance with industry standards;
- (4) meet requirements of the pipeline safety regulations -- 49 Code of Federal Regulations, Parts 191 and 192, or Parts 191 and 195 with respect to wall thickness;
- (5) designed for operating stress levels in accordance with federal pipeline safety regulations;
- (6) appropriately marked with permanent signs at each right-of-way line indicating ownership, type of facility, and an emergency telephone number; and
- (7) owner provides an official signed written statement certifying that the facility complies with the conditions and provisions required in this Section, Paragraph 14.4.1 [now Subsection D of 17.4.2.14 NMAC].
- (8) It should be noted that each request for waiver of casing will be considered on an individual bases. The ultimate decision to approve or reject a waiver will not be subject to pipeline owner criteria, but will be based on the following casing considerations:
  - (a) as an expediency in the insertion, removal, replacement, or maintenance of carrier pipe crossings of freeways, expressways, and other controlled access highways and at other locations where it is necessary to avoid trenched construction;
  - (b) as protection for carrier pipe from external loads or shock, either during or after construction of the highway;
  - (c) as a means of conveying leaking fluids or gases away from the area directly beneath the traveled way to a point of drainage in the highway ditch or a natural drainage way; and

(d) traffic safety considerations and maintaining the structural integrity of the roadway.

**E. Restriction against varied use:** Subject to the safety requirements of the various regulatory bodies, the following precautionary measures are required for pipeline crossings:

(1) Pipeline crossing utility accommodation permit applications shall specify the class of transmittants, the maximum working or test pressure, and the design standards for the carrier pipe.

(2) Prior approval shall be obtained from the Department before the utility is allowed to change the type of transmittant or raise the working or potential pressures beyond those provided for in the design and the utility accommodation permit. Non-compliance by the utility with any of the provisions of this regulation shall be grounds for rejection of the utility accommodation permit or the revocation of an existing permit.

**F. Trenched construction and backfill:** In trenched construction, bedding is the subgrade soil and its surface, as prepared to support a pipe. Backfill is the material that refills the rest of the trench, consisting of sidefill up to the level of top of facility, and of overfill above that level. The latter specifically includes restoration of the pavement structure and the road surface. From the Department's viewpoint, the pavement structure which is broken, disturbed, cut or otherwise damaged in any way, shall be removed and replaced to a design equal to or greater than the surrounding undisturbed pavement structure, as determined by the Department.. Open cut trenched construction on State roads shall be limited to areas where the pavement structure is deteriorated and in generally poor condition and only when justified in writing by the utility and subsequently approved by the District Traffic Engineer or his/her representative.

(1) In cases where the utility owner is allowed an open cut installation, the utility shall be responsible for the restoration and maintenance of the pavement structure, until such time that the Section of roadway is improved by resurfacing as approved by the Department.

(2) Where the utility or other party making the installation is not equipped to or fails to properly repair the damage to the pavement structure, the Department shall repair the damage and will bill the utility owner the actual costs incurred, including any administrative costs.

(3) **open trench installations crossing the highway:** From the Department's viewpoint, the essential features of open trench construction are detailed as follows:

(a) Restoration of the structural integrity of the roadbed.

(b) Security of the pipe against deformation and leakage.

(c) Assurance that the trench does not become a drainage channel, and that the backfill does not block road drainage.

(d) Open-cut trenched installations shall not be permitted unless it is not feasible to bore, push or jack under the roadway. All trenched or other utility installations shall conform to the applicable provisions of the current construction requirements of the Department, i.e., The New Mexico State Highway and Transportation Department Standard Specifications for Road and Bridge Construction, and any supplemental provisions thereto.

(e) Trenches shall be cut to have vertical faces with a maximum width of .61 m (2 feet), or the outside diameter of the pipe plus .46 m (1.5 feet) on each side, or as approved by the Engineer or his representative. The trench shall be shored where necessary to prevent cave-ins or sloughing, and shall meet OSHA requirements.

(f) Bedding should be provided to a depth of half the diameter of the pipe. Bedding shall consist of granular material, free from rocks, lumps, clods, cobbles, or frozen materials and shall be graded to a firm surface without abrupt change in bearing value. Unstable soils and rock ledges shall be sub-excavated from beneath the bedding zone and replaced with suitable granular material.

(g) Backfill shall be placed in 150.6 mm (6 inch) layers of granular materials, and each layer shall be consolidated (compacted) by mechanical tamping equipment and with a controlled addition of moisture, to a density of 95% maximum dry density (modified proctor method "C," T-99 or equivalent) determined by a standard compaction test. Consolidation by super-saturation, ponding or flooding will not be permitted in any circumstance. Materials and methods of compaction shall be adapted to achieve rapid restoration of traffic service. There shall be additional cutback of base and surfacing courses to minimize later development of sag in the replaced pavement over the trench.

(h) Pavement replacement may be performed by either the utility, or a contractor engaged by the utility, (constructed to a specification approved by the state) or by Department forces at the expense of the utility. The utility shall be liable from the date of completion of the pavement replacement, for the cost of repairs if the backfill subsides or the patched pavement fails, until such time that the roadway cut is resurfaced as approved by the Department. .

**G. Untrenched construction and grout:** Methods for installing a utility under a highway or roadway without disturbing the pavement surface are as follows:

(1) A pipe with a pilot shoe may be driven through compressible soil by steady thrust, hammering or vibration. Driven pipe must be smooth and uncoated, thus a casing or corrosion resistant carrier pipe should be used. Line and grade are difficult to control on long drives.

(2) Coring -- A casing without a pilot shoe can be drilled into more difficult soil, which enters the casing as it advances. The core is removed during and after the drilling. Control of line and grade is fairly easy.

(3) Boring -- A pipe can be jacked through a slightly oversized bore carved progressively ahead of the leading edge of the advancing pipe as the spoil is mucked back through the pipe. Line and grade control is excellent, but annular voids and overbreaks may be large and must be backfilled.

(4) Wet Boring -- A hole is sluiced by a jet of slurry and kept full of pressurized slurry to avoid collapse. The pipe is pushed through the slurry evacuating the excess. Soils may soften, expand or disintegrate from saturation by slurry moisture. This method is absolutely forbidden on all highways and roads under the jurisdiction of the Department.

(5) Untrenched installations (boring, coring or driving) will be required for all pipeline crossings of access controlled and other major highways. Open trench installations on other highways and roads will be permitted only where bad soil conditions or extremely difficult rocky conditions preclude untrenched construction, or where older pavement is severely deteriorated. All untrenched pipeline installations should extend under and across the entire roadway prism to a point 1.22 m (4 feet) beyond the toes of the foreslopes or borrow ditch bottom or across the access control lines, or as otherwise required by the Engineer or his/her representative.

(6) The oversize of boring operations is restricted to the minimum size necessary for the pipeline installation. The boring hole shall not exceed the pipe installation diameter by more than five percent (5%) oversize. The oversize excavation shall be backfilled to the satisfaction of the Engineer or his/her representative.

(7) All overbreaks, unused holes or larger diameter abandoned casings or pipes shall be backfilled with grout. The composition of the grout shall be cement mortar, a slurry of fine sand, or other fine granular materials, as local conditions dictate, and subject to the approval of the Engineer or his/her representative.

**H. Relocation of existing pipelines:** Highway design and construction requirements generally preclude compromise of proposed highway alignment or grade for new construction projects in order to avoid conflict with the line and grade of an existing pipeline. The feasibility of minor adjustments in the highway design to avoid extensive conflicts with existing utility facilities will be investigated, but in most instances a utility relocation or added pipeline protection will be required. Specific case factors are so varying as to make each such crossing unique. Therefore, standardized solutions are not uniformly applicable, but the following items will be considered:

(1) An existing pipeline should be relocated in alignment and/or grade, where the angle of the crossing is too acute, the top of the pipe is too close to the designed

highway gradient, or its bedding will be depressed by static and dynamic highway loadings.

(2) An existing or relocated pipeline shall be encased or otherwise protected as would normally be required for a future pipeline installation, built under the same conditions.

(3) An existing pipeline, inadequate to support highway loadings, shall be sheltered by an adequately designed casing or reinforced by a jacket, cap, or replaced with heavier weight pipe.

(4) An existing pipeline which would lack adequate cover for protection from vehicular loads or highway construction operations, may be protected by a floating slab in lieu of encasement.

(5) Notwithstanding utility facility protection, the highway construction contractor shall be warned of, and made responsible for the security of utility facilities located within the construction limits of a project. Where there are unusual utility hazards, or where heavy construction equipment will cross a facility, the highway contractor shall provide a temporary earth cover, or other such protection as may be required.

(6) Further clarification of the responsibility of highway contractors to protect utilities and for the relocation of utilities concurrently with highway construction and other utility/highway contractor relationships, are defined as to the joint responsibilities required, in the New Mexico State Highway and Transportation Department Standard Specification for Highway and Bridge Construction, and any modifying provisions or rule changes applicable thereto.

#### **I. Other design requirements:**

(1) Overhead Power and Communication Lines: The type of utility construction, vertical clearances, the lateral location of poles and down guys and related ground mounted utility facilities along the roadside are factors of major importance in preserving a safe traffic environment, the appearance of the highway, and the efficiency and economy of highway construction and maintenance. As such, the physical location of aerial utility facilities shall be as close to the right-of-way line as possible, normally .3048 m (1 foot) inside the right-of-way line.

(2) Aerial utility lines to be installed longitudinally on highway rights of way will usually be limited to single pole construction. Joint-use single pole construction is encouraged at locations where more than one utility or type of facility are involved. Except in very unusual circumstances and for short distances only, duplication of utility facility aerial pole-line installations on the same side of the highway will not be permitted.

**(3)** The vertical clearance for overhead power and communication lines above the highway, and the lateral and vertical clearances from structures shall conform to the National Electrical Safety Code as a minimum, except where greater clearances are required by the utility, or where required by other industry or governmental codes or regulations.

**(4)** On and along conventional highways in rural areas, poles and related facilities shall be located at or as near to the right-of-way line as possible, normally within .3048 m (1 foot) thereof. Down guys, anchors or other components shall not project into cut and fill slopes, nor shall such surface mounted obstacles intrude into the clear roadside area for the segment of the highway involved.

**(5)** In keeping with the nature and extent of roadside development along conventional highways in urban areas, aerial or buried utility facilities shall be located at, or as near as possible to the right-of-way line. On curbed Sections, the utilities shall be located as far as possible behind the face of the outer curbs, and preferably behind the sidewalks. Utilities located within sidewalks shall not be permitted unless no other viable alternative can be identified; however, under no circumstances shall their location compromise ADA requirements. Utilities must be protected in accordance with the AASHTO guide insofar as possible. Variations must be fully justified to the Engineer or his/her representative. The Department may require certain details of the method and manner of relocation in order to accommodate aesthetic, environmental, ecological and historical considerations (i.e. commitments contained in EIS or other documents) or in order to obtain consistency with local zoning, codes or ordinances.

**(6)** Locations of aerial utility facilities on highways with exceptionally narrow rights-of-way, or on urban streets with abutting improvements are special cases that must be resolved in a manner consistent with prevailing limitations and conditions. Locations behind sidewalks are required where feasible. Before a utility requests Department approval of a location other than near the right-of-way line, consideration shall be given to designs utilizing self-supporting armless single pole construction, with vertical alignment of wires and cables, or other techniques permitted by the utility, industry or governmental standards or codes that are also conducive to a safe traffic environment. Exceptions to these clearances may be made where poles and guys may be placed behind existing barriers, guardrails, beyond deep drainage ditches, the toe or top of steep slopes, retaining walls and other similar protected locations, or when poles are of a breakaway type manufacture.

**(7)** Where irregularly shaped portions of the right-of-way lines extend beyond the normal right-of-way limits, individual consideration will be given to requests for variations to maintain a reasonably uniform alignment for longitudinal, aerial or underground utility facility installations.

**(8)** Longitudinal installations of utility facilities shall not be permitted in the highway median. In rare instances, aerial components of utility crossings may be

permitted in a highway median in excess of 24.38 m (80 feet) in width, if the highway is not access controlled.

[3/10/71, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.15 INSTALLATIONS ON HIGHWAY STRUCTURES:**

Attachment of utility lines to a highway structure can materially affect the capacity of the structure, the safe operation of traffic, the efficiency of maintenance and reducing the aesthetic appeal of the structure.

**A.** Where it is feasible to locate utility lines elsewhere, attachments to highway structures should be avoided. However, when installation of the utility at an alternate location proves to be extremely difficult or unreasonably costly, consideration will be given for an attachment of utility lines to a highway structure. The attachment shall be made by a method acceptable to the Bridge Engineer of this Department.

**B.** All proposed attachment methods shall conform to adequate engineering considerations for preserving the highway structure's integrity, safety, ease of maintenance, and its appearance. In this respect, the following considerations shall govern:

**C.** Due to variations in highway structure designs and site specific considerations, it is not feasible to completely standardize the method by which utilities are attached to structures. Therefore each proposed attachment shall be considered on its individual merits, and shall be individually designed for the specific structure.

**D.** Utility line attachments to a highway structure shall not be considered unless the structure in question is of a design, age, and physical condition that is adequate to support the additional load and accommodate the utility without any compromise of the highway features, including reasonable ease of maintenance.

**E.** Attachment of a pipeline carrying a hazardous transmittant to a highway structure shall be avoided whenever possible. When such an attachment is permitted, the facility design shall be at a level to provide maximum safety.

**F.** Utility positioning on a highway structure which will inhibit access to any structure part for maintenance shall not be allowed. Utility access manholes shall not be allowed in a structure deck or load carrying member.

**G.** The entire utility installation on a highway structure shall be so located as to not reduce the vertical clearance otherwise available above river, stream, roadway surface or rails. In general, acceptable utility installations are those designed to occupy a position beneath the deck and in an interior bay of an I Girder Beam, or within a cell of a Box Girder Bridge. Installations shall always be above the bottom of girders on a Girder Bridge or above the bottom of the bottom cord on a Truss Bridge.

**H.** Utility line attachments to the visible outer portions of structures are unsightly, susceptible to damage, and shall not be permitted unless there is no reasonable alternative.

**I.** Utility line mountings shall be of sufficient strength to carry the weight of the utility and shall be of a type which will not rattle or loosen through vibrations caused by vehicular traffic. This is a matter of particular concern on steel structures. Utility attachments shall be designed to accommodate differences in thermal movements between the highway structure and the utility.

**J.** Where a utility facility is to pass through an abutment wingwall or other wall of a highway structure, the utility is required to neatly restore the disturbed construction by approved methods which shall preclude any leakage of water or backfill through the substructure elements. Where such construction is approved, any hole created in the highway structure shall be of a minimum size necessary for the installation. The annular space between the structure and pipe shall be completely filled with grout so as to seal the opening and effectively preclude the leakage of any moisture or backfill material through the substructure. Where a pipe or conduit is to be sleeved (cased) through the structure, the sleeve shall be tight sealed into the opening, and the annular space between the pipe conduit and the sleeve shall be sealed with a Department approved material.

**K.** Acceptable utility attachment methods are hangers or roller assemblies suspended from the underside of the bridge deck, or from hanger rods clamped to the flange of some superstructure member. Bolting through the bridge floor or deck shall not be permitted. Where there are transverse floor beams sufficiently removed from the underside of the deck to allow adequate clearances for the utility, the Bridge Engineer may consider a proposal to support the utility line on top of the floor beams.

**L.** Clearances of utility facilities from bridge members shall conform to all governing codes, and shall be such as not to render any portion of the structure inaccessible for any maintenance or other highway function.

**M.** The utility shall be required to make satisfactory provisions for lineal expansion and contraction of its facility as a result of temperature and pressure differentials. Line bends or expansion couplings are generally used for this purpose.

**N.** The utility shall restore or repair any portion of the structure or highway disturbed or damaged by utility installation or use.

**O.** If weatherall steel is utilized in the highway structure, utility attachments shall be of similar material.

**P.** A pipeline carrying volatile fluids, pressurized gas, water or sewage poses an element of risk when mounted on a highway structure. When such a carrier is placed in a casing pipe of leakproof construction, the hazard to the utility, the highway facility, and



the traveling public can be minimized. It is good practice to case all such pipeline attachments through the highway structure. The casing pipe should be carried beyond the back of the structure abutment and be effectively vented at each end to detect leakage and prevent possible build-up of pressure. In addition, all welds shall be tested by non-destructive means.

**Q.** Where a casing is not provided for a pipeline attachment to a bridge, additional protective measures shall be taken. Such measures shall include, but are not limited to, higher safety factors in design and pressure testing. The safety design factor shall be twice that normally used.

**R.** Communication and electric power line attachments shall be suitably insulated, grounded and carried in a protective steel conduit or pipe from below the point of ground exit, to below the point of ground re-entry. Carrier pipe and casing pipe shall be suitably insulated from electric power lines.

**S.** All pipeline attachments carrying gas or liquid under pressure, which by nature of the transmittant might cause damage or injury if the transmittant escapes on or in the vicinity of the highway structure, shall be provided with emergency shutoff valves of automatic design. Such valves shall be placed within an effective distance on each side of the structure. Exceptions to this rule may be considered by the Engineer, upon written justification submitted by the utility.

**T.** The responsibility of the utility owner requesting a bridge or highway structure attachment cannot be over stressed. The utility shall ascertain the extent of the Department's design requirements prior to initiating the design for attachment. A Registered Professional Engineer experienced in structural design shall be responsible for the design effort. Complete plans showing all details of the proposed work, together with pertinent design documents shall be prepared and submitted, along with the New Mexico Public Highway Utility Accommodation Permit Application. Traffic control plans must also accompany the permit. The plans must be complete and adequate enough to show in detail the full extent of the proposed work.

**U.** All materials integrated into the design must be certifiable for quality and strength, and full specifications must be provided in support of the design.

**U.** A complete written justification must support the need for attachment and demonstrate that there is no viable cost effective alternative.

**V.** All components of the utility attachment shall be protected from corrosion. Steel components shall be galvanized or painted in accordance with current Standard Specifications For Highway And Bridge Construction.

[3/10/71, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.16 CLEAR ROADSIDE POLICY:**

The Department discourages the installation or relocation of any utility facilities within the designated clear zones of highways in this state. However, if severe space limitation precludes any other viable option, consideration will be given when the public need for utility services and access to properties adjacent to highways or streets is evaluated.

**A. Specific installation guidelines:** Utilities may be permitted to install facilities within the clear zones of highways in this state if the installation design:

(1) Is approved by the Engineer, District Engineer, District Traffic Engineer, or the Traffic Design Engineer of this Department.

(2) Provides for the installation of the utility facilities, including all supporting appurtenances, below the ground surface of the clear zone area involved.

(3) Provides for the protection of the above ground utility facility by the installation of an intervening barrier or barriers, crash cushions, impact attenuators or longitudinal barriers approved for the use as per the current Roadside Design Guide.

(4) Protects errant vehicles from collision with utility poles, luminaire standards or masts, or any other above ground structures supported by poles, by the incorporation of break-away features in the structure design. Break-away features may include a hinge design, slip plate design, slotted fuse plate design, frangible coupling design and other accepted designs. The utility owner must comply with the design standards set forth in the AASHTO designs and specifications when accepted by the Traffic Design Engineer, or District Traffic Engineer.

**B. General requirements:** In evaluating whether to allow utilities in the clear zone, utility owners must provide the Department with a complete justification in support of a request to install utilities within the clear zone. This justification must include:

(1) Comprehensive information to support the utilities contention that no other viable location is available.

(2) That an installation on nearby adjacent right-of-way would be prohibitively expensive.

(3) That a right-of-way corridor nearby would adversely affect wetland or agricultural lands or areas of scenic enhancement.

(4) The utility must provide the Department with completed and comprehensive plans and specifications, including:

(a) Grades and elevations tied by survey to the design grade of the highway segment involved.

(b) A clearly defined clear zone, shown on the utility's plans, along with details and elevation views.

(c) Plan, profile and details of underground utility installations.

(d) Any additional information in support of the design.

[3/10/71, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.17 THE ACCOMMODATION OF UTILITY FACILITIES WITHIN FREEWAY OR INTERSTATE RIGHT-OF-WAY:**

Pursuant to Federal Highway Administration (FHWA) regulations regarding the accommodation of longitudinal utility facilities within the access control limits of Freeways and Interstate Highway rights-of-way, the Department will allow under controlled circumstances, the placement of longitudinal utility facilities within the access control limits of the Interstate System or other fully access controlled Freeways. These regulations do not apply to utility lines for servicing facilities required for the operation of the Freeway.

**A. Term and cost of permit:** Permits for longitudinal utility facilities within the access controlled Freeways shall have a term as set by the Engineer, but in no event shall the term exceed twenty-five (25) years. The Engineer may impose charges, fees or other compensation or consideration as may be reasonable for the occupancy of the right-of-way by the utility. The permit shall be subject to any other reasonable conditions deemed appropriate by the Department under the circumstances. Even though payment may be made by the utility to the Department, no permit shall be exclusive, meaning the Department may issue additional permits to other utilities within the same Freeway right-of-way.

**B. Physical location of new longitudinal utility facilities along interstate highways and freeways:** New utilities to be installed longitudinally within the control of access lines of any freeway shall be subject to controlled conditions, and the utility requesting permits must meet the following requirements:

(1) The accommodation will not adversely affect the safety, design, construction, maintenance or stability (integrity) of the Freeway.

(2) The accommodation will not interfere with or impair the present or future use, or future expansion of the Freeway.

(3) Any alternative location would be contrary to the public interest. This determination must include an evaluation of the direct and indirect environmental and economic impacts resulting from disapproval of the use of such right-of-way for the accommodation of the facility.

(4) If by reason of any change in the location, construction, grade or by any other matter affecting the highway upon which any facility is located because of changing traffic conditions or otherwise, it shall become advisable in the opinion of the Engineer that said facility be removed, relocated or otherwise modified, the utility, upon written notice from the Engineer, shall remove, relocate or modify such facility without undue delay in such manner as the Engineer may direct or approve, at the utility's expense and at no cost to the Engineer. All facilities located on public right-of-way under the dual jurisdiction of the State and a subordinate governmental entity shall comply with all applicable rules and regulations of such entity properly and lawfully in force and including but not limited to provisions of local franchises not in conflict with the rules and regulations of the Engineer. The Engineer makes no warranty, either express or implied, as to the continued existence of any highway in any particular location and expressly assumes no obligation with regard to the facility upon change, vacation or abandonment of any highway or portions thereof.

(5) If approval for installation is granted, any and all utility installations and components associated thereto shall be buried parallel to the Freeway, and shall be located within 1.52 m (5 feet) of the access control line, wherever practicable. Surface components of buried facilities, i.e., valves, manholes, vents, etc., shall be located as close as possible to the access control line. The high point of structural elements such as manholes, vaults, and anchor blocks, shall be at or below the natural ground line of the right-of-way surface. All buried facilities will be installed at a minimum depth of 0.91 m (36 inches) or more from the right-of-way surface to the top of the facility. All trenches and ditches will be backfilled and compacted by the facility installer to the satisfaction of the Engineer. All excavations outside the roadway foreslopes shall be compacted to a density equal to the surrounding soil. All excavations within the toes of the foreslopes shall be compacted to ninety-five percent (95%) of maximum dry density as determined by a Standard Compaction Test, Modified Proctor Method T-99 or equivalent. Parallel ditches in excess of 106.68 m (350 feet) in length shall not remain open over 24 hours. Any excavations on or near the traveled way shall not remain open overnight. All future relocations or adjustments shall be the responsibility of the utility and shall be at the sole expense of the utility.

(6) No service connections shall be allowed from within access controlled facilities.

**C. Existing utility facilities along proposed interstate highways or freeways:** Where a utility facility already exists within the proposed right-of-way of an Interstate Highway or Freeway and it can be serviced, maintained and operated without access from the through-traffic roadways or ramps, it may remain as long as it does not adversely affect the safety, design, construction, operation, maintenance or stability of the Interstate Highway or Freeway; otherwise it must be relocated.

**D. Major valley crossings, grade separation structures:** Where an Interstate Highway or Freeway crosses a major valley or river on an existing structure, any utility facility carried by said structure at the time the highway route is improved may continue

to be so carried when a relocation of the facility would not be cost effective, and provided that the utility facility could be serviced without interference with road users. All such approvals must be first cleared by the Department's Bridge Engineer.

(1) The expansion of a utility facility carried by an existing structure may be permitted provided the utility installed on the existing structure fulfills the methods of installation required by the Department's Bridge Engineer, and that any such installation can be serviced without interference with the road users.

(2) A new utility facility will not be permitted to be installed on a structure at or after the time the highway route is improved, except for special cases as covered in Paragraph 15 [now 17.4.2.15 NMAC], **supra**.

**E. Utility facilities crossing interstate highways:** New utility facility installations or the relocations of existing facilities may be permitted to cross Interstate Highways or Freeways. To the extent feasible and practical, they should cross on a line generally normal (crossing at 90 degrees) to the highway alignment and preferably under the Interstate Highway or Freeways.

**F. Utilities along roads or streets crossing freeways:** Where a utility follows a crossroad or street which is carried over or under a Freeway, provision shall be made for the utility to cross the Freeway at the location of the crossroad or street in such a manner that the utility can be serviced without access from the through-traffic roadways or ramps. Generally, the utilities are to be located within the right-of-way of the crossroad or street (existing or relocated) and may cross over or under the Freeway or be carried on or through the highway grade separation structure, provided the installation and servicing thereof can be accomplished without access from the through-traffic roadways or ramps. Where distinct advantage and appreciable cost saving are effected by locating the utilities outside the right-of-way of the crossroad or street, they may be so located, with written approval of the Department, in which case they shall be located and treated in the same manner as utility lines crossing the Freeway at points removed from grade separation structures, as in Paragraphs 17.7 [now Subsection G of 17.4.2.17 NMAC] and 17.8 [now Subsection H of 17.4.2.17 NMAC].

**G. Overhead utility crossings:** Overhead utility lines crossing a Freeway at points removed from grade separation structure, or those crossings near a grade separation but not within the right-of-way of a crossroad or street, in general, shall be adjusted so that the supporting utility pole and structure are located outside the outer edges of the through-traffic roadway side slopes and preferable outside the access control lines. In any case, supporting poles shall not be placed within the appropriate clear zone as designated in the current AASHTO publication "Roadside Design Guide, 1989," and as may be updated from time to time.

(1) Supporting poles may be placed in medians of sufficient width to provide for the previous mentioned clear zones from the edges of both roadways. If additional lanes are planned, the clear zone shall be determined from the ultimate edges of the

roadway to be built. Where control of access and right-of-way lines are not one and the same, and where frontage roads are provided, supporting poles may be located in the areas between them. In extraordinary cases where such spanning of the roadway is not feasible, consideration may be given to conversion to underground facilities to cross the highways.

(2) At interchange areas, in general, support for overhead utility facilities will be permitted only where all of the following conditions are met:

- (a) A clear zone is provided with respect to the freeway through-traffic lanes;
- (b) The appropriate clear zone from the edge of the ramp is provided as designated for the specific condition in the AASHTO publication, "Roadside Design Guide, 1989," which may be updated from time to time;
- (c) Essential sight distance is not impaired;
- (d) The conditions of Paragraph Section 17.12 [now Subsection L of 17.4.2.17 NMAC] "Access for Servicing Utilities" are satisfied; and
- (e) The vertical clearance to overhead utility lines crossing freeways shall be determined by the Department, but in no case shall they be less than the vertical clearances required by the current National Electrical Safety Code.

**H. Buried utility crossings:** Buried utilities shall be of durable materials and so installed as to virtually preclude any necessity for disturbing the roadways to perform maintenance or expansion operations. The design and type of materials shall conform to standards and installations outlined in Paragraphs 13 and 14 [now 17.4.2.13 NMAC and 17.4.2.14 NMAC] of this regulation, or to the appropriate governmental or industry codes, rules and specifications, whichever is more restrictive. Manholes and other points of access to underground utilities may be permitted within the right-of-way of a freeway if (1) they are located beyond the shoulder of the through-traffic roadways or ramps, and (2) can be serviced or maintained without access from the through-traffic roadways or ramps.

**I. Irrigation ditches and water canals:** Except for necessary crossings, irrigation ditches and water canals shall be excluded from the right-of-way of Freeways, except for special cases as covered in Paragraph 17.2 [now Subsection B of 17.4.2.17 NMAC]. Crossings may be made by underground siphon or through culverts or on bridges as appropriate to the size of the canal, topographic condition and highway safety aspects. In general, locations and structure are to be selected and designed in the same manner as are facilities for natural transverse drainage. All ingress and egress for servicing or patrolling such irrigation facilities shall be from outside the control of access lines. The procurement of necessary ingress and egress is the responsibility of the irrigation ditch and water canal owners. Ditch-walkers or ditch-riders shall not be permitted to indiscriminately cross the Freeway at grade. Under appropriate traffic control

arrangements, special ditch cleaning equipment may be permitted to cross in those cases where considerable travel distance would otherwise be required to utilized grade separation structures.

**J. Provisions for expansion of utilities:** When existing utilities are relocated in conjunction with the construction of a Freeway, provision shall be made for known and planned expansion of the utility facilities, particularly those underground. They shall be planned to avoid interference with traffic at some future date when additional or new overhead or underground lines are installed.

**K. Utilities in vehicular tunnels:** As a general rule, utilities shall not be permitted to occupy vehicular tunnels on freeways at new locations, except in special cases as covered in Paragraph 17.2 [now Subsection B of 17.4.2.17 NMAC].

(1) Utilities which transmit a hazardous commodity shall not be allowed in a vehicular tunnel under any circumstances.

(2) When a utility is located in an existing vehicular tunnel that is converted to a freeway, relocation of the utility may not be required, at the Department's discretion. Utilities not occupying an existing vehicular tunnel that is incorporated into a freeway shall not be permitted therein, except in special cases as covered in Paragraph 17.2 [now Subsection B of 17.4.2.17 NMAC].

**L. Access for servicing utilities:** Access for servicing a utility along or across a freeway shall be limited to access via frontage roads where provided; nearby or adjacent public roads or streets; or trails near the highway right-of-way lines, connecting only to an intersecting road, from any one of which entry may be made to the outer portion of the freeway right-of-way.

(1) In those special cases where utility supports, manholes or other appurtenances are located in medians or interchange areas, access to them from through-traffic roadways or ramps may be permitted, but only by utility accommodation permits issued by the Department to the utility owner setting forth the conditions for policing and other controls to protect the traveling public.

(2) Utilities requiring maintenance from within the Freeway right-of-way must obtain an approved utility accommodation permit from the Department before accessing the utility from within the Freeway.

(3) Advance arrangements, when practicable, shall be made between the utility and the Department for emergency repair and maintenance work within the rights-of-way of Freeways.

**M. Construction and location details:** The Department shall review and approve the location and the design of all utility installations and relocations affecting highways

under the jurisdiction of this Department and issue New Mexico Public Highway Utility Accommodation Permits for any contemplated work on these highways.

**N. Manner of making utility installations and relocation:** In general, utility installations and relocations are to be made with consideration for highway and utility costs; maximum safety to the traveling public; the least possible interference with the highway facility and its operation; not increasing the difficulty or cost of highway maintenance to the Department; and all installations and/or relocations must have prior review, appropriate approvals and the associated documentation required by Departmental Authority.

[3/10/71, 6/15/96, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.18 SAFETY MARKERS FOR IDENTIFICATION OF ABOVE GROUND UTILITY APPURTENANCES, WITHIN PUBLIC HIGHWAY RIGHT-OF-WAY:**

Buried utility facilities with supporting above ground appurtenances shall be marked as follows:

**A.** All existing buried utilities, including pipeline carriers, delivering natural gas or other gaseous products, water, sewage, steam, buried electric lines, telephone and other communication systems, petroleum products, and any other buried facilities with above ground appurtenances thereto located within the rights-of-way of highways under the jurisdiction of the Department shall have such above ground appurtenances clearly marked with the appropriate warning markers as described herein.

**B.** Above ground appurtenances to all buried utility systems such as pipeline valves, regulators and the like, pad mounted transformers, telephone pedestals, junction boxes and the like, shall be identified with a yellow, red, orange or other appropriate industry colored flexible fiberglass restorable blade, four feet six inches (1.65 m) minimum height above the ground surface. It shall be color coded a minimum of six inches (150 mm) in height and three inches (75 mm) width at the top of the blade. The blade shall be visible in all directions. The color coded portion of the marker shall be at least two feet (.61 m) above the surrounding high grass, weed or shrubbery line.

**C.** The utility owner shall maintain the markers in good condition; color faded markers shall be replaced as necessary so that their visibility to maintenance crews and others is not impaired. The markers shall not be placed within the Access Control Lines of Interstate Highways or Freeways in a manner that would create a safety hazard, or by methods contrary to this regulation.

**D.** The utilities shall commence the placement of these markers on new facility installations within public highway rights-of-way thirty (30) days after the date this new statutory regulation is approved and becomes effective (the approval and effective date is that date inscribed on page one (1) of this rule). The utilities are also directed to make these marker installations on existing utility facilities on a continuing basis whenever



their maintenance crews are repairing or maintaining their existing facilities located within the public highway right-of-way of this State in rural areas and/or on certain designated public highways within municipalities.

**E.** Variances not involving significant changes to the marker specifications detailed herein or the rules governing the installation of utilities within the access control lines, set forth in Paragraph 17 [now 17.4.2.17 NMAC] herein, may be approved by the Engineer or their representatives, upon the submittal by the utility owner of a written detailed justification supporting the variance requested.

**F.** During this marker installation process, the utility shall observe all appropriate regulations stipulated herein pertaining to the installation of utility facilities within the public highway right-of-way under control of this Department.

[11/15/96; Recompiled 12/31/01]

#### **17.4.2.19 UTILITY RELOCATIONS AND REIMBURSEMENT:**

The Department develops their annual highway construction schedule based upon engineering studies conducted on an ongoing basis, that determines when and where highway construction projects will be let to contract. In the early stages of development, the Railroad & Utility Section of the Department or its approved representative will begin discussions with utility owners who are thought to have portions of their facilities in conflict with the proposed highway construction features. This Section sets forth the regulations pertaining to eligibility for utility relocation reimbursement, methods and scheduling of the utility relocation work required, and the documentation and record keeping required when the expenditure of public funds is involved.

**A. Public and private utilities:** Statutory reimbursement regulation pertains only to utilities. Utilities that have to be relocated or removed from the right-of-way will be handled in accordance with the terms of the New Mexico Public Highway Utility Accommodation Permit and these regulations. The relocation of a private utility, situated on private land and not dedicated to public use, is to be handled as a right-of-way taking consideration. A private utility on public right-of-way will be handled in accordance with terms of the permit and these regulations.

**B. Interstate highway projects:** On Interstate highway projects only, the required relocation of public utility facilities within existing public right-of-way is generally eligible for reimbursement by the Department, unless the facilities were installed with knowledge of future conflict, or as documented in an approved New Mexico Public Highway Utility Accommodation Permit which defines the future obligation of the utility owner. Facilities owned by a public utility that are situated on lands, easements or other properties, in which the owners have a documented compensable property right thereto, and which utilities shall be relocated because of conflict with highway features are also reimbursable to the utility owner.

**C. Other state highway projects:** On any type of state highway project (other than Interstate Highways) where the utilities are located on private right-of-way, and the owner holds a documented compensable property interest therein, the relocation required of the owner is compensable to the owner under the Department's regulations providing for reimbursement. On any Non-Interstate Projects where public utility facilities are located within existing public rights-of-way, the relocation cost is not eligible for reimbursement, unless the utility facility occupies the right-of-way under a Joint Use Agreement, issued and approved by the Department, which authorizes reimbursement issued and approved by the Department.

**D. Other highway projects involving public funds:** On any highway project where public utility facilities have once been relocated to the satisfaction of the Department for a specific highway project, but due to a revision or change in plan on the same highway project an additional complete or partial relocation is required, and the Department directs the utility to relocate all or some of their facilities by written instruction, then the additional complete or partial relocation costs are reimbursable to the utility owner by the Department.

(1) If additional relocations are required due to errors, omissions or faulty workmanship performed by the utility owner, their personnel and/or those engaged by the utility, or if any of these parties fail to complete the relocation in accordance with the Utility Adjustment Agreement, the utility relocation plans, specifications, and/or contract documents, the utility shall make any correction required as directed in writing by this Department. This remedial work will be at the sole expense of the utility owner, including administrative costs incurred by the Department pertaining to the remedial work, regardless of the cost responsibility for the previous relocation.

(2) On projects where overhead utilities that occupy public right of way have to be buried because of safety, environmental, archeological, aesthetic, or highway construction considerations, such relocation from overhead to underground shall be performed at the expense of the utility owner.

(3) Should any highway construction delay claims be paid by the Department because of unreasonable actions or inaction by the utility owner, all costs associated therewith shall be reimbursed to the Department by the utility within ninety (90) days of receipt of a reimbursement request.

**E. Special districts, municipalities and counties:** Pursuant to NMSA 1978, Section 67-8-21, financial assistance will be provided by the Department to special districts, municipalities and counties to relocate utilities if they can demonstrate they are unable to pay for the relocation costs themselves. To qualify for relocation costs, the special districts, municipalities and counties must officially notify the Department in writing that they have made a determination that utility relocation will be necessary as a result of a highway project. The notification must be explicit in terms of the need to relocate specific utilities and the need for financial assistance. It must also be specific as to whether the need is for engineering and design services, relocation construction or

both. All reimbursement requests shall be considered on their individual merits and shall be forwarded to the Department for handling. All requests shall include the following as a minimum:

(1) A written request for reimbursement by an authorized representative of the utility.

(2) Letter of Transmittal, along with the following items:

(a) Copies of Utility Permits or other instruments authorizing the placement of utilities in their present location.

(b) Resolution by the appropriate governing body regarding the need to relocate utilities and the need for financial assistance, pursuant to relevant State statutes.

(c) Financial Statement that is current and sufficiently detailed for the State Department of Finance and Administration to perform an analysis and make an informed decision regarding the entity's financial condition.

(d) Current fiscal year budget as required by the local Government Division of the Department of Finance and Administration.

(i) Reimbursement for the cost of relocation shall be made only after the provisions of this regulation have been fulfilled and after the State Department of Finance and Administration, Local Government Division issues an official finding.

(ii) In the event the Department of Finance and Administration is unable to make a determination as to financial condition or the determination is not made in a timely manner, the Department shall then make such a determination.

**F. Documentation required to determine eligibility for reimbursement:** It is mandatory that a utility facility owner provide the Department with copies of their land use documentation to substantiate their right to occupy the public and private land affected by the proposed highway construction. If a utility owner is seeking reimbursement under New Mexico State Law, the right to compensation must be justified and substantiated by documented proof of the utilities existing compensable property rights. The Department will not reimburse a utility owner for any utility relocation occasioned by the construction of highway project unless the utility can prove their right to be paid. The documentation shall include copies of any land use conveyances, including Deeds, Easements, Permits, Land Use Agreements and any other documentation acceptable under the Laws of the State of New Mexico providing for transfer, sale and use of land, including a claim for prescriptive rights or adverse possession.

[3/10/71, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.20 UTILITY RELOCATION PROCEDURES:**

The following procedures shall be followed to assure the proper completion of utility relocation necessitated by the State Highway Program. To provide uniformity and avoid duplication, these procedures shall be followed on all State Highway Projects whether or not Federal Aid participation is involved. The FHWA's reimbursement to the New Mexico State Highway and Transportation Department will be governed by State Law and State Regulations, as well as the Code of Federal Regulations, Title 23, Part 645, Subpart A and Subpart B. When State Law or Regulation differs from the aforementioned Code, (Part 645, Utilities), a determination shall be made by the Department, subject to concurrence by FHWA, as to which standards shall govern, and the record will be documented accordingly for each relocation in which the differing procedural action is undertaken. The Department shall develop a Utility Cooperative Agreement for handling the relocation of utilities. The Agreement shall clearly stipulate the responsibilities of each party for financing and accomplishing the relocation work, shall incorporate the appropriate regulation(s) by reference and designate the method to be used for performing the work. The method for developing all relocation costs, including engineering and relocation construction, shall be acceptable to the Department and to the Federal Highway Administration on Federal Aid projects. When applicable, the Agreement shall specify the terms and amounts of any contributions or repayments made or to be made by the utility to the Department under eligibility provisions of State Laws and Federal Regulations. When the relocation involves both work to be done at the Department's expense and work to be done at the expense of the utility, the Agreement shall state the share to be borne by each party. Except as otherwise provided by this Agreement, authorization by the Department to the utility to proceed with the relocation work may be given after it has been included in an approved program and fulfills State and Federal requirements. If the utility does not have the necessary resources to perform the relocation, such work may be done as follows: (1) a contract awarded by the utility to the lowest qualified bidder based on appropriate procurement procedures; (2) inclusion as part of the Department's highway construction contract let by the Department as agreed to by the utility; or (3) an existing continuing contract, provided the costs to the Department are reasonable. All contract work performed for the utility under a contract let by the Department shall be reported separately from the other contract items on the highway project. All utility relocation costs shall be recorded by means of work orders in accordance with a work order system approved by the Department, except when another method of developing and recording costs, such as a lump-sum agreement, has been approved by the Department, and the Federal Highway Administration when applicable. The utility shall keep its work order system or other accounting procedure approved by the Department in such a manner as to show the nature and cost of each item. The current Federal Aid Policy Guide shall be used as a guide for all cost development and reimbursement matters. All reimbursed costs shall be subject to state audit for a period of three years following the date of final payment.

**A. Locating utilities:** On all proposed highway construction and/or maintenance projects, utilities shall be located horizontally, vertically, shall be identified as to type and

ownership, and their locations tied to the project center line. The locating process should meet, as a minimum, survey requirements outlined in the Department's Survey Manual, unless otherwise specified. Railroad facilities must also be treated as a utility, the facilities located and tied to the center line of track or other railroad structure, and referenced to existing railroad mile posts. The location should be conducted early enough in the project development process so as to allow for inclusion of the utility and/or railroad information in the highway construction Field Design Inspection plans.

**B. Location stage:** The Railroad and Utility Section of the Department shall become involved at the inception of each State Highway Project. The earliest conceptual design information available shall be reviewed to determine whether possible serious utility conflict can be avoided by minor highway alignment revisions without undue added cost. The assigned Agent should discuss the possibility of alignment changes with the assigned Project Development and Design Engineers as appropriate, and any other observations that have been made that might improve cost benefits to the project concerning the utility facilities. Liaison with the utility owners involved shall begin at this stage to avoid the installation of new utilities by the utility owners that could conflict to an even greater extent. If preliminary right-of-way maps are available, a preliminary review could disclose the extent of the utility involvement and give the Agent a workable idea as to the eligibility each owner may have for utility relocation reimbursement. Preliminary coordination meetings with all of the affected utilities in attendance should serve to avoid future problems concerning where each utility owner must place their relocated utilities to avoid conflict with the other utilities involved.

**C. Project programming procedures:** Utility adjustments eligible for reimbursement on Federal-Aid Highway Projects shall be programmed in accordance with the requirements set forth in Title 23 of the Code of Federal Regulations, Part 630(A). Generally, utility relocations and utility relocation engineering will be programmed when the initial state highway project programming is accomplished. Preliminary Engineering for the use of Consultant Engineers engaged by the utility owner will be programmed each time these services are required and authorized by the Department and the FHWA. The utility lead time cannot commence until the Utility Section has access to plans sufficiently completed to permit the utilities to design their relocations. Therefore, the plans should be in the post Grade & Drain or pre-Plan-in-Hand stage, with definite line grades, right-of-way, access control and other major features shown before they may be sent to the utilities with the formal authorization to proceed with their preliminary engineering. Prior to this stage, any plans provided to utilities must clearly be marked as "preliminary" with a statement that they are not yet authorized to proceed on any basis.

**D. Preliminary engineering:** Before preliminary engineering is authorized on a project, the basic eligibility for reimbursement of utility adjustment cost must be determined from a plan review. This eligibility is to be in conformity with the reimbursement policy set forth in Paragraph 19 [now 17.4.2.19 NMAC] herein. Plan review will, in most cases, resolve questions of such eligibility.

**E. Engineering by utility's staff, or a consultant engineer:** Preliminary engineering for utility relocation design can be accomplished by any of the following methods:

- (1) By utilization of the utility owner's engineering staff;
- (2) By utilization of a consultant engineer selected by the Department after consultation with the utility owner; contract shall be administered by the Department with the consent of the utility; or
- (3) By the utilization of a consultant engineer selected by the utility owner under a contract approved by the Department and FHWA; the contract shall be administered by the utility owner.
- (4) When the utility is not adequately staffed to perform the necessary preliminary engineering work related to the utility relocation on a State Highway Construction Project, Department and Federal funds may be used to reimburse the utility owner for amounts paid to engineers, architects, and others for allied services, provided such amounts are not based on a percentage of the relocation costs. The Department, utility owner and the engineering consultant shall agree in writing as to the services to be performed and the fee amount to be paid for the work in advance of the commencement of the engineering services agreed upon. The approval of these arrangements by the FHWA shall be obtained on all Federal Aid Projects.
- (5) State and Federal funds may participate in the cost of consultant engineering services performed on existing continuing contracts between the utility and the consultant when it can be demonstrated that such work is performed regularly for the utility at a reasonable cost.
- (6) The basic eligibility for reimbursement for the utility relocation costs must be determined from near final highway construction Plan and Profile Sheets developed after the Department's Grade and Drain Inspection. A utility owner must be otherwise entitled to utility relocation reimbursement costs to be eligible for payment for utility relocation preliminary engineering (PE). The PE written authorization is a commitment by the Department to reimburse the utility for PE, subject to compliance with these regulations.
- (7) If the utility relocation preliminary engineering is determined to be ineligible for reimbursement after the plan review, a non-reimbursable PE notice will be sent to the utility owner requesting that they commence their relocation design effort at their own expense, and on a schedule which would insure that the utility relocation construction would be completed in a timely manner.
- (8) If the project should be abandoned, postponed, or delayed by the Department, the utility is entitled to be paid for their design effort from the date of the PE

authorization to the date of abandonment, but only if the utility was eligible initially for utility relocation PE.

**(9)** If a highway project is delayed, substantially revised or even abandoned and the utility has incurred engineering costs at the request of the Department, such costs are not eligible for reimbursement if the relocation is not reimbursable.

**(10)** It should be noted by the utility owner that any costs incurred by the utility owner in the initial negotiation phase, including early engineering reviews and relocation planning, will not be reimbursed. The Department shall not be liable for reimbursing any utility PE costs prior to notification and proof by the utility of its compensable property rights and after the Department has provided the utility written authorization of its intent to reimburse the utility for its costs of relocation.

[3/10/71, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.21 UTILITY RELOCATION ESTIMATES:**

**A. Developing and recording costs:** It shall be necessary to develop a cost estimate for the utility relocation engineering and construction. All reimbursable utility relocations shall be in sufficient detail to permit analysis and evaluation of all anticipated costs and all such costs shall be recorded by means of work orders in accordance with an approved work order system except when another method of developing and recording costs, such as a lump-sum agreement, has been approved by the Department and the FHWA.

**(1)** Each utility shall keep its work order system or other approved accounting procedure in such a manner as to show the nature of each additions to or retirement from the facility, the total costs thereof, and the source of cost. As a minimum, each utility shall conform to the requirements of the Federal Aid Policy Guide on federal aid projects and/or to the Department's Estimate/Billing Guide.

**(2)** In the event there are changes in the scope of the reimbursable utility work covered by the approved Agreement, plans and estimate, state and/or federal reimbursement shall be limited to costs covered by a modification of the Agreement, a written change order or extra work order approved by the Department, FHWA or both.

#### **B. Salvage, accrued depreciation, betterments:**

**(1)** Credit to the highway project shall be required for the cost of any betterments to the facility being replaced or relocated and for the salvage of the materials removed.

**(2)** Credit to the highway project will be required for the accrued depreciation of utility facility being replaced such as a building, pumping station, filtration plant, power plant, substation, or other similar operational unit. Such accrued appreciation is that

amount based on the ratio between the period of actual length of service and total life expectancy applied to the original cost. Credit for accrued depreciation shall not be required for a segment of the utility's service, distribution, or transmission lines. When the facilities, including equipment and operating facilities, described in Paragraphs 21.2.1 and 21.2.2 [now Paragraphs (1) and (2) of Subsection B of 17.4.2.21 NMAC] are not being replaced but rehabilitated and/or moved, as necessitated by the highway project, no credit for accrued depreciation is needed.

**(3)** Betterment credit shall not be required for additions or improvements which are:

**(a)** Required by the highway project;

**(b)** Replacement devices or materials that are of equivalent standards although not identical;

**(c)** Replacement of devices or materials no longer manufactured with next highest grade or size;

**(d)** Required by law under governmental and appropriate regulatory commissions code; or

**(e)** Required by current design practices regularly followed by the company in its own work, and there is a direct benefit to the highway project.

**(4)** In no event shall the total of all credits required under the provisions of this regulation exceed the total costs of relocation exclusive of the costs of additions or improvements necessitated by the highway project.

[3/10/71, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.22 RIGHT-OF-WAY DISPOSITION:**

**A. Replacement right-of-way:** The Department and/or the FHWA may approve the acquisition of replacement right-of-way if the utility has the right of occupancy in its existing location because it holds the fee, an easement or other real property interest, and the damaging or taking is compensable in eminent domain, and is necessary to meet the requirements of the highway project. Such replacement right-of-way shall only be allowed where no change to the project for the utility's existing right-of-way, being transferred to the Department for highway purposes, is made.

**(1)** Any replacement right-of-way being paid for with state and/or federal funds shall be evaluated as to fair market value by a qualified and licensed New Mexico Real Estate Appraiser. A written evaluation/appraisal shall be accomplished and approved by the Department prior to acquisition.



(2) Acquisition of replacement right-of-way by the Department on behalf of the utility may be accomplished when it can be demonstrated by the utility that it is not staffed to accomplish the acquisition or consultant services are prohibitively expensive or unavailable. Acquisition by the Department should coincide with other Department acquisition functions, if at all possible, and shall be approved by the Right-of-Way Bureau Chief.

**B. Joint use of right-of-way:** When a utility occupies a utility corridor by virtue of an easement or other property interest, that is compensable under eminent domain laws, and the Department's highway project will envelop the utility corridor, the following regulation shall apply:

(1) If the utility's facilities are in physical conflict with proposed highway construction features, the utility may opt to vacate the Department's newly acquired right-of-way, obtain replacement right-of-way and relocate its facilities to the newly acquired utility corridor/easement. All eligible costs incurred by the utility in this situation are reimbursable when properly documented and supported.

(2) If the utility facilities do not conflict with proposed highway construction features and no relocation is necessary, they shall remain in place. When it becomes necessary to relocate the utility facilities, the Department shall reimburse the utility owner for all eligible expenses incurred for replacement right-of-way and relocation construction, if allowed under the terms of the permit. This one time future reimbursement obligation shall be documented by the issuance of a Joint Use Agreement, which defines future obligations of the Department to the utility. The Joint Use Agreement shall have no other purposes than those detailed herein, and shall not otherwise be issued by this Department.

(3) In the event a utility relocation is necessary and vacation of the existing utility corridor/right-of-way to replacement right-of-way is not a viable option, the utility may opt to relocate to another location within the newly acquired highway right-of-way if no conflict between the utility facilities and highway features exists. The costs for this utility relocation from utility right-of-way to highway right-of-way are reimbursable. Since this option has been granted for the benefit of the utility, at the utility's request, the Department will issue a New Mexico Highway Utility Accommodation Permit, after which time the utility owner shall be subject to the Permit provisions. This option does not deprive the utility owner of any land rights previously held, as the terms of the Permit grant the use of public right-of-way for a specific renewable time period. In the alternative, the utility may elect the option of locating completely outside highway right-of-way and under that option the utility would be eligible for relocation costs and replacement right-of-way costs.

[3/10/71, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.23 UTILITY RELOCATION/CONSTRUCTION DOCUMENTATION:**

A complete review of all utility relocation documents shall be performed upon submittal to the Railroads and Utility Section by the utility. The review should demonstrate that the Agreement, Estimate and associated documents comply with State regulations and/or the Federal Aid Policy Guide.

**A. Force account:** When work will be performed by utility forces, the documentation shall include, 1) three (3) executed copies of the Utility Relocation Agreement, NMSHTD Form A-366; 2) three (3) completed copies of the completed Utility Relocation Questionnaire, NMSHTD Form A-365; 3) four (4) fully executed copies of the New Mexico Highway Utility Accommodation Permit Application, NMSHTD Form M-202 for each crossing and each longitudinal run, five (5) each if on the Interstate System); 4) four (4) executed copies of the Joint Use Agreement (if applicable), NMSHTD Form A-421; and 5) three (3) copies of the cost estimate; (6) three (3) copies of land use documents.

**B. Continuing contract work:** In addition to items in Paragraph 23.1 [now Subsection A of 17.4.2.23 NMAC], a copy of a fully executed Continuing Contract that is in force and effect, along with appropriate cost estimates associated thereto, shall be provided if work is to be performed by an outside contractor under contract with the utility.

**C. Contract let out to bid:** If a contract is to be let out to bid to the lowest qualified bidder by the utility, the utility shall provide to the Department three (3) copies of each utility's relocation cost estimate, construction plans and contract documents. Such documents may be prepared by the utility owner or a consultant engineer engaged by the utility.

(1) When the relocation will be let to contract with an ultimate award to the lowest qualified bidder, the utility's engineering staff or a consultant engineer engaged by the utility must prepare a construction plan assembly that provides adequate location plans and profiles, structure installation details, technical specifications, and other plans and details appropriate to the type of facility being relocated. One set of reproducible transparencies of these plans and/or acceptable electronic files shall be provided to the Department.

(2) The consultant or utility shall also prepare a written contract which includes the administrative terms of the contract, definition of the scope of the work, clauses for liquidated damages, clauses for labor relations, materials and construction performance specifications, bidding documents with bid unit tabulation sheets, materials quality certifications, special provisions, if any, and other contractual arrangements, usually assembled in the form of a bound book.

(3) Prior to the advertisement and solicitation of bids, the utility owner shall supply the documents specified above and a list of prospective and qualified contractors to whom the utility has provided information concerning the utility relocation project that will be opened for bids. This documentation will be reviewed and approved by the

Department. Prior to the actual solicitation of bids, the Utility must receive the Department's Authority to solicit bids, and an additional written authorization to award the contract after the bid opening. The Department's authorization to award the contract will be based upon the utility owner's written recommendation, stating that the contract is in order, and the amount bid is not excessive for the work to be performed.

**D. Utility Relocation As Part of the Highway Construction Project shall be documented as follows:**

**(1)** If the utility relocation is to be performed as part of the NMSHTD Highway Construction Project by the highway contractor, the utility must provide the Department with complete utility relocation construction plans in acceptable electronic and/or hard copy format, adequate enough to include/merge in the highway construction plan assembly. The utility must also provide complete installation specifications, which must be numbered to adhere to the specification numbering system used by the Department, and unit bid tabulations, for insertion in the highway bid units.

**(2)** Each unit of the bid proposal must be estimated and an overall total obtained so the Department can review the unit cost of each construction item and program the overall utility relocation costs. A contract with a single lump sum bid item, for the total project, is not acceptable to this Department.

**(3)** Close coordination with the Department's Contracts Specifications Section, and/or the Road, Bridge and Traffic Design Sections will be necessary to integrate the utility relocations into the highway construction project. Two (2) copies of all contract and bid documentation and one (1) set of the utility relocation plans in the form of reproducible transparencies and/or electronic file are required.

[11/15/96; Recompiled 12/31/01]

#### **17.4.2.24 UTILITY CONSTRUCTION AUTHORIZATION:**

After review and approval of the utility relocation documents, authorization to proceed with construction shall be provided by the utility owner. The authorization letter, over the signature of the Department's Railroads and Utilities Section Manager, shall detail the specific authorization being provided, i.e., by Force Account, by lowest qualified bidder, by a contractor under a continuing contract, or authorizing the utility to commence utility relocation in accordance with an approved Lump Sum Agreement between the Department and the utility; a Lump Sum Agreement shall not exceed \$100,000.00, unless authorized by the Department or FHWA. On non-reimbursable utility relocations, the Department shall authorize the utility owner to proceed with the relocation by written notice. The coordination between the Department and the utility should be no less than that required for reimbursable utility relocations. All authorizations to relocate shall include an advisory for the utility to coordinate their work with the appropriate District Construction Engineer and other utilities as appropriate. The notice of authorization to proceed with relocation construction to the utility shall also include authorization for the

District Construction Engineer to assign an inspector to ensure compatibility of highway features and utility locations. The Department's Railroad and Utility Section Agent shall send a copy of the notice to the District Construction Engineer. (See Paragraph 24.2 [now Subsection B of 17.4.2.24 NMAC] on Inspection.)

**A. Verbal authorizations:** In urgent or emergency situations, verbal authorizations for the utility construction to commence may be made by the Department. On federal aid projects, concurrence from the FHWA shall be secured and documented by a memo to file prior to authorization. The utility should notify the Railroads and Utilities Section Manager by phone or in writing if the confirmation is not received within ten (10) working days, as undocumented authorizations may preclude reimbursement.

**B. Inspection of utility relocations:** Utility relocation inspection by the Department and/or the FHWA and the utility owner shall be performed during construction as necessary.

(1) A trained technician from the appropriate District shall be assigned to inspect and verify the labor, materials and equipment used by the utility owner or utility contractor performing the utility relocation construction. The Department's assigned inspector shall assist the utility owner or its contractor in determining the planned location of the utility facilities, as taken from the utility relocation plans. However, it is the sole responsibility of the utility owners for the accuracy of utility relocation work, including, but not limited to, surveying and staking performed by its employees or the utility contractor's employees. It is also the sole responsibility of the utility owner to do all necessary inspections to insure the integrity of utility construction, quality of materials being installed, construction methods, testing, and insure that the work is performed in a good and workmanlike manner.

(2) Periodic inspection of utility relocation work shall be made, as necessary, by the Department's assigned Railroads and Utilities Relocation Agent. The Agent shall also assist the utility owner, as necessary, in defining the highway features shown on highway construction and/or right-of-way plans and in resolving problems the utility may encounter during construction. The Agent shall also assist highway project personnel, as necessary, to interpret utility relocation plans, estimates, agreements and any other utility relocation contract documents.

**C. Notification of beginning and completed utility relocation construction:** Once the utility has received authorization from the Department to construct, it shall notify the Department, a minimum of three (3) weeks in advance, of the date it will commence utility relocation construction. Such notification by the utility shall be provided on the Department's Form No. A-369, "Acknowledgment of Authority for Utility Construction." Upon completion of the relocation work, the utility owner shall so notify the Department in writing, of the completion.

**D. Highway-utility preconstruction conferences:** When utility relocation is to be performed concurrent with highway construction, or if the relocation is not completed

when the Department's contractor is scheduled to begin highway construction operations, a Utility Preconstruction Conference, either concurrent with the Department's or immediately following, should be held. The conference shall be called by the Department's Highway Project Manager and all affected utilities shall be invited to attend. The scheduling of the utility's relocation work shall be discussed and a sequence of construction developed to assure completion of utility relocation work as expeditiously as possible, without delay or conflict to the Department's Contractor. Any highway contractor delay claims paid by the Department due to unreasonable utility owner or utility contractor actions or inactions shall be reimbursed to the Department by the utility owner. Any such actions or inactions shall be fully documented by Department personnel so as to substantiate reimbursement claims.

[3/10/71, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.25 BILLING AND AUDIT REQUIREMENTS:**

Payment to utilities shall be made only when the billings conform to State and Federal requirements, and are in sufficient detail so that each element is clear and its cost understood. Billings received prior to the appropriate authorization letter or that are inadequate or inaccurate shall be returned with appropriate correspondence to the utility.

**A.** Billings may be submitted on a progressive basis, but shall only include actual costs incurred; billings shall be identified as "first partial," "second partial," "final," etc. In all cases, billings shall be certified by the utility's auditor or person directly responsible for its accuracy.

**B.** It shall be the responsibility of the utility to ensure that final billings are submitted for payment within ninety (90) days of completion of the utility relocation work. Failure to submit billings within the ninety (90) day period may result in a penalty being assessed against the utility for five hundred dollars (\$500.00) for amounts due the utility of twenty-five thousand dollars (\$25,000.00) or less, and two and one-half percent (2.5%) for amounts due the utility that exceed twenty-five thousand (\$25,000.00).

**C.** Any reimbursable amounts for utility work that remains outstanding (unpaid) for a period of one year from the date of completion of utility relocation work shall be forfeited by the utility. In such a situation, the Department will disencumber the funds previously authorized for reimbursement and such funds may revert to the state road fund.

**D.** When the utility performs reimbursable utility work, all utility records and accounts relating to the specific highway project are subject to audit by representatives of the State of New Mexico and the Federal Government for a period of three (3) years from the date of final payment. It shall also be the Department's prerogative to audit billings prior to reimbursement.

[3/10/71, 11/15/96; Recompiled 12/31/01]

#### **17.4.2.26 RESOLUTION OF DISPUTES:**

Disputes between the Department and utility owners regarding reimbursement eligibility, replacement right-of-way, utility/highway construction operations and other issues may develop. Most disputes are generally resolved at administrative levels, by staff more directly involved in the day to day operations of highway/railroads/utilities functions. Therefore, dispute resolutions shall begin with official notification to the Railroads and Utilities Section Manager. If a dispute is not resolved at the Railroad and Utility Section Manager level, the utility shall submit a request for hearing within thirty (30) days of the Manager's decision. Within a reasonable time, taking into consideration the nature of the dispute, a hearing shall be scheduled by the Department and a hearing officer appointed to conduct the hearing. The hearing officer's decision shall be final and the findings and orders shall be documented and made available to the appropriate parties. Any party aggrieved by any order may appeal to the District Court of Santa Fe County for a review pursuant to NMSA 1978, Section 67-8-19, as amended. A dispute involving eligibility for reimbursement or the amount of such reimbursement shall not be grounds for a delay in making an ordered relocation. The utility must suffer the relocation as ordered, pending the resolution of the dispute.

[11/15/96; Recompiled 12/31/01]

#### **17.4.2.27 WAIVERS FOR THE PUBLIC GOOD:**

The Secretary of the Department, at his/her discretion, may waive any regulation herein, if such waiver will not violate any State Statute or Federal Regulation, and it has been determined to be for the public good. The Secretary shall appoint a three member committee, one member which must be from the Department's Office of General Counsel, to consider the waiver and prepare an appropriate justification.

[11/15/96; Recompiled 12/31/01]

#### **17.4.2.28 RAILROAD COST AND MAINTENANCE RESPONSIBILITY ON HIGHWAY/RAILWAY PROJECTS:**

During the development or maintenance of some highway projects, it shall be necessary to coordinate with and secure approval from railroad companies to resolve conflicts between highway construction features or maintenance activities and railroad property and/or facilities. This Section sets forth railroad eligibility for reimbursement by the Department for costs incurred in resolving such conflicts where construction of a highway project necessitates the use of railroad property or affects railroad facilities. There shall be a written agreement between the State and the railroad company, and such agreements shall meet the requirements of the Federal Aid Policy Guide, Part 646.

**A. Preliminary negotiation:** Preliminary negotiation should be initiated by the Department with the railroad at the location stage, if possible. Upon approval of the location, the railroad shall be provided with information showing a tie to the railroad

center line, railroad mile post or bridge. A proposed highway typical Section shall be supplied, along with a request that the railroad's horizontal and vertical clearances, maintenance road, drainage and other requirements be forwarded to the Department as soon as possible. This information shall then be forwarded to the appropriate Engineering/Design Division Unit, preferably before design of the highway project begins. As soon as preliminary plans showing the railroad requirements are available, they shall be sent to the railroad, along with a letter requesting a field meeting with railroad officials. The negotiations and understandings reached at such meeting shall be documented and reviewed prior to beginning negotiations for a State/Railroad Agreement.

**B. Right-of-way:** Acquisition of right-of-way, other than railroad operating right-of-way, required for highway construction shall be handled as any other acquisition by the Department's Right-of-Way Bureau. When railroad operating right-of-way is required for highway construction purposes, including, but not limited to soil exploration, a right of entry shall be secured by the Department prior to entering railroad property. Such right of entry may be in letter or agreement form and shall be fully executed by the State and railroad. Where soil exploration within railroad property is necessary, it is preferable that Department crews perform such exploration, because of strict insurance and agreement provisions. Because the State is self-insured, it is less cumbersome and time consuming to have State forces perform exploration activities within railroad property.

**C. Negotiations for agreements/authorizations:** Negotiations for a final agreement can be started after the following plans are available for review by the railroad company: (1) the layout structure over or under the tracks if a grade separation is involved, showing a tie to the railroad centerline, minimum clearances, both horizontal and vertical, and provisions for extra tracks, and off track maintenance equipment, if such provisions are required; (2) right-of-way plans showing the crossing area or easements required from the railroad company, together with a description thereof; and (3) highway plans showing grade, drainage and other features that may affect the railroad. The plans shall be developed to a stage where changes by the Department will not require re-engineering by the railroad. If authorization has been received from the FHWA for preliminary engineering, the plans that are applicable shall be sent to the railroad company in quadruplicate, with an explanation of any items that may be obscure to the railroad company. The transmittal letter to the railroad shall include information regarding the letting date for the project, a request for review of the plans transmitted, and comments or approval, and a request for the railroad to prepare their force account estimate. This submittal is the authorization from the Department to the railroad to proceed with their engineering and design.

**D. Processing agreements:** Four (4) copies of the Agreement (two original signatures and 2 stamped originals) shall be submitted for processing, accompanied by a letter to the FHWA requesting an authorization to proceed with construction (include method of construction, i.e., force account, contract, etc.) if provisions for railroad work are part of the Agreement. When the authorization from FHWA is received, the

Department shall authorize the railroad to proceed with the railroad work required, in accordance with the approved agreement, plans, and estimate.

**E. Railroad liability for cost of project:**

**(1) federal aid projects:** The classification of projects and the requisite railroad share the cost on federal aid projects shall conform to the Federal Aid Policy Guide, Part 646.

**(2) state funded projects:** The NMSHTD has determined that railway liability with respect to specific project types shall be as follows:

**(a) grade crossing elimination:** When a project eliminates an existing rail/highway at-grade-crossing, either by grade separation or relocation of the highway or the railway, whether or not railway active warning devices are in place, the project shall be deemed a benefit to the railroad. The assigned railroad liability shall be five percent (5%) of the cost of the project, which costs shall be based on the cost for preliminary engineering, right-of-way and construction costs, including utilities and railroad force account. Where the project does not result in closing an existing at-grade-crossing, railroad participation shall not be required. Railroad participation is limited to the grade separation structure and approaches required to transition to a theoretical highway profile, which would have been constructed if there were no railroad present, for the number of lanes on the existing highway and in accordance with the current design standards of the Department. Responsibility for maintenance of a newly constructed grade separation shall be as follows:

**(i)** Where a separation facility overpasses a railroad, maintenance responsibility for the entire structure and approaches shall be assumed by the Department.

**(ii)** Where a grade separation structure underpasses a railroad, maintenance of the approaches and of the entire structure below, including the deck plate, hand rails and parapets, shall be the responsibility of the Department. Maintenance of the water proofing, ballast, ties, rails and any portion of the supporting structure above the top of the ballast deck plate between parapets shall be the responsibility of the railroad company owning the tracks.

**(iii)** The cost of repairing damage to a structure, occasioned by collision, equipment failure or derailment of railroad equipment shall be borne by the railroad.

**(b) grade crossing protection:** This type includes all projects for protection of highways and railways by automatic signal devices. Authorizations for installation of automatic signal devices are described in the Federal Aid Highway Policy Guide, Part 646; the U.S. Department of Transportation on Railroad-Highway Grade Crossing Handbook, or as otherwise determined by the Department. Flashing light signals shall be installed at all highway projects crossing a railroad, when the highway traffic count



exceeds 100 A.D.T. and there are more than two (2) trains per day at the crossing. When the highway facility consists of more than two (2) lanes, cantilever type signals shall be installed. Automatic flashing light signals with short-arm gates shall be installed if one or more of the following conditions prevail:

**(i)** Multiple mainline railroad tracks.

**(ii)** Multiple tracks at or in the vicinity of the crossing which may be occupied by a train or locomotive so as to obscure the movement of another train approaching the crossing.

**(iii)** High speed train operation combined with limited sight distance at either single or multiple track crossing.

**(iv)** A combination of high speeds and moderately high volumes of highway and railroad traffic.

**(v)** A high volume of vehicular traffic crossing the tracks; a high number of train movements; a substantial numbers of school buses or trucks carrying hazardous materials; unusually restricted sight distance; continuing accident occurrences; or any combination of these conditions.

**(iv)** A diagnostic team recommends them. Motion sensors and predictors shall be installed at locations where they may expedite highway traffic.

**(c)** The New Mexico State Highway Department has determined that at-grade crossing protection falls into four (4) general classifications and conditions, as follows:

**(i)** Where a highway or railway project requires installation of automatic signal

devices at a location which is presently only protected by advance warning signs and standard cross-bucks, the project is deemed to be of no benefit to the railroad company involved. The railroad rehabilitation work which will be required at such crossings, consisting of raising or lowering of track, pavement materials between tracks, including any widened roadway Section, shall be deemed to be of no benefit to the railroad and railroad participation in that portion of the project shall not be required.

**(ii)** Where an existing highway crosses a railroad at-grade and there are presently automatic signal devices in place, and if on account of highway widening, the signals must be relocated and the crossing improved but no new signals required, the project shall be considered to be of no benefit to the railroad and railroad participation shall not be required.

**(iii)** Where an existing highway crosses a railroad at-grade and there are presently automatic signal devices in place, and due to highway widening the signals

must be replaced with cantilever type signals or signals with gates, the project shall be considered to be of no benefit to the railroad; the railroad rehabilitation work required at such crossings; consisting of raising or lowering of track, pavement materials

between tracks, including any widened roadway Section, shall be considered of no benefit to the railroad and railroad participation in that part of the project shall not be required.

**(iv)** Where an existing highway crosses a railroad at-grade and there are presently

automatic signal devices in place, and if on account of highway widening and improvement of the crossing the signal system must be modernized to include cantilever type or signals with gates, and the existing signals are to be relocated to the roadway median, the project shall be considered to be of no benefit to the railroad and railroad participation shall not be required. The railroad rehabilitation work which will be required at such crossing, consisting of raising or lowering of track pavement materials between tracks, including any widened roadway Section, shall be considered to be of no benefit to the railroad, and railroad participation in that part of the project shall not be required. Maintenance of automatic signal devices at the crossing surface and two (2) feet beyond each outside rail including space between multiple tracks under any of the above described conditions, shall become the responsibility of the railroad company involved.

**(d) reconstruction of existing railroad/highway grade separation:** A project to reconstruct an existing overpass or underpass shall include the entire structure and railroad and the highway approaches thereto. Since there is no railway liability for such projects, there shall be no benefit to the railroad and railroad participation shall not be required. Responsibility for maintenance shall be the same as described under I.A. [Subparagraph 3 of Paragraph 3 of Subsection E of 17.4.2.28 NMAC] and I.B. [Subparagraph (b) of Paragraph (3) of Subsection E of 17.4.2.28 NMAC], above.

**(e) existing railroad crossed by new highway:** Where a new highway is constructed which is not a relocation of an existing highway and it intersects an existing railroad, the construction of a separation structure or the installation of a signal device at such crossing will not be considered a benefit to the railroad and railroad participation shall not be required. Responsibility for maintenance shall be the same as described under I.A. [Subparagraph (a) of Paragraph (3) of Subsection E of 17.4.2.28 NMAC], I.B. [Subparagraph (b) of Paragraph (3) of Subsection E of 17.4.2.28 NMAC], and II.D (fourth classification) [Subparagraph (b) of Paragraph (2) of Subsection E of 17.4.2.28 NMAC], aforementioned.

**(f) Existing highway crossed by a new railroad:** Where a new railroad crosses an existing

highway, the required separation or signal devices and any pavement work at the crossing shall not be considered to be of benefit to the road user and 100% railroad participation shall be required. The determination as to separation or type of protection shall be according to the policy existing on the classification and traffic volume of the highway crossed and the relative traffic hazard. In the event exceptional situations arise and expansion of these regulations are necessary to cover the situation, the provisions of Federal Aid Policy Guide, Part 646, the U.S. Department of Transportation Grade Crossing Handbook, and other relevant data and/or conditions shall be considered; however, the decision of the Department shall be final.

**F. Railroad Section 130 safety funds:** On highway projects where railroad facilities are being impacted by highway construction, Section 130 funds shall not be used as a funding source unless the specific location of the rail/high facilities has been identified and included in an approved safety program by the State and FHWA. Exceptions may be projects where federal regulations that allow transfer of such funds have been considered and appropriate steps taken by the State and FHWA to allow their use. In all cases where railroad facilities are involved, early coordination between the Preliminary Engineering Bureau and the Railroads & Utilities Section shall be pursued so as to identify potential options for addressing conflicts and circumventing project delays.

[3/10/71, 11/15/96; Recompiled 12/31/01]

## **CHAPTER 5: UTILITY INTERCONNECTIVITY AND COOPERATIVE AGREEMENTS**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2-409: [RESERVED]**

### **PART 410: RESIDENTIAL CUSTOMER SERVICE BY GAS, ELECTRIC AND RURAL ELECTRIC COOPERATIVE UTILITIES**

#### **17.5.410.1 ISSUING AGENCY:**

Public Regulation Commission.

[17.5.410.1 NMAC - Rp, 17.5.410.1 NMAC, 7-1-11]

#### **17.5.410.2 SCOPE:**

**A.** This rule applies to electric, rural electric cooperative and gas utilities subject to the jurisdiction of the New Mexico public regulation commission.

**B.** In case of conflict between provisions of this rule and 17.9.560 NMAC or 17.10.650 NMAC, the provisions of this rule control.

[17.5.410.2 NMAC - Rp, 17.5.410.2 NMAC, 7-1-11]

**17.5.410.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 8-8-4, 8-8-15, 27-6-17, 27-6-18.1, 62-6-4A, 62-6-19 through 62-6-21, 62-8-3 and 62-8-10.

[17.5.410.3 NMAC - Rp, 17.5.410.3 NMAC, 7-1-11]

**17.5.410.4 DURATION:**

Permanent.

[17.5.410.4 NMAC - Rp, 17.5.410.4 NMAC, 7-1-11]

**17.5.410.5 EFFECTIVE DATE:**

July 1, 2011, unless a later date is cited at the end of a section.

[17.5.410.5 NMAC - Rp, 17.5.410.5 NMAC, 7-1-11]

**17.5.410.6 OBJECTIVE:**

The purpose of this rule is to establish uniform standards to be followed by electric, gas, and rural electric cooperative utilities in dealing with residential customers, to aid residential customers in obtaining and maintaining essential utility services, to promote safe and adequate service to residential customers, and to establish a basis for determining the reasonableness of such demands as may be made upon utilities by residential customers.

[17.5.410.6 NMAC - Rp, 17.5.410.6 NMAC, 7-1-11]

**17.5.410.7 DEFINITIONS:**

In addition to the definitions contained in NMSA 1978, Section 62-3-3, as used in this rule, unless otherwise specified:

**A. administering authority** means the human services department or a tribal or pueblo entity that administers a tribe's or pueblo's low-income home energy assistance program under NMSA 1978, Section 27-6-18.1;

**B. automatic adjustment clause** means the adjustment procedure approved by the commission to recognize variations in the cost of fuel for electric generation, cost of

purchased power, cost of purchased gas, or for any other cost factor approved by the commission;

**C. billing period** means a utility service usage period in accordance with applicable tariff schedules;

**D. chronically delinquent** means the status of a residential customer who during the prior twelve (12) months has been disconnected by that utility for nonpayment or who on three (3) or more occasions during the prior twelve months has not paid a bill by the date a subsequent bill is rendered;

**E. cycle billing** means a system employed by a utility which results in the rendition of bills for utility service to various residential customers on different days but on or about the same day of each billing period;

**F. delinquent** means the status of a bill rendered to a residential customer for utility service which remains unpaid after the due date of the bill;

**G. discontinuance of service** means an intentional cessation of service by a utility not voluntarily requested by a residential customer;

**H. estimated bill** means a bill for utility service which is not based on an actual reading of the residential customer's meter or other measuring device for the period billed;

**I. heating season** means the period beginning November 15 and continuing through March 15 of the subsequent year;

**J. HSD** means the New Mexico human services department;

**K. installment agreement** means an arrangement by a utility customer pursuant to 17.5.410.40 NMAC to make a series of payments of past due utility charges scheduled over a period greater than forty-five (45) days, and may be referred to as "payment plan" in customer notices;

**L. LIHEAP** means the low-income home energy assistance program administered by HSD or a tribal or pueblo entity that administers a tribe's or pueblo's low-income home energy assistance program under NMSA 1978, Section 27-6-18.1;

**M. line extension** means that part of a utility's system for the delivery of gas or electric utility service which extends and connects the utility's existing system to a residential customer, exclusive of yard lines or service drops;

**N. medical professional** means a licensed physician, physician's assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner;

**O. nonheating season** means the period beginning March 16 and continuing through November 14 of the same year;

**P. rendition of a bill** means the date of mailing or personal delivery of a bill by a utility;

**Q. residential customer** means any person being supplied with and legally liable for the payment of an electric or gas utility service for that person's household or domestic uses;

**R. residential service** means the provision of or use of electricity or gas for household or domestic purposes;

**S. seriously or chronically ill** means an illness or injury that results in a medical professional's determination that the loss of utility service would give rise to a substantial risk of death or would gravely impair health;

**T. settlement agreement** means an agreement between a utility and a residential customer establishing terms and conditions for resolving a dispute;

**U. special service** means a service provided to a residential customer by a utility which is not subject to a tariff schedule;

**V. specific date** means an exact date, or a period of no more than five (5) business days beginning with an exact date. The date specified on the most recent bill or notice as the date by which past due amounts must be paid to avoid discontinuance of service constitutes a specific date for purposes of this rule;

**W. utility charges** means the billing or charges for the provision of utility service and other charges authorized by the commission pursuant to approved tariffs.

[17.5.410.7 NMAC - Rp, 17.5.410.7 NMAC, 7-1-11]

#### **17.5.410.8 APPLICATION:**

**A.** A utility shall not unreasonably discriminate against any residential customer. Neither shall a utility discriminate against or penalize a residential customer for exercising any right granted by 17.5.410 NMAC, nor shall any provision herein be construed to relieve any residential customer from liability for proper utility charges.

**B.** A utility may adopt such reasonable rules governing its relations with residential customers as are necessary and which are not inconsistent with 17.5.410 NMAC and as prescribed in 17.1.210 NMAC.

**C.** Unless otherwise specified a utility shall not be required to file new tariffs pursuant to 17.5.410 NMAC. To the extent that existing tariffs are inconsistent with

17.5.410 NMAC, such tariffs are deemed to be superseded by the requirements of 17.5.410 NMAC and all provisions of 17.5.410 NMAC are deemed to apply to all utilities as though set forth in applicable tariffs unless the differences between the tariffs and 17.5.410 NMAC are permitted pursuant to an exemption or variance requested under 17.5.410.9 NMAC and granted by the commission.

[17.5.410.8 NMAC - Rp, 17.5.410.8 NMAC, 7-1-11]

#### **17.5.410.9 EXEMPTION AND VARIANCE:**

**A. Exemption.** If unreasonable hardship with no reasonable alternative to a utility or to a residential customer results from the application of any provision of 17.5.410 NMAC, application may be made to the commission for temporary or permanent exemption from its requirements.

**B. Variances.** A utility may file a written application with the commission seeking a variance from all or part of 17.5.410 NMAC for good cause shown, except that no variances shall be allowed from the provisions of 17.5.410.30 NMAC. Each variance request shall include an explanation for the requested variance together with an alternate proposal designed to achieve the purpose of the rule to be waived and to be implemented for application to the condition(s) requiring the variance.

**C. Stay pending application for exemption or variance.** An application for an exemption or a variance shall stay the application of 17.5.410 NMAC to the utility applying for the exemption or variance as it relates to the matter on which an exemption or a variance is sought for a period of twenty (20) days. Within that time frame the commission may for good cause shown extend the period of the stay.

**D. Notice of application for exemption or variance.** A utility filing an application for an exemption or a variance with the commission shall contemporaneously with such filing mail copies of such application by first class mail to the attorney general, and the intervenors in the utility's most recent rate case.

**E. Exemption or variance hearings.** The commission may schedule a hearing on any proposed exemption or variance.

[17.5.410.9 NMAC - Rp, 17.5.410.9 NMAC, 7-1-11]

#### **17.5.410.10 RENDITION OF BILLS:**

**A.** A utility shall render a bill to every residential customer for each billing period in accordance with applicable tariffs and the requirements and options of 17.5.410 NMAC.

**B.** A utility may either bill all of its residential customers on the same day of each billing period or bill its residential customers on a billing cycle. If a utility significantly

alters a billing cycle, notice shall promptly be given to the affected residential customer(s).

**C.** When billing for concurrent service at a residence the usage and charge attributable to each such service shall be clearly set forth on the bill. Utility service to multiple locations billed to a single residential customer shall be stated separately for each location.

**D.** Upon approval of an experimental rate by the commission a utility shall give full written disclosure of such rate to the affected residential customer prior to implementing such rate, and the utility shall advise its residential customers of the financial impact of such rate based on typical patterns of usage.

[17.5.410.10 NMAC - Rp, 17.5.410.10 NMAC, 7-1-11]

#### **17.5.410.11 BUDGET PAYMENT PLANS:**

A utility shall offer a budget payment plan to its residential customers. Such plans must be approved by the commission and must contain the following provisions at a minimum.

**A.** The budget payment plan shall provide the residential customer with a method of levelizing the bill for utility service. It shall be designed to avoid the accumulation of an unpaid balance which will be burdensome to pay in a single payment.

**B.** The budget payment plan shall be available to any residential customer who is then either current in payments for utility service or who has entered into and is complying with a settlement agreement or an installment agreement at any time during the year, without regard to the residential customer's length of service with the utility. Should a chronically delinquent residential customer fail to pay the amount specified in the budget payment plan, the utility may remove that residential customer from the plan and withhold the plan from that residential customer for up to twelve (12) succeeding months. A utility may also petition the commission for an order permitting it to offer its budget payment plan at specified times only or for less than a prospective twelve (12) month period upon a showing by the utility that offering such a plan at and for times specified in 17.5.410 NMAC will result in an undue financial burden to the utility.

**C.** In determining one (1) year's budget payment plan the computation shall be specific to each residential customer. If the residential customer has been served by the utility at the same location for the previous year, the budgeted payment should be based on the residential customer's actual use for the previous year and may be adjusted for known price changes, bill averages and normalized weather conditions. If the residential customer has not been served by the utility during the previous year at that location, the budgeted payment should be based on the actual use at that location for the previous year and may be adjusted for known price changes, bill averages and



normalized weather conditions, as applied to the residential class of customers or similar residences.

**D.** The specific methodology of the plan shall be approved by the commission and shall be nondiscriminatory.

[17.5.410.11 NMAC - Rp, 17.5.410.11 NMAC, 7-1-11]

#### **17.5.410.12 CONTENTS OF BILLS:**

Bills for utility service shall include:

**A.** the beginning and ending meter reading dates or the number of days in the billing cycle and the date of the ending meter reading;

**B.** clear and conspicuous language identifying the bill as an estimated bill, if the bill has been estimated;

**C.** the number and kind of units metered;

**D.** any conversions from meter reading units to billing units;

**E.** any multiplier constants used to determine billing;

**F.** the date the bill is due;

**G.** any previous balance;

**H.** an identification of the applicable rate tariff;

**I.** the amount due for electric or gas usage;

**J.** the amount due for special services;

**K.** the total amount due;

**L.** gross receipts taxes and any other taxes or fees, if not a part of the base rate;

**M.** the automatic adjustment clauses approved by the commission in total and in cost per unit basis, as applicable;

**N.** contact information of the utility designating where the residential customer may initiate an inquiry or complaint regarding the bill as rendered or the service provided;

**O.** if the residential customer is on a budget payment plan, a statement of:

- (1) the actual charges for service incurred for the current billing period;
- (2) the budgeted amount due; and
- (3) the actual balance of total services rendered.

[17.5.410.12 NMAC - Rp, 17.5.410.12 NMAC, 7-1-11]

#### **17.5.410.13 PAYMENT STANDARDS:**

**A.** A residential customer shall be given at least twenty (20) calendar days from the date of rendition of a bill for payment in full before the bill is deemed delinquent.

**B.** A residential customer shall be given at least fifteen (15) calendar days from the date the bill is deemed delinquent before a utility may disconnect utility service, pursuant to the requirements of 17.5.410.31 through 17.5.410.35 NMAC.

**C.** If the last day for payment of a bill falls on a Saturday, Sunday, legal holiday, or other day when the offices of the utility which regularly receive payments are not open to the general public, the due date shall be extended to the next business day.

**D.** Receipt by a utility of a payment at the utility's address shall be deemed received by the utility on that date. If payment is made on the utility's website or at a third-party payment location authorized by the utility, the payment shall be deemed received within two business days of the payment date. If payment is made through any other third-party payment process, the date of payment shall be the date the payment is received by the utility from the third party. If the residential customer making payment has received a disconnect notice and provides verification of the payment to the utility prior to disconnection, the utility shall stop disconnection activities and shall not disconnect the residential customer without providing a subsequent final notice.

**E.** Any monies received by a utility from a residential customer in excess of the amount of a bill owing shall be credited immediately. Any monies received by a utility from a residential customer that exceed the amount billed by twenty five-dollars (\$25) or more shall be refunded upon request.

[17.5.410.13 NMAC - Rp, 17.5.410.13 NMAC, 7-1-11]

#### **17.5.410.14 FINANCE, SERVICE, CARRYING, PENALTY AND SPECIAL SERVICE CHARGES:**

**A.** Unless otherwise approved by the commission a utility shall not assess a finance, service, carrying, or penalty charge to a residential customer for the reason that any utility service balance due and owing upon the bill remains outstanding beyond the period of time established for payment.

**B.** A utility shall not impose on residential customers a late fee for unpaid amounts due for utility service that is greater than eight percent (8%) on an annual basis.

**C.** A utility may include charges for special services together with utility charges on the same bill if the charges for special services are designated clearly and separately from utility charges. If partial payment is made the utility shall first credit such payment to any arrearage for utility charges.

**D.** A charge for connection or reconnection may not exceed the actual cost involved but shall be no less than the minimum allowed in applicable tariffs.

[17.5.410.14 NMAC - Rp, 17.5.410.14 NMAC, 7-1-11]

#### **17.5.410.15 ESTIMATED BILLS:**

**A.** A utility may render a bill based on estimated usage to a seasonally billed residential customer if an appropriate tariff is on file with the commission and an actual reading is obtained before each change in the seasonal cycle.

**B.** A utility may render a bill based on estimated usage to a residential customer other than a seasonally billed residential customer if the utility through no fault of its own is unable to obtain access to the residential customer's premises for the purpose of reading the meter or in situations where the residential customer makes reading the meter unnecessarily difficult; a meter is defective or has been evidently tampered with or bypassed; or weather conditions prohibit meter readings or where other force majeure conditions exist. If the utility is unable to obtain an actual meter reading for these reasons it shall attempt to contact the residential customer to obtain access to the premises, or it shall undertake reasonably practical alternatives to obtain a meter reading.

**C.** Notwithstanding the provisions of Subsection B of 17.5.410.15 NMAC, a utility may not render a bill based on estimated usage for more than two (2) consecutive billing periods without prior notification to the commission, nor for an initial or final bill for service, unless otherwise agreed to by the residential customer and the utility.

**D.** The estimating procedures employed by the utility must be contained in a tariff on file with the commission.

**E.** The utility must, for no less than twelve (12) months, maintain accurate records of the reasons for each estimate and the efforts made to secure an actual reading.

**F.** If a utility underestimates a residential customer's usage and subsequently seeks to correct the bill, the residential customer shall be given an opportunity to participate in an installment agreement with regard to the underestimated amount.

**G.** Upon request, a utility shall explain to any residential customer how to read and report electric or gas usage. Upon an agreement between a residential customer and a utility, a residential customer may read and report the electric or gas usage as long as such usage is reported on a regular and accurate basis. The utility shall provide a reasonable means for the residential customer to report meter readings. In such a case, at least annually, a utility shall obtain an actual meter reading of residential customer usage in order to verify the accuracy of readings reported in this manner. 17.5.410 NMAC shall not prevent a utility from reading meters on a regular basis.

**H.** A utility's tariff may provide for a residential customer to read and report the electric or gas usage on a regular and accurate basis.

**I.** Notwithstanding Subsections B, C and H of 17.5.410.15 NMAC, a utility may estimate a billing in the event that a residential customer fails to timely and accurately report the self-reading.

[17.5.410.15 NMAC - Rp, 17.5.410.15 NMAC, 7-1-11]

#### **17.5.410.16 RESIDENTIAL SECURITY DEPOSITS OR GUARANTEES:**

**A.** A utility may not require a security deposit or other guarantee of payment as a condition of new or continued service to a residential customer except in the case of service:

**(1)** to a residential customer who has not previously had utility service with the utility and who has not established an acceptable credit rating;

**(2)** to a residential customer who has on three or more occasions, within a 12-month period, received a final notice;

**(3)** as a condition for reconnection of service following discontinuance of service by the utility; and

**(4)** to a residential customer who in an unauthorized manner has interfered with or diverted the service of the utility situated on or about or delivered to the residential customer's premises.

**B.** If a residential customer or prospective residential customer can demonstrate to the utility that the residential customer does not have adequate financial resources to pay the security deposit and the residential customer meets the qualifications of LIHEAP, or is subject to other special circumstances, the utility shall give special consideration to such a residential customer in determining whether or in what amount a security deposit will be charged or if payment by an installment agreement is appropriate. In making such determination, a utility shall accept documentation from the administering authority that such residential or prospective residential customer meets the qualifications of LIHEAP.

[17.5.410.16 NMAC - Rp, 17.5.410.16 NMAC, 7-1-11; A, 3-29-13]

**17.5.410.17 METHODS TO ESTABLISH ACCEPTABLE CREDIT RATING:**

**A.** In determining whether a residential customer who has not previously had utility service with the utility has an acceptable credit rating, a utility shall consider the following:

- (1) documentation that the residential customer owns or is purchasing the residence served;
- (2) documentation that the residential customer has an adequate income;
- (3) documentation that the residential customer has an adequate credit reference from a utility where the residential customer had prior utility service;
- (4) documentation obtained by the utility from a commercial credit source; or
- (5) any other reasonable documentation.

**B.** If a prospective residential customer cannot establish an acceptable credit rating but previously received utility service under the name of a spouse, the utility may consider prior utility service to that spouse in determining whether and in what amount a security deposit will be charged.

[17.5.410.17 NMAC - Rp, 17.5.410.17 NMAC, 7-1-11]

**17.5.410.18 AMOUNTS OF AND ACCOUNTING FOR SECURITY DEPOSITS:**

Any deposit policy shall be as set forth in the utility's tariff on file with the commission pursuant to 17.1.210 NMAC, but shall conform to the following provisions.

**A.** A deposit for a residential customer shall not exceed an amount equivalent to one sixth (1/6) of that residential customer's estimated annual billings. A utility shall base its billing estimates for purposes of calculating a deposit upon the most recent available prior 12-month corresponding period at the same service location; or, if there is not a comparable period of service at the same service location, the deposit shall be based upon consumption of similar units in the same area.

**B.** Simple interest on deposits at a rate not less than the rate required by law shall accrue annually to the residential customer's credit for the time the deposit is held by the utility. The deposit shall cease to draw interest on the date it is returned, on the date service is terminated, or on the date the refund is sent to the residential customer's last known address.

**C.** Each residential customer who posts a security deposit shall receive in writing at the time of tender of deposit or with the first bill a receipt as evidence thereof. The receipt shall contain the following minimum information:

- (1) name of residential customer;
- (2) date of payment;
- (3) amount of payment; and
- (4) statement of the terms and conditions governing the payment, retention, interest, and return of deposits.

**D.** A utility shall provide means whereby a residential customer entitled to a return of deposit is not deprived of the deposit refund even though the residential customer may be unable to produce the original receipt for the deposit, provided the residential customer can produce adequate identification to insure that the residential customer is entitled to a refund of the deposit.

[17.5.410.18 NMAC - Rp, 17.5.410.18 NMAC, 7-1-11; A, 3-29-13]

#### **17.5.410.19 REFUND OF DEPOSITS, TERMINATION OF GUARANTEES:**

**A.** Any residential customer who has not been chronically delinquent for the twelve-month period from the date of deposit or guarantee shall promptly receive a credit or refund in the amount of the deposit together with accrued interest due or shall be permitted to terminate any guarantee. If the amount of the deposit exceeds the amount of the current bill, the residential customer may request a refund in the amount of the excess if such excess exceeds twenty five dollars (\$25). If the residential customer fails to qualify for a refund of the deposit on the first anniversary date of the deposit, that account shall be reviewed at least annually, and the amount of the deposit shall be credited if the residential customer has not been chronically delinquent during the preceding twelve (12) months. A residential customer may request a refund at any time after twelve (12) months payment history, which refund shall promptly be paid if the residential customer has not been chronically delinquent during the prior twelve-month (12) period, or a utility may pay such refund in the absence of a request within a reasonable period of time.

**B.** Unclaimed deposits shall be handled as provided by law.

[17.5.410.19 NMAC - Rp, 17.5.410.19 NMAC, 7-1-11]

#### **17.5.410.20 RECORD OF DEPOSITS:**

A utility shall keep records of deposits and issue receipts of deposits in accordance with the requirements of Paragraphs (5), (7), (8) and (9) of Subsection B of 17.9.560.12 NMAC and Paragraphs (5), (7), (8) and (9) of Subsection B of 17.10.650.11 NMAC.

[17.5.410.20 NMAC - Rp, 17.5.410.20 NMAC, 7-1-11; A, 3-29-13]

#### **17.5.410.21 INTERNAL UTILITY COMPLAINT PROCEDURES:**

A utility shall establish internal procedures pursuant to 17.1.210 NMAC for the prompt, efficient, and thorough receipt, investigation, and, where possible, resolution of all residential customer inquiries, disputes, service requests, and complaints regarding residential utility service and charges. Such internal procedures shall provide that:

**A.** a utility shall be prepared at all times during normal business hours to receive all residential customer inquiries, disputes, service requests, and complaints;

**B.** a utility shall have qualified personnel available and prepared to respond to all residential customer inquiries, disputes, service requests, and complaints at all reasonable times during normal business hours;

**C.** a utility shall make reasonable arrangements for residential customers unable to communicate in the English language to receive assistance;

**D.** a utility shall provide qualified and authorized utility personnel at reasonable times during normal business hours to negotiate settlement agreements and installment agreements on behalf of the utility; and

**E.** a utility shall provide qualified personnel or other reasonable means at all times to receive and initiate responses to customer contacts regarding any emergency condition involving utility services.

[17.5.410.21 NMAC - Rp, 17.5.410.21 NMAC, 7-1-11]

#### **17.5.410.22 TESTING OF UTILITY METERS:**

A residential customer may request the testing of a utility meter pursuant to Subsection A of 17.9.560.14 NMAC and Paragraph (4) of Subsection A of 17.10.650.13 NMAC or NMSA 1978, Section 62-6-22.

[17.5.410.22 NMAC - Rp, 17.5.410.22 NMAC, 7-1-11]

#### **17.5.410.23 PUBLIC NOTICE OF RESIDENTIAL CUSTOMER RIGHTS:**

The utility shall prepare in both Spanish and English information subject to commission approval which in layman's terms summarizes the rights and responsibilities of the utility and its residential customers in accordance with 17.5.410 NMAC. This information shall

be displayed prominently by the utility and shall be available to the general public. The utility shall advise new residential customers of the availability of such information upon commencement of utility service and shall advise its existing residential customers of such availability on an annual basis. The information shall state that it is being provided in accordance with 17.5.410 NMAC and shall contain information concerning, but not limited to:

- A.** billing procedures, including estimated billing, budget payment plans, installment agreements, and third-party notification programs;
- B.** methods for residential customer verification of billing accuracy;
- C.** a description of the operation of applicable rate tariffs, automatic adjustment clauses, and cost of service indexing;
- D.** residential customer payment requirements and procedures;
- E.** security deposit and guarantee requirements;
- F.** special consideration in determining deposits and installment agreements for residential and prospective residential customers who meet the qualifications of LIHEAP;
- G.** procedures relating to discontinuance and reconnection of service;
- H.** the utility's inquiry, dispute, service request, and complaint procedures;
- I.** an explanation of meter reading procedures which would enable a residential customer to read his or her own meter;
- J.** a procedure whereby a residential customer may avoid discontinuance of service during an extended period of absence;
- K.** procedures for filing a complaint with the commission;
- L.** the utility's policy concerning discontinuance of service to those whose lives or health may be endangered by discontinuance;
- M.** the names and addresses of state and local governmental agencies which have programs available to assist eligible persons with payment of their utility bills;
- N.** winter moratorium protection; and
- O.** a statement that members of New Mexico tribes or pueblos who need help with translation or with other matters may contact the director of the commission's consumer



relations division at (888) 427-5772, who will contact the appropriate tribal or pueblo official for assistance.

[17.5.410.23 NMAC - Rp, 17.5.410.23 NMAC, 7-1-11]

#### **17.5.410.24 NOTICE, AVAILABILITY AND PUBLIC ACCESS TO SCHEDULES:**

**A.** A utility shall keep on file and provide public access to a copy of 17.5.410 NMAC and its current applicable residential rates, rules, and regulations and shall maintain up-to-date maps, plans, or records of its entire transmission and distribution systems with such other information as may be necessary to enable the utility to advise prospective residential customers as to facilities for serving any locality. Suitable signs shall be posted conspicuously in public areas at utility offices calling to the public's attention that this information is available for inspection.

**B.** Unless otherwise directed by the commission a utility shall notify its affected residential customers of any change in its tariffs which have been suspended by the commission.

[17.5.410.24 NMAC - Rp, 17.5.410.24 NMAC, 7-1-11]

#### **17.5.410.25 ASSISTANCE TO CUSTOMERS:**

**A.** The utility shall assist the residential customer or prospective residential customer in selecting an appropriate rate tariff and furnish such additional information concerning that tariff as the residential customer may reasonably request.

**B.** A utility shall maintain residential customer records which contain details of all bills and correspondence sent to or received from the residential customer and evidence of all payments, deposits, guarantees, or other monies received from the residential customer.

**C.** Copies of residential customer records shall be furnished to that residential customer upon request.

**D.** Copies of a residential customer's records relevant to a matter in dispute, or for good cause shown, shall be furnished to any person authorized in writing by the residential customer to receive such records.

**E.** The utility shall correct any nondisputed mistakes in a residential customer's payment history that are brought to its attention.

**F.** A utility shall maintain records which contain the number of:

**(1)** disputes that require further action by the utility beyond the initial contact related to billing and services;

- (2) settlement agreements made by the utility;
- (3) discontinuance of service notices sent to residential customers;
- (4) discontinuances of service and the number of reconnections for non-payment;
- (5) security deposits collected, number credited or refunded, number of guarantees received and number terminated;
- (6) residential customers with installment agreements;
- (7) residential customers with budget payment plans;
- (8) estimated bills;
- (9) medical certifications received before and after discontinuance of service pursuant to 17.5.410 NMAC;
- (10) times beyond twelve (12) hours after receipt of a medical certification before each reconnection of service was accomplished; and
- (11) residential customers within whose households resides a disabled, elderly, or other person who may suffer injury or death if utility service is discontinued to the extent that the utility has actual knowledge of the conditions.

**G.** The above-enumerated records shall be kept for the period of time required by 17.9.560 NMAC and 17.10.650 NMAC, or if not so required for at least three (3) years.

[17.5.410.25 NMAC - Rp, 17.5.410.25 NMAC, 7-1-11]

#### **17.5.410.26 REPORTS TO COMMISSION:**

Upon commission request the utility shall provide information required by Subsection F of 17.5.410.25 NMAC to the commission within ten (10) business days or other time period agreed to by the commission.

[17.5.410.26 NMAC - Rp, 17.5.410.26 NMAC, 7-1-11]

#### **17.5.410.27 LINE EXTENSIONS:**

Upon a residential customer's request for a line extension a utility shall:

**A.** provide the residential customer with a copy of the utility's line extension policy and explain the content of such policy;

**B.** establish a reasonable time not exceeding thirty (30) days after the residential customer has complied with all reasonable utility requirements for the delivery to the residential customer of the utility's estimate for the line extension;

**C.** complete construction of the line extension within sixty (60) days after the residential customer signs the utility's line extension agreement and after the utility has secured all applicable permits, rights-of-way, materials, and labor necessary for the line extension, and the utility has completed all other applicable contractual obligations; a utility shall be required to exercise due diligence and good faith in its efforts to obtain such permits, rights-of-way, materials, labor, and contractual compliance; however, the utility shall not be required to complete construction of the line extension within this time frame where *force majeure* or hazardous conditions exist;

**D.** advise the residential customer that if the residential customer is not satisfied with the line extension proposal of the utility including cost and time of construction, an informal review of the proposal may be provided by utility personnel located in the service area of the residential customer and authorized to conduct such reviews; such personnel shall be in a position to modify such proposal, where appropriate;

**E.** inform the residential customer in writing of how the residential customer's options concerning the type of installation of a line extension will affect utility charges based on present rates or rates which are the subject of a pending case concerning rates; at a minimum comparisons of average annual utility charges for that residential customer shall be provided.

[17.5.410.27 NMAC - Rp, 17.5.410.27 NMAC, 7-1-11]

#### **17.5.410.28 COST OF LINE EXTENSION:**

The amount charged to the residential customer for a line extension shall be based on the estimated total cost to the utility and shall be clearly stated in the written line extension agreement entered into between the utility and the residential customer. The method for collecting the amount charged to the residential customer shall be outlined in applicable tariffs filed with the commission.

[17.5.410.28 NMAC - Rp, 17.5.410.28 NMAC, 7-1-11]

#### **17.5.410.29 NOTICE OF AVAILABILITY OF ENERGY ASSISTANCE AND WINTER MORATORIUM PROTECTION:**

Utilities shall make available to the public information regarding:

**A.** LIHEAP application forms, qualification requirements, application procedures, and locations at which residential customers may submit LIHEAP applications; and

**B.** winter moratorium protection against discontinued and disconnected service for residential customers who meet the qualifications of LIHEAP, including an explanation of payment options and circumstances under which services may be disconnected or discontinued.

**C. Required notice.**

**(1) Required notice prior to heating season.** Beginning with the August billing cycle and prior to the next heating season, all public natural gas and electric utilities subject to the terms of the winter heating season disconnection moratorium law shall communicate in writing to all residential customers at least two times the following statement on either a bill, in a bill insert or through a direct mailing:

**(a)** "Protection from winter shut-off begins November 15, (year). To avoid potential disconnection of services please contact the human services department at 800-283-4465, or the appropriate tribal or pueblo entity for eligibility information for low income heating energy assistance program (LIHEAP). Your service will not be disconnected from November 15, (year), through March 15, (year), if you meet the qualifications of LIHEAP and have no past due amounts or you remain current on any settlement or installment agreement for amounts due as of November 15, (year). Members of New Mexico tribes or pueblos who need help with translation or with other matters may contact the commission's consumer relations division at (888) 427-5772, who will contact the appropriate tribal or pueblo official for assistance."

**(b)** Where it is technically feasible, the foregoing notice language shall be written in both English and Spanish. If not feasible the following statement shall be included "Para informacion en espanol llame (phone no.)."

**(2) Required notice of end of moratorium protection.** Beginning with the February billing cycle all public natural gas and electric utilities subject to the terms of the winter heating season disconnection moratorium law shall communicate in writing to all residential customers at least one time the following statement on either a bill, in a bill insert or through a direct mailing:

**(a)** "Protection from winter shut-off ends March 15, (year). To avoid potential disconnection of services please contact (utility name) (phone number) to make arrangements for payment. Members of New Mexico tribes or pueblos who need help with translation or with other matters may contact the commission's consumer relations division at (888) 427-5772, who will contact the appropriate tribal or pueblo official for assistance."

**(b)** Where it is technically feasible, the foregoing notice language shall be written in both English and Spanish. If not feasible the following statement shall be included "Para informacion en espanol llame (phone no.)."

**(3) 15-day notice of discontinuance of service.** All natural gas and electric utilities subject to the terms of the winter heating season disconnection moratorium law shall include the following statements in both English and Spanish in all 15-day disconnect notices issued pursuant to this rule during the heating season:

**(a)** "15-day disconnect notice for services;"

**(b)** "Your service will not be disconnected from November 15, (year), through March 15, (year), if you meet the qualifications of the low income home energy assistance program (LIHEAP) and have no past due amounts, or you remain current on any settlement or installment agreement for amounts due as of November 15, (year). For information call New Mexico human services department at 1-800-283-4465, or the tribal or pueblo entity that administers a tribe's or pueblo's LIHEAP."

[17.5.410.29 NMAC - N, 7-1-11]

### **17.5.410.30 WINTER MORATORIUM PROTECTIONS:**

**A.** Unless requested by the residential customer, no utility shall discontinue or disconnect service to a residential customer during heating season for nonpayment of the residential customer's utility bill if the utility receives notice that the residential customer meets the qualifications of LIHEAP as determined by the administering authority for the current heating season and:

**(1)** the residential customer has no past due charges on November 15 of the current heating season; or

**(2)** the residential customer has a settlement agreement or an installment agreement with the utility for amounts other than those owing from the prior heating season, and the residential customer continues to make the agreed-upon payments under the settlement or installment agreement.

**B.** At any time during the current heating season, a residential customer may become eligible for winter moratorium protection from discontinuance or disconnection of service if a notice issued by the administering authority is provided to the utility that the customer meets the qualifications of LIHEAP and the residential customer either pays the amount due as of November 15 or enters into a settlement or installment agreement for such past-due amounts and continues to make the agreed-upon payments under the settlement or installment agreement.

**C.** Any residential customer that has had services disconnected or discontinued during the current winter heating season for whom the utility receives, subsequent to the disconnection or discontinuance of service, a proof of qualification issued by the administering authority and has met the payment requirements of Subsection A of 17.5.410.30 NMAC, shall have service reconnected as soon as reasonable but not later

than the next working day if otherwise qualified for protection. Immediate payment of a reconnection fee, if any, shall not be a prerequisite to such reconnection.

**D.** The utility shall make installment agreement options available to any residential customer that has an unpaid bill pursuant to the regulations of the commission.

**E.** A residential customer who has defaulted on the residential customer's chosen installment agreement and whose utility service has been discontinued or disconnected during the non-heating season shall be reconnected and maintain the protection afforded by this section by paying reconnection charges if any, and by paying the amount due pursuant to the installment agreement by the date on which service is reconnected.

**F.** If a residential customer notifies the utility that the residential customer needs payment assistance and requests that the utility report the residential customer's need to the administering authority, the utility shall promptly report the request for assistance to the administering authority, provided that the administering authority called is willing to act on calls made by utilities on behalf of customers.

[17.5.410.30 NMAC - N, 7-1-11]

#### **17.5.410.31 DISCONTINUANCE OF SERVICE:**

**A.** A utility may discontinue service to a residential customer without prior notice in the event of:

- (1)** a condition determined by the utility to be hazardous;
- (2)** residential customer use of equipment in such manner as to adversely affect the utility's equipment or the utility's service to others;
- (3)** residential customer's tampering with, damaging, or deliberately destroying the equipment furnished and owned by the utility; or
- (4)** unauthorized use of service provided by the utility.

**B.** A utility may discontinue service to a residential customer for:

- (1)** nonpayment of a delinquent account pursuant to 17.5.410.33 NMAC;
- (2)** failure to post a security deposit or guarantee pursuant to 17.5.410.33 NMAC, as applicable; except that a utility may not discontinue service to an existing residential customer solely for failure to pay a deposit; or
- (3)** failure to comply with the terms and conditions of a settlement agreement or installment agreement entered into pursuant to this rule.

**C.** A utility may discontinue utility service to a residential customer after three (3) days' prior written notice in the event of the residential customer's:

- (1)** refusal to grant access at reasonable times to equipment installed upon the premises of the residential customer for the purpose of inspection, meter reading, maintenance, or replacement;
- (2)** failure to furnish such service, equipment, permits, certificates, or rights-of-way as shall have been specified by the utility as a condition to obtaining service or in the event such equipment or permissions are withdrawn or terminated;
- (3)** violation of or noncompliance with the utility's rules on file with and approved by the commission;
- (4)** provision of a fraudulent medical certification form or financial certification form.

**D.** The three-day notice required by Subsection C of 17.5.410.31 NMAC shall be in English and Spanish and shall include the following:

- (1)** a statement of the reason(s) why the utility has issued notice to discontinue utility service pursuant to Subsection C of 17.5.410.31 NMAC;
- (2)** the title(s), address, telephone number(s), and working hours of utility personnel responsible for carrying out the rights prescribed in 17.5.410 NMAC;
- (3)** a statement that the residential customer can obtain a review by utility personnel of the reasons for the proposed discontinuance of service, which shall stay the discontinuance during the review, and a statement that a complaint may be filed with the commission if the residential customer disagrees with the utility's determination of the facts upon which the proposed discontinuance is based;
- (4)** a statement that members of New Mexico tribes or pueblos who need help with translation or with other matters may contact the commission's consumer relations division at (888) 427-5772, who will contact the appropriate tribal or pueblo official for assistance.

[17.5.410.31 NMAC - Rp, 17.5.410.29 NMAC, 7-1-11; A, 3-29-13]

#### **17.5.410.32 PROHIBITIONS ON DISCONTINUANCE OF SERVICE:**

A utility shall not discontinue service for:

- A.** the failure of a residential customer to pay for special services;

**B.** the failure of a residential customer to pay for service received at a separate metering point, residence, or location; however, in the event of discontinuance or termination of service at a separate residential metering point, residence, or location, a utility may transfer any unpaid balance due to any other residential service account of the residential customer and proceed in accordance with subsection B of 17.5.410.31 NMAC;

**C.** the failure of the residential customer to pay for a different class of service received at the same or different location; however, placing more than one meter at the same location for purposes of billing the usage of specific devices under optional rate tariffs or provisions is not construed as a different class of service;

**D.** nonpayment of the disputed amount of a bill, as provided by 17.5.410.36 NMAC;

**E.** delinquency in payment for service to a previous occupant of the same premises unless a court has found the new residential customer legally liable for the debt of the previous occupant or the previous occupant continues to reside at the premises;

**F.** failure of a residential customer to pay the bill of another residential customer as guarantor thereof;

**G.** failure of a residential customer to pay an estimated bill rendered in violation of 17.5.410.15 NMAC;

**H.** the failure of a residential customer to pay for service received during the heating season if the residential customer qualifies for winter moratorium protection; or

**I.** the failure of a residential customer to pay for service received if the utility has received a signed medical certification form and a financial certification form as provided by this rule.

[17.5.410.32 NMAC - Rp, 17.5.410.30 NMAC, 7-1-11]

### **17.5.410.33 REQUIREMENTS PRIOR TO DISCONTINUANCE OF SERVICE PURSUANT TO SUBSECTION B OF 17.5.410.31 NMAC:**

Each utility shall file a tariff for its residential customer service that shall include the following minimum standards for discontinuance of utility services with standardized languages as provided below.

**A. Fifteen-day notice.** At least fifteen (15) days before a utility discontinues service to a residential customer, the utility shall provide written notice to the residential customer stating its intent to discontinue service and setting forth the residential customer's rights regarding discontinuance of service, budget payment plans, and installment agreements. The notice shall be in English and Spanish. The notice shall be delivered to the residential customer in person, by U.S. mail, postage prepaid,



addressed to the last address for the residential customer known to the utility, or by electronic mail if a residential customer has elected to receive electronic billing.

**(1)** Notwithstanding the provisions of Paragraph (3) of Subsection C of 17.5.410.31 NMAC a fifteen-day notice shall contain:

**(a)** the title, address, telephone number, and working hours of utility personnel responsible for administering the procedures in this section;

**(b)** a statement that "if the past due balance on your account has been paid, please disregard this notice";

**(c)** a statement that "to avoid disconnection we must receive your past due balance of (\$\_\_.\_\_) no later than (month/day/year), or payment arrangements must be made; please see the enclosed notice for more information";

**(d)** a statement in both English and Spanish of "**customers' rights and responsibilities**" set forth in 17.5.410.42 NMAC, and a utility can choose the method of enclosing the required statement of "customers' right and responsibilities".

**(2) Notice of winter moratorium protection.** At a minimum, during the heating season, each utility shall notify its residential customers who have not been previously qualified for protection under the provisions of the winter moratorium of their rights set forth in this rule and in the format required by this rule.

**(3)** The 15-day notice shall include specific notice that the utility will not discontinue utility service if the residential customer provides the utility either of the following:

**(a)** documentation for winter moratorium protection in accordance with this rule; or

**(b)** valid medical and financial certification forms pursuant to this rule.

**B. Final notice.** Each utility shall communicate with a residential customer by telephone, mail if delivery to the residential service address can be verified, or personal contact at least two (2) days prior to the specific date of discontinuance of service to: remind the residential customer of the pending date of discontinuance of service; advise the residential customer again of the potential availability of financial assistance for utility service payments; obtain payment of delinquent accounts; and during the heating season, provide a reminder of the protection under the moratorium.

**(1)** The utility shall have up to five (5) business days from the specific date to perform the disconnection of services or be required to reissue a final notice pursuant to this subsection.

(2) The utility employee who personally contacts a residential customer and the utility employee sent to discontinue utility services shall note any information from the residential customer that a person living in the residential customer's residence is seriously or chronically ill. Such information shall immediately be reported to a utility employee authorized to prevent discontinuance. That employee shall either delay the discontinuance if it is apparent that the forms required by this rule will be received, or state in writing why discontinuance of service will not be delayed.

(3) However, a utility is not required to delay discontinuance of service pursuant to Paragraph (2) of Subsection B of 17.5.410.33 NMAC for more than two (2) times within a twelve-month period. The utility and utility employee shall be held harmless for errors made in good faith in noting, acting upon, or failing to act upon the information provided by the residential customer.

(4) A utility may use reasonable means to verify the accuracy of information on a medical or financial certification form.

(5) The utility employee sent to discontinue utility service may be empowered to receive payment of delinquent bills, and upon receipt of approved payment method, shall cancel the discontinuance order.

(6) A utility shall not issue a final notice of discontinuance of service to a residential customer when the utility has received notice that actual termination is prohibited by law.

**C. Third-party notification:** Each utility shall offer its residential customers a third-party notification program and shall notify residential customers that such program is available. The utility shall extend the third-party notification program to those residential customers who notify the utility in writing of their desire to participate in the program and designate a specific person, organization, or governmental agency that is ready, willing, and able to assist the residential customer with the payment of utility bills. Upon receipt of such notice from a residential customer, a utility shall not discontinue service to a participating residential customer for nonpayment of past due charges without:

(1) contacting the designated person, organization, or governmental agency by phone or in writing at least fifteen (15) days prior to the proposed discontinuance of service; and

(2) determining that the designated person, organization, or governmental agency has not made a commitment to assist with payment of the residential customer's past due charge within a reasonable period of time.

**D. Timing of discontinuance of service.** A utility may discontinue service to a residential customer during the hours from 7:30 a.m. to 4:00 p.m. on Monday through Thursday. A utility may not discontinue service less than twenty-four (24) hours prior to a holiday or weekend unless the utility's business office is open for receipt of payment of

past due charges and utility personnel are available to restore service during the holiday or weekend once payment is received.

[17.5.410.33 NMAC - Rp, 17.5.410.31 NMAC, 7-1-11]

**17.5.410.34 EMERGENCY DISCONTINUANCE OF SERVICE:**

Notwithstanding any other provision of 17.5.410 NMAC, a utility may temporarily and without notice discontinue residential service for reasons of operation, maintenance, health, safety, or a state of emergency.

[17.5.410.34 NMAC - Rp, 17.5.410.32 NMAC, 7-1-11]

**17.5.410.35 RESTORATION OF SERVICE:**

Upon a residential customer's request a utility shall restore service promptly when the cause for discontinuance of service has been eliminated, applicable restoration or reconnection charges paid, and, if required, satisfactory payment arrangements have been made. At all times a reasonable effort shall be made to restore service on the day restoration is requested, and in any event restoration shall be made no later than the next working day following the day on which the cause for discontinuance of service has been eliminated. Provided further that in the event a medical certification and a financial certification contemplated by Paragraph (6) of Subsection C of 17.5.410.42 NMAC is received, service shall be reestablished within twelve (12) hours of receipt.

[17.5.410.35 NMAC - Rp, 17.5.410.33 NMAC, 7-1-11]

**17.5.410.36 BILLING DISPUTES; NOTICE BY RESIDENTIAL CUSTOMER; PAYMENT OF UNDISPUTED AMOUNT:**

A residential customer may advise a utility by written notice, by telephone, by email, or in person that utility charges are in dispute. If a residential customer disputes the amount of utility charges, the residential customer shall pay the utility an amount equal to that part of the utility charges not in dispute. The amount not in dispute shall be mutually determined by the parties. Failure of a residential customer to pay a utility the nondisputed amount of utility charges shall constitute a waiver of the residential customer's right to continued service.

[17.5.410.36 NMAC - Rp, 17.5.410.34 NMAC, 7-1-11]

**17.5.410.37 SETTLEMENT OF DISPUTED AMOUNT:**

**A.** When a utility and a residential customer settle a dispute, the utility and residential customer may enter into a settlement agreement to pay the amount of the bill. If applicable, any excess amount paid previously by the residential customer shall promptly be credited to the residential customer's account, and if the amount is in

excess of twenty-five dollars (\$25) and if so requested by the residential customer, the excess amount shall promptly be refunded.

**B.** If the terms of the settlement agreement extend beyond forty-five (45) days, it shall be considered an installment agreement and shall be subject to the requirements of 17.5.410.40 NMAC.

**C.** If a residential customer fails to comply with the settlement agreement, a utility shall notify the residential customer at least seven (7) days before discontinuing service that service will be discontinued.

**D.** A settlement agreement to pay an outstanding past due balance does not relieve the residential customer of the obligation to pay future bills on a current basis.

[17.5.410.37 NMAC - Rp, 17.5.410.36 NMAC, 7-1-11]

#### **17.5.410.38 ADJUSTMENT OF BILLS:**

Bills that are incorrect due to meter or billing errors shall be adjusted in accordance with the requirements of 17.9.560 NMAC and 17.10.650 NMAC.

[17.5.410.38 NMAC - Rp, 17.5.410.38 NMAC, 7-1-11]

#### **17.5.410.39 FILING COMPLAINT WITH COMMISSION:**

**A. Notice to customers.** If the residential customer and utility are unable to resolve a dispute, the utility representative shall:

(1) advise the residential customer that if the complaint cannot be resolved to the parties' satisfaction, each has a right to file an informal or formal complaint with the commission; and

(2) give the residential customer the address and telephone number where the residential customer may file a complaint with the commission;

(3) if the residential customer is a member of a New Mexico tribe or pueblo, the utility shall advise the customer that he or she can request help with translation or other assistance by contacting the commission's consumer relations division at (888) 427-5772, who will contact the appropriate tribal or pueblo official for assistance.

**B. Informal complaints by Native Americans.** The commission's consumer relations division, to the extent practicable and consistent with applicable law, should process informal complaints filed by Native Americans in accordance with any applicable guidelines or directives established by the complainant's tribe or pueblo.

[17.5.410.39 NMAC - Rp, 17.5.410.39 NMAC, 7-1-11]

#### **17.5.410.40 INSTALLMENT AGREEMENTS:**

**A.** A utility shall attempt to arrange an installment agreement for the payment of past due charges when a residential customer who has not been chronically delinquent indicates an inability to pay the charges. Service will not be discontinued if, on or before the specific date for discontinuance, the residential customer enters into an installment agreement with the utility. The utility may also maintain a list of organizations in the area that may provide assistance to residential customers in paying utility bills and shall notify residential customers that application forms for LIHEAP are available upon request and at its billing offices. Utilities are encouraged to refer low-income assistance inquiries to the administering authority consistent with Subsection A of 17.410.41 NMAC.

**B.** A utility is not required to enter into an installment agreement with a chronically delinquent residential customer. However, if a chronically delinquent residential customer can demonstrate to the utility that the residential customer does not have adequate financial resources to pay the outstanding bill without participation in an installment agreement because the residential customer meets the qualifications of LIHEAP, or is subject to other special circumstances, the utility shall give special consideration to such a residential customer in determining whether to offer an installment agreement. In making such determination, a utility shall accept documentation from the administering authority that such residential customer meets the qualifications of LIHEAP.

**C.** Every installment agreement shall provide that service will not be discontinued if the residential customer pays a reasonable portion of the outstanding bill when terms of the installment agreement are reached and agrees to pay the remaining outstanding balance in reasonable installments until the bill is paid. For purposes of determining reasonableness the parties shall weigh the following:

- (1) the size of the outstanding balance;
- (2) the residential customer's ability to pay;
- (3) the residential customer's payment history;
- (4) the time the balance has been outstanding;
- (5) the reasons why the balance has been outstanding;
- (6) a six month installment agreement for residential customers with significant arrearages; and
- (7) any other relevant factors relating to the residential customer's service.

**D.** An installment agreement to pay an outstanding past due balance on a bill does not relieve the residential customer from the obligation to pay future bills on a current basis.

**E.** If the residential customer has entered into an installment agreement as provided by this rule, the residential customer shall receive a statement of:

- (1)** the actual service charges incurred for the current billing period;
- (2)** the amount of the installment payment due; and
- (3)** the total amount due (sum of (1) and (2)).

**F.** A residential customer may offer the utility a proposed installment agreement or a proposed change in the terms of an existing installment agreement. If the utility and the residential customer do not reach an agreement, the utility may refuse the offer orally and shall note in that residential customer's records the reason for refusal and what special consideration was given for residential customers who meet the qualifications of LIHEAP. Upon final refusal, the utility also shall provide oral notice of the right of the residential customer to appeal the refusal to the commission.

[17.5.410.40 NMAC - Rp, 17.5.410.40 & 41 NMAC, 7-1-11]

#### **17.5.410.41 FAILURE TO COMPLY WITH INSTALLMENT AGREEMENT:**

**A.** If a residential customer fails to comply with an installment agreement, a utility may discontinue service after notifying the residential customer by personal delivery of written notice, by first class mail or electronic mail, if the residential customer has elected to receive electronic billing, that the residential customer is in default of the installment agreement.

**(1)** The notice shall be written in simple language in English and Spanish and shall state:

- (a)** the nature of the default;
- (b)** the specific date service shall be stopped; and
- (c)** the following statements: "if you have difficulty paying this bill, and feel you may qualify for assistance in paying your utility bill from the low-income home energy assistance program (LIHEAP) or another assistance program in your community, contact the human services department at 1-800-283-4465, the tribal or pueblo entity that administers a tribess or pueblo's LIHEAP, or contact the residential customer service representative at this utility; application forms for LIHEAP are available at the billing offices of this utility, at the human services department, and at the tribal or pueblo entity that administers a tribe's or pueblo's LIHEAP; application forms should be

returned to the human services department or the tribe or pueblo entity that administer's a tribe's or pueblo's LIHEAP; the human services department and the tribal or pueblo entity, and not this utility, administer the program and determine your eligibility to receive assistance."

**(2)** The notice shall also state that unless a payment which brings the installment agreement current is made within seven (7) days from the date of notice the utility will discontinue service on or after the specific date identified in the notice; provided, however, that during the period from November 15 to March 15, the provisions of 17.5.410.30 NMAC shall apply.

**B.** Each utility shall provide a procedure for reviewing residential customer allegations that a proposed installment agreement is unreasonable, that a utility charge is not due and owing, or that the residential customer has not violated an existing installment agreement. Such procedure shall provide due notice to residential customers, shall not be conducted by the credit department of the utility, and shall authorize the reviewing employee to order appropriate corrective action. A utility shall not discontinue service until the review is completed.

**C.** Nothing in 17.5.410.40 through 17.5.410.41 NMAC shall preclude a utility and a residential customer from renegotiating the terms of an installment agreement.

[17.5.410.41 NMAC - Rp, 17.5.410.42 NMAC, 7-1-11]

#### **17.5.410.42 CUSTOMERS' RIGHTS AND RESPONSIBILITIES:**

A statement of customer's rights and responsibilities is required to be enclosed in each 15-day notice of discontinuance of service and served by a utility on a residential customer pursuant to 17.5.410.33 NMAC. Each statement shall be in both English and Spanish and shall be on file with the commission.

**A.** Each statement shall be entitled in bold letters "your rights and responsibilities regarding discontinuance of services".

**B.** Each statement shall be addressed to "Dear (utility name) residential customer.

**C.** Each statement shall include:

**(1)** a statement that "this notice is to inform you that your utility payment is past due; your service will be disconnected after the date printed on the enclosed bill if payment is not made by then; upon request, we can provide outstanding charge information to you including the dates of service during which the outstanding charges were incurred and the date and amount of the last payment";

**(2)** a statement that "you can participate in a payment plan if you can demonstrate that you do not have the financial resources to pay the outstanding amount, or if you are low income or are subject to other special circumstances";

**(3)** a statement in capital letters that "IF YOU HAVE DIFFICULTY PAYING THIS BILL, AND FEEL YOU MAY QUALIFY FOR ASSISTANCE IN PAYING YOUR UTILITY BILL FROM THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM, OR ANOTHER ASSISTANCE PROGRAM IN YOUR COMMUNITY, CONTACT THE COMMUNITY ASSISTANCE SECTION OF THE HUMAN SERVICES DEPARTMENT AT 1-800-283-4465, THE TRIBAL OR PUEBLO ENTITY THAT ADMINISTERS A TRIBE'S OR PUEBLO'S LIHEAP, OR THE CUSTOMER SERVICE REPRESENTATIVE AT THIS UTILITY";

**(4)** a statement in capital letters that "LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP) APPLICATION FORMS FOR THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM ARE AVAILABLE AT THE BILLING OFFICES OF THIS UTILITY, AT THE HUMAN SERVICES DEPARTMENT, AND AT THE TRIBAL OR PUEBLO ENTITY THAT ADMINISTERS A TRIBE'S OR PUEBLO'S LIHEAP. YOU SHOULD RETURN THE APPLICATION FORMS TO THE HUMAN SERVICES DEPARTMENT OR THE TRIBAL OR PUEBLO ENTITY THAT ADMINISTERS THE PROGRAM AND DETERMINES YOUR ELIGIBILITY TO RECEIVE ASSISTANCE";

**(5)** a statement that "if you believe that there is an error in your billing, contact us immediately for a review; after you pay the undisputed amount of your bill, we will postpone disconnection of your service until the dispute is resolved";

**(6)** a statement that "if you or someone in your household are seriously or chronically ill, we will not disconnect your service, if at least two days before the disconnection date, we receive an original of the attached [utility name] medical and financial certification forms; the medical certification form must be completed by a licensed medical professional; an original of the attached financial certification form, stating that you qualify for financial assistance, must be completed by an agency providing assistance in or for the state of New Mexico;

**(7)** a statement that "if your service has been disconnected, we will restore service within twelve hours after you have satisfied the certification requirements above; your obligation to pay your bill is not relieved if service is continued or reestablished because we receive these certifications";

**(8)** a statement that "between November 15 through March 15, if you qualify for low income home energy assistance program (LIHEAP), you may be protected from having your services disconnected for non-payment; for more information, please call us at (utility telephone number)";



(9) a statement in capital letter that "TO RESTORE SERVICE THAT HAS BEEN DISCONNECTED, A RECONNECT FEE OF \$\_ MAY BE CHARGED";

(10) a statement of the utility-specific programs, if any;

(11) a statement that "we can put you in touch with other organizations in your community that might be able to help you; if you have a relative, friend, or agency that will assist in paying your bills, and you want us to notify them when disconnect notices are sent, contact us";

(12) a statement that "(utility budget bill program name) can help even out your payments throughout the year; you still pay for all of the energy you use; you can cancel your participation at any time; upon cancellation, all amounts are due and become payable within 30 days; any credits will be applied to your account";

(13) a statement "see your bill for your local (utility name) payment office location; or, contact us for third-party and other pay locations nearest you";

(14) a statement "to contact us, call us at (utility phone number) from (utility hours) (utility days); holiday hours vary or, go to (utility web site)";

(15) a statement "if you are not satisfied with the arrangements that we provide, you have the right to file a complaint with the NMPRC, 1120 Paseo de Peralta, Santa Fe, NM 87501; telephone 505-827-6940 or 1-888-4 ASK PRC or 1-888-427-5772"; and

(16) a statement that "special consideration will be given to a residential customer who meets the qualifications of LIHEAP, or has other special circumstances, in determining deposits and installment agreements; in making such determination, a utility shall accept documentation from the administering authority that such residential customer meets the qualifications of LIHEAP."

[17.5.410.42 NMAC - N, 7-1-11]

#### **17.5.410.43 MEDICAL CERTIFICATION FORM:**

**MEDICAL CERTIFICATION - PLEASE NOTE:** To be complete, ALL fields must be filled in, valid, and legible. **NOTE:** In order to continue to receive gas or electric service from (name of utility), a complete medical certification form and a complete financial certification form must be submitted. This certification is valid for ninety (90) days from the signature date of medical professional.

#### **PATIENT OR LEGAL GUARDIAN**

I certify the information provided is true and correct. I understand that if I provide false information, I could be denied continued medical emergency gas or electric utility service from (name of utility company) \_\_\_\_\_

I, (printed name of patient) \_\_\_\_\_, hereby authorize the medical professional signing this certification to disclose to (name of utility company) \_\_\_\_\_ the information contained in this medical certification form.

(patient or legal guardian signature) \_\_\_\_\_ (date)  
\_\_\_\_\_

### **PRIMARY UTILITY ACCOUNT HOLDER**

I certify the information provided is true and correct. I understand that if I provide false information, I could be denied continued medical emergency gas or electric utility service from (name of utility company) \_\_\_\_\_

I, (printed name of primary account holder) \_\_\_\_\_, hereby certify that I am the person responsible for the charges for gas or electric utility service at (service address) \_\_\_\_\_ and that a seriously or chronically ill person (as defined by Rule 17.5.410.7 NMAC) resides there.

I further certify that I will immediately notify (name of utility company) \_\_\_\_\_ or arrange to have such notification provided, if there is a change in the status of the seriously or chronically ill person residing at the service address, including relocation or a change in the physical condition of such person which renders continued medical emergency gas or electric utility service unnecessary.

(primary account holder signature) \_\_\_\_\_ (date)  
\_\_\_\_\_

### **DOCTOR'S USE ONLY**

I, (printed name of medical professional) \_\_\_\_\_ certify that: I am, (1) a licensed physician or physician's assistant licensed or accepted by the New Mexico medical board and practicing under the New Mexico Medical Practice Act, (2) an osteopathic physician or osteopathic physician's assistant practicing under the New Mexico Osteopathic Physician's Practice Act or (3) a certified nurse practitioner licensed by the New Mexico board of nursing and practicing under the New Mexico Nursing Practice Act; I hold license number/NPI Number \_\_\_\_\_; and that on (date) \_\_\_\_\_ I examined (name of patient) \_\_\_\_\_ who I am informed resides at (service address) \_\_\_\_\_

I certify that the said person has the following condition in which loss of \_\_\_\_ gas or \_\_\_\_ electric (please indicate type of service by checking) utility service would give rise

to substantial risk of death or gravely impair health and that this condition qualifies as a serious or chronic illness pursuant to Rule 17.410.7 NMAC:

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(Describe condition and reasons for continued gas or electric utility service (if applicable, list medically necessary equipment)).

**DEFINITION OF SERIOUS OR CHRONICALLY ILL PER RULE 17.5.410.7 NMAC:**  
AN ILLNESS OR INJURY THAT RESULTS IN A MEDICAL PROFESSIONAL'S DETERMINATION THAT THE LOSS OF GAS OR ELECTRIC UTILITY SERVICE WOULD GIVE RISE TO A SUBSTANTIAL RISK OF DEATH OR GRAVELY IMPAIR HEALTH.

(signature of medical professional) \_\_\_\_\_ (date) \_\_\_\_\_ (office address of medical professional) \_\_\_\_\_ (telephone number, and fax number of medical professional) \_\_\_\_\_

**ONLY** for patients meeting the requirements for extended medical certification, also complete the additional certification below if it applies to this patient:

**DOCTOR'S USE ONLY – EXTENDED MEDICAL CERTIFICATION (VALID FOR 1 YEAR)**

I (printed name of medical professional) \_\_\_\_\_ certify that the above mentioned patient's medical condition (description of approved condition) \_\_\_\_\_ is permanent and will not improve within 12 months from \_\_\_\_\_ (today's date)

**SEE OTHER SIDE FOR FINANCIAL CERTIFICATION**

2012 Revised December,

[17.5.410.43 NMAC - Rp, 17.5.410.43 NMAC, 7-1-11; A, 3-29-13]

**17.5.410.44 FINANCIAL CERTIFICATION FORM:**

**FINANCIAL CERTIFICATION (VALID FOR 90 DAYS ONLY)**

PLEASE NOTE: to be complete, ALL fields must be filled in, valid and legible.

BY SIGNING BELOW, I, THE ACCOUNT HOLDER, ACKNOWLEDGE THAT THIS CERTIFICATE DOES NOT RELIEVE ME OF MY RESPONSIBILITY TO PAY MY CURRENT AND PAST BILLS WITH (NAME OF UTILITY).

- For administering authority (human services department (HSD) or tribal authority) certification: primary account holder completes Section I, and HSD or tribal authority completes Section II.

OR

- For self certification: primary account holder completes Section III and attaches a copy of the primary account holder's current medicaid eligibility.

(Even when extended medical certification is authorized, financial recertification is required every 90 days for the account holder.)

**SECTION I - AUTHORIZATION TO RELEASE INFORMATION – PRIMARY ACCOUNT HOLDER**

I, (printed name of primary account holder) \_\_\_\_\_, authorize administering authority to release to (name of utility) information from my file as deemed necessary for the purpose of qualifying for the medical certification program.

I certify the information provided is true and correct. I understand that if I provide false information, I can be denied continued medical emergency gas or electric utility service.

(primary account holder's signature) \_\_\_\_\_ (utility account number) \_\_\_\_\_

(primary account holder's social security number) \_\_\_\_\_ (primary account holder's telephone number) \_\_\_\_\_ (service address, city, state, zip code) \_\_\_\_\_

**SECTION II - ADMINISTERING AUTHORITY (HSD OR TRIBAL) USE ONLY**

I, (name of agency representative) \_\_\_\_\_, an authorized representative of (administering authority) \_\_\_\_\_ hereby certify that (primary account holder and social security number) \_\_\_\_\_, the primary account holder named in Section I, currently meets the income guidelines as defined by the administering authority (such as low income home energy assistance program (LIHEAP) (agency representative signature) \_\_\_\_\_ (phone number and fax number) \_\_\_\_\_ (date) \_\_\_\_\_

**-OR-**

**SECTION III - SELF CERTIFICATION - PRIMARY ACCOUNT HOLDER - ATTACH COPY OF CURRENT NEW MEXICO MEDICAID ELIGIBILITY FOR PRIMARY ACCOUNT HOLDER**

I, (printed name of primary account holder)\_\_\_\_\_ hereby certify that I am the person responsible for the charges for gas or electric utility service at (service address)\_\_\_\_\_ and that a seriously or chronically ill person (as defined by Rule 17.5.410.7 NMAC) (patient's name)\_\_\_\_\_ resides there.

I certify the information provided is true and correct. I understand that if I provide false information, I could be denied continued medical emergency gas or electric utility service.

(primary account holder signature) \_\_\_\_\_ (date) \_\_\_\_\_ (primary account holder's social security number) \_\_\_\_\_ (service address, city, state, zip code)\_\_\_\_\_

It is in the account holder's best interest to make regular payments toward current and past due balances; the account holder is encouraged to contact (name of utility) to make payment arrangements.

**SEE OTHER SIDE FOR MEDICAL CERTIFICATION**

Revised December 2012

[17.5.410.44 NMAC - Rp, 17.5.410.44 NMAC, 7-1-11; A, 3-29-13]

**PART 411-439: [RESERVED]**

**PART 440: EXTENSIONS, SYSTEM IMPROVEMENTS, REPAIRS OR REPLACEMENTS, ADDITIONS, AND COOPERATIVE AGREEMENTS BETWEEN OR AMONG UTILITIES**

**17.5.440.1 ISSUING AGENCY:**

New Mexico public regulation commission.

[17.5.440.1 NMAC - Rp, 17.5.440.1 NMAC, 12/27/2022]

**17.5.440.2 SCOPE:**

This rule applies to investor-owned electric, gas, water, and sewer utilities subject to the jurisdiction of the New Mexico public regulation commission, however, Subparagraph (a) of Paragraph (1) of Subsection A of 17.5.440.8 NMAC and Paragraph (3) of Subsection C of 17.5.440.8 NMAC shall apply to all electric utilities, and Subparagraph

(a) of Paragraph (1) of Subsection A of 17.5.440.9 NMAC and Paragraph (2) of Subsection D of 17.5.440.9 NMAC shall apply to all gas, water, and sewer utilities, subject to the jurisdiction of the New Mexico public regulation commission.

[17.5.440.2 NMAC - Rp, 17.5.440.2 NMAC, 12/27/2022]

**17.5.440.3 STATUTORY AUTHORITY:**

Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978 and Section 8-8-15 NMSA 1978.

[17.5.440.3 NMAC - Rp, 17.5.440.3 NMAC, 12/27/2022]

**17.5.440.4 DURATION:**

Permanent.

[17.5.440.4 NMAC - Rp, 17.5.440.4 NMAC, 12/27/2022]

**17.5.440.5 EFFECTIVE DATE:**

December 27, 2022, unless a later date is cited at the end of a section.

[17.5.440.5 NMAC - Rp, 17.5.440.5 NMAC, 12/27/2022]

**17.5.440.6 OBJECTIVE:**

This rule is intended to provide reporting and filing requirements and guidance for public utilities and utility division staff.

[17.5.440.6 NMAC - Rp, 17.5.440.6 NMAC, 12/27/2022]

**17.5.440.7 DEFINITIONS:**

As used in this rule:

**A. "repairs or replacements"** means any public utility activity, that is also a capital expenditure, that repairs, or replaces with the same or substantially similar, equipment or property that has either failed, is in the process of failing, or deteriorated, or that is at the end of its useful life, or that is otherwise necessary to repair or replace; and

**B. "undertaking"** means the extension, system improvement, repair or replacement, or addition for which the public utility is required to report to the Commission pursuant to 17.5.440.8 NMAC and 17.5.440.9 NMAC.

[17.5.440.7 NMAC - Rp, 17.5.440.7 NMAC, 12/27/2022]

## **17.5.440.8 ELECTRIC UTILITIES:**

**A.** Report requirements for extensions, system improvements, repairs or replacements, or additions:

(1) A public utility shall, prior to making any of the following described extensions, system improvements, repairs or replacements, or additions as set forth in Subparagraphs (a) through (e) of 17.5.440.8 NMAC below, file a report with the commission setting forth the character of the undertaking, the purpose sought thereby to be accomplished, the means by which that purpose is intended to be realized, the estimated costs involved in the employment of those means, the data upon which the engineering and economic feasibility of the undertaking is based, any reasonable alternatives to the proposed undertaking that have been considered, any system upgrades that may be needed due to the undertaking, and, if Subparagraph (a) of 17.5.440.8 NMAC below is applicable, the name or names of the utility or utilities toward which the proposed extension is to be made.

(a) Any extension, of any electric facility outside the limits of a municipality to a point within one-half mile of the facilities of any other utility or utilities rendering electric service.

(b) Any extension, system improvement, repairs or replacements, or addition to any transmission or distribution line, plant, facility, or system, exclusive of generating facilities, which will have an estimated cost to the utility under the uniform system of accounts of \$1,000,000 or more on a total company basis and for which the utility intends to seek rate recovery from its New Mexico customers, regardless of the location of the line, plant, facility, or system.

(i) In calculating the estimated cost, the utility shall include the cost of any system upgrades that are directly related to, or required as a result of, such addition, repair or replacement, or system improvement.

(ii) The estimated cost shall be reasonable and proposed in good faith.

(c) Any addition to, or repair or replacement of, or improvement of, any electric generating facility which will have an estimated cost to the utility under the uniform system of accounts of \$2,000,000 or more on a total company basis and for which the utility intends to seek rate recovery from its New Mexico customers, regardless of the location of the electric generating facility.

(i) In calculating the estimated cost, the utility shall include the cost of any system upgrades that are directly related to, or required as a result of, such addition, repair or replacement, or system improvement.

(ii) The estimated cost shall be reasonable and proposed in good faith.

(d) Substantial system characteristic improvements involving a change in operating voltage of electric lines. Substantial system characteristic improvements involving reconductoring, rephasing (addition or deletion of phases) of electric lines resulting in a length of two miles or more. System improvements of an overall or system wide nature shall be submitted to the commission as an overall plan.

(e) Any extensions, system improvements, repairs or replacements, or additions for which the public utility claims or intends to claim safe harbor under 17.9.592.15 NMAC that have an estimated cost to the utility under the uniform system of accounts of \$1,000,000 or more on a total company basis and for which the utility intends to seek rate recovery from its New Mexico customers, regardless of the location of the undertaking.

(i) In calculating the estimated cost, the utility shall include the cost of any system upgrades that are directly related to, or required as a result of, such extension, system improvement, repair or replacement, or addition.

(ii) The estimated cost shall be reasonable and proposed in good faith.

(2) The report is for informational purposes and shall not constitute nor be deemed to constitute an application by the utility for authority to engage in the reported undertaking.

(3) Reports shall include sufficient information to enable the commission to appropriately relate the proposed extension, system improvement, repair or replacement, or addition to maps of existing facilities.

(4) The utility shall file reports on forms to be furnished by the commission and shall be numbered serially.

**B.** The commission shall not be precluded from requiring the filing of further information by the reporting utility with respect to its proposed undertaking.

**C.** Filing and service procedures:

(1) The utility shall file a report at least 30 days prior to the commencement of construction of the extension, system improvement, repair or replacement, or addition, except in the event of unplanned emergency undertakings, in which case the report shall be filed not more than 30 days after the onset of the emergency.

(2) Upon the utility's filing of a report, commission utility division staff shall review the report and notify by email the utility, office of general counsel, and the individual commissioners of statutory, regulatory, or feasibility issues, if any, within a reasonable time prior to the commencement of construction, or within a reasonable time following the filing of a report on an unplanned emergency undertaking.



(3) Where a utility is required to file a report with the commission pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 17.5.440.8 NMAC, the utility shall, at the time of filing its report with the commission, serve a copy of the filed report on the utility or utilities toward whose facilities the extension is proposed to be made.

(a) Proof of service of such copy shall be made and filed with the commission under the certificate of the person making the service.

(b) If the service is made by mail, it shall be made by certified mail with return receipt requested, it shall include the corresponding 440 filing number, and the return receipt shall be filed with the commission with the proof of service.

(c) Thereafter, no complaint by a utility in opposition to the proposed extension will be entertained by the commission unless filed with the commission by the opposing utility within 20 days of its receipt of the served copy of the report.

(d) The provisions of this section will be waived whenever the commission is furnished proof in writing that the utility toward whose facilities the extension is proposed to be made has no complaints.

(4) A public utility shall notify each individual commissioner by email when it files a report or amended report with estimated or actual costs of \$8,000,000 or more on a total company basis.

**D. Duty to amend report:**

(1) Prior to any request for rate recovery for the undertaking, the utility shall amend a report to update the undertaking's estimated costs, if the estimates increased or decreased by greater than twenty percent, and to reflect the utility's actual costs incurred for that undertaking.

(a) In its amended report, the utility shall provide explanations for why its initial estimated costs were inaccurate and why its actual costs fell below or exceeded its estimated costs.

(b) The amended report shall be included with the utility's request for rate recovery.

(2) The utility shall amend a report to accurately reflect the undertaking's materially altered character or purpose, or if the utility pursues a reported alternative, pursuant to Paragraph (1) of Subsection A of 17.5.440.8 NMAC, at least 30 days prior to the commencement of construction of the extension, system improvement, repair or replacement, or addition. If a utility files an amended report pursuant to this Paragraph, commission utility division staff shall follow the procedures of Paragraph (2) of Subsection C of 17.5.440.8 NMAC above.

[17.5.440.8 NMAC -Rp, 17.5.440.9 NMAC, 12/27/2022]

**17.5.440.9 GAS, WATER, AND SEWER UTILITIES:**

**A.** Report requirements for extensions, system improvements, and additions:

(1) Each public utility shall, prior to making any of the following described extensions, system improvements, or additions as set forth in Subparagraphs (a) through (d) of 17.5.440.9 NMAC below, file a report with the commission setting forth the character of the undertaking, the purpose sought thereby to be accomplished, the means by which that purpose is intended to be realized, the estimated costs involved in the employment of those means, the data upon which the engineering and economic feasibility of the undertaking is based, any reasonable alternatives to the proposed undertaking, and, if Subparagraph (a) of 17.5.440.9 NMAC below is applicable, the name or names of the utility or utilities toward which the proposed extension is to be made.

(a) Any extension of or any change in the routing of any distribution or transmission line which will extend to within one-half mile of the facilities of any other utility or utilities rendering the same kind of service.

(b) Any extension, system improvement, or addition to any transmission or distribution line, plant, facility, or system which will have an estimated cost under the uniform system of accounts of \$200,000 or more on a total company basis and for which the utility intends to seek rate recovery from its New Mexico customers, regardless of the location of the line, plant, facility, or system.

(c) Any extension or system improvement one-half mile or more in length of any transmission or distribution line outside of any municipality which involves any changes in routing, pipe size, pipe material, or design pressure for gas or water lines.

(d) Any extension of one-half mile or more in length within the limits of a municipality where the pressure is in excess of 400 p.s.i.

(2) The report is for informational purposes and shall not constitute an application by the utility for authority to engage in the reported undertaking.

(3) Reports shall include sufficient information to enable the commission to appropriately relate the proposed extension, system improvement, or addition to maps of existing facilities.

(4) The utility shall file reports on forms to be furnished by the commission and shall be numbered serially.

**B.** The commission shall not be precluded from taking any action which it deems appropriate with respect to reports filed pursuant to this rule and the undertaking.

**C.** The commission shall not be precluded from requiring the filing of further information by the reporting utility with respect to its proposed undertaking.

**D.** Service procedure and policy:

(1) Upon the utility's filing of a report, commission utility division staff shall review the report and notify the Commission of statutory, regulatory, or feasibility issues, if any, and shall recommend appropriate actions to be taken, if any, pursuant to Subsections B and C of 17.5.440.9 NMAC above, as determined by staff.

(2) Where a utility is required to file a report with the commission pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 17.5.440.9 NMAC, the utility shall at the time of filing its report with the commission serve a copy of the filed report on the utility or utilities toward whose facilities the extension is proposed to be made.

(a) Proof of service of such copy shall be made and filed with the commission under the certificate of the person making the service.

(b) If the service is made by mail, it shall be made by certified mail with return receipt requested, it shall include the corresponding 440 filing number, and the return receipt shall be filed with the commission with the proof of service.

(c) Thereafter, no complaint by a utility in opposition to the proposed extension will be entertained by the commission unless filed with the commission by the opposing utility within 20 days of its receipt of the served copy of the report.

(d) The provisions of this section will be waived whenever the commission is furnished proof in writing that the utility toward whose facilities the extension is proposed to be made has no complaints.

[17.5.440.9 NMAC - Rp, 17.5.440.10 NMAC, 12/27/2022]

#### **17.5.440.10 ANNUAL REPORT:**

**A.** Each public utility shall, by March 31 of each calendar year, file a report with the commission summarizing:

(1) each of the utility's filings pursuant to 17.5.440.8 NMAC or 17.5.440.9 NMAC for the prior calendar year, as described in Subsection B of 17.5.440.10 NMAC below;

(2) each of the utility's planned filings pursuant to 17.5.440.8 NMAC or 17.5.440.9 NMAC for the following 365-day period, as described in Subsection C of 17.5.440.10 NMAC below; and

(3) the utility's projects from the prior calendar year that were not deemed undertakings pursuant to Subparagraphs (b) and (c) of Paragraph (1) of Subsection A of 17.5.440.8 NMAC, and Subparagraph (b) of Paragraph (1) of Subsection A of 17.5.440.9 NMAC, as described in Subsection D of 17.5.440.10 NMAC below.

**B.** Annual reports shall contain the following information for each filing pursuant to 17.5.440.8 NMAC or 17.5.440.9 NMAC of the prior calendar year:

- (1) filing and construction commencement dates;
- (2) category of report pursuant to Paragraph (1) of Subsection A of 17.5.440.8 NMAC or Paragraph (1) of Subsection A of 17.5.440.9 NMAC;
- (3) estimated and actual costs, as may be amended, associated with each of the reported extensions, system improvements, repairs or replacements, or additions;
- (4) general locations of the extensions, system improvements, repairs or replacements, or additions; and
- (5) a short description, including a project status update, of the reported extensions, system improvements, repairs or replacements, or additions.

**C.** Annual reports shall contain the following information for every planned filing pursuant to 17.5.440.8 NMAC or 17.5.440.9 NMAC to be made during the following 365-day period:

- (1) planned filing and construction commencement dates or timeframe;
- (2) category of report pursuant to Paragraph (1) of Subsection A of 17.5.440.8 NMAC or Paragraph (1) of Subsection A of 17.5.440.9 NMAC;
- (3) estimated costs associated with each of the extensions, system improvements, repairs or replacements, or additions;
- (4) planned location of the extensions, system improvements, repairs or replacements, or additions;
- (5) a short description of the extensions, system improvements, repairs or replacements, or additions, including the adjacent infrastructure to which the extensions, system improvements, repairs or replacements, or additions are expected to interconnect, and the third parties with whom the utility expects to engage with contractually; and
- (6) any reasonable alternatives to the planned extensions, system improvements, repairs or replacements, or additions.

**D.** Annual reports shall include, for the prior calendar year, the aggregated total actual costs (not individual project costs) of all extensions, system improvements, repairs or replacements, and additions that are not required to be reported pursuant to Subparagraphs (b) and (c) of Paragraph (1) of Subsection A of 17.5.440.8 NMAC due to falling below the cost thresholds. Annual reports shall include the same information as estimated for the following 365-day period.

**E.** Annual reports shall include the aggregated total estimated and actual costs for all reports, and for each individual category of report pursuant to Paragraph (1) of Subsection A of 17.5.440.8 NMAC or Paragraph (1) of Subsection A of 17.5.440.9 NMAC, for extensions, system improvements, repairs or replacements, or additions made during the prior calendar year.

**F.** Annual reports shall include the aggregated total estimated costs for all of the utility's planned filings pursuant to 17.5.440.8 NMAC or 17.5.440.9 NMAC for the following 365-day period. The estimated total cost shall be reasonable and proposed in good faith.

**G.** Commission staff shall notify the commission of a public utility's noncompliance with 17.5.440.10 NMAC within 60 days of the filing of the annual report.

[17.5.440.10 NMAC - N, 12/27/2022]

## **CHAPTER 6: AFFILIATE TRANSACTIONS**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2-449: [RESERVED]**

### **PART 450: AFFILIATE TRANSACTIONS**

#### **17.6.450.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

#### **17.6.450.2 SCOPE:**

NMPSC Rule 450 [17.6.450 NMAC] applies to all water, electric, gas, and rural electric cooperative utilities subject to the Commission's jurisdiction.

[Recompiled 12/30/01]

#### **17.6.450.3 STATUTORY AUTHORITY:**

NMPSC Rule 450 [17.6.450 NMAC] is adopted under the authority vested in this Commission by the Public Utility Act, NMSA 1978, Section 62-3-1 et seq., and in particular by NMSA 1978, Section 62-6-19E.

[Recompiled 12/30/01]

**17.6.450.4 DURATION:**

[Recompiled 12/30/01]

**17.6.450.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.6.450.6 OBJECTIVE:**

The purpose of NMPSC Rule 450 [17.6.450 NMAC] is to set forth the Commission's policy and requirements concerning Class I and Class II transactions by public utilities under the Commission's jurisdiction. The intent of the Commission in promulgating NMPSC Rule 450 [17.6.450 NMAC] to assure reasonable and proper utility service at fair, just, and reasonable rates; to require reasonable access to the books and records of a utility and its affiliates so that such an assurance can be made; to assure that appropriate cost allocations are made; and to assure that no cross-subsidization occurs between the utility and an affiliated interest. It is not the Commission's purpose or intent to approve, disapprove, or regulate any specific nonutility business or venture conducted by any utility's affiliates.

[Recompiled 12/30/01]

**17.6.450.7 DEFINITIONS:**

When used in NMPSC Rule 450 [17.6.450 NMAC] unless otherwise specified the following definitions will apply:

- A. "Affiliated Interest" or "Affiliate" is as defined by NMSA 1978, Section 62-3-3A.
- B. "Class I Transaction" is as defined by NMSA 1978, Section 62-3-3J.
- C. "Class II Transaction" is as defined by NMSA 1978, Section 62-3-3K.
- D. "Commission" means the New Mexico Public Service Commission. [New Mexico Public Regulation Commission]
- E. "Holding Company" or "Public Utility Holding Company" is as defined by NMSA 1978, Section 62-3-3M.

F. "Corporate Subsidiary" is as defined by NMSA 1978, Section 62-3-3L.

G. "Utility" or "Public Utility" is as defined by NMSA 1978, Section 62-3-3G.

[Recompiled 12/30/01]

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H. Affiliated Interests Existing as of May 19, 1982: Filing of Diversification Summary [17.6.450.16 NMAC]

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J. Enforcement: [17.6.450.18 NMAC]

K. Miscellaneous [17.6.450.19 NMAC]

(1) Powers Not Limited

(2) Supplement to Other Rules

(3) Severability

(4) Variances

[Recompiled 12/30/01]

#### **17.6.450.9 GENERAL PROVISIONS:**

A. Reason for Adoption: NMPSC Rule 450 [17.6.450 NMAC] is adopted in order to fulfill the requirements of NMSA 1978, Section 62-6-19E.

B. Investigation: The Commission hereby undertakes an ongoing investigation into Class I transactions and Class II transactions and their resulting effects, and finds that the information required to be provided by NMPSC Rule 450 [17.6.450 NMAC] is reasonably required and is pertinent, material, and relevant to such investigation.

[Recompiled 12/30/01]

#### **17.6.450.10 CLASS II TRANSACTIONS:**

##### **APPROVAL OF GENERAL DIVERSIFICATION PLAN:**

A. No public utility may engage in a Class II transaction after November 30, 1982 [the effective date of former General Order No. 39] without first obtaining written approval of a general diversification plan from the Commission.

B. The general diversification plan shall include:



- (1) to the extent known the name, home office address, and chief executive officer of each affiliate, corporate subsidiary, holding company, or person which is the subject of the Class II transaction;
- (2) a statement of the goals and effects upon the utility operation of the Class II transaction including an analysis of the benefits, risks, and any costs to the public utility which could arise, and including all tax effects on the utility both on a consolidated entity basis and on a stand-alone basis;
- (3) the type of corporate structure to be used;
- (4) the means of implementing the corporate structure to be used, including, but not limited to, amendments to corporate articles, any issuances, acquisitions, cancellations, exchanges, transfers, or conversions of securities, and the impact of such on the rights of creditors and security holders;
- (5) the anticipated capital structure for the utility, its affiliates, and the consolidated entity (utility plus affiliates) for the next five (5) years;
- (6) the contemplated annual and cumulative investment in each affiliated interest for the next five (5) years in dollars and as a percentage of projected net utility plant and an explanation of why this level of investment is reasonable and will not increase the risks of investment in the public utility;
- (7) an explanation of how the affiliate(s) will be financed, by whom, and the type and amounts of capital or instruments of indebtedness;
- (8) an explanation of how the utility's capital structure, cost of capital, and ability to attract capital at reasonable rates will be impacted;
- (9) an explanation of how the utility can assure that adequate capital will still be available for the construction of necessary new utility plants and at no greater cost than if the utility did not engage in this Class II transaction;
- (10) to the extent not answered in (9) above, an explanation of how ratepayers will be protected and insulated from any risks, costs, or other adverse and material effects attributable to Class II transactions or their resulting effects;
- (11) if the utility intends to divest a corporate subsidiary, an explanation of the reasons for such divestiture, how it will be accomplished, how it will affect utility operations, financial viability, cost of capital, and adequacy of service during the next ten (10) years following divestiture, the anticipated proceeds to the utility, the extent, if any, that the utility intends for ratepayers to share in the proceeds or otherwise benefit from the divestiture, the amount of and reasons why any ratepayer funds have flowed directly or indirectly to the benefit of the corporate subsidiary; and

(12) to the extent not provided above, such information or representations that will allow the Commission to make the findings contained in NMPSC Rule 450.7(c) [Subsection C of 17.6.450 10.NMAC].

C. The Commission shall approve the general diversification plan if it contains the above information in detail acceptable to the Commission and if the Commission finds that such approval is in the public interest. Approval is in the public interest if the Commission finds that the level of investment appears reasonable and that it appears the utility's ability to provide reasonable and proper utility service at fair, just, and reasonable rates will not be adversely and materially affected by Class II transactions and their resulting effect, and if the utility represents and the Commission, based upon such representations, finds that:

(1) the books and records of the utility will be kept separate from those of nonregulated business and in accordance with the Uniform System of Accounts;

(2) the Commission and its staff will have access to the books, records, accounts, or documents of the affiliate, corporate subsidiary, or holding company pursuant to NMSA 1978, Sections 62-6-17 and 62-6-19;

(3) the supervision and regulation of the public utility pursuant to the Public Utility Act will not be obstructed, hindered, diminished, impaired, or unduly complicated;

(4) if a holding company is formed the utility will not pay excessive dividends to such holding company, and the holding company will not take any action which will have an adverse and material effect on the utility's ability to provide reasonable and proper service at fair, just, and reasonable rates;

(5) the public utility will not without prior approval of the Commission:

(a) loan its funds or securities or transfer similar assets to any affiliated interest, or

(b) purchase debt instruments of any affiliated interests or guarantee or assume liabilities of such affiliated interests;

(6) all applicable statutes, rules, or regulations, federal or state, have been or will be complied with;

(7) when required by the Commission the utility will have an allocation study (which will not be charged to ratepayers) performed by a consulting firm chosen by and under the direction of the Commission; and

(8) when required by the Commission the utility will have a management audit (which will not be charged to ratepayers) performed by a consulting firm chosen by

and under the direction of the Commission to determine whether there are any adverse effects of Class II transactions upon the utility.

D. The Commission's approval of a general diversification plan and any findings or conclusions made in connection therewith shall in no way limit or preclude the Commission from subsequently investigating and reviewing Class I and Class II transactions or from taking such steps as it deems necessary to protect ratepayers and to assure that the utility's ability to provide reasonable and proper utility service at fair, just, and reasonable rates will not be adversely and materially affected.

E. The Commission may require the modification of a general diversification plan and may attach conditions to the approval thereof in order to make such plan consistent with the public interest or to avoid material and adverse effects on the utility's ability to provide reasonable and proper service at fair, just, and reasonable rates.

[Recompiled 12/30/01]

#### **17.6.450.11 CLASS I TRANSACTIONS:**

##### **NOTIFICATION OF CLASS I TRANSACTIONS:**

A. A public utility which enters into any agreement or other arrangement or any amendment thereto under which a Class I transaction would occur shall give written notification to the Commission within five (5) days after the agreement, arrangement, or amendment thereto is entered into.

B. Such notification shall include:

- (1) the terms of the arrangement, agreement, or amendment;
- (2) a description of the goods, services, or other property interest to be provided to or by the utility;
- (3) a discussion (including any studies or other pertinent information) of whether the utility could or attempted to obtain the goods or services at a price lower than that obtainable under the Class I transaction;
- (4) if the utility is selling, leasing, or providing goods, services, or other property interests to an affiliate, a discussion (including any studies or other pertinent information) of whether the utility could or attempted to obtain a better price than under the Class I transaction; and
- (5) a statement of the purpose of the transaction explaining how it benefits the utility or its ratepayers or both.

C. Notification is not necessary for Class I transactions which consist only of the provision of normal water, electric, gas or sewer service by a utility to an affiliate under tariffs filed with the Commission.

[Recompiled 12/30/01]

**17.6.450.12 PROCEDURES FOR APPLICATIONS FOR APPROVAL OF GENERAL DIVERSIFICATION PLANS:**

A. A utility seeking approval of its general diversification plan shall file an application with the Commission.

B. Concurrently with the filing of any application under NMPSC Rule 450 [17.6.450 NMAC] the utility will send notice of such filing to each intervenor in its preceding rate case and the Attorney General.

C. Upon the filing of any application under NMPSC Rule 450 [17.6.450 NMAC] the Commission shall determine whether good cause exists to hold a hearing in the matter. If the Commission determines that good cause exists, notice of the hearing shall be given to the utility and each intervenor in its preceding rate case, and notice shall also be published in a newspaper of general circulation in the county where the principal New Mexico office of the utility is located and such other counties as the Commission directs. Such notice shall be given at least twenty (20) days prior to the hearing.

D. If the Commission determines that good cause does not exist to hold a hearing, public notice shall be published as above at least twenty (20) days prior to consideration by the Commission at an open meeting. The applicant shall bear the cost of all publications.

E. Hearings and other procedures will be conducted in a manner consistent with the Commission's Rules of Practice and Procedure.

[Recompiled 12/30/01]

**17.6.450.13 REPORTING:**

A. Class II Transaction Reports:

(1) Any declaration, filing, petition, prospectus, application, offering memorandum, or registration statement pertaining to a Class II transaction which is filed with any court of competent jurisdiction, the United States Securities and Exchange Commission, or other federal or state administrative agency shall be filed simultaneously with the Commission.

(2) After approval of a utility's general diversification plan or after the filing of a diversification summary, the utility must provide to the Commission unless otherwise ordered by the Commission:

(a) concurrent notification of all new or expanded lines of business or ventures entered into by the utility or any affiliate and any change or transfer of rights, obligations, or assets between the utility and any affiliate; and

(b) a verified annual report covering the last calendar year to be filed as an addendum to the annual report required by NMPSC Rules 510, 610, or 720 [17.3.510 NMAC, 17.3.610 NMAC, or 17.12.720 NMAC] which shall include:

(i) an explanation and description of all affiliates, their relationship to each other and the utility, the types of business in which they are involved, and a listing of their exact names and home office addresses;

(ii) the total investment in each affiliate;

(iii) the joint officers, directors, employees, and facilities and an explanation of their functions and how they are divided;

(iv) all agreements or contracts required to implement and/or continue the Class II transaction(s) and any amendments thereto;

(v) a summary and explanation of any transactions or agreements between the utility and its affiliates, corporate subsidiaries, and holding company;

(vi) the allocation factors utilized, the dollar amounts involved, and an explanation of how the factors are computed, why that methodology is appropriate, and why the allocation is required;

(vii) an explanation and justification of any changes to any part of the utility's general diversification plan or any representations made to the Commission in connection therewith;

(viii) the immediate and projected long-term (up to five (5) years) impact of the Class II transaction(s) on the capital structure of the public utility;

(ix) an identification and detailed complete explanation of the method by which any Class II transaction or any action related thereto that has a utility accounting impact is or will be accounted for by the utility;

(x) the names of the officers and managers of the utility and its affiliates;

(xi) the most recent balance sheet and income statement from each of the utility's affiliates, corporate subsidiaries, and holding company which have been provided to or are in the possession of the utility;

(xii) the effect of the Class II transactions or any action related thereto on the financial performance of the utility and the utility's ability to provide reasonable and proper service at fair, just, and reasonable rates;

(xiii) all costs and fees related to the Class II transaction(s) and any necessary corporate restructuring;

(xiv) a year-by-year, annual five-year projection using pro forma financial statements showing the effects of the utility's decision to enter into Class II transactions compared with a decision not to enter into Class II transactions and showing the expected impact of the Class II transactions and their resulting effect on utility rates and/or other matters relating to the public interest;

(xv) the end-of-year consolidated capital structure (utility plus affiliates);

(xvi) an explanation of how the utility's capital structure, cost of capital, and ability to raise capital have been impacted by Class II transactions and their resulting effect;

(xvii) the amount of dollars transferred between the utility and each affiliate during the annual period and the purpose of each transfer;

(xviii) an explanation of how the utility's taxes and their calculation have been impacted, both on a stand-alone basis and consolidated basis, by Class II transactions and their resulting effect;

(xix) a five-year, year-by-year projection of new utility capital requirements categorized and identified to the extent the utility is able and the projected sources and amounts of capital that will be used to meet these requirements; and

(xx) an explanation of any impacts on new utility capital requirements from Class II transactions and their resulting effect.

(c) The Commission may, upon receipt of the annual report and a finding of good cause, commence an investigation into the diversification activities pursuant to the provisions of the Public Utility Act and the rules of this Commission.

B. Class I Transaction Reports: Each utility engaging in a Class I transaction during the preceding period shall, unless otherwise ordered by the Commission, provide a statement with its Annual Report covering the twelve months preceding the date its Annual Report is due to be filed showing all monies, securities, or other items of value paid or transferred by a utility to an affiliate or by an affiliate to a utility showing the

dollar amount of each Class I transaction by account (using Uniform System of Accounts) and broken down by the type of good or service provided, the quantity, and the price paid or received.

[Recompiled 12/30/01]

#### **17.6.450.14 RATE TREATMENT:**

A. Allocations: There is no presumption that a utility's allocation method is reasonable. The burden of proof shall be on the utility in a rate case or other proceeding to justify its method of allocation of expenses, any factors used, and amounts allocated.

B. Class I Transactions: There is no presumption that a Class I transaction is reasonable. The utility has the burden of proof to show that all Class I transaction costs and contract conditions are reasonable.

C. Class II Transactions: The utility shall bear the burden of proof to show that its rates, costs including cost of capital, and service have not been materially and adversely affected by any Class II transaction or its resulting effect and that the utility has not subsidized its affiliates.

D. Confidentiality: Any person who so qualifies may petition the Commission for a protective order for confidential or proprietary information, as provided by NMSA 1978, Section 62-6-17(D).

E. Sanctions for Failure to Provide or Permit Discovery: If any person fails to obey an order to provide or permit discovery with regard to any matter related to Class I transactions or Class II transactions and their resulting effect, the Commission may impose sanctions pursuant to Rule 37 of the New Mexico Rules of Civil Procedure for the District Courts and/or penalties pursuant to NMSA 1978, Article 12, Chapter 62, and/or if the person is a utility the Commission may disapprove the utility's general diversification plan.

F. Remedies:

(1) Upon a finding that a utility has failed to carry its burden of proof regarding Class I and Class II transactions, or upon a finding that a Class II transaction or its resulting effect is adversely and materially affecting the utility's ability to provide reasonable and proper service at just and reasonable rates, or a finding that a cross-subsidization or improper allocation has occurred, the Commission may take such steps as it deems necessary to correct such situations and to compensate ratepayers for any resulting risks, costs, service reductions, or other adverse and material effects including, but not limited to, adjustments to the utility's cost of capital, capital structure, expenses, or revenues.

(2) Upon a Commission finding that a Class II transaction or the resulting effect thereof has materially and adversely affected the utility's ability to provide reasonable and proper utility service at fair, just, and reasonable rates and/or imposed other costs or risks on the ratepayer, the Commission may order the utility to develop and file a proposed plan of action which will eliminate the cause of, and compensate ratepayers for, such effect, costs, or risks and will provide appropriate monitoring procedures.

[Recompiled 12/30/01]

#### **17.6.450.15 DIVESTITURE AND SPIN-OFF: COMMISSION APPROVAL REQUIRED:**

An affiliate or a holding company may not divest itself of or spin-off a public utility without the prior written approval of the Commission. The Commission shall investigate such divestiture or spin-off and shall give its approval only upon a showing that such divestiture or spin-off is in the public interest.

[Recompiled 12/30/01]

#### **17.6.450.16 AFFILIATED INTERESTS EXISTING AS OF MAY 19, 1982: FILING OF DIVERSIFICATION SUMMARY:**

A. Any utility which had any affiliates as of May 19, 1982 is required to have filed a diversification summary with the Commission by December 30, 1982 [thirty (30) days after the effective date of former General Order No. 39].

B. For the purpose of NMPSC Rule 450.19(c) [Subsection C of 17.6.450.16 NMAC], Class I transactions and Class II transactions shall include in addition to their definitions in NMPSC Rule 450.6 [17.6.450.7 NMAC] anything which was classified as a Class I transaction or Class II transaction as of November 30, 1982 [the effective date of former General Order No. 39].

C. The diversification summary shall include:

- (1) the exact name of each affiliate together with the home office address and name of chief executive officer;
- (2) the date on which each affiliate became affiliated with the public utility;
- (3) the method or methods by which the affiliated interest was accomplished and is maintained;
- (4) a chart or listings clearly presenting --
  - (a) the identities of and interrelationships among the public utility and all affiliates;



(b) the percentage and number of each class of voting securities of each affiliate which is owned directly or indirectly by another affiliate or by the public utility;

(c) if control of any person is maintained other than by the ownership or control of voting securities, the basis of such control;

(d) the type of business organization (e.g., corporation, partnership, trust, etc.); and

(e) the state(s) or other jurisdiction(s) of domicile;

(5) a description of all Class I and Class II transactions that were operative or outstanding on May 19, 1982 including, but not limited to, the following:

(a) their nature and purpose;

(b) the identity of all parties involved; and

(c) the nature and amounts of any payments or transfers of assets and all rights and obligations established between the parties;

(6) a brief description of any litigation or administrative proceedings pending or concluded on or after May 19, 1982, in which any affiliate of a public utility is involved which may have a material effect upon the solvency or capital structure or the value of any asset of the affiliate or the public utility, including, but not limited to, foreclosure of property, calls upon guarantees, bankruptcy, receivership, or other corporate reorganizations;

(7) the latest financial statements for each affiliate on an individual basis that have been provided to or are in the possession of the utility;

(8) latest annual reports to shareholders of each affiliate which have been provided to or are in the possession of the utility;

(9) an identification and detailed complete explanation of the method by which any Class II transaction or any action related thereto that has a utility accounting impact is or has been accounted for by the utility;

(10) the allocation factors utilized, the dollar amounts involved during the utility's latest fiscal year, and an explanation of how the factors are computed, why that methodology is appropriate, and why allocation is required;

(11) the joint officers, directors, employees, and facilities and an explanation of their functions and how they are divided;

(12) the effect of the Class II transactions on the financial performance of the utility and the utility's ability to provide reasonable and proper service at fair, just, and reasonable rates;

(13) a year-by-year annual five-year projection using pro forma financial statements showing the effects of Class II transactions compared with a decision not to continue such transactions and showing the expected effect of each decision on rates; and

(14) an explanation of how ratepayers have been protected and insulated from any risks, costs, or other adverse effects attributable to Class II transactions or their resulting effect.

[Recompiled 12/30/01]

#### **17.6.450.17 ADDITIONAL INVESTIGATIONS AND INFORMATION:**

The Commission may conduct additional investigations of any matters pertaining to Class I and Class II transactions where it deems appropriate and may require additional information to be filed.

[Recompiled 12/30/01]

#### **17.6.450.18 ENFORCEMENT:**

Enforcement of NMPSC Rule 450 [17.6.450 NMAC], any provision thereof, or any order of the Commission pursuant to NMPSC Rule 450 [17.6.450 NMAC] may be accomplished through any sanction, method, or procedure expressed or implied in the Public Utility Act.

[Recompiled 12/30/01]

#### **17.6.450.19 MISCELLANEOUS:**

A. Powers Not Limited: Nothing contained herein shall be construed to limit the Commission in its powers, duties, or authority under the Public Utility Act.

B. Supplement to Other Rules: NMPSC Rule 450 [17.6.450 NMAC] does not supersede any other rule of the Commission but is to be construed as a supplement to such rules.

C. Severability: If any part or application of NMPSC Rule 450 [17.6.450 NMAC] is held invalid, the remainder or its application shall not be affected.

D. Variances: The Commission may in its discretion grant variances from any provisions herein or their application.

[Recompiled 12/30/01]

## **CHAPTER 7: ENERGY CONSERVATION**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **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, 9/26/2017]

#### **17.7.2.2 SCOPE:**

This rule applies to all electric, gas and distribution cooperative utilities subject to the commission's jurisdiction.

[17.7.2.2 NMAC - Rp. 17.7.2.2 NMAC, 9/26/2017]

#### **17.7.2.3 STATUTORY AUTHORITY:**

Sections 8-8-16, 62-3-1, 62-8-6, 62-17-1 et. seq., NMSA 1978.

[17.7.2.3 NMAC - Rp. 17.7.2.3 NMAC, 9/26/2017; A, 10/26/2021]

#### **17.7.2.4 DURATION:**

Permanent.

[17.7.2.4 NMAC - Rp. 17.7.2.4 NMAC, 9/26/2017]

#### **17.7.2.5 EFFECTIVE DATE:**

September 26, 2017 unless a later date is cited at the end of a section. Applications filed prior to this effective date shall be governed by the specific orders related to those applications.

[17.7.2.5 NMAC - Rp. 17.7.2.5 NMAC, 9/26/2017; A, 10/26/2021]

#### **17.7.2.6 OBJECTIVE:**

The purpose of this rule is to implement the Efficient Use of Energy Act and establish criteria to evaluate and implement cost-effective measures or programs that reduce

energy demand and energy consumption. The rule also specifies how annual program funding is to be determined; how the public utility's prior commission approved total portfolio of programs will be cost-effective; how the public utility's total new portfolio of programs will be cost-effective; and establishes annual incentive criteria for a public utility.

[17.7.2.6 NMAC - Rp. 17.7.2.6 NMAC, 9/26/2017]

#### **17.7.2.7 DEFINITIONS:**

In addition to the definitions used in Section 62-17-4 NMSA 1978, the following definitions apply to this rule:

**A. Definitions beginning with "A": application** means a utility application for commission approval of proposed energy efficiency measures or programs and load management measures or programs;

**B. Definitions beginning with "B": [RESERVED]**

**C. Definitions beginning with "C": [RESERVED]**

**D. Definitions beginning with "D": [RESERVED]**

**E. Definitions beginning with "E": estimate or estimated** 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 measures or programs 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;

**(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":**

**(1) measure or program** means an energy efficiency measure or program or a load management measure or program;

**(2) 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 measures or programs or of particular load management measures or programs;

**N. Definitions beginning with "N": [RESERVED]**

**O. Definitions beginning with "O": [RESERVED]**

**P. Definitions beginning with "P":**

**(1) plan year** means the calendar year for which commission approval is being sought;

**(2) plan year overage** means the public utility's actual prior plan year expenditures that exceeded the same plan year's actual collections;

**(3) plan year underage** means the public utility's actual prior plan year collections that exceeded the same plan year's actual expenditures.

**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]**

[17.7.2.7 NMAC - Rp. 17.7.2.7 NMAC, 9/26/2017; A, 10/26/2021]

**17.7.2.8 PUBLIC UTILITY FILING REQUIREMENTS FOR APPLICATIONS AND ANNUAL REPORTS:**

**A. Timing.** Beginning in the year specified below, each public utility shall file an application every three years.

<b>2021</b>	<b>2022</b>	<b>2023</b>
El Paso Electric Company (and its successors)	Southwest Public Service Company (and its successors)	Public Service Company of New Mexico (and its successors)
Zia Natural Gas Company (and its successors)	New Mexico Gas Company (and its successors)	Raton Natural Gas Company (and its successors)
		Any other public utility

Each of the three years covered by an application shall, for the purposes of 17.7.2.7 NMAC, be treated as a plan year. Each public utility may, but is not required to, file an application prior to the year specified in this subsection. If a utility does not elect to file an application prior to the year specified in this subsection, the measures, programs and incentive approved in the utility's last energy efficiency case shall continue in effect until modified or terminated. If a utility does elect to file an application prior to the year specified in this subsection, the measures, programs and incentive approved in that case shall continue in effect as provided by the commission. All utilities shall file their annual reports each year and in the same docket as the application that covered the period of the annual report. Public Service Company of New Mexico (and its successors) shall file its application and its annual reports on April 15 of the applicable year. Southwestern Public Service Company (and its successors) shall file its application and its annual reports on May 15 of the applicable year. El Paso Electric Company (and its successors) shall file its application and its annual reports on June 1 of the applicable year. A natural gas company shall file its annual report on or before July 1 of each year, and shall file its application on or before August 31 of the applicable year in which it is required to file an application. If a specified filing date falls on a weekend or legal holiday, the public utility shall file on the next business day.

**B. Compliance with pre-filing requirements.** Applications shall 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. The public utility shall identify by name, association, and contact information, each interested party that participated in the process, including commission staff, the attorney general, and the energy, minerals and natural resources department. The public utility shall summarize each participant's non-binding recommendation on the

design, implementation, and use of third-party energy service contractors through competitive bidding for programs and measures.

**C.** The public utility shall identify within its application, its estimated plan year funding for energy efficiency and load management program costs for each year during the plan period.

**(1)** Estimated plan year funding for electric public utilities energy efficiency and load management program 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 public utility estimates to be billed during the plan year to customer classes with the opportunity to participate, excluding:

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

**(b)** revenues that the 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 public utility or by a commission approved self-direct administrator; and

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

**(2)** Estimated plan year funding for gas public utilities' energy efficiency and load management program costs shall be expressed in dollars and shall not exceed five percent of customers' bills that the public utility estimates to be billed during the plan year, excluding:

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

**(b)** revenues that the public utility estimates to bill during the plan year to any single customer that exceed seventy five thousand (\$75,000);

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

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

**D.** The public utility's application shall calculate and provide the difference between its actual prior plan year expenditures for measures and programs and the same plan year's applicable funding required by statute. At the end of each plan year, the public utility shall calculate the following applicable values:

**(1)** any plan year overage; or

**(2)** any plan year underage.

**E.** In each plan year, a public utility shall make its best efforts to expend its applicable plan funding as calculated in Subsection C of 17.7.2.8 NMAC above subtracting any applicable prior plan year overage or adding any applicable prior plan year underage; provided, however, that 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. By motion in the docket of its most recent energy efficiency case a utility may seek approval to adjust its plan year expenditures by more than ten percent of the approved funding level.

**F.** The application shall include an executive summary to facilitate commission review.

**G.** The 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 of measures and programs.

**H.** For each proposed measure or program, including previously approved measures and programs submitted for reauthorization, the application shall provide:

**(1)** the public utility's statement that the measure or program is estimated to be cost-effective and meets the utility cost test;

**(2)** a detailed description of the proposed measure or program;

**(3)** the expected useful life of the measure or program;

**(4)** any participation requirements and restrictions of the measure or program;

**(5)** the time period during which the measure or program will be offered;

**(6)** a description of any competitive bid process for utility measures or programs;

**(7)** the estimated number of measure or program participants, supported by written testimony and exhibits;

**(8)** the estimated economic benefit to the participants attributable to the measure or program, supported by written testimony and exhibits;

**(9)** the estimated annual energy savings and the estimated energy savings over the useful life for the measure or program (expressed in kilowatt hours and dollars



for electric utilities or in therms and dollars for gas utilities), supported by written testimony and exhibits;

**(10)** the estimated annual demand savings and the estimated demand savings over the useful life for the measure or program (expressed in kilowatts and dollars), supported by written testimony and exhibits;

**(11)** the proposed program costs to be incurred by the utility to support more than one measure or program, along with the associated allocation of this cost to each measure or program, and the method used to determine each allocation, supported by written testimony and exhibits;

**(12)** a detailed separate measure or program budget that identifies the estimated monetary program costs to be incurred by the public utility in acquiring, developing, and operating each measure and program on a life cycle basis, for each year of the expected useful life of the measure or program;

**(13)** 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 written testimony and workpapers 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.

**(14)** the estimated avoided monetary cost associated with developing, acquiring and operating associated supply side resources, supported by written testimony and exhibits that:

**(a)** demonstrate and justify how the estimated avoided monetary cost will be equal to or greater than the actual avoided monetary cost; 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.

**(15)** supporting documentation, underlying data, calculations, estimates and other items shall be 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, and that facilitates a simple comparison of measure or program estimated results to actual results, including the public utility's cost of capital and discount rate; and

**(16)** if the utility cost test is not met, justify why the utility is proposing to implement the program within its portfolio of proposed programs.

**I.** The public utility shall demonstrate, and has the burden to demonstrate, that it has evaluated and determined that the proposed measure or program is cost-effective and will reduce energy usage or energy demand or both, if approved by the commission and implemented by the utility.

**J.** The public utility shall demonstrate that its portfolio of proposed measures and programs are cost-effective, meets the utility cost test as defined by Subsection C of Section 62-17-4 NMSA 1978 and are designed to provide every affected customer class with the opportunity to participate and benefit economically.

**K.** The public utility shall demonstrate that no less than five percent of the funding for measure and program costs shall be specifically directed to measures or programs for low-income customers.

**L.** Any application that includes a proposed annual incentive award shall:

- (1)** be based on the utility's costs;
- (2)** be based on satisfactory performance of measures and programs;
- (3)** be supported by written testimony and exhibits; and
- (4)** shall not exceed the product (expressed in dollars) of:
  - (a)** its weighted cost of capital (expressed as a percent), and
  - (b)** its approved annual program costs.

**M.** For each approved large customer self-directed program, the utility's application shall describe, in an annual report, 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.

**N.** The commission shall act expeditiously on the public utility's request for approval of its energy efficiency and load management measures and programs.

[17.7.2.8 NMAC - Rp. 17.7.2.8 NMAC, 9/26/2017; A, 10/26/2021]

#### **17.7.2.9 RESIDENTIAL PROGRAMS:**

**A.** The programs should enable residential customers or households to conserve energy, reduce demand, or reduce residential energy bills.

**B.** Provided that the public utility's total portfolio of programs remains cost-effective, no less than five percent of the amount received by the public utility for program costs shall be specifically directed to energy efficiency programs for low-income customers.

**(1)** 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.

**(2)** Whenever possible, providers of low-income energy efficiency measures or programs should have demonstrated experience and effectiveness in the design, administration and provision of low-income measures and programs, along with experience in identifying and conducting outreach to low-income households. In the absence of qualified independent agencies, a public utility that does not provide measures or programs directly, may solicit qualified competitive bids for these services.

**(3)** In developing the utility cost test for energy efficiency and load management measures and programs 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 reductions in working capital, reduced collection costs, lower bad-debt expense, improved customer service, effectiveness, and other appropriate factors qualifying as utility system economic benefits.

[17.7.2.9 NMAC - Rp. 17.7.2.9 NMAC, 9/26/2017; A, 10/26/2021]

#### **17.7.2.10 SELF-DIRECTED PROGRAM CREDITS FOR LARGE CUSTOMERS:**

The following criteria apply to large customer utility credits for self-directed programs.

**A.** The expenditures made by the large customer at its facilities shall be cost-effective according to the utility cost test.

**B.** Projects that have received rebates, financial or other program support from a utility are not eligible for a credit.

**C.** Eligible expenditures must have a simple payback period of more than one year but less than seven years.

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

**E.** Large customers applying for an investor-owned electric utility bill credit must meet the electricity consumption size criteria set forth in Subsection G of Section 62-17-4 NMSA 1978 and the utility cost test.

**F.** Large customers applying for gas utility bill credit must meet the gas consumption criteria as set forth in Subsection G of Section 62-17-4 NMSA 1978 and the utility cost test.

**G.** 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 the project, and allow access to its site for reasonable inspections, at reasonable times. All records relevant to a self-direct program shall be maintained by the large customer for the duration of that program, which shall be evaluated in accordance with 17.7.2.15 NMAC, subject to appropriate protections for confidentiality.

**H.** The utility shall designate a qualified representative to review, approve, or disapprove large customer requests for credits.

**I.** The commission may appoint a "commission-approved" self-direct program administrator to review, approve, or disapprove large customer requests for credits.

**J.** Approvals or disapprovals by the utility representative or administrator shall be subject to commission review. Within 30 business days of the action, the utility representative or administrator shall file and serve notice of each self-direct program review, approval, or disapproval with the commission, and on all interested parties. 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 by Staff, the large customer or any interested party.

**K.** Once approved, the credit may be used to offset up to seventy percent of the tariff rider authorized by the Efficient Use of Energy Act, until said credit is exhausted.

**L.** Any credit not fully utilized in the year it is received shall carry over to subsequent years.

**M.** Implementation of credits shall be designed to minimize utility administrative costs.

**N.** Self-direct 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-direct program credits.

**O.** Large customers must respond to reasonable utility or administrator information requests and allow the utility or an administrator to perform necessary site visits.

**P.** The utility or administrator shall act in a timely manner on requests for self-direct program approval.

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

**R.** Large customer expenditures incurred to produce electric energy savings or electric demand savings are only eligible for an electric utility bill credit. Large customer expenditures incurred to produce natural gas energy savings or natural gas demand savings are only eligible for a gas utility bill credit. Large customer expenditures incurred to produce both electric and natural gas energy savings, both electric and natural gas demand savings, or any combination of energy savings and demand savings for both electric and natural gas are eligible for both an electricity bill credit and a gas utility bill credit, provided that the same energy efficiency expenditures or load management expenditures cannot be accounted for twice.

**S.** Upon written request by the large customer, the information provided by that customer to the utility or program administrator, program evaluator, or others, shall remain confidential, except as otherwise ordered by the commission.

[17.7.2.10 NMAC - Rp. 17.7.2.10 NMAC, 9/26/2017]

#### **17.7.2.11 SELF-DIRECTED PROGRAM EXEMPTIONS FOR LARGE CUSTOMERS:**

The following criteria apply to utility exemptions to large customers for self-directed programs.

**A.** To receive approval for an exemption to paying seventy percent of the tariff rider, a large customer must demonstrate to the reasonable satisfaction of the utility or self-direct program administrator that it has exhausted all cost-effective energy efficiency measures at its facility.

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

**C.** Eligible expenditures must have a simple payback period of more than one year but less than seven years.

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

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

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

**G.** The utility shall designate a qualified representative to review and approve, or disapprove, large customer requests for exemptions.

**H.** The commission may appoint a "commission-approved" self-direct program administrator to review and approve, or disapprove, large customer requests for exemptions.

**I.** Approvals or disapprovals by the utility representative or administrator shall be subject to commission review. Within 30 business days of the action, the utility representative or administrator shall file and serve notice of each self-direct program approval or disapproval with the commission, and on all interested parties. 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 by staff, the large customer or any interested party.

**J.** Self-direct 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 the project, and allow access to its site for reasonable inspections, at reasonable times. All records relevant to a self-direct program shall be maintained by the large customer for the duration of that program, which shall be evaluated in accordance with 17.7.2.15 NMAC, subject to appropriate protections for confidentiality.

**K.** Self-direct 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-direct program exemptions.

**L.** Large customers must respond to reasonable utility or administrator information requests and allow the utility or an administrator to perform necessary site visits.

**M.** The utility or administrator shall act in a timely manner on requests for self-direct program approval.

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

**O.** Large customer expenditures incurred to produce electric energy savings or electric demand savings are only eligible for an electric utility bill credit. Large customer expenditures incurred to produce natural gas energy savings or natural gas demand savings are only eligible for a gas utility bill credit. Large customer expenditures incurred to produce both electric and natural gas energy savings, both electric and natural gas demand savings or any combination of energy savings and demand savings for both electric and natural gas are eligible for both an electricity bill credit and

a gas utility bill credit, provided that the same energy efficiency expenditures or load management expenditures cannot be accounted for twice.

**P.** Upon written request by the large customer, the information provided by large customers to the utility or program administrator, program evaluator or others shall remain confidential, except as otherwise ordered by the commission.

[17.7.2.11 NMAC - Rp. 17.7.2.11 NMAC, 9/26/2017]

#### **17.7.2.12 MODIFICATION OR TERMINATION OF PROGRAMS:**

**A.** Within each plan year, the utility, commission staff, attorney general, energy, minerals and natural resources department, or any other interested party, may petition the commission to modify or terminate a measure or program, or to approve a new program, for good cause by filing a motion in the same docket in which the public utility filed its most recent application. 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. Termination of a program or programs 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 utility may add or subtract measures within a program, modify customer incentive levels, or make other adjustments to an approved program if necessary for the overall success of the program and so long as the portfolio of programs remains cost effective under the utility cost test.

[17.7.2.12 NMAC - Rp. 17.7.2.12 NMAC, 1/1/2015, A, 9/26/2017, 9/26/2017; A, 10/26/2021]

#### **17.7.2.13 FILING REQUIREMENTS FOR COST RECOVERY:**

**A.** Electric utility recovery of program costs shall only be from customer classes with an opportunity to participate in approved measures and programs, and shall be three percent to five percent of customers' bills or seventy-five thousand dollars (\$75,000) per customer per plan year, whichever is less. For gas utilities, recovery of program costs shall be no more than five percent of total annual revenues adjusted to maximize the impact on any single customer to \$75,000.00 per plan year.

**B.** The 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 by combining recovery through a tariff rider and base rates.

**C.** If a public utility seeks recovery of costs through a tariff rider, a utility shall present the proposed ratemaking treatment to the commission for approval. The 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.

(1) The tariff rider shall be applied on a monthly basis, unless otherwise allowed by the commission.

(2) Unless otherwise ordered by the commission, a tariff rider approved by the commission shall require language on customer bills explaining program benefits.

(3) A public utility seeking approval of a tariff rider shall file an advice notice containing the information required by 17.1.2.210.11 NMAC and served upon the individuals and entities set forth in that rule. The proposed tariff rider shall go into effect 30 days after filing, unless suspended by the commission for a period not to exceed 180 days. If the commission has not acted to approve or disapprove the tariff rider by the end of an ordered suspension period, or within 30 days of filing, it shall be deemed approved as a matter of law.

D. If base rate recovery of costs is sought, a utility shall present the proposed ratemaking treatment to the commission for approval. The 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.

E. Program costs and incentives may be deferred for future recovery through creation of a regulatory asset. Prior commission approval is required for the public utility to create a regulatory asset and to establish any associated carrying charge.

[17.7.2.13 NMAC - Rp. 17.7.2.13 NMAC, 9/26/2017; A, 10/26/2021]

#### **17.7.2.14 ANNUAL REPORT:**

A. Annual reports shall provide information relating to the public utility's actions to comply with the Efficient Use of Energy Act.

B. Each public utility shall post its annual report on a publicly accessible website.

C. Annual reports shall include the following for each measure and program:

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

(2) estimated and actual customer participation levels;

(3) estimated and actual energy savings;



- (4) estimated and actual demand savings;
- (5) estimated and actual monetary costs of the public utility;
- (6) estimated and actual avoided monetary costs of the public utility;
- (7) an evaluation of its cost-effectiveness; and
- (8) an evaluation of the cost-effectiveness and pay-back periods of self-directed programs.

**D.** Annual reports also shall include the following:

- (1) the most recent measurement and verification report of the independent program evaluator, which includes documentation, at both the portfolio and individual program levels of expenditures, savings, and cost-effectiveness of all energy efficiency measures and programs and load management measures and programs, expenditures, savings, and cost-effectiveness of all self-direct programs, and all assumptions used by the evaluator;
- (2) a listing of each measure or program expenditure not covered by the independent measurement and verification report and related justification as to why the evaluation was not performed;
- (3) 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 for each of the utility's approved measures or programs by year;
- (4) a listing of the number of program participants served for each of the utility's approved measures or programs by year;
- (5) a listing of the calculated economic benefits for each of the utility's approved measures or programs by year;
- (6) information on the number of customers applying for and participating in self-direct programs, the number of customers applying for and receiving exemptions, measurement and verification of self-direct program targets, payback periods and achievements, customer expenditures on qualifying projects, oversight expenses incurred by the utility representative or administrator; and
- (7) any other information required by the commission.

[17.7.2.14 NMAC - Rp. 17.7.2.14 NMAC, 9/26/2017]

**17.7.2.15 MEASUREMENT AND VERIFICATION:**

**A.** Every energy efficiency and load management program shall be independently evaluated at least every three years. Every year, a public utility shall submit to the commission a comprehensive measurement, verification and program evaluation report prepared by an independent program evaluator.

**(1)** The independent program evaluator shall, at a minimum determine and verify energy and demand savings;

**(a)** determine and verify energy and demand savings;

**(b)** determine program cost effectiveness by applying the monetary values contained in the utility's approved plan year application;

**(c)** assess the public utility's performance in implementing energy efficiency and load management programs;

**(d)** assess whether the utility has failed to meet its requirements under the Efficient Use of Energy Act or has not operated in good faith;

**(e)** provide recommended improvements on program performance for commission directed modification;

**(f)** confirm that commission approved measures and programs were installed or implemented, meet reasonable quality standards, and are operating fully and correctly;

**(g)** utilize applicable international performance measurement and verification protocols, describe any deviation from those protocols, and explain the reason for that deviation; and

**(h)** fulfill any other measurement and verification statutory requirements not specifically delineated herein.

**(2)** 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 proper evaluation of each public utility and completion of a comprehensive measurement, verification and program evaluation report.

**B.** The commission, through its staff, will select and direct an independent program evaluator to prepare and submit a comprehensive measurement, verification and program evaluation report to the commission. Staff, to fulfill its obligation under Subsection B of this Section, may consult with public utilities and other interested parties.

**C.** Staff shall:

(1) undertake a competitive bid process and abide by state purchasing rules and commission policies in selecting a sole independent program evaluator to evaluate public utility compliance with the Efficient Use of Energy Act;

(2) develop a request for proposals ("RFP"), including the scope, terms of work, and evaluation process to score the RFP responses;

(3) receive, review, score and rank the RFP responses;

(4) subsequently rank and recommend competitive qualified bidders to the commission;

(5) negotiate a contract with the competitive bidder awarded the contract; and

(6) administer the contract, including: confirming that contract deliverables are met, reviewing invoices and related contract performance, and approving utility invoices after staff's review and approval.

**D.** Funding for services of the independent program evaluator's completion of a comprehensive measurement and verification report will be paid initially 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.

**E.** Self-direct measures, programs, expenditures, credits and exemptions shall be evaluated and reported in the utility's annual report by the independent program evaluator using the same measurement and verification standards applied to utility measures and programs by the utility or commission-approved self-direct program administrator.

**F.** Upon written request by the large customer, the information provided by large customers to the utility or program administrator, program evaluator, or others, shall remain confidential except as otherwise ordered by the commission.

**G.** The commission may require other information.

[17.7.2.15 NMAC - Rp. 17.7.2.15 NMAC, 9/26/2017]

#### **17.7.2.16 RURAL ELECTRIC COOPERATIVES:**

**A.** Distribution cooperative utilities shall, within 24 months after the effective date of this rule, and every 24 months thereafter, examine potential customer assistance in reducing energy consumption or peak electricity demand in a cost-effective manner. Based on these studies, distribution cooperative utilities shall establish and implement energy efficiency and load management targets and programs that are economically feasible and practical for their members and customers. Approval for such programs

shall reside with the governing body of each distribution cooperative utility rather than the commission.

**B.** Each distribution cooperative utility shall simultaneously file with the commission its annual report by May 1st, along with a report describing the cooperative's examination of efficiency potential set forth in Subsection A of Section 17.7.2.18 NMSA 1978. The distribution cooperative utility's report will also address all of its programs or measures that promote energy efficiency, conservation or load management. The report shall set forth the costs of each of the programs or measures for the previous calendar year and the resulting effect on electricity consumption. 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.

**C.** Each distribution cooperative utility shall include in the report required by Subsection B of Section 17.7.2.18 NMSA 1978, a description of all planned programs or measures to promote energy efficiency, conservation or load management and the anticipated implementation date.

**D.** 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.

**E.** The commission may develop necessary compliance forms.

[17.7.2.16 NMAC - Rp. 17.7.2.16 NMAC, 9/26/2017]

**17.7.2.17 [RESERVED]**

[17.7.2.17 NMAC - Rp. 17.7.2.17 NMAC, 9/26/2017; Repealed, 10/26/2021]

**17.7.2.18 AUDIT:**

The commission may order a public utility to submit to an audit that examines whether the public utility's energy efficiency and load management program costs are prudent, reasonable and being properly assigned to programs in accordance with this rule, commission orders, and other applicable requirements and standards. The cost of such audit shall be considered recoverable program costs, unless it results in a commission order containing findings of the public utility's malfeasance, in which case, audit costs shall not be recoverable from the public utility's customers.

[17.7.2.18 NMAC - Rp. 17.7.2.18 NMAC, 9/26/2017]

**17.7.2.19 VARIANCES:**

Written applications for a variance from any of the provisions of this guideline shall:

- A.** state the reason(s) for the variance request;
- B.** identify each of the sections of this guideline for which a variance is requested;
- C.** describe the effect the variance will have, if granted, on compliance with this guideline;
- D.** describe how granting the variance will not compromise, or will further, the purposes of this guideline; and
- E.** indicate why the proposed variance is a reasonable alternative to the requirements of this guideline.

[17.7.2.19 NMAC - N, 9/26/2017]

### **PART 3: INTEGRATED RESOURCE PLANS FOR ELECTRIC UTILITIES**

#### **17.7.3.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.7.3.1 NMAC - Rp, 17.7.3.1 NMAC, 10/27/2022]

#### **17.7.3.2 SCOPE:**

- A.** This rule applies to all electric utilities subject to the commission's jurisdiction over integrated resource planning.
- B.** Impact on other rules: Except as specifically provided herein, this rule does not supersede any other rule of the commission but is to be construed as a supplement to such rules.
- C.** Severability: If any part or application of this rule is held invalid, the remainder of its application shall not be affected.

[17.7.3.2 NMAC - Rp, 17.7.3.2 NMAC, 10/27/2022]

#### **17.7.3.3 STATUTORY AUTHORITY:**

This rule is adopted under the authority vested in this commission by the New Mexico Constitution, Article XI, Section 2; the Public Regulation Commission Act, Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978 and Section 8-8-15 NMSA 1978; the Public Utility Act, Section 62-3-1 NMSA 1978, et seq., Section 62-3-2 NMSA 1978, Subsection H of Section 62-3-3 NMSA 1978, Section 62-6-4 NMSA 1978, Section 62-8-

1 NMSA 1978, and Section 62-8-13 NMSA 1978; the Efficient Use of Energy Act, Section 62-17-1 NMSA 1978, et seq., and Section 62-17-10 NMSA 1978; the Renewable Energy Act, Section 62-16-1 NMSA 1978, et seq.; the Energy Transition Act, 62-18-1 NMSA 1978, et seq.; the grid modernization statute, Section 62-8-13 NMSA 1978; and the Community Solar Act, Section 62-16B-1 NMSA 1978, et seq.

[17.7.3.3 NMAC - Rp, 17.7.3.3 NMAC, 10/27/2022]

#### **17.7.3.4 DURATION:**

Permanent.

[17.7.3.4 NMAC - Rp, 17.7.3.4 NMAC, 10/27/2022]

#### **17.7.3.5 EFFECTIVE DATE:**

October 27, 2022, unless a later date is cited at the end of a section.

[17.7.3.5 NMAC - Rp, 17.7.3.5 NMAC, 10/27/2022]

#### **17.7.3.6 OBJECTIVE:**

**A.** The objective of this rule is to set forth the commission's requirements for the preparation, filing, review, and acceptance of integrated resource plans by public utilities supplying electric service in New Mexico in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers. This rule regulates utility integrated resource planning and procurement consistent with the commission's statutory obligations to ensure fair, just, and reasonable rates.

**B.** This rule serves the commission's objectives of increasing transparency, involving stakeholder participation early in the process, and tying the IRP outcome directly to the procurement process.

**C.** To assist utilities in identifying the most cost-effective portfolio, this rule establishes a transparent, competitive format for analyzing alternative resource portfolio plans.

**D.** This format promotes fair and robust competition in selection of resources to ensure consistency, efficiency, and harmony with the integrated resource planning and procurement process.

(1) In proposing cost-effective resources, utilities shall prioritize those that best comply with the state's requirements for reducing greenhouse gas emissions, fostering equitable clean energy development, and grid modernization.

(2) Utilities shall consider the following resources, including but not limited to: distributed energy resources, demand response, energy efficiency, renewable energy, flexible generation, low-emission or zero carbon resources, energy storage systems, and transmission and distribution grid improvements.

[17.7.3.6 NMAC - Rp, 17.7.3.6 NMAC, 10/27/2022]

#### **17.7.3.7 DEFINITIONS:**

When used in this rule, unless otherwise specified the following definitions shall apply:

##### **A. Definitions beginning with "A":**

(1) **action plan means** the proposed process and specific actions the utility shall carry out to implement the integrated resource plan spanning a three year period following the filing of the utility's integrated resource plan;

(2) **availability factor means** the ratio of the time a generating facility is available to produce energy at its rated capacity to the total amount of time in the period being measured;

##### **B. Definitions beginning with "B": [RESERVED]**

**C. Definitions beginning with "C": capacity factor means** the ratio of the net energy produced by a generating facility during a given time period to the amount of net energy that could have been produced if the facility operated continuously at full capacity during that same time period;

##### **D. Definitions beginning with "D":**

(1) **demand response means** a form of load management that involves changes in electric usage by end-use customers from their normal consumption patterns, either in response to changes in the price of electricity over time, or to incentive payments designed to induce lower electricity use at times of high wholesale market prices or when system reliability is jeopardized;

(2) **demand-side resource means** storage, responsive distributed generation, and loads engaged in demand response programs that can support the grid by responding to market signals or direct load control;

(3) **derating means** a temporary or permanent reduction in the expected power output of a generating facility;

(4) **distributed energy resource (DER) means** the equipment used by an interconnection customer to generate, store, or generate and store electricity that operates in parallel with the electric distribution system.

(a) DER may include, but is not limited to: an electric generator with or without an energy storage system, a prime mover, or combination of technologies capable of injecting power and energy into the electric distribution system, which also includes the interconnection equipment necessary to safely interconnect with the distribution system;

(b) DER may not always be interconnected with the bulk power system;

(c) DER may include distributed generation resources, distributed energy storage, demand response energy efficiency, and electric vehicles and chargers that are connected to the electric distribution power grid;

(e) DER may be capable of exporting active power to an electric power system;

(f) DER includes the customer's interconnection facilities but shall not include the area electric power system operator's interconnection facilities.

#### **E. Definitions beginning with "E":**

**(1) emergency procurement means** a utility's procurement to address a system-based emergency condition including a serious threat to public health, welfare, safety, or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure, or similar event.

**(2) energy efficiency means** measures, including energy conservation measures, or programs that target consumer behavior, equipment, or devices, to result in a decrease in consumption of electricity without reducing the quantity or quality of energy services;

**(3) energy storage resource means** a commercially available technology that is capable of absorbing energy, storing it for a period of time, and thereafter delivering the energy.

(a) specifically, it means a commercially available technology that:

(i) uses mechanical, chemical, or thermal processes to:

(ii) store energy, including energy generated from renewable energy resources and energy that would otherwise be wasted, and deliver the stored energy for use at a later time; or

(iii) store thermal energy for direct use for heating or cooling at a later time in a manner that reduces the demand for electricity at the later time;

(iv) is composed of stationary equipment;



(v) if being used for electric grid benefits, is operationally visible and capable of being controlled by the distribution or transmission entity managing it, to enable and optimize the safe and reliable operation of the electric system; and

(b) achieves any of the following:

(i) reduces peak electrical demand;

(ii) defers the need, or substitutes for, an investment in electric generation, transmission, or distribution assets;

(iii) improves the reliable operation of the electrical transmission or distribution systems; or

(iv) lowers customer costs by storing energy when the cost of generating or purchasing it is low and delivering it to customers when the costs are high.

#### **F. Definitions beginning with "F":**

**(1) facilitated stakeholder process means** the statutory public advisory process pursuant to Section 62-17-10 NMSA 1978, conducted by a commission appointee to facilitate advisory discussions among stakeholders, including members of the public, to advise the public utility and reach potential agreement in the utility's development of its statement of need and action plan;

**(2) flexibility means** the ability of a power system or resource to timely respond as needed to changes in supply and demand through deployment or curtailment of resources by system managers or other control methods, to maintain a balanced load, and to compensate for the variability of renewable energy resources;

**(3) flexible generation means** generation resources that can start, ramp up, and ramp down quickly and efficiently, can be dispatched, and run at low output levels, and can serve frequency response and ancillary service needs, as needed;

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

**H. Definitions beginning with "H": heat rate means** the ratio of energy inputs used by a generating facility expressed in British thermal units, to the energy output of that facility expressed in kilowatt-hours;

#### **I. Definitions beginning with "I":**

**(1) integrated resource plan (IRP) means** a public utility's plan to meet New Mexico jurisdictional retail customers' existing and future demand in accordance with this rule and applicable state policies.

(a) specifically, it means a set of resource options that a utility could use to meet the service needs of its customers over a forecast period, including an explanation of the supply and demand circumstances under which, and the extent to which, each resource option would be used to meet those service needs.

(b) these resource options include, but are not limited to, using, refurbishing, and constructing utility plant and equipment, buying power generated by other entities, controlling customer loads, and implementing customer energy conservation;

**(2) independent monitor (IM) means** a person or entity appointed by the commission to oversee the conduct of a utility's competitive procurement process as addressed in this rule. The IM shall report to the commission regarding the utility's conformance with the most recently accepted statement of need and action plan and the sufficiency, reasonableness, competitive fairness, and completeness of that process;

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

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

**L. Definitions beginning with "L":**

**(1) load forecasting means** the prediction of the demand for electricity and energy over the planning period for the utility;

**(2) load management means** measures or programs that target equipment or devices to decrease peak electricity demand or shift demand from peak to off-peak periods;

**M. Definitions beginning with "M": most cost-effective resource portfolio means** those supply-side resources and demand-side resources that minimize the net present value of revenue requirements proposed by the utility to meet electric system demand during the planning period consistent with reliability and risk considerations;

**N. Definitions beginning with "N":**

**(1) net capacity means** the amount of flexible capacity necessary to supply instantaneous demand over and above the available capacity from variable energy resources, including wind and solar generation;

**(2) net load means** the difference between forecasted load and expected electricity production from variable generation resources;

**O. Definitions beginning with "O": [RESERVED]**

**P. Definitions beginning with "P":**

(1) **planning period means** the future period for which a utility develops its IRP, which, for purposes of this rule, is 20 years;

(2) **public utility or utility has the same meaning** as in the Public Utility Act, except that it does not include a distribution cooperative utility as defined in the Efficient Use of Energy Act.

**Q. Definitions beginning with "Q": [RESERVED]**

**R. Definitions beginning with "R":**

(1) **regional energy market means** an organized interstate market for energy, ancillary services, or capacity, operated by an independent entity (independent system operator or regional transmission operator) subject to regulatory authority of the Federal energy regulatory commission;

(2) **renewable energy means** electrical energy generated by use of renewable energy resources and delivered to a public utility;

(3) **renewable energy resource means** the following energy resources, with or without energy storage:

(a) solar, wind and geothermal;

(b) hydropower facilities brought in service on or after July 1, 2007;

(c) biomass resources, limited to agriculture or animal waste, small diameter timber, not to exceed eight inches, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico; provided that these resources are from facilities certified by the energy, minerals and natural resources department to:

(i) be of appropriate scale to have sustainable feedstock in the near vicinity;

(ii) have zero life cycle carbon emissions; and

(iii) meet scientifically determined restoration, sustainability and soil nutrient principles;

(d) fuel cells that do not use fossil fuels to create electricity; and

(e) landfill gas and anaerobically digested waste biogas; and

**S. Definitions beginning with "S": statement of need means** a description and explanation of the amount and type of new resources, expressed in terms of energy or

capacity, necessary to reliably meet an identified level of electricity demand in the planning horizon and to effect state policies.

**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]**

[17.7.3.7 NMAC - Rp, 17.7.3.7 NMAC, 10/27/2022]

#### **17.7.3.8 INTEGRATED RESOURCE PLANS FOR ELECTRIC UTILITIES:**

**A.** A public utility supplying electric service to customers shall file with the commission every three years a proposed integrated resource plan (IRP) to meet the service needs of its customers over the planning period. The plan shall show the resource options the utility intends to use to meet those needs. The plan shall also specify how the implementation and use of those resource options would vary with changes in supply and demand. The utility is only required to identify a resource option type, unless a commitment to a specific resource exists at the time of the filing. The utility shall also discuss any plans to reduce emissions from existing resources through sales, leases, deratings, or retirements.

**B.** The IRP submitted to the commission by an electric utility shall contain the utility's New Mexico jurisdictional information as follows:

- (1) description of existing resources, see Appendix A;
- (2) current load forecast, see Appendix A;
- (3) load and resources table, see Appendix A;
- (4) new load and facilities arising from special service agreements, economic development projects, and affiliate transactions;
- (5) identification of resource options, see Appendix A;
- (6) statement of need, see 17.7.3.10 NMAC;

- (7) determination of the resource portfolio, see Appendix A; and
- (8) action plan, see 17.7.3.11 NMAC.

**C.** The utilities shall file their IRP on a staggered schedule, as follows:

(1) Public service company of New Mexico shall file an IRP pursuant to 17.7.3.8 NMAC on or before September 1, 2023.

(2) Southwestern public service company shall file an IRP pursuant to 17.7.3.8 NMAC on or before September 1, 2024.

(3) El Paso electric company shall file an IRP pursuant to 17.7.3.8 NMAC on or before September 1, 2025.

**D.** A multi-jurisdictional utility shall include in its IRP a description of its resource planning requirements in the other state(s) where it operates, and a description of how it is coordinating the IRP with its out-of-state resource planning requirements.

**E.** The utility shall promptly notify the commission and participants of material events that would have the effect of changing the statement of need or action plan had those events been recognized when the statement of need or action plan was accepted.

(1) The utility shall, within two weeks of knowledge of the material event or events, submit a filing in its most recent IRP docket detailing the material events and options being considered as proposed modifications to the accepted action plan.

(2) This notice shall occur prior to the development of any proposed action plan modifications to ensure that the commission has advance notice. The utility shall serve the filing on everyone on the service list as well as each commissioner.

(3) The utility bears the burden of explaining why the events qualify as material and whether it shall file a variance, pursuant to 1.2.2.40 NMAC or 17.7.3.17 NMAC, from the accepted statement of need or action plan.

[17.7.3.8 NMAC - Rp, 17.7.3.9 NMAC, 10/27/2022]

### **17.7.3.9 FACILITATED STAKEHOLDER PROCESS; IRP PROCESS:**

**A.** At least six months prior to the filing of its IRP, the utility shall notify the commission, members of the public, the New Mexico attorney general, and all parties to its most recent base rate case and most recent IRP case of its intent to file an IRP. The commission, upon notification, shall initiate a facilitated process for the utility, commission utility division staff, and stakeholders to reach a potential agreement on a proposed statement of need pursuant to 17.7.3.10 NMAC and an action plan pursuant

to 17.7.3.11 NMAC. The commission, aside from utility division staff and the appointed facilitator, shall not participate in the facilitated stakeholder process.

(1) The utility shall provide commission utility division staff and stakeholders who have signed a confidentiality agreement reasonable access to the same modeling software used by the utility on equal footing as the utility, and shall perform a reasonable number of modeling runs per staff or a stakeholder, if requested by staff or a stakeholder, in accordance with commission precedent, and the utility shall share all modeling information.

(2) Nothing in this Section shall preclude commission utility division staff from providing an analysis based on an alternative, open-source modeling software.

**B.** In selecting the facilitator, the commission, through its designee, may solicit recommendations of the names of independent firms or individuals that demonstrate independence from public utilities supplying electric service in the state, their affiliates, and likely bidders, and demonstrate the qualifications, expertise, and experience to perform the functions of a facilitator as provided in this rule. The commission shall comply with the New Mexico procurement code in its solicitation of a facilitator.

(1) The facilitator shall provide a statement of interest to the commission which discloses any contracts or other economic arrangements of any kind between the facilitator and any investor-owned electric utility or affiliate within the last four years.

(2) The facilitator shall notify the commission and utility of any perceived or actual conflicts that arise during the course of the facilitation process.

**C.** The commission, through its designee, shall develop a standard form of contract between the facilitator and the commission that requires the facilitator, in consultation with the utility, to issue notice of facilitated stakeholder meetings, and to host and moderate facilitated stakeholder meetings, including but not limited to, preparing the agenda, and acting as the coordinator between the utility's presentation and the stakeholders' questions and comments.

**D.** Funding for the services of the facilitator shall be paid by the utility and treated as a regulatory asset to be recovered through rates established in the utility's next general rate proceeding.

**E.** Not later than six months after the facilitated stakeholder process commences, the utility shall file the IRP with the commission, explaining all resolved and unresolved issues resulting from the facilitated process.

(1) Written public comments may be filed within 30 days of the utility's filing of the IRP.

(a) Written public comments may include the commenter's own draft statement of need and action plan for commission review.

(b) Written public comments shall be made part of the utility's IRP as addendums.

(2) The utility shall file, within 60 days of the utility's filing of the IRP, a written response to all timely filed written public comments, stating whether it adopts any of the written comments as amending the IRP and the reasons why or why not.

(3) The commission's utility division staff shall consider the filed written public comments and the utility's written responses and shall file a statement with the commission within 90 days of utility's filing of the IRP as to whether the statement of need and action plan comply with the policies and procedures of this rule.

(4) If the commission has not acted within 120 days of the filing of the IRP, the statement of need and action plan are deemed accepted as compliant with this rule. If the commission determines that the statement of need or action plan do not comply with the requirements of this rule, the commission shall identify the deficiencies and return it to the utility with instructions for re-filing.

[17.7.3.9 NMAC - N, 10/27/2022; A, 11/29/2022]

#### **17.7.3.10 STATEMENT OF NEED:**

**A.** The statement of need is a description and explanation of the amount and the types of new resources, including the technical characteristics of any proposed new resources, to be procured, expressed in terms of energy or capacity, necessary to reliably meet an identified level of electricity demand in the planning horizon and to effect state policies.

**B.** The statement of need shall not solely be based on projections of peak load. The need may be attributed to, but not limited by, incremental load growth, renewable energy customer programs, or replacement of existing resources, and may be defined in terms of meeting net capacity, providing reliability reserves, securing flexible resources, securing demand-side resources, securing renewable energy, expanding or modifying transmission or distribution grids, or securing energy storage as required to comply with resource requirements established by statute or commission decisions.

[17.7.3.10 NMAC - N, 10/27/2022; A, 11/29/2022]

#### **17.7.3.11 ACTION PLAN:**

**A.** The utility's action plan shall:

(1) detail the specific actions the utility shall take to implement the IRP spanning a three year period following the filing of the utility's IRP;

(2) detail the specific actions the utility shall take to develop any resource solicitations or contracting activities to fulfill the statement of need as accepted by the commission; and

(3) include a status report of the specific actions contained in the previous action plan.

**B.** The utility shall update the commission by filing two reports describing the utility's implementation of the action plan. These reports shall be filed in the existing IRP docket one year after the filing of the IRP, and two years after the filing of the IRP, respectively.

**C.** An action plan does not replace or supplant any requirements for applications for approval of resource additions set forth in New Mexico law or commission regulations.

**D.** The utility shall promptly notify the commission and participants of material events that would have the effect of changing the results of the utility's action plan had those events been recognized when the action plan was developed.

**E.** In accepting the action plan, the commission shall take into consideration contractual obligations as between the utility and any regional transmission organizations or balancing authorities of which the utility is a member.

[17.7.3.11 NMAC - N, 10/27/2022]

#### **17.7.3.12 REQUEST FOR PROPOSALS PROCESS:**

**A.** Scope and purpose: Unless the commission grants a public utility's variance application pursuant to 17.7.3.17 NMAC for a variance from Section 12 of this rule, the utility shall follow the request for proposals process to ensure cost competitiveness and fairness in procurement by comparing proposals among bidders through a transparently designed and monitored request for proposals.

**B.** To address the utility's procurement need, if any, as described in the statement of need, and to fulfill the objectives of the utility's action plan, the utility shall issue a request for proposals (RFP) in the current IRP docket, within five months of the commission's acceptance of its statement of need and action plan.

**C.** Prior to the utility's commencement of an RFP solicitation, the utility shall provide the commission, the IM, and parties to the utility's pending IRP case with the documents and contracts that constitute the RFP solicitation (RFP documents) and a timeline for soliciting, accepting, and evaluating bids.



**D.** Within 21 days of receipt of the RFP documents, commissioners, commission utility division staff, and intervenors may submit comments to the utility, including on whether its proposed RFP conforms with its accepted statement of need and action plan and is not unduly discriminatory. Comments shall be considered, and may be incorporated, by the utility prior to the issuance of the RFP.

**E.** The utility may issue the RFP after comments are submitted on the independent monitor's design report pursuant to Subsection I of 17.7.3.14 NMAC. The utility shall file a notice with the commission of any final changes to the RFP design upon issuance.

**F.** The proposed RFP(s) shall include:

- (1) bid evaluation criteria;
- (2) the overall amount and duration of power the utility is soliciting and any other details concerning its resource needs;
- (3) a request for bidders' reasonable estimates of any new transmission costs and transmission upgrade costs for resources, if known;
- (4) the extent and degree to which resources shall be dispatchable, including the requirement, if necessary, that resources be able to operate under automatic dispatch control;
- (5) the utility's proposed contract(s) for the acquisition of resources;
- (6) proposed contract term lengths;
- (7) the applicable discount rate;
- (8) the timeline, including the solicitation period, the evaluation period, and the expected selection period;
- (9) all security requirements and the rationale behind them; and
- (10) any other information necessary to implement a competitive RFP process.

**G.** For a proposed RFP, each utility shall provide:

- (1) a description of information that the utility claims is confidential;
- (2) descriptions of proposed protection methods for:
  - (a) bid prices; and
  - (b) other bid details.

**H.** Not later than 120 days after the utility receives bids for its projected needs, the utility shall provide the IM with an evaluation of proposals that meet the above stated criteria, a detailed description of price and non-price criteria, its preferred portfolio of resources, along with a timeline for resource development.

**I.** The utility shall evaluate bids submitted in response to an RFP using the following price and non-price criteria:

(1) consistency with the terms and requirements of the Efficient Use of Energy Act and the Renewable Energy Act; and other public policies regarding resource preferences adopted by New Mexico or the federal government;

(2) cost of the resource that would be borne by ratepayers, described in terms of the net present value of capacity cost and lifetime cost of energy calculation;

(3) resource effect on system operations and reliability, credit, and financial risks to the utility;

(4) any risks imposed on ratepayers, including assessment of relative amounts of risk inherent among different technologies, fuel sources, or financing arrangements;

(5) environmental impacts including, but not limited to, those associated with resources that emit carbon dioxide or create long-term waste disposal issues;

(6) resource dispatchability and operational flexibility benefits or constraints;

(7) the utility shall include in its evaluation the estimated cost and environmental impact of transmission upgrades or distribution infrastructure upgrades necessary to deliver the project's energy, capacity, or services;

(8) each bidder shall be responsible for all costs associated with interconnecting its project to the transmission grid or, if applicable, to local distribution facilities; and

(9) completeness and credibility of a detailed critical path schedule, and ability to meet scheduled construction start date and commercial operational date, including completing the interconnection process.

**J.** Additional criteria used by the utility for evaluation may not establish a preference for utility ownership or for projects proposed by a utility-affiliated company. The utility shall not unreasonably discriminate between proposals for a utility-owned or utility affiliate-owned resource and proposals for a resource owned by an independent power producer through a purchased power agreement.

**K.** The bid evaluation shall ensure that all bids are compared and evaluated on a consistent basis that is competitive, fair, and shall be subject to review by the commission.

**L.** The utility may issue additional RFPs in the current IRP docket, adhering to the processes and procedures described in 17.7.3.12 NMAC, if prudent following a material event pursuant to Subsection D of 17.7.3.11 NMAC.

**M.** Nothing in this rule shall be construed to prevent a public utility from procuring resources as required by the REA, Section 62-16-4 NMSA 1978, the EUEA, Section 62-17-5 NMSA 1978, or 17.9.570 NMAC. Such procurements shall be included in the utility's forecasting, statement of need, and action plan.

[17.7.3.12 NMAC - N, 10/27/2022; A, 11/29/2022]

#### **17.7.3.13 COST RECOVERY:**

**A.** Acceptance of the utility's statement of need and action plan does not constitute a finding of prudence or pre-approval of costs associated with acquiring additional resources.

**B.** Any costs incurred to implement an accepted action plan shall be considered in a general rate case, resource acquisition proceeding, or appropriate application for a CCN.

[17.7.3.13 NMAC - N, 10/27/2022]

#### **17.7.3.14 INDEPENDENT MONITOR:**

**A.** Scope and purpose: The independent monitor's role is to help the commission determine that the request for proposals design and execution is fair, competitive, and transparent. The independent monitor shall advise the commission and report on the RFP process, but the independent monitor shall not make or participate in the public utility's decisions regarding the procurement process or the selection of resources.

**B.** Following commission acceptance of a public utility's statement of need and action plan, the commission shall appoint an independent monitor to monitor the procurement process of a public utility for competitive resource procurements pursuant to 17.7.3.12 NMAC. The independent monitor, as provided in this Section, shall assist the commission in ensuring that all such processes are reasonable and competitively fair and shall report to the commission regarding those matters as provided in this rule. The commission may appoint an IM for emergency procurements pursuant to 17.7.3.17 NMAC.

**C.** The commission shall, through its designee:

- (1) undertake a process consistent with state purchasing rules and commission policies in recommending a pool of qualified IMs;
- (2) develop an RFP, including the scope, terms of work, and evaluation process to score the RFP responses;
- (3) receive, review, score, and rank the RFP responses;
- (4) confer with the public utility on the recommendation of the IM;
- (5) recommend qualified bidders to the commission for appointment as the IM; and
- (6) administer the contract with the appointed IM, including: confirming that contract deliverables are met, reviewing invoices and related contract performance, and approving utility invoices after staff's review and approval.

**D.** In selecting the IM, the commission, through its designee, may solicit recommendations of the names of independent firms or individuals that demonstrate independence from public utilities supplying electric service in the state, their affiliates, and likely bidders, and demonstrate the qualifications, expertise, and experience to perform the functions of an IM as provided in this rule.

(1) The IM shall provide a statement of interest to the commission which discloses any contracts or other economic arrangements of any kind between the IM and any investor-owned electric utility or affiliate within the last four years.

(2) The IM shall notify the commission and utility of any perceived or actual conflicts that arise during the course of the procurement process.

**E.** The commission, through its designee, shall develop a standard form of contract between an IM and the commission that requires the IM to perform the functions of an IM as provided in this rule in a manner that is not subject to the control of the public utility. The standard form of contract between an IM and the commission for IM services as provided for in this rule shall include, but shall not be limited to, the identification of the IM's functions and scope of work as provided in Subsection G of 17.7.3.14 NMAC.

**F.** Funding for the services of the IM shall be paid by the utility and treated as a regulatory asset to be recovered through rates established in the utility's next general rate proceeding.

**G.** Duties of the independent monitor:

(1) The IM shall file a minimum of two reports with the commission. The first report shall analyze the RFP design (design report). The final report shall review the fairness of the RFP execution (final report).

(a) In the design report, the IM shall report to the commission on RFP design within 28 days of the public utility's provision of RFP documents pursuant to Subsection C of 17.7.3.12 NMAC. The IM shall analyze the proposed RFP, including but not limited to its scope, instructions, conditions for eligible proposals, specifications, time schedules, disclosure of bid evaluation methods, and term sheets. The RFP design report shall state whether the contents of the proposed RFP comply with the requirements of 17.7.3.10 NMAC through 17.7.3.12 NMAC and are otherwise reasonable, competitively fair, designed to promote a robust bid response, and designed to identify a utility's most cost-effective option among resource alternatives to meet its service needs in compliance with this rule.

(b) In the final report, the IM shall, within 30 days of the utility's submission of its shortlist to the IM, review and report on the reasonableness, competitiveness, and fairness of the utility's solicitation, evaluation, and procurement processes, including but not limited to bid screening, comparison, evaluation, and short-listing criteria.

(i) The IM shall state whether the RFP process implemented by the public utility complied with the requirements of 17.7.3.11 NMAC and 17.7.3.12 NMAC.

(ii) The IM's report shall also provide summary information on the results of the bids, including the number of bids sorted by the following criteria: by resource type, capacity or energy, price range by resource type, and whether there were any deficiencies in those respects that should be addressed by the commission in a future proceeding for approval of the solicited projects. The commission may rely on that opinion to request that the utility make modifications in a timely manner.

(2) At any point during the public utility's RFP process the IM may notify the commission and the utility of any deficiency as contemplated in Subsection G of 17.7.3.14 NMAC.

**H.** The public utility shall provide the IM with prompt and continuing access to all documents, data, assumptions, models, specific model inputs, bidding and weighting criteria used, and any other relevant information reviewed, produced, or relied on by the public utility in the preparation and conduct of its competitive resource procurement process.

**I.** All communications, including but not limited to reports pursuant to this Section, provided by the IM to the commission, shall be made part of the commission's public records in a timely manner in the public utility's most recent IRP docket.

(1) The public utility, commission utility division staff, and any parties to the public utility's most recent IRP docket may comment within 14 days of the filing of the

design report to the public record. After the design report comment deadline of 14 days, the utility may issue the RFP.

(2) In any proceeding filed by a public utility for approvals stemming from its solicitation made pursuant to the RFP process as described in 17.7.3.12 NMAC, the commission may rely upon any reports or findings of the IM assigned to monitor that solicitation as evidence, provided that such evidence shall not be conclusive as to whether or not a resource proposed by the utility shall be approved.

**J.** All communications between the public utility and any bidders shall be shared at the same time with the IM. Commission utility division staff and any parties are restricted from initiating contacts with the independent monitor. The independent monitor may initiate contact with the utility, commission utility division staff, and any parties.

(1) For all contacts with the public utility, commission utility division staff, and any parties in the resource plan proceeding, the independent monitor shall maintain a log that briefly identifies the entities communicating with the IM, the date and duration of the communication, the means of communication, the topics discussed, and the materials exchanged, if any.

(2) The communications log shall be contained in the IM's report to the commission pursuant to Subparagraph (b) of Paragraph (1) of Subsection G of 17.7.3.14 NMAC.

**K.** The independent monitor shall serve as an advisor to the commission and shall not be a party to the proceedings in accordance with 1.2.3.9 NMAC. As such, the independent monitor shall not be subject to discovery nor cross-examination at hearing, if one is held, but the public utility, commission utility division staff, and any parties shall have the opportunity to respond to any reports or findings of the IM pursuant to Paragraph (1) of Subsection I of 17.7.3.14 NMAC.

**L.** The commission shall not appoint an independent monitor for a utility's procurement for which the commission grants a variance pursuant to Subsection D of 17.7.3.17 NMAC.

[17.7.3.14 NMAC - N, 10/27/2022; A, 11/29/2022]

#### **17.7.3.15 CONFIDENTIALITY OF INFORMATION:**

**A.** The utility may submit any portions of its IRP under seal to the extent the utility deems specific information to be confidential.

**B.** The utility shall seek a protective order under Subsection B of 17.1.2.8 NMAC for those portions of its IRP it considers confidential, and the utility shall have the burden of proving its right to such protection.

(1) Any information submitted under seal pursuant to this paragraph shall remain under seal for a period of three years, after which time it shall become public unless the utility seeks and obtains further protection from the commission.

(2) Information submitted under seal shall be available for review by the commission and its designated representatives and by any person who has entered into a confidentiality agreement with the utility in a form approved by commission order, provided, however, that bidders or potential bidders shall not have access to competitively sensitive information of other bidders.

**C.** The utility shall not disclose any bid information for which a non-winning bidder has requested confidential treatment except in accordance with a commission protective order limiting disclosure of such information to persons who execute and file a confidentiality agreement with the commission as provided in that order.

[17.7.3.15 NMAC - Rp, 17.7.3.11 NMAC, 10/27/2022]

#### **17.7.3.16 EXEMPTIONS:**

**A.** Motion for exemption from rule: Upon motion by a utility and for good cause shown, the commission may exempt public utilities with fewer than five thousand customers and distribution-only public utilities from the requirements of this rule.

**B.** Filing of a notice of exemption from rule: Upon the filing of a notice of exemption in the utility's most recent IRP docket, a utility shall be exempted from the requirements of 17.7.3.12 and 17.7.3.14 NMAC for the following procurements:

(1) emergency procurements; and

(2) capacity or energy from the generation facilities of other utilities or from non-utility generators pursuant to agreements for a two year term or less (including renewal terms) or for 20 megawatts of capacity or less;

**C.** Multi-state resource planning: The commission shall take into account a public utility's resource planning requirements in other states and shall authorize utilities that operate in multiple states to implement plans that coordinate the applicable state resource planning requirements.

[17.7.3.16 NMAC - Rp, 17.7.3.14 NMAC, 10/27/2022; A, 11/29/2022]

#### **17.7.3.17 VARIANCES AND AMENDMENTS:**

**A.** A utility may file a request for a variance from the requirements of this rule.

**B.** Such application shall:

- (1) describe the situation which necessitates the variance;
- (2) set out the effect of complying with this rule on the utility and its customers if the variance is not granted;
- (3) identify the section(s) of this rule for which the variance is requested;
- (4) describe the expected result which the request shall have if granted; and
- (5) state how the variance shall aid in achieving the purposes of this rule.

**C.** The commission may grant a request for a procedural variance through an order issued by the chair, a commissioner, or a designated hearing examiner.

**D.** The following types of procurements that deviate from the utility's commission-accepted action plan shall be submitted to the commission as an application for a variance pursuant to 17.7.3.17 NMAC:

- (1) capacity or energy from newly-constructed, utility-owned, supply-side resources with a nameplate rating of 20 megawatts or less;
- (2) improvements or modifications to existing utility generation facilities that change the production capability of the generation facility site in question by 20 megawatts or less based on the utility's share of the total power generation at the facility site and that have an estimated cost of \$20 million or less;
- (3) interruptible service provided to the utility's electric customers;
- (4) modification to, or amendment of, existing power purchase agreements provided that the modification or amendment does not extend the agreement more than four years, does not add more than 20 megawatts of nameplate capacity to the utility's system, and is cost effective in comparison to other supply-side alternatives available to the utility; and
- (5) utility administered demand-side programs.

[17.7.3.17 NMAC - Rp, 17.7.3.15 NMAC, 10/27/2022; A, 11/29/2022]

## **PART 4: INTEGRATED RESOURCE PLANS FOR GAS UTILITIES**

### **17.7.4.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.7.4.1 NMAC - N, 4-16-07]



#### **17.7.4.2 SCOPE:**

This rule applies to all gas utilities subject to the commission's jurisdiction over integrated resource planning.

**A.** Supplement to other rules: Except as specifically provided herein, this rule does not supersede any other rule of the commission but is to be construed as a supplement to such rules.

**B.** Severability. If any part or application of this rule is held invalid, the remainder or its application shall not be affected.

[17.7.4.2 NMAC - N, 4-16-07]

#### **17.7.4.3 STATUTORY AUTHORITY:**

This rule is adopted under the authority vested in this commission by the New Mexico Public Regulation Commission Act, NMSA 1978, Section 8-8-15; the Public Utility Act, NMSA 1978, Section 62-3-1 et seq.; and the Efficient Use of Energy Act, NMSA 1978, Section 62-17-1 et seq.

[17.7.4.3 NMAC - N, 4-16-07]

#### **17.7.4.4 DURATION:**

Permanent.

[17.7.4.4 NMAC - N, 4-16-07]

#### **17.7.4.5 EFFECTIVE DATE:**

April 16, 2007, unless a later date is cited at the end of a section.

[17.7.4.5 NMAC - N, 4-16-07]

#### **17.7.4.6 OBJECTIVE:**

The purpose of this rule is to set forth the commission's requirements for the preparation, filing, review and acceptance of New Mexico retail integrated resource plans by public utilities supplying retail natural gas service in New Mexico.

[17.7.4.6 NMAC - N, 4-16-07]

#### **17.7.4.7 DEFINITIONS:**

Unless otherwise specified, the following definitions will apply when used in this rule:

**A. energy efficiency** means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices to result in a decrease in consumption of natural gas without reducing the amount or quality of energy services;

**B. integrated resource plan (IRP)** means a public utility's plan to meet New Mexico jurisdictional retail customers existing and future demand, which for natural gas utilities incorporates the evaluation of supply- and demand-side options that create a reliable resource mix to accommodate customer demand;

**C. load and resources table** means an accounting and comparison of a utility's firm gas supplies with its peak customer obligations and reserve requirements for each year of the planning period;

**D. load management** means measures or programs that target equipment or devices to result in decreased peak demand or shifting demand from peak to off-peak periods;

**E. load forecasting** means the prediction of the demand for an energy commodity over each of the succeeding four to ten years for the utility's New Mexico jurisdictional utility system;

**F. planning period** means the future period for which a utility develops its IRP; for purposes of this rule, the planning period is four to ten years and begins the year the utility files its plan with the commission;

**G. public advisory process** means the process through which a public utility provides information to interested parties and receives input from interested parties during the development of its IRP;

**H. resources** means supply-side resources, energy efficiency or renewable resources used to meet utility system requirements;

**I. supply side resource** means a resource that can provide natural gas supplies to the natural gas utility's transmission and distribution pipeline systems; supply side resources include utility owned generating facilities, and capacity purchased from other utilities and non utilities.

[17.7.4.7 NMAC - N, 4-16-07]

#### **17.7.4.8 GENERAL PROVISIONS:**

The commission adopts this rule in order to fulfill the requirements of NMSA 1978, Section 62-17-10.

[17.7.4.8 NMAC - N, 4-16-07]

#### **17.7.4.9 IRP FOR NATURAL GAS UTILITIES:**

Public utilities supplying natural gas service to customers shall file an initial IRP with the commission within twelve months of the effective date of this rule and every four years thereafter.

[17.7.4.9 NMAC - N, 4-16-07]

#### **17.7.4.10 CONTENTS OF THE GAS UTILITY IRP:**

The contents of the IRP submitted by a utility providing natural gas retail service in New Mexico shall contain the utility's jurisdictional:

- A.** current load forecast;
- B.** description of existing portfolio of resources;
- C.** summary of foreseeable resource needs for the planning period;
- D.** anticipated resources to be added during the planning period and the evaluation of various options that could reasonably be added to the utility's resource portfolio;
- E.** a summary description of natural gas supply sources and delivery systems;
- F.** a summary identification of critical facilities susceptible to supply-source or other failures;
- G.** description of the public advisory process; and
- H.** other information that may aid the commission in reviewing the utility's planning processes.

[17.7.4.10 NMAC - N, 4-16-07; A, 12-31-12]

#### **17.7.4.11 EVALUATION OF NATURAL GAS RESOURCES:**

- A.** The utility shall evaluate the ability of its natural gas resources to provide adequate redundancy of supply and of delivery systems.
- B.** The utility shall evaluate, as appropriate, renewable energy, energy efficiency, load management and conventional supply-side resources on a consistent and comparable basis and take into consideration risk and uncertainty of energy supply, price volatility and costs of anticipated environmental regulations in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers. The evaluation shall be based on a present-value analysis of revenue requirements and shall include discussion of any economic, risk, environmental, and reliability analyses.

[17.7.4.11 NMAC - N, 4-16-07; A, 12-31-12]

#### **17.7.4.12 PUBLIC ADVISORY PROCESS:**

**A.** At least one year prior to the filing date of its IRP, a utility shall initiate a public advisory process to develop its IRP. The utility shall initiate the process by providing notice at least 30 days prior to the first scheduled meeting to the commission, interveners in its most recent general rate case, and participants in its most recent energy efficiency and IRP proceedings. The utility shall at the same time, also publish this notice in a newspaper of general circulation in every county in which it serves and in the utility's billing inserts. This notice shall consist of:

- (1) a brief description of the IRP process;
- (2) time, date and location of the first meeting;
- (3) a statement that interested individuals should notify the utility of their interest in participating in the process; and
- (4) utility contact information.

**B.** Meetings held as part of the public participation process shall be noticed and scheduled on a regular basis and shall be open to members of the public who shall be heard and their input considered as part of the public participation process. Upon request, the utility shall provide an executive summary containing a non-technical description of its most recent IRP.

**C.** The purposes of the public participation process are for the utility to provide information to, and receive and consider input from, the public regarding the development of its IRP. Topics to be discussed as part of the public participation process include, but are not limited to, the utility's load forecast; evaluation of existing supply- and demand-side resources; the assessment of need for additional resources; identification of resource options; modeling and risk assumptions and the cost and general attributes of potential additional resources; and development of the most cost-effective portfolio of resources for the utility's IRP.

**D.** In its initial IRP advisory process, the utility and participants shall explore a procedure to coordinate the IRP process with energy efficiency and load management program proposals. Any proposed procedure shall be designed to conserve commission, participant and utility resources and shall indicate what, if any, variances may be needed to effectuate the proposed procedure.

[17.7.4.12 NMAC - N, 4-16-07]

#### **17.7.4.13 CONFIDENTIALITY OF INFORMATION:**

The utility may submit under seal any portions of its IRP that reveals its contracted portfolio, its major suppliers, transportation volumes, or its contract pricing, on a contract-by-contract basis, to the extent the utility deems specific information to be confidential. The utility also may seek a protective order under Subsection B of 17.1.2.8 NMAC for other portions of its IRP it considers confidential, but the utility shall have the burden of proving its right to such protection. Any information submitted under seal pursuant to this paragraph shall remain under seal for a period of two (2) years, after which time it shall become public unless the utility seeks and obtains further protection from the commission. Information submitted under seal shall be available for review by the commission and its designated representatives and by any person who has entered into a confidentiality agreement with the utility in a form approved by commission order.

[17.7.4.13 NMAC - N, 4-16-07]

#### **17.7.4.14 NOTICE OF MATERIAL CHANGES:**

The utility shall promptly notify the commission and participants of material events that would have the effect of changing the results of the utility's IRP had those events been recognized when the IRP was developed.

[17.7.4.14 NMAC - N, 4-16-07]

#### **17.7.4.15 COMMISSION REVIEW, ACCEPTANCE AND ACTION:**

**A. Compliance Review.** The commission will review the utility's proposed IRP for compliance with the procedures and objectives set forth herein. The commission may accept the proposed IRP as compliant with this rule without a hearing, unless a protest is filed that demonstrates to the commission's reasonable satisfaction that a hearing is necessary. Protests must be filed within thirty (30) days of the filing of the proposed IRP. If the commission has not acted within forty-five (45) days after the filing of the proposed IRP, that IRP is deemed accepted as compliant with this rule. If the commission determines the proposed IRP does not comply with the requirements of this rule, the commission will identify the deficiencies and return it to the utility with instructions for re-filing.

**B. Use in Resource Acquisition Proceedings.** In a proceeding concerning a utility's request for a CCN for a new utility resource, or in other proceedings concerning a utility's resource acquisition, the utility shall present evidence that the requested resource is consistent with the commission-accepted utility IRP unless material changes, as described in Section 17.7.4.14 of this rule, have occurred that would warrant a different utility course of action. Evidence that the resource is consistent with the IRP, and that there have not been material changes that would warrant a different course of action by the utility, will constitute prima facie evidence that the resource-type, but not the particular resource being proposed, is required by the public convenience and necessity.

[17.7.4.15 NMAC - N, 4-16-07]

**17.7.4.16 ADDITIONAL INVESTIGATIONS AND INFORMATION:**

The commission may conduct an investigation of any matters pertaining to a public utility's IRP where it deems appropriate and may require additional information to be filed.

[17.7.4.16 NMAC - N, 4-16-07]

**17.7.4.17 EXEMPTIONS:**

**A.** Motion for Exemption from Rule. Upon motion by a utility and for good cause shown, the commission may exempt public utilities with fewer than five thousand customers and distribution-only public utilities from the requirements of this rule.

**B.** Multi-State Resource Planning. The commission shall take into account a public utility's resource planning requirements in other states and shall authorize utilities that operate in multiple states to implement plans that coordinate the applicable state resource planning requirements.

[17.7.4.17 NMAC - N, 4-16-07]

**17.7.4.18 VARIANCES AND AMENDMENTS:**

A utility may file a request for a variance from the requirements of this rule or to amend its IRP filing to reflect substantially changed circumstances. Such application shall describe the situation which necessitates the variance; set out the effect of complying with this rule on the utility and its customers if the variance is not granted; identify the section(s) of this rule for which the variance is requested; describe the expected result that the request will have if granted; and state how the variance will aid in achieving the purposes of this rule. The commission may grant a request for a procedural variance through an order issued by the chairman, a commissioner or a designated hearing examiner. Other variances shall be presented to the commission as a body for determination.

[17.7.4.18 NMAC - N, 4-16-07]

**PART 5-429: [RESERVED]**

**PART 430: COSTS OF RESIDENTIAL ENERGY CONSERVATION PROGRAMS FOR COVERED UTILITIES**

**17.7.430.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

**17.7.430.2 SCOPE:**

NMPSC Rule 430 [17.7.430 NMAC] shall apply to all regulated utilities operating in the State of New Mexico which meet the definition of "Covered Utility."

[Recompiled 12/30/01]

**17.7.430.3 STATUTORY AUTHORITY:**

NMPSC Rule 430 [17.7.430 NMAC] is adopted under the authority vested in the Commission by the Public Utility Act, NMSA 1978, Section 62-3-1 et. seq., and the National Energy Conservation Policy Act, Public Law 95-619, 92 Stat. 3206, November 9, 1978, Section 215(c)(1)(C).

[Recompiled 12/30/01]

**17.7.430.4 DURATION:**

[Recompiled 12/30/01]

**17.7.430.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.7.430.6 OBJECTIVE:**

NMPSC Rule 430 [17.7.430 NMAC] is promulgated pursuant to Section 215(c)(1)(C) of the National Energy Conservation Policy Act, Public Law 95-619, 92 Stat. 3206, November 9, 1978, 42 USC Section 8201 et. seq. (NECPA). NECPA requires the establishment of utility programs to encourage and facilitate the installation of energy conservation measures and renewable resource measures. Administration of utility programs is overseen by the New Mexico Energy, Minerals and Natural Resources Department, which has promulgated a New Mexico Residential Conservation Service Plan approved by the U.S. Department of Energy. The New Mexico Public Service Commission [New Mexico Public Regulation Commission] is charged with determining whether utility programs carried out under Section 215(b) of NECPA should be treated as a current expense of providing utility service and charged to all ratepayers of a utility in the same manner as current operating expenses of providing utility service, or charged to the residential customer for whom the activity is performed. Section 215(c)(1)(C). The purpose of NMPSC Rule 430 [17.7.430 NMAC] is to require that all costs incurred by a utility under Section 215(b) of NECPA be treated as a current expense charged to all ratepayers.

[Recompiled 12/30/01]

### **17.7.430.7 DEFINITIONS:**

When used in NMPSC Rule 430 [17.7.430 NMAC] unless otherwise specified the following definitions will apply:

A. "Utility Program" or "Program" means a program meeting the requirements of Section 215 of NECPA.

B. "Eligible Customer" means a person who:

- (1) owns or occupies a residential building and
- (2) receives a fuel bill from a covered utility or participating home heating supplier for fuel used in such residential building.

C. "Covered Utility" means in any calendar year a public utility which during the second preceding calendar year had either:

- (1) sales of natural gas for purposes other than resale which exceeded 10 billion cubic feet or
- (2) sales of electric energy for purposes other than resale which exceeded 750 million kilowatt hours.

D. "Program Audit" means an energy audit in which the estimates of costs and savings are based on an on-site inspection of an eligible customer's residence by an auditor qualified according to the New Mexico Residential Conservation Service Plan promulgated by the New Mexico Energy, Minerals and Natural Resources Department.

[Recompiled 12/30/01]

### **17.7.430.8 TABLE OF CONTENTS:**

- A. Purpose: [17.7.430.6 NMAC]
- B. Authority: [17.7.430.3 NMAC]
- C. Application [17.7.430.2 NMAC]
- D. Definitions: [17.7.430.7 NMAC]
- E. Treatment of Program Costs [17.7.430.9 NMAC]
- F. Customer Charges [17.7.430.10 NMAC]
- G. Billing Practice [17.7.430.11 NMAC]



[Recompiled 12/30/01]

#### **17.7.430.9 TREATMENT OF PROGRAM COSTS:**

The following program elements are to be treated as a current operating expense:

A. Administrative and general expenses, including those associated with program audits, list distribution, customer billing services, and "arranging". These administrative costs may include any costs the utility incurs if it conducts random post-installation inspections required by 10 CFR Section 456.313(b) and conciliation conferences required by 10 CFR Section 456.315(a);

B. Project Manager requirements, including:

(1) program audits;

(2) arranging for a lender to make a loan to an eligible customer to finance the purchase and installation costs of energy conservation and renewable resource measures, including the costs of arranging repayment of the principal and interest of a loan as part of the periodic bill; and

(3) arranging to have the program measures installed.

[Recompiled 12/30/01]

#### **17.7.430.10 CUSTOMER CHARGES:**

There shall be no charge to a customer who requests a program audit over and above those charges in rates based on current operating expenses.

[Recompiled 12/30/01]

#### **17.7.430.11 BILLING PRACTICE:**

Costs incurred by the utility attributable to the RCS Program and passed on to the ratepayers shall not be stated as a separate line item on bills.

[Recompiled 12/30/01]

## **CHAPTER 8: RENEWABLE ENERGY**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: SELECTION OF AND PARTICIPATION IN PROJECTS**

**17.8.2.1 ISSUING AGENCY:**

New Mexico Renewable Energy Transmission Authority ("RETA" or the "Authority").

[17.8.2.1 NMAC - N, 12/15/2011]

**17.8.2.2 SCOPE:**

This rule applies to all renewable energy transmission-related projects submitted to the New Mexico renewable energy transmission authority ("authority") seeking the authority's participation in the project.

[17.8.2.2 NMAC - N, 12/15/2011]

**17.8.2.3 STATUTORY AUTHORITY:**

NMSA 1978, Section 62-16A-1 *et seq.*, as amended.

[17.8.2.3 NMAC - N, 12/15/2011]

**17.8.2.4 DURATION:**

Permanent.

[17.8.2.4 NMAC - N, 12/15/2011]

**17.8.2.5 EFFECTIVE DATE:**

December 15, 2011, unless a later date is cited at the end of a section.

[17.8.2.5 NMAC - N, 12/15/2011]

**17.8.2.6 OBJECTIVE:**

This rule sets forth the criteria by which the authority may consider undertaking a renewable energy related project as defined by NMSA 1978, Section 62-16A-2. The rule also articulates the authority's participation in those projects.

[17.8.2.6 NMAC - N, 12/15/2011]

**17.8.2.7 DEFINITIONS:**

**A. "Act"** means the New Mexico Renewable Energy Transmission Authority Act, NMSA, 1978, Chapter 62, Article 16A, as amended.

**B. "Acquire" or "acquisition"** means to obtain eligible facilities by lease, construction, reconstruction or purchase, whether directly by the authority or by an entity in which the authority has a majority ownership interest. The authority may lease, construct, reconstruct or purchase eligible facilities through an agent when doing so is consistent with the act. If at any time after acquisition, the authority sells, leases or otherwise relinquishes its ownership interest in the eligible facilities, the authority will nevertheless be deemed to have acquired the eligible facilities.

**C. "Authority"** means the New Mexico renewable energy transmission authority.

**D. "Board"** means the appointed members of the authority.

**E. "Electric service reliability"** means the continuity of electric service experienced by retail customers. A project or facility will not be considered to affect electric service reliability if it does not materially diminishes electric service reliability of the transmission system in New Mexico.

**F. "Letter of support"** means a letter issued by the authority in order to assist the developer in attracting financial or other support for the project.

**G. "Memorandum of understanding" or "MOU"** means a written agreement entered into between the authority and an applicant for the purpose of informing the public of RETA's involvement in a project; allowing a greater exchange of information; implying a financial or project development commitment between the two; or for any other reason the board deems appropriate.

**H. "Participation"** means involvement of any kind by the authority in a project, including, but not limited to, planning, acquiring, financing, developing, managing, operating, consulting, cooperating or otherwise taking part in a project, which has been approved by the authority.

**I. "Partnership"** means the authority's affiliation with a person for the purpose of RETA participation in a project.

**J. "Person"** means a federal, state or local public entity, a public utility, or a private entity or individual.

**K. "Project committee"** means the subcommittee of the board established to review projects.

[17.8.2.7 NMAC - N, 12/15/2011]

#### **17.8.2.8 RETA PARTICIPATION IN PROJECTS:**

##### **A. General:**

(1) The board may, in its sole discretion, choose to provide support for a project based on evaluation criteria set forth in this rule, as further described in policies adopted by the board. The type and amount or degree of support provided by the authority will generally depend on the request of an applicant, the evaluation of the project based on the criteria, and RETA's resource capacity to support the project.

(2) The authority may decline to participate in any project, or may participate in any project through a letter of support; an MOU; a joint development agreement; financing of a project in whole or in part; entering into a partnership or limited liability company agreement with a person; or acquisition of a project.

#### **B. Evaluation criteria:**

(1) The evaluation of a project will be consistent with the type of request being made and may include, to the extent applicable, an evaluation of project feasibility, administrative capacity, financial position, benefit to the state of New Mexico, and economic and demographic factors. The authority may use one or more of these criteria during the evaluation process; depending on the type of request being considered. Further detail regarding the basis for RETA's evaluation of a project may be issued by the board in a policy.

(2) In accordance with NMSA 1978, Section 62-16A-4(F), the authority shall not own or control facilities unless:

(a) the facilities are leased to or help for lease or sale to a public utility or such other person approved by the public regulation commission;

(b) the operation, maintenance and use of the facilities are vested by lease or other contract in a public utility or such other person approved by the public regulation commission;

(c) the facilities are owned or controlled for a period of not more than 180 days after termination of a lease or contract described in Paragraph (1) or (2) of this subsection or after the authority gains possession of the facilities following a breach of such lease or contract or as a result of bankruptcy proceedings; or

(d) the facilities do not affect in-state retail rates or electric service reliability.

**C. Evaluation by RETA projects committee:** Employees of the authority will make a best effort to evaluate applications and compile a recommendation for the projects committee within 60 days of a request made pursuant to this rule. A project shall not proceed to the board for consideration unless the committee has evaluated it and recommended consideration by the full board. The committee may, in its sole discretion, request additional information from an applicant prior to making a recommendation to the full board. A project shall not be presented to the full board if the committee has denied the request or has not yet completed a full review.

[17.8.2.8 NMAC - N, 12/15/2011]

**17.8.2.9 CONFIDENTIALITY:**

**A.** All information obtained by the authority that is proprietary technical or business information shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act (NMSA 1978, Section 14-2-4). Proprietary confidential information includes, but is not limited to, power purchase agreements, interconnection agreements, construction contracts, equipment supply or procurement agreements, operation and maintenance agreements, real property related agreements, financing agreements (including security, pledge and mortgage agreements), costs of production, costs of transmission, transmission service agreements, credit reviews, detailed power models and financing statements.

**B.** The authority may enter into confidentiality agreements as necessary consistent with the Inspection of Public Records Act and the act.

[17.8.2.9 NMAC - N, 12/15/2011]

**17.8.2.10 FILING RULES:**

Each rule, amendment, or repeal thereof adopted by the authority shall be filed with the state records center in accordance with NMSA 1978, Section 14-4-3 and published in the New Mexico register in accordance with NMSA 1978, Section 14-4-7.1.

[17.8.2.10 NMAC - N, 12/15/2011]

**PART 3: EMINENT DOMAIN**

**17.8.3.1 ISSUING AGENCY:**

New Mexico Renewable Energy Transmission Authority ("Authority").

[17.8.3.1 NMAC - N, 12/15/2011]

**17.8.3.2 SCOPE:**

This rule applies to the authority's exercise of the authority's power of eminent domain for acquiring property or interests in property for projects the authority has determined are eligible facilities, as that term is defined in NMSA 1978, Section 62-16A-2, and for which the authority has determined to participate in the project, but in circumstances in which the authority is not acquiring the project. In exercising any authority provided for herein, the authority shall act in accordance with all applicable laws.

[17.8.3.2 NMAC - N, 12/15/2011]

**17.8.3.3 STATUTORY AUTHORITY:**

NMSA, 1978, Sections 42A-1-1 *et seq.*, and 62-16A-1 *et seq.*

[17.8.3.3 NMAC - N, 12/15/2011]

**17.8.3.4 DURATION:**

Permanent.

[17.8.3.4 NMAC - N, 12/15/2011]

**17.8.3.5 EFFECTIVE DATE:**

December 15, 2011, unless a later date is cited at the end of a section.

[17.8.3.5 NMAC - N, 12/15/2011]

**17.8.3.6 OBJECTIVE:**

The purpose of this rule is to specify the objective standards and procedures the authority will follow in considering applications for exercise of its power of eminent domain, the negotiation procedures required of persons submitting applications with landowners and those claiming an interest in property, the contents of applications, condemnation procedures, and related matters.

[17.8.3.6 NMAC - N, 12/15/2011]

**17.8.3.7 DEFINITIONS:**

In addition to the definitions in NMSA 1978, Sections 62-16A-2, 42A-1-2, , as used in this rule:

**A. "Agreement"** means a project ownership and property agreement as described in this rule and includes the applicant and the authority's understanding regarding the authority's participation in the project, project ownership, project financing, project management, and any other matter required by the authority. The parameters of the authority's exercise of its eminent domain powers shall be set forth in the agreement.

**B. "Authority"** means the renewable energy transmission authority.

**C. "Applicant"** means any person that submits an application to the authority pursuant to this rule and in the manner set forth herein. Applications will only be considered if the authority has already agreed to participate in the project.

**D. "Eligible facilities"** means facilities to be financed or acquired by the authority, in which, within one year after beginning the transmission or storage of any electricity, and thereafter, at least 30 percent of the electric energy, as estimated by the authority, originates from renewable energy sources.

**E. "Eminent domain code"** means the statutory provisions governing condemnation in New Mexico, NMSA 1978, Section 42A-1-1 *et seq.*, as modified from time to time.

**F. "Person"** includes a natural individual, partnership, corporation, association other legal or fiduciary entity and a governmental entity.

**G. "Project"** means, for the purposes of this rule, an undertaking by the authority to finance or plan, acquire, maintain and operate eligible facilities located in part or in whole within the state of New Mexico in which the authority has agreed to participate.

**H. "Property"** means real property under the laws of the New Mexico, and may include one or more individual parcels of land or a portion or portions thereof, any improvements thereon or connected therewith or any easement or other interest therein.

**I. "Property owner(s)"** means any person or entity having an ownership interest in the property.

[17.8.3.7 NMAC - N, 12/15/2011]

#### **17.8.3.8 PROJECT OWNERSHIP AND PROPERTY AGREEMENT:**

**A.** The applicant may apply to the authority for approval of an agreement and exercise of the authority's eminent domain powers for the purpose of property acquisition, condemnation, property management, property disposition, and related matters. The parameters of the authority's exercise of its eminent domain powers shall be set forth in the agreement.

**B. Contents of application:** The applicant must file with the authority an application, which shall contain:

(1) a description of the project, including:

(a) identification of all applicants and other persons with a financial interest in the project;

(b) a description of the project and its purpose(s);

(c) a description of the proposed project route in New Mexico, including a map showing the route in New Mexico;

(d) a description of the property on the proposed project route that the applicant does not have an interest in; and

(e) a description of the scope of work for the project and the projected timeline for completion of the work;

(2) a copy of the draft agreement(s) proposed for approval;

(3) copies of memorandum of understanding (MOU) or prior agreements, if any, regarding the authority's support for or participation in the project;

(4) a statement explaining why the property comprising the proposed route in New Mexico is necessary for the project;

(5) copies of any reviews of the proposed project under the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.* (NEPA), or other similar reviews;

(6) evidence that the applicant has made reasonable and diligent efforts to acquire the property by negotiation, including by offering at least fair market value for the property;

(7) a statement verifying, under oath, that the proposed exercise of eminent domain authority does not involve taking any utility-owned property;

(8) a copy of a determination by the New Mexico public regulation commission that the proposed project will not materially diminish electric service reliability of the transmission system in New Mexico, if issued;

(9) a form of draft publication of the notice in compliance with Subsection C of 17.8.3.8 NMAC;

(10) any other information or exhibits the applicant wishes to submit in support of the application.

**C.** Any information contained in the application which the applicant believes is exempt from disclosure pursuant to the Inspection of Public Records Act (Chapter 14, Article 2 NMSA 1978) or the New Mexico Renewable Energy Transmission Authority Act (Chapter 6, Article 16A NMSA 1978) must be clearly marked in the application and, if feasible, separated from the remainder of the application.

**D. Notice and comment on application:**

(1) Notice.



(a) At the same time the application is submitted to the authority, the applicant shall provide a copy of the application to private property owner(s) of record of the properties that lie within the proposed project route in New Mexico, in the same manner as provided in Subsection B of 17.8.3.8 NMAC.

(b) The authority shall cause notice of the application to be published in a newspaper of general circulation available in every county in which the property within the proposed project route in New Mexico lies. The notice shall not include any information from the application that is exempt from disclosure pursuant to the Inspection of Public Records Act (Chapter 14, Article 2 NMSA 1978) or the New Mexico Renewable Energy Transmission Authority Act (Chapter 6, Article 62A NMSA 1978). Upon request by the authority, the applicant shall publish notice in accordance with this rule.

(c) Such published notice shall appear at least three times a minimum of seven days apart, with the first occurrence published within 14 days after the date of the authority's approving the form of notice and at least 30 days prior to the date of the authority board meeting at which the application will be considered.

(d) The notice shall contain the following information:

(i) identification of the applicant(s);

(ii) a description of the project and its purpose;

(iii) a description of the proposed project route in New Mexico and a statement that a map is available at RETA's offices;

(iv) a statement that the applicant has applied to the authority for approval of the agreement and exercise of its eminent domain authority pursuant to this rule;

(v) the date, time and place of the authority meeting at which the authority may consider the application, if known, together with the further statement that interested persons should contact the authority for confirmation of the meeting date, time, and place;

(vi) a statement that any interested person may examine the application and related exhibits, except such information exempt from disclosure pursuant to the Inspection of Public Records Act (Chapter 14, Article 2 NMSA 1978) or the New Mexico Renewable Energy Transmission Authority Act (Chapter 6, Article 62A NMSA 1978), submitted to the authority at the offices of the authority in Santa Fe, and indicating the address and telephone number of the authority;

(vii) a statement that property owners whose property lies within the proposed project route in New Mexico may submit written comments on the application

to the authority on or before the date of the board of directors' meeting at which the authority will consider the application;

(viii) a statement that property owner(s) whose property lies within the proposed project route in New Mexico may appear at the time and place of the authority's board of directors' meeting at which the authority will consider the application, and may make written or oral comments on the application at the meeting;

(ix) a statement that any and all agency approvals required by law have been obtained and all reviews required by any other agency have been satisfactorily completed. Copies of all supporting documentation or review results shall be submitted along with the application.

(e) The applicant shall bear the cost of publication.

(f) If the authority requires the applicant to publish the notice in accordance with this rule, the applicant shall ensure that an affidavit of publication is provided to the authority promptly upon last publication of the notice.

(2) Comment. The authority shall provide opportunity for written and oral comments on the application by property owner(s) whose property lies within the proposed project route in New Mexico. The authority shall provide a comment period of at least 30 days following last publication of the notice pursuant to Paragraph (1) of Subsection D of 17.8.3.8 NMAC, but may provide a reasonable extension of the comment period, not to exceed sixty 60 additional days. Oral comments shall be received at the meeting of the authority wherein the issue is to be considered.

#### **E. Findings and determination:**

(1) For projects in which the authority already participates, the authority may approve the proposed agreement if the criteria below are satisfied in the sole discretion of the board of directors of the authority:

(a) The property comprising the route in New Mexico is necessary for the project. Consideration and selection of the proposed route through review under NEPA, or other governmental review, if undertaken, shall serve to satisfy this requirement.

(b) The proposed project route in New Mexico will not involve taking utility-owned property. Applicant's affidavit or letters or documentation from relevant New Mexico utilities shall serve to satisfy this requirement.

(c) The project will not materially diminish electric service reliability of the transmission system in New Mexico, as determined by the New Mexico public regulation commission. If the public regulation commission has not yet made this determination, the authority may approve the application subject to a New Mexico public

regulation commission determination.that the project will not materially diminish electric service reliability of the transmission system in New Mexico.

(d) The project and the proposed agreement, as may be modified by the authority, are in the public interest.

(e) The applicant has the financial capacity to complete the project.

(2) The authority shall make its determination on the application within 120 days of the applicant's submittal of its application, which may be extended if the comment period is extended.

(3) If the authority denies the application, the authority shall inform the applicant in writing within 15 days after the denial the reasons for the denial in the context of the criteria set forth herein, and shall provide opportunity to submit an amended application. The new application shall include additional information demonstrating the applicant has met the requirements for approval set forth herein. The amended application will go through the approval process contained in this section including the requirements for public notice and comment.

[17.8.3.8 NMAC - N, 12/15/2011]

#### **17.8.3.9 NEGOTIATION WITH PROPERTY OWNERS:**

Prior to the exercise of the authority's eminent domain powers, negotiations with private property owner(s) by the applicant must be by reasonable and diligent efforts to acquire property needed for the project, including by offering at least fair market value for the property. At any time during applicant's negotiations with property owner(s) and upon the applicant's request, the authority may participate in such negotiations in order to facilitate the voluntary acquisition of property for a project, but the applicant shall remain responsible for conducting good faith negotiations.

[17.8.3.9 NMAC - N, 12/15/2011]

#### **17.8.3.10 CONDEMNATION PROCEDURES:**

##### **A. Condemnation proceedings.**

(1) Upon initiating condemnation procedures, the authority shall expeditiously and diligently follow the condemnation procedures set forth in the Eminent Domain Code found at NMSA 1978, Section 42A-1-1 *et seq.* as it may be modified from time to time.

(2) The applicant shall cooperate with the authority to assist the authority in carrying out the authority's procedures set forth herein and its obligations under the law in an expeditious and diligent manner.

## **B. Costs and expenses.**

(1) The applicant shall be responsible for all costs and expenses incurred by the authority in the condemnation action, including all attorneys' fees. The applicant shall pay all such costs and expenses within 30 days after receipt of an invoice for such from the authority, subject to dispute provisions which shall be set forth in the agreement. If an applicant fails to timely pay all such costs and expenses, the authority may discontinue the condemnation action.

(2) Prior to the authority's initiation of condemnation proceedings under the Eminent Domain Code, the applicant shall obtain a surety or cash bond in an amount agreed to by the parties and as required by law.

(3) The authority shall diligently work to reasonably minimize damages, other costs, and litigation expenses for which the applicant is responsible. The authority shall consult with the applicant prior to incurring substantial costs or expenditures, whenever practicable. The authority shall not make any offer above fair market value without prior approval by the applicant.

[17.8.3.10 NMAC - N, 12/15/2011]

### **17.8.3.11 OTHER AGREEMENTS; DISPOSITION OF PROPERTY:**

**A.** In addition to the agreement, the authority and the applicant may enter into any other contracts or agreements they deem necessary setting forth the roles and obligations of the parties in the condemnation proceeding, the disposition and use of the property once acquired by the authority, and any other matter. The authority may dispose of any or all of the property in accordance with New Mexico law if it determines that doing so fulfills a public purpose. The use of the property for the same purpose for which the property was condemned is deemed to fulfill a public purpose.

**B.** If the property cannot be used for the purpose for which it was condemned, and if practicable and permissible under existing laws, the authority shall offer the property owner an opportunity to purchase the property from the authority at fair market value.

[17.8.3.11 NMAC - N, 12/15/2011]

### **17.8.3.12 INDEMNIFICATION:**

The agreement shall provide that the applicant shall indemnify and hold harmless the authority against any and all liability arising pursuant to the authority's actions under this rule and the Eminent Domain Code.

[17.8.3.12 NMAC - N, 12/15/2011]

### **17.8.3.13 VARIANCES:**

**A.** An applicant may request a variance from any of the requirements of this rule, provided such variance will not create a conflict with state law.

**B.** A petition for variance must be supported by an affidavit signed by an officer of the applicant or someone with authority to sign for the applicant.

**C.** The applicant shall send notice of any request for a variance to the property owner(s) who are affected by the variance or who possess an ownership interest in the property. The notice shall indicate the nature of the variance requested and state that the property owner(s) may submit written or oral comments on the request for a variance. The authority may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination on a request for variance. In the event an informal conference or a formal evidentiary hearing is held, oral comment shall be accepted at that time.

**D.** A petition for variance shall:

- (1) identify the section of this rule for which the variance is requested;
- (2) describe the situation that necessitates the variance;
- (3) describe the effect of complying with this rule on the applicant if the variance is not granted; and
- (4) describe the result the variance will have if granted.

[17.8.3.13 NMAC - N, 12/15/2011]

## **CHAPTER 9: ELECTRIC SERVICES**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2-519: [RESERVED]**

### **PART 520: LISTS OF RETIREMENT UNITS OF PROPERTY FOR ELECTRIC UTILITIES**

#### **17.9.520.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

#### **17.9.520.2 SCOPE:**

[Recompiled 12/30/01]

**17.9.520.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

**17.9.520.4 DURATION:**

[Recompiled 12/30/01]

**17.9.520.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.9.520.6 OBJECTIVE:**

[Recompiled 12/30/01]

**17.9.520.7 DEFINITIONS:**

[Recompiled 12/30/01]

**17.9.520.8 TABLE OF CONTENTS:**

A. List of Retirement Units for Rural Electric Cooperatives [17.9.520.9 NMAC]

B. List of Retirement Units for Electric Utilities Other Than Rural Electric Cooperatives [17.9.520.10 NMAC]

[Recompiled 12/30/01]

**17.9.520.9 LIST OF RETIREMENT UNITS FOR RURAL ELECTRIC COOPERATIVES:**

All corporations organized under the New Mexico Rural Electric Cooperative Act subject to the Commission's jurisdiction shall use and comply fully with the requirements of the Rural Electrification Administration's STANDARD LIST OF RETIREMENT UNITS, REA Bulletin No. 181-2, with any subsequent revisions.

[Recompiled 12/30/01]

**17.9.520.10 LIST OF RETIREMENT UNITS FOR ELECTRIC UTILITIES OTHER THAN RURAL ELECTRIC COOPERATIVES:**

All electric utilities subject to the Commission's jurisdiction except corporations organized under the New Mexico Rural Electric Cooperative Act shall use and comply

with the requirements of the National Association of Railroad and Utilities Commissioners' LIST OF RETIREMENT UNITS OF PROPERTY FOR ELECTRIC UTILITIES, 1961, with any subsequent revisions by the National Association of Regulatory Utility Commissioners.

[Recompiled 12/30/01]

## **PART 521-529: [RESERVED]**

## **PART 530: FILING REQUIREMENTS IN SUPPORT OF RATE SCHEDULES FOR INVESTOR-OWNED ELECTRIC UTILITIES**

### **17.9.530.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Regulation Commission].

[Recompiled 12/30/01]

### **17.9.530.2 SCOPE:**

The data requirements specified in Appendix A shall apply to the investor-owned electric utilities doing business in New Mexico.

[Recompiled 12/30/01]

### **17.9.530.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

### **17.9.530.4 DURATION:**

[Recompiled 12/30/01]

### **17.9.530.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

### **17.9.530.6 OBJECTIVE:**

The adoption by the New Mexico Public Service Commission [New Mexico Public Regulation Commission] of the minimum data requirements specified in Appendix A to NMPSC [17.9.530 NMAC] (incorporated herein by reference) is pursuant to the authority conferred upon the Commission by the Public Utility Act, NMSA 1978, Section 62-3-1 et seq. and NMPSC Rules 110 and 210 [17.1.2 NMAC and 17.1.210 NMAC]. The purpose of NMPSC Rule 530 [17.9.530 NMAC] is to define and specify the minimum data requirements to be filed in support for a tendered new rate schedule or

rate schedule which will supersede, supplement, or otherwise change the provision of a rate schedule required to be on file with this Commission.

[Recompiled 12/30/01]

#### **17.9.530.7 DEFINITIONS:**

When used in Appendix A unless otherwise specified the following definitions will apply.

A. "Accounting Method" means the uniform system of accounting prescribed by the Commission.

(1) "Functional Accounting" means the grouping of plant and expense accounts according to the specified function or purpose which the plant or expense performs in rendering the utility service; for example, production, transmission, distribution, etc.

(2) "Primary Account" means the grouping of plant and expenditures by balance sheet account number; for example, accounts 101, 102, 103, etc.

(3) "Detailed Account" means the breakdown of plant and expenditures into subaccounts, that is, electric plant accounts; for example, accounts 301, 302, 303, etc.

B. Accounting Period:

(1) "Calendar Year" means a consecutive twelve-month accounting period beginning with January 1 and ending with December 31; and

(2) "Fiscal Year" means a consecutive twelve-month accounting period.

C. "Adjustment" means a calculation made with reasonable accuracy to the book balance of accounts to reflect an annualization, a known and measurable change, or estimate based on projection for the full twelve-month period of the Test Year. "Pro Forma Adjustment" means a computation made to develop the effect of an annualization, a known and measurable change, or estimate based on projection on the financial statements presented for Test Year purposes in a rate case.

D. "Allocation" means the process by which the total cost of service is separated into the major functions of plant, such as production, transmission, distribution; classified into the types of services provided, such as demand, energy, customer; and assigned to the various classes of customers served within a regulatory jurisdiction or among regulatory jurisdictions.

E. "Annualization" means a computation made to reflect a full twelve-month effect of an item of income or expense which is recorded in the utility's financial statements for only a portion of a year.



F. "Base Period" means the applicant utility's twelve (12) consecutive months of actual experience as reflected on the book balance of accounts, the last day of which shall not be more than one hundred fifty (150) days prior to the date of tender for filing.

G. "Book Balance Amounts" means the amounts actually recorded by the applicant utility on its books of account. Whenever property and/or services are acquired for other than cash the basis for valuation for book purposes shall be explained.

H. "Classification" means the separation of plant and expenses into the principal categories of the services rendered such as demand related, energy related, customer related, etc.

I. "Cost of Service" means the total annual cost of rendering the utility service expressed in monetary value including a return on invested capital and operational and administrative costs and expenses.

J. "Department" or "Division" means a responsibility center within the corporate structure of a public utility enterprise where revenues and expenses are accumulated as a result of a commodity or service rendered.

K. "Depreciated Original Cost" means the cost of property to the person first devoting it to the public service less the accrued depreciation reserve. Depreciated original cost shall not include the cost of reproduction as a going concern and other elements of value.

L. "Filing" means notification to the Commission by means of a tendered change in rate schedules by a public utility enterprise of its intent to initiate proceedings regarding such change pursuant to the provisions of the Commission's Administrative Code.

(1) The "Filing Date" shall occur on the date on which the tendered change in rate schedules is completed by receipt at the offices of the Commission.

(2) The "Effective Date" shall occur on the date that such tendered change in rate schedules is permitted to become effective by the Commission pursuant to the provisions of the Commission's Administrative Code, thirty (30) days after the filing date, or on such other date as may be ordered by the Commission.

M. "Functionalization" means the separation of costs according to major function or purpose which the plant or expense performs in rendering the utility service; for example, production, transmission, distribution, general, etc.

N. "Interconnected." For reporting purposes herein a public utility is "interconnected" to another jurisdiction if power flows from the applicant utility's New Mexico service area to its service area in another jurisdiction without leaving the applicant utility's system.

O. "Lead-Lag Study" is a method sometimes employed in developing the amount of cash working capital to be included in a Rate Base determination for a utility company. The study seeks to measure and quantify the lag (delay) in receipt of revenues from customers from the time service is rendered offset by the lead that is the period the utility company has from the time it incurs an expense until cash is actually disbursed in payment for the expense.

P. "Litigation" means all contested matters before regulatory commissions, administrative bodies, and state or federal courts. Litigation also includes arbitration proceedings and other similar dispute resolution proceedings. Uncontested regulatory filings, contract drafting, negotiation and management, routine legal advice and other similar legal matters which are not in dispute are not considered litigation for the purposes of this rule.

Q. "Rate Base" means the net investment value upon which the applicant utility shall be permitted to earn a specified return. Generally, the Rate Base represents the value of utility property used and useful in rendering the public utility service and may contain elements of value reflecting the cost of the utility property to the person first devoting it to the public service and other items such as cash working capital, materials, supplies, and prepayments. In accordance with existing New Mexico Statutes [NMSA 1978] the applicant's Rate Base may also reflect the cost of reproduction as a going concern and other elements of value. "Reproduction Cost" means the estimated cost to reproduce an item of property or other asset currently owned at current prevailing prices.

R. "Rate Class" means a group of the applicant utility's customers who exhibit similar use characteristics and who are grouped together for cost allocation and rate design purposes.

S. "Test Year Period." Nothing herein shall preclude an applicant utility from adopting either an Historical Test Year Period or a Future Test Year Period, as defined below, as the basis for the determination by the Commission of the applicant utility's total revenue requirements. The Test Year Period prescribed in the individual data request schedules shall incorporate the necessary adjustments in conformance with the definition given above for the type of Test Year Period selected by the applicant utility.

(1) "Historical Test Year Period" means the Base Period after all proper adjustments, such as annualizations and known and measurable changes, for which period the applicant utility's total revenue requirements shall be determined.

(2) "Future Test Year Period" means the twelve (12) consecutive months following the last day of the applicant utility's twelve (12) months of actual experience [otherwise the Base Period] adjusted for known and measurable changes and/or estimates based on projections for which period the applicant utility's total revenue requirements shall be determined.

[Recompiled 12/30/01]

### **17.9.530.8 TABLE OF CONTENTS:**

- A. Applicability [SCOPE] [17.9.530.2 NMAC]
- B. Letter of Transmittal [17.9.530.9 NMAC]
- C. Failure to Comply [17.9.530.10 NMAC]
- D. Variances [17.9.530.11 NMAC]
- E. History [17.9.530.12 NMAC]
- F. Appendix Minimum Data Standard Filing Requirements [17.9.530.13 NMAC]

[Recompiled 12/30/01]

### **17.9.530.9 LETTER OF TRANSMITTAL:**

In the letter of transmittal the applicant shall:

- A. notify the New Mexico Public Service Commission of the tendered rate schedules which will supersede, supplement, or otherwise change any provision of a rate schedule required to be on file with the Commission;
- B. include copies of each tendered rate schedule which will supersede, supplement, or otherwise change the provision of a rate schedule required to be on file with the Commission;
- C. state the date on which the applicant proposes to make the changes in service or rate, rule, or practice effective;
- D. state a brief description of the proposed changes in service and/or rate, the reason for each proposed change, and shall show that all the requisite agreements to the proposed change, including any contract embodied therein, have in fact been obtained;
- E. state that notice has been given or will be given as required by the Rules of the New Mexico Public Service Commission; and
- F. list the documents submitted in support of the proposed changes.

[Recompiled 12/30/01]

### **17.9.530.10 FAILURE TO COMPLY:**

The failure of the applicant to fulfill the minimum data requirements specified in Appendix A shall constitute sufficient cause for the Commission to reject the applicant's filing pursuant to NMPUC Rule 210 [17.1.10 NMAC].

[Recompiled 12/30/01]

#### **17.9.530.11 VARIANCES:**

A. Pursuant to NMPUC Rules 110 and 210 [17.1.2 NMAC and 17.1.210 NMAC] an applicant utility unable to comply fully with any data request contained in Appendix A due to good and sufficient cause should give notice in writing to the Commission of the applicant utility's inability to comply with the provisions of such data request at least thirty (30) days prior to the actual filing of the Minimum Data Requirements Filing Package.

B. Upon receipt of such notification and after consideration by the Commission of the applicant utility's stated reasons for failure to comply fully with the provisions of the data request, the Commission shall within fifteen (15) days notify the applicant utility in writing of its decision concerning the applicant utility's notice of its inability to comply with the Commission's Data Filing Requirements.

[Recompiled 12/30/01]

#### **17.9.530.12 HISTORY:**

Codified by NMPUC Case No. 2086, Order dated June 30, 1988; amended by NMPUC Case No. 2232, Order dated December 19, 1988; amended by NMPUC Case No. 2561, Order dated April 4, 1994. Formerly NMPUC General Order No. 40, superseded for purposes of rule reorganization and codification.

[Recompiled 12/30/01]

#### **17.9.530.13 APPENDIX A MINIMUM DATA STANDARD REQUIREMENTS:**

A. Schedule A Series: Summaries of the proposed cost of service.

(1) Sch. A-1: Summary of the overall cost of service and the claimed revenue deficiency: Base Period; Test Year Period.

(2) Sch. A-2: Summary of the revenue increase or decrease at the proposed rates by rate classes: Test Year Period.

(3) Sch. A-3: Summary of the cost of service adjustments by functional classification: Test Year Period.

(4) Sch. A-4: Summary of Rate Base: Base Period; Test Year Period; Test Year Period RCND--OPTIONAL.

(5) Sch. A-5: Summary of total capitalization and the weighted average cost of capital: Base Period; Test Year Period; Test Year Period RCND--OPTIONAL.

B. Schedule B Series: Original cost of plant in service.

(1) Sch. B-1: Original cost of plant in service by primary account: Base Period; Test Year Period.

(2) Sch. B-2: Original cost of plant in service by detail account: Base Period; Test Year Period.

(3) Sch. B-3: Original cost of plant in service by monthly balances: Base Period; Test Year Period.

(4) Sch. B-4: Construction work in progress: Base Period; Test Year Period.

(5) Sch. B-5: Allowance for funds used during construction transferred to plant in service: Base Period; Test Year Period.

(6) Sch. B-6: Plant held for future use: Base Period; Test Year Period.

(7) Sch. B-7: Nuclear fuel in process: Base Period; Test Year Period.

C. Schedule C Series: Accumulated provision for depreciation and amortization.

(1) Sch. C-1: Accumulated provision for depreciation and amortization by functional classification and detailed plant account: Base Period; Test Year Period.

(2) Sch. C-2: Depreciation rate study: Base Period; Test Year Period.

(3) Sch. C-3: Depreciation and amortization methods: Base Period; Test Year Period.

D. Schedule D Series: Original cost of plant in service adjusted to the cost of reproduction as a going concern and other elements of value--OPTIONAL.

(1) Sch. D-1: Original cost of plant in service adjusted to the cost of reproduction as a going concern and other elements of value--OPTIONAL: Base Period; Test Year Period.

(2) Sch. D-2: Cost of reproduction as a going concern and other elements of value adjusted for age and condition--OPTIONAL: Base Period; Test Year Period.

E. Schedule E Series: Working capital allowance.

- (1) Sch. E-1: Cash working capital allowance: Base Period; Test Year Period.
- (2) Sch. E-2: Materials and supplies, prepayments, and deferred charges: Base Period; Test Year Period.
- (3) Sch. E-3: Fuel inventories by plant location: Base Period; Test Year Period.
- (4) Sch. E-4: Amounts of working capital items charged to operating and maintenance expense: Base Period; Test Year Period.

F. Schedule F Series: Other property and investments.

- (1) Sch. F-1: Other property and investments: Base Period; Test Year Period.
- (2) **[RESERVED]**

G. Schedule G Series: Capitalization, the cost of capital, and the overall rate of return.

- (1) Sch. G-1: Capitalization, the cost of capital, and the overall rate of return in conformance with an original cost Rate Base: Base Period; Test Year Period.
- (2) Sch. G-2: Capitalization, the cost of capital, and the overall rate of return in conformance with a cost of reproduction as a going concern and other elements of value Rate Base--OPTIONAL: Base Period; Test Year Period.
- (3) Sch. G-3: Embedded cost of borrowed capital with term of maturity in excess of one year from date of issue: Base Period; Test Year Period.
- (4) Sch. G-4: Cost of short-term borrowed capital including revolving credit agreements and other notes payable: Base Period; Test Year Period.
- (5) Sch. G- 5: Embedded cost of preferred stock capital: Base Period; Test Year Period.
- (6) Sch. G-6: Ratio of earnings to fixed charges: Base Period; Test Year Period.
- (7) Sch. G-7: Issuance restrictions on borrowed and preferred stock capital: Base Period; Test Year Period.
- (8) Sch. G-8: Common stock equity capital: Base Period; Test Year Period.

(9) Sch. G-9: Historical activity in common stock, paid-in capital, and retained earnings: Base Period; Test Year Period.

(10) Sch. G-10: Summary of applicant's support for the claimed rate of return on common stock equity capital.

H. Schedule H Series: Expenses of operation.

(1) Sch. H-1: Operation and maintenance expenses: Base Period; Test Year Period.

(2) Sch. H-2: Cost of fuel: Base Period; Test Year Period.

(3) Sch. H-3: Revenue generated through the fuel adjustment clause: Base Period; Test Year Period.

(4) Sch. H-4: Payroll distribution and associated payroll taxes: Base Period; Test Year Period.

(5) Sch. H-5: Expenses associated with advertising, contributions, donations, lobbying and political activities, memberships, and outside services: Base Period; Test Year Period.

(6) Sch. H-6: Other administrative and general expenses: Base Period; Test Year Period.

(7) Sch. H-7: Depreciation and amortization expense: Base Period; Test Year Period.

(8) Sch. H-8: Taxes other than income taxes: Base Period; Test Year Period.

(9) Sch. H-9: Federal and state income taxes: Base Period; Test Year Period.

(10) Sch. H-10: Reconciliation of net income per books to net income for income tax purposes: Base Period; Test Year Period.

(11) Sch. H-11: Income tax effect as result of applicant joining in a consolidated federal income tax return: Base Period; Test Year Period.

(12) Sch. H-12: Accumulated tax deferrals: Base Period; Test Year Period.

(13) Sch. H-13: Investment tax credits: Base Period; Test Year Period.

(14) Sch. H-14: Expenses associated with affiliated interests: Base Period; Test Year Period.

(15) Sch. H-15: Expenses associated with nonutility services: Base Period; Test Year Period.

(16) Sch. H-16: Schedule I Series: Explanation of the adjustments to expenses of operation.

I. Schedule I Series: Balance sheet, income statement, statement of changes in financial position.

(1) Sch. I-1: Balance sheet: Base Period; Test Year Period.

(2) Sch. I-2: Income statement: Base Period; Test Year Period.

(3) Sch. I-3: Statement of changes in financial position: Base Period; Test Year Period.

J. Schedule J Series: Construction program and sources of construction funds.

(1) Sch. J-1: Construction program: Base Year and Projected.

(2) Sch. J-2: Sources of construction funds: Base Year and Projected.

K. Schedule K Series: Fully allocated cost of service study.

(1) Sch. K-1: Allocation of Rate Base--jurisdictional: Base Period; Test Year Period.

(2) Sch. K-2: Allocation of Rate Base--functional classification: Base Period; Test Year Period.

(3) Sch. K-3: Allocation of Rate Base--demand, energy, and customer: Base Period; Test Year Period.

(4) Sch. K-4: Allocation of Rate Base to rate classes: Base Period; Test Year Period.

(5) Sch. K-5: Allocation of total expenses--jurisdictional: Base Period; Test Year Period.

(6) Sch. K-6: Allocation of total expenses--functional classification: Base Period; Test Year Period.

(7) Sch. K-7: Allocation of total expenses--demand, energy, and customer: Base Period; Test Year Period.



(8) Sch. K-8: Allocation of total expenses to rate classes: Base Period; Test Year Period.

L. Schedule L Series: Allocated cost of service per billing unit of demand, energy, and customer by rate classification.

(1) Sch. L-1: Allocated cost per billing unit of demand, energy, and customer: Base Period; Test Year Period.

(2) **[RESERVED]**

M. Schedule M Series: Allocation Factors.

(1) Sch. M-1: Allocation factors used to assign items of plant and expenses to the various rate classes: Base Period; Test Year Period.

(2) Sch. M-2: Classification factors used to assign items of plant and expenses to demand, energy, and customer: Base Period; Test Year Period.

(3) Sch. M-3: Demand and energy loss factors: Base Period; Test Year Period.

N. Schedule N Series: Rate of return by rate classification.

(1) Sch. N-1: Rate of return by rate classification: Base Period; Test Year Period.

(2) **[RESERVED]**

O. Schedule O Series: Rate design.

(1) Sch. O-1: Total revenue requirements by rate classification: Base Period; Test Year Period.

(2) Sch. O-2: Proof of revenue analysis: Test Year Period.

(3) Sch. O-3: Comparison of rates for service under the present and proposed schedules.

(4) Sch. O-4: Explanation of proposed changes to existing rate schedules.

P. Schedule P Series: Key operating statistics.

(1) Sch. P-1: Peak demand information.

(2) Sch. P-2: Plant in service.

- (3) Sch. P-3: Property retirements and property investments information.
- (4) Sch. P-4: Operation and maintenance expense information.
- (5) Sch. P-5: Customer information.
- (6) Sch. P-6: Weather data.
- (7) Sch. P-7: Power plant maintenance information.
- (8) Sch. P-8: Customer service interruption information.
- (9) Sch. P-9: Line loss information.
- (10) Sch. P-10: Reliability indices information.
- (11) Sch. P-11: Reserve margin information.
- (12) Sch. P-12: Fuel statistics information.

Q. Schedule Q Series: Required Reports.

- (1) Sch. Q-1: Load research program and conservation plan.
- (2) Sch. Q-2: Description of company.
- (3) Sch. Q-3: Annual Report to stockholders.
- (4) Sch. Q-4: Reports to the Securities and Exchange Commission.
- (5) Sch. Q-5: Form 1 reports.
- (6) Sch. Q-6: Opinion of independent public accountants.

R. Schedule R Series: Testimony and exhibits.

[Recompiled 12/30/01]

**17.9.530.14 APPENDIX:**

A. Schedule A Series: Summaries of the proposed cost of service. In this series of schedules the applicant shall show the New Mexico jurisdictional total cost of service in summary form for the Base Period and for the Test Year Period, as appropriate, and the proposed total cost of service in summary form for the Proposed Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the

applicant's filing package. Summaries of the proposed cost of service shall be provided as specified in the following schedules.

(1) Schedule A-1: Summary of the overall cost of service and the claimed revenue deficiency.

(a) [Base Period]: In this schedule the applicant shall show the cost of service for the Base Period on an unadjusted basis including but not limited to: revenues, operation and maintenance expenses, depreciation expense, taxes on other than income, taxes on income, and the resulting return.

(b) [Test Year Period]: In this schedule the applicant shall show each of the items included in the Base Period, all adjustments thereto, the sum of each of these items at the end of the Test Year Period, and the revenue deficiency.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule A-2: Summary of the revenue increase or decrease at the proposed rates by rate classes.

(a) [Base Period]: Not required.

(b) [Test Year Period]: In this schedule the applicant shall show for the New Mexico jurisdiction:

(i) Base revenue for the Test Year Period under existing rates and under proposed rates.

(ii) Fuel and purchased power revenues for the Test Year Period under existing rates and under proposed rates.

(iii) Other revenue for the Test Year Period.

(iv) Total revenue for the Test Year Period under existing rates and under proposed rates.

(v) The amount of the revenue increase or decrease expressed both in dollars and as a percent. The revenue increase shall be the total revenue from the proposed rates less the total revenue from the existing rates for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule A-3: Summary of the cost of service adjustments by functional classification.

(a) [Base Period]: Not required.

(b) [Test Year Period]: In this schedule the applicant shall show by functional classification the account balances for the Base Period and the adjustments made to the Base Period balances to reflect the applicant's cost of service for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule A-4: Summary of Rate Base.

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an original cost basis for the Base Period on an unadjusted basis.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components on an original cost basis for the Base Period, all adjustments made thereto, and the sum of these components for the Test Year Period.

(c) [Test Year Period--Optional]: At the option of the applicant the Rate Base components as adjusted for the Test Year Period may be adjusted further to reflect the cost of reproduction as a going concern and other elements of value. The information required in this schedule will be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support its proposed rate adjustment.

(d) A full explanation of each of the adjustments made to the component balances of Rate Base at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(5) Schedule A-5: Summary of total capitalization and the weighted average cost of capital.

(a) [Base Period]: In this schedule the applicant shall show the total claimed capitalization and the weighted average cost of capital for the Base Period on an unadjusted basis.

(b) [Test Year Period]: In this schedule the applicant shall show the total claimed capitalization and the weighted average cost of capital at the end of the Base Period, the adjustments made thereto, and the total claimed capitalization and the weighted average cost of capital for the Test Year Period.

(c) [Test Year Period--Optional]: At the option of the applicant the total claimed capitalization and weighted average cost of capital as adjusted for the Test Year Period may be adjusted further to reflect the cost of reproduction as a going concern and other elements of value. The information required in this schedule will be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support its proposed rate adjustment.

(d) A full explanation of each of the adjustments made to the claimed total capitalization and the weighted average cost of capital at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

B. Schedule B Series: Original cost of plant service: In this series of schedules the applicant shall show the amounts of utility plant under the various classifications for the Base Period and for the Test Year Period, as appropriate, and as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule B-1: Original cost of plant in service by primary account:

(a) [Base Period]: In this schedule the applicant shall show the utility plant book balances by primary account at the beginning of the Base Period; the book balances for additions, retirements, and transfers made thereto during the Base Period; and the book balances at the end of the Base Period including totals for the original cost of plant in service.

(b) [Test Year Period]: In this schedule the applicant shall show each of the utility plant accounts shown for the Base Period as of the end of the Base Period; all adjustments thereto for additions, retirements, and transfers; and the balances at the end of the Test Year Period including totals for the the original cost of plant as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule B-2: Original cost of plant in service by detail account.

(a) [Base Period]: In this schedule the applicant shall show by functional classification the detailed plant account book balances at the beginning of the Base Period; the book balances for additions, retirements, and transfers made thereto during the Base Period; and the book balances at the end of the Base Period including subtotals by functional classification and totals for the original cost of plant in service.

(b) [Test Year Period]: In this schedule the applicant shall show by functional classification the detailed plant account balances at the end of the Base Period; all adjustments thereto for additions, retirements, and transfers; and the balances at the

end of the Test Year Period including subtotals by functional classification and totals for the original cost of plant in service.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule B-3: Original cost of plant in service by monthly balances.

(a) [Base Period]: In this schedule the applicant shall show by functional classification the detailed plant account book balances at the beginning of each month and at the end of the Base Period including subtotals by functional classification and totals for the original cost of plant in service.

(b) [Test Year Period]: In this schedule the applicant shall show by functional classification the detailed plant account book balances at the beginning of each month as adjusted for the Test Year Period and at the end of the Test Year Period including subtotals by functional classification and totals for the original cost of plant in service as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule B-4: Construction work in progress. [Report only those Items for which \$100,000 or more have been expended by the end of the Base Period.]

(a) [Base Period]: In this schedule the applicant shall show the items included in construction work in progress for the Base Period by functional classification including a proper description of the project, work order number, estimated cost of the project, expenditures at the end of the Base Period, and the total book balance for construction work in progress at the end of the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the items included in construction work in progress for the Test Year Period by functional classification including a proper description of the project, work order number, estimated completion date, total estimated cost of the project, adjustments made thereto for the Test Year Period expenditures, and the total balance for construction work in progress at the end of the Test Year Period as adjusted. The information required in this schedule shall be supplied when the applicant claims construction work in progress to support a rate increase adjustment.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(5) Schedule B-5: Allowance for funds used during construction generated and transferred to plant in service.

(a) [Base Period]: In this schedule the applicant shall show the amounts of allowance for funds used during construction which were generated and transferred to plant in service during the Base Period and for the four (4) years prior thereto along with the corresponding capitalization rates used to calculate the amounts generated. In addition the applicant shall include a complete explanation of the methods, procedures, and calculations used in computing the amount of funds generated and transferred to plant in service.

(b) [Test Year Period]: In this schedule the applicant shall show the amounts of allowance for funds used during construction as adjusted from the Base Period along with an explanation of the methods, procedures, and calculations used in computing the amount of funds generated and transferred to plant in service.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(6) Schedule B-6: Plant held for future use.

(a) [Base Period]: In this schedule the applicant shall show a list of plant held for future use as of the end of the Base Period including a proper description, date of purchase, anticipated use, anticipated date that property will be placed in service, and the book balance of each item of plant at the end of the Base Period including a total of these balances of plant held for future use.

(b) [Test Year Period]: In this schedule the applicant shall show a list of plant held for future use as of the end of the Test Year Period including a proper description, date of purchase, anticipated use, anticipated date that property will be placed in service, adjustments made to the Base Period balances for the Test Year Period, and the balance of each item of plant at the end of the Test Year Period including a total of these balances of plant held for future use as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(7) Schedule B-7: Nuclear fuel in process. [FERC accounts 120.1 through 120.5]

(a) [Base Period]: In this schedule the applicant shall show the beginning balance for FERC Accounts 120.1 through 120.5 of the Base Period and the monthly changes to these accounts during the Base Period including, where applicable, payments to vendors or to participating agents, the date payment was made, the name

of vendor or participating agent, anticipated use of fuel, and the closing balance for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the closing balance of FERC accounts 120.1 through 120.5 for the Base Period, all adjustments thereto for the Test Year Period, and the closing balance as of the end of the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

C. Schedule C Series: Accumulated provision for depreciation and amortization. In this series of schedules the applicant shall show information concerning the accumulated provision for depreciation and amortization for the Base Period and for the Test Year Period, as appropriate, and as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule C-1: Accumulated provision for depreciation and amortization by functional classification and detailed plant account:

(a) [Base Period]: In this schedule the applicant shall include the book balance at the beginning of the Base Period for depreciation and amortization by functional classification and detailed plant account; the book balances for accruals, retirements, abandonments, and transfers entered on the books during the Base Period; and the book balances at the end of the Base Period including subtotals by functional classification and totals for the accumulated provision for depreciation and amortization.

(b) [Test Year Period]: In this schedule the applicant shall show by functional classification and detailed plant account the balances for accumulated provision for depreciation and amortization at the end of the Base Period; all adjustments thereto for accruals, retirements, abandonments, and transfers; and the balances at the end of the Test Year Period including subtotals by functional classification and totals for the accumulated provision for depreciation and amortization as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule C-2: Depreciation rate study.

(a) [Base Period]: In this schedule the applicant shall show by functional classification and detailed plant account all changes made during the Base Period to the approved book depreciation rates, the property service lives, or the net values of properties included in the Base Period. In addition the applicant shall include for any changes made to the book depreciation rates during the Base Period reference to the



appropriate supporting study, schedule, or workpapers which shall constitute a part of the applicant's filing package. This information will be in accordance with NMPSC Rule 340 [17.3.340 NMAC].

(b) [Test Year Period]: In this schedule the applicant shall show by functional classification and detailed plant account any changes proposed to the Base Period approved book depreciation rates, the property service lives, or the net service value of properties included in the Base Period.

(c) A full explanation of each of the adjustments made to the Base Period book depreciation rates shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package. This information will be in accordance with NMPSC Rule 340 [17.3.340 NMAC].

(3) Schedule C-3: Depreciation and amortization methods.

(a) In this schedule the applicant shall show a full description of the methods, formulae, and procedures used to determine book depreciation and amortization of the applicant's utility plant in service as applicable to either the Base Period or to the Test Year Period.

(b) This schedule shall only be required of those utilities requesting a change in depreciation methods, formulae, or procedures. Otherwise reference to the utility's applicable NMPSC Rule 340 [17.3.340 NMAC] report shall constitute compliance with this schedule.

D. Schedule D Series: Original cost of plant in service adjusted to the cost of reproduction as a going concern and other elements of value--Optional. In this series of schedules the applicant shall show the original cost of plant in service adjusted to the cost of reproduction as a going concern and other elements of value. The information required in this series shall be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support a rate increase adjustment.

(1) Schedule D-1: Original cost of plant in service adjusted to the cost of reproduction as a going concern and other elements of value--Optional.

(a) [Base Period]: In this schedule the applicant shall show the original cost of plant in service by functional classification and detailed account at the end of the Base Period adjusted to the cost of reproduction as a going concern and other elements of value at the end of the Base Period and shall include therein subtotals and the total for the adjusted value of the original cost of plant in service. In addition the applicant shall state herein the rationale, methods, formulae, and calculations used to adjust the original cost of plant in service.

(b) [Test Year Period]: In this schedule the applicant shall show the original cost of plant in service by functional classification and detailed account as adjusted for

the Test Year Period and as adjusted to the cost of reproduction as a going concern and other elements of value and shall include therein subtotals and the total for the adjusted value of the original cost of plant in service. In addition the applicant shall state herein the rationale, methods, formulae, and calculations used to adjust the original cost of plant in service.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule D-2: Cost of reproduction as a going concern and other elements of value adjusted for age and condition--Optional.

(a) [Base Period]: In this schedule the applicant shall show the adjustment for age and condition of the Base Period cost of reproduction as a going concern and other elements of value by functional classification and shall include therein the subtotal and the total for the cost of reproduction as a going concern value. In addition the applicant shall state therein the rationale, methods, formulae, and calculations used to arrive at the value for age and condition of the cost of reproduction as a going concern.

(b) [Test Year Period]: In this schedule the applicant shall show the adjustment for age and condition of the Test Year Period cost of reproduction as a going concern and other elements of value by functional classification and detail account and shall include therein the subtotal and the total for the cost of reproduction as a going concern value. In addition the applicant shall state therein the rationale, methods, formulae, and calculations used to arrive at the value for age and condition of the cost of reproduction as a going concern.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

E. Schedule E Series: Working capital allowance: In this series of schedules the applicant shall show the amounts claimed for working capital for the Base Period and for the Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule E-1: Cash working capital allowance:

(a) [Base Period]: In this schedule the applicant shall show the computation for the allowance of cash working capital for the Base Period on an unadjusted basis. At the applicant's option a lead-lag study may be supplied to satisfy the requirements of this data request.

(b) [Test Year Period]: In this schedule the applicant shall show the computation for the allowance of cash working capital as of the end of the Base Period,

the adjustments made thereto, and the total claimed cash allowance for the Test Year Period. At the applicant's option a lead-lag study may be supplied to satisfy the requirements of this data request.

(c) A full explanation of each of the adjustments made to the balance for cash working capital allowance as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule E-2: Materials and supplies, prepayments, and deferred charges.

(a) [Base Period]: In this schedule the applicant shall show for each month of the Base Period on an unadjusted basis the beginning monthly book balances and the end-of-period balance for materials and supplies, prepayments, and deferred charges and shall include therein subtotals, totals, and the average of the thirteen (13) balances for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show for each month of the Test Year Period the beginning monthly balance for materials and supplies, prepayments, and deferred charges; all adjustments thereto; and the subtotals, totals, and the average of the thirteen (13) balances for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances for materials and supplies, prepayments, and deferred charges for the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule E-3: Fuel inventories by plant location.

(a) [Base Period]: In this schedule the applicant shall show for each month of the Base Period the beginning monthly balances and the Base Period ending balance of fuel inventories on an unadjusted basis and shall include therein subtotals, totals, and the average of the thirteen (13) balances for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show for each month of the Test Year Period the beginning monthly book balances and the period ending balance of fuel inventories; all adjustments thereto; and the subtotals, totals, and the average of the thirteen (13) balances for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances for fuel inventories as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule E-4: Amounts of working capital items charged to operating and maintenance expenses.

(a) [Base Period]: In this schedule the applicant shall show for each month of the Base Period the monthly amounts of working capital items charged to operating and maintenance expenses on an unadjusted basis and shall include therein totals for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show for each month of the Test Year Period the monthly amounts of working capital items charged to operating and maintenance expenses, all adjustments thereto, and the totals for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances of working capital items charged to operating and maintenance expenses as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

F. Schedule F Series: Other property and investments: In this series of schedules the applicant shall show the information requested on investments in other-than-utility property for the Base Period and for the Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package. To the extent that the information required herein has been supplied and is currently on file with the New Mexico Public Service Commission [New Mexico Public Regulation Commission] pursuant to the provisions of NMPSC Rule 450 [17.6.450 NMAC], notice herein that such filing has been made will fulfill the requirements for this series of schedules.

(1) Schedule F-1: Other property and investments.

(a) [Base Period]: In this schedule the applicant shall show its investments in other-than-utility property as of the beginning of the Base Period and as of the end of the Base Period on an unadjusted basis. The applicant shall include therein a description of the property or investment; the amounts invested; the types of securities owned, loaned, pledged, and/or advanced; the applicable cost rates; the equity in the undistributed earnings since date of acquisition; and the interest and/or dividend income received from such property or investment. In addition, if regulatory approval was required for any security acquired or advancement made in connection with such property or investment, the applicant shall state the name of the Commission, the date authorization was granted, and the case or docket number.

(b) [Test Year Period]: In this schedule the applicant shall show its investments in other-than-utility property as of the end of the Base Period; all adjustments made thereto for the Test Year Period; the balance at the end of the Test Year Period including therein a description of the property or investment; the amounts invested; the types of securities owned, loaned, pledged, and/or advanced; the

applicable cost rates; the equity in the undistributed earnings since date of acquisition; and the interest and/or dividend income received from such property or investment. In addition, if regulatory approval was required for any security acquired or advancement made in connection with such property or investment, the applicant shall state the name of the Commission, the date authorization was granted, and the case or docket number.

(c) A full explanation for each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

G. Schedule G Series: Capitalization, the cost of capital, and the overall rate of return. In this series of schedules the applicant shall show the total capitalization by class of capital, the claimed capital structure, the embedded cost rates including the claimed rate of return on the common stock equity component, and the resulting weighted average cost of capital for the Base Period and for the Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule G-1: Capitalization, the cost of capital, and the overall rate of return in conformance with an original cost Rate Base:

(a) [Base Period]: In this schedule the applicant shall show the claimed capitalization, the cost of capital thereon, and the overall claimed rate of return as of the end of the Base Period on an actual basis; a description of the various classes of capital; the capital structure ratios; the effective embedded cost rates; and the weighted cost rate for each class of capital.

(b) [Test Year Period]: In this schedule the applicant shall show the capitalization, the cost of capital, and the overall claimed rate of return as of the end of the Base Period; all adjustments thereto; a description of the various classes of capital; the dollar amounts outstanding at the end of the Test Year Period; the capital structure ratios; the estimated cost rates; and the weighted cost rate for each class of capital.

(c) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule G-2: Capitalization, the cost of capital, and the overall rate of return in conformance with a cost of reproduction as a going concern and other elements of value Rate Base--Optional.

(a) [Base Period]: In this schedule the applicant shall show the claimed capitalization, the cost of capital thereon, and the overall claimed rate of return as of the end of the Base Period on an actual basis; the adjustment thereto for the cost of reproduction as a going concern value; a description of the various classes of capital;

the dollar amounts outstanding at the end of the Base Period as adjusted; the capital structure ratios; the effective embedded cost rates; and the weighted cost rate for each class of capital. The information required in this schedule will be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support its proposed rate adjustment.

(b) [Test Year Period]: In this schedule the applicant shall show the capitalization, the cost of capital, and the overall claimed rate of return as of the end of the Test Year Period as adjusted further to the cost of reproduction as a going concern value; a description of the various classes of capital; the dollar amounts outstanding at the end of the Test Year Period as adjusted; the capital structure ratios; the estimated cost rates; and the weighted cost rate for each class of capital. The information required in this schedule will be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support its proposed rate adjustment.

(c) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule G-3: Embedded cost of borrowed capital with term of maturity in excess of one year from date of issue:

(a) [Base Period]: In this schedule the applicant shall show the embedded cost of borrowed capital based on the actual principal amounts outstanding at the end of the Base Period. In addition the applicant shall show the following particulars for each class and series of borrowed capital outstanding:

- (i) description of issue;
- (ii) date of issuance;
- (iii) date of maturity;
- (iv) coupon or nominal interest rate;
- (v) principal amount of issue at offering;
- (vi) price at offering;
- (vii) gross proceeds;
- (viii) underwriter's commission, discount, or premium;
- (ix) expense of issue;

(x) net proceeds--(1) amount, (2) per unit;

(xi) effective yield to maturity [by reference to any generally acceptable table of bond yields or computer computation];

(xii) principal amount outstanding at end of Base Period;

(xiii) annual interest requirements;

(xiv) weighted effective cost rate;

(xv) if issue is owned by an affiliate, state name and relationship of owner to applicant; and

(xvi) if issue is convertible, state terms of conversion.

(b) [Test Year Period]: In this schedule the applicant shall show the cost of borrowed capital [particulars i through xvi] after all adjustments to the actual balances and cost rates at the end of the Base Period.

(c) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule G-4: Cost of short-term borrowed capital including revolving credit agreements and other notes payable:

(a) [Base Period]: In this schedule the applicant shall show the cost of short-term borrowed capital based on the actual principal amounts outstanding at the end of the Base Period. In addition the applicant shall show the following particulars for each class and series of short-term borrowed capital outstanding:

(i) description of issue;

(ii) date of issuance;

(iii) date of maturity;

(iv) coupon or nominal interest rate;

(v) principal amount of issue at offering;

(vi) annual interest requirements;

(vii) average principal balance outstanding monthly during the period;

(viii) average weighted interest cost rate on average principal balance outstanding monthly during the period; and

(ix) if issue is owned by an affiliate, state name and relationship of owner to applicant.

(b) [Test Year Period]: In this schedule the applicant shall show the cost of short-term borrowed capital [particulars i through ix] after all adjustments to the actual balances and cost rates at the end of the Base Period.

(c) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(5) Schedule G-5: Embedded cost of preferred stock capital:

(a) [Base Period]: In this schedule the applicant shall show the embedded cost of preferred stock capital based on the actual principal amounts outstanding at the end of the Base Period. In addition the applicant shall show the following particulars for each class and series of preferred stock outstanding:

- (i) description of issue [including number of shares offered];
- (ii) date of issuance;
- (iii) dividend rate;
- (iv) price at offering;
- (v) gross proceeds;
- (vi) underwriter's commission, discount, or premium;
- (vii) issuance expense;
- (viii) net proceeds--(1) amount, (2) per unit;
- (ix) effective dividend cost rate;
- (x) principal amount outstanding at end of period;
- (xi) annual dividend requirements;
- (xii) weighted effective cost rate;



- (xiii) if issue is owned by an affiliate, state name and relationship; and
- (xiv) if issue is convertible, state terms of conversion.

(b) [Test Year Period]: In this schedule the applicant shall show the cost of preferred stock capital [particulars i through xiv] after all adjustments to the actual balances and cost rates at the end of the Base Period.

(c) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(6) Schedule G-6: Ratio of earnings to fixed charges:

(a) [Base Period]: In this schedule the applicant shall show the computation of the ratio of earnings to fixed charges for the Base Period on an actual basis and for the four (4) years preceding the Base Period using the following format, where appropriate:

(i) Fixed charges, as defined by the Securities and Exchange Commission: (1) Interest on Long-term Debt; (2) Amortization of Debt Premium, Discount, and Expense; (3) Interest on Short-term Debt; (4) Other Interest; (5) Estimated Interest Factor of Lease Rental Charges Total Fixed Charges.

(ii) Earnings, as defined by the Securities and Exchange Commission; (1) Net Earnings; (2) Add Fixed Charges, as above.

(iii) Earnings Available for Fixed Charges After Provision for Income Taxes.

(iv) Add Income Taxes: (1) Federal; (2) Deferred-net; (3) Investment Tax Credit Adjustment; (4) Investment Tax Credit; (5) State.

(v) Earnings Available for Fixed Charges Before Provision for Income Taxes.

(vi) Ratio of Earnings to Fixed Charges After Provision for Income Taxes.

(vii) Ratio of Earnings to Fixed Charges Before Provision for Income Taxes.

(b) [Test Year Period]: In this schedule the applicant shall show the computation of the ratio of earnings to fixed charges for the Test Year Period after adjustments made to the Base Period balances using the same format as prescribed for the Base Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(7) Schedule G-7: Issuance restrictions on borrowed and preferred stock capital: In this schedule the applicant will show a brief summary of the most current restrictions imposed on the applicant in the issuance of borrowed and preferred stock capital.

(8) Schedule G-8: Common stock equity capital:

(a) [Base Period]: In this schedule the applicant shall show the common stock activity as of the end of the Base Period and for five (5) years preceding the Base Period on an actual basis and shall show therein the following particulars:

- (i) year-end number of shares outstanding;
- (ii) year-end book value per share;
- (iii) annual earning per share;
- (iv) year-end market-to-book value ratio;
- (v) annual cash dividend per share;
- (vi) annual stock dividends per share;
- (vii) dividend yield per share;
- (viii) average monthly high/low market price;
- (ix) stock splits and/or changes in par value;
- (x) sales of common stock;
- (xi) date of sale;
- (xii) number of shares sold;
- (xiii) gross proceeds;
- (xiv) underwriter's commission, discount, or premium;
- (xv) issuance expense; and
- (xvi) type of offering.

(b) [Test Year Period]: In this schedule the applicant shall show the common stock activity as of the end of the Base Period, all adjustments made to the particulars a through p [i through xvi] prescribed for the Base Period, and the results as of the end of the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(9) Schedule G-9: Historical activity in common stock, paid-in capital, and retained earnings:

(a) [Base Period]: In this schedule the applicant shall show the historical activity in common stock, paid-in capital, and retained earnings for the last ten (10) years as of the end of each year on an actual basis and shall include therein the beginning balance, additions, reductions, and the ending balance concluding with the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the actual balances for the Base Period, all adjustments to the Base Period balances, and the ending balance for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(10) Schedule G-10: Summary of applicant's support for the claimed rate of return on common stock equity capital: In this schedule the applicant shall state briefly the analyses, methods, and conclusions on which the applicant depends for its support of the claimed rate of return on common stock equity capital.

H. Schedule H Series: Expenses of operation: In this series of schedules the applicant shall show information concerning its expenses of operation by each account of the Uniform System of Accounts prescribed by the New Mexico Public Service Commission [New Mexico Public Regulation Commission] for the Base Period and for the Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule H-1: Operation and maintenance expenses:

(a) [Base Period]: In this schedule the applicant shall show operation and maintenance expenses by functional classification and detailed account on an unadjusted basis by month for the Base Period and shall include therein subtotals and totals by functional classification and detailed account. Amounts included in Account 920, Administrative & General Salaries; Account 923, Outside Services Employed; and Account 928, Regulatory Commission Expenses, shall further be separated to identify

those amounts in each detailed account which are litigation expenses as defined by NMSA 1978, Section 62-13-3 and those amounts which are not litigation expenses. Amounts included in any other detailed account which are litigation expenses as defined by Section 62-13-3 shall also be separately identified.

(b) [Test Year Period]: In this schedule the applicant shall show operation and maintenance expenses by functional classification and detailed account by month for the Base Period, all adjustments made thereto for the Test Year Period, and the balances as of the end of the Test Year Period and shall include therein subtotals and totals by functional classification and detailed account. Test year period litigation expenses should be handled in the same manner as described above for the base period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule H-2: Cost of fuel:

(a) [Base Period]: In this schedule the applicant shall show the cost of fuel by month on an unadjusted basis for the Base Period by type of fuel, quantity in MMBTU, and the unit cost in dollars per MMBTU.

(b) [Test Year Period]: In this schedule the applicant shall show the cost of fuel by month for the Base Period, all adjustments thereto, the balances as of the end of the Test Year Period by type of fuel, quantity in MMBTU, and the unit cost in dollars per MMBTU.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule H-3: Revenue generated through the fuel adjustment clause:

(a) [Base Period]: In this schedule the applicant shall show an analysis of the reconciliation of fuel and purchased power expense with the fuel cost adjustment revenues on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show an analysis of the reconciliation of fuel and purchased power expense with the fuel cost adjustment revenues as adjusted for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule H-4: Payroll distribution and associated payroll taxes:

(a) [Base Period]: In this schedule the applicant shall show the payroll distribution and the associated payroll taxes included in operating expenses on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the payroll distribution and the associated payroll taxes included in operating expenses for the Base Period, all adjustments made thereto, and the balances for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(5) Schedule H-5: Expenses associated with advertising, contributions, donations, lobbying and political activities, memberships, and outside services:

(a) [Base Period]: In this schedule the applicant shall show the expenses incurred as a result of advertising, contributions, donations, lobbying and political activities, memberships, and outside services by month on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the expenses associated with advertising, contributions, donations, lobbying and political activities, memberships, and outside services for the Base Period; all adjustments made thereto; and the balances for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(6) Schedule H-6: Other administrative and general expenses:

(a) [Base Period]: In this schedule the applicant shall show other administrative and general expenses such as transfer credits, regulatory commission expenses, duplicate charges, and other miscellaneous general expenses not shown elsewhere, separately by month for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show other administrative and general expenses such as transfer credits, regulatory commission expenses, duplicate charges, and other miscellaneous general expenses not shown elsewhere, separately by month for the Base Period; all adjustments thereto; and the balances for these items for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(7) Schedule H-7: Depreciation and amortization expense:

(a) [Base Period]: In this schedule the applicant shall show the depreciation and amortization expense by functional classification and detailed plant account on an unadjusted basis for the Base Period, the book depreciation rate, and the annual expense accrual. The applicant shall include therein subtotals and totals by functional classification and detailed plant account.

(b) [Test Year Period]: In this schedule the applicant shall show the depreciation and amortization expense by functional classification and detailed plant account for the Base Period, all adjustments thereto, and the annual expense accrual for the Test Year Period. The applicant shall include therein subtotals and totals by functional classification and detailed plant account.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(8) Schedule H-8: Taxes other than on income:

(a) [Base Period]: In this schedule the applicant shall show the taxes, excluding federal and state income taxes, by type of tax accrued, prepaid, and charged on an actual basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the taxes, excluding federal and state income taxes, by type of tax for the Base Period, all adjustments made thereto, and the balances for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown for the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(9) Schedule H-9: Federal and state income taxes:

(a) [Base Period]: In this schedule the applicant shall show the computation for federal and state income taxes on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the computation for federal and state income taxes reflecting all adjustments made for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(10) Schedule H-10: Reconciliation of net income per books to net income for income tax purposes:

(a) [Base Period]: In this schedule the applicant shall show the reconciliation of the net income per books to the net income as reported to the Federal Internal Revenue Service for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the reconciliation of the net income as adjusted for the Test Year Period to the net income as would be reported to the Federal Internal Revenue Service for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(11) Schedule H-11: Income tax effect as a result of applicant joining in a consolidated federal income tax return:

(a) [Base Period]: In this schedule the applicant shall show a detailed analysis for the Base Period of the applicant's tax effect as a result of joining in the filing of a consolidated federal income tax return.

(b) [Test Year Period]: In this schedule the applicant shall show a detailed analysis for the Test Year Period of the applicant's tax effect at the proposed revenue as a result of joining in the filing of a consolidated federal income tax return.

(12) Schedule H-12: Accumulated tax deferrals:

(a) [Base Period]: In this schedule the applicant shall show the accumulated tax deferrals by month on an unadjusted basis for the Base Period and shall include therein the actual balances for additions and reductions and the balances as of the end of the Base Period. In addition the applicant shall show the item giving rise to the tax deferral separately, such as accelerated amortization, liberalized depreciation, asset depreciation range, investment tax credit, job development credit, etc.

(b) [Test Year Period]: In this schedule the applicant shall show the accumulated tax deferrals as of the end of the Base Period, all adjustments thereto for the Test Year Period, and the balances at the end of the Test Year Period. In addition the applicant shall show the item giving rise to the tax deferral separately, such as accelerated amortization, liberalized depreciation, asset depreciation range, investment tax credit, job development credit, etc.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(13) Schedule H-13: Investment tax credits:

(a) [Base Period]: In this schedule the applicant shall show an analysis of the investment tax credits earned, utilized, and amortized during the Base Period on an unadjusted basis. In addition the applicant shall show herein the particulars concerning any sale/leaseback transactions under the safe-harbor lease provisions of the Accelerated Cost Recovery System established by the Economic Recovery Tax Act of 1981 and amendments thereto, such as the investor/lessor, amount of property, cash payment, term of lease, discount, and tax rate.

(b) [Test Year Period]: In this schedule the applicant shall show an analysis of the investment tax credit for the Base Period, all adjustments made thereto for the Test Year Period, and the balances at the end of the Test Year Period. In addition the applicant shall show herein the particulars concerning any sale/leaseback transactions under the safe-harbor lease provisions of the Accelerated Cost Recovery System established by the Economic Recovery Tax Act of 1981 and amendments thereto, such as the investor/ lessor, amount of property, cash payment, term of lease, discount, and tax rate.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(14) Schedule H-14: Expenses associated with affiliated interests:

(a) [Base Period]: In this schedule the applicant shall show the charges or credits on an unadjusted basis for the Base Period between applicant and any other affiliated or associated company, or for corporate organizations of applicant operating as departments or divisions, including therein the proper account classification; a description of the service performed; and the basis for the determination of the charge or credit. For reporting purposes herein items of \$10,000 or more shall be shown individually; items of \$10,000 or less may be aggregated by type of item.

(b) [Test Year Period]: In this schedule the applicant shall show the charges or credits for the Base Period, all adjustments made thereto, and the balances for the Test Year Period between applicant and any other affiliated or associated company, or for corporate organizations of applicant operating as departments or divisions, including therein the proper account classification; a description of the service performed; and the basis for the determination of the charge or credit. For reporting purposes herein items of \$10,000 or more shall be shown individually; items of \$10,000 or less may be aggregated by type of item.



(c) A full explanation of each of the adjustments made to the balances shown for the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(15) Schedule H-15: Expenses associated with nonutility services:

(a) [Base Period]: In this schedule the applicant shall show the investments, revenues, and expenses pertaining to the applicant's nonutility services on an unadjusted basis for the Base Period. The applicant shall include a full explanation of the rationale, methods, formulae, and calculations used in the allocation of these expenses to the nonutility service.

(b) [Test Year Period]: In this schedule the applicant shall show the investments, revenues, and expenses pertaining to the applicant's nonutility services for the Base Period; all adjustments made thereto; and the balances as of the end of the Test Year Period. The applicant shall include a full explanation of the rationale, methods, formulae, and calculations used in the allocation of these expenses to the nonutility service.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(16) Schedule H-16: Explanation of the adjustments to expenses of operation: In this schedule the applicant shall state in a brief explanation the nature of each adjustment made to the book balances of expenses of operation.

I. Schedule I Series: Balance sheet, income statement, statement of changes in financial position: In this series of schedules the applicant shall submit copies of the financial forms, as required herein.

(1) Schedule I-1: Balance sheet:

(a) [Base Period]: To satisfy the requirements of this schedule the applicant shall submit a copy of its balance sheet which conforms with the end of the Base Period of operations reported herein and shall include all notes pertaining thereto.

(b) [Test Year Period]: To satisfy the requirements of this schedule the applicant shall submit a copy of its balance sheet which conforms with the end of the Test Year Period of operations reported herein and shall include all notes pertaining thereto.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule I-2: Income statement:

(a) [Base Period]: To satisfy the requirements of this schedule the applicant shall submit a copy of its income statement which conforms with the end of the Base Period of operations reported herein and shall include all notes pertaining thereto.

(b) [Test Year Period]: To satisfy the requirements of this schedule the applicant shall submit a copy of its income statement which conforms with the end of the Test Year Period of operations reported herein and shall include all notes pertaining thereto.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule I-3: Statement of changes in financial position:

(a) [Base Period]: To satisfy the requirements of this schedule the applicant shall submit a copy of its statement of changes in financial position which conforms with the end of the Base Period of operations reported herein and shall include all notes pertaining thereto.

(b) [Test Year Period]: To satisfy the requirements of this schedule the applicant shall submit a copy of its statement of changes in financial position which conforms with the end of the Test Year Period of operations reported herein and shall include all notes pertaining thereto.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

J. Schedule J Series: Construction program and sources of construction funds: In this series of schedules the applicant shall show its proposed construction program and the sources of construction funds as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule J-1: Construction program:

(a) In this schedule the applicant shall show by functional classification the capital requirements and shall include allowance for funds used during construction, related to its construction underway during the Base Period, and for construction planned for the next two (2) succeeding years.

(b) A full explanation of all assumptions and estimates used to arrive at the projections shown shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule J-2: Sources of construction funds:

(a) In this schedule the applicant shall show the planned sources of construction funds by years to conform with the planned construction program and shall include therein the amounts by class of capital and the anticipated cost rates on the proposed financing.

(b) A full explanation of all assumptions and estimates used to arrive at the projections shown shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

K. Schedule K Series: Fully allocated cost of service study: In this series of schedules the applicant shall show the total cost of service for the Base Period and for the Test Year Period separated by jurisdiction if applicant is interconnected between two (2) or more jurisdictions and where applicable by corporate department or division; by functional classification; classified to demand, energy, and customer; and by rate classification as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule K-1: Allocation of Rate Base--jurisdictional:

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an unadjusted basis for the Base Period separated by jurisdiction and, where applicable, by corporate department or division.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components after adjustments to the Base Period balances separated by jurisdiction and, where applicable, by corporate department or division.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule K-2: Allocation of Rate Base--functional classification:

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an unadjusted basis for the Base Period separated by functional classification.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components after adjustments to the Base Period balances separated by functional classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule K-3: Allocation of Rate Base--demand, energy, and customer:

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an unadjusted basis for the Base Period separated as to demand, energy, and customer.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components after adjustments to the Base Period balances separated by demand, energy, and customer.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule K-4: Allocation of Rate Base to rate classes:

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an unadjusted basis for the Base Period separated by rate classification.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components after adjustments to the Base Period balances separated by rate classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(5) Schedule K-5: Allocation of total expenses--jurisdictional:

(a) [Base Period]: In this schedule the applicant shall show the total expenses on an unadjusted basis for the Base Period separated by jurisdiction and, where applicable, by corporate department or division.

(b) [Test Year Period]: In this schedule the applicant shall show the total expenses after adjustments to the Base Period balances separated by jurisdiction and, where applicable, by corporate department or division.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(6) Schedule K-6: Allocation of total expenses--functional classification:

(a) [Base Period]: In this schedule the applicant shall show the total expenses on an unadjusted basis for the Base Period separated by functional classification.

(b) [Test Year Period]: In this schedule the applicant shall show the total expenses after adjustments to the Base Period balances separated by functional classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(7) Schedule K-7: Allocation of total expenses--demand, energy, and customer:

(a) [Base Period]: In this schedule the applicant shall show total expenses on an unadjusted basis for the Base Period separated as to demand, energy, and customer.

(b) [Test Year Period]: In this schedule the applicant shall show total expenses after adjustments to the Base Period balances separated as to demand, energy, and customer.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(8) Schedule K-8: Allocation of total expenses to rate classes:

(a) [Base Period]: In this schedule the applicant shall show total expenses on an unadjusted basis for the Base Period separated by rate classification.

(b) [Test Year Period]: In this schedule the applicant shall show total expenses after adjustments to the Base Period balances separated by rate classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

L. Schedule L Series: Allocated cost of service per billing unit of demand, energy, and customer by rate classification: In this series of schedules the applicant shall show the allocated cost of service by rate classification per billing unit of demand, energy, and customer as requested in each schedule and developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule L-1: Allocated cost per billing unit of demand, energy and customer:

(a) [Base Period]: In this schedule the applicant shall show the total allocated cost of service and the total allocated cost of service per billing unit of demand, energy, and customer on an unadjusted basis for the Base Period existing rate schedules.

(b) [Test Year Period]: In this schedule the applicant shall show the total allocated cost of service and the total allocated cost of service per billing unit of demand, energy, and customer for the proposed rate schedules after adjustments to the Base Period balances.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) **[RESERVED]**

M. Schedule M Series: Allocation factors: In this series of schedules the applicant shall provide a list of the allocation factors used to assign items of plant and expenses to the various rate classes as well as a brief summary of the derivation of the allocation factors used.

(1) Schedule M-1: Allocation factors used to assign items of plant and expenses to the various rate classes:

(a) [Base Period]: In this schedule the applicant shall provide a list of the allocation factors used to assign items of plant and expenses on an unadjusted basis to the rate classes for the Base Period. In addition the applicant shall provide a brief explanation of the derivation of the allocation factors used.

(b) [Test Year Period]: In this schedule the applicant shall provide a list of the allocation factors used to assign items of plant and expenses to the rate classes after adjustments to the Base Period balances. In addition the applicant shall provide a brief explanation of the derivation of the allocation factors used.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule M-2: Classification factors used to assign items of plant and expenses to demand, energy, and customer:

(a) [Base Period]: In this schedule the applicant shall provide a tabulation of the classification factors used to assign items of plant and expenses to the appropriate demand, energy, and customer components on an unadjusted basis for the Base Period, showing therein the classification and a brief rationale for the classification.

(b) [Test Year Period]: In this schedule the applicant shall provide a tabulation of the classification factors used to assign items of plant and expenses to the appropriate demand, energy, and customer components after adjustments to the Base Period balances, showing therein the classification and a brief rationale for the classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule M-3: Demand and energy loss factors:

(a) [Base Period]: In this schedule the applicant shall provide the demand and energy loss factors used to assign the cost of service responsibility on an unadjusted basis to the Base Period. In addition the applicant shall briefly explain herein the methods, procedures, and formulae used to determine the loss factors and demand and energy losses.

(b) [Test Year Period]: In this schedule the applicant shall provide the demand and energy loss factors used to assign the cost of service responsibility after adjustments to the Base Period balances. In addition the applicant shall briefly explain herein the methods, procedures, and formulae used to determine the loss factors and demand and energy losses.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

N. Schedule N Series: Rate of return by rate classification: In this series of schedules the applicant shall show the rate of return and the relative rate of return by rate classification as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule N-1: Rate of return by rate classification:

(a) [Base Period]: In this schedule the applicant shall show the rate of return and the relative rate of return by rate classification for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the rate of return and the relative rate of return by rate classification under the proposed rate schedules for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) **[RESERVED]**

O. Schedule O Series: Rate design: In this series of schedules the applicant shall show the total revenue requirement by rate classification as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule O-1: Total revenue requirements by rate classification:

(a) [Base Period]: In this schedule the applicant shall show the total revenue requirements on an unadjusted basis by rate classification for the Base Period, showing therein on a separate basis: base revenues, revenues derived from fuel and purchased power, and other revenue.

(b) [Test Year Period]: In this schedule the applicant shall show by rate classification:

(i) the total revenue requirements under existing rate schedules after adjustments to the Base Period balances, showing therein on a separate basis: base revenues, revenues derived from fuel and purchased power, and other revenue;

(ii) the total revenue requirements under the proposed rates after adjustments to the Base Period balances, showing therein on a separate basis: base revenues, revenues derived from fuel and purchased power, and other revenue; and

(iii) the difference between the total revenue under existing rates and the total revenue under the proposed rates expressed in both dollars and as a percent.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule O-2: Proof of revenue analysis:

(a) [Base Period]: Not required.

(b) [Test Year Period]: To satisfy the requirements of this request the applicant shall include a proof of revenue by rate class utilizing the proposed rate schedules.

(c) A full explanation of each of the adjustments made to the Base Period information shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule O-3: Comparison of rates for service under the present and proposed schedules: To satisfy the requirements of this request the applicant shall



include herein a tabulation showing a comparison of the rates for each rate classification for the present and proposed schedules.

(4) Schedule O-4: Explanation of proposed changes to existing rate schedules: In this schedule the applicant shall provide a brief explanation for the proposed change to the Base Period existing rate schedules and shall include therein the justification and support for the proposed change.

P. Schedule P Series: Key operating statistics: In this series of schedules the applicant shall provide the statistical data as requested in the following series of schedules and shall include therein an explanation or reference to the appropriate supporting schedules or workpapers for any adjustments made to the historical data requested or to the data for the Base Period. In addition, detailed explanations of all estimates and assumptions used to arrive at future values of data shall be provided.

(1) Schedule P-1: Peak demand information: In this schedule the applicant shall provide the following peak demand data:

(a) for total system, if applicant is interconnected to another jurisdiction and New Mexico jurisdiction for the twelve (12) months of the Test Year Period;

(b) for the New Mexico jurisdiction for the twelve (12) months of the Test Year Period as per:

(i) functional classification;

(ii) major customer classification, if available, or estimated by: (1) coincident peak at source, (2) noncoincident peak at source, and (3) voltage level at the meter;

(c) for total system, if applicant is interconnected to another jurisdiction and New Mexico jurisdiction for the four (4) years prior to the Test Year Period by month; and

(d) for total system, if applicant is interconnected to another jurisdiction and New Mexico jurisdiction for the five (5) years beyond the Test Year Period by month.

(2) Schedule P-2: Plant in service: In this schedule the applicant shall provide the following plant in service data, as requested:

(a) for total system, if applicant is interconnected to another jurisdiction;

(b) by New Mexico jurisdiction;

(c) by functional classification;

(d) for four (4) years prior to Test Year Period;

(e) for twelve (12) months of the Test Year; and

(f) for five (5) years beyond the Test Year Period.

(3) Schedule P-3: Property retirements and property investment information: In this schedule the applicant shall provide the following property retirements and property investment data, as requested:

(a) for total system, if applicant is interconnected to another jurisdiction;

(b) for New Mexico jurisdiction;

(c) by functional classification;

(d) for four (4) years prior to the Test Year Period;

(e) for twelve (12) months of the Test Year Period; and

(f) for five (5) years beyond Test Year Period.

(4) Schedule P-4: Operation and maintenance expense information: In this schedule the applicant shall provide the following operation and maintenance expense data, as requested:

(a) for total system, if applicant is interconnected with another jurisdiction;

(b) for New Mexico jurisdiction;

(c) by functional classification excluding fuel and purchased power and showing transmission by voltage level;

(d) for four (4) years prior to the Test Year Period;

(e) for twelve (12) months of the Test Year Period; and

(f) for five (5) years beyond the Test Year Period.

(5) Schedule P-5: Customer information: In this schedule the applicant shall provide the following customer data, as requested:

(a) for New Mexico jurisdiction and service area;

(b) annual KWH sales and the revenue produced and the increase or decrease in KWH sales due to changes in number of customers and due to other adjustments by customer class for twelve (12) months of the Test Year Period;

(c) the year-end number of customers and average number of customers for the year by customer class for:

- (i) four (4) years prior to the Test Year Period,
  - (ii) the Test Year Period, and
  - (iii) five (5) years beyond the Test Year Period; and
- (d) annual KWH sales for:

- (i) four (4) years prior to the Test Year Period, and
- (ii) five (5) years beyond the Test Year Period.

(6) Schedule P-6: Weather data: In this schedule the applicant shall provide weather data, including cooling and heating degree days by service area, used by the applicant to support any adjustments to sales due to weather.

(7) Schedule P-7: Power plant maintenance information: In this schedule the applicant shall provide the following power plant maintenance data:

(a) total maintenance by operating unit for four (4) years prior to the Test Year Period by month; and

(b) scheduled system maintenance by operating unit for:

- (i) twelve (12) months of the Test Year Period, and
- (ii) five (5) years beyond the Test Year Period by month.

(8) Schedule P-8: Customer service interruption information: In this schedule the applicant shall provide the following customer service interruption data:

(a) for total system, if applicant is interconnected to another jurisdiction and for the New Mexico Jurisdiction for four years prior to the Test Year Period by: (1) occurrence, (2) duration, and (3) geographical location; and

(b) for twelve (12) months of the Base Period.

(c) Only those service interruptions of a duration of fifteen (15) minutes or longer and affecting at least 15 MW of load need be reported in this schedule.

(9) Schedule P-9: Line loss information:

(a) In this schedule the applicant shall provide the following line loss data, as requested:

(i) for total system, if applicant is interconnected to another jurisdiction;

(ii) for New Mexico jurisdiction;

(iii) by demand, energy, and voltage level;

(iv) for four (4) years prior to the Test Year Period;

(v) for twelve (12) months of the Test Year Period; and

(vi) for five (5) years beyond Test Year Period.

(b) The methods, procedures, and formulae used by the applicant to determine the line loss information herein reported should conform with the methods, procedures, and formulae used by the applicant to determine the information reported at Schedule M-3: Demand and Energy Loss Factors.

(c) Whenever the applicant has used a different method, procedure, and formula for developing line loss information, this fact shall be reported and a brief description of the method, procedure, and formula used shall be provided.

(10) Schedule P-10: Reliability indices information: In this schedule the applicant shall provide the following reliability data, as requested:

(a) by total system, if applicant is interconnected to another jurisdiction;

(b) for New Mexico jurisdiction;

(c) for four (4) years prior to the Test Year Period;

(d) for twelve (12) months of the Test Year Period; and

(e) for five (5) years beyond the Test Year Period.

(11) Schedule P-11: Reserve margin information: In this schedule the applicant shall provide the following reserve margin data, as requested:

(a) for total system, if applicant is interconnected to another jurisdiction;

(b) for New Mexico jurisdiction;

(c) for four (4) years prior to the Test Year Period;

- (d) for twelve (12) months of the Test Year Period; and
- (e) for five (5) years beyond Test Year Period.

(12) Schedule P-12: Fuel statistics information. In this schedule the applicant shall provide the following fuel data, as requested:

- (a) for total system, if applicant is interconnected to another jurisdiction;
- (b) for New Mexico jurisdiction;
- (c) cost of fuel by type of fuel;
- (d) overall cost of fuel in \$/MMBTU;
- (e) generation by type of fuel;
- (f) for four (4) years prior to Test Year Period; and
- (g) for twelve (12) months of Test Year Period.

Q. Schedule Q Series: Required reports: In this series of schedules the applicant shall submit a copy of the most current reports as requested herein:

(1) Schedule Q-1: Load research program: To satisfy the requirements of this schedule the applicant shall submit a copy of its latest load research program.

(2) Schedule Q-2: Description of company: To satisfy the requirements of this schedule the applicant shall submit a statement describing the company and its scope of operations by service areas and shall include an organizational chart.

(3) Schedule Q-3: Annual Report to stockholders: To satisfy the requirements of this schedule the applicant shall submit a copy of its latest Annual Report to stockholders.

(4) Schedule Q-4: Reports to the Securities and Exchange Commission: To satisfy the requirements of this schedule the applicant shall submit copies of its latest SEC Form 10K and SEC Form 10Q and shall include copies of the Form 10Q conforming to the latest Form 10K accounting period.

(5) Schedule Q-5: Form 1 reports:

(a) To satisfy the requirements of this schedule the applicant shall submit a copy of the latest Form 1 report required to be on file at the New Mexico Public Service Commission [New Mexico Public Regulation Commission]. Where the applicant has duly filed such report with the New Mexico Public Service Commission [New Mexico

Public Regulation Commission], notice herein of the fact will satisfy the requirements of this schedule.

(b) In addition, if the applicant is required to file Form 1 with the Federal Energy Regulatory Commission, the latest Form 1 report filed at the Federal Energy Regulatory Commission shall be submitted herein.

(6) Schedule Q-6: Opinion of independent public accountants: To satisfy the requirements of this schedule the applicant shall submit a copy of the opinion of its independent certified public accountant stating that an independent examination of the book amounts and accounting adjustments thereto of the applicant utility company's books and records has been made for the Base Period, as defined herein, and that the results thereof are in all material respects in compliance with the Uniform System of Accounts prescribed by the New Mexico Public Service Commission [New Mexico Public Regulation Commission].

R. Schedule R Series: Testimony and exhibits: To the extent that testimony and exhibits are required in support of the materials submitted in compliance with the filing requirements herein, the applicant shall submit testimony and exhibits of such composition, scope, and format so as to serve as the applicant's case-in-chief in the event the matter is set for hearing. Further, any utility seeking recovery of litigation expenses as defined in Section 62-13-3 NMSA 1978 shall file sufficient testimony to enable the Commission to find those expenses were prudently incurred.

[Recompiled 12/30/01]

## **PART 531: DISCLOSURE OF ELECTRIC RATES BY FUNCTION IN CUSTOMER BILLS**

### **17.9.531.1 ISSUING AGENCY:**

New Mexico Public Utility Commission [New Mexico Public Regulation Commission],  
224 East Palace Avenue, Santa Fe, NM 87501.

[6-30-98; Recompiled 12/31/01]

### **17.9.531.2 SCOPE:**

This rule applies to every investor-owned, rural electric cooperative, or municipal electric utility operating in New Mexico that is subject to the jurisdiction of the Commission as provided in the Public Utility Act.

[6-30-98; Recompiled 12/31/01]

### **17.9.531.3 STATUTORY AUTHORITY:**

The New Mexico Public Utility Act, NMSA 1978 Section 62-1-1 **et seq.**, in particular NMSA 1978 Sections 62-6-1, 62-6-4, and 62-10-2.

[6-30-98; Recompiled 12/31/01]

**17.9.531.4 DURATION:**

Permanent.

[6-30-98; Recompiled 12/31/01]

**17.9.531.5 EFFECTIVE DATE:**

June 30, 1998, unless a later date is cited at the end of a Section or Paragraph.

[6-30-98; Recompiled 12/31/01]

**17.9.531.6 OBJECTIVE:**

The purpose of this rule is to provide information to the Commission and to consumers regarding the generation, transmission and distribution functions of the electric services being provided by utilities. To that end, this rule requires that electric utilities include information in customer bills about the portion of the rates attributable respectively to generation, transmission and distribution activity. This information will serve to educate customers about the various services being rendered by their electric utility and the cost of those services.

[6-30-98; Recompiled 12/31/01]

**17.9.531.7 DEFINITIONS:**

As used in this rule, unless otherwise specified:

**A. Commission or NMPUC** means the New Mexico Public Utility Commission or its successor agency.

**B. Commission Staff** means persons, other than Hearing Examiners, Commission Technical Advisors and Commission Counsel, employed by the Commission.

**C. Customer charge** means the charge which is usually characterized as a customer or monthly service charge, does not vary with the level of usage, and generally includes such costs as administrative, billing, and metering costs.

**D. Distribution** means the delivery of electric power from the transmission system through distribution lines to the meter of the retail customer.

**E. Functions** means the various activities involved in providing electric service, including generation, transmission and distribution. For purposes of this rule, attributing portions of rates to different functions means separately identifying and disclosing that portion of the utility's rates which reasonably reflect the costs attributable to each of the three functions, not including the customer charge. (Note: The definition of "functionalization" provided in NMPUC Rule 530 on minimum data filing requirements shall provide guidance in this identification; "functionalization" in that rule refers to the costs of providing the utility service separated by the major function or purpose which the plant or expense performs in rendering the utility service, for example, production, transmission, distribution, etc.)

**F. Generation** means the production or acquisition of energy supply.

**G. Transmission** means the activities involved in the transmission of electric power from the source or producer of power to the distribution system.

[6-30-98; Recompiled 12/31/01]

#### **17.9.531.8 RELATIONSHIP TO OTHER COMMISSION RULES:**

Unless otherwise specified, this rule is not intended to supersede any other rule of the Commission but to supplement such rules, including but not limited to NMPUC Rule 410. In the case of conflict, the provisions of this rule shall apply.

[6-30-98; Recompiled 12/31/01]

#### **17.9.531.9 INFORMATION TO BE INCLUDED IN CUSTOMER BILLS:**

**A.** Every electric utility shall separately state in its bills to retail customers the portions of its rates (not including the customer charge or any separately stated, Commission-approved fuel and purchased power cost adjustment clause) which are attributable to generation, transmission and distribution functions, respectively. The utility shall provide this information for each per kilowatt or per kilowatt hour charge for the customer class to which the customer belongs. Examples of possible bill formats are provided in 17 NMAC 10.531.16 and 17 NMAC 10.531.17 NMAC [now 17.9.531.16 NMAC and 17.9.531.17 NMAC].

**B.** The information required by 17 NMAC 10.531.9.1 [now Subsection A of 17.9.531.9 NMAC] shall be revenue-neutral for the utility and for each customer and customer class. No provision of this rule is intended to affect the rates on file with the Commission and a utility's filing pursuant to this rule shall not be construed to be a request for new rates or a change in rates under NMSA 1978 Section 62-8-7 or NMPUC Rules 110, 210, 530 or 540.

**C.** In the event that adjustments based on a fuel and purchased power cost adjustment clause approved by the Commission under NMPUC Rule 550 are not



separately stated in the utility's customer bills, the utility may, without further approval by the Commission, modify the information required by this rule consistently with the change in rates resulting from the fuel and purchased power cost adjustment clause.

[6-30-98; Recompiled 12/31/01]

#### **17.9.531.10 BASIS FOR INFORMATION:**

**A.** The information required by 17 NMAC 10.531.9 [now 17.9.531.9 NMAC] shall be based on the revenue requirements and rates in effect for the utility.

**B.** Data used to develop and support the information provided pursuant to 17 NMAC 10.531.9 [now 17.9.531.9 NMAC] may include data filed by the utility in its last rate proceeding, any reports filed with the Commission, including cost of fuel adjustment reports, annual reports, and data included in Federal Energy Regulatory Commission (FERC) Form No. 1 in the case of investor-owned utilities or Rural Utility\_Services (RUS) Form 7 in the case of rural electric cooperatives.

[6-30-98; Recompiled 12/31/01]

#### **17.9.531.11 COMMISSION REVIEW AND APPROVAL:**

To implement the requirements of this rule in the most expeditious manner possible, the following procedures shall be followed

**A.** Each electric utility shall submit the information required by 17 NMAC 10.531.9 [now 17.9.531.9 NMAC] to the Commission on or before August 1, 1998. The utility shall submit the information in the form of proposed bill formats for each customer class, together with the data and calculations upon which it bases its determination of the portions of its rates attributable to different functions. The utility shall include as part of this filing a copy of the first insert it proposes to send to customers under 17 NMAC 10.531.12.1 [now Subsection A of 17.9.531.12 NMAC] and a copy of the customer education program it intends to implement under 17 NMAC 10.531.12.2 [now Subsection B of 17.9.531.12 NMAC]. A copy of the filing shall be served on the Attorney General, Commission Staff and the parties to the utility's most recent general rate proceeding, except as provided in 17 NMAC 10.531.11.4 [now Subsection D of 17.9.531.11 NMAC].

**B.** Commission Staff and other interested parties may submit written comments on the utility's filing, including any proposed revisions and all supporting materials, to the Commission within 10 days of service by the utility pursuant to 17 NMAC 10.531.11.1 [now Subsection A of 17.9.531.11 NMAC]. The Commission shall review the submittals of the utility and any interested parties, together with the data and calculations on which they are based and any other information requested by the Commission, and determine the information to be included in customer bills and the manner of presentation, as well as the nature and timing of the utility's customer education program.

**C.** The utility shall use the new bill format beginning either with the October 1998 billing cycle or the second billing cycle after issuance of the Commission's order under 17 NMAC 10.531.11.2 [now Subsection B of 17.9.531.11 NMAC], whichever is later, or as otherwise directed by the Commission.

**D.** Notwithstanding the service provisions of 17 NMAC 10.531.11.1 [now Subsection A of 17.9.531.11 NMAC], in the case of rural electric cooperatives, service shall be made on the Attorney General, Commission Staff and the parties to the cooperatives most recent general rate proceeding, if conducted within the five years immediately prior to service. If no general rate proceeding has been conducted during that time period, service shall be made on the Attorney General, Commission Staff and any other person requesting such service.

**E.** Utilities shall file their new bill formats with the Commission in accordance with NMPUC Rule 210.11.

[6-30-98; Recompiled 12/31/01]

#### **17.9.531.12 CUSTOMER EDUCATION PROGRAM:**

**A. Bill inserts.** During the billing cycle just prior to the implementation of the bill format adopted pursuant to 17 NMAC 10.531.11 [now 17.9.531.11 NMAC], the utility shall include an insert with its bills which explains the new format. The utility shall also include a bill insert with the first two bills sent to each customer using the new bill format, and no less often than every six months thereafter. These inserts shall describe the different functional components of electric service, defining each function in clear terms, and shall be approved by the Commission prior to their use. In the case of a rural electric cooperative, the explanation otherwise provided by an insert may be furnished in the enlightenment magazine, subject to Commission approval.

**B. Required plan.** Each electric utility affected by this rule shall develop a plan for providing timely information to its customers about the new bill format and the functional components of electric service. Each utility's plan shall include appropriate means of communication, such as the use of community forums, radio and television announcements, newspaper advertisements, or World Wide Web sites, in addition to the bill inserts described in 17 NMAC 10.531.12.1 [now Subsection A of 17.9.531.12 NMAC]. The utility's plan is subject to review and approval by the Commission as provided in 17 NMAC 10.531.11 [now 17.9.531.11 NMAC].

[6-30-98; Recompiled 12/31/01]

#### **17.9.531.13 PROCEDURES FOR REVISING INFORMATION BASED ON RATE CHANGES:**

**A.** If a rate case is pending on the effective date of this rule, the Commission shall order the utility to propose the information required by 17 NMAC 10.531.9.1 [now

Subsection A of 17.9.531.9 NMAC]. consistent with its rate filing or as the Commission may otherwise direct.

**B.** A utility requesting a change of rates after the effective date of this rule shall propose the information required by 17 NMAC 10.531.9.1 [now Subsection A of 17.9.531.9 NMAC]. in its rate filing.

**C.** A rural electric cooperative that changes its rates without a hearing pursuant to NMSA 1978 Section 62-8-7F shall include the information required by 17 NMAC 10.531.9.1 [now Subsection A of 17.9.531.9 NMAC]. in its rate filing.

**D.** At the time that a utility's changed rates become effective, bills to customers shall separately state the portions of those rates which are attributable respectively to generation, transmission and distribution functions.

[6-30-98; Recompiled 12/31/01]

#### **17.9.531.14 VARIANCES:**

A utility may request a variance from the informational requirements of this rule if the approach it proposes would provide comparable information to the consumer in a more accurate or understandable manner. The utility shall send notice of its application for a variance to the Attorney General, Commission Staff and the parties to the utility's most recent general rate proceeding. The Commission may grant the variance, with or without modifications, for good cause shown.

[6-30-98; Recompiled 12/31/01]

#### **17.9.531.15 EXTENSIONS:**

A utility, Commission Staff or other interested party may request an extension of time in which to take an action required by this rule, for good cause shown. The request for extension shall include a specific date by which the moving party proposes to take the action for which an extension is being requested. The moving party shall send notice of its request for an extension to the Attorney General, Commission Staff and the parties to the utility's most recent general rate proceeding.

[6-30-98; Recompiled 12/31/01]

#### **17.9.531.16 RESIDENTIAL BILL FORMAT:**

This Section illustrates the difference between the format for a residential bill prior to the effective date of this rule and a sample format that would satisfy the requirements of this rule. Both the formats and the dollar figures used are for illustrative purposes only. The examples are not intended to reflect actual bills and do not include all possible charges, such as gross receipts taxes.

**A. Format prior to this rule.**

Customer Charge		\$ 9.00
Energy Charge	500kWh @ \$0.08/kWh	
\$40.00		
Fuel & Purchased Power Cost	500kWh @ \$0.0003/kWh	
\$ 0.15		
Total Charges		
\$49.15		

**B. Sample format under this rule.**

Customer Charge		\$ 9.00
Energy Charge		
Generation	\$0.045/kWh	
Transmission	\$0.010/kWh	
Distribution	\$0.025/kWh	
Total Energy Charge	500kWh @ \$0.080/kWh	
\$40.00		
Fuel & Purchased Power	500kWh @ \$0.0003/kWh	
\$ 0.15		
Total Charges		
\$49.15		

[6-30-98; Recompiled 12/31/01]

**17.9.531.17 COMMERCIAL OR INDUSTRIAL BILL FORMAT:**

This Section illustrates the difference between the format for a commercial or industrial bill prior to the effective date of this rule and the format to be used under the rule. Both the formats and the dollar figures used are for illustrative purposes only. The examples are not intended to reflect actual bills and do not include all possible charges, such as gross receipts taxes.

**A. Format prior to this rule.**

Customer Charge  
\$250.00

Demand Charge  
\$600.00

60 kW @ \$10.00/K

Energy Charge  
\$919.80

26,280 kWh @ \$0.035/kWh

Total Charges  
\$1,769.80

**B. Sample under this rule.**

Customer Charge  
\$250.00

Demand Charge

Generation \$ 5.15/kW

Transmission \$ 3.60/kW

Distribution \$ 1.25/kW

Total Demand Charge  
\$600.00

60kW @ \$10.00/kW

Energy Charge

Generation \$0.018/kWh

Transmission \$0.010/kWh

Distribution \$0.007/kWh

Total Energy Charge  
\$919.80

26,280 kWh @ \$0.035/kWh

Total Charges  
\$1,769.80

[6-30-98; Recompiled 12/31/01]

**PART 532-539: [RESERVED]**

## **PART 540: PROCEDURES FOR REVIEW OF RATES PROPOSED BY RURAL ELECTRIC COOPERATIVES**

### **17.9.540.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

### **17.9.540.2 SCOPE:**

A. Except as provided in Subsection B all rural electric cooperatives organized under the Rural Electric Cooperative Act, hereinafter referred to sometimes as "coops," shall comply with the provisions of NMPSC Rule 540 [17.9.540 NMAC] when proposing a new rate or rates. NMPSC Rules 110.39 through 110.41 [17.1.2.53 NMAC] relating to applications for change of rates shall not be applicable.

B. The provisions of NMPSC Rules 540.1 through 540.10 [17.9.540.1 through 17.9.540.15 NMAC] shall not affect the Commission's regulation of the sale, furnishing, or delivery by wholesale suppliers of electricity to coops under NMSA 1978, Section 62-6-4B et seq. NMPSC Rule 540.11 [17.9.540.16 NMAC] shall apply to each rural electric cooperative regardless of the law under which it is organized or whether or not it is a wholesale supplier of electricity.

C. The provisions of NMPSC Rule 540 [17.9.540 NMAC] do not apply to new coop rules as the term "rules" is used in NMPSC Rule 210 [17.1.210 NMAC].

[Recompiled 12/30/01]

### **17.9.540.3 STATUTORY AUTHORITY:**

NMPSC Rule 540 [17.9.540 NMAC] is adopted under the authority vested in this Commission by the Public Utility Act, NMSA 1978, Section 62-3-1 et. seq.

[Recompiled 12/30/01]

### **17.9.540.4 DURATION:**

[Recompiled 12/30/01]

### **17.9.540.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

### **17.9.540.6 OBJECTIVE:**

The purpose of NMPSC Rule 540 [17.9.540 NMAC] is to carry out the explicit legislative intent of Laws 1985, Chapter 176, which amended NMSA 1978, Section 62-3-2 and Section 62-8-7, to limit governmental regulation of rate setting by rural electric cooperatives (whose members have direct control over rates through an elected board) to the maximum extent consistent with retaining oversight by the Commission.

[Recompiled 12/30/01]

#### **17.9.540.7 DEFINITIONS:**

[Recompiled 12/30/01]

#### **17.9.540.8 TABLE OF CONTENTS:**

- A. Purpose [17.9.540.6 NMAC]
- B. Authority [17.9.540.3 NMAC]
- C. Applicability [17.9.540.2 NMAC]
- D. Filings by Coops Proposing a New Rate or Rates [17.9.540.9 NMAC]
- E. Protests by Coop Members [17.9.540.10 NMAC]
- F. Form and Filing of Protest [17.9.540.11 NMAC]
- G. Commission Procedure Upon Receipt of a Protest [17.9.540.12 NMAC]
- H. Notice to Customers Prior to Filing of Proposed Rates [17.9.540.13 NMAC]
- I. Review and Hearing of Proposed Rates [17.9.540.14 NMAC]
- J. Status of Protest During Proceeding [17.9.540.15 NMAC]
- K. Debt Cost Adjustment Clause [17.9.540.16 NMAC]
- L. Effective Date [17.9.540.17 NMAC]

[Recompiled 12/30/01]

#### **17.9.540.9 FILINGS BY COOPS PROPOSING A NEW RATE OF RATES:**

A. A coop which has complied with NMPSC Rule 540.8 [17.9.540.13 NMAC] below shall file with the Commission a schedule proposing a new rate or rates together with an affidavit describing how the notice required by NMPSC Rule 540.8 [17.9.540.13 NMAC] has been made, to which affidavit is annexed a copy of the notice. The filing shall be in

accordance with NMPSC Rule 210 [17.1.210 NMAC] except that NMPSC Rule 210.14 [Subsection C of 17.9.210.10 NMAC] (entitled "Additional Information as to Effect of Proposed Rates") and NMPSC Rule 210.13(b) [Paragraph 2 of Subsection B of 17.9.210.10 NMAC] (relating to filing of testimony) thereof shall not be applicable. The filing shall become effective:

(1) on the date set forth in the Advice Notice, that date being no less than thirty (30) days after such filing;

(2) on any date the coop subsequently agrees to;

(3) on the day following the entry of an order by the Commission determining that just cause does not exist for reviewing the proposed rate or rates pursuant to NMPSC Rule 540.7(c) [Subsection C of 17.9.540.12 NMAC]; or

(4) if the Commission determines there is just cause for review pursuant to NMPSC Rule 540.7 [17.9.540.12 NMAC], in accordance with subsections C and D of NMSA 1978, Section 62-8-7.

B. A coop shall submit with its filing:

(1) the coop's most recent REA Form 7;

(2) a proof of revenue statement for each class of customers to which the new rate or rates apply;

(3) a statement comparing the new rate or rates with the present rate or rates, which statement shall contain the information required in NMPSC Rule 540.8(b)(3) [Paragraph 3 of Subsection B of 17.9.540.13 NMAC]; and

(4) a brief statement explaining what has caused the need for the rate adjustment.

C. A coop may, but is not required to, include in its filing any data, exhibits, illustrations, prepared testimony, or written argument which is pertinent to the schedule proposing a new rate or rates. Whether or not a coop includes such matters in its filing does not affect its duty to furnish prepared testimony and exhibits if ordered under NMPSC Rule 540.7(d) [Subsection D of 17.9.540.12 NMAC]. Any testimony and exhibits included in the coop's filing shall conform to the requirements of NMPSC Rule 110 [17.1.2 NMAC].

D. Failure to abide by the requirements set forth or incorporated by reference herein shall be deemed grounds for rejection of the filing.



E. Rates which have been filed and which by operation of law have become effective without hearing by the Commission shall not be construed to bear the approval of the Commission but may be subject to inquiry by the Commission at any time.

[Recompiled 12/30/01]

#### **17.9.540.10 PROTESTS BY COOP MEMBERS:**

A. Any member of the coop may protest the proposed rate or rates by filing a protest in accordance with the requirements of NMPSC Rule 540.6 [17.9.540.11 NMAC] upon the filing of the schedule proposing the new rate or rates. Protests must be filed no later than twenty (20) days after the coop files the schedule. The term "member" herein shall mean each incorporator of a coop and each person admitted to and retaining membership therein and shall include a husband and wife admitted to a joint membership.

B. In order to determine whether just cause may exist for review pursuant to NMPSC Rule 540.7 [17.9.540.12 NMAC], the Commission will ordinarily consider among other matters whether a protestant has exhausted remedies within the coop or the coop has unreasonably rejected the protestant's objections to the new rate or rates. Therefore, a member should present his objections to the coop in writing and allow the coop a reasonable period to attempt a resolution of or otherwise respond to those objections. A period of seven (7) days after receipt of written objections will be deemed reasonable for the coop to provide a written response to the member, but a written response is not required if such time period extends beyond the date specified in Subsection A. above. The Commission expects the coop and its member to make a good faith effort to resolve the member's objections to the proposed rate or rates during that period of time.

[Recompiled 12/30/01]

#### **17.9.540.11 FORM AND FILING OF PROTEST:**

A. Contents of Protest: Protests to the Commission must be in writing and shall be signed by the member or members submitting the protest or by their attorney. All protests shall contain the following:

(1) the name, mailing address, and phone number of each member protesting the proposed rate or rates, and the name, mailing address, and phone number of each member's attorney, if any;

(2) the name of the coop proposing the rate or rates and identification of the proposed rate or rates being protested;

(3) a clear and concise statement of the effect of the proposed rate or rates on the protestant;

(4) a clear and concise statement of the specific grounds upon which the protestant believes the proposed rate or rates are unjust, unreasonable, or otherwise unlawful;

(5) a brief description of the member's efforts to resolve his objections directly with the coop; and

(6) a clear and concise statement of the relief the protestant seeks from the Commission.

(7) All protests shall show the caption of the proceeding and the docket number and shall be titled "Protest." Whenever possible, protests shall be typed and double-spaced, shall be on paper 8 1/2 inches wide and 11 inches long, and fastened only on the left side.

B. Use of Commission Form: A protestant may, but is not required to, use the Commission's form for protests. The coop shall make copies of the Commission's form available to its members upon request.

C. Attachments Required: The protestant must attach to the protest copies of any written objections the protestant presented to the coop and any response made by the coop under NMPSC Rule 540.5(b) [Subsection B of 17.9.540.10 NMAC]. If the protestant did not present his objections to the coop before filing the protest or if the coop did not respond to objections presented to it, the protestant shall so state in the protest.

D. Additional Information Permitted: The protestant may, but is not required to, file with the protest any data, exhibits, illustrations, prepared testimony, or written argument which is pertinent to the grounds of the protest and which may aid the Commission in its consideration of the protest under NMPSC Rule 540.7 [17.9.540.12 NMAC].

E. Certificate of Service: The protestant shall serve copies of the protest and any accompanying documents on the coop whose proposed rate or rates are being protested either by first class U.S. mail or by hand delivery. A certificate of service stating the date and manner of mailing or delivery must be included in or attached to the protest at the time of filing with the Commission.

F. Number of Copies Required: At the time of filing the protestant shall provide the Commission with an original plus ten (10) copies of the protest and any accompanying documents unless the Commission directs otherwise.

G. Date of Filing: If a protest is submitted to the Commission before the coop has filed its proposed rate or rates, the protest shall be deemed filed as of the date of the coop's filing.

H. Response Not Permitted: No response to a protest filed with the Commission is permitted except by leave of the Commission or presiding officer. Notwithstanding the foregoing, if the protestant has not presented an objection to the coop in accordance with NMPSC Rule 540.5(b) [Subsection B of 17.9.540.10 NMAC] the coop may, and is encouraged to, initiate communications with the protestants to determine if there is a negotiated basis for withdrawal of the protest and may, with notice to the protestant, disclose such an effort and its results to the Commission or presiding officer.

[Recompiled 12/30/01]

#### **17.9.540.12 COMMISSION PROCEDURE UPON RECEIPT OF A PROTEST:**

A. Upon receipt of a protest which is in substantial compliance with these procedural rules the Commission shall determine whether or not there is just cause for reviewing the proposed rate or rates on one or more of the grounds of the protest.

B. The Commission or the presiding officer in the cause may notice a pre-hearing conference in order to obtain further information from either the protestant or the coop in aid of the just cause determination.

C. If the Commission determines that just cause does not exist for reviewing the proposed rate or rates or that all protests have been withdrawn by the protestants, the Commission shall enter an order so stating and providing the basis for such determination. The Commission shall serve the order on the protestants and to the coop.

D. If a determination is made that there is just cause for review the Commission or presiding officer shall issue an order noticing the proposed rate or rates for hearing and stating the issue or issues to be heard. Either this order or subsequent orders shall prescribe:

(1) the manner of any further notice to ratepayers or the public, the cost of which shall be borne by the coop;

(2) a deadline for the filing of motions to intervene under the intervention provisions of NMPSC Rule 110 [17.1.2 NMAC];

(3) directions to the parties and, to the extent the Commission or presiding officer may deem helpful, to the Commission Staff to file written testimony and exhibits; and

(4) the time and place of the hearing.

[Recompiled 12/30/01]

#### **17.9.540.13 NOTICE TO CUSTOMERS PRIOR TO FILING OF PROPOSED RATES:**

A. At least thirty (30) days prior to filing a schedule proposing a new rate or rates a coop shall give, by mailing with billings or independently or by publication in the enchantment (in the case of coops subscribing thereto), written notice to affected customers. For this purpose all customers of the coop shall be considered to be affected customers unless the Commission, upon motion made by the coop, directs otherwise.

B. The notice shall include the following information:

- (1) the amount of the increase requested in both dollar amounts and percentage increase;
- (2) the customer classifications to which the new rate or rates apply;
- (3) the present rates and the proposed rates for each customer class and the number of customers in each customer class to which those proposed rates would apply and, for residential customers without demand meters, the present rates, the proposed rates, and the percentage difference between the present bill and the anticipated bill for each of the following levels of consumption-0 kwh, 250 kwh, 500 kwh, 750 kwh, 1,000 kwh and 2,000 kwh;
- (4) the date on which the coop intends to file with the Commission the schedule proposing the new rate or rates;
- (5) a statement that the coop will promptly notify a member of the date on which it actually files the schedule proposing the new rate or rates if the member so requests;
- (6) a statement that the new rate or rates will go into effect automatically and without hearing by the Commission unless one or more members of the coop file a protest with the Commission no later than twenty (20) days after the coop has filed the schedule proposing the new rate or rates and the Commission determines there is just cause for reviewing the proposed rate or rates on one or more of the grounds of the protest AND A STATEMENT IN ALL CAPITAL LETTERS THAT IF A HEARING IS HELD BY THE PUBLIC SERVICE COMMISSION [PUBLIC REGULATION COMMISSION] ANY COSTS INCURRED BY THE UTILITY MAY BE INCLUDED IN THE UTILITY'S FUTURE RATES, FOLLOWING THE UTILITY'S NEXT RATE CASE;
- (7) a statement that the procedures for protesting a proposed rate or rates are set forth in NMPSC Rule 540 [17.9.540 NMAC], a copy of which can be obtained upon request from or inspected at either the main office of the coop or the offices of the Commission in Santa Fe, that forms for protests are available from either the coop or the Commission, and indicating the telephone numbers and addresses of both the coop and the Commission;

(8) a statement that before filing a protest a coop member should attempt to resolve any grievance within the coop by presenting his objections to the coop in writing and allowing the coop at least seven (7) days in which to attempt a resolution or otherwise respond;

(9) a statement that any interested person may examine the rate filings together with any exhibits and related papers that may be filed at any time at the main office of the coop or on or after the date of filing at the offices of the Commission in Santa Fe; and

(10) a statement that further information may be obtained by contacting the coop or the Commission.

C. The coop shall submit a copy of the form of notice to the Commission for approval at least fifteen (15) days prior to giving notice to customers. If the Commission does not disapprove the form of notice within five (5) working days of submission of the notice the form will be deemed approved.

D. Failure to comply with this section shall be deemed grounds for rejection of the filing proposing a new rate or rates.

[Recompiled 12/30/01]

#### **17.9.540.14 REVIEW AND HEARING OF PROPOSED RATES:**

Any proceeding to review a coop's proposed rate or rates under NMPSC Rule 540.7(d) [Subsection D of 17.9.540.12 NMAC] shall be conducted in accordance with the Public Utility Act and NMPSC Rules 110.1 through 110.29 and NMPSC Rules 110.56 through 110.142 [17.1.2.7 NMAC through 17.1.2.12 NMAC and 17.1.2.26 NMAC through 17.1.2.40 NMAC].

[Recompiled 12/30/01]

#### **17.9.540.15 STATUS OF PROTESTANT DURING PROCEEDING:**

A. Unless the Commission or presiding officer directs otherwise the protestant or protestants who filed the protest shall be deemed parties to any proceeding to review the proposed rate or rates protested. Said protestants shall have the same status as intervenors and any reference to intervenors during the proceeding shall be deemed to include such protestants unless otherwise noted. These protestants need not file motions to intervene otherwise required by NMPSC Rule 110 [17.1.2 NMAC].

B. If more than one member filed the protest the Commission or the presiding officer may, to expedite the proceeding and avoid duplication, give intervenor status to fewer than all of the protestants and grant other intervenor status only upon a showing that their intervention will not be duplicative and will not unduly delay the proceeding.

[Recompiled 12/30/01]

**17.9.540.16 DEBT COST ADJUSTMENT CLAUSE:**

A. A coop's schedule of rates proposed pursuant to NMPSC Rule 540 [17.9.540 NMAC] may provide for the flow-through to customers of increases and decreases in the cost of debt capital incurred pursuant to securities, the issuance of which has been approved by the Commission, above or below debt cost utilized to establish the rates.

B. Unless the coop obtains the approval of the Commission or presiding officer for a different methodology, the clause in a rate containing such an adjustment shall provide at a minimum for the following:

(1) the Base Cost shall be the cost of Commission authorized debt capital as of the end of the test period upon which the rates were established, as annualized;

(2) the applicable debt cost expense shall be determined every calendar quarter by adding the actual changes in the Base Cost to or, as the case may be, subtracting these changes from the actual cost of new debt under securities approved by the Commission and incurred after the end of the period used to determine the Base Cost;

(3) a demand allocation factor shall be determined for each class of customers (the demand allocation factor shall be that upon which the cooperative's current rates were established but may be adjusted by the cooperative with prior approval of the Commission Executive Director on the basis of a more recent cost of service study or known and measurable changes); and

(4) the Debt Cost Adjustment amount to be allocated to each class of customers for the next succeeding calendar quarter shall be the result of multiplying items (2) and (3) above. The distribution of the Debt Cost Adjustment amount among the customers within each class may be on the basis of projected kilowatt demand or projected kilowatt-hour sales, as the coop elects to designate in its schedule of rates.

C. The coop shall file with the Commission the data and calculations called for by Paragraphs (1), (2), (3) and (4) of Subsection B of this Section above a minimum of ten (10) days before an adjustment factor is to be applied to billings.

D. The coop shall establish a Balancing Account to compensate for under-collections and over-collections of revenue by increasing or decreasing the adjustment factor for the next following calendar quarter and shall file with the Commission one (1) year from the date of the first Debt Cost Adjustment filing and annually thereafter a reconciliation of Debt Cost Adjustment revenues and expenses and the operation of the Balancing Account. The Commission will examine this filing to insure that only the appropriate revenues are being recovered.

E. The adjustment factor expressed in either cents per kilowatt-hour or cents per kilowatt and the resultant billing period charge shall be shown on each bill as Debt Cost Adjustment.

F. Notwithstanding NMPSC Rule 540.11 [17.9.540.16 NMAC], an effective schedule of rates, or the filing of information with the Commission, the Commission reserves the authority to entertain complaints and undertake investigations of Debt Cost Adjustments as provided in the Public Utility Act and NMPSC Rule 110 [17.1.2 NMAC].

[Recompiled 12/30/01]

**17.9.540.17 EFFECTIVE DATE:**

NMPSC Rule 540 [17.9.540 NMAC] shall be effective for all filings made after the date of adoption of former General Order No. 46 and compliance thereof with the State Rules Act, NMSA 1978, Section 14-4-1 et seq. For all previous filings Interim General Order No. 46, adopted July 15, 1985, shall remain in effect.

[Recompiled 12/30/01]

**PART 541-549: [RESERVED]**

**PART 550: FUEL AND PURCHASED POWER COST ADJUSTMENT CLAUSES FOR ELECTRIC UTILITIES**

**17.9.550.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.9.550.1 NMAC - Rp, NMPSC Rule 550, 12-30-10]

**17.9.550.2 SCOPE:**

NMPSC Rule 550, 17.9.550 NMAC shall apply to every electric utility and generation and transmission cooperative operating within the state of New Mexico and which is subject to the jurisdiction of the commission as provided by law.

[17.9.550.2 NMAC - Rp, NMPSC Rule 550.1, 12-30-10]

**17.9.550.3 STATUTORY AUTHORITY:**

Sections 62-3-1, 62-3-2, 62-6-4, 62-8-1, 62-8-3 and 62-8-7(E) and (F), NMSA 1978.

[17.9.550.3 NMAC - N, 12-30-10]

**17.9.550.4 DURATION:**

Permanent.

[17.9.550.4 NMAC - N, 12-30-10]

**17.9.550.5 EFFECTIVE DATE:**

December 30, 2010, unless a later date is cited at the end of a section.

[17.9.550.5 NMAC - N, 12-30-10]

**17.9.550.6 OBJECTIVE:**

The objective of this rule is to:

A. provide for adequate regulatory review of a utility's operations under a fuel and purchased power cost adjustment clause ("FPPCAC");

B. provide for the stability of utility earnings when electric fuel costs and purchased power costs are rising and permit prompt credits to customers when electric fuel costs and purchased power costs are declining; and

C. assure that utilities collect through the FPPCAC the amount actually expended for fuel and purchased power costs;

D. the objective of a FPPCAC is to flow through to the users of electricity the increases or decreases in applicable fuel and purchased power expense per kilowatt-hour of delivered energy above or below a base fuel and purchased power expense.

[17.9.550.6 NMAC - Rp, NMPSC Rule 550.2, 12-30-10]

**17.9.550.7 DEFINITIONS:**

Unless otherwise specified, the following definitions will apply:

A. **account (number)** means such account as defined and in current use by the federal energy regulatory commission;

B. **annual report** means the report filed annually that summarizes and verifies all actual fuel and purchased power revenues and expenses during the twelve (12) months ended December 31 of each year; the annual report shall be verified under oath by an officer of the utility;

C. **applicable fuel and purchased power expense** means the fuel and/or purchased power expense that is to be collected through the FPPCAC in accordance with a utility's commission-approved methodology and forms;



D. **applicable kWh sales** means the kilowatt-hour ("kWh") sales associated with the applicable fuel and purchased power expense;

E. **balancing account** means the difference between the increased or decreased fuel and purchased power expenses in the second month preceding the current month and the actual fuel and purchased power cost adjustment revenue billed in the current month; the balancing account may also include other components granted by a 17.9.550 NMAC variance;

F. **base fuel and purchased power expense** means the cost of fuel and purchased power upon which the applicable rate schedule was based stated on a dollars per kWh basis;

G. **billing month** or **effective month** means the month during which the FPPCAC factor is applied to customers' bills;

H. **current month** means the most recent month for which actual fuel and purchased power volumes and costs and kWh sales data are available;

I. **fuel and purchased power cost adjustment clause** or **FPPCAC** means that clause in a rate schedule that contains the parameters under which the fuel and purchased power cost adjustment factor is determined for customer monthly billing;

J. **fuel and purchased power cost adjustment factor** or **factor** means the monthly dollars per kWh charge to be applied to customers' bills, and which represents the amount of increase or decrease in dollars per kWh to be added to or deducted from each bill; for monthly adjustable factors, the factor is the increased or decreased fuel and purchased power expense stated on a dollars per kWh basis by dividing the current month's increased or decreased fuel and purchased power expenses by the applicable kWh sales as set forth under 17.9.550.12 NMAC;

K. **increased or decreased fuel and purchased power expense** means the difference between the applicable fuel and purchased power expense and the base fuel and purchased power expense during the current month.

[17.9.550.7 NMAC - Rp, NMPSC Rule 550.7, 12-30-10]

#### **17.9.550.8 VARIANCES:**

Applications for a variance shall:

A. describe with particularity the reasons which prompted the filing of the variance application;

B. set out the effect of complying with 17.9.550 NMAC on the utility and its customers as a result of the condition;

C. identify the section(s) of 17.9.550 NMAC from which the variance is requested;

D. describe the result which the request will have if granted;

E. state how the variance will achieve the purposes of 17.9.550 NMAC as stated in 17.9.550.6 NMAC;

F. state why the proposed variance is a reasonable alternative to the requirements of this rule.

[17.9.550.8 NMAC - Rp, NMPSC Rule 550.3, 12-30-10]

#### **17.9.550.9 SERVICE OF APPLICATIONS:**

A utility filing an application for an initial or continued FPPCAC, or a variance, shall, contemporaneously with such filing, mail copies of such application by first class mail to the attorney general and the intervenors in the utility's most recent rate case.

[17.9.550.9 NMAC - Rp, NMPSC Rule 550.4, 12-30-10]

#### **17.9.550.10 HEARINGS:**

A. Unless otherwise ordered by the commission, formal hearings will not be held prior to the effective date of any factor adjustment made in accordance with the provisions of 17.9.550 NMAC. The commission may, upon its own motion or upon the filing of a complaint, and after notice to the utility, public, attorney general, and intervenors of record in the utility's last filed rate case, suspend any adjustment pending hearing. However, the commission may allow the factor in effect immediately preceding the period in which the suspended adjustment otherwise would have become effective, to remain in effect, subject to refund or surcharge, during the interim time period in which an adjustment is suspended pending hearing. In the event that a suspended adjustment ultimately is approved, in whole or in part, following a hearing, interest charges computed at the statutory rate established under NMSA 1978, Section 62-13-13, or any amendment to it, and computed for the period commencing with the date the suspended adjustment actually becomes effective, shall, as provided by the commission, be added to the calculation resulting from the approved adjustment.

B. The matters which the commission might notice for hearing may include but are not limited to:

(1) any unusual or substantial increases in the cost for fuel and purchased power;

(2) the development of any dispute over the interpretation of contracts or laws concerning the pricing of any significant amount of power supply;

(3) any new or amended contractual arrangements for provision of services related to power supply; and

(4) any other matter that the commission determines requires a hearing.

[17.9.550.10 NMAC - Rp, NMPSC Rule 550.5, 12-30-10]

**17.9.550.11 EFFECT OF RULE:**

This rule shall in no way relieve any electric utility subject to the jurisdiction of the commission of any of its duties prescribed under the laws of New Mexico or the tariff regulations, orders and rules of the commission.

[17.9.550.11 NMAC - Rp, NMPSC Rule 550.6, 12-30-10]

**17.9.550.12 CALCULATION OF FUEL AND PURCHASED POWER COST ADJUSTMENT FACTOR; PURPOSE OF BALANCING ACCOUNT:**

A. Calculation of a factor shall be made using the methodology, required format and data calculations approved for the utility by the commission, and shall be submitted on commission-approved forms. A sample format is provided in 17.9.550.20 NMAC of this rule. A utility's methodology for calculation of its factor shall be proposed in its initial tariff filing or continuation filing pursuant to 17.9.550.16 and 17 NMAC of this rule. A methodology approved by the commission may be based on monthly, rolling average, or fixed period calculations. Where applicable, a utility's methodology shall take into consideration the utility's multi-state and jurisdictional operations and shall identify any allocation factors applied by the utility. Costs associated with an investor-owned utility's long term purchase power contracts with a term of two or more years may be recovered through the utility's FPPCAC if consistent with all commission orders or rules regarding such contracts or with commission approval.

B. Unless otherwise ordered by the commission the methodology for calculating a monthly-adjustable factor shall employ the use of a balancing account. The purpose of the balancing account is to insure that only the appropriate revenue is recovered through the application of the factor. The balancing account shall compensate for under-collections and over-collections of revenue by increasing or decreasing the factor for the next following billing month. A utility may make additional adjustments to the factor to mitigate the effect on customers of monthly changes in the balancing account, and the adjusted factor shall go into effect unless suspended by the commission. Additional amounts may be applied to the balancing account as the commission may authorize or direct. These additional items may include such amounts as refunds received by the utility or extraordinary payments by the utility, provided that these payments have received written approval of the commission prior to inclusion in the balancing account.

[17.9.550.12 NMAC - Rp, NMPSC Rule 550.8, 12-30-10]

### **17.9.550.13 INFORMATION TO BE FILED:**

A. Each electric utility that has a FPPCAC as a part of a filed rate schedule shall file each month all the data and calculations called for in 17.9.550.12 NMAC. The monthly data shall be submitted in electronic format to the director of the utility division or his designee on the earliest possible date after the end of each month, but in no event less than five (5) days before the factor becomes effective for customer billing. The utility shall also file its monthly data with the commission's records bureau prior to the effective date of the factor. Where a utility has more than one base fuel and purchased power expense in various rate schedules, a separate calculation shall be filed for each base fuel and purchased power expense and a separate balancing account shall be maintained for each base fuel and purchased power expense.

B. An investor-owned utility shall provide the total charges that were incurred under purchased power contracts with a term of not less than fifteen days and entered into by the utility to replace normally available or scheduled power and energy from the utility's generating resources that operate at annual capacity factors of 40 percent or more and that were unavailable due to an unplanned outage and included in each month's FPPAC report. The utility shall make available each underlying purchased power contract to utility division staff upon request, in a manner consistent with any applicable confidentiality provisions in such contract. This reporting requirement shall not apply to economy energy transactions and transactions entered into for solely economic dispatch purposes.

C. Upon the utility division's receipt of the factor, a review of the calculations will be conducted by utility division staff to ensure compliance with this rule. In the event a utility fails to timely file the calculations of its factor in accordance with this section, or if the data filed by the utility is incomplete or inaccurate, utility division staff may immediately petition the commission for the appropriate relief provided by law and these rules, including the suspension, or collection subject to refund, of the factor.

D. Whenever the utility or the commission has good reason to believe on the basis of factual data that the adjustment factor would result in a substantial under-collection or over-collection of revenue in the following billing month with the further result that adjustment factors for future billing months would fluctuate excessively, the utility may apply to the commission for permission to place into effect or the commission may direct the utility to place into effect a specified increase or decrease in the amount of the adjustment factor which is to remain in effect for such period of time as the commission may direct.

E. Each utility that has a FPPCAC shall file by April 30 of each year the annual report defined in Subsection B of 17.9.550.7 NMAC.

[17.9.550.13 NMAC - Rp, NMPSC Rule 550.9, 12-30-10]

### **17.9.550.14 ELIMINATION OR IMPOSITION OF CONDITIONS:**

The commission may eliminate or impose conditions on a particular FPPCAC if it finds such action is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable rates to all customer classes; provided however that no such elimination or imposition of conditions shall be ordered if to do so would place the affected utility at a competitive disadvantage. The commission may provide for separate examination of a utility's FPPCAC based upon that utility's particular operating characteristics.

[17.9.550.14 NMAC - Rp, NMPSC Rule 550.10, 12-30-10]

**17.9.550.15 RENDITION AND STATEMENT OF FUEL AND PURCHASED POWER COST ADJUSTMENT FACTOR:**

The factor shall be expressed in dollars per kWh, and the resultant monthly charge or credit shall be shown on each customer's monthly bill.

[17.9.550.15 NMAC - Rp, NMPSC Rule 550.11, 12-30-10]

**17.9.550.16 INITIAL TARIFF FILING:**

A. No utility shall have a FPPCAC included in its tariff unless it complies with the requirements of 17.9.550 NMAC in the design of its FPPCAC and tariff and files an application with the commission requesting approval of its use of a FPPCAC. The utility shall submit testimony along with its initial tariff filing and application under 17.9.550 NMAC showing that all of the objectives stated in 17.9.550.6 NMAC are met by its tariff and that:

(1) the costs of fuel and purchased power are a significant percentage of the total cost of service;

(2) the costs of fuel and purchased power periodically fluctuate and cannot be precisely determined in a rate case;

(3) the utility's fuel and purchased power policies and practices are designed to assure that electric power is generated and purchased at the lowest reasonable cost.

B. Sufficient financial and other necessary information and data shall be submitted to demonstrate that no amounts to be recovered under the operation of the FPPCAC are included in the base rates for service. The commission may approve all or part of the tariff filing and format with or without a formal hearing. All tariffs shall be deemed approved thirty (30) days after filing unless otherwise suspended by the commission.

[17.9.550.16 NMAC - Rp, NMPSC Rule 550.12, 12-30-10]

**17.9.550.17 CONTINUATION FILINGS:**

A. Each utility operating with a FPPCAC as part of its tariff shall file an application for continued use of its FPPCAC at intervals of no more than four (4) years from the date the FPPCAC is approved or continued by the commission. The application must address the considerations described in Paragraphs (1) through (4) of Subsection E of 62-8-7 NMSA 1978. A utility may elect to satisfy this requirement by submitting its continuation filing as part of a general rate proceeding that is subject to hearing by the commission or in a separate filing. Failure to file the application required in this paragraph by the prescribed time may, after notice and hearing, result in appropriate orders or sanction under the Public Utility Act, including termination of the utility's FPPCAC.

B. All applications required by this section shall be accompanied by a revenue and expense statement that shall contain, at minimum, an analysis of costs and revenues included in or affected by the operation of the utility's FPPCAC. In addition, the utility shall make the same showings required of an initial tariff filing set out in 17.9.550.16 NMAC.

C. A continuation filing shall be deemed approved thirty (30) days after filing unless suspended by the commission. Unless otherwise ordered by the commission, an existing FPPCAC shall remain in effect pending the outcome of a proceeding in which a request for continued use of an FPPCAC has been suspended.

[17.9.550.17 NMAC - Rp, NMPSC Rule 550.13, 12-30-10]

#### **17.9.550.18 REFUNDS RIGHT:**

The commission in its discretion may order refunds of charges collected under the provisions of 17.9.550 NMAC to the customers of an electric utility where the commission determines, after notice and hearing, that the utility's collection of such amounts is contrary to the provisions of 17.9.550 NMAC, the previously approved adjustment factor, or otherwise is unfair, unjust or unreasonable.

[17.9.550.18 NMAC - Rp, NMPSC Rule 550.14, 12-30-10]

#### **17.9.550.19 PRUDENCE REVIEW:**

The commission in its discretion may order that a prudence review be conducted to assure that fuel and purchased power costs collected by a utility through its FPPCAC are prudently incurred. Any prudence review shall be conducted under such procedures as the commission may direct. Unless otherwise ordered by the commission for good cause shown, the costs of the prudence review shall be paid by the utility and the costs treated as a regulatory asset, which shall accrue carrying costs at a rate to be set by the commission in its order authorizing the prudence review, until included in base rates and recovered in the utility's next general rate proceeding.

[17.9.550.19 NMAC - N, 12-30-10]

**17.9.550.20 NMPRC RULE 550 FPPCAC SAMPLE FORM:**

A utility shall submit a monthly report and calculation of its factor to the commission, using a standard format that is not inconsistent with the format and data requirements of this section. Supporting workpapers shall accompany the monthly report. **FPPCAC Factor Sample Report Form:**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**NEW MEXICO JURISDICTION RETAIL FUEL AND PURCHASED POWER DATA**

**17.9.550 NMAC FPPCAC REPORT FORM**

UTILITY NAME \_\_\_\_\_

BILLING MONTH \_\_\_\_\_

CURRENT MONTH \_\_\_\_\_

**I. SUMMARY FPPCAC FACTOR INFORMATION**

1. Type of Factor (fixed, rolling average, monthly):

\_\_\_\_\_

2. Effective Date of Factor: \_\_\_\_\_

3. Billing Month's System Factor: \_\_\_\_\_ /kWh

4. Per kWh Base Rate Cost of Fuel and Purchased Power (if applicable):  
\_\_\_\_\_ /kWh

5. Number of Months Factor is Applicable: \_\_\_\_\_

6. Time Period of Data Used to Calculate Factor: \_\_\_\_\_

7. Cumulative Over/Under Collection at end of Current Month:

\_\_\_\_\_

8. Applicable Case No(s). for FPPCAC Approvals: \_\_\_\_\_

9. Supporting Workpapers (attached)

**II. CURRENT MONTH (OR OTHER APPLICABLE PERIOD) JURISDICTIONAL FUEL AND PURCHASED POWER EXPENSES**

**FUEL EXPENSE (Investor-Owned Utilities)**

(Attach supporting workpapers)

**ACCOUNT 501 -FUEL EXPENSE**

- a) Coal \$ \_\_\_\_\_
- b) Natural Gas \$ \_\_\_\_\_
- c) Oil \$ \_\_\_\_\_

**TOTAL ACCOUNT 501** \$ \_\_\_\_\_

**Utilities)**

**ACCOUNT 518 - NUCLEAR FUEL EXPENSE (Investor-Owned**

\$ \_\_\_\_\_

**2.A. PURCHASED POWER EXPENSE (Investor-Owned Utilities)**

(Attach supporting workpapers)

**ACCOUNT 555-PURCHASES**

- a) Firm/Capacity \$ \_\_\_\_\_
  - Capacity \$ \_\_\_\_\_
  - Firm \$ \_\_\_\_\_
  - Bank (Net) \$ \_\_\_\_\_
  - Spinning Reserves \$ \_\_\_\_\_

b) Contingent/Unit Commitment \$ \_\_\_\_\_

c) Economy \$ \_\_\_\_\_

**TOTAL PURCHASED POWER EXPENSE** \$ \_\_\_\_\_

**LESS ACCOUNT 447-SALES FOR RESALE**

- a) Firm/Capacity \$ \_\_\_\_\_
  - Capacity \$ \_\_\_\_\_
  - Firm \$ \_\_\_\_\_



Bank (Net) \$ \_\_\_\_\_

Spinning Reserves \$ \_\_\_\_\_

b) Contingent/Unit Commitment \$ \_\_\_\_\_

c) Economy \$ \_\_\_\_\_

d) Firm Surplus \$ \_\_\_\_\_

System Sales \$ \_\_\_\_\_

Block Sales \$ \_\_\_\_\_

Other Firm Sales \$ \_\_\_\_\_

e). Other Adjustments

(Renewable Energy, Margin Sharing, Etc.)

\$ \_\_\_\_\_

TOTAL SALES FOR RESALE

\$ \_\_\_\_\_

NET PURCHASED POWER EXPENSE

\$ \_\_\_\_\_

## **2.B PURCHASED POWER EXPENSE (Distribution Cooperatives)**

(Attach supporting workpapers, with purchased power billing invoice to be provided as available)

a) Demand \$ \_\_\_\_\_

b) Energy \$ \_\_\_\_\_

c) Transmission \$ \_\_\_\_\_

d) Misc Adjustments \$ \_\_\_\_\_

e) Supplier Adjustments \$ \_\_\_\_\_

f) Other Charges \$ \_\_\_\_\_

TOTAL PURCHASED POWER EXPENSE

\$ \_\_\_\_\_

**3. BALANCING ACCOUNT OR CUMULATIVE OVER/UNDER COLLECTION (If**

**Applicable)**

(Investor-Owned Utilities and Distribution Cooperatives)

(Attach supporting workpapers)

\$ \_\_\_\_\_

**4. APPLICABLE TOTAL FUEL AND PURCHASED POWER EXPENSE**

(Investor-Owned Utilities and Distribution Cooperatives)

\$ \_\_\_\_\_

**III. CURRENT MONTH (OR OTHER APPLICABLE PERIOD) FUEL AND PURCHASED POWER**

**REVENUES**

(Investor-Owned Utilities and Distribution Cooperatives)

**1. APPLICABLE KWH SALES** \_\_\_\_\_ kWh

**2. FUEL AND PURCHASED POWER REVENUES**

a) Base Rate Revenues: \$ \_\_\_\_\_/kWh times kWh Sales  
\$ \_\_\_\_\_

b) FPPCAC Revenues: \$ \_\_\_\_\_ /kWh times kWh Sales \$ \_\_\_\_\_

c) Revenue Adjustments \$ \_\_\_\_\_

**TOTAL FUEL AND PURCHASED POWER REVENUES**  
\$ \_\_\_\_\_

[17.9.550.20 NMAC - Rp, NMPSC Rule 550 Forms I & II, 12-30-10]

**PART 551: PRIOR APPROVAL OF PURCHASED POWER AGREEMENTS**

**17.9.551.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.9.551.1 NMAC – N, 7-31-12]

**17.9.551.2 SCOPE:**

This rule applies to the investor owned electric utilities operating within New Mexico that are subject to the jurisdiction of the New Mexico public regulation commission and to purchased power agreements entered into after the effective date of this rule. This rule shall not supersede or modify requirements pertaining to an electric utility's purchased power agreements with its affiliates as set by New Mexico public regulation commission orders.

[17.9.551.2 NMAC - N, 7/31/2012; A/E, 8/15/2023]

**17.9.551.3 STATUTORY AUTHORITY:**

Public Regulation Commission Act, Section 62-19-9 NMSA 1978, Public Utility Act, Sections 62-3-1, 62-6-4, and 62-6-19 NMSA 1978.

[17.9.551.3 NMAC - N, 7/31/2012; A/E, 8/15/2023]

**17.9.551.4 DURATION:**

Permanent.

[17.9.551.4 NMAC – N, 7-31-12]

**17.9.551.5 EFFECTIVE DATE:**

July 31, 2012, unless a later date is cited at the end of a section.

[17.9.551.5 NMAC – N, 7-31-12]

**17.9.551.6 OBJECTIVE:**

To establish review and approval procedures for purchased power agreements.

[17.9.551.6 NMAC – N, 7-31-12]

**17.9.551.7 DEFINITIONS:**

**A. "Capacity cost"** means a charge separately identified and incurred under a purchased power agreement for capacity or the reservation of capacity.

**B. "Commission"** means the New Mexico public regulation commission.

**C. "Electric utility"** means an entity certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act Sections 62-13-1, et seq. NMSA 1978, but does not include rural electric cooperatives.

**D. "Fixed cost"** means a charge separately identified and incurred under a purchased power agreement that does not vary with changes in amount used, volume consumed, or units purchased. A fixed cost includes, but is not limited to, administrative fees, accounting fees, facilitation fees, minimum payment amounts, and similar charges.

**E. "Long term purchased power agreement" or "LTPPA"** means a purchased power agreement with a term of five years or more and for which an electric utility seeks or intends to seek rate recovery from its New Mexico retail customers. The term shall be inclusive of the base term and any automatic or option extensions.

**F. "Purchased power agreement"** means an agreement for the purchase of energy or capacity, or both, by an electric utility with a term of any length and for which an electric utility seeks or intends to seek rate recovery from its New Mexico retail customers, but does not include agreements to purchase renewable energy subject to commission review and approval under the Renewable Energy Act Sections 62-16-1, et seq. NMSA 1978, or agreements to purchase energy or capacity from a qualifying facility pursuant to Section 17.9.570 NMAC.

[17.9.551.7 NMAC - N, 7/31/2012; A/E, 8/15/2023]

#### **17.9.551.8 GENERAL REQUIREMENTS FOR FILING AN APPLICATION FOR APPROVAL OF A LONG TERM PURCHASED POWER AGREEMENT:**

**A.** No electric utility shall become irrevocably obligated under an LTPPA without first obtaining the commission's written approval of the agreement.

**B.** An electric utility shall file at the commission within 30 days after the execution of a LTPPA an application for the commission's review and approval of the LTPPA.

**C.** Copies of the application shall be served on commission staff, the New Mexico attorney general and parties in the electric utility's most recent general rate case, in accordance with Subsection C of 1.2.2.10 NMAC.

**D.** An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide:

- (1) a copy of the LTPPA;
- (2) an explanation of the key terms and conditions of the LTPPA containing:
  - (a) the term of the LTPPA including any options to extend the agreement;

(b) the size in MW of capacity and the amount of energy in MWh or kWh per month and any conditions regarding the minimum or maximum amount of energy or capacity made available or required to be purchased;

(c) the price or pricing formula under which the electric utility will pay for the power and energy contracted for, including identification of when charges begin to be incurred, any price reopeners and any price escalation provisions;

(d) obligations by the electric utility to pay for any fixed or variable administrative, transactional, or operation and maintenance costs incurred through the operation of the generation facility, including start-up costs, taxes, insurance, environmental or reclamation-related costs, fuel costs, and any other costs that the electric utility may incur; and

(e) provisions relating to non-performance by the counter-party and the remedies provided;

(3) a description of transmission costs the electric utility will incur or pay to receive the purchased power, which may include the costs of third-party transmission wheeling, or construction of transmission to facilitate purchases under the LTPPA or both;

(4) an explanation of how the electric utility proposes to recover from ratepayers the costs incurred and an estimate of the effect on rates to customers;

(5) a general description of:

(a) the generating facility or facilities that will generate the purchased power;  
or

(b) if the power is to be generated from one or more specific generating units to be constructed outside New Mexico, a description of the anticipated siting of the generating unit, expected construction time, and the expected commercial operation date; and

(c) if the power is to be generated from one or more specific generating units to be constructed within New Mexico, a description of:

(i) the approvals required to construct and operate the generating unit, including air quality and other environmental permits;

(ii) the expected construction time;

(iii) the expected commercial operation date;

(iv) the fuel type and supply sources; and

(v) other provisions addressing the electric utility's ownership options for the generating unit during or after the term of the agreement;

(6) evidence that entering into the LTPPA is consistent with the provision of safe and reliable electric utility service at the lowest reasonable cost, considering both short and long-term costs and all other relevant factors;

(7) evidence of the LTPPA's impact on the electric utility's financial condition and financial metrics;

(8) evidence that the LTPPA is consistent with the electric utility's most recent commission-accepted integrated resource plan unless material changes that would warrant a different course of action by the electric utility have occurred, in which case, the testimony shall include justification for deviation from the integrated resource plan;

(9) evidence addressing whether a utility-owned generation resource could have been constructed as an alternative to the LTPPA with greater benefit to ratepayers;

(10) evidence addressing the methodology and criteria by which the purchased power agreement was selected; and

(11) any other information or evidence that the electric utility believes will assist the commission in its review of the LTPPA.

**E.** The electric utility may, as set forth in Subsection D of 17.9.551.8 NMAC, submit any portion of its application and supporting documentation under seal, to the extent that the electric utility deems the specific information to be confidential. The electric utility shall seek a protective order under Subsection B of 1.2.2.8 NMAC for the information it considers confidential.

[17.9.551.8 NMAC - N, 7/31/2012; A/E, 8/15/2023]

#### **17.9.551.9 RATEMAKING TREATMENT FOR ALL PURCHASED POWER AGREEMENTS:**

**A.** The following ratemaking treatment shall apply to all purchased power agreements unless otherwise expressly authorized by order of the commission:

(1) energy costs incurred under a purchased power agreement are recoverable through a fuel and purchased power cost adjustment clause ("FPPCAC") according to the provisions of the FPPCAC approved for the electric utility; and

(2) capacity costs and fixed costs incurred under a purchased power agreement, as well as energy costs incurred by an electric utility without an approved FPPCAC, may be recoverable through base rates when the commission issues an

order authorizing a change in base rates that includes recovery of the capacity costs and fixed costs, and energy costs in the case of an electric utility without an approved FPPCAC.

**B.** An electric utility may include in an application for approval of an LTPPA a request that the commission determine other ratemaking principles and treatment that will apply to the LTPPA.

**C.** If a request for a determination of other ratemaking principles and treatment is made, the commission shall determine the appropriate ratemaking treatment and principles that will apply to the LTPPA during its term and include that determination in the order granting approval of the LTPPA.

[17.9.551.9 NMAC – N, 7-31-12]

**17.9.551.10 PROCESS FOR APPROVAL OF A LONG-TERM PURCHASED POWER AGREEMENT:**

**A.** The commission may approve an application for approval of an LTPPA without a formal hearing if no protest is filed within 60 days after the date that notice is given pursuant to a commission order.

**B.** The commission shall issue its final order acting on the application within six months after the date the application was filed. A final order denying an application shall be without prejudice. The electric utility may re-file a previously denied application at any time after that denial. If the commission does not issue its final order within six months after the date that the application was filed by the electric utility, the application shall be deemed to be approved.

[17.9.551.10 NMAC - N, 7/31/2012; A/E, 8/15/2023]

**17.9.551.11 INFORMATIONAL FILING REQUIREMENTS FOR A PURCHASED POWER AGREEMENT WITH A TERM OF TWO YEARS OR MORE BUT LESS THAN FIVE YEARS:**

**A.** An electric utility may, but is not required to, request approval or request ratemaking treatment other than as provided in Subsection A of 17.9.551.9 NMAC, for a purchased power agreement with a term of two years or more but less than five years, by filing the same type of application applicable to a LTPPA. The provisions in 17.9.551.10 NMAC shall apply to an application regarding a purchased power agreement with a term of two years or more but less than five years.

**B.** An electric utility entering into a purchased power agreement with a term of two years or more but less than five years for which the utility intends to seek rate recovery either in base rates or its fuel and purchased power cost adjustment clause, shall file

with the commission a notice of purchased power agreement within 30 days of execution.

**C.** A notice of purchased power agreement shall include a copy of the agreement and:

(1) an explanation of the key terms and conditions of the agreement, including:

(a) its term;

(b) its size in MW of capacity and any conditions regarding the minimum or maximum amount of energy or capacity made available or required to be purchased;

(c) the price or pricing formula, including any escalation provisions, and, if applicable, any obligations of the utility to pay for any fixed or variable operation and maintenance costs incurred through the operation of any generation facility providing service under the agreement, including start-up costs, taxes, insurance, environmental or reclamation-related costs and fuel costs; and

(d) any other costs for which the public utility is obligated;

(2) a description of transmission costs the utility will incur or pay to receive the purchased power and any impact on the transmission system of the agreement, including any needed construction of transmission facilities to facilitate purchases under the agreement;

(3) an explanation of how the utility intends to recover costs incurred under the agreement from ratepayers;

(4) an explanation of the impact of the agreement on the electric utility's financial condition or financial metrics;

(5) an explanation of how entering into the agreement is consistent with the provision of safe and reliable electric utility service at the lowest reasonable cost, considering both short- and long-term costs and all other relevant factors;

(6) an explanation of whether the agreement will result in the deferment or delay of any capacity addition by the public utility, and whether the agreement is consistent with the utility's most recent commission-accepted integrated resource plan;

(7) evidence addressing the methodology and criteria by which the purchased power agreement was selected; and

(8) any information that the electric utility believes will assist the commission in its review of the agreement.



[17.9.551.11 NMAC - N, 7/31/2012; A/E, 8/15/2023]

**17.9.551.12 VARIANCES:**

**A.** An electric utility may file a request for a variance from the requirements of this rule with service of the request to the same parties on whom the application must be served; such request shall:

- (1) identify the sections of this rule for which the variance is requested;
- (2) describe the reasons for the variance;
- (3) set out the effect of complying with this rule on the parties and the electric utility's customers if the variance is not granted;
- (4) describe the expected result that the request will have if granted; and
- (5) state how the variance will aid in achieving the purposes of this rule.

**B.** The commission may grant a request for a procedural variance through an order issued by a single commissioner or a designated hearing examiner. Other variances shall be presented to the commission for its determination.

[17.9.551.12 NMAC - N, 7-31-12]

**PART 552-559: [RESERVED]**

**PART 560: SERVICE STANDARDS FOR ELECTRIC UTILITIES**

**17.9.560.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.9.560.1 NMAC - Rp, 17.9.560.1 NMAC, 11/10/2020]

**17.9.560.2 SCOPE:**

17.9.560 NMAC shall apply to every electric utility (investor-owned, rural electric cooperative, or municipal) operating within the state of New Mexico and which is subject to the jurisdiction of the New Mexico public regulation commission as provided by the public utility act.

[17.9.560.2 NMAC - Rp, 17.9.560.2 NMAC, 11/10/2020]

**17.9.560.3 STATUTORY AUTHORITY:**

Public Regulation Commission Act, Section 8-8-15 NMSA 1978.

[17.9.560.3 NMAC - Rp, 17.9.560.3 NMAC, 11/10/2020]

**17.9.560.4 DURATION:**

Permanent.

[17.9.560.4 NMAC - Rp, 17.9.560.4 NMAC, 11/10/2020]

**17.9.560.5 EFFECTIVE DATE:**

November 10, 2020 unless a later date is cited at the end of a section.

[17.9.560.5 NMAC - Rp, 17.9.560.5 NMAC, 11/10/2020]

**17.9.560.6 OBJECTIVE:**

17.9.560 NMAC is intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities.

[17.9.560.6 NMAC - Rp, 17.9.560.6 NMAC, 11/10/2020]

**17.9.560.7 DEFINITIONS:**

When used in 17.9.560 NMAC unless otherwise specified the following definitions will apply:

- A. "commission means"** the New Mexico public regulation commission;
- B. "customer means"** any person, firm, association, or corporation, or any agency of the federal, state, or local government being supplied with and responsible for payment for electric services by an electric utility;
- C. "electric plant means"** all plant, property, or facilities owned, operated, leased, or controlled for the generation, transmission, or distribution of electricity;
- D. "filed rule means"** rules and regulations filed by a utility with the commission in compliance with 17.1.210 NMAC which has been made effective either through commission approval thereof or by operation of law;
- E. "final notice means"** personal communication with a non-residential customer by telephone, hand delivery or other electronic communications at least two days prior to the specific date of discontinuance of service or, if by mail, at least four days prior to

the specific date of discontinuance of service, excluding Sundays and holidays observed by the utility, to remind the non-residential customer of the pending date of discontinuance of service.

**F. "meter means"**, unless otherwise qualified, a device that measures and registers the integral of an electrical quantity with respect to time;

**G. "meter shop means"** a shop where meters are inspected, repaired, and tested and may be at a fixed location or may be mobile and shall contain facilities for protected storage of secondary standards;

**H. "meter standards laboratory means"** a facility which is equipped and staffed to provide the calibration and certification of secondary standards by comparison with primary standards;

**I. "premises means"** a piece of land or real estate including buildings and other appurtenances thereon;

**J. "primary standards means"** those items of laboratory equipment from which the basic units of electricity and standard time interval can be obtained for use in a meter standards laboratory;

**K. "protected storage means"** an enclosed case or cabinet in a clean location free from excessive heat, moisture, and vibration for the storage and protection of secondary standards and which is accessible only to authorized personnel;

**L. "secondary indicating ammeter standard means"** an indicating ammeter standard which is in a semi-fixed installation in the protected storage of the meter shop and is used for calibrating the working ammeter standard; this standard remains in the protected storage at all times except when sent to a meter standards laboratory for standardization;

**M. "secondary indicating voltmeter standard means"** an indicating voltmeter standard which is in a semi-fixed installation in the protected storage of the meter shop and is used for calibrating the working voltmeter standard; this standard remains in the protected storage at all times except when sent to a meter standards laboratory for standardization;

**N. "secondary instrument transformer standard means"** an instrument transformer standard which is in a semi-fixed installation in the protected storage of the meter shop and is used for calibrating the working transformer standard; this standard remains in the protected storage at all times except when sent to a meter standards laboratory for standardization;

**O. "secondary watt-hour standard means"** an indicating watt-hour standard which is in a semi-fixed installation in the protected storage of the meter shop and is

used for calibrating the working watt-hour standard; this standard remains in the protected storage at all times except when sent to a meter standards laboratory for standardization;

**P. "special contract means"** a written agreement between a utility and a customer to establish a rate or conditions of utility service, or both, that, due to size or load characteristics or both, differs from those established for general classes of service;

**Q. "utility and electric utility"** has the meaning given for "public utility" or "utility" in Section 62-3-3 NMSA 1978.

[17.9.560.7 NMAC - Rp, 17.9.560.7 NMAC, 11/10/2020]

#### **17.9.560.8 [RESERVED]**

[17.9.560.8 NMAC - Rp, 17.9.560.8 NMAC, 11/10/2020]

#### **17.9.560.9 APPLICATION OF RULE:**

**A. Modifications.** If unreasonable hardship to a utility or to a customer results from the application of any provision herein prescribed, application may be made to the commission for the modification of the provision or for temporary or permanent exemption from its requirements.

**B. Rule revisions.** 17.9.560 NMAC establishes standards to be followed by every electric utility in providing service to customers who are not residential customers as defined in Subsection J of 17.5.410.7 NMAC of the commission's code of rules and regulations and in providing service to residential customers except to the extent inconsistent with 17.5.410 NMAC of the code; provided, however, that any electric utility may file rules inconsistent with the provisions herein established when permitted by the commission under the provisions of Subsection A of 17.9.560.9 NMAC above, or, for residential customers, to conform with the requirements of 17.5.410 NMAC and when so filed and approved by the commission such utility rules shall take precedence over the provisions herein established.

**C. Adoption.** The adoption of 17.9.560 NMAC will in no way preclude the commission from altering or amending it or from making such modifications with respect to its application as may be found necessary to meet exceptional conditions.

**D. Duties.** These regulations shall in no way relieve any utility from any of its duties under the laws of this state.

[17.9.560.9 NMAC - Rp, 17.9.560.9 NMAC, 11/10/2020]

#### **17.9.560.10 RECORDS AND REPORTS:**

**A.** Location of records. The location of records shall be as prescribed in Section 62-6-17 NMSA 1978.

**B.** Retention of records. Records shall be retained as prescribed in 17.3.310 NMAC.

**C.** Data to be filed with the commission. The utility shall maintain the following documents and information on a current basis. Upon commission request, the utility shall provide the following information to the commission within 10 working days:

**(1)** a copy of utility's drawings or rules, if any, published or furnished by the utility for the use of engineers, architects, electrical contractors, etc., covering meter and service installations;

**(2)** a map or series of maps showing the geographical location of the utility system outside the limits of an incorporated community together with a schematic drawing which shows:

**(a)** generating stations, with the individual unit nameplate kilowatt capability and total capability of all units shown;

**(b)** transmission lines, with operating and design voltages and types and sizes of conductors shown;

**(c)** sub-transmission lines, with operating and design voltages and types and sizes of conductors shown;

**(d)** utility-owned transmission and sub-transmission substations and switching stations, with the capacities and voltages shown;

**(e)** state boundary crossings of utility's lines, with sources of generation from other states shown;

**(f)** intrastate and interstate connections with other utilities, with metering points, names of other utilities, and nature of service furnished or taken shown;

**(g)** names of all incorporated communities served;

**(3)** the name, title, address, and telephone number of the person or persons who should be contacted by the commission in connection with:

**(a)** general management duties;

**(b)** customer relations (complaints);

**(c)** engineering operations;

**(d)** meter tests and repairs; and

**(e)** emergencies during non-office hours;

**(4)** a list of those items such as meters, meter sockets, instrument transformers, enclosures, and service entrances along with all other equipment which is furnished and maintained by the utility in its regular rates for service;

**(5)** report detailing the results of all meters (excluding new meters) tested during the year showing:

**(a)** total of meters tested;

**(b)** percentage of breakdown of reasons for tests;

**(c)** number of meters found to be more than two percent fast; and

**(d)** number of meters found to be more than two percent slow;

**(6)** a list detailing all genuine customer voltage complaints and investigations along with the corrective measures taken to correct high or low voltage system conditions;

**(7)** the location at which the utility keeps the various classes of records required by these rules;

**(8)** information regarding any generating units which are not available for service, either scheduled or nonscheduled, which may affect reliability, and the arrangements to maintain service:

**(a)** scheduled-by advance letter advice of scheduled maintenance by the owning utility, or if the utility is a member of any power pool the pool schedule should be furnished in advance; if a unit is not returned to service by the scheduled date, such supplemental notice as will enable the commission to be fully advised will be required;

**(b)** nonscheduled-by telegraph in the event a unit is not available for service for a period of 24 hours or longer due to any reason not covered by Subparagraph (a) above;

**(9)** A list detailing the continuity of service (short planned outages for routine maintenance, system improvements, etc., are not considered as a customer hours outage).

Continuity = Customer hours actually served x one hundred percent

Maximum customer hours possible to serve

[17.9.560.10 NMAC - Rp, 17.9.560.10 NMAC, 11/10/2020]

**17.9.560.11 METER REQUIREMENTS:**

**A. Disposition of electricity:**

(1) All electricity sold by a utility shall be on a basis of meter measurement except for service of installations where the load is constant and the consumption may be readily computed.

(2) Wherever practicable, consumption of electricity within the utility itself or by administrative units associated with it shall be metered.

**B. Meter reading sheets, cards, or records:** The meter reading sheets, cards, or records from which the customer's bills are prepared shall show:

- (1) customer's name, address, and rate schedule;
- (2) identification number or description of the meter(s);
- (3) meter readings;
- (4) if the reading has been estimated; and
- (5) any applicable multiplier or constant.

**C. Meter reading interval:** The meter shall be read at monthly intervals as nearly as practicable except that authority may be obtained from the commission for reading the meters at other than monthly intervals. Commission approval need not be obtained where deviation from monthly meter reading schedules occurs because of the seasonal nature of the customer. As nearly as practicable utilities shall avoid sending a customer two successive estimated bills.

**D. Condition of meter:** No meter shall be installed which is known to be mechanically or electrically defective or to have incorrect constants or which has not been tested and adjusted, if necessary, in accordance with Subsection H of 17.9.560.14 NMAC. The capacity of the meter and the index mechanism should be consistent with the requirements of the customer.

**E. Meter charts:** All charts taken from recording meters shall be marked with the date of the record, the meter number, the customer's name and location, and chart multiplier.

**F. Meter multiplier:** If it is necessary to apply a multiplier to the meter readings the multiplier must be marked on the face of the meter register.

**G.** Demand meter registration: When a demand meter is used for billing the installation should be designed so that the highest demand reading used for billing should appear in the upper half of the meter's range.

[17.9.560.11 NMAC - Rp, 17.9.560.11 NMAC, 11/10/2020]

#### **17.9.560.12 CUSTOMER RELATIONS:**

**A.** Customer information: Each utility shall:

(1) maintain up-to-date maps, plans, or records of its entire transmission and distribution systems with such other information as may be necessary to enable the utility to advise prospective customers and others entitled to the information as to the facilities for serving any locality;

(2) assist the customer or prospective customer in selecting the most economical rate schedule appropriate for their class of service;

(3) notify customers affected by a change in rates or schedule classification;

(4) post a notice in a conspicuous place in each office of the utility where applications for service are received informing the public that copies of the rate schedules and rules relating to the service of the utility as filed with the commission are available for inspection;

(5) upon request inform its customers as to the method of reading meters;  
and

(6) furnish such additional information as the customer may reasonably request.

**B.** Customer deposits: Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service.

(1) A utility may not require a security deposit or other guarantee of payment as a condition of new or continued service to a customer except in the case of service:

(a) to a customer that has not previously had utility service with the utility and that has not established an acceptable credit rating;

(b) to a customer that has on three or more occasions, within a 12-month period, received a final notice;

(c) as a condition for reconnection of service following discontinuance of service by the utility; or



**(d)** to a customer that in an unauthorized manner has interfered with or diverted the service of the utility situated on or about or delivered to the customer's premises.

**(2)** In determining whether a customer that has not previously had utility service with the utility has an acceptable credit rating, a utility shall consider the following:

**(a)** documentation that the customer has an adequate credit reference from a utility where the customer had prior utility service;

**(b)** documentation obtained by the utility from a commercial credit source; or

**(c)** any other reasonable documentation.

**(3)** A utility may give special consideration to a prospective or existing customer in determining if payment by an installment agreement is appropriate.

**(4)** If a utility requires a deposit, it shall have on file with the commission an approved rule setting forth the minimum and maximum deposit that may reasonably be required by the utility in cases involving all types of service. That rule shall conform to the following provisions:

**(a)** a deposit for a customer shall not exceed an amount equivalent to one-sixth of that non-residential customer's estimated annual billings; a utility shall base its deposit criteria upon the most recent available prior 12-month corresponding period at the same service location; or, if there is not a comparable period of service at the same service location, the deposit shall be based upon consumption of similar units in the same area;

**(b)** simple interest on deposits at a rate not less than the rate required by Section 62-13-13 NMSA 1978, shall accrue annually to the customer's credit for the time the deposit is held by the utility; by January 15 of each year the commission shall post on its website the minimum rate to be paid on any deposits required of a customer by any public utility; the deposit shall cease to draw interest on the date it is returned, on the date service is terminated, or on the date the refund is sent to the non-residential customer's last known address.

**(5)** Each customer that posts a security deposit shall receive in writing at the time of tender of deposit or with the first bill a receipt as evidence thereof. A utility shall provide the means whereby a depositor may establish its claim if its receipt is lost. The receipt shall contain the following minimum information:

**(a)** name of customer;

**(b)** date of payment;

(c) amount of payment; and

(d) statement of the terms and conditions governing the payment, retention, interest, and return of deposits.

(6) Refunds: Any non-residential customer that has not received a final notice for the 12-month period from the date of deposit or guarantee shall promptly receive a credit or refund in the amount of the deposit together with accrued interest due or shall be permitted to terminate any guarantee. If the amount of the deposit exceeds the amount of the current bill, the customer may request a refund in the amount of the excess if such excess exceeds \$25.00. If the customer fails to qualify for a refund of the deposit on the one year anniversary date of the deposit, that account shall be reviewed at least annually, and the amount of the deposit shall be credited if the customer has not received a final notice during the preceding 12 months. A customer may request a refund at any time after 12 months payment history, which refund shall promptly be paid if the customer has not received a final notice during the prior 12-month period or a utility may pay such refund in the absence of a request within a reasonable period of time.

(7) Each utility shall keep records to show:

(a) the name and address of each depositor;

(b) the amount and the date of the deposit; and

(c) each transaction concerning the deposit.

(8) A record of each unclaimed deposit shall be maintained for at least three years during which time the utility shall mail a check or a letter to the customer at their last known address in an effort to return the deposit.

(9) Unclaimed deposits together with accrued interest shall be credited to the appropriate account and shall be handled as required by the uniform disposition of unclaimed property act of the state of New Mexico.

**C. Customer bill forms:**

(1) The utility shall bill each customer as promptly as possible following the reading of their meter. The bill shall show:

(a) the reading of the meter at the end of the period for which the bill is rendered;

(b) the nominal date on which the meter was read;

(c) the number and kind of units metered;

**(d)** the applicable rate schedule or identification of the applicable rate schedules;

**(e)** the gross or net amount of the bill;

**(f)** the date by which the customer must pay the bill in order to benefit from any discount or to avoid any penalty;

**(g)** a distinct marking to identify an estimated bill;

**(h)** any conversions from meter reading units to billing units or any calculations to determine billing units from recording or other devices or any other factors, such as fuel clause adjustments, power factor adjustments, applicable primary discounts for customer-owned transformer, or billing units additions for secondary metering of primary services used in determining the bill; and

**(i)** a multiplier constant when used to determine billing will be shown on the bill whenever applicable.

**(2)** In lieu of information required under subparagraphs (c), (g), and (h) above, the utility may incorporate on the bill form a statement advising the customer that any additional information desired relative to the application of the rate schedule can be obtained by contacting one of the utility's offices.

**D. Customer records:** The utility shall retain records as may be necessary to effect compliance with 17.3.310 NMAC and with Subsection E of 17.9.560.12 NMAC and Subsection E of 17.9.560.14 NMAC, and shall show where applicable the following:

- (1)** KWH meter reading;
- (2)** KWH consumption;
- (3)** KW or KVA readings;
- (4)** KW or KVA measured demand;
- (5)** KW or KVA billing demand;
- (6)** primary discounts; and
- (7)** total amount of bill.

**E. Adjustments of bills:**

**(1)** General: An adjustment of bills for service shall be made for the following reasons, and may be made for reasons not listed below in order to achieve a reasonable, fair and just result:

- (a)** meter creep;
- (b)** kilowatt-hour registration in excess of two percent average error determined by meter test;
- (c)** demand registration in excess of one percent error in addition to errors allowed under accuracy of demand meters, Subsection H of 17.9.560.14 NMAC;
- (d)** failure of meter or equipment including automatic meter reading technology if such failure was not the result of a customer tampering with, damaging, replacing or deliberately destroying the equipment furnished and owned by the utility;
- (e)** improper installation, testing, or inspection of equipment;
- (f)** improper application of rate schedule;
- (g)** improper multiplier;
- (h)** improper application of a tax;
- (i)** failure of utility to bill a customer for services at the time the customer received the services; or
- (j)** failure of a customer to provide safe and reasonable access to utility equipment.

**(2)** The amount of the adjustment shall be calculated on the basis that the metering equipment should be one hundred percent accurate with respect to the testing equipment used to make the test. For watt-hour meters the average accuracy shall be the arithmetic average of the percent registration at light load and at heavy load, giving the light load registration a weight of one and the heavy load registration a weight of four.

**(3)** Determination of adjustments: Unless otherwise specified, the time periods established in Paragraph (8) of Subsection E of 17.560.12 NMAC shall apply to adjustments made under Paragraph (3) of Subsection E of 17.560.12 NMAC.

**(a)** Meter creep: The error in registration due to creep shall be calculated by timing the rate of creeping and assuming that this creeping affected the registration of the meter for twenty percent of the time since the meter was installed or since the last previous test, whichever is later.

**(b) Meter with inaccuracy in excess of specified limits:** If the date when the error in registration began can be determined, such date shall be the starting point for determination of the amount of adjustment. If the date when the error in registration began cannot be determined, it shall be assumed that the error has existed for a period equal to one-half the time elapsed since the meter was installed or one-half the time elapsed since the last previous test, whichever is later.

**(c) Failure of meter or equipment:** When the error in registration is caused by failure of part or all of the metering installation, it shall be permissible to use the registration of check metering installations, if any, or to estimate the kilowatt-hour consumption, demand, and other data required for billing based upon a period of similar operating conditions as agreed to between the customer and the utility.

**(d) Improper installation, testing, or inspection of meter or equipment:** When the error in registration is caused by improper installation, testing, or inspection of meter or equipment, the date of installation, date of test, or date of inspection shall be the starting point for determination of the amount of the adjustment.

**(4) Refunds:**

**(a)** If the recalculated bills indicate that a refund is due an existing customer or a person no longer a customer of the utility, the full amount of the calculated difference between the amount paid and the true amount shall be refunded in the applicable time period established in Paragraph (8) of Subsection E of 17.560.12 NMAC.

**(b)** The refund to an existing customer may be in cash or as credit on a bill. In the case of a previous customer who is no longer a customer of the utility, a notice of the amount due shall be mailed to such previous customer at their last known address and the utility shall, upon demand within three months thereafter, refund the amount due.

**(5) Back-billing:**

**(a)** If the recalculation of billing indicates that an amount is due the utility and such amount is in excess of any refund due the customer, the utility may bill the customer the true amount due in the applicable time period established in Paragraph (8) of Subsection E of 17.560.12 NMAC.

**(b)** Each utility may establish a minimum amount below which the utility will not back-bill the customer. When the amount of the back-billing is greater than the established minimum amount, the customer will be billed the true amount due the utility in the applicable time period established in Paragraph (8) of Subsection E of 17.560.12 NMAC.

**(c)** The customer shall be permitted to pay the amount of the back-billing in reasonable installments. A back-bill shall be accompanied by an offer of an installment agreement.

**(d)** The utility shall not charge the customer interest for any amount back-billed.

**(6)** A utility and its special contract customer may make their own agreements respecting adjustments for errors in measurement.

**(7)** The utility will assist the customer in selecting the rate schedule under which the customer is eligible to be billed. However, the utility will not be held responsible for refunding any overcharge caused by the customer's failure to select the appropriate rate schedule or by the customer's failure to notify the utility of a change in customer's operations. If the utility improperly applies the rate schedule selected by the customer, any billing in excess of the true amount will be refunded to the customer and any billing less than the true amount when greater than the established minimum amount will be billed to the customer in the applicable time period established in Paragraph (8) of Subsection E of 17.560.12 NMAC.

**(8)** Time periods for adjustment of bills:

**(a)** Residential customer class (metered usage): Refunding of an overbilling is limited to 12 months. Back-billing of an under billing is limited to six months. Customers responsible for the back-billed under-bill shall be given, at a minimum, the same time period to pay the under billing as the length of time period of the under billing.

**(b)** Residential customer class (zero usage or no bill): Back-billing is limited to six months. Customers responsible for the back-billed under-bill shall be given, at a minimum, the same time period to pay the under billing as the length of time period of the under billing.

**(c)** Non-residential small commercial customer class, defined by tariff: Refunding of an overbilling is limited to six months. Back-billing of an under billing is limited to six months. Customers responsible for the back-billed under-bill shall be given, at a minimum, the same time period to pay the under billing as the length of time period of the under billing.

**(d)** All other non-residential customer class, such as medium, large or industrial as defined by tariff: Refunding of an overbilling is limited to 12 months. Back-billing is limited to 12 months. Customers responsible for the back-billed under-bill shall be given, at a minimum, the same time period to pay the under billing as the length of time period of the under billing.

**(e)** Back-billing customers is limited to 72 months for under billing that was caused by tampering or fraud by the customer.

**(f)** Notwithstanding the above time limits, the commission may determine a different time limit for back-billing or refunding in order to achieve a reasonable, fair, and just result.

**F.** Reasons for denying or discontinuing service: Service may be denied or discontinued for any of the reasons listed below unless prohibited under Paragraph (3) of Subsection G of 17.9.560.12 NMAC. Unless otherwise stated the customer shall be allowed a reasonable time in which to comply with the rule before service is discontinued except as provided in Paragraphs (1), (2), (3) and (4) below:

**(1)** without notice in the event of a condition determined by the utility to be hazardous;

**(2)** without notice in the event of customer use of equipment in such manner as to adversely affect the utility's equipment or the utility's service to others;

**(3)** without notice in the event that a customer tampers with, damages, or deliberately destroys the equipment furnished and owned by the utility;

**(4)** without notice in the event of unauthorized use;

**(5)** for violation of or noncompliance with the utility's rules on file with and approved by the commission;

**(6)** for failure of the customer to fulfill their contractual obligations for service or facilities subject to the regulations of the commission;

**(7)** for failure of the customer to permit the utility reasonable access to its equipment;

**(8)** for non-payment of bill provided the utility has given the customer final notice;

**(9)** for failure of the customer to provide the utility with a deposit as authorized by Subsection B of 17.9.560.12 NMAC except that a utility may not discontinue service to an existing customer solely for failure to pay deposit;

**(10)** for failure of the customer to furnish such service equipment, permits, certificates, or rights-of-way as shall have been specified by the utility as a condition for obtaining service or in the event such equipment or permissions are withdrawn or terminated; and

**(11)** for failure of the customer to pay for service of the same class at a previous metering point or points.

**G.** Reasons insufficient for denying or discontinuing service:

**(1)** The following shall not constitute sufficient cause for discontinuing service to a present customer:

- (a)** for failure to pay for merchandise purchased from the utility;
- (b)** for failure to pay for a different type or class of public utility service;
- (c)** for failure to pay the bill of another customer as guarantor thereof; or
- (d)** for failure to pay for concurrent service of whatever class at a different metering point.

**(2)** The following shall not constitute sufficient cause for denying service to a prospective customer:

- (a)** for delinquency in payment for service by a previous occupant unless the previous occupant still resides at the premises;
- (b)** for failure to pay for merchandise purchased from the utility; or
- (c)** for failure to pay the bill of another customer as guarantor thereof.

**(3)** Irrespective of any conflict with 17.5.410 NMAC, the following rules regarding disconnection of residential utility service may be implemented on a temporary basis by order of the commission for a period of time, up to and including, the duration of any emergency executive order issued by the governor of New Mexico pertaining to a public health or other emergency condition under either the Public Health Emergency Response Act, Section 12-10A-1 NMSA 1978, and the All Hazards Emergency Management Act, Section 12-10-1 NMSA 1978:

**(a)** all utilities may be prohibited from discontinuing residential utility service for non-payment during the time period the emergency executive orders are in effect;

**(b)** any late fees on residential accounts that would be incurred during the time period of the effectiveness of the emergency executive orders may be required to be waived;

**(c)** utilities may be permitted to temporarily close in-person bill payment locations provided the utility provides notice to residential customers of such closures and identifies in such notice how payment made be made, including electronically or by mail. In the event of the closure of in-person bill payment locations, utilities shall be



permitted to continue to collect credit card or bank fees in accordance with their own commission approved and filed tariffs;

**(d)** medical certificates set to expire shall not expire for the duration of the effectiveness of any emergency executive order and may be automatically be extended for 90 days from the end of any emergency executive order; and

**(e)** irrespective of this rule, public utilities are not prohibited from disconnecting service to residential customers due to:

- (i)** an emergency;
- (ii)** safety;
- (iii)** a request to disconnect from the residential customer.

**H.** Estimated demand: Upon request of the customer and provided the customer's demand is estimated for billing purposes, the utility shall measure the demand during the customer's normal operations and use the measured demand for billing.

**I.** Servicing utilization control equipment: Each utility shall service and maintain any equipment it owns and used on the customer's premises and shall correctly set and keep in proper adjustment any thermostats, clocks, relays, time switches, or other devices which control the customer's service in accordance with the provisions of the utility's rate schedules.

**J.** Customer complaints: Bona fide complaints concerning the charges, practices, or service of the utility shall be investigated promptly and thoroughly. The utility shall keep such records of customer complaints as will enable the utility to review and analyze its procedures and actions.

**K.** Temporary service: When the utility renders temporary service to a customer it may require that the customer bear all the cost of installation and removal of the service facilities in excess of any salvage realized.

**L.** Extension plan: Each utility shall develop a plan acceptable to the commission for the extension of facilities where they are in excess of those included in the regular rates for service and for which the customer shall be required to pay all or part of the cost.

[17.9.560.12 NMAC - Rp, 17.9.560.12 NMAC, 11/10/2020]

### **17.9.560.13 ENGINEERING:**

**A.** Requirement for good engineering practice: The electric plant of the utility shall be constructed, installed, maintained, and operated in accordance with accepted good

engineering practice in the electric industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

**B. Acceptable standards:** Unless otherwise specified by the commission the utility shall use the applicable provisions in the latest edition of the publications listed below as standards of accepted good practice.

- (1) National electric safety code as compiled by the national bureau of standards.
- (2) National electrical code, NFPA No. 70, ANSI standard C-1.
- (3) American standard code for electricity meters, ANSI standard C-12.
- (4) American standard requirements, terminology and text code for instrument transformers, ANSI standard C-57.13.
- (5) Preferred voltage ratings for A-C systems and equipment, EEI Pub. No. R-6, NEMA Pub. No. 117 ANSI standard C-84.1.
- (6) Voltage levels on rural distribution system-REA bulletin 169-4.
- (7) New Mexico state electrical code.

**C. Adequacy of supply:** The generating capacity of the utility's plant supplemented by the electric power regularly available from other sources must be sufficiently large so as to meet all normal demands for service and provide a reasonable reserve for emergencies.

**D. Inspection of electric plant:** Each utility must adopt a program of inspection of its electric plant in order to determine the necessity for replacement and repair. The frequency of the various inspections shall be based on the utility's experience and accepted good practice. Each utility shall keep sufficient and reasonable records to give evidence of compliance with its inspection program.

[17.9.560.13 NMAC - Rp, 17.9.560.13 NMAC, 11/10/2020]

#### **17.9.560.14 INSPECTION AND TESTS:**

**A. Request tests:** Upon request by a customer the utility shall test the meter serving that customer. The utility shall advise such customer that they may be present during the meter test. If the meter has been tested within the last 18 months the utility may charge the customer the applicable amount provided for in its filed rules, such charge to be refunded to the customer whenever the meter proves to be in excess of two percent in error.

(1) The customer or their representative may be present when their meter is tested if such customer's request to be present is made at the time of their request for the meter test. The utility shall give the customer reasonable advance notification as to the day, time, and place of the test.

(2) A report of the test results shall be made to the customer within a reasonable time after the completion of test, and a record of the report together with a complete record of each test shall be kept on file at the office of the utility for as long a period as prescribed in Subsection K of 17.9.560.14 NMAC.

**B. Pre-installation inspections and tests:**

(1) Every meter not certified by the manufacturer shall be inspected and tested in the utility's meter shop before being placed in service, and the accuracy of each of these meters shall be adjusted to be within the tolerances permitted by Subsection H of 17.9.560.14 NMAC.

(2) If a meter is physically removed from a customer's premises except for field testing and has not been tested during the preceding thirty-month period, it must be returned to the utility's meter shop and inspected and tested as above before it is again placed in service.

**C. Post-installation inspections and tests:** The utility shall employ such qualified personnel and shall conduct such post-installation inspections as may be necessary to insure an overall accuracy within two percent of the condition as prescribed in Paragraph (6) of Subsection H of 17.9.560.14 NMAC in the following installations:

(1) meters with associated instrument transformers and phase shifting transformers;

(2) kilovar-hour meters, if associated with instrument transformers;

(3) demand meters, if associated with instrument transformers; and

(4) direct current watt-hour meters;

(5) The commission may order inspections when in its opinion such inspections are necessary.

**D. As-found tests:** All meters shall be tested after they are physically removed from service if they have not been tested during the preceding thirty-month period. Excepted are those meters damaged beyond testing. Such tests shall be made before the meters are adjusted, repaired, and calibrated. It will not be mandatory to test meters scheduled for retirement unless there is cause to suspect that there will be a subsequent complaint involving the accuracy of the meter.

## **E. In-service performance tests:**

**(1)** General: In-service performance tests must be made in accordance with Paragraph (2) of Subsection E of 17.9.560.14 NMAC. These tests may be made on the customer's premises or in the utility's meter shop. All self-contained single-phase meters and three-wire network meters on a utility's system must be tested in accordance with Subparagraphs (a) through (e) of Paragraph (2) below.

**(2)** Periodic test schedule: In the test intervals specified below the word "years" means calendar years and the word "months" means calendar months. The basic periodic test interval shall not be longer than provided for in the following schedule.

### **(a)** Alternating current watt-hour meters:

**(i)** meters used with instrument transformers: polyphase meters - at least once in four years, and single-phase meters - at least once in eight years;

**(ii)** self-contained polyphase meters - at least once in six years;

**(iii)** self-contained single-phase meters - at least once in eight years.

**(b)** All self-contained single-phase meters and three-wire meters must be tested in accordance with any one of the following listed permissive test programs referred to in 8.1.8 of the standard code for electricity metering, ANSI standard C-12-1965:

**(i)** periodic interval program;

**(ii)** variable interval program;

**(iii)** statistical sampling program.

**(c)** Variable interval and statistical sampling programs can be used only when specifically approved by the commission and when in accordance with the specific program adopted by commission.

**(d)** Var-hour meters: same as the schedule for associated watt-hour meters.

### **(e)** Demand meters:

**(i)** block-interval non-recording demand meters and registers - same as the schedule for associated watt-hour meters;

**(ii)** block-interval graphic watt-hour demand meters - two years;

- (iii) block-interval pulse-operated recording demand meters - two years;
- (iv) lagged-demand meters - same as the schedule for associated watt-hour meters.

(f) Secondary standards:

- (i) portable rotating standard watt-hour meters - 12 months;
- (ii) indicating voltmeters - 12 months;
- (iii) instrument transformers - 10 years.

(g) working standards and instruments.

- (i) portable rotating standard watt-hour meters - one month;
- (ii) indicating voltmeters - six months;
- (iii) instrument transformers - 10 years.

**F. Instrument transformer tests:** All instrument transformers shall be tested in accordance with the applicable procedures of American standard requirements, terminology and test code for instrument transformers, ANSI standard C-57.13:

(1) when first received except in cases where a certificate of test is furnished by the manufacturer;

(2) when removed from service if there is subsequently found to be visual evidence of damage;

(3) upon complaint;

(4) while still in service if there is visual evidence of damage; and

(5) whenever an approved check, such as the variable burden method in the case of current transformers, made whenever the meter was tested indicated that a quantitative test is required.

**G. Generating station meter tests:** Each generating utility may establish its own test procedures to insure the accuracy of its generating station output watt meter and watt-hour meters as per Subsection A of 17.9.560.13 and Subsection K of 17.9.560.14 NMAC.

**H. Test procedures and accuracies:** Meters shall be tested at the loads indicated below and adjusted as close as practicable to zero error when found to exceed the

tolerances prescribed below. The test of any meter shall consist of a comparison of its accuracy with the accuracy of a standard. The commission will use the applicable provisions of the latest edition of the American standard code for electricity meters, ANSI standard C-12, as criteria of accepted good practice.

**(1)** Alternating current watt-hour meters:

<b>(a)</b> Shop tests:		
Test Load as Approximate Percentage of Test Current*	Power Factor	Tolerances
100	1.0	+1.0%
10	1.0	+1.0%
100	0.5	+1.5%
<b>(b)</b> Field Tests:		
100	1.0	+1.0%
10	1.0	+1.0%
*For meters used with current transformers the current at heavy load shall be approximately one hundred percent of the secondary rating of the current transformers and at light load approximately ten percent of that rating.		

**(2)** Direct current watt-hour meters:

Test Load as Approximate Percentage of Test Current	Power Factor	Tolerances
100		+1.5%
10		+1.5%

**(3)** Demand meters:

**(a)** Integrated (block interval) demand meters:

**(i)** Demand meters which are direct driven shall be tested at a load point no less than fifty percent of full scale. Tests shall be continuous for at least one demand interval and shall be started simultaneously with the demand interval of the demand meter.

**(ii)** Demand meters which are actuated by impulses shall be tested by transmitting enough impulses to cause the meter to register at a load point no less than

fifty percent of full scale. If an impulse-actuated demand meter is equipped with a device which records the number of impulses received by the meter, and if there is frequent and accurate comparison of such record with the number of kilowatt hours registered on the associated watt-hour meter, then it is not necessary to make a periodic field test of the demand meter.

**(iii)** Demand meters shall be adjusted to indicate zero under no-load conditions and shall be checked to ascertain that the meter resets to zero.

**(iv)** Impulse devices associated with demand meters must be checked for proper operation.

**(v)** The demand meter shall have an accuracy of within two percent of full scale.

**(vi)** The time interval must be accurate within half a percent for synchronous motor timing elements and within two percent for mechanical clock timing elements.

**(vii)** Meters recording demand reading on a chart which provides a record of the time at which the demand occurs shall be accurate to within plus or minus four minutes in 24 hours.

**(b)** Lagged demand meters:

**(i)** Demand meters shall be tested at a load point no less than fifty percent of full scale.

**(ii)** Demand meters shall be adjusted to indicate zero under no-load conditions with potential applied.

**(iii)** The demand meter shall have an accuracy within three percent of full scale.

**(iv)** Meters recording demand readings on a chart which provides a record of the time at which the demand occurs shall be accurate to within plus or minus four minutes in 24 hours.

**(4)** Transformers:

**(a)** All current and potential transformers shall be tested in accordance with the applicable procedures prescribed in ANSI standard C-57.13.

**(b)** Any utility unable to perform the above tests due to a lack of proper equipment may have its instrument transformers tested by another utility or laboratory whose testing conforms to the requirements of the commission.

(c) In lieu of the utility testing of instrument transformers the commission will accept the certificate of test as furnished by the manufacturer.

(d) Current or potential transformers shall not be installed if their accuracy does not fall within the 0.6 accuracy class as described in ANSI standard C-57.13.

(5) Meters for measurement of purchased electricity: Utilities purchasing electricity from non-utilities or from utilities outside the state must see that the instruments and meters which are necessary to furnish complete and accurate information as to the energy purchased are installed and tested in accordance with the requirements of the commission.

(6) General:

(a) All meters when tested shall be adjusted as closely as practicable to the condition of zero error.

(b) All tolerances are to be interpreted as maximum permissible variations from the condition of zero error. In making adjustments no advantage of the prescribed tolerance limits shall be taken.

(c) Meters shall not "creep," i.e., there shall be no continuous rotation of the moving element of a meter at a speed in excess of one revolution in 10 minutes when the meter load wires have been removed and voltage is applied to the potential elements of the meter.

**I. Facilities and equipment for meter testing:** Each utility shall maintain a meter shop or shall have the services of a meter shop available to it for the purpose of inspecting, testing, and repairing meters. The shop shall be open for inspection by authorized representatives of the commission at all reasonable times, and the facilities and equipment as well as the methods of measurement and testing employed shall be subject to the approval of the commission. The meter shop used by a utility shall have adequate and sufficient testing equipment to comply with this rule and to conduct the tests and make repairs and adjustments in compliance with this rule.

(1) Each location at which the shop conducts tests of meters shall have a three-phase voltage supply, one phase of which shall be variable from zero volts to 270 volts.

(2) Standards: Extreme care shall be exercised in the handling of standards to assure that their accuracy is not disturbed. Each meter shop shall contain facilities for protected storage of the secondary standards which are accessible only to personnel specifically so assigned by the utility management.

(a) Secondary standards:



(i) Each shop shall have at least one indicating voltmeter with a stated accuracy within one-quarter percent of full scale. This instrument must be maintained within its stated accuracy.

(ii) Each shop shall have at least one portable rotating standard watt-hour meter with a correction of not more than one-half percent at commonly used loads. If the correction percentage varies between successive tests by more than one-quarter percent, a complete check must be made to determine the cause of such variation. If the cause of variation cannot be removed the use of the instrument should be discontinued.

(iii) Secondary standards shall be checked periodically (See Paragraph (2) of Subsection E of 17.9.560.14 NMAC) at the national bureau of standards or at a laboratory acceptable to the commission. Secondary standards otherwise shall be kept in the protected storage of the meter shop at all times.

(iv) Secondary standards shall be accompanied at all times by a certificate or calibration card, duly signed and dated, on which are recorded the corrections required to compensate for errors found at the customary test points at the time of the last previous test.

(b) Working standards: Each shop shall have at least one portable rotating standard watt-hour meter with a correction of not more than one-half percent at commonly used loads. If the correction percentage varies between successive tests by more than one-quarter percent, a complete check must be made to determine the cause of such variation. If the cause of variation cannot be removed the use of the instrument should be discontinued. Working standards shall be checked periodically (See Paragraph (2) of Subsection E of 17.9.560.14 NMAC) by comparison with a secondary standard from the protected storage of the meter shop.

**J. Records of meters:** Each utility shall maintain records of the following data, where applicable, for each meter until retirement:

(1) the complete identification (number, type, voltage, amperes, number of wires, disk constant (kh), demand interval, and ratio); and

(2) the dates of installation and removal from service together with the location.

**K. Meter test records:** Each utility shall keep meter test records until a superseding test has been made but not less than two years or as may be necessary to comply with service rules regarding refunds on inaccurate meters. Test records shall include the following:

(1) the date and reason for the test;

- (2) the reading of the meter before making any test;
- (3) the accuracy "as found" at light and heavy loads;
- (4) the accuracy "as left" at light and heavy loads; and
- (5) a statement of any repairs made.

[17.9.560.14 NMAC - Rp, 17.9.560.14 NMAC, 11/10/2020]

#### **17.9.560.15 STANDARDS OF QUALITY OF SERVICES:**

**A. Standard frequency:** The standard frequency for alternating current distribution systems shall be 60 cycles per second. The frequency shall be maintained within limits which will permit the satisfactory operation of customers' clocks connected to the system.

**B. Voltage limits:** Each utility shall adopt and file with the commission standard nominal service voltages and for each of the several areas into which its distribution system or systems may be divided.

(1) The variations of the voltage for the various classes of service, voltage spread, and extreme tolerable voltage limits shall be in accordance with the publication EEI No. R-6, NEMA No. 117, ANSI standard C-84.1, or voltage levels on rural distribution systems REA bulletin No. 169.4.

(2) For service rendered to public utilities and others for resale, the nominal voltage spread and extreme tolerable voltage limits shall be as mutually agreed upon by the parties concerned. These limitations do not apply to special contracts in which the customer specifically agrees to accept service with unregulated voltage.

(3) Exceptions to voltage requirements: Voltage outside the limits specified will not be considered a violation when the variations:

- (a) arise from the action of the elements;
- (b) are infrequent fluctuations not exceeding five minutes' duration;
- (c) arise from service interruptions;
- (d) arise from temporary separation of parts of the system from the main system;
- (e) are from causes beyond the control of the utility.

#### **C. Voltage surveys and records:**

(1) Each utility shall make a reasonable number of voltage measurements using recording voltmeters or minimum/maximum voltmeters to determine if voltages are in compliance with the requirements as stated in Subsection B of 17.9.560.15 NMAC.

(2) Voltage measurements shall be made at the customer's point of metering and at other pertinent locations on the utility system.

(3) All voltmeter records obtained under Paragraphs (1) and (2) above shall be retained by the utility in accordance with 17.3.310 NMAC and shall be available for inspection by the commission's representatives. Notations on each record shall indicate the following:

(a) the location where the voltage was taken;

(b) the time and date of the test; and

(c) the results of the comparison with an indicating voltmeter.

**D. Equipment for voltage measurements:**

(1) Working instruments:

(a) Each utility shall have at least two indicating voltmeters with a stated accuracy within plus three percent of full scale.

(b) Each utility shall have at least two portable recording voltmeters with a stated accuracy within plus three percent of full scale.

(2) Working instruments shall be checked periodically (see Paragraph (2) of Subsection E. of 17.9.560.14 NMAC) by comparison with a standard in a meter shop.

(3) Extreme care shall be exercised in the handling of instruments to assure that their accuracy is not disturbed.

**E. Interruptions of service:** Each utility shall make reasonable efforts to avoid interruptions of service, but when interruptions occur service shall be reestablished within the shortest time practicable consistent with safety.

(1) Each utility shall keep records of interruptions of service on its primary distribution circuits and shall make an analysis of the records for the purpose of determining steps to be taken to prevent recurrence of such interruptions. Such records should include the following information concerning the interruptions:

(a) cause;

**(b)** date and time; and

**(c)** duration.

**(2)** The log for each unattended substation must show interruptions which require attention to restore service with the estimated time of interruption.

**(3)** Planned interruptions shall be made at a time that will not cause unreasonable inconvenience to customers and shall be preceded, if feasible, by adequate notice to those who will be affected.

**(4)** Each utility shall report the following information:

**(a)** A major interruption of service is defined as an unscheduled interruption of service of more than 30 minutes in duration, affecting:

**(i)** more than ten percent of a utility's New Mexico jurisdictional load or more than 100 MW of its New Mexico jurisdictional load, whichever is less; or

**(ii)** substantially all of a New Mexico municipality or county; or

**(iii)** any of the utility's customers of at least one MW (based on the most recent demand billing information on the date of the major interruption).

**(b)** Within two hours of the commencement of a major interruption of service (or no later than 9:00 AM the following business day for outages occurring after 4:00 PM or on a weekend), the utility division of the commission shall be notified telephonically, by facsimile or by e-mail of the occurrence with a brief description of the occurrence.

**(c)** Within three business days a written report shall be filed with the records division of the commission. The written report shall contain the pertinent information on the outage including, but not limited to, time of occurrence, duration, cause, facilities affected, MW of load lost, MWH of lost sales, estimated number of consumers affected, municipalities and counties wholly or partially interrupted, and actions taken by the utility to correct and prevent recurrence of the outage.

**(d)** Utilities that submit reports of an interruption to any coordinating council, regional transmission group or other industry review shall concurrently submit copies to the records division of the commission, including any engineering reports associated with an interruption. Each utility shall provide to commission staff all information requested by staff that is reasonably needed to assess the situation.

**(5)** Each utility shall identify critical customers, including facilities that require electricity to perform essential life-health-safety services, including other utility services such as natural gas compression, to establish priority of service and to minimize curtailments to these customers.

(6) Each utility shall identify an emergency coordinator to act as a single point of contact between designated emergency personnel in each community served by the utility in the event of a system emergency.

**F. Curtailment of service plan:** Each utility shall have in place a plan for curtailment of service that may need to be instituted to maintain system reliability and integrity. Each plan shall be consistent with applicable NERC and other reliability standards. The plan shall identify various levels of curtailment and conditions that an electric utility must experience for each level as well as specifying the type of actions the utility must undertake to contain or reverse a potential emergency. Each plan must also prescribe the minimum documentation required at each level. The plan must also include information dissemination to customers, the public and governmental entities. Each utility will periodically review and update the plan and will submit a copy of the most current plan version to the records division of the commission as a company rule pursuant to 17.9.210 NMAC.

[17.9.560.15 NMAC - Rp, 17.9.560.15 NMAC, 11/10/2020]

#### **17.9.560.16 SAFETY:**

##### **A. Protective measures:**

(1) Each utility shall exercise reasonable care to protect its employees, its customers, and the general public from hazards to which they may be subjected.

(2) The utility shall give reasonable assistance to the commission in the investigation of the cause of accidents and in the determination of suitable means of preventing accidents.

(3) Each utility shall maintain a summary of each accident arising from its operations and make such summaries available to the commission upon request.

(4) A utility shall not connect a new electric service unless the utility has the three copies of the application for electrical inspection. This subsection is not applicable to federal installations for which a state or local inspection is not required.

**B. Safety program:** Each utility shall adopt and execute a safety program fitted to the size and type of its operations. As a minimum the safety program should:

(1) require employees to use suitable tools and equipment in order to perform their work in a safe manner;

(2) instruct employees in safe methods of performing their work; and

(3) instruct employees who in the course of their work are subject to the hazard of electrical shock or drowning in accepted methods of artificial respiration.

**C. Grounding of secondary distribution system:** Each utility shall comply with the applicable provisions in the national electrical safety code and the national electrical code for the grounding of secondary circuits and equipment.

[17.9.560.16 NMAC - Rp, 17.9.560.16 NMAC, 11/10/2020]

## **PART 561-567: [RESERVED]**

## **PART 568: INTERCONNECTION OF GENERATING FACILITIES WITH A NAMEPLATE RATING UP TO AND INCLUDING 10 MW CONNECTING TO A UTILITY SYSTEM**

### **17.9.568.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.9.568.1 NMAC - Rp, 17.9.568.1 NMAC, 02/14/2023]

### **17.9.568.2 SCOPE:**

**A.** This rule, and the definitions, standards, procedures and screening processes described herein apply to every electric utility including rural electric cooperatives and investor-owned utilities operating within the state of New Mexico that are subject to the jurisdiction of the New Mexico public regulation commission. These standards and procedures apply to both qualifying and non-qualifying facilities.

**B.** The standards and procedures described in this rule (17.9.568 NMAC) apply only to the interconnection of generating facilities with a nameplate rated capacity up to and including 10 MW. The standards and procedures described in 17.9.569 NMAC apply to the interconnection of generating facilities with a rated capacity greater than 10 MW and are unchanged by this rule.

**C.** Interconnection requests are reviewed based on the combined nameplate ratings of systems accounting for their export capacity and energy storage operating mode. For purposes of review screens, only the capacity that is designed to inject electricity to the utility's distribution or transmission system, other than inadvertent exports and fault contribution, will be used.

**D.** All interconnection contracts between a utility and an interconnection customer existing at the time 17.9.568 NMAC is revised and adopted shall automatically continue in full force and effect. Material modifications to existing facilities or operations require a new interconnection application and agreement and will be subject to review under the current conditions of the electric power system. Any changes made to existing interconnection agreements shall conform to the provisions of 17.9.568 NMAC in effect at the time modification is executed.

[17.9.568.2 NMAC - Rp, 17.9.568.2 NMAC, 02/14/2023]

**17.9.568.3 STATUTORY AUTHORITY:**

This rule is adopted under the authority vested in this commission by the New Mexico Public Regulation Commission Act, Section 8-8-1 et seq. NMSA 1978, the Public Utility Act, Section 62-3-1 et seq. NMSA 1978; the Energy Transition Act, 62-18-1 et seq. NMSA 1978; the Grid Modernization Act, Section 62-8-13 NMSA 1978; and the Community Solar Act, Section 62-16B-1 NMSA 1978.

[17.9.568.3 NMAC - Rp, 17.9.568.3 NMAC, 02/14/2023]

**17.9.568.4 DURATION:**

Permanent.

[17.9.568.4 NMAC - Rp, 17.9.568.4 NMAC, 02/14/2023]

**17.9.568.5 EFFECTIVE DATE:**

February 14, 2023, unless a later date is cited at the end of a section.

[17.9.568.5 NMAC - Rp, 17.9.568.5 NMAC, 02/14/2023]

**17.9.568.6 OBJECTIVE:**

The purpose of this rule is to set forth common interconnection requirements and a common interconnection process based on a standard screening process for utilities and interconnection customers to expeditiously interconnect generating facilities with a rated capacity up to and including 10 MW in a safe and reliable manner.

[17.9.568.6 NMAC - Rp, 17.9.568.6 NMAC, 02/14/2023]

**17.9.568.7 DEFINITIONS:**

Terms used in rule 17.9.568 NMAC shall have the following meanings:

**A. Definitions beginning with "A":**

(1) Applicant means a person or an entity that has filed an application to interconnect a generating facility to an electric power system. An applicant may include:

(a) A customer who applies for interconnection of a generating facility that will offset part or all of the load of a utility customer, the applicant is that customer, whether the customer owns the generating facility or a third party owns the generating facility.

(b) An owner of a generating facility that applies for interconnection of a generating facility that sells electric power to a utility.

(c) A subscriber organization as defined by the Community Solar Act, Subsection M. of Section 62-16B-2 NMSA 1978.

(2) Area network means a section of an electric power system served by multiple transformers interconnected in an electrical network circuit, generally used in large, densely populated metropolitan areas, to provide high reliability of service. Area network has the same meaning as the term "grid network" as defined in IEEE Std 1547.6™. An area network is also referred to as a grid network or a street network.

(3) Auxiliary load means electrical power consumed by any equipment necessary to operate the generator or energy storage system. This is intended for in-front-of-the-meter systems.

**B. Definitions beginning with "B":** Business day means Monday through Friday, excluding holidays observed by the utility.

**C. Definitions beginning with "C":**

(1) Certified means equipment has been tested in accordance with the applicable requirements of IEEE Std 1547™-2018 and IEEE Std 1547.1™-2020 by any nationally recognized testing laboratory (NRTL) recognized by the United States occupational safety and health administration to test and certify equipment pursuant to the applicable standard and the equipment has been labeled and is publicly listed by such NRTL at the time of the interconnection application. Equipment installed prior to March 28, 2023 will also be considered certified if it has been tested in accordance with IEEE Std 1547™-2003 and 1547.1™-2005.

(2) Customer options meeting means a meeting designed to review the status of the interconnection application initial review results, or to determine next steps needed to permit safe and reliable interconnection.

**D. Definitions beginning with "D":**

(1) Detailed study process means the procedure for evaluating an interconnection application that may include a scoping meeting, feasibility study, system impact study, or facilities study as described in 17.9.568.18 NMAC.

(2) Distributed energy resource (DER) means the equipment used by an interconnection customer to generate or store electricity that operates in parallel with the electric distribution system. DER may include, but is not limited to: an electric generator or energy storage system, a prime mover, or combination of technologies capable of injecting power and energy into the electric distribution system, which also includes the interconnection equipment necessary to safely interconnect with the



distribution system. DER may not always be interconnected with the bulk power system. DERs may include distributed generation (DG) resources, distributed energy storage, demand response energy efficiency, and electric vehicles and chargers that are connected to the electric distribution power grid. DERs may be capable of exporting active power to an electric power system (EPS). The DER includes the customer's interconnection facilities but shall not include the area EPS operator's interconnection facilities.

(3) Distribution service means delivering energy over the electric power system pursuant to the approved tariffs of the utility other than services directly related to the interconnection of a generating facility under these interconnection procedures.

(4) Distribution system means the utility's facilities and equipment used to transmit electricity to ultimate usage points, known as premises, directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas.

(5) Distribution upgrade means the additions, modifications, and upgrades to the utility's distribution system at or beyond the point of common coupling to facilitate interconnection of the generating facility and render the service necessary to effect the interconnection customer's operation of on-site generation. Distribution upgrades do not include interconnection facilities.

#### **E. Definitions beginning with "E":**

(1) Electric power system (EPS) means the equipment operated and maintained by a utility (may include: independent system operators, transmission owner/operator, vertically integrated utilities, electric cooperatives, municipals, and distribution companies) to deliver electric service to end-users, including transmission and distribution lines, substations, transformers, spot networks and area networks.

(2) Energy storage system (ESS) means any commercially available, customer-sited system or utility-sited system, including batteries and batteries paired with on-site generation, that is capable of retaining, storing, and delivering electrical energy by chemical, thermal, mechanical, or other means. For the purposes of this rule, an energy storage system can be considered part of a DER or a DER in whole that operates in parallel with the distribution system.

(3) Export capacity means the amount of power that can be transferred from the generating facility to the distribution system. Export capacity is either the nameplate rating, or a lower amount if limited using and acceptable means identified in 17.9.568.12 NMAC.

#### **F. Definitions beginning with "F":**

(1) Facilities study means a study that specifies and estimates the cost of the equipment, engineering, procurement, and construction work needed to implement the conclusions of the system impact study.

(2) Fast Track means the process for evaluating an interconnection application utilizing established screens as described in 17.9.568.16 NMAC.

(3) Fault current means the current produced during a short circuit on the electric power system measured in amperes.

(4) Feasibility study means a preliminary technical assessment of the proposed interconnection that identifies any potential adverse system impacts that would result from the interconnection of the generating facility.

#### **G. Definitions beginning with "G":**

(1) Generating facility means the equipment used by an interconnection customer to generate, store, manage, interconnect and monitor electricity. A generating facility includes the interconnection equipment required to safely interconnect the facility with the distribution system. DERs are generating facilities.

(2) Grid network Grid network is also commonly referred to as area network or street network. For definition, refer to "Area Network".

H. Definitions beginning with "H": Host load means the electrical power, less the DER auxiliary load, consumed by the customer at the location where the generating facility is connected.

#### **I. Definitions beginning with "I":**

(1) IEEE means the institute of electrical and electronic engineers.

(2) IEEE standards means the standards published by the IEEE, often in collaboration with American National Standards Institute (ANSI), National Institute of Standards and Technology (NIST), UL, International Electrotechnical Commission (IEC), CIGRE, and National Fire Protection Institute (NFPA), available at [www.ieee.org](http://www.ieee.org).

(3) Inadvertent export means the unscheduled export of active power from a generating facility, exceeding a specified magnitude and for a limited duration generally due to fluctuations in load-following behavior.

(4) Interconnection agreement means a standard form agreement between an interconnection customer and a utility that governs the interconnection of a generating facility to a utility's electric delivery system, as well as the ongoing operation of the generating facility after it is interconnected.

(5) Interconnection application means the request by an interconnection customer to interconnect a new generating facility, increase the capacity or make a material modification to the operating characteristics of an existing generating facility that is interconnected with the utility's electric power system.

(6) Interconnection customer means any person who proposes to interconnect a generating facility with the utility's system.

(7) Interconnection facilities means the utility's interconnection facilities and the interconnection customer's interconnection facilities. Collectively, interconnection facilities include all facilities and equipment between the generating facility and the point of common coupling, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the generating facility to the utility's electric power system in a safe and reliable manner. Interconnection facilities are sole use facilities and shall not include distribution upgrades.

(8) Interconnection upgrade cost sharing means the allocation of distribution upgrade costs among multiple generator facility projects that utilize the hosting capacity created by a distribution upgrade.

(9) Interconnection procedures means the procedures specified in 17.9.568.12 NMAC through 17.9.568.23 NMAC.

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

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

**L. Definitions beginning with "L":**

(1) Limited export means the exporting capability of a DER whose generating capacity is limited by the use of any configuration or operating mode described in 17.9.568.12 NMAC.

(2) Line section means that portion of a utility's electric power system connected to a customer that is bounded by automatic sectionalizing devices or the end of the distribution line.

**M. Definitions beginning with "M":**

(1) Material modification means a modification to machine data, equipment configuration or to the interconnection site of the DER at any time after receiving notification by the utility of a complete interconnection application that has a material impact on the cost, timing, or design of any interconnection facilities or distribution upgrades, or a material impact on the cost, timing, or design of any interconnection application with a later queue priority date or material impact on the safety or reliability of the electric power system. A change to the point of interconnection would require

either a new interconnection application or a change in queue position. A material modification does not include, for example;

(a) a change of ownership of a generating facility:

(b) a change or replacement of generating equipment that is a like-kind substitution in size, ratings, impedances, efficiencies, or capabilities of the equipment specified in the original interconnection application; or

(c) a reduction in the output of the generating facility of ten percent or less. Replacement of existing inverters with new inverters that conform to new standards after March 28, 2023, will not be considered a material modification, so long as the generating facilities output or export status does not change as a result.

(2) Minimum load means the lowest measured circuit/substation load regardless of time of day.

(3) Minor modification means any modification to a utility's electric power system that involves limited work or low costs. Minor modifications include, but are not limited to, activities like changing the fuse in a fuse holder cut-out or changing the settings on a circuit recloser.

#### **N. Definitions beginning with "N":**

(1) Nameplate rating means the sum total of maximum rated power output of a DER's constituent generating units or ESS, as identified on the manufacturer's nameplate, regardless of whether it is limited by any approved means.

(2) Network system means a collection of secondary networks, or combinations of such networks on a primary network feeder or primary network feeders that supply them. This may also consist of primary feeders networked to supply connected loads.

(3) Network transformer means a transformer designed for use in a vault to feed a variable capacity system of interconnected secondaries.

(4) Non-export or non-exporting means when the DER is sized and designed using any of the methods described in 17.9.568.12 NMAC, such that the output is used for host load only and no electrical energy (except for any inadvertent export) is transferred from the generating facility to the distribution system.

**O. Definitions beginning with "O":** Operating mode means the mode of DER operational characteristics that determines the performance during normal and abnormal conditions. For example, an operating modes can include "export only," "import only," and "no exchange."

**P. Definitions beginning with "P":**

(1) Parallel Operation means the simultaneous operation of a generating facility with power delivered or received by the electric power system while interconnected. Parallel operation includes only those generating facilities that are interconnected with the electric power system for more than 60 cycles (one second).

(2) Parties means the applicant and the utility in a particular interconnection agreement. "Either party" refers to either the applicant or the utility.

(3) Person means, for purposes of this rule, an individual, firm, partnership, company, rural electric cooperative organized under Laws 1937, Chapter 100 or the rural electric cooperative act, corporation or lessee, trustee or receiver appointed by any court.

(4) Point of interconnection means the point where the interconnection facilities connect with the electric distribution system. Point of interconnection has the same meaning as the term "point of common coupling" as defined in IEEE 1547-2018.

(5) Power control system (PCS) means systems or devices which electronically limit or control steady state currents to a programmable limit.

(6) Primary network feeder means a feeder that supplies energy to a network system or the combination of a network system and other radial loads. Dedicated primary network feeders are feeders that supply only network transformers for the secondary network.

(7) Power conversion unit (PCU) means an inverter or AC generator, not including the energy source.

(8) Premise means a piece of land or real estate including buildings and other appurtenances thereon.

(9) Protective function means the equipment, hardware, or software in a generating facility (whether discrete or integrated with other functions) for the purpose of protecting against conditions that, if left uncorrected, could result in harm to personnel, damage to equipment, loss of safety or reliability, or operation outside pre-established parameters required by the interconnection agreement.

**Q. Definitions beginning with "Q.": [RESERVED]**

**R. Definitions beginning with "R":**

(1) Rated capacity means the total AC nameplate rating of the power conversion unit(s) at the point of common coupling.

(2) Reference point of applicability (RPA) means the location where the interconnection and interoperability performance requirements, as specified by IEEE 1547-2018, apply.

(3) Relevant minimum load means the lowest measured circuit or substation load coincident with the generating facility's production. For solar-only facilities this shall be the daytime minimum load.

#### **S. Definitions beginning with "S":**

(1) Secondary network means an AC distribution system where the secondaries of the distribution transformers are connected to a common network for supplying electricity directly to consumers.

(2) Simplified process means the procedure for evaluating an interconnection application for a small certified inverter-based DER described in 17.9.568.15 NMAC.

(3) Small utility means a utility that serves fewer than 50,000 customers.

(4) Supplemental review means additional engineering evaluation to determine if a generating facility can be interconnected following the (simplified or fast track) process without the need for detailed study as described in 7.9.568.17 NMAC.

(5) System emergency means a condition on a utility system that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

(6) System impact study means a study that identifies and details the electric system impacts that would result if the proposed generating facility were interconnected without project modifications or electric system modifications, focusing on the adverse system impacts preliminarily identified in the feasibility study (if conducted), or to study potential impacts, including but not limited to those identified in the scoping meeting. A system impact study shall evaluate the impact of the proposed interconnection on the safety and reliability of the electric power system.

**T. Definitions beginning with "T":** Technical Interconnection and Interoperability Requirements (TIIR) documents are public documents, often utility specific, which include requirements for interconnection, interoperability, capabilities, and their utilization (settings), and grid integration (e.g., protection coordination, telemetry).

#### **U. Definitions beginning with "U":**

(1) UL means the company by that name which has established technical standards for safe operations of electrical devices, previously known as underwriter's laboratory.

(2) UL 1741 CRD for PCS means the certification requirement decision for power control systems for the standard titled "inverters, converters, controllers and interconnection system equipment for use with distributed energy resources". (March 8, 2019), Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook IL 60062-2096.

(3) Unintentional island means an unplanned island per IEEE 1547-2018.

(4) Utility means a utility or public utility, as defined in Subsection G of Section 62-3-3 NMSA 1978, serving electric customers subject to the jurisdiction of the commission.

**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]**

[17.9.568.7 NMAC - Rp, 17.9.568.7 NMAC, 02/14/2023]

#### **17.9.568.8 APPLICABILITY:**

All generating facilities that operate in parallel with the utility electric power system are required to have an interconnection review and an interconnection agreement to ensure safety, system reliability, and operational compatibility. These interconnection procedures are applicable to all state-jurisdictional interconnections of generating facilities with a rated capacity up to and including 10 megawatts (MW). Generating facilities with a rated capacity greater than 10 megawatts (MW) shall be conducted pursuant to 17.9.569 NMAC. Neither these procedures nor the requirements included hereunder apply to generating facilities interconnected or approved for interconnection prior to the effective date of these procedures.

[17.9.568.8 NMAC - N, 02/14/2023]

#### **17.9.568.9 LIBERAL CONSTRUCTION:**

If any part or application of this rule is held invalid, the remainder of its parts and any other applications of the rule shall not be affected.

[17.9.568.9 NMAC - N, 02/14/2023]

#### **17.9.568.10 APPLICABLE CODES AND STANDARDS:**

**A.** The interconnection customer shall install, operate, and maintain the generating facility and the interconnection equipment in a safe manner in accordance with the rules for safety and reliability set forth in the latest editions of the national electrical code, other applicable local, state, and federal electrical codes, and prudent electrical practices.

**B.** In order to qualify for any interconnection procedures, each generating facility generator shall be in conformance with the following codes and standards (or their successors) as applicable, unless otherwise provided by law:

(1) IEEE Std 1547™, IEEE standard for interconnection and interoperability of distributed energy resources with associated electric power systems interfaces, as amended by IEEE 1547a™-2020, including use of IEEE 1547.1™-2020 testing protocols to establish conformity;

(2) IEEE Std 1547.1™-.2020™, standard conformance test procedures for equipment interconnecting distributed energy resources with electric power systems and associated interfaces;

(3) ANSI C84.1-2020, electric power systems and equipment - voltage ratings (60 Hertz);

(4) IEEE Std 1547.2™-2008™, application guide for IEEE 1547 standard for interconnecting distributed resources with electric power systems;

(5) IEEE Std 1547.6™-2011™, IEEE recommended practice for interconnecting distributed resources with electric power systems distribution secondary networks;

(6) IEEE Std 1547.7™-2013™, IEEE guide for conducting distribution impact studies for distributed resource interconnection;

(7) IEEE C62.92.6™-2017 IEEE Guide for Application of Neutral Grounding in Electrical Utility Systems, Part VI - Systems Supplied by Current Regulated Sources;

(8) UL 1741, Edition 3, September 28, 2021 Inverters, Converters, Controllers and Interconnection System Equipment for Use with Distributed Energy Resources;

(9) NFPA 70, current version, National Electrical Code, including any NM or local modifications;

(10) IEEE C2, current version, National Electrical Safety Code, including any NM or local modifications;



(11) UL 1741 Certification Requirement Decision for Power Control Systems, March 8, 2019, Inverters, Converters, Controllers and Interconnection System Equipment for Use With Distributed Energy Resources.

**C.** The interconnection equipment shall be considered certified for interconnected operation if the equipment package has been tested and listed by a nationally recognized testing and certification laboratory (NRTL) for continuous interactive operation with a utility grid.

[17.9.568.10 NMAC - Rp, 17.9.568.8 NMAC, 02/14/2023]

#### **17.9.568.11 IEEE 1547-2018 ADOPTION:**

**A.** Beginning on March 28, 2023 (or another date set by commission order), generating facilities shall be required to comply with IEEE 1547-2018, and shall conform with the following minimum requirements.

**(1) Abnormal performance requirements:** Category III ride through capabilities must be supported for inverter-based generating facilities. Rotating generating facilities must meet category I ride-through capabilities.

**(2) Normal performance requirements:** Inverter-based generating facilities shall meet reactive power requirements with category B. Rotating generating facilities must meet category A.

**B.** Each utility shall post its preferred default settings in their public facing Technical Interconnection and Interoperability Requirements (TIIR) document. As applicable the following shall be identified in the TIIR documents:

- (1) voltage and frequency trip settings;
- (2) frequency droop settings;
- (3) activated reactive power control function and default settings;
- (4) voltage active power (volt-watt) mode activation and default settings;
- (5) communication protocols and ports requirements.

**C.** TIIR documents shall be created through a technical advisory group process and submitted to the commission for approval. Subsequent changes to TIIR documents shall also be submitted to the commission for approval.

[17.9.568.11 NMAC - N, 02/14/2023]

#### **17.9.568.12 DETERMINATION OF EXPORT CAPACITY STATUS:**

**A. Export Controls:** If a DER uses any configuration or operating mode in subsection C to limit the export of electrical power across the point of interconnection, then the export capacity shall be only the amount of power capable of being exported (not including any inadvertent export). To prevent impacts on system safety and reliability, any inadvertent export from a DER must comply with the limits identified in this section. The export capacity specified by the interconnection customer in the interconnection application will be documented as the maximum allowed export capacity of the DER in the interconnection agreement.

**B.** An interconnection application proposing to use a configuration or operating mode to limit the export of electrical power across the point of interconnection shall include proposed control or protection settings.

**C. Acceptable export control methods:**

(1) Export control methods for non-exporting DER:

(a) Reverse power protection (Device 32R): To limit export of power across the point of interconnection, a reverse power protective function is implemented using a utility grade protective relay. The default setting for this protective function shall be one tenth percent (export) of the service transformer's nominal base nameplate rating, with a maximum two second time delay to limit inadvertent export.

(b) Minimum power protection (Device 32F): To limit export of power across the point of interconnection, a minimum import protective function is implemented utilizing a utility grade protective relay. The default setting for this protective function shall be five percent (import) of the generating unit's total nameplate capacity, with a maximum two second time delay to limit inadvertent export.

(c) Relative distributed energy resource rating: This option requires the DER facility's nameplate capacity to be no greater than fifty percent of the interconnection customer's verifiable minimum host load during DER operating hours over the past 12 months. This option is not available for interconnections to area networks or spot networks.

(2) Export control methods for limited export DER:

(a) Directional power protection (Device 32): To limit export of power across the point of interconnection, a directional power protective function is implemented using a utility grade protective relay. The default setting for this protective function shall be the export capacity value, with a maximum 2.0 second time delay to limit inadvertent export.

(b) Configured power rating: A reduced output power rating utilizing the power rating configuration setting may be used to ensure the DER does not generate power beyond a certain value lower than the nameplate capacity. The configuration

setting corresponds to the active or apparent power ratings in Table 28 of IEEE Std 1547-2018, as described in subclause 10.4. A local DER communication interface is not required to utilize the configuration setting if it can be set by other certified means. The reduced power rating may be indicated by means of a nameplate rating replacement or, a supplemental adhesive de-rating tag to indicate the reduced power output capacity. The customer must also provide a signed attestation confirming the reduced power output capacity. This method must be certified to IEEE 1547.1-2020. Use of a configured power rating not applied to individual power conversion unit(s) shall require evaluation under mutually agreed-upon means.

(3) Export control methods for non-exporting DER or limited export DER:

(a) Certified power control systems: DER facilities may use certified power control systems to limit export. DER facilities utilizing this option must use a power control system and inverter certified per UL 1741 by a nationally recognized testing laboratory (NRTL) with a maximum open loop response time of no more than 30 seconds. NRTL testing to the UL power control system certification requirements decision shall be accepted until similar test procedures for power control systems are included in a standard. This option is not available for interconnections to area networks or spot networks.

(b) Agreed-upon means: DER facilities may be designed with other control systems or protective functions to limit export and inadvertent export if mutual agreement is reached with the distribution provider. The limits may be based on technical limitations of the interconnection customer's equipment or the electric distribution system equipment. To ensure inadvertent export remains within mutually agreed-upon limits, the interconnection customer may use an uncertified power control system, an internal transfer relay, energy management system, or other customer facility hardware or software if approved by the distribution provider.

[17.9.568.12 NMAC - N, 02/14/2023]

**17.9.568.13 APPLICATION REVIEW PROCESS:**

**A.** There are four interconnection review paths:

**(1) Simplified process:** For certified inverter-based generating facilities that have a nameplate rating that does not exceed 50 kilowatts (kW) and an export capacity that does not exceed 25 kilowatts (kW).

**(2) Fast track process:** For generating facilities that have a nameplate rating of up to 5 megawatts (MW), depending on the line capacity and distance from the substation. To qualify for fast track, the generating facility's export capacity shall not exceed the limits identified in the table below, which vary according to the voltage of the line at the proposed point of interconnection. Generating facilities located within 2.5 miles of a substation and on a main distribution line with minimum 600-amp capacity are

eligible for the fast track process under higher thresholds. For purposes of the table below, a mainline is the three-phase backbone of a circuit. It will typically constitute lines with wire sizes of 4/0 American wire gauge, 336.4 kcmil, 397.5 kcmil, 477 kcmil and 795 kcmil.

Line Voltage	Export Capacity for Fast Track Eligibility	
	Regardless of location	On > 600 amp line and < 2.5 miles from substation
5 kV	< 500 kW	< 500 kW
5 kV - 14 kV	< 2 MW	< 3 MW
15 kV - 30 kV	< 3 MW	< 4 MW
31 kV - 69 kV	< 4 MW	< 5 MW

**(3) Detailed study process:** For all generating facilities with a rated capacity 10 megawatts (MW) or less that do not qualify, or pass through, the simplified or fast track processes or subsequent supplemental review.

**(4) Case specific review process:** Generating facilities with a rated capacity greater than 10 megawatts (MW) shall be reviewed pursuant to 17.9.569 NMAC.

**B. Application submittal:** The interconnection applicant shall submit an interconnection application (see Appendices 1A, 1B or 1C, as appropriate) to the utility, together with the applicable processing fee identified in 17.9.568.23 NMAC. The application shall be date and time-stamped upon receipt for the purposes of any timetable in these procedures.

**C. Completeness review:** Utility shall notify the interconnection applicant, via email or other means, that the interconnection application has been received within three business days of receipt of the interconnection application. Within 10 business days of receipt, the utility shall notify the applicant whether the interconnection application is deemed complete and valid. If the application is incomplete, the utility shall provide the applicant with a list of all information that the applicant must provide to complete the application. The applicant must provide the requested information within 10 business days, or the application will be deemed withdrawn.

**D. Interconnection queue position and posting:** The utility shall assign the interconnection application a queue position based on when it is received under Subsection C of 17.9.568.13 NMAC.

(1) The utility shall maintain a single queue, which may be sortable by geographic region (e.g., feeder or substation).

(2) The queue position of each interconnection application will be used to determine the cost responsibility for the upgrades necessary to accommodate the interconnection.

(3) The queue shall be publicly available on the utility's website and shall be updated at least monthly.

(4) If an application fails the screening process under the simplified or fast track process, but the applicant decides to continue with review (including Supplemental review) under another level, the applicant shall retain its original queue position.

(5) If an interconnection application fails the screening process under the simplified or fast track process, but the applicant decides to continue with review (including supplemental review) under another level, the applicant shall retain its original queue position.

#### **E. Modifications to generating facility:**

(1) At any time after an interconnection application is deemed complete or an interconnection agreement has been signed, if the applicant wishes to make modifications to the planned generating facility it shall submit to the utility, in writing, all proposed modifications to any information provided in the interconnection application or in the interconnection agreement. Any modification to machine data, equipment configuration, or to the interconnection site of the generating facility not agreed to in writing by the utility and the interconnection customer may be deemed a withdrawal of the interconnection application.

(2) Within 10 business days of receipt of a proposed modification, the utility shall notify the applicant whether a proposed modification to either an interconnection application or an existing generating facility constitutes a material modification.

(a) If the utility determines the proposed modification is a material modification, then the utility shall notify the interconnection customer in writing that the customer may:

(i) withdraw the proposed modification; or

(ii) proceed with a new interconnection application for such modification. The interconnection customer shall provide its determination in writing to the utility within 10 business days after being provided the material modification determination results. If the interconnection customer does not provide its determination, the proposed modification shall be deemed withdrawn.

(b) If the proposed modification is determined not to be a material modification, then the utility shall notify the interconnection customer in writing that the modification has been accepted and that the customer shall retain its eligibility for

interconnection, including its place in the interconnection queue. Existing generating facilities may make the modification without requiring a new interconnection application.

(3) Any dispute as to the utility's determination that a modification constitutes a material modification shall proceed in accordance with the dispute resolution provisions in 17.9.568.26 NMAC.

(4) Any modification to machine data, equipment configuration, or to the interconnection site of the generating facility not agreed to in writing by the utility and the interconnection customer may be deemed a withdrawal of the interconnection application and may require submission of a new interconnection application, unless proper notifications of each party by the other as described in Paragraphs (1) and (2) of Subsection E of 17.9.568.13 NMAC.

**F. Site Control:** Documentation of site control must be submitted with the interconnection request. Site control may be demonstrated by:

(1) ownership of, or a leasehold interest in, or a right to develop a site for the purpose of constructing a generating facility;

(2) a fully executed option to purchase or acquire a leasehold site for such purpose; or

(3) a fully executed agreement demonstrating exclusivity or other business relationship between the interconnection applicant and the entity having the authority to grant the applicant the right to possess or occupy a site for such purpose.

[17.9.568.13 NMAC - N, 02/14/2023]

#### **17.9.568.14 OPTIONAL PRE-APPLICATION REPORT:**

Potential applicants may request this optional report for a specific site to get information about system conditions at their proposed point of interconnection without submitting a full interconnection application.

**A.** Potential applicants shall provide the following information to the utility to expedite its pre-application review:

(1) project contact information including name, address, phone number, and email address;

(2) project location (street address with nearby cross streets, and town/city);

(3) meter number, pole number, or other equivalent information (such as latitude and longitude coordinates) identifying the potential point of interconnection, if available;

- (4) generator type (i.e., solar, wind, combined heat and power) and whether energy storage will be collocated with the generation;
- (5) nameplate capacity (in alternating current kW);
- (6) single or three phase generator configuration;
- (7) stand-alone generator with no on-site load (yes or no?);
- (8) whether new service is requested. If there is existing service, include the customer account number, site minimum and maximum existing or proposed maximum loads in kW and specify if the amount of any anticipated additional load is expected to change.

**B.** The pre-application report shall be completed by the utility per the schedule in Subsection F of this section and include the following information, if available:

- (1) Total capacity (MW) of substation/area bus or bank and circuit likely to serve proposed site. If substation or circuit planned capacity limits are less than the total capacity the utility shall indicate the planned capacity limits.
- (2) Aggregate existing export capacity (MW) interconnected to the substation/area bus or bank and circuit likely to serve proposed site.
- (3) Aggregate queued export capacity (MW) proposing to interconnect to the substation/area bus or bank and circuit likely to serve proposed site.
- (4) Available capacity (MW) of substation/area bus or bank and circuit likely to serve proposed site. Available capacity is the total capacity less the sum of existing and queued export capacity, accounting for all load served by existing and queued generators.
- (5) Whether the proposed generating facility is located on an area, spot or radial network.
- (6) Nominal distribution circuit voltage at the proposed site.
- (7) Approximate circuit distance between the proposed site and the substation.
- (8) Relevant line section(s) and substation actual or estimated peak load and minimum load data, when available.
- (9) Manufacturer model number/type and rating of protective devices and number and type of voltage regulating devices between the proposed site and the substation/area.

(10) Whether or not three-phase power is available at the site or distance from three-phase service.

(11) Limiting conductor rating from proposed point of interconnection to distribution substation.

(12) Based on proposed point of interconnection, existing or known constraints such as, but not limited to, electrical dependencies at that location, short circuit interrupting capacity issues, power quality or stability issues on the circuit, capacity constraints, or secondary networks.

(13) Any other information the utility deems relevant to the interconnection application.

**C.** The pre-application report need only include pre-existing data. A pre-application report request does not obligate the utility to conduct a study or other analysis of the proposed project if that data is not available. If the utility cannot complete all or some of a pre-application report due to lack of available data, the utility will provide the potential applicant with a pre-application report that includes the information that is available and identify the information that is unavailable.

**D.** Notwithstanding any of the provisions of this section, the utility shall, in good faith, provide pre-application report data that represents the best available information at the time of reporting.

**E. Costs of pre-application reports:** The party requesting the pre-application report shall pay \$300.00 for up to one MW system size, and \$500.00 for over one MW. If a utility can provide documentation that the cost is higher, then the requesting party shall pay that additional amount.

**F. Time frames for pre-application reports:** Pre-application reports should be completed in 20 business days for system sizes up to one MW, and 30 business days for system sizes greater than one MW, from the receipt of the completed request form and payment of the fee. If it can be documented that a utility cannot meet this deadline due to circumstances beyond their control, then the utility will be given more time but must notify the applicant.

**G. Length of time for accuracy of information:** Due to the dynamic nature of the electric power system, accuracy cannot be guaranteed past the time of completion of a report. The pre-application report shall be non-binding on the utility and shall not confer any rights to the interconnection customer. The provided information does not guarantee that an interconnection may be completed.

[17.9.568.14 NMAC - N, 02/14/2023]

**17.9.568.15 SIMPLIFIED PROCESS:**



**A. Application:** An interconnection customer must submit an interconnection application, pursuant to Subsection B of 17.9.568.13 NMAC, using the standard simplified interconnection application form provided in Appendix 1A, which may be sent electronically to a recipient designated by the utility. The application fee specified in Subsection A of 17.9.568.23 NMAC shall be submitted along with the application. An interconnection customer executes the standard interconnection agreement for the simplified process by submitting a simplified process application.

**B. Simplified screening:** The utility shall evaluate the interconnection application using the following simplified screens.

(1) **Screen 1:** The generating facility must utilize a UL 1741 certified inverter.

(2) **Screen 2:** For interconnection of a proposed generating facility to the load side of network protectors, the proposed generating facility must utilize an inverter-based equipment package and, its nameplate rating, together with the nameplate rating of the aggregated other inverter-based generation, shall not exceed fifty percent of the secondary network's relevant minimum load.

(3) **Screen 3:** Until December 31, 2023, for interconnection of a proposed generating facility to a radial distribution circuit, the aggregate export capacity of the generating facilities connected to the distribution circuit, including the proposed generating facility, may not exceed one hundred percent of the relevant minimum load (or fifteen percent of maximum load if minimum load data is unavailable) normally supplied by the distribution circuit. After December 31, 2023, for interconnection of a proposed generating facility to a radial distribution circuit, the aggregate export capacity of the generating facilities connected to the distribution circuit, including the proposed generating facility, may not exceed one hundred percent of the relevant minimum load normally supplied by the distribution circuit.

(4) **Screen 4:** If the proposed generating facility is to be interconnected on a single-phase shared secondary, the aggregate export capacity generation capacity on the shared secondary, including the proposed generating facility, shall not exceed sixty-five percent of the transformer nameplate power rating.

(5) **Screen 5:** If the proposed generating facility is single-phase and is to be interconnected on a center tap neutral of a 120/240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than twenty percent of the nameplate rating of the service transformer.

**C. Simplified screening results:** Within seven business days after the utility notifies the applicant that its interconnection application is complete, the utility shall notify the customer whether the generating facility meets the simplified process screens and include with the notification copies of the analysis and data underlying the utility's determinations under the screens. Despite the failure of one or more screens, the

utility, at its sole option, may approve the interconnection provided such approval is consistent with safety and reliability.

**(1) Failed screens:** If the utility cannot determine that the generating facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards, the utility shall provide the applicant the screen results. If one or more screens are not passed, the utility shall provide, in writing, the specific screens that the interconnection application failed, including the technical reason for failure. The utility shall provide information and detail about the specific system threshold or limitation causing the interconnection application to fail the screen. In addition, the utility shall allow the customer to select one of the following, at the applicant's option:

(a) undergo supplemental review in accordance with 17.9.568.17 NMAC; or

(b) continue evaluating the interconnection application under detailed study in accordance with 17.9.568.18 NMAC. The applicant must notify the utility of its selection within 10 business days or the interconnection application will be deemed withdrawn.

**(2) Approval:** If the proposed generating facility passes the screens, or the utility determines the proposed generating facility can be interconnected safely and reliably despite the failure of one or more screens, the interconnection application shall be approved. The utility shall return to the applicant an executed simplified process interconnection agreement at the same time it provides the applicant with the screen results. If the utility determines that the generating facility can be interconnected safely and reliably, but requires construction of interconnection facilities or distribution system modifications, the utility shall instead process the interconnection application according to the procedures for the fast track process starting at 17.9.568.16 NMAC.

#### **D. Reference point of applicability review:**

(1) The following process will occur concurrently with the simplified process screening in Subsections B and C of 17.9.568.15 NMAC. Within five business days after the utility notifies the applicant that the interconnection application is complete, the utility shall review the reference point of applicability denoted by the applicant and determine if it is appropriate.

(2) If it is determined that the reference point of applicability is appropriate, the utility will notify the applicant when it provides the simplified screen results and proceed according to Subsection C of 17.9.568.15 NMAC.

(3) If the utility determines the reference point of applicability is inappropriate, the utility will notify the applicant in writing, including an explanation as to why it requires correction. Applicant shall provide the utility with a corrected interconnection application with the proper reference point of applicability within five business days of notification. During this time the utility will proceed with applying the simplified screens. The utility shall review the revised interconnection request within five business days of receipt to

determine if the revised reference point of applicability has been appropriately denoted. If correct, the utility will proceed according to Subsection C of 17.9.568.15 but be provided with a total of 12 business days to provide the simplified results. If the interconnection customer does not provide the appropriate reference point of applicability or a request for an extension of time within the deadline, the interconnection application will be deemed withdrawn.

[17.9.568.15 NMAC - N, 02/14/2023]

#### **17.9.568.16 FAST TRACK PROCESS:**

**A. Application:** An interconnection customer must submit an interconnection application, pursuant to Subsection B of 17.9.568.13 NMAC, using the standard interconnection application form provided in Appendix 1B, which may be sent electronically to a recipient designated by the utility. The application fee specified in Subsection A of 17.9.568.23 NMAC shall be submitted along with the interconnection application.

**B. Fast track screening:** The utility shall evaluate the interconnection application using the following fast track initial review screens.

**(1) Screen 1:** For interconnection of a proposed generating facility to the load side of network protectors, the proposed generating facility must utilize a certified inverter-based equipment package and its nameplate rating, together with the nameplate rating of the aggregated other inverter-based generation, shall not exceed fifty percent of the secondary network's relevant minimum load.

**(2) Screen 2:** Until December 31, 2023, for interconnection of a proposed generating facility to a radial distribution circuit, the aggregate export capacity of the generating facilities connected to the distribution circuit, including the proposed generating facility, may not exceed one hundred percent of the relevant minimum load (or fifteen percent of maximum load if minimum load data is unavailable) normally supplied by the distribution circuit. After December 31, 2023, for interconnection of a proposed generating facility to a radial distribution circuit, the aggregate export capacity of the generating facilities connected to the distribution circuit, including the proposed generating facility, may not exceed one hundred percent of the relevant minimum load normally supplied by the distribution circuit.

**(3) Screen 3:** For interconnection of a proposed generating facility that can introduce inadvertent export, where the nameplate rating minus the export capacity is greater than 250 kW, the following inadvertent export screen limit is required. With a power change equal to the nameplate rating minus the export capacity, the change in voltage at the point on the medium voltage (primary) level nearest the point of interconnection does not exceed three percent. Voltage change will be estimated applying the following formula:

Formula	$\frac{(R_{SOURCE}) - (X_{SOURCE})}{V^2}$
Where: = (DER apparent power Nameplate Rating - Export Capacity) PF, (DER apparent power Nameplate Rating - Export Capacity) , R <sub>SOURCE</sub> is the grid resistance, X <sub>SOURCE</sub> is the grid reactance, V is the grid voltage, PF is the power factor	

**(4) Screen 4:** If the proposed generating facility is to be interconnected on a single-phase shared secondary, the aggregate export capacity on the shared secondary, including the proposed generating facility, shall not exceed sixty-five percent of the transformer nameplate power rating.

**(5) Screen 5:** If the proposed generating facility is single-phase and is to be interconnected on a center tap neutral of a 120/240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than twenty percent of the nameplate rating of the service transformer.

**(6) Screen 6:** The starting voltage dip shall be less than five percent and the flicker requirements of IEEE 1547™-2018 must be met. This screen only applies to generating facilities that start by motoring the generator(s).

**(7) Screen 7:** When measured at the primary side (high side) of a dedicated distribution transformer serving a generating facility, the sum of the short circuit current contribution ratios of all generating facilities connected to utility's distribution system circuit that serves the generating facility must be less than or equal to 0.1.

**(8) Screen 8:** The generating facility, aggregated with other generation on the distribution circuit, will not cause any distribution protective devices and equipment (including but not limited to substation breakers, fuse cutouts, and line reclosers), or utility customer equipment on the system, to exceed ninety percent of the short circuit interrupting capability; nor is the interconnection proposed for a circuit that already exceeds ninety percent of the short circuit interrupting capability.

**(9) Screen 9:** The generating facility complies with the applicable type of interconnection, based on the table below. This screen includes a review of the type of electrical service provided to the interconnecting customer, including line configuration and the transformer connection to limit the potential for creating over-voltages on the utility's electric power system due to a loss of ground during the operating time of any anti-islanding function.

Primary Distribution Line Type	Type of Interconnection to	Result/Criteria
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	<b>Primary Distribution Line</b>	
Three-phase, three-wire	If ungrounded on primary or any type on secondary	Pass screen
Three-phase, four-wire	Single-phase line-to-neutral	Pass screen
Three-phase, four-wire or mixed three-wire and four-wire	All others	<p>Pass screen for inverter-based generation if the aggregate nameplate rating, including the nameplate rating of the proposed project, is</p> <ul style="list-style-type: none"> <li>· <math>\leq 100\%</math> feeder or line section minimum load, or</li> <li>· if minimum load data is not available: <math>\leq 30\%</math> feeder or line section peak load.</li> </ul> <p>Pass screen for rotating generation if the aggregate nameplate rating, including the nameplate rating of the proposed project, is:</p> <ul style="list-style-type: none"> <li>· <math>\leq 33\%</math> of feeder or line section minimum load, or</li> <li>· if minimum load data isn't available: <math>\leq 10\%</math> of feeder or line section peak load.</li> </ul>

**(10) Screen 10:** If the generating facility's point of interconnection is behind a line voltage regulator, the generating facility's export capacity is less than 250 kW.

**C. Fast track screening results:** Within 15 business days after the utility notifies the applicant that the interconnection application is complete, the utility shall notify the applicant of the initial review results and include with the notification copies of the analysis and data underlying the utility's determinations under the screens. If one or more screens are not passed, the utility shall provide, in writing, the specific screens that the interconnection application failed, including the technical reason for failure. The utility shall provide information and detail about the specific system threshold or limitation causing the interconnection application to fail the screen.

**D. Approval:** For all interconnection applications that pass initial review and do not require interconnection facilities or distribution upgrades, utility shall provide applicant with an interconnection agreement no later than 15 business days of providing notice of initial review results, except where a utility is required to provide notice to the transmission provider as outlined in Paragraph (1) of Subsection D of 17.9.568.16 NMAC. Despite the failure of one or more screens, the utility, at its sole option, may approve the interconnection provided such approval is consistent with safety and reliability. For interconnection applications that fail initial review but the utility

determines the interconnection application can be approved with minor modifications, the utility shall provide the applicant with a non-binding cost estimate of the minor modifications and an interconnection agreement within 5 business days of providing notice of initial review results.

(1) If a utility's transmission service agreement requires that it notify the transmission provider of interconnections (of any size or beyond a specific threshold as specified in the transmission service agreement), the utility shall provide the notice to the transmission provider immediately after it has applied the fast track screens. If the transmission provider determines that it does not need to conduct a further analysis of transmission system impacts, the utility shall provide the interconnection agreement to the customer within three business days of receiving the transmission provider's determination. If the transmission provider does require further analysis, the utility shall coordinate with the interconnection applicant and the transmission provider to ensure such analysis is conducted in a timely manner.

(2) If the transmission provider determines that there are impacts that require upgrades, the utility shall follow the detailed study process in 17.9.568.18 NMAC for providing the customer with an interconnection agreement.

**E. Failed screens:** For interconnection applications that fail initial review, at the time it provides the screen results, the utility shall provide the applicant the option to either attend a customer options meeting or proceed directly to supplemental review. The applicant must notify the utility of its selection within 10 business days or the interconnection application will be deemed withdrawn.

**F.** The utility shall use the screens identified above to evaluate the interconnection application and shall not impose arbitrary limitations on interconnection (i.e., limiting interconnection to projects less than fifty percent of the circuit's rated capacity) without a valid technical reason. that is provided to the applicant in writing with an explanation. In providing detail about the specific system threshold or limitation causing the interconnection applicant to fail the screen, the utility shall provide an estimate of the cost of and expected timeline for conducting necessary upgrades to accommodate the interconnection application.

**G. Reference point of applicability review:**

(1) The following process will occur concurrently with the fast track screening process in Subsection C of 17.9.568.16 NMAC. Within five business days after the utility notifies the applicant that the interconnection application is complete, the utility shall review the reference point of applicability denoted by the applicant and determine if it is appropriate.

(2) If it is determined that the reference point of applicability is appropriate, the utility will notify the applicant when it provides the fast track screen results and proceed according to Subsections C through F of 17.9.568.16.

(3) If the utility determines the reference point of applicability is inappropriate, the utility will notify the applicant in writing, including an explanation as to why it requires correction. Applicant shall provide the utility with a corrected interconnection application with the proper reference point of applicability within five business days of notification. During this time the utility will proceed with applying the fast track screens. The utility shall review the revised interconnection request within five business days of receipt to determine if the revised reference point of applicability has been appropriately denoted. If correct, the utility will proceed according to Subsections C through F of 17.9.568.16 NMAC. If the applicant does not provide the appropriate reference point of applicability or a request for an extension of time within the deadline, the interconnection application will be deemed withdrawn.

**H. Customer options meeting:** Within 10 business days of the utility's completion of its initial review, the utility shall offer to convene a customer options meeting with the applicant to review possible interconnection customer facility modifications or the screen analysis and related results to determine what further steps are needed to permit the generating facility to be connected safely and reliably. At the time of notification of the utility's determination, or at the customer options meeting, the utility shall:

(1) Offer to perform facility modifications or minor modifications to the utility's electric system (e.g., changing meters, fuses, relay settings) and provide a non-binding good faith estimate of the limited cost to make such modifications to the utility's electric system and offer to continue the screening process; or

(2) Offer to perform a supplemental review if the utility concludes that the supplemental review might determine that the generating facility could continue to qualify for interconnection pursuant to the fast track process, and provide a non-binding good faith estimate of the costs and time of such review; or

(3) Offer to continue evaluating the interconnection application under the full interconnection study process.

[17.9.568.16 NMAC - N, 02/14/2023]

#### **17.9.568.17 SUPPLEMENTAL REVIEW:**

**A. Agreeing to supplemental review:** To accept the offer of a supplemental review, the applicant shall agree in writing and submit a \$2,500 fee for the review, both within 15 business days of the offer. If the written agreement and deposit have not been received by the utility within that timeframe, the interconnection application shall continue to be evaluated under the detailed study process unless it is withdrawn by the applicant.

**B. Supplemental review screens:** The utility shall evaluate the interconnection application using the following supplemental review screens.

**(1) Minimum gross load screen:** Where 12 months of line section minimum load data (including onsite load but not station service load served by the proposed generating facility) are available, can be calculated, can be estimated from existing data, or determined from a power flow model, the aggregate export capacity on the line section is less than one hundred percent of the gross minimum load for all line sections bounded by automatic sectionalizing devices upstream of the proposed generating facility. If minimum load data is not available, or cannot be calculated, estimated or determined, the utility shall include the reason(s) that it is unable to calculate, estimate or determine minimum load in its supplemental review results notification. After December 31, 2023 utility should have minimum load data for all circuits.

(a) The type of generation used by the proposed generating facility will be taken into account when calculating, estimating, or determining circuit or line section minimum load relevant for the application of Subsection B of 17.9.568.17 NMAC. Solar photovoltaic (pv) generation systems with no battery storage use daytime minimum load (i.e., 10 a.m. to 4 p.m. for fixed panel systems and 8 a.m. to 6 p.m. for pv systems utilizing tracking systems), while all other generation uses absolute minimum load.

(b) When this screen is being applied to a generating facility that serves some station service load, only the net injection into the electric system will be considered as part of the aggregate export capacity.

(c) Utility will not consider as part of the aggregate export capacity generation for purposes of this screen generating facility export capacity known to be already reflected in the minimum load data

**(2) Voltage and power quality screen:** In aggregate with existing generation on the line section:

(a) the voltage regulation on the line section can be maintained in compliance with relevant requirements under all system conditions;

(b) the voltage fluctuation is within acceptable limits as defined by Institute of Electrical and Electronics Engineers (IEEE) Standard 1453, or utility practice similar to IEEE Standard 1453; and (3) the harmonic levels meet IEEE Standard 519 limits. If the generating facility limits export pursuant to 17.9.568.12 NMAC, the export capacity instead of nameplate rating must be utilized in any analysis including power flow simulations.

**(3) Safety and reliability screen:** The location of the proposed generating facility and the aggregate export capacity on the line section do not create impacts to safety or reliability that cannot be adequately addressed without application of the detailed study process. If the generating facility limits export pursuant to 17.9.568.12 NMAC, the export capacity must be included in any analysis including power flow simulations, except when assessing fault current contribution. To assess fault current contribution, the analysis must use the rated fault current; for example, the customer



may provide manufacturer test data (pursuant to the fault current test described in IEEE 1547.1-2020 clause 5.18) showing that the fault current is independent of the nameplate rating. The utility shall give due consideration to the following and other factors in determining potential impacts to safety and reliability in applying this screen.

(a) whether the line section has significant minimum loading levels dominated by a small number of customers (e.g., several large commercial customers);

(b) whether the loading along the line section is uniform or even;

(c) whether the proposed generating facility is located in close proximity to the substation (i.e., less than 2.5 electrical circuit miles), and whether the line section from the substation to the point of interconnection is a mainline rated for normal and emergency ampacity;

(d) whether the proposed generating facility incorporates a time delay function to prevent reconnection of the generator to the system until system voltage and frequency are within normal limits for a prescribed time;

(e) whether operational flexibility is reduced by the proposed generating facility, such that transfer of the line section(s) of the generating facility to a neighboring distribution circuit/substation may trigger overloads or voltage issues;

(f) whether the proposed generating facility employs equipment or systems certified by a recognized standards organization to address technical issues such as, but not limited to, islanding, reverse power flow, or voltage quality.

**C. Supplemental review screening results:** Within 20 business days of an applicant's election to undergo supplemental review, the utility shall perform supplemental review using the screens set forth above and notify the customer of the results.

**(1) Failed screens and option to revise interconnection application:** If the proposed interconnection fails any of the supplemental review screens, the utility shall specify which screens the interconnection application failed, including the technical reason for failure, and the data and the analysis supporting the supplemental review. The utility shall provide information and detail about the specific system threshold or limitation causing the interconnection application to fail the screen. If the applicant chooses to amend the interconnection application to address the specific failed screens, the applicant must submit an updated interconnection application demonstrating the redesign within 10 business days after receiving the screen results. The redesign shall only include changes to address the screen failures or identified upgrades (which could include, for example, the addition of DC-coupled or AC-coupled energy storage). Increases in export capacity or changes in point of interconnection are not permitted and shall require the interconnection application to be withdrawn and resubmitted. The utility will evaluate whether the redesign addresses the screen failure and notify the

applicant of the results of this evaluation within 10 business days. This redesign option to mitigate impacts shall only be available one time during the supplemental review process. If the applicant does not amend or withdraw its interconnection application within 10 business days of receiving results, it shall continue to be evaluated under the detailed study process consistent with Subsection A of 17.9.568.18 NMAC below.

**(2) Approval:**

(a) If the proposed interconnection passes the supplemental screens above and does not require construction of facilities by the utility on its own system, the interconnection agreement shall be provided within 10 business days after the notification of the supplemental review results unless the provisions in Paragraph (2) of Subsection D of 17.9.568.17 NMAC apply.

(b) If interconnection facilities or minor modifications to the utility's system are required for the proposed interconnection to pass the supplemental screens above, the interconnection agreement, along with a non-binding good faith estimate for the interconnection facilities or minor modifications, shall be provided to the applicant within 15 business days after receiving written notification of the supplemental review results.

(c) If the proposed interconnection would require more than interconnection facilities or minor modifications to the utility's system to pass the supplemental screens above, the utility shall notify the applicant, at the same time it notifies the applicant with the supplemental review results, that the interconnection application shall be evaluated under the detailed study process unless the applicant withdraws its interconnection application.

(d) If a utility's transmission service agreement requires that it notify the transmission provider of interconnections (of any size or beyond a specific threshold as specified in the transmission service agreement), the utility shall provide the notice to the transmission provider immediately after it has applied the supplemental review screens. If the transmission provider determines that it does not need to conduct a further analysis of transmission system impacts, the utility shall provide the interconnection agreement to the customer within three business days of receiving the transmission provider's determination. If the transmission provider does require further analysis, the utility shall coordinate with the interconnection applicant and the transmission provider to ensure such analysis is conducted in a timely manner. If the transmission provider determines that there are impacts that require upgrades, the utility shall follow the detailed study process in 17.9.568.18 NMAC for providing the customer with an interconnection agreement.

[17.9.568.17 NMAC - N, 02/14/2023]

**17.9.568.18 DETAILED STUDY PROCESS:**

**A. Application:** An interconnection customer must submit an interconnection application, pursuant to Subsection B of 17.9.568.13 NMAC, using the interconnection application form for fast track and detailed study provided in Appendix 1C, which may be sent electronically to a recipient designated by the utility. The application fee specified in Subsection A of 17.9.568.23 NMAC shall be submitted along with the application. An applicant who was unable to proceed through the simplified or fast track process application due to failure of the screening process may request that the utility treat that existing interconnection application as a new detailed study application.

**B. Scoping meeting:**

(1) A scoping meeting will be held within 10 business days after the interconnection application is deemed complete., or the applicant agrees to proceed to detailed study after simplified or fast track review or as otherwise mutually agreed to by the parties. By mutual agreement of the parties, the scoping meeting, system impact study or facilities study may be waived. The utility and the applicant will bring to the meeting personnel, including system engineers and other resources as may be reasonably required to accomplish the purpose of the meeting.

(2) The purpose of the scoping meeting is to discuss the interconnection application, the reference point of applicability, and review existing studies relevant to the interconnection application. The parties shall further discuss whether the utility should perform a feasibility study (at the customer's option) or proceed directly to a system impact study, or a facilities study, or an interconnection agreement. If the parties agree that a feasibility study should be performed, the utility shall provide the applicant, as soon as possible, but not later than five business days after the scoping meeting, a feasibility study agreement, provided by the utility, including an outline of the scope of the study and a non-binding, good- faith estimate of the cost to perform the study.

(a) the feasibility study will provide a preliminary review of short circuit currents, including contribution from the proposed generation facility, and coordination and potential overloading of distribution circuit protection devices. If the interconnection applicant agrees to the feasibility study, the interconnection applicant shall provide an executed agreement and a deposit for the estimated costs provided by the utility;

(b) the scope of the feasibility study can be modified by the parties upon mutual agreement.

(3) In order to remain in consideration for interconnection, an applicant who has requested a feasibility study must return the executed feasibility study agreement and any required deposit within 15 business days. If the parties agree not to perform a feasibility study, the utility shall provide the applicant, no later than five business days after the scoping meeting, a system impact study agreement provided by the utility including an outline of the scope of the study and a non-binding, good faith estimate of the cost to perform the study.

**C. Feasibility study:** A feasibility study shall identify any potential adverse system impacts that would result from interconnection of the generating facility.

(1) A deposit of the lesser of fifty percent of the good faith estimated feasibility study cost, or earnest money of \$1,000.00 may be required by the utility.

(2) Once the feasibility study is completed, a feasibility study report shall be prepared and transmitted to the applicant. Barring unusual circumstances, the feasibility study must be completed and the feasibility study report transmitted within 30 business days of the applicant's agreement to conduct a feasibility study.

(3) If the feasibility study shows no potential for adverse system impacts, but facilities are required, the utility shall send the applicant a facilities study agreement, including an outline of the scope of the study and a non-binding, good faith estimate of the cost to perform the study.

(4) If no additional facilities are required, the utility shall provide the applicant an executable interconnection agreement within five business days.

**D. System impact study:** A system impact study shall identify and detail the electric system impacts that would result if the proposed generating facility were interconnected without project modifications or electric system modifications. A system impact study shall consist of a short circuit analysis, a stability analysis, a power flow analysis, voltage drop and flicker studies, protection and set point coordination studies, and grounding reviews, as necessary. A system impact study shall state the impact of assumptions upon which it is based, state the results of the analyses, and provide the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. A system impact study shall provide a list of facilities that are required as a result of the interconnection application and non-binding good faith estimates of cost responsibility and time to construct. The system impact study must take into account the proposed generating facility's design and operating characteristics, including but not limited to the proposed operating profile, and study the generating facility according to how it is proposed to be operated. If the generating facility limits export pursuant to 17.9.568.12 NMAC, the system impact study must use export capacity instead of the nameplate rating, except when assessing fault current contribution. To assess fault current contribution, the system impact study must use the rated fault current; for example, the customer may provide manufacturer test data (pursuant to the fault current test described in IEEE 1547.1-2020 clause 5.18) showing that the fault current is independent of the nameplate rating.

(1) The utility shall provide the applicant a system impact study agreement within five business days if:

(a) a feasibility study is conducted and indicates adverse impacts on either the transmission system or the distribution system;

(b) the parties agree at the scoping meeting to proceed directly to a system impact study;

(c) the scoping meeting is omitted by mutual agreement; or

(d) the simplified process or fast track process has been completed and the applicant has elected to continue with the study process, and a system impact study is required.

(2) The system impact study agreement shall include an outline of the scope of the study and a non-binding good-faith estimate of the cost to perform the study. If applicable, the agreement shall list any additional and reasonable technical data on the generating facility needed to perform the system impact study. The scope of and cost responsibilities for a system impact study must be described in the system impact study agreement. A deposit of the good faith estimated costs for each system impact study shall be provided by the applicant when it returns the study agreements. The additional and reasonable technical data, if applicable, shall be returned with the system impact agreement. In order to remain under consideration for interconnection, the applicant must return the executed system impact study agreements and a deposit for the good-faith estimates of the studies within 20 business days.

(3) If the feasibility study shows no potential for adverse impacts on either the transmission or distribution systems, (or the parties agree to proceed straight to a facilities study), the utility shall send the applicant a facilities study agreement, including an outline of the scope of the study and a non-binding, good faith estimate of the cost to perform the study, or an executable interconnection agreement, as applicable.

(4) A system impact study shall be completed within 40 business days after the system impact study agreement is signed by the parties and delivered with deposit to the utility. The results and, if necessary, facilities study agreement shall be delivered to the applicant within five business days of completion of the system impact study. Upon request, the utility shall provide the applicant supporting documentation and workpapers developed in the preparation of the system impact study.

(5) In instances where the system impact study shows potential for transmission system adverse system impacts, within five business days following the identification of such impacts by the utility, the utility shall coordinate with the appropriate transmission provider to have the necessary studies completed to determine if the DER causes any adverse transmission impacts. If the utility's transmission service agreement requires that the transmission provider be notified of an interconnection, it shall provide that notice, regardless of whether the system impact study shows potential for transmission system adverse system impacts, and coordinate with the transmission provider on any studies it may determine are necessary.

(6) In order to remain in consideration for interconnection, an applicant must return the executed transmission system impact study agreement within 15 business days of receipt of the agreement.

(7) A transmission system impact study, if required, shall be completed and the results transmitted to the applicant in as timely a manner as possible after the transmission system impact study agreement is signed by the parties. The utility shall be responsible for coordination with the transmission provider as needed. Affected systems shall participate in the study and provide all information necessary to prepare the study.

(8) A one-time modification of the interconnection application is allowed as a result of information from the system impact study report.

(a) if the applicant chooses to amend the interconnection application to address the specific system impacts, the applicant must submit an updated interconnection application demonstrating the redesign within 15 business days after receiving the system impact study results from the utility. The redesign shall only include changes designed to address the specific system impacts or identified upgrades (which could include, for example, the addition of DC-coupled or AC-coupled energy storage). This redesign option to mitigate impacts shall only be available one time during the detailed study process. Increases in export capacity or changes in point of interconnection are not permitted and shall require the interconnection application to be withdrawn and resubmitted;

(b) the utility shall notify the interconnecting customer within ten business days of receipt of the modified interconnection application if any additional information is needed. If additional information is needed or document corrections are required, the applicant shall provide the required information or corrections within 10 business days from receipt of the utility notice;

(c) the actual costs to the utility for any necessary restudies as a result of a modification described above shall be paid by the applicant. Such restudies should be limited to the impacts of the modification and shall be billed to the applicant at cost and not for work previously completed. The utility shall use reasonable efforts to limit the scope of such restudies to what is necessary. The revised impact study shall be completed within 15 business days.

**E. Facilities study:** Once the required system impact study/studies are completed, a system impact report shall be prepared and transmitted to the applicant along with a facilities study agreement within five business days.

(1) The report and agreement shall provide an outline and non-binding, good faith estimate of the cost of the facilities study.

(2) In order to remain under consideration for interconnection, the applicant must return the executed facilities agreement, and a deposit for the good-faith estimates of the studies, within 15 business days. The facilities study shall specify and estimate the cost of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusions of the system impact study(s).

(3) Design for any required interconnection facilities or upgrades shall be performed under the facilities study agreement. The utility may contract with consultants to perform activities required under the study agreement.

(4) The applicant and the utility may agree to allow the applicant to arrange for the design of some of the interconnection facilities, but the proposed design will be reviewed subject to modification by the utility prior to acceptance.

(5) In cases where upgrades are required, the facilities study must be completed within 45 business days of the receipt of the executed facilities study agreement and deposit. In cases where no upgrades are necessary, and the required facilities are limited to interconnection facilities, the facilities study must be completed within 30 business days of the receipt of the executed facilities study agreement and deposit.

(6) Once the facilities study is completed, a facilities study report shall be prepared and transmitted to the applicant. Upon request, the utility shall provide applicant supporting documentation and workpapers developed in the preparation of the interconnection facilities study.

(7) Upon completion of the facilities study, and with the agreement of the interconnection applicant to pay for interconnection facilities or upgrades identified in the study, the utility shall provide the interconnection applicant with an executable interconnection agreement within five business days.

**F. Payment for study costs:** For each of the studies conducted, any study fees shall be based on the utility's actual costs and will be invoiced to the applicant after the study is completed and delivered and will include a summary of professional time. The applicant must pay any study costs that exceed the deposit without interest within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the utility shall refund such excess within 30 calendar days of the invoice without interest.

[17.9.568.18 NMAC - N, 02/14/2023]

#### **17.9.568.19 COST SHARING FOR INTERCONNECTION UPGRADES:**

**A.** The cost of utility system modifications required pursuant to the fast track process or the full interconnection study process shall be borne by the applicant unless

otherwise agreed to by the parties or following a determination by the commission that some or all of the costs constitute system benefits eligible for cost-sharing options:

(1) The commission may determine on a case-by-case basis whether the cost of distribution system upgrades necessary to interconnect one or more generating facilities may be eligible for some form of cost-sharing:

(a) among several developers using the same distribution facilities;

(b) among all ratepayers of the qualifying utility via rate base adjustments; or

(c) among ratepayers of the same rate class as subscribers to the community solar facility via a rate rider for that class.

(2) In making such a determination that there are public benefits to such a cost-sharing mechanism, the commission shall employ the same analysis as provided for cost-sharing or rate basing grid modernization projects as defined by Section 62-8-13 NMSA 1978 (Grid Modernization Act 2019, HB 233) to make a finding that the approved expenditures are:

(a) reasonably expected to improve the public utility's electrical system efficiency, reliability, resilience and security; maintain reasonable operations, maintenance and ratepayer costs; and meet energy demands through a flexible, diversified and distributed energy portfolio;

(b) reasonably expected to increase access to, and use of, clean and renewable energy, with consideration given to increasing access to low-income subscribers and subscribers in underserved communities;

(c) designed to contribute to the reduction of air pollution, including greenhouse gases;

(3) Expenditures approved for such cost sharing of necessary interconnection upgrades shall not be considered a "subsidization" subject to the three percent limitations spelled out in this rule or in the Community Solar Act.

[17.9.568.19 NMAC - N, 02/14/2023]

#### **17.9.568.20 INTERCONNECTION AGREEMENT:**

**A.** For simplified process interconnection projects, the applicant will sign a form interconnection agreement at the time it submits its interconnection application, and the utility will return a counter-signed interconnection agreement with the screen results.

**B.** For fast track and detailed study interconnection projects: after receiving an interconnection agreement from the utility, the applicant shall have 30 business days or



another mutually agreeable timeframe to sign and return the interconnection agreement. If the applicant does not sign the interconnection agreement within 30 business days, the interconnection application shall be deemed withdrawn. After the interconnection agreement is signed by the parties, the interconnection of the generating facility shall proceed under the provisions of the interconnection agreement.

[17.9.568.20 NMAC - N, 02/14/2023]

#### **17.9.568.21 PERMISSION TO OPERATE:**

**A.** The interconnection customer may not commence operations until its interconnection application is deemed complete and the utility has issued a permission to operate (PTO). The interconnection customer shall provide the utility with at least 10 business days' notice of the anticipated start date of the generating facility.

**B.** Within 10 business days of receiving the notice of the anticipated start date of the generating facility, the utility may conduct an inspection of the generating facility at a time mutually agreeable to the parties. The inspection may include verification that the facility complies with applicable codes and standards, the terms of the interconnection agreement, and may include a witness test. The utility may also schedule appropriate metering replacement or programming if necessary. If the generating facility passes the inspection, the utility shall provide written notice of the passage within three business days. If a Generating Facility initially fails a utility inspection, the utility shall offer to redo the inspection at the applicant's expense at a time mutually agreeable to the parties. If the utility determines that the generating facility fails the inspection, the utility must provide the applicant with a written explanation detailing the reasons for the failure and any standards violated. If the utility determines no inspection is necessary, it shall notify the applicant within three business days of receiving the notice of the anticipated start date.

**C.** For simplified process and fast track generating facilities, utility approval for interconnection (i.e., permission to operate) shall normally be processed not later than 10 business days following the utility's receipt of:

- (1) a completed net energy metering interconnection application, if appropriate, including all supporting documents and required payments;
- (2) a completed signed interconnection agreement, if appropriate; and
- (3) evidence of the applicant's final electric inspection clearance from the governmental authority having jurisdiction over the generating facility. If the 10-day period cannot be met, the utility shall notify the applicant.

**D.** A generating facility that has not been approved for parallel operation within one year of execution of the interconnection agreement is subject to withdrawal by utility; however, the utility may not deem the interconnection application withdrawn if:

(1) applicant provides reasonable evidence that the interconnection application is still active; or

(2) the delay is at no fault of applicant.

[17.9.568.21 NMAC - N, 02/14/2023]

#### **17.9.568.22 INTERCONNECTION APPLICATION REVIEW FLOW CHART:**

**[RESERVED]**

[17.9.568.22 NMAC - Repealed, 02/14/2023]

#### **17.9.568.23 GENERAL PROVISIONS APPLICABLE TO INTERCONNECTION APPLICATIONS:**

**A.** An applicant shall pay the following application fee to the utility at the time it delivers its interconnection application to the utility:

(1) \$150.00 if the proposed generating facilities will have a nameplate rating less than or equal to 25 kW;

(2) \$300.00 if the proposed generating facilities will have a nameplate rating greater than 25 kW and less than or equal to 100 kW; or

(3) \$300.00 + \$1.00 per kW if the proposed generating facilities will have a nameplate rating greater than 100 kW;

(4) if the proposed generating facility is non-export only, it shall pay \$150.00, if it has a nameplate rating below 100kW, or \$300 if the nameplate rating is greater than 100 kW.

**B.** In addition to the fees authorized by this rule, a small utility may collect from the applicant the reasonable costs incurred to obtain necessary expertise from consultants to review interconnection applications for generating facilities with rated capacities greater than 10 kW. A small utility shall provide a good faith estimate of the costs of such consultants to an applicant within 10 business days of the date the interconnection application is delivered to the utility.

**C.** Commissioning tests of the interconnection customer's installed equipment shall be performed pursuant to applicable codes and standards, including IEEE 1547.1 "IEEE standard conformance test procedures for equipment interconnecting distributed energy resources with electric power systems." A utility must be given at least five business days written notice of the tests, or as otherwise mutually agreed to by the parties, and may be present to witness the commissioning tests. An interconnection customer shall reimburse a utility for its costs associated with witnessing commissioning tests

performed except that a utility may not charge a fee in addition to the interconnection application fee for the cost of witnessing commissioning tests for inverter-based generating facilities that have nameplate capacities that are less than or equal to 25 kW.

**D.** If an interconnection customer requests an increase in capacity for an existing generating facility, the interconnection application shall be evaluated on the basis of the new total capacity of the generating facility. If an interconnection customer requests interconnection of a generating facility that includes multiple energy production devices at a site for which the interconnection customer seeks a single point of common coupling, the interconnection application shall be evaluated on the basis of the aggregate capacity of the multiple devices.

**E.** Confidential information shall remain confidential unless otherwise ordered by the commission. Confidential information shall mean any confidential and proprietary information provided by one party to the other party that is clearly marked or otherwise designated "confidential".

[17.9.568.23 NMAC - N, 02/14/2023]

#### **17.9.568.24 GENERAL PROVISIONS APPLICABLE TO UTILITIES:**

**A.** A utility shall interconnect any interconnection customer that meets the interconnection criteria set forth in this rule. A utility shall make reasonable efforts to keep the applicant informed of the status and progress.

**B.** Utilities shall reasonably endeavor to aid and assist interconnection customers to ensure that a proposed generating facility's interconnection design, operation, and maintenance are appropriate for connection to the utility's system. This may include consultations with the applicant and its engineer and other representatives.

**C.** Utilities shall make reasonable efforts to meet all time frames provided for in this rule unless a utility and an applicant agree to a different schedule. If a utility cannot meet a deadline provided herein, it shall notify the applicant in writing within one business day, explain the reason for its inability to meet the deadline, and provide an estimated time by which it will complete its activity. The utility shall keep the applicant updated of any changes in the expected completion date.

**D.** Utilities shall use the same reasonable efforts in processing and analyzing interconnection applications from all interconnection customers, whether the generating facility is owned or operated by the utility, its subsidiaries or affiliates, or others.

**E.** Utilities shall maintain records for three years of each interconnection application received, the times required to complete each interconnection application approval or disapproval, and justification for the utility's disapproval of any interconnection application. Other reporting requirements are specified in 17.9.568.23 NMAC.

**F.** Utilities shall maintain current, clear, and concise information regarding this rule including the name, telephone number, and email address of contact persons. The information shall be easily accessible on the utility's website beginning within one month of the effective date of this rule, or the information may be provided in bill inserts or separate mailings sent no later than one month after the effective date of this rule and no less often than once each year thereafter. Each utility shall maintain a copy of this rule at its principal office and make the same available for public inspection and copying during regular business hours.

**G.** A small utility that uses a consultant to review a proposal to interconnect a generating facility with the small utility's system may extend each of the time deadlines for review of the fast track process by a period not to exceed 20 business days provided that the small utility shall make a good faith effort to complete the review sooner.

**H.** Compliance with this interconnection process does not constitute a request for, nor provision of any transmission delivery service, or any local distribution delivery service. Interconnection under this rule does not constitute an agreement by the utility to purchase or pay for any energy, inadvertently or intentionally exported.

[17.9.568.24 NMAC - N, NMAC, 02/14/2023]

#### **17.9.568.25 GENERAL PROVISIONS APPLICABLE TO INTERCONNECTION CUSTOMERS:**

**A.** An interconnection customer is responsible for the prudent maintenance and upkeep of its interconnection equipment.

**B.** Upon the petition of a utility, for good cause shown, the commission may require a customer with a generating facility with a rated capacity of 250 kW or less to obtain general liability insurance prior to connecting with a public utility. A utility may require that an applicant proposing to connect a generating facility with a rated capacity greater than 250 kW provide proof of insurance with reasonable limits not to exceed \$1,000,000.00 or other reasonable evidence of financial responsibility.

[17.9.568.25 NMAC - Rp, 17.9.568.14 NMAC, 02/14/2023]

#### **17.9.568.26 EXTENSIONS:**

**A.** The applicant may request in writing the extension of one timeline set by these rules. The requested extension may be for up to one-half of the time originally allotted (e.g., a 10 business day extension for a 20 business day timeframe). The utility shall not unreasonably refuse this request.

**B.** If further timeline extensions are necessary, the applicant may request an extension and the utility shall grant the extension so long as it does not unreasonably delay the processing of later queued interconnection applications.

[17.9.568.26 NMAC - N, 02/14/2023]

**17.9.568.27 DISPUTE RESOLUTION:**

**A.** Each party agrees to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner.

**B.** In the event of a dispute, either party shall provide the other party with a written notice of dispute. Such notice shall describe in detail the nature of the dispute. The non-disputing party shall acknowledge the notice within three business days of its receipt and identify a representative with the authority to make decisions for the non-disputing party with respect to the dispute.

**C.** If the dispute has not been resolved in eight business days for timeline related disputes or 20 business days for all other disputes after the receipt of the notice, the parties may, upon mutual agreement:

(1) continue negotiations for an additional 10 business days; or

(2) seek resolution through the assistance of a dispute resolution service. The dispute resolution service will assist the parties in either resolving the dispute or in selecting an appropriate dispute resolution venue (e.g., mediation, settlement judge, early neutral evaluation, or qualified technical expert(s)) to assist the parties in resolving their dispute. Each party will be responsible for one-half of any costs paid to neutral third-parties.

**D.** For any technical disputes, both parties shall have a qualified technical representative present in the attempts to resolve the dispute.

**E.** If the dispute remains unresolved after 30 business days, either party may petition the commission to handle the dispute as a formal complaint or may exercise whatever rights and remedies it may have in equity or law.

**F.** If the dispute remains unresolved after 90 business days, a formal complaint to the commission has not been submitted, and the dispute is causing delays to other projects in the queue, the utility may adjust the queue position of the disputing project. The disputing party shall be responsible for any additional study costs that may result from the change in queue position.

[17.9.568.27 NMAC - N, 02/14/2023]

**17.9.568.28 REPORTING REQUIREMENTS:**

**A.** For each request for a pre-application report or interconnection application received, the utility shall collect and retain the following data, at a minimum:

- (1) facility capacity;
- (2) DER type (technology);
- (3) number of pre-application reports requested and processed;
- (4) date of interconnection application submittal;
- (5) date interconnection application deemed complete;
- (6) date and disposition at applicable milestones in the interconnection process, including which screens, if any, are failed in the applicable process:
  - (a) initial review, (under the simplified or fast track process);
  - (b) supplemental review;
  - (c) feasibility study;
  - (d) system impact study;
  - (e) facilities study;
  - (f) interconnection agreement; and
  - (g) permission to operate.
- (7) interconnection fees and study costs assessed to the customer;
- (8) interconnection facility and distribution upgrade costs assessed to the customer;
- (9) number of times outside consultants were utilized and the range of fees assessed to the customer for the consultants services.

**B.** Twice annually each utility shall submit to the commission and make available to the public on its website an interconnection report with the following information. The report shall contain information in the following areas, including relevant totals for both the year.

- (1) Pre-application reports: total pre-application reports requested, completed within the time limits (20 business days for system sizes up to one MW, and 30 business days for system sizes greater than one MW), and number completed outside the specified time limits.

(2) Interconnection applications: total number received, (noting nameplate rating of proposed systems).

(3) Number of interconnection applications processed within specified timeframes and completed outside of specified time limits.

(4) Number of interconnection upgrades completed within negotiated timelines and outside of negotiated timelines, including a narrative on how much time it is taking to complete typical upgrades.

(5) Number of interconnection applications that required more than initial review: median number of days to complete such reviews.

(6) Number of interconnection applications withdrawn.

(7) Number of interconnection agreements executed.

(8) A table showing the range of fees charged for the feasibility study, system impact study, and facilities study.

(9) A table showing how many projects failed each of the interconnection screens in the simplified, fast track and supplemental review processes broken out by project size and type (i.e., solar, storage, solar+storage) in the following increments: up to 25 kW, 25-100 kW, 100-500 kW, 500 kW to 2 MW, 2 to 5 MW.

(10) A narrative of how the process is working and where there is potential for improvement by the utility or interconnection applicants.

[17.9.568.28 NMAC - N, 02/14/2023]

#### **17.9.568.29 SAFETY PROVISIONS:**

**A.** A DER project that operates outside of its approved export status or operational limits may be disconnected by the utility following notification of violation and a 30-day cure period.

**B.** An interconnection customer shall separate from the utility system in the event of any one or more of the following conditions:

(1) a fault on the generating facility's system; or

(2) a generating facility contribution to a utility system emergency; or

(3) abnormal frequency or voltage conditions on the utility's system; or

(4) any occurrence or condition that will endanger utility employees or customers; or

(5) a generating facility condition that would otherwise interfere with a utility's ability to provide safe and reliable electric service to other customers; or

(6) the sudden loss of the system power.

**C.** The utility may temporarily disconnect the generating facility upon the following conditions:

(1) for scheduled outages per notice requirements in the utility's tariff or commission rules;

(2) for unscheduled outages or emergency conditions pursuant to Subsection B of 17.9.568.29 NMAC;

(3) if the generating facility does not operate in the manner consistent with these terms and conditions;

(4) the utility shall inform the customer in advance of any scheduled disconnection, or as is reasonable after an unscheduled disconnection.

**D.** A visible-open, load break disconnect switch between the generating facility and the utility system that is visibly marked "generating facility generation disconnect" and is accessible to and lockable by the utility is required for all generating facilities except for those generating facilities with a maximum capacity rating of 10 kW or less that use a certified inverter including a self-contained renewable energy certificate (REC) meter and either:

(1) a utility accessible AC load break disconnect; or

(2) a utility accessible DC load break disconnect where there is no other source of generated or stored energy connected to the system.

**E.** Interconnection customers shall post a permanent and weatherproof one-line electrical diagram of the generating facility located at the point of service connection to the utility. Generating facilities where the disconnect switch is not located in close proximity to the utility meter must post a permanent and weatherproof map showing the location of all major equipment including the utility meter point, the generating facility generation disconnect, and the generating facility generation breaker. Non-residential generating facilities larger than 10 kW shall include with or attached to the map the names and current telephone numbers of at least two persons authorized to provide access to the generating facility and who have authority to make decisions regarding the generating facility interconnection and operation.



**F.** If the generating facility interconnection equipment package is not certified or if a certified equipment package has been modified, the generating facility interconnection equipment package shall be reviewed and approved by a professional electrical engineer, registered in the state of New Mexico.

[17.9.568.29 NMAC - Rp, 17.9.568.15 NMAC, 02/14/2023]

**17.9.568.30 VARIANCES:**

A party may file a request for a variance from the requirements of this rule. Such application shall describe the reasons for the variance; set out the effect of complying with this rule on the parties and the utility's customers if the variance is not granted; identify the section(s) of this rule for which the variance is requested; describe the expected result which the request will have if granted; and state how the variance will aid in achieving the purposes of this rule. The commission may grant a request for a procedural variance through an order issued by the chairman, a commissioner or a designated hearing examiner. Other variances shall be presented to the commission as a body for determination.

[17.9.568.30 NMAC - Rp, 17.9.568.16 NMAC, 02/14/2023]

**PART 569: INTERCONNECTION OF GENERATING FACILITIES WITH A RATED CAPACITY GREATER THAN 10 MW CONNECTING TO A UTILITY SYSTEM**

**17.9.569.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.9.569.1 NMAC - N, 10/15/08]

**17.9.569.2 SCOPE:**

**A.** This rule applies to every electric utility including rural electric cooperatives and investor-owned utilities operating within the state of New Mexico that is subject to the jurisdiction of the New Mexico public regulation commission. These standards and procedures apply to both qualifying and non-qualifying facilities.

**B.** The standards and procedures described in this rule 17.9.569 NMAC apply only to the interconnection of generating facilities with a rated capacity greater than 10 MW. The standards and procedures described in 17.9.568 NMAC apply to the interconnection of generating facilities with a rated capacity up to and including 10 MW.

[17.9.569.2 NMAC - N, 10/15/2008]

**17.9.569.3 STATUTORY AUTHORITY:**

This rule is adopted under the authority vested in this commission by the New Mexico Public Regulation Commission Act, NMSA 1978, Section 8-8-1 et seq. and the Public Utility Act, NMSA 1978, Section 62-3-1 et seq.

[17.9.569.3 NMAC - N, 10/15/2008]

**17.9.569.4 DURATION:**

Permanent.

[17.9.569.4 NMAC - N, 10/15/2008]

**17.9.569.5 EFFECTIVE DATE:**

October 15, 2008. All interconnection contracts between a utility and an interconnection customer existing at the time 17.9.569 NMAC is adopted shall automatically continue in full force and effect. Any changes made to existing interconnection contracts shall conform to the provisions of 17.9.569 NMAC.

[17.9.569.5 NMAC - N, 10/15/2008]

**17.9.569.6 OBJECTIVE:**

The purpose of this rule is to set forth common interconnection requirements for the interconnection of generating facilities with a rated capacity greater than 10 MW in a safe and reliable manner.

[17.9.569.6 NMAC - N, 10/15/2008]

**17.9.569.7 DEFINITIONS:**

Terms used in this rule 17.9.569 NMAC shall have the following meanings.

**A.** Business day means Monday through Friday, excluding holidays observed by the utility.

**B.** Generating facility means the interconnection customer's device for the production of electricity identified in the interconnection application, including all generators, electrical wires, equipment, and other facilities owned or provided by the interconnection customer for the purpose of producing electric power.

**C.** Interconnection application means the request by an interconnection customer to interconnect a new generating facility, or to increase the capacity or make a material modification to the operating characteristics of an existing generating facility that is interconnected with the utility's system.

**D.** Interconnection customer means any person that proposes to interconnect its generating facility with the utility's system.

**E.** Party means the utility and the interconnection customer separately or in combination.

**F.** Person, for purposes of this rule, means an individual, firm, partnership, company, rural electric cooperative organized under Laws 1937, Chapter 100 or the Rural Electric Cooperative Act, corporation or lessee, trustee or receiver appointed by any court.

**G.** Point of common coupling (PCC) means the point where the interconnection facilities connect with the utility's system.

**H.** Power conversion unit (PCU) means an inverter or AC generator, not including the energy source.

**I.** Qualifying facility means a cogeneration facility or a small power production facility which meets the criteria for qualification contained in 18 C.F.R. Section 292.203.

**J.** Rated capacity means the total AC nameplate rating of the power conversion unit(s) at the point of common coupling.

**K.** System means the facilities owned, controlled, or operated by the utility that are used to provide electric service under a utility's tariff.

**L.** Utility means a utility or public utility as defined in NMSA 62-3-3 (G) serving electric customers subject to the jurisdiction of the commission.

[17.9.569.7 NMAC - N, 10/15/2008]

**17.9.569.8 GENERAL PROVISIONS FOR INTERCONNECTION APPLICATIONS FOR FACILITIES WITH RATED CAPACITIES GREATER THAN 10 MW:**

**A.** A utility shall interconnect with any interconnection customer that:

- (1) is in its service area;
- (2) qualifies for the interconnection procedures in this rule 17.9.569 NMAC;
- (3) files an interconnection application in accordance with Subsection B of 17.9.569.8 NMAC;
- (4) meets the utility's system safety standards;
- (5) has paid the estimated costs of interconnection (if applicable);

(6) has entered into a contract with the utility pursuant to 17.9.569 NMAC;

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

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

**B.** An interconnection customer subject to this rule 17.9.569 NMAC shall make its application for interconnection to a utility using the interconnection application form provided in the *interconnection manual* and its exhibits, incorporated by reference in 17.9.568 NMAC.

**C.** Unless a longer period of time is agreed to in writing by the interconnection customer, within 30 business days of receipt of an interconnection application on the prescribed form, a utility shall furnish to the interconnection customer a good faith, detailed list of required interconnection equipment and an itemized estimate of the costs that the proposed interconnection customer will have to pay to the utility to complete the interconnection. The list of required interconnection equipment shall not change substantially other than in response to changes in design, location of equipment, and/or intended operation of the equipment of the generating facility.

**D.** If an interconnection application fails to comply with the requirements of this rule 17.9.569 NMAC or is otherwise insufficient, the utility shall attempt to obtain the required information to complete the interconnection application by telephone. If the utility cannot so obtain complete information, the utility shall within 15 business days of receipt of the interconnection application notify the interconnection customer specifying the deficiencies in the interconnection application.

**E.** If the interconnection customer disagrees with the utility's determination that the interconnection application is insufficient, it may within 15 business days of its receipt of the utility's notification initiate a proceeding before the commission pursuant to the complaint process of 17.9.570 NMAC. In such a proceeding, the utility shall have the burden to establish that the rejection was justified.

**F.** The interconnection customer shall give the utility at least 60 days written advance notice to interconnect. Such notice shall specify the date the generating facility will be ready for interconnection, the date the generating facility will be able to commence testing, and the anticipated date of operation after testing. The interconnection customer shall pay the estimated costs of interconnection in full at the time the notice to interconnect is given. The utility shall pay an interconnection customer for any energy produced during testing of the generating facility at the appropriate energy rate pursuant to Subsection B of 17.9.570.11 NMAC.

**G.** If the utility determines that it cannot interconnect the generating facility within the time set in the notice to interconnect because adequate interconnection facilities are not available, it shall, within 15 business days of receipt of the notice to interconnect, notify the interconnection customer specifying the reasons it cannot interconnect as requested by the interconnection customer and specifying the date interconnection can be made. If the interconnection customer objects to the date for interconnection specified by the utility, objects to the utility's determination that adequate interconnection facilities are not available, or disputes the good faith efforts of the utility to interconnect, the interconnection customer may initiate a proceeding before the commission pursuant to the complaint process of 17.9.570 NMAC.

**H.** Payment for all costs of interconnection shall be the responsibility of the interconnection customer. If the utility incurs any of the costs of interconnection, the interconnection customer shall reimburse the utility for such costs. The estimated costs for interconnection described in this rule 17.9.569 NMAC shall be paid prior to interconnection. Upon completion of the interconnection the actual costs of interconnection shall be determined in a verifiable form by the utility, and any actual costs in excess of the estimated costs shall be paid by the interconnection customer to the utility within 30 days. If the estimated costs exceed actual costs the utility shall refund the difference to the interconnection customer within 30 days.

**I.** Each utility shall develop and file with the commission proposed general safety standards governing the installation, operation, and maintenance of the protective equipment required to integrate generating facilities subject to this rule 17.9.569 NMAC into the utility's electric system (if any such equipment is required). These general safety standards may contain reasonable provisions for case-by-case standards for certain generation facilities based on their size or location. These standards shall be reasonable and nondiscriminatory and shall be designed to assure system and personnel safety.

**J.** The generating facility's output to the utility will meet the following interconnection standards.

(1) The voltage will be that voltage normally available on the utility system at the generator's site or such other standard voltage to which the parties may agree.

(2) The frequency will be 60 hertz.

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

(4) The protective devices connected between the output of the generating facility and the utility system must be rated for the maximum available fault current that the utility's system may be capable of developing at the point of interconnection. Such devices shall disconnect the generating facility's generation from the utility's system in

the event of a fault on the generating facility system in order to maintain continuity of service to other customers connected to the secondary of the distribution transformer or other portions of the utility's system.

(5) The generating facility's output shall not affect the utility's distribution system. This includes but is not limited to:

- (a) overload of distribution equipment;
- (b) abnormal harmonic currents or voltages;
- (c) interference with automatic voltage regulation equipment; and
- (d) electronic noise that would interfere with communications.

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

**K.** Interconnection and safety requirements shall include the ability to synchronize on connecting to the utility system to avoid voltage decay or out-of-phase connection. The generating facility's controls shall be capable of disconnecting the generation output to the utility or otherwise limiting the generating facility's input to avoid overload of any of the utility system components or undesirable transient voltage or frequency fluctuations in the event of a fault on the utility's system or under conditions of large motor start or capacitor switching operations on the utility system to which the generating facility is interconnected. These devices must be coordinated with the utility's protective system. The generating facility must meet the following safety standards.

(1) The generating facility's interconnection must meet the requirements of the latest editions of the national electrical safety code, national electrical code, and the state of New Mexico electrical code.

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

(3) There must be a three-phase load break disconnect between the generating facility's interconnection and the utility that can be controlled and operated by the utility.

(a) Where the generating facility is a customer of the utility, the disconnect or disconnects shall disconnect the generating facility's output without interrupting utility service to the customer's other load unless otherwise agreed.

(b) The disconnect must provide a visible air gap which will assure disconnection of the generating facility before a utility employee does any work on the circuit or circuits to which the interconnection is made.

(c) The meter socket or secondary connection compartment or bus compartment may be provided by the utility or provision may be required of the interconnection customer as is presently provided for in the case of each component by the rules and regulations filed with the commission in the case of the specific utility.

(d) In any event the capacity and the connection arrangements of the specific device must be approved by the utility if the generating facility is required to provide the device.

L. A utility may require that an interconnection customer provide proof of insurance or other evidence of financial responsibility in an amount reasonably related to the risks involved.

[17.9.569.8 NMAC - N, 10/15/2008]

#### **17.9.569.9 VARIANCES:**

A party may file a request for a variance from the requirements of this rule. Such application shall describe the reasons for the variance; set out the effect of complying with this rule on the parties and the utility's customers if the variance is not granted; identify the section(s) of this rule for which the variance is requested; describe the expected result which the request will have if granted; and state how the variance will aid in achieving the purposes of this rule. The commission may grant a request for a procedural variance through an order issued by the chairman, a commissioner or a designated hearing examiner. Other variances shall be presented to the commission as a body for determination.

[17.9.569.9 NMAC - N, 10/15/2008]

## **PART 570: GOVERNING COGENERATION AND SMALL POWER PRODUCTION**

#### **17.9.570.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.9.570.1 NMAC - Rp, 17.9.570.1 NMAC, 5/24/2022]

#### **17.9.570.2 SCOPE:**

A. 17.9.570 NMAC applies to every electric utility (investor-owned, rural electric cooperative, municipal, or an entity providing wholesale rates and service) operating

within the state of New Mexico that is subject to the jurisdiction of the New Mexico public regulation commission as provided by law.

**B.** It is intended that the obligations of utilities provided for in 17.9.570 NMAC shall extend to both production and consumption functions of qualifying facilities irrespective of whether the production and consumption functions are singly or separately owned. In situations where the production and consumption functions are separately owned, the qualifying facility or its operator may elect to enter into the contract with the utility.

**C.** All interconnection contracts between utilities and qualifying facilities existing at the time 17.9.570 NMAC is adopted shall automatically continue in full force and effect with no change in rates for the purchase of power from the qualifying facilities. Any changes made to the existing interconnection contracts shall be made by mutual agreement and shall conform to the provisions of 17.9.570 NMAC.

**D.** Variances which have been granted by the commission from earlier versions of general order no. 37 and under 17.9.570 NMAC shall continue in full force and effect unless the commission specifically rescinds any such variance.

[17.9.570.2 NMAC - Rp, 17.9.570.2 NMAC, 5/24/2022]

#### **17.9.570.3 STATUTORY AUTHORITY:**

Sections 8-8-15, 62-6-4, 62-6-19, 62-6-24, and 62-8-2 NMSA 1978; 16 USCA Section 2621.

[17.9.570.3 NMAC - Rp, 17.9.570.3 NMAC, 5/24/2022]

#### **17.9.570.4 DURATION:**

Permanent.

[17.9.570.4 NMAC - Rp, 17.9.570.4 NMAC, 5/24/2022]

#### **17.9.570.5 EFFECTIVE DATE:**

May 24, 2022, unless a later date is cited at the end of a section. Applications filed prior to this effective date shall be governed by the specific orders related to those applications.

[17.9.570.5 NMAC - Rp, 17.9.570.5 NMAC, 5/24/2022]

#### **17.9.570.6 OBJECTIVE:**

**A.** 17.9.570 NMAC is to govern the purchase of power from and sale of power to qualifying facilities by:



- (1) enabling the development of a market for the power produced by qualifying facilities;
- (2) establishing reasonable and objective criteria to determine when a legally enforceable obligation arises;
- (3) establishing guidelines for the calculation of utilities' avoided costs, including the option to use market-based methods to calculate avoided energy and capacity costs; and
- (4) providing meaningful access to critical cost information from utilities.

**B.** 17.9.570.14 NMAC is intended to simplify the metering procedures for qualifying facilities up to and including 10kW and encourage the use of small-scale customer-owned renewable or alternative energy resources in recognition of the beneficial effects the development of such resources will have on the environment of New Mexico.

**C.** 17.9.570 NMAC is intended to implement regulations of the federal energy regulatory commission, 18 C.F.R. Section 292, as amended, promulgated pursuant to the Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat. 3117 (codified as amended starting at 16 U.S.C. Section 824) and the New Mexico Public Utility Act, Sections 62-3-1 et. seq., NMSA 1978 as amended.

**D.** The standards and procedures for the interconnection of generating facilities with rated capacities up to and including 10 MW are set forth in 17.9.568 NMAC. The standards and procedures for the interconnection of generating facilities with rated capacities greater than 10 MW are set forth in 17.9.569 NMAC.

[17.9.570.6 NMAC - Rp, 17.9.570.6 NMAC, 5/24/2022]

#### **17.9.570.7 DEFINITIONS:**

Terms defined in the Public Utility Regulatory Policies Act of 1978 (PURPA) shall have the same meaning for purposes of this rule as they have under PURPA, unless further defined in 18 CFR 292.101. The following definitions apply for purposes of this rule:

##### **A. Definitions beginning with "A":**

(1) avoided costs means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source. Avoided costs shall exclude all costs that the utility would not have been incurred "but for" the sale by the qualifying facility. Costs that would not have been incurred "but for" the sale by the qualifying facility shall include, but are not limited to, settlement adjustment charges and costs associated with additional reserves, systems operation impacts, and curtailments;

(2) as available power means power that a qualifying facility may sell, but has no legal obligation to sell, to the utility.

**B. Definitions beginning with "B":** back-up power means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the qualifying facility;

**C. Definitions beginning with "C":** commission means New Mexico public regulation commission.

**D. Definitions beginning with "D":** design capacity means the total AC nameplate power rating of the power conversion unit(s) at the point of common coupling.

**E. Definitions beginning with "E": [RESERVED]**

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

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

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

**I. Definitions beginning with "I":**

(1) interconnection costs means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs;

(2) interruptible power means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

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

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

**L. Definitions beginning with "L":**

(1) locational marginal price means the price for energy at a particular location as determined in the western energy imbalance market or in the "SPP energy

markets" which means the real-time energy markets operated by southwest power pool, inc;

(2) legally enforceable obligation means a public utility's obligation to purchase as-available energy from a qualified facility and is created when the criteria set forth in 17.9.570.9 NMAC are met and refers to the qualifying facility's obligation to sell power to a utility for the term of the obligation, and to the utility's corresponding obligation to purchase power from the qualifying facility for the term of the obligation.

**M. Definitions beginning with "M":** maintenance power means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility.

**N. Definitions beginning with "N":**

(1) net metering means the difference between the energy produced by the qualifying facility's generation and the energy that would have otherwise been supplied by the utility to the qualifying facility absent the qualifying facility's generation;

(2) new capacity addition:

(a) new capacity addition means the capacity added to a utility's resource mix after the effective date of 17.9.570 NMAC through normal utility resource procurement activities which shall include but not necessarily be limited to:

(i) construction of or participation in new generating facilities;

(ii) augmenting the capacity of or extending the life of existing generating facilities through capital improvements; or

(iii) entering into new contracts or exercising options in existing contracts which will result in additional capacity;

(b) new capacity addition does not include the following:

(i) renegotiation of existing contracts for anything other than increasing capacity in the resource mix;

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

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

**O. Definitions beginning with "O": [RESERVED]**

**P. Definitions beginning with "P":**

- (1) point of common coupling (PCC) means the point where the interconnection facilities connect with the utility's system;
- (2) power means electric energy or capacity or both;
- (3) power conversion unit (PCU) means an inverter or AC generator, not including the energy source;
- (4) purchase means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility.

**Q. Definitions beginning with "Q":**

(1) qualifying facility means a cogeneration facility or a small power production facility that is a qualifying facility under Subpart B of 18 C.F.R. Part 292;

(a) A qualifying facility may include transmission lines and other equipment used for interconnection purposes (including transformers and switchyard equipment), if:

(i) Such lines and equipment are used to supply power output to directly and indirectly interconnected electric utilities, and to end users, including thermal hosts, in accordance with state law; or

(ii) Such lines and equipment are used to transmit supplementary, standby, maintenance and backup power to the qualifying facility, including its thermal host meeting the criteria set forth in *Union Carbide Corporation*, 48 FERC 61,130, reh'g denied, 49 FERC 61,209 (1989), aff'd sub nom., *Gulf States Utilities Company v. FERC*, 922 F.2d 873 (D.C. Cir. 1991); or

(iii) If such lines and equipment are used to transmit power from other qualifying facilities or to transmit standby, maintenance, supplementary and backup power to other qualifying facilities.

(b) The construction and ownership of such lines and equipment shall be subject to any applicable federal, state, and local siting and environmental requirements.

**R. Definitions beginning with "R":** rate means any price, rate, charge, or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity.

**S. Definitions beginning with "S":**

(1) sale means the sale of electric energy or capacity or both by an electric utility to a qualifying facility;

(2) settlement adjustment charge means the sum of adjustments to the settlement interval by an energy market, such as the southwest power pool, to account for market charges or credits applicable to the qualifying facility resource.

(3) supplementary power means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself;

(4) system emergency means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

**T. Definitions beginning with "T":** tariff means the document filed by a utility with the commission pursuant to 17.9.570 NMAC containing that utility's rules, rates, services and forms.

**U. Definitions beginning with "U":** utility means a utility or public utility as defined in Section 62-3-3 NMSA 1978 serving electric customers subject to the jurisdiction of the commission.

**V. Definitions beginning with "V": [RESERVED]**

**W. Definitions beginning with "W":** western energy imbalance market (or western EIM) means the real-time energy imbalance market operated by the California independent system operator corporation.

**X. Definitions beginning with "X": [RESERVED]**

**Y. Definitions beginning with "Y": [RESERVED]**

**Z. Definitions beginning with "Z": [RESERVED]**

[17.9.570.7 NMAC - Rp, 17.9.570.7 NMAC, 5/24/2022]

**17.9.570.8 [RESERVED]**

[17.9.570.8 NMAC - Rp, 17.9.570.8 NMAC, 5/24/2022]

**17.9.570.9 OBLIGATION TO PURCHASE:**

**A.** If a qualifying facility elects to sell power to the utility on an as-available basis, the utility shall purchase power from the qualifying facility from the date the qualifying facility begins providing as-available power to the utility.

**B.** If a qualifying facility elects to sell power to the utility in accordance with a legally enforceable obligation, the legally enforceable obligation arises on the date that the qualifying facility demonstrates compliance with all of the following prerequisites:

(1) The qualifying facility has filed an interconnection application with the appropriate entity and has tendered all required fees to that entity;

(2) The qualifying facility has taken meaningful steps to obtain site control to construct the entire qualifying facility, which the qualifying facility may demonstrate through the production of executed agreements and through similar measures;

(3) The qualifying facility has applied for all required federal, state, and local permits and licenses necessary to construct and operate the facility, and has tendered all required fees to the appropriate governmental authorities;

(4) The qualifying facility has completed all environmental studies and other actions necessary to support permit and license applications including but not limited to acquired and recorded in the appropriate governmental offices all real property rights necessary to construct and operate the facility, such as real property leases, rights of way, line locations approvals and easements;

(5) The qualifying facility has obtained or applied for financing of the proposed project, as evidenced by loan application documents or other types of financing applications;

(6) The qualifying facility has provided the utility with a construction plan and timeline for the construction of the facility, including construction cost quotes; and

(7) The qualifying facility has submitted a self-certification to the federal energy regulatory commission that has not been revoked, has received an order from the federal energy regulatory commission certifying qualifying facility status, or has otherwise demonstrated that certification as a qualifying facility is not required under the Federal Energy Regulatory Commission's regulations.

**C.** After receipt of a qualifying facility's request that the utility acknowledge that a legally enforceable obligation to purchase from the qualifying facility has arisen, the utility shall provide a response to the qualifying facility within 30 calendar days. If the utility rejects the qualifying facility's request or otherwise fails to acknowledge the request within 30 calendar days, the qualifying facility may file an application with the commission seeking a determination that the utility has a legally enforceable obligation to purchase power from the qualifying facility, with the date of such obligation to be fixed by the commission.

**D.** Regardless of when a legally enforceable obligation arises, the utility's obligation to begin paying for power provided under a legally enforceable obligation begins on the date the qualifying facility begins delivering power to the utility.

**E.** An electric utility is obligated to purchase power from a qualifying facility at the utility's avoided cost, as calculated under 17.9.570.11 NMAC, regardless of whether the electric utility making such purchase is simultaneously selling power to the qualifying facility.

**F.** The qualifying facility shall give the utility at least 60 days written advance notice to interconnect. Such notice shall specify the date the qualifying facility will be ready for interconnection, the date the qualifying facility will be able to commence testing, and the anticipated date of operation after testing. The qualifying facility shall pay the estimated costs of interconnection in full at the time the notice to interconnect is given. The utility shall pay a qualifying facility for any energy produced during testing of the qualifying facility at the appropriate energy rate pursuant to Subsection B of 17.9.570.11 NMAC.

**G.** If the utility determines that it cannot interconnect the qualifying facility within the time set in the notice to interconnect because adequate interconnection facilities are not available, it shall, within 15 business days of receipt of the notice to interconnect, notify the qualifying facility specifying the reasons it cannot interconnect as requested by the qualifying facility and specifying the date interconnection can be made. If the qualifying facility objects to the date for interconnection specified by the utility, objects to the utility's determination that adequate interconnection facilities are not available, or disputes the good faith efforts of the utility to interconnect, the qualifying facility may initiate a proceeding before the commission pursuant to the complaint process of this 17.9.570 NMAC. If the commission finds that the utility's position on the time for interconnection or unavailability of interconnection facilities was not justified, the qualifying facility shall be deemed to have been interconnected and the qualifying facility shall be deemed to have otherwise complied with its contractual duties on the 60th day following the notice to interconnect and payments by the utility to the qualifying facility shall commence at the appropriate power rate which shall be applied to the amount of imputed or expected power as if the qualifying facility were producing, provided that the qualifying facility's power was available.

[17.9.570.9 NMAC - Rp, 17.9.570.9 NMAC, 5/24/2022]

#### **17.9.570.10 METERING OPTIONS:**

##### **A. General.**

(1) A qualifying facility contracting to provide power may displace its own load. The utility may require appropriate metering. Billing for any power from the utility will be at the utility's approved rate applicable to the service provided to the qualifying facility in accordance with Subsections A-G of 17.9.570.12 NMAC.

(2) The tariff filed by each utility pursuant to Subsection H of 17.9.570.13 NMAC shall include the offer to any qualifying facility that has not contracted to receive capacity payments, the metering options in Subsections B, C and D of 17.9.570.10 NMAC.

(3) The options of Subsections B, C and D of 17.9.570.10 NMAC may involve time-of-day metering if the utility has in effect time-differentiated rates and metering for the class of customer to which the qualifying facility belongs or if the parties negotiate time-differentiated payments to the qualifying facility.

**B. Load displacement option.** If the qualifying facility wishes primarily to serve its own load, the utility shall agree to interconnect with a single meter or meter set measuring flow from the utility to the qualifying facility; billing for any power from the utility will be at the utility's approved tariff applicable to the service provided to the qualifying facility; there will be no additional customer charge and no payment by the utility for any excess energy which might be generated by the qualifying facility.

**C. Net metering option.**

(1) The utility shall install the metering necessary to determine the net energy delivered from the qualifying facility to the utility or from the utility to the qualifying facility for each time-of-use or single rate period, as applicable, during a billing period; the net energy delivered to either the qualifying facility or to the utility is the difference between the energy produced by the qualifying facility's generation and the energy that would have otherwise been supplied by the utility to the qualifying facility absent the qualifying facility's generation.

(2) The net energy delivered from the qualifying facility to the utility shall be purchased by the utility at the utility's applicable time-of-use or single period energy rate as described in Subsection B of 17.9.570.11 NMAC; the qualifying facility shall be billed for the net energy delivered from the utility in accordance with the tariffs that are applicable to the qualifying facility absent the qualifying facility's generation; the qualifying facility shall also be billed for all demand and other charges in accordance with the applicable tariffs. At the end of the billing period the utility shall net all charges owed to the utility by the qualifying facility and all payments owed by the utility to the qualifying facility. If a net amount is owed to the qualifying facility for the billing period, and is less than \$50, the payment amount may be carried over to the following billing period. If a net amount is owed to the qualifying facility and is \$50 or more, the utility shall make payment to the qualifying facility prior to the end of the next billing period.

(3) If provision of the net metering option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for net metering, the qualifying facility shall pay all incremental costs associated with installing the more costly metering equipment and facilities. An additional customer charge to cover the added costs of billing and administration may be included in the tariff if supported with evidence of need for such charge.

**D. Separate load metering (simultaneous buy/sell) option.** The utility shall install the metering necessary to determine separately:

(1) all the energy produced by the qualifying facility's generator; and



(2) all of the power consumed by the qualifying facility's loads; the utility shall purchase all energy produced by the qualifying facility's generator at the utility's applicable time-of-use or single period energy rate as described in Subsection B of 17.9.570.11 NMAC. The qualifying facility shall purchase all power consumed at its normally applicable rate; an additional customer charge to cover the added costs of billing and administration may be included in the tariff if supported with evidence of need for such charge.

**E. Metering configurations.** Metering configurations used to implement the provisions of 17.9.570 NMAC shall be reasonable, nondiscriminatory, and shall not discourage cogeneration or small power production.

[17.9.570.10 NMAC - Rp, 17.9.570.10 NMAC, 5/24/2022]

### **17.9.570.11 DETERMINATION OF RATES FOR PURCHASES FROM QUALIFYING FACILITIES:**

**A. General:** A utility shall pay a qualifying facility avoided costs for energy or capacity purchased from the qualifying facility. Avoided costs are defined in Subsection A of 17.9.570.7 NMAC. The energy rate represents avoided energy costs for the purposes of 17.9.570 NMAC. The avoided energy or capacity rate determined as provided herein represents avoided energy or avoided capacity costs for the purposes of 17.9.570 NMAC.

**B. Energy rate:**

(1) Within one year of the approval of this rule, each utility subject to the commission's jurisdiction shall apply for approval of a tariff that specifies a method for determining avoided energy costs as specified herein to establish the avoided energy cost rates paid by that utility to qualifying facilities.

(a) A utility participating in the Western EIM may establish the energy rate to be paid for power supplied by a qualifying facility by reference to the appropriate Western EIM locational marginal price determined on an hourly basis if such locational marginal price is representative of the utility's avoided cost. To implement this option for the avoided cost energy rate, the utility must set forth in its current tariff on file with the commission the applicable Western EIM pricing location.

(b) A utility participating in the SPP may establish the energy rate to be paid for power supplied by a qualifying facility by reference to the appropriate SPP locational marginal price if such locational marginal price is representative of the utility's avoided cost, as defined herein. To implement this option for the avoided cost energy rate, the utility must set forth in its current tariff on file with the commission the applicable SPP pricing location.

(c) Any utility that participates in a market has the flexibility to establish avoided energy cost rates based on the rule criteria. Any utility that does not participate in the Western EIM or the SPP may establish avoided energy cost rates based on:

- (i) Locational marginal prices, if any are available;
- (ii) Market hub prices;
- (iii) Formulas based on natural gas prices;
- (iv) Competitive solicitations; or
- (v) Mutual agreement between the qualifying facility and the utility.

(2) In its application for approval of the tariff, each utility applying for approval of a method to calculate avoided energy cost rates for purchases shall specify the method to be used and explain why it results in an accurate approximation of the utility's avoided energy costs.

(3) The avoided energy cost rates calculated in accordance with the method approved under Paragraph (1) of Subsection B of 17.9.570.11 NMAC shall be applied to both energy acquired on an as-available basis and energy acquired pursuant to a legally enforceable obligation.

(4) Until the commission approves a utility's tariff under Paragraph (1) of Subsection B of 17.9.570.11 NMAC, the utility shall pay avoided cost rates calculated under Subsection C of 17.9.570.11 NMAC for both energy purchased on an as-available basis and energy purchased pursuant to a legally enforceable obligation. After the approval of the utility's tariff under Paragraph (1) of Subsection B of 17.9.570.11 NMAC, the utility shall pay the avoided cost rates calculated under the approved tariff for both energy purchased on an as-available basis and energy purchased pursuant to a legally enforceable obligation.

**C.** Until approval of a utility's tariff under Paragraph (1) of Subsection B 17.9.570.11 NMAC, the avoided cost rate to be paid for the energy supplied by a qualifying facility in any month shall be that respective month's rate from the utility's current schedule on file with the commission. Each utility shall file with the commission its schedule containing monthly energy rates that will be applicable to the next 12-month period. These monthly energy rates shall be listed for each voltage level of interconnection and shall be expressed in cents/kWh. Each month's energy rate contained in the schedule shall be the average of the economy energy purchases by the utility for the corresponding month of the immediately preceding 12-month period. In the event a utility does not engage in economy energy purchases in any given month, the energy rate to be included in its schedule for that month shall be either: the monthly average of hourly incremental energy costs including variable operation and maintenance expenses for

generating utilities, or the energy charge of the highest energy cost contract as adjusted for appropriate retail fuel and purchase power pass through for non-generating utilities.

(1) As applicable, those utilities with retail time-of-use rates on file with the commission shall file schedules reflecting monthly energy rates calculated for peak periods only and off-peak periods only which shall be applied to qualifying facilities whose generation is limited to peak periods only or off- peak periods only. Peak and off-peak periods shall be as defined in the utility's retail tariffs on file with the commission.

(2) Within 60 days of the effective date of revised 17.9.570 NMAC each electric utility subject to the rule shall file with the commission the schedule containing rates to be offered along with detailed supporting workpapers showing the input data and calculations, if applicable. After the first submittal each utility shall update its filing within 30 days from the last day of its fiscal year.

(3) To the extent applicable, variable operation and maintenance rates used for the above computations shall be the basis for requested variable operation and maintenance rates in the utility's future rate cases.

(4) The energy rate contained in the schedules shall include the savings attributable to the avoidance of losses due to transmission, distribution, and transformation as applicable for different voltage levels of interconnection. These transmission, distribution, and transformation loss avoidance savings for different voltage levels of interconnection shall be obtained from the utility's filing in the last commission-decided rate case, and those figures shall be shown in the utility's submittal.

**D. Negotiations.** Notwithstanding the provisions of 17.9.570 NMAC, a utility and qualifying facility may at the qualifying facility's option negotiate rates for the power to be supplied by the qualifying facility. Such negotiated rates shall be filed with the commission within 30 days of the execution of the contract. The contract shall not contain any rate which is higher than the utility's avoided costs as defined in 17.9.570 NMAC.

[17.9.570.11 NMAC - Rp, 17.9.570.11 NMAC, 5/24/2022]

#### **17.9.570.12 OBLIGATION TO SELL:**

**A. Rates to be offered.** Utilities are required to provide supplementary power, backup power, maintenance power, and interruptible power to qualifying facilities irrespective of whether the production and consumption functions of the qualifying facility are singly or separately owned. The rates for supplementary power, backup power, maintenance power, and interruptible power shall be calculated as provided for in this section (17.9.570.12 NMAC) and included in the tariff for each utility to be filed pursuant to 17.9.570 NMAC. Utilities may charge a facilities fee for equipment dedicated to the customer pursuant to the utility's rate schedules and rules governing

the utility's practices for recovering such costs. The computation of the facilities fee shall take into account the costs of facilities already paid for by the customer before installing a qualifying facility.

**B. Supplementary power.**

(1) Qualifying facilities shall be entitled to supplementary power under the same retail rate schedules that would be applicable to those retail customers having power requirements equal to the supplementary power requirements of the qualifying facility. Any ratchet enforced through the "billing demand" provisions of such retail schedules shall also apply.

(2) To determine the amount of supplementary power required, supplementary power shall be measured to each qualifying facility through appropriate metering devices which are adequate to determine whether supplementary or backup power is being utilized. The demand interval used shall be the same as that contained in the applicable retail rate schedule.

**C. Backup power.**

(1) Qualifying facilities shall be entitled to backup power for forced outages under the same retail rate which would be applicable absent its qualifying facility generation. Rates for sale of backup power shall not contain demand charges in time periods when demand charges are not applicable to such retail rate schedule. Rates for backup power shall not contain demand ratchets or power factor penalties. If the utility can demonstrate that a particular qualifying facility has caused either a demand ratchet or a power factor penalty clause between the utility and its power supplier(s) to be invoked because of the qualifying facility's operation, the utility may petition the commission to allow the allocable charges resulting from the demand ratchet or power factor penalty which has been invoked to be included in the rates for that particular qualifying facility.

(2) In the months that backup power is not utilized by the qualifying facility the rates for backup power may contain a monthly reservation fee which shall not exceed ten percent of the monthly demand charge contained in the retail rate schedule which would be applicable to the consumer absent its qualifying facility generation. Such a reservation fee shall not be charged while a qualifying facility is taking backup power or while charges resulting from a power factor penalty or demand ratchet have been imposed pursuant to Paragraph (1) of Subsection C of 17.9.570.12 NMAC.

**D. Maintenance power.**

(1) Maintenance power shall be provided to qualifying facilities for periods of maintenance scheduled in advance with the concurrence of the utility. A qualifying facility shall schedule such maintenance with the utility by giving the utility advance notice dependent on the length of the outage as follows:

<b>Length of Outage*</b>	<b>Advance Notice*</b>
1 day	5 days
2 to 5 days	30 days
6 to 30 days	90 days
*All days are calendar days.	

(2) Maintenance power rates shall be the same as the retail rate which would be applicable to the qualifying facility absent its qualifying facility generation. The maintenance power demand charge shall be determined by multiplying the applicable retail demand charge by the ratio of the number of weekdays in which the maintenance power was taken to the number of weekdays in the month. No demand charge shall apply for maintenance power taken during off-peak hours as defined in the utility's retail tariffs. For those utilities which do not have time-of-use rates, off-peak hours are defined as 11:00 p.m. to 7:00 a.m. weekdays, 24 hours per day on weekends and holidays.

(3) Maintenance power shall be available to qualifying facilities for a minimum period of 30 days per year scheduled outside of the system peak period of the utility which is defined as the three-month period covering the peak month together with the preceding and succeeding months.

**E. Interruptible power.** All utilities shall file rates for interruptible power which shall be available to qualifying facilities. Rates for such interruptible power purchases shall reflect the lower costs, if any, which the utility incurs in order to provide interruptible power as opposed to what it would incur to provide firm power.

**F. Customer charges.** The customer charges from a utility for a qualifying facility shall be the same as the retail rate applicable to the customers in the same rate class absent its qualifying facility generation.

**G. Exceptions.** An electric utility shall not be required to provide supplementary power, backup power, maintenance power, or interruptible power to a qualifying facility if, after notice in the area served by the electric utility and after opportunity for public comment, the electric utility demonstrates and the commission finds that provision of such power would:

(1) impair the electric utility's ability to render adequate service to its customers; or

(2) place an undue burden on the utility.

[17.9.570.10 NMAC - Rp, 17.9.570.10 NMAC, 5/24/2022]

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

**A. System emergencies.**

(1) During any system emergency a utility may discontinue on a nondiscriminatory basis:

(a) purchases from a qualifying facility if such purchases would contribute to such emergency, and

(b) sales to a qualifying facility provided that such discontinuance is on a previously established nondiscriminatory basis.

(2) A qualifying facility shall be required to provide power to a utility during a system emergency only to the extent:

(a) provided by agreement between the qualifying facility and the utility; or

(b) ordered pursuant to the provisions of the Federal Power Act, 16 U.S.C. Section 824a(c).

**B. Operational circumstances.** The utility may discontinue purchases from the qualifying facility during any period in which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases but instead generated an equivalent amount of energy itself; a claim by an electric utility that such a period has occurred or will occur is subject to verification by the commission; the utility shall maintain and make available sufficient documentation to aid the commission with verification proceedings.

**C. Notification requirements.** Any utility which disconnects and thereby discontinues purchases or sales from a qualifying facility for the reasons cited in Subsections A and B of 17.9.570.13 NMAC above shall notify the qualifying facility or facilities prior to the system emergency or operational circumstance if reasonably possible. If prior notice is not reasonably possible the utility shall notify the qualifying facility by telephone or personal contact within 48 hours following the system emergency or operational circumstance followed by written communication if requested by the qualifying facility. Any notification shall include the specific reason for the system emergency or operational circumstance.

**D. Penalty.** Any utility which fails to comply with the notification requirements in Subsection C of 17.9.570.13 NMAC or fails to demonstrate the existence of a system emergency or operational circumstance which warrants the discontinuance of purchases shall pay for the qualifying facility's imputed or expected power at the applicable rate as if the system emergency or operational circumstance had not occurred. The utility may also be subject to a penalty under Section 62-12-4 NMSA 1978.

**E. Wheeling of power.** If the qualifying facility agrees, an electric utility which would otherwise be obligated to purchase power from the qualifying facility may transmit power to any other electric utility. Any electric utility to which power is transmitted shall purchase such power as if the qualifying facility were supplying power directly to such electric utility. The rate for purchase by the electric utility to which such power is transmitted shall be adjusted up or down to reflect line losses pursuant to 18 C.F.R. Section 292.304(e)(4) and shall not include any charges for transmission.

**F. Distribution cooperatives.**

(1) A distribution cooperative having a full power requirements contract with its supplier has the option of transferring the purchase obligation pursuant to 17.9.570.9 NMAC to its power supplier. The qualifying facility will be paid the capacity and energy payments, as applicable, by the supplier pursuant to 17.9.570.11 NMAC. A distribution cooperative that does not transfer the purchase obligation to its power supplier shall have the option to:

(a) pay qualifying facilities the energy and capacity charges including appropriate fuel and purchase power pass-throughs it pays to its power supplier, or

(b) pay the qualifying facility the energy and capacity charges which shall be determined in accordance with Section 17.9.570.11 NMAC.

(2) The obligation to interconnect and provide supplementary, backup, and maintenance power either on a firm or on an interruptible basis shall remain with the distribution cooperative.

(3) Any municipal electric utility that does not have generating capacity but is subject to the jurisdiction of the commission shall be considered a distribution cooperative for the purposes of 17.9.570 NMAC.

**G. Requirements to file electric utility system data:** not later than April 1 of each year each utility shall submit to the commission a report covering the previous calendar year which shall at a minimum provide:

(1) the name and address of each qualifying facility with which it is interconnected, with which it has a contract to interconnect, or with which it has concluded a wheeling agreement;

(2) annual purchases in kW and kWh from each qualifying facility with which it is interconnected and the amount of electricity wheeled on behalf of each qualifying facility;

(3) the price charged for any power wheeled on behalf of each qualifying facility;

- (4) the methodology and assumptions used in the calculation of wheeling rates;
- (5) amounts actually paid to each qualifying facility; and
- (6) a list of all applications for interconnection which the utility has rejected or otherwise failed to approve together with the reasons therefor.

**H. Filing of tariff.**

(1) Within 60 days of the adoption of this rule, each utility shall develop and file any changes to its tariffs on file with the commission needed to comply with the requirements set forth herein; such changes shall comply with all tariff filing requirements of the commission; such tariffs shall conform to the requirements of 17.1.210 NMAC, and shall become effective 30 days after the filing thereof unless suspended by the commission pursuant to Section 62-8-7 NMSA 1978, or unless ordered effective at an earlier date by the commission.

(2) Within 60 days of the adoption of the amendments to this rule, each utility shall develop and file tariffs for metering and billing consistent with this rule for generating facilities with rated capacities up to and including 10 kW; such tariffs shall comply with all tariff filing requirements of the commission; such tariffs shall conform to the requirements 17.1.210 NMAC, and shall become effective 30 days after the filing thereof unless suspended by the commission pursuant to Section 62-8-7 NMSA 1978, or unless ordered effective at an earlier date by the commission.

**I. Complaints and investigations.** The procedures set forth in Sections 62-8-7 and 62-10-1 NMSA 1978 and the complaint provisions of 1.2.2 NMAC shall be applicable for the resolution of complaints and investigations arising out of the implementation and conduct of 17.9.570 NMAC.

**J. Severability.** If any part of 17.9.570 NMAC or any application thereof is held invalid, the remainder or the application thereof to other situations or persons shall not be affected.

**K. Amendment.** The adoption of 17.9.570 NMAC shall in no way preclude the commission, after notice and hearing, from altering or amending any provision hereof or from making any modification with respect to its application deemed necessary.

**L. Exemption or variance.**

(1) Any interested person may file an application for an exemption or a variance from the requirements of 17.9.570 NMAC. Such application shall:

- (a) describe the situation which necessitates the exemption or variance;



(b) set out the effect of complying with 17.9.570 NMAC on the utility and its customers if the exemption or variance is not granted;

(c) identify the section(s) of 17.9.570 NMAC for which the exemption or variance is requested;

(d) define the result which the request will have if granted;

(e) state how the exemption or variance will promote the achievement of the purposes of 17.9.570 NMAC; and

(f) state why no other reasonable alternative is available.

(2) If the commission determines that the exemption or variance is consistent with the purposes of the rule as defined herein, the exemption or variance may be granted. The commission may at its option require an informal conference or formal evidentiary hearing prior to the granting of the variance.

**M.** Motion for stay pending amendment, exemption, or variance. An application for an amendment, exemption, or a variance may include a motion that the commission stay the application of the affected portion of 17.9.570 NMAC for the transaction specified in the motion.

[17.9.570.13 NMAC - Rp, 17.9.570.13 NMAC, 5/24/2022]

#### **17.9.570.14 NET METERING OF CUSTOMER-SITED QUALIFYING FACILITIES WITH A DESIGN CAPACITY UP TO AND INCLUDING 10KW:**

**A.** Relationship to other commission rules. The standards and procedures for the interconnection of qualifying facilities subject to this section (17.9.570.14 NMAC) are set forth in 17.9.568 NMAC.

**B.** Use of a single meter. When the customer is billed under a rate structure that does not include time-of-use energy pricing, a single energy meter shall be used to implement net metering of a qualifying facility unless an alternate metering arrangement is agreed to by the customer and utility. If either the utility or the customer requests an alternate form of metering or additional metering that is not required to accomplish net metering or is for the convenience of the party, the party requesting the change in metering shall pay for the alternate or additional metering arrangement. If the customer elects to take electric service under any rate structure, including time-of-use, that requires the use of metering apparatus or a metering arrangement that is more costly than would otherwise be necessary absent the requirement for net metering, the customer shall be required to pay the additional incremental cost of the required metering equipment. Within ten days of receiving notification from the customer of the intent to interconnect, the utility will notify the customer of any metering costs. Charges for special metering costs shall be paid by the customer, or arrangements for payment

agreed to between the customer and utility, prior to the utility authorizing interconnected operation.

**C. Net metering calculation.** The utility shall calculate each customer's bill for the billing period using net metering and with the following conditions:

(1) Customers shall be billed for service in accordance with the rate structure and monthly charges that the customer would be assigned if the customer had not interconnected a qualifying facility. Net energy produced or consumed on a monthly basis shall be measured in accordance with standard metering practices.

(2) If electricity supplied by the utility exceeds electricity generated by the customer during a billing period, the customer shall be billed for the net energy supplied by the utility under the applicable rates.

(3) If electricity generated by the customer exceeds the electricity supplied by the grid during a billing period, the utility shall credit the customer on the next bill for the excess kilowatt-hours generated, by:

(a) crediting or paying the customer for the net energy supplied to the utility at the utility's energy rate pursuant to this 17.9.570 NMAC; or

(b) crediting the customer for the net kilowatt-hours of energy supplied to the utility. Unused credits shall be carried forward from month to month; provided that if a utility opts to credit customers and the customer leaves the system, customer's unused credits for excess kilowatt-hours generated shall be paid to the customer at the utility's energy rate pursuant to this 17.9.570 NMAC.

[17.9.570.14 NMAC - Rp, 17.9.570.14 NMAC, 5/24/2022]

**17.9.570.15 STANDARD METERING AND BILLING AGREEMENT FOR QUALIFYING FACILITIES WITH A DESIGN CAPACITY OF GREATER THAN 10 KW AND LESS THAN OR EQUAL TO 10 MW:**

This agreement is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ ("customer") and \_\_\_\_\_ ("utility") also referred to collectively as "parties" and singularly as "party." Customer receives electric service from utility at \_\_\_\_\_ (location/address) under account \_\_\_\_\_.

Customer has located at these premises a qualifying facility ("QF") as defined by 17.9.570 NMAC, having an installed capacity of greater than 10 kilowatts and up to and including 10 megawatts, which is interconnected to utility pursuant to an interconnection agreement, attached as exhibit A. For good and valuable consideration, customer desires to sell or provide electricity to utility from the QF and utility desires to purchase or accept all the energy produced by the QF that is not consumed by customer, and the parties agree to the following terms and conditions:

**A. DEFINITIONS.** Whenever used in the agreement, the following words and phrases shall have the following meanings:

(1) agreement shall mean this agreement and all schedules, tariffs, attachments, exhibits, and appendices attached hereto and incorporated herein by reference;

(2) interconnection facilities shall mean all machinery, equipment, and fixtures required to be installed solely to interconnect and deliver power from the QF to the utility's system, including, but not limited to, connection, transformation, switching, metering, relaying, line and safety equipment and shall include all necessary additions to, and reinforcements of, the utility's system;

(3) prudent electrical practices shall mean those practices, methods and equipment, as changed from time to time, that are commonly used in prudent electrical engineering and operations to operate electric equipment lawfully, and with safety, dependability, efficiency and economy;

(4) qualifying facility (QF) means a cogeneration facility or a small power production facility which meets the criteria for qualification contained in 18 C.F.R. Section 292.203;

(5) point of delivery means the geographical and physical location described on exhibit B hereto; such exhibit depicts the location of the QF's side of interconnection facilities where customer is to (sell and) deliver electric energy pursuant to this agreement or pursuant to a separate wheeling agreement;

(6) termination means termination of this agreement and the rights and obligations of the parties under this agreement, except as otherwise provided for in this agreement;

(7) suspension means suspension of the obligation of the utility to interconnect with and purchase electricity from the customer.

**B. TERM OF AGREEMENT.** The original term of this agreement shall be for a period of five years from the date of the execution of this agreement and shall continue thereafter from year to year until terminated as herein provided.

(1) Termination by customer. Termination of this agreement during and after the original term requires written notice to utility that this agreement will terminate in 90 days. Customer may terminate this agreement without showing good cause.

(2) Termination by utility. Termination of this agreement during and after the original term requires written notice to customer that this agreement will terminate in 90 days, unless otherwise provided. utility, in the exercise of this right, must show good cause for the termination.

(3) At any time the QF is sold, leased, assigned, or otherwise transferred, the seller or lessor of the QF shall notify utility and this agreement may be terminated at utility's option, for good cause, regardless of whether such transfer occurs during the original term or any renewal thereof. Such termination may be made with five days written notice by utility.

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

**C. METER INSTALLATION, TESTING AND ACCESS TO PREMISES.** Customer will be metered by a meter or meters as determined by utility to which utility is granted reasonable access.

(1) Customer shall supply, at its own expense, a suitable location for all meters and associated equipment. Customer shall provide a clearly understandable sketch or one-line diagram showing the qualifying facility, the interconnection equipment, breaker panel(s), disconnect switches and metering, to be attached to this agreement. Such location must conform to utility's meter location policy. The following metering options will be offered by utility: \_\_\_\_\_. Customer shall provide and install a meter socket and any related interconnection equipment per utility's requirements.

(2) Customer shall deliver the as-available energy to utility at utility's meter.

(3) Utility shall furnish and install a standard kilowatt-hour meter. Utility may install, at its option and expense, magnetic tape recorders in order to obtain load research information. Utility may meter the customer's usage using two meters for measurement of energy flows in each direction at the point of delivery.

(4) If either utility or customer requests an alternate form of metering or additional metering that is not required to accomplish net metering or is for the convenience of the party, the party requesting the change in metering shall pay for the alternate or additional metering arrangement. If customer elects to take electric service under any rate structure, including time-of-use, that requires the use of metering apparatus or a metering arrangement that is more costly than would otherwise be necessary absent the requirement for net metering, customer shall be required to pay the additional incremental cost of the required metering equipment. Within 10 days of receiving notification from customer of the intent to interconnect, utility will notify the customer of any metering costs. Charges for special metering costs shall be paid by customer, or arrangements for payment agreed to between customer and utility, prior to utility authorizing interconnected operation.

(5) All meter standards and testing shall be in compliance with utility's rules and regulations as approved by the NMPRC. The metering configuration shall be one of utility's standard metering configurations as set out in Subsection D of 17.9.570.15 NMAC and mutually agreeable to the parties or any other metering configuration mutually agreeable to the parties. The agreed upon configuration is shown on exhibit B. (Service by the distribution cooperative to customer shall be in accordance with the distribution cooperative's articles, bylaws and regulations and in accordance with its tariffs filed with the NMPRC, the terms and conditions of which shall be unaffected by this agreement). If the interconnection facilities have been modified pursuant to the interconnection agreement, customer shall permit utility, at any time, to install or modify any equipment, facility or apparatus necessary to protect the safety of its employees or to assure the accuracy of its metering equipment, the cost of which shall be borne by customer. Utility shall have the right to disconnect the QF if it has been modified without utility's authorization.

(6) Utility may enter customer's premises to inspect at all reasonable hours customer's protective devices and read or test meter; and pursuant to the interconnection agreement to disconnect, without notice, the interconnection facilities if utility reasonably believes a hazardous condition exists and such immediate action is necessary to protect persons, or utility's facilities, or property of others from damage or interference caused by customer's facilities, or lack of properly operating protective devices.

**D. ENERGY PURCHASE PRICE AND METERING OPTION.** All electric energy delivered and service rendered hereunder shall be delivered and rendered in accordance with the applicable rate schedules and tariffs. Customer has selected the \_\_\_\_\_ metering option defined in this section. It is understood and agreed, however, that said rates are expressly subject to change by any regulatory body having jurisdiction over the subject matter of this agreement. If a new rate schedule or tariff is approved by the proper regulatory body, the new rate schedule or tariff shall be applicable to this agreement upon the effective date of such rate schedule or tariff.

(1) Load displacement option: Utility will interconnect with the customer using a single meter which will be ratcheted and would only measure the flow of energy to the customer. Billing to customer will be at utility's approved tariff rate applicable to the service provided to the QF. There will be no additional customer charge and no payment by utility for any excess power which might be generated by the QF.

(2) Net metering option.

(a) Utility shall install the metering necessary to determine the net energy delivered from customer to utility or the net energy delivered from utility to customer for each time-of-use or single rate period, as applicable, during a billing period. The net energy delivered to either the QF or to the utility is the difference between the energy produced by the QF generation and the energy that would have otherwise been supplied by the utility to the QF absent the QF generation.

(b) The net energy delivered from customer to utility shall be purchased by utility at utility's applicable time-of-use or single period energy rate, as described in Subsection B of 17.9.570.11 NMAC, and filed with the NMPRC. Customer shall be billed for all net energy delivered from utility in accordance with the tariff that is applicable to customer absent the QF generation. An additional customer charge to cover the added costs of billing and administration may be included in the tariff. At the end of the billing period, utility shall net all charges owed to utility by customer and all payments owed by utility to customer. If a net amount is owed to customer for the billing period, and is less than \$50, the payment amount may be carried over to the following billing period. If a net amount is owed to customer and is \$50 or more, utility shall make payment to customer prior to the end of the next billing period.

(c) If provision of the net metering option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for net metering, customer shall pay all incremental costs associated with installing the more costly metering equipment and facilities.

(3) Simultaneous buy/sell option.

(a) Utility will install the metering necessary to determine separately 1) all of the energy produced by customer's generator and 2) all of the power consumed by customer's loads. Utility will purchase all energy produced at utility's applicable time-of-use or single period energy rate, as described in Subsection B of 17.9.570.11 NMAC, for such purchases, and as filed with and approved by the NMPRC. Customer shall purchase all power consumed at its normally applicable tariff rate. An additional customer charge to cover the added costs of billing and administration may be included.

(b) If provision of the simultaneous buy/sell option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for simultaneous buy/sell metering, customer shall pay all incremental costs associated with installing the more costly metering equipment and facilities.

**E. INTERRUPTION OR REDUCTION OF DELIVERIES.**

(1) Utility shall not be obligated to accept or pay for and may require customer to interrupt or reduce deliveries of available energy under the following circumstances:

(a) it is necessary in order to construct, install, maintain, repair, replace, remove, investigate, or inspect any of its equipment or part of its system or if it reasonably determines that curtailment, interruption, or reduction is necessary because of emergencies, forced outages, force majeure, or compliance with prudent electrical practices; whenever possible, utility shall give customer reasonable notice of the possibility that interruption or reduction of deliveries may be required;

(b) there is evidence that customer's QF is interfering with service to other customers or interfering with the operation of utility's equipment; customer may be reconnected by utility when customer makes the necessary changes to comply with the standards required by this agreement;

(c) it is necessary to assure safety of utility's personnel; notwithstanding any other provision of this agreement, if at any time utility reasonably determines that the facility may endanger utility personnel or other persons or property or the continued operation of customer's facility may endanger the integrity or safety of utility's electric system, utility shall have the right to disconnect and lock out customer's facility from utility's electric system; customer's facility shall remain disconnected until such time as utility is reasonably satisfied that the conditions referenced in this section have been corrected;

(d) there is a failure of customer to adhere to this agreement;

(e) if suspension of service is otherwise necessary and allowed under utility's rules and regulations as approved by the NMPRC.

(2) Customer shall cooperate with load management plans and techniques as ordered or approved by the NMPRC, and the service to be furnished by utility hereunder may be modified as required to conform thereto.

**F. FORCE MAJEURE.** Force majeure shall mean any cause beyond the control of the party affected, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, (labor dispute,) labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction, by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence, it shall be unable to overcome. If either party, because of force majeure, is rendered wholly or partly unable to perform its obligations under this agreement, except for the obligation to make payments of money, that party shall be excused from whatever performance is affected by the force majeure to the extent so affected, provided that:

(1) the nonperforming party, within a reasonable time after the occurrence of the force majeure, gives the other party written notice describing the particulars of the occurrence;

(2) the suspension of performance is of no greater scope and of no longer duration than is required by the force majeure; and

(3) the nonperforming party uses its best efforts to remedy its inability to perform. This paragraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the party involved in the

dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the party involved in the disputes.

**G. INDEMNITY.** Each party shall indemnify the other from liability, loss, costs, and expenses on account of death or injury to persons or damage or destruction of property occasioned by the negligence of the indemnifying party or its agents, officers, employees, contractors, licensees or invitees, or any combination thereof, except to the extent that such death, injury, damage, or destruction resulted from the negligence of the other party or its agents, officers, employees, contractors, licensees or invitees, or any combination thereof. Provided, however, that:

(1) each party shall be solely responsible for the claims or any payments to any employee or agent for injuries occurring in connection with their employment or arising out of any workers compensation law or occupational disease disablement law;

(2) utility shall not be liable for any loss of earnings, revenues, indirect or consequential damages or injury which may occur to customer as a result of interruption or partial interruption (single-phasing) in delivery of service hereunder to customer or by failure to receive service from customer by reason of any cause whatsoever, including negligence; and

(3) the provisions of this subsection on indemnification shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of any valid insurance policy;

(4) the indemnifying party shall pay all costs and expenses incurred by the other party in enforcing the indemnity under this agreement including reasonable attorney fees.

**H. DEDICATION.** An undertaking by one party to another party under any provision of this agreement shall not constitute the dedication of such party's system or any portion thereof to the public or to the other party and any such undertaking shall cease upon termination of the party's obligations herein.

**I. STATUS OF CUSTOMER.** In performing under this agreement, customer shall operate as or have the status of an independent contractor and shall not act as or be an agent, servant, or employee of utility.

**J. AMENDMENT, MODIFICATIONS OR WAIVER.** Any amendments or modifications to this agreement shall be in writing and agreed to by both parties. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of the breach of any term or covenant contained in this agreement, whether by conduct or otherwise, shall be deemed to be construed as a further or continuing waiver



of any such breach or a waiver of the breach of any other term or covenant unless such waiver is in writing.

**K. ASSIGNMENT.** This agreement and all provisions hereof shall inure to and be binding upon the respective parties hereto, their personal representatives, heirs, successors, and assigns. Customer shall not assign this agreement or any part hereof without the prior written consent of utility, otherwise this agreement may be terminated pursuant to Paragraph (3) of Subsection B of 17.9.570.15 NMAC

**L. NOTICES.** Any payments, notices, demands or requests required or authorized by this agreement shall be deemed properly given if personally delivered or mailed postage prepaid to:

Customer: \_\_\_\_\_  
Utility: \_\_\_\_\_

The designation of the persons to be notified, or the address thereof, may be changed by notice in writing by one party to the other. Routine notices and notices during system emergency or operational circumstances may be made in person or by telephone. Customer's notices to utility pursuant to this agreement shall refer to the customer's electric service account number set forth in this agreement.

**M. MISCELLANEOUS.** This agreement and any amendments thereto, including any tariffs made a part hereof, shall at all times be subject to such changes or modifications as shall be ordered from time to time by any regulatory body or court having jurisdiction to require such changes or modification. This agreement (and any tariffs incorporated herein) contains all the agreements and representations of the parties relating to the interconnection and purchases contemplated and no other agreement, warranties, understandings or representations relating thereto shall be binding unless set forth in writing as an amendment hereto.

**N. GOVERNING LAW.** This agreement shall be interpreted, governed, and construed under the laws of the state of New Mexico as if executed and to be performed wholly within the state of New Mexico.

**O. ATTACHMENTS.** This agreement includes the following exhibits as labeled and incorporated herein by reference:

- (1) interconnection agreement;
- (2) customer's sketch or one line diagram and site drawing, and generation and protection equipment specifications.

In witness thereof, the parties have executed this agreement on the date set forth herein above.

Date: \_\_\_\_\_  
CUSTOMER \_\_\_\_\_ By: \_\_\_\_\_  
Date: \_\_\_\_\_  
UTILITY \_\_\_\_\_ By: \_\_\_\_\_.

[17.9.570.15 NMAC - Rp, 17.9.570.15 NMAC, 5/24/2022]

## **PART 571: [RESERVED]**

## **PART 572: RENEWABLE ENERGY FOR ELECTRIC UTILITIES**

### **17.9.572.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.9.572.1 NMAC - Rp, 17.9.572.1 NMAC, 2/28/2023]

### **17.9.572.2 SCOPE:**

This rule applies to all electric investor-owned public utilities under the commission's jurisdiction.

[17.9.572.2 NMAC - Rp, 17.9.572.2 NMAC, 2/28/2023]

### **17.9.572.3 STATUTORY AUTHORITY:**

Sections 62-13-13.1 NMSA 1978 and 62-16-1 to 62-16-10 NMSA 1978.

[17.9.572.3 NMAC - Rp, 17.9.572.3 NMAC, 2/28/2023]

### **17.9.572.4 DURATION:**

Permanent.

[17.9.572.4 NMAC - Rp, 17.9.572.4 NMAC, 2/28/2023]

### **17.9.572.5 EFFECTIVE DATE:**

February 28, 2023, unless a later date is cited at the end of a section.

[17.9.572.5 NMAC - Rp, 17.9.572.5 NMAC, 2/28/2023]

### **17.9.572.6 OBJECTIVE:**

The purpose of this rule is to implement the Renewable Energy Act, Sections 62-16-1 to 62-16-10 NMSA 1978, and to bring significant economic development and environmental benefits to New Mexico.

[17.9.572.6 NMAC - Rp, 17.9.572.6 NMAC, 2/28/2023]

### **17.9.572.7 DEFINITIONS:**

Unless otherwise specified, as used in this rule:

**A. Definitions beginning with "A": "average annual levelized cost"** means a calculation to produce the present value of the total cost of building and operating a new resource over an assumed lifetime, assuming equal unit costs each year over the life of the resource. Average annual levelized cost is calculated by dividing the present value of the assumed lifetime total cost of a new resource by the present value of the assumed lifetime generation production of that new resource. The equation for calculating average annual levelized cost is as follows:

$$\frac{\sum_{t=1}^n \frac{I_t + M_t + F_t}{(1+r)^t}}{\sum_{t=1}^n \frac{E_t}{(1+r)^t}}$$

where,  $I_t$  equals investment expenditures in year  $t$  (including financing) in nominal dollars;  $M_t$  equals operations and maintenance expenditures in year  $t$  in nominal dollars, including but not limited to return, depreciation, property taxes, and income taxes, net of tax credits that are passed on to customers;  $F_t$  equals fuel expenditures and variable operations and maintenance in year  $t$  in nominal dollars;  $E_t$  equals electricity generated in year  $t$  including any degradation;  $r$  equals a discount rate equal to the utility's after-tax weighted average cost of capital as authorized in the utility's most recent rate case; and  $n$  equals the assumed lifetime of the new resource. Fuel expenditures would not be applicable for determining the levelized cost of renewable resources but may be applicable for determining the levelized cost of proposed zero-carbon resources.

**B. Definitions beginning with "B": [RESERVED]**

**C. Definitions beginning with "C": [RESERVED]**

**D. Definitions beginning with "D": [RESERVED]**

**E. Definitions beginning with "E": "emissions"** means all emissions regulated by state or federal authorities, including but not limited to: all criteria pollutants and hazardous air pollutants, methane, mercury, and carbon dioxide.

**F. Definitions beginning with "F": "financial incentive"** means money or additional earnings that a public utility is authorized to collect from ratepayers by the commission or capital investment opportunities to encourage certain behaviors or

actions that would not otherwise have occurred in order to further the outcomes described in Section 62-16-4 NMSA 1978. The financial incentive, or monetary benefit, motivates certain behaviors or actions.

**G. Definitions beginning with "G": "greenhouse gas emissions"** means emissions of gases including carbon dioxide, methane, nitrous oxide, fluorinated gases, or other gases that trap heat in the atmosphere.

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

**I. Definitions beginning with "I": "IRP" means integrated resource plan.**

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

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

**L. Definitions beginning with "L": [RESERVED]**

**M. Definitions beginning with "M": [RESERVED]**

**N. Definitions beginning with "N": [RESERVED]**

**O. Definitions beginning with "O": [RESERVED]**

**P. Definitions beginning with "P":**

(1) **"plan year"** means the calendar year for which approval is sought;

(2) **"plan year total retail energy sales"** means retail energy sales in kilowatt-hours projected for the plan year adjusted for projected energy efficiency reductions based on approved energy efficiency and load management programs in effect at the time of the filing, less energy sales to voluntary program participants under Section 62-16-7 NMSA 1978;

(3) **"political subdivision of the state"** means a division of the state made by proper authorities thereof, acting within their constitutional powers, for purpose of carrying out a portion of those functions of the state which, by long usage and inherent necessities of government, have always been regarded as public;

(4) **"procure or procurement"** means a competitive process conducted by an investor-owned electric utility for soliciting and evaluating purchased power, facility self-build, or facility build-transfer options as proposals for any new, additional, or amended renewable energy resource, including but not limited to, instructions to bidders, bid specifications, conditions, forms, or other requirements included in a request for proposals, and all methods, practices, and assumptions used by an investor-owned electric utility to model or evaluate such proposals or to negotiate with bidders, in

order to generate or purchase any renewable energy resource or to commit to generate or purchase any renewable energy resource, but does not include agreements to purchase energy or capacity from a qualifying facility pursuant to 17.9.570 NMAC;

**(5) "public utility"** means investor-owned electric utility certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act and does not include rural electric cooperatives or municipalities.

**Q. Definitions beginning with "Q.": [RESERVED]**

**R. Definitions beginning with "R":**

**(1) "reasonable cost threshold" (RCT)** means an average annual levelized cost of \$60.00 per megawatt-hour at the point of interconnection of the renewable energy resource with the transmission systems, adjusted for inflation after 2020. The reasonable cost threshold is a customer protection mechanism that limits the customer bill impact resulting from annual Renewable Energy Act plans;

**(2) "renewable energy"** means electric energy generated by use of renewable energy resources and delivered to a public utility;

**(3) "renewable energy certificate" (REC)** means a certificate or other record, in a format approved by the commission, that represents all the environmental attributes from one megawatt-hour of electricity generated from renewable energy delivered to a public utility and assigned to its New Mexico customers;

**(4) "renewable energy resource"** means the following energy resources with or without energy storage:

(a) solar, wind, and geothermal;

(b) hydropower facilities brought in service on or after July 1, 2007;

(c) biomass resources, limited to agriculture of animal waste, small diameter timber not to exceed eight inches, salt cedar, and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, provided that these resources are from facilities certified by the energy, minerals and natural resources department to:

(i) be of appropriate scale to have sustainable feedstock in the near vicinity;

(ii) have zero life cycle carbon emissions; and

(iii) meet scientifically determined restoration, sustainability and soil nutrient principles;

(d) fuel cells that do not use fossil fuels to create electricity; and

(e) landfill gas and anaerobically digested waste biogas.

**(5) "renewable portfolio standard" (RPS)** means the minimum percentage of retail sales of electricity by a public utility to electric consumers in New Mexico that is required by the Renewable Energy Act to be from renewable energy;

**(6) "renewable purchased power agreement"** means an agreement that binds an entity generating power from renewable energy resources to provide power at a specified price, for a specified term, and binds the purchaser to that price.

**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": "WREGIS"** means the western renewable energy generation information system.

**X. Definitions beginning with "X": [RESERVED]**

**Y. Definitions beginning with "Y": [RESERVED]**

**Z. Definitions beginning with "Z":**

**(1) "zero carbon resource"** means an electricity generation resource that emits no carbon dioxide into the atmosphere, or that reduces methane emitted into the atmosphere in an amount equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere, as a result of electricity production;

**(2) "zero carbon resource standard"** means providing New Mexico public utility customers with electricity generated from one hundred percent zero carbon resources.

[17.9.572.7 NMAC - Rp, 17.9.572.7 NMAC, 5/4/2021; A, 2/28/2023]

#### **17.9.572.8 LIBERAL CONSTRUCTION:**

This rule shall be liberally construed to carry out its intended purposes. If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, the remainder of the rule, or the application of such provision to other persons or circumstances, shall not be affected thereby.

[17.9.572.8 NMAC - Rp, 17.9.572.8 NMAC, 2/28/2023]

### **17.9.572.9 RELATIONSHIP TO OTHER COMMISSION RULES:**

Unless otherwise specified, this rule does not supersede any other rule of the commission but supplements rules applying to public utilities.

[17.9.572.9 NMAC - Rp, 17.9.572.9 NMAC, 2/28/2023]

### **17.9.572.10 RENEWABLE PORTFOLIO STANDARD:**

**A.** Each public utility shall develop an annual Renewable Energy Act plan to comply with the renewable portfolio standard during the plan year. The plan shall demonstrate reasonable and consistent progress toward meeting the renewable portfolio standard to be effective following the end of the plan year. Renewable energy resources that are in a public utility's electric energy supply portfolio on July 1, 2004 shall be counted in determining compliance with this rule. However, renewable energy sold to customers through a voluntary renewable energy program tariff approved by the commission shall not be counted in determining compliance with this rule. Other factors being equal, preference shall be given to renewable energy generated in New Mexico.

**B. Renewable portfolio standards:** For public utilities other than rural electric cooperatives and municipalities, requirements of the renewable portfolio standard are:

- (1) no later than January 1, 2015, renewable energy shall comprise no less than fifteen percent of each public utility's total retail sales to New Mexico customers;
- (2) no later than January 1, 2020, renewable energy shall comprise no less than twenty percent of each public total retail sales to New Mexico customers;
- (3) no later than January 1, 2025, renewable energy shall comprise no less than forty percent of each public utility's total retail sales to New Mexico customers;
- (4) no later than January 1, 2030, renewable energy shall comprise no less than fifty percent of each public utility's total retail sales to New Mexico customers;
- (5) no later than January 1, 2040, renewable energy resources shall supply no less than eighty percent of all retail sales of electricity in New Mexico, provided that compliance with this standard until December 31, 2047 shall not require the public utility to displace zero carbon resources in the utility's generation portfolio as of June 14, 2019; and
- (6) no later than January 1, 2045, zero carbon resources shall supply one hundred percent of all retail sales of electricity in New Mexico. Reasonable and consistent progress shall be made over time toward this requirement.

**C. Demonstration of compliance:** In accordance with Section 62-16-5 NMSA 1978:

(1) compliance with the renewable portfolio standard shall be demonstrated by the retirement of renewable energy certificates, provided that the associated renewable energy is delivered to the public utility and assigned to the public utility's New Mexico customers;

(2) a public utility shall not retire renewable energy certificates associated with renewable energy from generation resources for which it has traded, sold, or transferred the associated renewable energy certificate for purposes of compliance with the renewable portfolio standard; and

(3) for any REC that a public utility claims to own pursuant to the exceptions stated in Subparagraphs (a), (b), and (c) of Paragraph (1) of Subsection B of Section 62-16-5 NMSA 1978, the public utility shall have purchased the associated renewable energy. In the case of qualifying facilities that are net metered pursuant to 17.9.570.10 NMAC, only the excess net energy delivered from the qualifying facility to the utility shall be deemed to be purchased by the utility for the purposes of this rule, unless a different purchasing scheme is permitted in a specific agreement or contract pursuant to Subparagraphs (a) and (c) of Paragraph (1) of Subsection B of Section 62-16-5 NMSA 1978.

[17.9.572.10 NMAC - Rp, 17.9.572.10 NMAC, 2/28/2023]

#### **17.9.572.11 COMMISSION ADMINISTRATION OF RPS AND ZERO CARBON STANDARDS:**

After consultation with the department of environment, the commission may not approve a public utility's annual Renewable Energy Act plan that results in material increases to greenhouse gas emissions from entities not subject to commission oversight and regulation.

[17.9.572.11 NMAC - Rp, 17.9.572.11 NMAC, 2/28/2023]

#### **17.9.572.12 REASONABLE COST THRESHOLD:**

**A.** The reasonable cost threshold in any plan year is adjusted for inflation starting in 2021 by the amount of the cumulative increase change in the consumer price index, urban, all items, published by the bureau of labor statistics between January 1 of the year prior to the procurement plan year and January 1 of the procurement plan year. Each public utility shall include in its annual Renewable Energy Act plan a reasonable cost threshold analysis by proposed procurement for the plan year for which it seeks commission approval. This analysis shall show how each procurement compares for that plan year with the inflation adjusted reasonable cost threshold.



**B.** If, in any given year, a public utility determines that the average annual levelized cost of renewable energy that would need to be procured or generated for purposes of compliance with the renewable portfolio standard would be greater than the reasonable cost threshold, the public utility shall not be required to incur that excess cost; provided that the existence of this condition excusing performance under the renewable portfolio standard in any given year shall not operate to delay compliance with the renewable portfolio standard in subsequent years. The provisions of this rule do not preclude a public utility from accepting a project with a cost that would exceed the reasonable cost threshold. When a public utility can generate or procure renewable energy resources at or below the reasonable cost threshold, it shall be required to do so to the extent necessary to meet the applicable renewable portfolio standard. To the extent a procurement is greater than the reasonable cost threshold and results in excess costs, the public utility shall explain in detail why the public utility cannot procure renewable energy resources at a cost less than or equal to the reasonable cost threshold along with a demonstration of the public utility's efforts to procure renewable energy resources at or below the reasonable cost threshold.

**C.** A public utility that believes its procurement will exceed the reasonable cost threshold may file with the commission a request for waiver of the renewable portfolio standard for the applicable plan year. The waiver request shall:

- (1) explain in detail why the public utility cannot procure resources at a cost less than the reasonable cost threshold;
- (2) include an explanation and evidence of all efforts the public utility undertook to procure resources at a cost within the reasonable cost threshold; and
- (3) be deemed granted if not acted upon within sixty days of the date the waiver request was filed.

[17.9.572.12 NMAC - Rp, 17.9.572.12 NMAC, 2/28/2023]

#### **17.9.572.13 RESOURCE SELECTION:**

The utility shall select resources to satisfy the renewable portfolio standard through a competitive resource selection process that includes opportunities for bidders to propose purchased power, facility self-build or facility build-transfer options. The utility shall determine all commercially available resources available through a competitive procurement process that are necessary to make reasonable and consistent progress toward the renewable portfolio standards and the zero-carbon standard. The utility shall, at a minimum, use the net present value methodology to identify the costs of a proposed new renewable energy resource necessary to satisfy the renewable portfolio standard. The utility may propose additional methodologies to identify the costs of a proposed new renewable energy resource.

[17.9.572.13 NMAC - Rp, 17.9.572.13 NMAC, 2/28/2023]

#### **17.9.572.14 ANNUAL RENEWABLE ENERGY ACT PLAN:**

**A.** An annual Renewable Energy Act plan shall include plan year and next plan year data. The plan year shall be presented for commission approval and the next plan year shall be presented for informational purposes.

**B.** On or before July 1 of each year, each public utility shall file with the commission an annual Renewable Energy Act plan. The filing schedule shall be staggered, as follows, with each of the investor-owned utility filings occurring one month apart, the last filing to be made July 1 of each year. The utilities shall file alphabetically each year (el paso electric company shall file on May 1; public service company of New Mexico shall file on June 1; and southwestern public service company shall file on July 1 each year).

**C.** The annual Renewable Energy Act plan shall include:

(1) testimony and exhibits providing a full explanation of the utility's determination of the plan year and next plan year renewable portfolio standard and reasonable cost threshold;

(2) the cost of procurement in the plan year and the next plan year for all new renewable energy resources required to comply with the renewable portfolio standard selected by the utility pursuant to 17.9.572.10 NMAC;

(3) the amount of renewable energy the public utility plans to provide in the plan year and the next plan year required to comply with the renewable portfolio standard;

(4) testimony and exhibits demonstrating how the cost and amount specified in Paragraphs (2) and (3) of this subsection were determined;

(5) testimony and exhibits demonstrating the plan year and next plan year procurement amounts and costs expected to be recovered by the utility;

(6) the capital, operating, and fuel costs on a per-megawatt-hour basis during the preceding calendar year of each nonrenewable generation resource rate-based by the utility, or dedicated to the utility through a power purchase agreement of one year or longer, and the nonrenewable generation resources' carbon dioxide emissions on a per-megawatt-hour basis during that same year;

(7) testimony and exhibits demonstrating the plan year and next plan year procurement amounts and costs expected to be recovered by the utility if limited by the reasonable cost threshold;

(8) testimony demonstrating that the cost of the proposed procurement is reasonable compared with the price of electricity from renewable resources in the bids

received by the public utility to recent prices for comparable energy resources elsewhere in the southwestern united states;

(9) testimony regarding strategies used to minimize costs of renewable energy integration, including location, diversity, balancing area activity, demand-side management, rate design, and load management;

(10) testimony demonstrating that the portfolio procurement plan is consistent with the integrated resource plan and explaining any material differences;

(11) testimony demonstrating that acceptable system reliability will be maintained with the proposed new renewable resource additions;

(12) information, including exhibits, as applicable, that demonstrates that the proposed procurement was the result of a competitive procurement that included opportunities for bidders to propose purchased power, facility self-build, or facility build-transfer options;

(13) demonstration that the plan is otherwise in the public interest, considering factors such as overall cost and economic development opportunities;

(14) a mechanism, with supporting testimony, to prevent the public utility's voluntary program customers from being subject to charges by the public utility to recover RPS compliance costs pursuant to Subsection B of Section 62-16-7 NMSA 1978; and

(15) any other information the commission may deem necessary.

**D.** In addition to electronically filing and serving in accordance with 1.2.2 NMAC, a public utility shall serve notice and a copy of its annual renewable energy plan filing by first class mail on renewable resource providers requesting such notice from the commission, the New Mexico attorney general, and the intervenors in the public utility's most recent rate case. A public utility shall also post on its website the most recent and the pending annual Renewable Energy Act plans.

[17.9.572.14 NMAC - Rp, 17.9.572.14 NMAC, 2/28/2023]

#### **17.9.572.15 COST RECOVERY FOR RENEWABLE ENERGY AND EMISSIONS REDUCTIONS:**

**A.** A public utility shall recover the reasonable costs of complying with this rule through the rate making process, including its reasonable interconnection and transmission costs, costs to comply with electric industry reliability standards, and other costs attributable to acquisition and delivery of renewable energy and zero carbon energy to retail New Mexico customers.

**B.** Costs that are consistent with commission-approved annual Renewable Energy Act plans are deemed to be reasonable.

**C.** A public utility that is permitted to defer the recovery of renewable energy costs pursuant to commission order may, through the ratemaking process, recover from customers that are not subject to the rate impact limitations of Subsection C of Section 62-16-4 NMSA 1978 the cumulative sum of those deferred amounts, plus a carrying charge on those amounts.

**D.** Any financial benefits resulting to customers qualified pursuant Subsection C of Section 62-16-4 NMSA 1978 shall accrue to the customer immediately as of June 14, 2019 and shall be reflected in customer bills each month, subject to annual true-up and reconciliation.

**E.** The financial incentive established pursuant to 17.9.572.22 NMAC shall be recovered or credited through a separate rider during the calendar year following the determination of the financial incentive, and subject to reconciliation for under- or over-recovery in a subsequent calendar year.

**F.** Any renewable energy procurement costs recovered through the utility's fuel clause shall be separately identified in its monthly and annual fuel and purchased power clause adjustment filings and its continuation filings.

**G.** The commission shall not disallow the cost associated with any expired renewable energy certificate.

**H.** If a public utility has been granted a certificate of public convenience and necessity prior to January 1, 2015 to construct or operate an electric generation facility and the investment in that facility has been allowed recovery as part of the utility's rate-base, the commission may require the facility to discontinue serving customers within New Mexico if the replacement has less or zero carbon dioxide emissions into the atmosphere; provided that no order of the commission shall disallow recovery of any undepreciated investments or decommissioning costs associated with the facility.

[17.9.572.15 NMAC - Rp, 17.9.572.15 NMAC, 2/28/2023]

**17.9.572.16 CUSTOMERS QUALIFIED PURSUANT TO SUBSECTION C OF SECTION 62-16-4 NMSA 1978:**

**A.** Any customer that is a political subdivision of the state, or any educational institution designated in Article 12, Section 11 of the Constitution of New Mexico with an enrollment of twenty thousand students or more during the fall semester on its main campus, with consumption exceeding twenty million kilowatt-hours per year at any single location or facility, and that owns renewable energy generation or hosts such facilities through a renewable purchased power agreement, shall not be charged by the utility for power purchases of one year or less or fuel on the amount of electricity

purchased from the utility equal to the amount of renewable energy produced or hosted by the customer. The customer shall annually certify to the state auditor and notify the commission and the customer's serving electric utility of the amount of renewable energy produced at the customer-owned or customer-hosted facilities that generate renewable energy. The customer shall also certify to the state auditor and notify the commission that the customer will retire all renewable energy certificates associated with the renewable energy produced by those facilities. Any financial benefits as a result of the provisions of this subsection shall accrue to the customer immediately upon June 14, 2019, and shall be reflected in customer bills each month subject to annual true-up and reconciliation. The provisions of this rule shall not prevent the utility from recovering all of its reasonable and prudent fuel and purchased power costs. That customer shall also certify that it will retire all renewable energy certificates associated with the energy produced by those facilities.

**B.** The notice to the commission and the customer's serving utility shall:

- (1) be timely;
- (2) state the plan year during which the renewable energy is expected to be produced or hosted;
- (3) quantify the amount of renewable energy expected to be produced or hosted; and
- (4) shall include a copy of the customer's certification to the state auditor.

**C.** Rule 17.9.572.16 NMAC only exempts customers from charges for power purchases of one year or less or fuel on the amount of electricity purchased from the utility equal to the amount of renewable energy produced or hosted by the customer. Rule 17.9.572.16 NMAC shall not prevent the utility from recovering all of its reasonable and prudent fuel and purchased power costs.

**D.** A public utility shall not retire any RECs retired per the certification of a customer made pursuant to Subsection C of Section 62-16-4 NMSA 1978 for the renewable portfolio standard or voluntary renewable energy program compliance.

[17.9.572.16 NMAC - Rp, 17.9.572.16 NMAC, 2/28/2023]

#### **17.9.572.17 RENEWABLE ENERGY CERTIFICATES:**

**A.** Each public utility shall annually establish its compliance with the renewable portfolio standard through the filing of an annual report, as provided in 17.9.572.19 NMAC, documenting the retirement of renewable energy certificates.

**B.** Non-WREGIS registered RECs shall contain the following information:

- (1) the name and contact information of the renewable energy generating facility owner or operator;
- (2) the name and contact information of the public utility or rural electric distribution cooperative purchasing the renewable energy certificate;
- (3) the type of generator technology and fuel type;
- (4) the generating facility's physical location, nameplate capacity in megawatts, location and ID number of revenue meter and date of commencement of commercial generation;
- (5) the public utility to which the generating facility is interconnected;
- (6) the control area operator for the generating facility; and
- (7) the quantity in kilowatt-hours and the date of the renewable energy certificate creation.

**C. Renewable energy certificates:**

- (1) shall be owned by the generator of the renewable energy unless:
  - (a) the renewable energy certificates are transferred to the purchaser of the energy through specific agreement with the generator;
  - (b) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the public utility purchaser of the renewable energy unless retained by the generator through specific agreement with the public utility purchaser of the energy; or
  - (c) a contract for the purchase of renewable energy is in effect prior to January 1, 2019, in which case the purchaser of the energy owns the renewable energy certificates for the term of such contract; and
- (2) may be traded, sold or otherwise transferred by their owner, unless the certificates are from a rate-based public utility plant, in which case the entirety of the renewable energy certificates from that plant shall be retired by the utility on behalf of itself or its customers. Any contract to purchase renewable energy entered into by a public utility on or after July 1, 2019 shall include conveyance to the purchasing utility of all renewable energy certificates, and the entirety of those certificates shall be retired by that utility on behalf of itself or its customers or subsequently transferred to a retail customer for retirement under a voluntary program for purchasing renewable energy approved by the commission;

(3) that are used once by a public utility to satisfy the renewable portfolio standard and are retired shall not be further used by the public utility; and

(4) that are not used by a public utility to satisfy the renewable portfolio standard may be carried forward for up to four years from the date of creation and, if not used by that time, shall be retired by the public utility.

**D.** Public utilities shall be responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources and has not been retired, traded, sold or otherwise transferred to another party. Public utilities shall maintain records sufficient to meet the demonstration requirement of this subsection.

**E.** The acquisition, sale or transfer, and retirement of any renewable energy certificates used to meet renewable portfolio standards on or after January 1, 2008 shall be registered with the WREGIS or its direct successor(s), except as provided in Subsection F of 17.9.572.17 NMAC. Certificates whose retirement has been registered by the public utility with WREGIS shall be deemed to meet the requirements of Subsection D of 17.9.572.17 NMAC.

**F.** Renewable energy certificates representing electricity delivered to the public utility and assigned to the public utility's New Mexico customers and registered with a tracking system other than WREGIS may be used to meet renewable portfolio standards so long as WREGIS lacks the capability to import certificates from that other tracking system.

[17.9.572.17 NMAC - Rp, 17.9.572.17 NMAC, 2/28/2023]

#### **17.9.572.18 VOLUNTARY RENEWABLE TARIFFS:**

**A.** The commission may require that a public utility offer its retail customers a voluntary program for purchasing renewable energy that is in addition to electricity provided by the public utility pursuant to the renewable portfolio standard, under rates and terms that are approved by the commission.

**B.** The voluntary renewable tariff may also include provisions to enable consumers to purchase renewable energy within certain energy blocks and by source of renewable energy. Additionally, each public utility shall develop an educational program on the benefits and availability of its voluntary renewable energy program. The tariff, along with the details of the consumer education program, shall be on file with the commission.

**C.** All renewable energy purchased by a retail customer through an approved voluntary program shall:

(1) have all associated renewable energy certificates retired by the retail customer, or on that customer's behalf, by the public utility, and the certificates shall not be used to meet the public utility's renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978;

(2) be excluded from the total retail sales to New Mexico customers used to determine the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978; and

(3) not be subject to charges by the public utility to recover costs of complying with the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978.

[17.9.572.18 NMAC - Rp, 17.9.572.18 NMAC, 2/28/2023]

### **17.9.572.19 ANNUAL RENEWABLE ENERGY PORTFOLIO REPORT:**

**A.** Concurrent with the filing of an annual renewable energy plan, each public utility shall file with the commission a report on its renewable energy generation or purchases of renewable energy during the prior plan year. This report shall:

(1) itemize all renewable energy generation or renewable energy certificate purchases and sales;

(2) list, and include copies of, all renewable energy certificates, including acquired, issued or retired certificates;

(3) document from WREGIS or its successor the renewable energy certificates acquired, sold, retired, transferred, or expired; such documentation shall include reports from WREGIS or its successor which allow the commission to determine, by fuel type, the number of RECs in each calendar year:

(a) acquired;

(b) sold;

(c) retired;

(d) transferred; and

(e) expired;

(4) describe the retirements made to meet renewable portfolio standard compliance based on actual retail sales and procurement costs, for the most recent reporting period including, the reductions, if any, to the RPS for:



(a) purchases by retail customers through an approved voluntary program; or

(b) due to the reasonable cost threshold;

(c) explain and demonstrate how the reduction was determined; and

(d) quantity of renewable energy certificates banked for future compliance use;

(5) describe and quantify the implementation of the voluntary renewable tariff requirements in 17.9.572.18 NMAC;

(6) present a full explanation of approved recovery mechanisms for approved annual renewable energy plan costs and a complete accounting of all collected and deferred amounts; and

(7) describe and tabulate the utility's compliance with its renewable portfolio standard for a given report year and describe how the compliance relates to the first year a new renewable portfolio standard becomes effective as established in Subsection A of Section 62-16-4 NMSA 1978 and Subsection A of 17.9.572.10 NMAC and describe how the compliance relates the first year of the next new renewable portfolio standard.

**B.** The report shall include the following to demonstrate compliance with the renewable portfolio standard:

(1) report year total utility renewable portfolio standard requirement in megawatt-hours;

(2) report year total utility renewable portfolio standard compliance in megawatt-hours;

(3) report year total utility renewable portfolio standard provided by eligible renewable energy resources in megawatt-hours listed by resource and totaled;

(4) percentage of report year total utility renewable portfolio standard megawatt-hours provided by eligible renewable energy resources; and

(5) report year kilowatt-hour generation by facility from coal-fired generating facilities allocated to New Mexico retail customers.

[17.9.572.19 NMAC - Rp, 17.9.572.19 NMAC, 2/28/2023]

**17.9.572.20 REVIEW BY COMMISSION:**

**A.** Interested parties wishing to protest an annual Renewable Energy Act plan shall do so by stating the bases for the protest within 30 days after the filing of the utility's annual renewable energy plan.

**B.** The commission shall approve or modify annual Renewable Energy Act plans within 90 days and may approve such plans without a hearing, unless a protest is filed that demonstrates to the commission's reasonable satisfaction that a hearing is necessary.

**C.** The commission may modify a plan after notice and hearing, and may, for good cause, extend the time to approve an annual Renewable Energy Act plan for an additional 90 days.

**D.** If the commission does not act within the 90-day period, a plan is deemed approved.

**E.** The commission may reject a plan, within 40 days of filing, if the commission finds that the plan does not contain the required information; upon such rejection the public utility's obligation to procure additional resources will be suspended for the time necessary to file a revised plan. In such instances, the total amount of renewable energy to be procured by the public utility will not change.

[17.9.572.20 NMAC - Rp, 17.9.572.20 NMAC, 2/28/2023]

#### **17.9.572.21 EXEMPTION AND VARIANCE:**

**A.** The commission, upon its own motion, may issue, or any interested person may file an application for, an exemption or a variance from the requirements of this rule.

**B.** Such motion or application shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation that necessitates the exemption or variance;

(3) set out the effect of complying with this rule on the public utility and its customers if the exemption or variance is not granted;

(4) define the result the request will have if granted;

(5) state how the exemption or variance will be consistent with the purposes of this rule;

(6) state why no other reasonable alternative is preferable; and

(7) state why the proposed alternative is in the public interest.

[17.9.572.21 NMAC - Rp, 17.9.572.21 NMAC, 2/28/2023]

**17.9.572.22 FINANCIAL INCENTIVE:**

**A.** In accordance with Subsection D of Section 62-16-4 NMSA 1978, a public utility or any other person may, by motion or application, request that the commission develop and provide the public utility with financial or other incentives to encourage the public utility to produce or acquire renewable energy that:

(1) exceeds the applicable annual renewable portfolio standard set forth in Section 62-16-4 NMSA 1978;

(2) results in reductions in carbon dioxide emissions earlier than required by Subsection A of Section 62-16-4 NMSA 1978; or

(3) causes a reduction in the generation of electricity by coal-fired generating facilities, including coal-fired generating facilities located outside of New Mexico.

**B.** A financial or other incentive proposed under 17.9.572.22 NMAC shall be to encourage the public utility to produce or to acquire renewable energy to accomplish, in the future, at least one of the following purposes:

(1) exceeding the public utility's annual RPS requirements;

(2) reducing carbon dioxide emissions earlier than required by Subsection A of Section 62-16-4 NMSA 1978; or

(3) reducing the generation of electricity by coal-fired generating facilities, including coal-fired generating facilities located outside of New Mexico that serve the utility's customers.

**C.** A public utility shall not be eligible to receive financial or other incentives for renewable energy that was produced or acquired prior to the date that the commission approves the public utility's application for a financial or other incentive for the specific renewable energy investments.

**D.** The public utility or other person requesting a financial or other incentive shall have the burden to prove by a preponderance of evidence that the terms and duration of the proposed incentive meet the requirements of this rule and are just and reasonable in light of the utility's costs, its authorized return, and the magnitude of any other incentives that have been authorized by the commission. Any application or motion requesting a financial or other incentive shall be supported by written testimony and exhibits.

**E.** No incentive shall be awarded under 17.9.572.22 NMAC with respect to a particular investment if the cost of that investment exceeds the demonstrable value of the corresponding reduction in carbon dioxide or other emissions. A utility requesting a financial or other incentive under this rule shall establish that the benefits of achieving the goals set out in Subsection B of 17.9.572.22 NMAC above are not exceeded by the costs it incurred to achieve them. To establish this, the utility shall provide detailed analysis for each applicable period, including but not limited to:

- (1) the utility's total carbon dioxide emissions;
- (2) the reduction in the utility's carbon dioxide emissions attributable to the measures described in Subsection B of 17.9.572.22 NMAC;
- (3) the estimated value of the reduction in carbon dioxide emissions described in Paragraph (2) of this subsection based on an analysis of relevant carbon dioxide markets;
- (4) the cost of the measures implemented by the utility that resulted in the lower carbon dioxide emissions identified in Paragraph (2) of this subsection and the dates when each measure was implemented; and
- (5) any other costs necessary to implement each of the measures identified in Subsection B of 17.9.572.22 NMAC.

**F.** The total financial incentive authorized for recovery in rates pursuant to 17.9.572.22 NMAC shall not exceed the product (expressed in dollars) of:

- (1) the utility's annual weighted average cost of capital (expressed as a percent); and
- (2) the cost of the measures described in Subsection B of 17.9.572.22 NMAC.

**G.** A financial incentive shall only be granted to encourage a public utility to produce or to acquire renewable energy to accomplish the requirements of Subsection D of Section 62-16-4 NMSA 1978, and it shall not be granted to incentivize only an abandonment or closure of a carbon dioxide emitting generating resource.

**H.** Public utilities shall file any motion or application under 17.9.572.22 NMAC concurrently with their annual Renewable Energy Act plan.

[17.9.572.22 NMAC - Rp, 17.9.572.22 NMAC, 2/28/2023]

## **PART 573 COMMUNITY SOLAR**

### **17.9.573.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.9.573.1 NMAC - N, 07/12/2022]

**17.9.573.2 SCOPE:**

This rule applies to investor-owned electric utilities subject to the commission's jurisdiction and to rural electric distribution cooperatives that opt into the community solar program. This rule also applies to subscriber organizations and subscribers as defined in the Community Solar Act, Subsections M and N of Section 62-16B-2 NMSA 1978.

[17.9.573.2 NMAC - N, 07/12/2022]

**17.9.573.3 STATUTORY AUTHORITY:**

Paragraph (10) of Subsection B of Section 8-8-4 and Section 62-16B-7 NMSA 1978.

[17.9.573.3 NMAC - N, 07/12/2022]

**17.9.573.4 DURATION:**

Permanent, unless otherwise indicated.

[17.9.573.4 NMAC - N, 07/12/2022]

**17.9.573.5 EFFECTIVE DATE:**

July 12, 2022, unless a later date is cited at the end of a section.

[17.9.573.5 NMAC - N, 07/12/2022]

**17.9.573.6 OBJECTIVES:**

The objectives of this rule are to implement the Community Solar Act, Section 62-16B-1 et seq. NMSA 1978, and to reasonably allow for the creation, financing and accessibility of community solar facilities.

[17.9.573.6 NMAC - N, 07/12/2022]

**17.9.573.7 DEFINITIONS:**

[RESERVED]

[17.9.573.7 NMAC - N, 07/12/2022]

**17.9.573.8 LIBERAL CONSTRUCTION:**

If any part or application of this rule is held invalid, the remainder of its parts and any other applications of the rule shall not be affected.

[17.9.573.8 NMAC - N, 07/12/2022]

**17.9.573.9 UTILITY FILINGS FOR IMPLEMENTATION OF PROGRAM:**

Utilities shall file all tariffs, agreements and forms necessary for implementation of the community solar program with the commission within 60 days of the effective date of this rule.

[17.9.573.9 NMAC - N, 07/12/2022]

**17.9.573.10 COMMUNITY SOLAR FACILITY REQUIREMENTS:**

**A.** A community solar facility, excepting any native community solar project, shall:

(1) have a nameplate capacity rating of five megawatts alternating current or less;

(2) be located in the service territory of the qualifying utility and be interconnected to the electric distribution system of that qualifying utility;

(3) have at least ten subscribers;

(4) have the option to be co-located with other energy resources, but shall not be co-located with other community solar facilities;

(5) not allow a single subscriber to be allocated more than forty percent of the generating capacity of the facility; and

(6) make at least forty percent of the total generating capacity of a community solar facility available in subscriptions of 25 kilowatts or less.

**B.** At least thirty percent of electricity produced from each community solar facility shall be reserved for low-income subscribers and low-income service organizations. The commission will issue guidelines to ensure the carve-out is achieved each year and develop a list of low-income service organizations and programs that may pre-qualify low-income customers.

[17.9.573.10 NMAC - N, 07/12/2022]

**17.9.573.11 STATEWIDE CAPACITY PROGRAM CAPS:**

**A.** The initial statewide capacity program cap of 200 megawatts alternating current is allocated among the three qualifying utilities according to addressable market estimations, subject to further refinement, as follows:

- (1) public service company of New Mexico (PNM), 125 MW;
- (2) southwestern public service company (SPS), 45 MW; and
- (3) El Paso electric company (EPE), 30 MW.

**B.** If, within one year of the receipt by a utility of the results of an initial request for proposals for community solar facilities, the initial capacity cap allocation for that utility has not been fully committed by contract, the commission may, at its discretion, apply the unused capacity to another utility on a showing of the latter utility's sufficient subscriber demand.

**C.** On or before April 1, 2024, the commission will commence a review of the results of the initial allocation and subscriber demand for the community solar program and a proceeding to establish a revised annual statewide capacity program cap and allocation to be in effect after November 1, 2024.

[17.9.573.11 NMAC - N, 07/12/2022]

#### **17.9.573.12 PROCESS FOR SELECTION OF COMMUNITY SOLAR FACILITIES:**

**A.** The commission will engage a third-party administrator to manage an unbiased and nondiscriminatory process for selection of proposed projects for building and operating community solar facilities. The commission will have no involvement in the process except to the extent that the administrator or any participant in the process may raise before the commission an issue that is not fully addressed in this rule and that the commission finds, in its discretion, that it should address.

**B.** Community solar facility projects shall be selected through a competitive solicitation process, with each bid meeting the following minimum requirements for eligibility:

- (1) the bidder's legally binding site control;
- (2) the bidder's commitment to meeting statutory subscriber minimums and not exceeding statutory maximums;
- (3) the bidder's completion of a utility pre-application report or an equivalent report by the utility;
- (4) the bidder's proof of access to collateral for the applicable project deposit;  
and
- (5) the bidder's payment of a \$1000 non-refundable bid application fee to the commission.

**C.** The program administrator shall limit consideration of bids by any one bidder to a maximum total for such bids of twenty percent of the statewide capacity cap allocated to the applicable utility.

**D.** No utility shall use any information provided in the interconnection application process or any information to which the utility has superior access to gain an unfair advantage for itself or any utility-affiliated bidder in the project selection process.

**E.** Eligible bids shall be scored using a set of non-price factors, with each factor weighted by the number of points awarded to the factor, as follows:

(1) each bid shall be awarded to one of the following categories pertaining to permitting status, each with its own point weighting:

(a) a bid for which all necessary non-ministerial permits and approvals have been secured, based upon a permitting plan signed by a licensed engineering firm, shall be categorized as fully permitted and shall be awarded 15 points:

(b) a bid for which applications are pending for all necessary non-ministerial permits, or for which one or more permits have been granted and applications are pending for the remainder, based upon permitting plan signed by a licensed engineering firm, shall be categorized as permits known and pending and shall be awarded 10 points;

(c) a bid for which the necessary non-ministerial permits have been identified based upon a permitting plan signed by a licensed engineering firm, but not all such permits have been applied for, shall be categorized as permits known and shall be awarded five points; or

(d) a bid for which the necessary non-ministerial permits have not been identified, based upon a permitting plan signed by a licensed engineering firm, shall be categorized as no permitting activity and shall be awarded no points.

(2) each bid shall be awarded points for having any, some, or all of the following attributes concerning the bidder's experience in developing and managing community solar projects, with the attributes being additive, not exclusive, for a range of zero to 10 potential points per bid:

(a) a bid made by a bidder composed of partners or principals having experience with subscriber recruiting and subscription management shall be awarded three points;

(b) a bid made by a bidder composed of partners or principals having experience building and operating facilities shall be awarded three points; and



(c) a bid made by a bidder composed of partners or principals having experience working directly with low-income communities shall be awarded four points.

(3) each bid shall be assigned to one of the following categories pertaining to financing status, each with its own point weighting:

(a) a bid for which financing has been secured, whether in the form of an executed commitment letter from the project financier(s) or in the form of written confirmation of executive-level approval for internal financing, shall be categorized as financing secured and shall be awarded 10 points;

(b) a bid for which financing has not been secured but for which a detailed and feasible financing plan has been prepared shall be categorized as financing planned and shall be awarded four points; or

(c) a bid for which financing has not been secured and for which no detailed and feasible financing plan has been prepared shall be categorized as financing unplanned and shall be awarded no points.

(4) each bid shall be awarded points for having one or both of the following attributes concerning the proposed project site's viability for interconnection, with the attributes being additive, not exclusive, for a range of zero to five potential points per bid:

(a) a bid for which the proposed project site's distance to the utility's nearest three-phase line is less than one mile, as demonstrated by the utility's pre-application report or convincing alternative evidence presented by the bidder, shall be awarded two points; and

(b) a bid for which the proposed project would interconnect to a line of voltage 12 kV or higher, as demonstrated by the utility's pre-application report, shall be awarded three points.

(5) each bid shall be awarded points for including any, some, or all the following commitments beyond what is required by the statute, with the commitments being additive, not exclusive, for a range of zero to 25 potential points per bid:

(a) a bid including a commitment to exceed the statutory thirty-percent minimum level of subscription of low-income subscribers shall be awarded two points for each additional five-percent commitment above the thirty-percent minimum, up to a maximum of eight points for a commitment to a fifty-percent low-income subscription level for the proposed project;

(b) a bid including a commitment to serve a specific percentage of direct-billed low-income customers shall be awarded two points for a ten-percent commitment and two additional points for each additional ten-percent commitment, up to a maximum

of eight points for a commitment to a forty-percent subscription level of direct-billed, low-income subscribers for the proposed project;

(c) a bid including a commitment to refrain from imposing upon any potential low-income subscriber any up-front costs of subscribing, a commitment to refrain from imposing upon any potential low-income subscriber any early termination fee, and a commitment to refrain from requiring or ordering any credit check or credit report for any low-income subscriber, shall be awarded two points; and

(d) a bid including a commitment to supplement the community solar bill credit for any low-income subscriber, for a minimum period of five years, by including, in addition to the credit as calculated and provided by the utility, a credit from the subscriber organization to the subscriber in the amount of an additional twenty to thirty percent of the utility solar bill credit, shall be awarded four points for a commitment of twenty percent up to and including twenty-two percent, five points for a commitment above twenty-two percent up to and including twenty-five percent, six points for a commitment above twenty-five percent up to and including twenty-seven percent, or seven points for a commitment above twenty-seven percent up to and including thirty percent.

(6) each bid shall be awarded points for having any, some, or all of the following attributes concerning benefits to local communities, to disproportionately impacted communities, or to disadvantaged groups, with the attributes being additive, not exclusive, for a range of zero to 20 potential points per bid:

(a) a bid including a commitment to offer workforce training or educational opportunities to disproportionately impacted communities shall be awarded six points;

(b) a bid including a commitment to contract for materials, supplies, or services only with businesses owned or operated locally or owned or operated by members of racial minorities, women, veterans, or Native Americans, shall be awarded six points;

(c) a bid including a commitment to ownership of the proposed facility by members of the local community shall be awarded two points; and

(d) a bid including evidence of and a description of an existing and continuing partnership with a tribe, pueblo, local community, or non-profit community organization shall be awarded six points.

(7) each bid shall be awarded points for having any, some, or all of the following attributes concerning the proposed project site, with the attributes being additive, not exclusive, for a range of zero to five potential points per bid:

(a) a bid for a project to be sited on a brownfield, built environment, or rooftop shall be awarded two points;

(b) a bid for a project to be sited on municipal, county, or state land shall be awarded one point; and

(c) a bid for a project that has received a favorable analysis from the department of cultural affairs or a qualified independent expert shall be awarded two points.

(8) each bid shall be categorized according to the provisions of Section 13-1-21 NMSA 1978, and shall be awarded points accordingly.

(9) The program administrator may award an additional five points to any bid that, as determined by the administrator in its discretion, includes an innovative commitment or provision beneficial to the local community, to potential subscribers, or to the program overall.

**F.** The program administrator shall select projects based upon these qualifications and selection criteria within each qualifying utility's territory until the allocated capacity cap for each utility has been reached.

**G.** For each bid selected to proceed further by the program administrator, the bidder shall pay to the commission an application fee in the amount of \$2500 for each megawatt of nameplate capacity the proposed facility is expected to have.

**H.** The program administrator shall identify sets of proposed projects to comprise utility-specific wait lists of proposed projects that would be eligible and able to participate in the program should a project or multiple projects be withdrawn after being selected to go forward. The wait lists shall be comprised of projects that received total scores immediately below the scores of the projects that were selected. The program administrator shall maintain a wait list for each qualifying utility, including projects with combined capacities for each utility equal to the utility's allocated capacity cap. Each bidder proposing a wait-listed project shall pay the \$2500/MW application fee within 30 days of moving from the wait list into the queue of selected projects.

**I.** A utility must consider interconnection applications for community solar projects that have been selected by the administrator and any projects from the wait list that replace any selected projects and need not consider interconnection applications for community solar projects that have not been selected or have not replaced selected projects. Among the group of interconnection applications for community solar projects that have been selected by the administrator or have replaced selected projects, a utility must prioritize consideration of applications in the order of ranking by points awarded to each project in the selection process. A utility shall not apply any preference for interconnection applications for community solar projects as opposed to other types of interconnection applications, and vice-versa, regarding prioritization in the interconnection queue.

### **17.9.573.13 INTERCONNECTION AND ADMINISTRATIVE COSTS:**

**A.** The commission may determine on a case-by-case basis whether the cost of distribution system upgrades necessary to interconnect one or more community solar facilities may be eligible for some form of cost-sharing:

- (1) among subscriber organizations using the same distribution facilities;
- (2) among all ratepayers of the qualifying utility via rate base adjustments; or
- (3) among ratepayers of the same rate class as subscribers to the community solar facility via a rate rider for that class.

**B.** In making a determination that there are public benefits to such a cost-sharing mechanism, the commission will employ the analysis that the commission employs when considering cost sharing or rate basing grid modernization projects as defined by 71-3 NMSA 1978, the Grid Modernization Act, to make a finding that the approved expenditures are:

- (1) reasonably expected to improve the utility's electrical system efficiency, reliability, resilience and security;
- (2) reasonably expected to maintain reasonable operations, maintenance and ratepayer costs;
- (3) reasonably expected to meet energy demands through a flexible, diversified and distributed energy portfolio;
- (4) reasonably expected to increase access to and use of clean and renewable energy, with consideration given to increasing access to low-income subscribers and subscribers in underserved communities; or
- (5) designed to contribute to the reduction of air pollution, including greenhouse gases.

**C.** The commission will consider approving sharing of interconnection costs with nonsubscribing ratepayers only to the extent that the costs borne by such ratepayers are matched or exceeded by demonstrable benefits to such ratepayers, so that there will be no subsidization of interconnection costs by nonsubscribing ratepayers.in appropriate cases.

**D.** A utility may recover administrative costs of carrying out its responsibilities concerning the community solar program through a rate rider from which nonsubscribing ratepayers are exempt. A utility may apply to the commission to establish such a rider.

[17.9.573.13 NMAC - N, 07/12/2022]

#### **17.9.573.14 REGISTRATION OF SUBSCRIBER ORGANIZATIONS:**

**A.** The commission will issue a registration form that each subscriber organization shall file with the commission, that includes ownership and contact information, non-profit registration, or proof of certification to operate in New Mexico, and a general description of the project(s) proposed by the subscriber organization.

**B.** Each subscriber organization's ongoing authorization to operate community solar facilities shall be dependent upon the organization's compliance with the statutory thirty-percent low-income subscription minimum for each facility operated by the subscriber organization. Each subscriber organization shall report to the program administrator on a monthly basis upon the organization's progress toward meeting the requirement. Subscriber organizations that have reached the required level shall report on a quarterly basis to verify that the requirement continues to be met. Subscriber organizations that fail to reach the required level within one year of project selection may be subject, at the commission's discretion, to penalties up to and including suspension or revocation of the subscriber organization's authorization to operate.

[17.9.573.14 NMAC - N, 07/12/2022]

#### **17.9.573.15 SPECIAL SUBSCRIBER PROVISIONS:**

**A.** Low-income customers who are eligible to meet the thirty percent carve out of Paragraph (3) of Subsection B of Section 62-16B-7 NMSA 1978 may be pre-qualified based on participation in any of the following programs:

- (1) Medicaid;
- (2) Supplemental Nutrition Assistance Program (SNAP);
- (3) Low-Income Home Energy Assistance Program (LIHEAP);
- (4) first-time homeowner programs and housing rehabilitation programs;
- (5) living in a low-income/affordable housing facility; or
- (6) state and federal income tax credit programs.

**B.** An entire multi-family affordable housing project may prequalify its entire load as a low-income subscriber.

**C.** A customer who does not qualify under subpart A may provisionally qualify as a low-income subscriber by signing a self-attestation that the customer's income and household size qualify the customer as a low-income subscriber, until the customer

provides sufficient confirming documentation within ninety days of providing the self-attestation.

**D.** Low-income service organizations need only fit the special definition of this term provided in the community solar act, Subsection H of Section 62-16-2 NMSA 1978.

**E.** For the initial period of the program, the commission shall contract with an experienced service provider to partner with community organizations and to manage an outreach program to attract low-income subscribers to the program.

[17.9.573.15 NMAC - N, 07/12/2022]

#### **17.9.573.16 SUBSCRIBER PROTECTIONS:**

**A.** The commission has adopted a uniform disclosure form, identifying the information to be provided by subscriber organizations to potential subscribers, in both English and Spanish, and when appropriate, native or indigenous languages, to ensure fair disclosure of future costs and benefits of subscriptions, key contract terms, security interests and other relevant but reasonable information pertaining to the subscription, as well as grievance and enforcement procedures. The key contract terms to be disclosed on the form are subscription size (kw dc), estimated contract effective date, contract term (months or years), option to renew y/n?, enrollment costs/subscription fees, payment terms, rate discount, estimated total one year payments, early termination fees or cancellation terms, and subscription portability or transferability. The subscriber organization shall provide the form to a potential subscriber and allow them a reasonable time to review the form's disclosures and sign the form before entering into a subscription agreement. The subscriber organization shall maintain in its files a signed form for each subscriber for the duration of the subscriber's subscription, plus one year, and shall make the form available to the commission upon the commission's request.

**B.** The subscriber organization must maintain a minimum level of general liability insurance coverage for each facility that it operates, with the minimum level dependent upon the nameplate capacity of the facility, according to the following schedule: one million dollars per occurrence for a facility with a capacity greater than 250 kW, five hundred thousand dollars per occurrence for a facility with a capacity in the range of 40 kW - 250kW, and three hundred thousand dollars per occurrence for a facility with a capacity below 40 kW.

[17.9.573.16 NMAC - N, 07/12/2022]

#### **17.9.573.17 SUBSCRIPTION AGREEMENTS:**

Each subscriber organization shall develop and implement a written subscriber agreement containing the organization's terms and conditions for subscribing to its project.

**A.** The subscriber agreement must include the following terms, at a minimum:

- (1) general project information;
- (2) the effective date and term of the agreement;
- (3) identification of all charges and fees;
- (4) payment details;
- (5) information about the bill credit mechanism;
- (6) a comparison of the subscriber's net bill with and without the subscription;
- (7) the terms and conditions of service;
- (8) the process for customer notification if the community solar facility is out of service;
- (9) the customer protections provided;
- (10) contact information for questions and complaints; and
- (11) the subscriber organization's commitment to notify the subscriber of changes that could impact the subscriber.

**B.** The commission may consider additional required terms in a future proceeding.

**C.** Complaints by subscribers against subscriber organizations may be submitted to the commission's consumer relations division for informal resolution. The commission may, in its discretion, refer serious issues to the attorney general to pursue enforcement proceedings.

[17.9.573.17 NMAC - N, 07/12/2022]

#### **17.9.573.18 CO-LOCATION OF COMMUNITY SOLAR FACILITIES:**

As long as a community solar facility is not located on the same parcel as another community solar facility, it shall not be considered co-located with another community solar facility. For any parcel that has been subdivided in the two years prior to a community solar project bid, all subdivided parcels shall be considered a single parcel for the purposes of this rule. The commission will consider, on a case-by-case basis, allowing more than one community solar facility to be located on the same parcel.

[17.9.573.18 NMAC - N, 07/12/2022]

### **17.9.573.19 PRODUCTION DATA:**

**A.** The subscriber organization shall pay for a production meter to be used to measure the amount of electricity and renewable energy certificates generated by each community solar facility, whether installed by the utility or the subscriber organization. A net meter may serve as the production meter if the utility determines that there is no material onsite load at the facility.

**B.** The subscriber organization shall provide real-time reporting of production as specified by the utility. For a community solar facility with production capacity greater than 250 kW AC, the subscriber organization shall provide real-time electronic access to production and system operation data to the utility.

**C.** Production from the facility shall be reported to the subscribers by the subscriber organization on at least a monthly basis. Subscriber organizations are encouraged to provide website access to subscribers showing real-time output from the facility, if practicable, as well as historic production data.

[17.9.573.19 NMAC - N, 07/12/2022]

### **17.9.573.20 COMMUNITY SOLAR BILL CREDIT RATE:**

**A.** In calculating the solar bill credit rate, the utility shall calculate the total aggregate retail rate on a per-customer-class basis, less the commission-approved distribution cost components, and identify all proposed rules, fees and other charges converted to a kilowatt-hour rate, including fuel and power cost adjustments, the value of renewable energy attributes and other charges of a qualifying utility's effective rate schedule applicable to a given customer rate class, but does not include charges described on a qualifying utility's rate schedule as minimum monthly charges, including customer or service availability charges, energy efficiency program riders or other charges not related to a qualifying utility's power production, transmission or distribution functions, as approved by the commission, franchise fees and tax charges on utility bills;

**B.** The total aggregate retail rate is the total amount of a qualifying utility's demand, energy and other charges converted to a kilowatt-hour rate, including fuel and power cost adjustments, the value of renewable energy attributes and other charges of a qualifying utility's effective rate schedule applicable to a given customer rate class, but does not include charges described on a qualifying utility's rate schedule as minimum monthly charges, including customer or service availability charges, energy efficiency program riders or other charges not related to a qualifying utility's power production, transmission or distribution functions, as approved by the commission, franchise fees and tax charges on utility bills. The utility's tariff for the bill credit shall include a table specifying the components of the total aggregate retail rate, the value of the renewable energy attributes and the distribution costs to be subtracted.



**C.** The utility shall base its distribution cost calculation upon its most recently commission-approved cost-of-service study indexed to current value.

**D.** The utility shall not subtract any costs of transmission from the solar bill credit rate calculation.

**E.** The utility shall initially value the environmental attributes of renewable energy certificates (RECs) at the utility's average cost of meeting its renewable portfolio standard requirement. During the utility's next base rate case, the Commission will consider whether to adopt a replacement methodology to determine the net present value of the environmental attributes of RECs necessary to reach the mandated eighty-percent renewable portfolio standard by 2040, including full environmental and distribution benefits.

[17.9.573.20 NMAC - N, 07/12/2022]

#### **17.9.573.21 UNSUBSCRIBED ENERGY:**

**A.** If a community solar facility is not fully subscribed in a given month, the unsubscribed energy may be rolled forward on the community solar facility account for up to one year from its month of generation and allocated by the subscriber organization to subscribers at any time during that period. At the end of that period, any undistributed bill credit shall be removed, and the unsubscribed energy shall be purchased by the qualifying utility at its applicable avoided cost of energy rate as approved by the commission.

**B.** The utility shall document any payments made for unsubscribed energy, including documentation of the utility's calculation of avoided cost and make such documentation available to the commission upon request. The utility may request recovery of such payments in its next base rate case.

[17.9.573.21 NMAC - N, 07/12/2022]

#### **17.9.573.22 REPORT TO LEGISLATURE:**

On April 1, 2023 and April 1, 2024, qualifying utilities and subscriber organizations shall provide information to the commission relevant to the report to the legislature due on November 1, 2024. The commission will issue specific information requests no later than 45 days before each April deadline.

[17.9.573.22 NMAC - N, 07/12/2022]

### **PART 574: APPLICATIONS TO EXPAND TRANSPORTATION ELECTRIFICATION**

#### **17.9.574.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.9.574.1 NMAC - N, 2/14/2023]

**17.9.574.2 SCOPE:**

This rule applies to all investor-owned electric utilities under the commission's jurisdiction.

[17.9.574.2 NMAC N, 2/14/2023]

**17.9.574.3 STATUTORY AUTHORITY:**

Paragraph (10) of Subsection B of Section 62-19-9 NMSA 1978 and Section 62-8-12 NMSA 1978.

[17.9.574.5 NMAC - N, 2/14/2023]

**17.9.574.4 DURATION:**

Permanent.

[17.9.574.6 NMAC - N, 2/14/2023]

**17.9.574.5 EFFECTIVE DATE:**

February 14, 2023, unless a later date is cited at the end of a section.

[17.9.574.7 NMAC - N, 2/14/2023]

**17.9.574.6 OBJECTIVE:**

The purpose of this rule is to implement Section 62-8-12 NMSA 1978, applications to expand transportation electrification, and to bring to New Mexico the economic development and environmental benefits of expanded electrification of the State's transportation modalities and transportation infrastructure.

[17.9.574.8 NMAC - N, 2/14/2023]

**17.9.574.7 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": "charging station"** means any publicly available infrastructure that delivers electricity from a source outside an electric vehicle into one or more electric vehicles.

**D. Definitions beginning with "D": [RESERVED]**

**E. Definitions beginning with "E": "electric vehicle" or "EV"** means a passenger automobile, truck, bus, train, boat, or other equipment that transports goods or people that is powered in part or in whole by the use of electricity from external sources.

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

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

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

**I. Definitions beginning with "I": "investment"** means utility incurred expenditures on an asset, on a program or a project, or on research and development, associated with the expansion and facilitation of transportation electrification.

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

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

**L. Definitions beginning with "L": [RESERVED]**

**M. Definitions beginning with "M": "measure"** means an investment, incentive, program, rate design, or expenditure in a transportation electrification plan that is reasonably expected to achieve the goals of Section 62-8-12 NMSA 1978.

**N. Definitions beginning with "N": [RESERVED]**

**O. Definitions beginning with "O":**

(1) **"off-peak hours"** means hours not included in the on-peak period as set forth in a public utility's commission approved tariff;

(2) **"on-peak hours"** means hours included in the on-peak period as set forth in a public utility's commission approved tariff.

**P. Definitions beginning with "P":**

(1) **"planning horizon"** means the two calendar years immediately following the plan years;

(2) "plan years" means the three calendar years for which TEP approval is sought;

(3) "public utility" or "utility" means an investor-owned electric utility certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act and does not include rural electric cooperatives or municipalities.

**Q. Definitions beginning with "Q": [RESERVED]**

**R. Definitions beginning with "R": [RESERVED]**

**S. Definitions beginning with "S": [RESERVED]**

**T. Definitions beginning with "T": "transportation electrification plan" or "TEP"** means a plan to expand transportation electrification in a utility's service territory over the three plan years, which additionally contains the informational outlook for the planning horizon.

**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]**

[17.9.574.9 NMAC - N, 2/14/2023]

**17.9.574.8 IMPACT ON OTHER RULES:**

Except as specifically provided herein, this rule does not supersede any other rule of the commission but is to be construed as a supplement to such rules.

[17.9.574.8 NMAC - N, 2/14/2023]

**17.9.574.9 SEVERABILITY:**

If any part or application of this rule is held invalid, the remainder of its application shall not be affected.

[17.9.574.9 NMAC - N, 2/14/2023]

#### **17.9.574.10 LIBERAL CONSTRUCTION:**

This rule shall be liberally construed to carry out its intended purposes.

[17.9.574.10 NMAC - N, 2/14/2023]

#### **17.9.574.11 APPLICATIONS TO EXPAND TRANSPORTATION ELECTRIFICATION:**

**A.** In accordance with the filing schedule provided in 17.9.574.12 NMAC, a public utility shall file with the commission an application for approval of a proposed three-year plan to expand transportation electrification in the utility's service area. The three-year plan may include planned investments, incentives, programs, rate designs, and expenditures that are reasonably expected to achieve the goals of Section 62-8-12 NMSA 1978 during the plan years.

**B.** A public utility's proposed three-year plan shall include, at minimum:

(1) strategies and measures for expanding transportation electrification among low-income customers and underserved communities, including but not limited to:

(a) a percentage budgetary carveout for measures aimed at increasing EV awareness and adoption among low-income customers and in underserved communities;

(b) outreach and marketing strategies and measures for expanding transportation electrification among low-income customers and in underserved communities; and

(c) strategies and measures for mass transit operations, ride-sharing programs, and multi-family dwelling units in the utility's service area that serve low-income customers and underserved communities;

(2) strategies and measures for expanding transportation electrification across multiple EV classes, including but not limited to personal and commercial light-duty, medium-duty, and heavy-duty EVs, and electric bicycles;

(3) expected customer participation estimates and the methods used to derive such estimates;

(4) strategies and measures for servicing multiple market segments, including but not limited to commercial businesses, multi-family dwelling units, single-family homes, and ride-sharing and public transit programs;

(5) strategies and measures for coordinating with State or federal EV infrastructure planning;

(6) strategies and measures for coordinating with existing business locations that sell and dispense transportation fuel to the public; and

(7) identification of key performance indicators for program success and how these indicators are utilized to further the success of the program.

**C.** Strategies and measures for low-income customers shall permit self-certification of eligibility and shall be provided with public-facing materials in English and Spanish, and any incentives shall be made available prior to or at the time of purchase.

**D.** In addition to the proposed three-year plan, the TEP shall include a planning outlook addressing the two-year period beyond the three-year plan. The two-year planning outlook shall be presented for informational purposes to inform the commission of the utility's vision for the transportation electrification sector during the planning horizon. Planning outlooks shall include:

(1) the public utility's outlook for projected transportation electrification in its service territory, including estimates of the expected numbers of EVs operating in its service territory, listed by light-duty, medium-duty, and heavy-duty EV classes;

(2) expected lead times for coordinating with State and federal EV infrastructure planning, EV charging station operators, existing business locations that sell and dispense transportation fuel to the public, and other stakeholders, and for planned construction or planned deployments, including estimated or expected new or upgraded infrastructure needs;

(3) anticipated requests for regulatory approvals to effectuate a future TEP in the planning horizon, to carry out the three-year plan, to support the transition between TEPs, and to coordinate with State or federal EV infrastructure planning;

(4) planned or potential integration with neighboring public utility transportation electrification planning and possible strategies for coordinating with rural electric cooperatives, tribes, and pueblos, if any;

(5) anticipated grid management requirements and projected peak load requirements to reliably accommodate expanded transportation electrification in the public utility's service territory, and how these requirements may be reduced by improved distribution planning, rate design, or other solutions;

(6) forecasted potential for meeting new load growth associated with EV charging infrastructure with renewable energy; and

(7) any expected or potential policy or statutory issues that could impact expanded infrastructure or network upgrades required by expanded transportation electrification in the public utility's service territory.

**E.** The application shall include:

- (1) testimony and exhibits providing a full explanation of the public utility's determination of the plan years' transportation electrification expansion measures to be undertaken and their corresponding budgets;
- (2) the costs of transportation electrification measures in the plan years;
- (3) whether the public utility intends to recover costs through a tariff rider, base rates, or both;
- (4) testimony and exhibits demonstrating how the cost and amount specified in Paragraphs (2) and (3) of this Subsection were determined;
- (5) testimony demonstrating that the proposed transportation electrification plan is reasonably and prudently designed and expected to accomplish any or all of the goals of the TEP pursuant to Paragraphs (1) through (6) of Subsection B of Section 62-8-12 NMSA 1978 and 17.9.574 NMAC.

[17.9.574.12 NMAC - N, 2/14/2023]

**17.9.574.12 APPLICATION FILING, SERVICE, AND REVIEW:**

**A.** Public service company of New Mexico shall file its application by June 1, 2023, and every three years thereafter following by the same date. El paso electric company shall file its application by July 1, 2023, and every three years thereafter following by the same date. Southwestern public service company shall file its application by April 1, 2024, and every three years thereafter following by the same date.

**B.** A public utility shall electronically file and serve its application pursuant to 1.2.2 NMAC. A public utility shall electronically serve a copy of its application on intervenors in the public utility's most recent TEP docket, the New Mexico attorney general, and the intervenors in the public utility's most recent rate case. The public utility shall also post on its website its most recently approved TEP and any proposed TEP pending before the commission.

**C.** The commission shall complete its review and approval of a public utility's TEP application pursuant to 17.9.574.11 NMAC no later than six months after filing of the application, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.

**D.** The commission's final order on a public utility's TEP application shall address the utility's proposed cost recovery for TEP costs.

[17.9.574.13 NMAC - N, 2/14/2023]

### **17.9.574.13 ANNUAL PROGRESS REPORT:**

**A.** Each public utility shall file an annual progress report of its progress in meeting the requirements and goals of its TEP. Public service company of New Mexico shall file its first annual progress report by June 1, 2024, and shall file annually thereafter by June 1st. El paso electric company shall file its first annual progress report by July 1, 2024, and shall file annually thereafter by July 1st. Southwestern public service company shall file its first annual progress report by April 1, 2025, and shall file annually thereafter by April 1st.

**B.** In addition to any service territory specific reporting requirements carried over from a public utility's previously approved transportation electrification plan, the annual progress report shall include for a utility's service territory:

- (1) an estimate of EV adoption, including estimated changes in EV adoption since the utility's most recently approved TEP;
- (2) an estimate of the number and type of TEP-funded EV charging stations and ports and an estimate of required maintenance, frequency of repairs, and station outages;
- (3) the number of participants in TEP programs, including:
  - (a) estimated low-income customer participation; and
  - (b) participation by customer rate class.
- (4) an estimate of usage or of the amount of energy sold to program participants during off-peak and on-peak hours, as well as the change in usage since the last annual progress report;
- (5) TEP spending by measure;
- (6) estimated electricity consumption by participating EV charging stations in kWh;
- (7) estimated load from incentivized EV charging infrastructure in kW;
- (8) geographical distribution of participants and infrastructure investments;
- (9) descriptions of average load data and load profiles of TEP programs;
- (10) a listing and summary of all customer outreach activities, the cost of those activities, an estimate of the number of customers reached, and an assessment of the effectiveness of each activity; and



(11) readily available data that may inform future measures to help better understand the impact of EV charging on the electric grid.

[17.9.574.14 NMAC - N, 2/14/2023]

**17.9.574.14 BUDGET FLEXIBILITY:**

**A.** A public utility shall be granted budget flexibility between programs in its TEP to shift up to twenty percent of a program's budget to another program.

(1) Inter-program budget flexibility may not be used to shift funding from a dedicated low-income program to:

- (a) a program for standard customers; or
- (b) any customer outreach and education program.

(2) Inter-program budget flexibility between different low-income programs, or into low-income programs from other programs, including low-income programs, is permissible.

**B.** Should a public utility exceed ninety percent of its allocated spending for a program in its current TEP at any point during the plan period, the utility is authorized to exceed that program's original budget by up to ten percent to supplement funding for that program. This budget flexibility mechanism does not apply to:

- (1) a pilot program with participation caps;
- (2) a program for which that program's budget was reduced pursuant to Subsection A of 17.9.574.14 NMAC; or
- (3) any customer outreach and education program.

**C.** A public utility may request additional budget flexibility funding in its TEP application or at any other time after approval of its current TEP.

**D.** The commission reserves the authority to stipulate additional circumstances when budget flexibility shall not be applicable.

[17.9.574.14 NMAC - N, 2/14/2023]

**17.9.574.15 EXEMPTION AND VARIANCE:**

**A.** The commission, upon its own motion, may issue, or any interested person, may file an application for, an exemption or a variance from the requirements of this rule.

**B.** An exemption or variance motion or application shall:

- (1) identify the section of this rule for which the exemption or variance is requested;
- (2) describe the situation that necessitates the exemption or variance;
- (3) set out the effect of complying with this rule on the public utility and its customers if the exemption or variance is not granted;
- (4) define the result the request will have if granted;
- (5) state how the exemption or variance will be consistent with the purposes of this rule;
- (6) state why no other reasonable alternative is preferable; and
- (7) state why the proposed alternative is in the public interest.

[17.9.574.15 NMAC - N, 2/14/2023]

**PART 575-587: [RESERVED]**

**PART 588 GRID MODERNIZATION GRANT PROGRAM**

**17.9.588.1 ISSUING AGENCY:**

Energy, Minerals and Natural Resources Department.

[17.9.588.1 NMAC – N, 4/11/2023]

**17.9.588.2 SCOPE:**

17.9.588 NMAC applies to all eligible entities applying for a grant from the grid modernization grant program.

[17.9.588.2 NMAC – N, 4/11/2023]

**17.9.588.3 STATUTORY AUTHORITY:**

17.9.588 NMAC is authorized pursuant to Subsection B through E of Section 71-11-1, and Section 71-11-2 NMSA 1978.

[17.9.588.3 NMAC – N, 4/11/2023]

**17.9.588.4 DURATION:**

Permanent.

[17.9.588.4 NMAC – N, 4/11/2023]

**17.9.588.5 EFFECTIVE DATE:**

April 11, 2023, unless a later date is cited at the end of a section.

[17.9.588.5 NMAC – N, 4/11/2023]

**17.9.588.6 OBJECTIVE:**

The objective is to establish requirements and procedures for applying for a grid modernization grant program grant.

[17.9.588.6 NMAC – N, 4/11/2023]

**17.9.588.7 DEFINITIONS:**

**A. "Applicant"** means one or more representatives of an eligible entity making an application for a grid modernization grant.

**B. "Applicant category"** means, for the purposes of evaluating applications an Indian nation, tribe or pueblo, a rural community served by a rural electric cooperative, a rural community served by an investor-owned public utility, an urban or semi-urban municipality or county, or an institution of higher education.

**C. "Department"** means the energy, minerals and natural resources department.

**D. "Division"** means the energy conservation and management division of the department.

**E. "Fund"** means the grid modernization grant fund established by the legislature in Section 71-11-2, NMSA 1978.

**F. "Eligible entity"** means an organization that may apply for a grid modernization grant and includes only the following: municipalities and county governments, state agencies, state universities, public schools, post-secondary educational institutions and Indian nations, tribes and pueblos.

**G. "In-kind"** means non-monetary contributions to a project made by an applicant and demonstrated in the applicant's budget justification.

**H. "Non-responsive"** means an application that does not meet all the application requirements for the specific project type.

I. **"Program"** means the grid modernization grant program of the department established by Section 71-11-1, NMSA 1978.

J. **"Project"** means an activity defined by the applicant that supports the goals of grid modernization and falls within the three specified types.

[17.9.588.7 NMAC – N, 4/11/2023]

**17.9.588.8 ELIGIBILITY:**

Grid modernization grants shall only be awarded to eligible entities for projects that occur within the state of New Mexico.

[17.9.588.8 NMAC – N, 4/11/2023]

**17.9.588.9 PROJECT TYPES:**

Grid modernization projects may be one of three project types.

**A. Type 1.** Original research that advances the state's understanding and appreciation of grid function, reliability, resilience, security and operation as it relates to the integration of renewable and zero-carbon resources, including impacts on customer behavior, operations and maintenance costs or the value of specific grid technologies.

**B. Type 2.** Pre-construction and design work to support grid modernization construction/installation projects.

**C. Type 3.** Construction, installation, operation and verification of a grid modernization technology at a project site.

[17.9.588.9 NMAC – N, 4/11/2023]

**17.9.588.10 APPLICATION SUBMISSION CYCLE:**

The division will request applications on an annual cycle that aligns with the state's fiscal year if funds are available. The division may elect to review draft applications submitted voluntarily by March 1 and provide feedback within 30 days. Review is provided as a courtesy and does not guarantee a place in the funding queue. All final applications will be due by June 1 of every year the department requests applications to be considered for funding in the following fiscal year. Application packages will be accepted by e-mail or by mail.

[17.9.588.10 NMAC – N, 4/11/2023]

**17.9.588.11 APPLICATION REQUIREMENTS FOR TYPE 1 PROJECTS:**

Applications for type 1 research projects made for grid modernization grant program funding shall describe a scope of work that includes:

- A. the proposed research question and methodology;
- B. a deliverables-based summary of the overall plan for the research; and
- C. results of any previous or preliminary research or expected results.

[17.9.588.11 NMAC – N, 4/11/2023]

#### **17.9.588.12 APPLICATION REQUIREMENTS FOR TYPE 2 PROJECTS:**

Applications for type 2 pre-construction design projects shall describe a scope of work that includes:

- A. a deliverables-based summary of the plan for the design project, including proposed operational goals for the project;
- B. the proposed site with maps, diagrams or images;
- C. plans for achieving compliance with federal, state and local construction requirements; and
- D. plan to obtaining funding to complete project construction and installation.

[17.9.588.12 NMAC – N, 4/11/2023]

#### **17.9.588.13 APPLICATION REQUIREMENTS FOR TYPE 3 PROJECTS:**

Applications for type 3 construction projects shall describe a scope of work that includes

- A. a deliverables-based summary of the plan for the grid modernization installation project;
- B. a description of the grid modernization technology being deployed;
- C. a completed engineering/design study; and
- D. proof of compliance with applicable federal, state and local construction requirements.

[17.9.588.13 NMAC – N, 4/11/2023]

#### **17.9.588.14 ADDITIONAL APPLICATION REQUIREMENTS FOR ALL PROJECTS:**

**A. Applicant contact information.** Applicants shall include the name, title, telephone number and e-mail address for the person or persons authorized to negotiate a contract on applicant's behalf in the application. Applicants shall also include the names, titles, telephone numbers and e-mail addresses of persons to be contacted for clarification related to the contents of an application.

**B. Alignment with the state's goals.** Applicants shall describe in their application how the research will advance grid modernization in New Mexico by

(1) helping to improve electrical system efficiency, reliability, resilience and security; lowering operations and maintenance costs; and meeting energy demands through a flexible, diversified and distributed energy portfolio consistent with New Mexico's energy goals;

(2) incorporating a new technology or a new or innovative application of an existing technology that will provide useful information to the state, utilities, and the general public related to grid modernization

(3) having broad applicability to the state or other utility service territories within New Mexico;

(4) fostering the public's, students', industry's or a specific government or industry sector's overall understanding and appreciation of grid modernization;

(5) demonstrating the ability to stimulate in-state economic development, including the creation of jobs and apprenticeships and

(6) the extent to which the project complements or coordinates with the resource planning of a public utility as required by the Public Utility Act, Section 62-13-1, NMSA 1978.

**C. Utility support.** Applicants shall include a letter of support from the utility or utilities providing service to the area(s) in which the project will take place. Applicants shall coordinate with the electric provider to ensure that the program does not adversely impact electrical system efficiency, reliability, resilience and security.

**D. Ability to complete project.** Applications shall include

(1) a deliverables-based budget showing how work will be compensated, including a list of non-program funding or in-kind resources, and how these resources will be applied to the project, if applicable;

(2) a deliverables-based timeline showing how the project will be completed, including major milestones; and

(3) resumes/curriculum vitae and other documentation showing that the applicants and designated sub-contractors are qualified to complete the project.

[17.9.588.14 NMAC – N, 4/11/2023]

#### **17.9.588.15 APPLICATION EVALUATION CRITERIA:**

The department will score all applications based on the following criteria.

**A. Application completeness.** The department will review the entire application to see that it satisfies all application requirements for the specific project type. The department will deny and deem non-responsive an incomplete application without further review.

**B. Capability to meet the scope of work described.** The department will consider the project timeline, appropriateness of deliverables, qualifications of project team members including subcontractors and the ability to complete the project financially if the total budget exceeds the grant amount requested.

**C. Alignment with state grid modernization goals.** The department will consider the extent to which a proposed project will advance grid reliability, resilience, security and cost effectiveness, and enable a flexible, diversified and distributed energy portfolio, through the adoption of a new technology or innovative application of an existing technology.

**D. Replicability and broader impact.** For type 1 projects, the department will consider the extent to which research findings are broadly applicable to statewide grid modernization or energy distribution or diversification goals. For type 2 and 3 projects, the department will consider the extent to which the project will lead to widespread adoption of a grid modernization technology.

**E. Economic impact.** The department will consider the extent to which the project will stimulate in-state economic development, workforce development or further development of a commercial market for grid modernization technology services.

**F. Educational value.** The department will consider the extent to which the project will foster the public's, students' or the industry's overall understanding of a new technology or an innovative application of an existing technology and will provide useful information to the state, utilities, and the general public related to grid modernization.

#### **G. Competitive awards.**

(1) **Funding match.** The department will prioritize projects for which the applicant has committed non-state resources to the project, including in-kind contributions.

(2) **Priority applicant categories.** The department will seek to fund applicants in each of these categories in any given year to the extent there are available funds and project proposals:

- (a) an Indian nation, tribe or pueblo;
- (b) a rural community served by a rural electric cooperative;
- (c) a rural community served by an investor-owned public utility;
- (d) an urban or semi-urban municipality or county; and
- (e) an institution of higher education.

**H.** Request relative to available funding.

The department will consider available funding at the time of review.

[17.9.588.15 NMAC – N, 4/11/2023]

**17.9.588.16 FUNDING QUEUE:**

After scoring the applications received for a given fiscal year based on the application criteria, the department will rank the applications from highest to lowest score in the funding queue. The department will then pursue agreements with the highest scoring applicants first until funding for the applicable fiscal year have been depleted.

[17.9.588.16 NMAC – N, 4/11/2023]

**17.9.588.17 FUNDING SOURCES:**

The department may apply, at its sole discretion and subject to applicable requirements, a mix of federal and state funding to support grid modernization projects depending on available balances in the fund. The department will notify applicants of the funding source or sources applied to their projects and the associated reporting and compliance requirements.

[17.9.588.17 NMAC – N, 4/11/2023]

**17.9.588.18 FUNDING USES AND LIMITATIONS:**

**A.** Eligible project costs for reimbursement may include:

- (1) project development,
- (2) engineering design,



- (3) environmental and regulatory assessments,
- (4) equipment and supplies,
- (5) construction, and
- (6) inspection.

**B. Ineligible project costs for reimbursement include:**

- (1) water rights,
- (2) land easements,
- (3) right-of-way acquisition, and
- (4) legal fees.

[17.9.588.18 NMAC – N, 4/11/2023]

**17.9.588.19 RECORD KEEPING AND REPORTING:**

Successful applicants receiving grid modernization grant funding shall submit progress and expenditure reports, including a final report, in accordance with the requirements of their respective agreement. The department reserves the right to structure reporting requirements on a project-specific basis.

[17.9.588.19 NMAC – N, 4/11/2023]

**17.9.588.20 ENVIRONMENTAL AND CULTURAL RESOURCES COMPLIANCE FOR PROJECTS ANTICIPATING GROUND DISTURBANCE:**

Successful applicants receiving grid modernization grant funding shall provide a statement to demonstrate acknowledgement of compliance with all applicable federal, state and local environmental and cultural resources compliance laws.

[17.9.588.20 NMAC – N, 4/11/2023]

**17.9.588.21 MAINTENANCE AND INSPECTION OF PUBLIC RECORDS ACT; CONFIDENTIAL INFORMATION:**

All information obtained regarding the project, including pre-applications, applications for funding and reports are subject to disclosure, in response to requests received under provisions of the Inspection of Public Records Act, Sections 14-2-1 to 14-2-12, NMSA 1978. Information that could reasonably be considered proprietary, privileged or confidential commercial or financial information must be identified as such. The

department will maintain the confidentiality of that information only to the extent permitted by law.

[17.9.588.21 NMAC – N, 4/11/2023]

## **PART 589: [RESERVED]**

## **PART 590: ECONOMIC DEVELOPMENT RATES**

### **17.9.590.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission.]

[Recompiled 12/30/01]

### **17.9.590.2 SCOPE:**

[Recompiled 12/30/01]

### **17.9.590.3 STATUTORY AUTHORITY:**

This Rule is adopted under the authority vested in the Commission pursuant to NMSA 1978, Sections 62-3-1, 62-6-1, 62-6-4, 62-8-6, and 1989 N.M. Laws, ch. 5.

[Recompiled 12/30/01]

### **17.9.590.4 DURATION:**

[Recompiled 12/30/01]

### **17.9.590.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

### **17.9.590.6 OBJECTIVE:**

This Rule permits electric utilities to provide economic development rates from excess capacity to qualified customers in their service area. Providing utilities with the option of reducing rates to customers in certain rate classes who qualify under the criteria set out in the Rule would:

A. Encourage a greater utilization of utility resources which would result in increased system load and improved system efficiency;

B. Spread utilities' fixed costs over a larger base thus permitting lower average rates to all customers;

C. Permit utilities to market their excess capacity at reduced rates within their service area rather than to sell this excess capacity to industries in other states at reduced rates;

D. Encourage new industry to locate in the state;

E. Promote expansion and greater production by existing industry; and

F. Assure the protection of nonparticipating customers.

[Recompiled 12/30/01]

**17.9.590.7 DEFINITIONS:**

A. "Approved" or "Approval" includes, but is not limited to, affirmative action by the Commission and a filing with the Commission which becomes effective by operation of law.

B. "Commission" is the New Mexico Public Service Commission [New Mexico Public Regulation Commission].

C. "Economic development rate" is a rate set at a level lower than the corresponding service rate for which a participating customer would otherwise qualify.

D. "Excess capacity" is the amount of generating and purchased capacity available to the supplier or to the utility which is greater than its peak load plus some fixed percentage reserve margin. The reserve margin used to determine excess capacity will be filed on an individual basis for each supplier or utility. When the utility purchases its total requirements, its excess capacity shall be that of its supplier, unless the Commission determines otherwise.

E. "Incremental load" is the amount of load above some established base level for an individual customer. Incremental load shall include the total load for new customers or the additional firm load for existing customers.

F. "Investment unit" is a certain percentage increase in employment or a certain dollar increase in capital investment by a customer necessary to qualify for an economic development rate. Investment units will be filed on an individual basis for each utility and may differ between urban and rural areas. Utilities served by a common supplier may coordinate their programs and if the supplier's rates to those utilities are regulated by the Commission, investment units shall be determined in accordance with such requirements as may be established by the supplier and approved by the Commission.

G. "Non-participating customer" is a customer of a utility who is being charged the service rate approved by the Commission.

H. "Participating customer" is a customer of a utility who otherwise qualifies for one of the utility's service rates, but who also qualifies for and has signed an agreement for an economic development rate for his incremental load.

I. "Supplier", whether itself a utility or a person subject to the Commission's jurisdiction under NMSA 1978, Section 62-6-4(B), or subject to the exclusive regulation of the Federal Energy Regulatory Commission, is the person supplying wholesale service to a utility to meet all or substantially all of its requirements.

J. "Utility" is every person defined as a public utility by NMSA 1978, Section 62-3-3(G).

[Recompiled 12/30/01]

#### **17.9.590.8 TABLE OF CONTENTS:**

A. Purpose: [17.9.590.6 NMAC]

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[Recompiled 12/30/01]

#### **17.9.590.9 AVAILABILITY:**

A. The use of economic development rates is not mandatory for utilities. Utilities may use economic development rates as a part of their marketing program and as a management tool in dealing with excess capacity on a voluntary basis.

B. A utility may sign agreements with eligible customers for economic development rates only so long as the utility or its supplier reasonably projects in advance that it will

possess excess capacity for the time period covered by the agreement, and pursuant to a tariff approved in accordance with the Public Utility Act.

C. A utility which chooses to use economic development rates as a marketing tool to deal with excess capacity shall first use excess capacity which is in rate base for said sales.

D. Agreements between a utility and a participating customer to provide service under economic development rates shall be limited to a maximum period of 5 years.

[Recompiled 12/30/01]

**17.9.590.10 ELIGIBILITY:**

A. Economic development rates shall apply only to a participating customer's incremental load.

B. A participating customer shall qualify for service under economic development rates only if the customer meets the minimum investment units established by the utility providing it service and approved by the Public Service Commission [Public Regulation Commission].

[Recompiled 12/30/01]

**17.9.590.11 RATE FLEXIBILITY:**

A. The most recent rate schedule approved by the Commission for a customer class is the maximum rate a utility is permitted to charge that customer class.

B. A utility may provide an economic development rate lower than the rate schedule approved by the Commission for a customer class. The economic development rate shall be designed so as to recover at least the incremental cost of providing electric utility service to that customer. The utility shall file the variable cost of providing electric utility service to the customer classes for which economic development rates are being offered. The variable cost of the supplier's wholesale service for resale to that customer shall be used to determine the variable cost in circumstances where the utility purchases its requirements.

C. If the utility decides to provide economic development rates, it must provide the economic development rates to all participating customers pursuant to NMSA 1978, Section 62-8-6.

[Recompiled 12/30/01]

**17.9.590.12 RATE SCHEDULE:**

A. A utility or a person subject to the Commission's regulation pursuant to NMSA 1978, Section 62-6-4(B), shall not provide, and a customer or a utility which receives wholesale service the charges for which are regulated pursuant to NMSA 1978, Section 62-6-4(B), shall not accept, service under an economic development rate until the utility or such person has filed an economic development rate schedule and the rate schedule shall have become effective in accordance with the Public Utility Act. Wholesale economic development rates which are subject to the Commission's regulation shall not make or grant any unreasonable preference or advantage to a purchasing utility within any classification, or subject any purchasing utility within any classification to any unreasonable prejudice or disadvantage.

B. The rates charged under any service agreements involving economic development rates that are executed on or after the effective date of this Rule shall be as set forth in the economic development rate schedule on file with the Commission.

C. The fuel and purchased power adjustment charge in any economic development rate schedule shall be the same as those in the rate schedule that would be otherwise applicable to the participating customer.

D. Economic development rates shall be filed with the Commission for approval. In addition to an explanation of the operations of the tariff and the situations for which it applies, the applicant shall show that the tariff complies fully with the requirements of its filing for tariffs as described in this rule. Since economic development rates represent a decrease from tariffs currently on file with the Commission, the requirements of NMPSC Rule 530 [17.5.530 NMAC] shall not apply to economic development rate tariffs. The economic development tariff shall become effective after 30 days unless the Commission suspends the filing pursuant to NMSA 1978, Section 62-8-7. In the event the Commission suspends the filing, the utility shall have the option within ten days of the suspension date to withdraw the suspended filing without prejudice.

[Recompiled 12/30/01]

### **17.9.590.13 PROTECTION OF NONPARTICIPATING CUSTOMERS:**

The regulatory rate treatment of sales made under economic development rates established by this Rule is designed to protect nonparticipating customers because power sold by utilities to participating customers under an economic development rate schedule is from excess capacity and applies only to the incremental load of the participating customer. Excess capacity is typically sold on the economy energy market. Revenues derived from economy energy sales are used to offset or reduce the revenue requirement in rate cases. Since the economic development rate will almost always be higher than the economy energy rate, sales made under economic development rates will result in a larger reduction in revenue requirements for utilities than would otherwise be the case and thus will benefit all classes of ratepayers.

[Recompiled 12/30/01]

#### **17.9.590.14 APPLICABILITY TO OTHER RATES AND SERVICE:**

This Rule does not apply to rates for interruptible or non-firm, peak and similar kinds of service. It does not prohibit rates which otherwise comply with the Public Utility Act, but which become effective in accordance with that Act and which are not the subject matter of this Rule.

[Recompiled 12/30/01]

#### **17.9.590.15 EXEMPTIONS OR VARIANCES:**

Any interested person may file an application for a variance or an exemption from the requirements of this Rule. Such application may include a motion that the Commission stay the affected portion of this Rule for the transaction specified in the motion. Such application shall:

- A. describe the situation which necessitates the exemption or variance;
- B. set out the effect of complying with this Rule on the person or utility and its customers if the exemption or variance is not granted;
- C. identify the section(s) of this Rule for which the exemption or variance is requested;
- D. define the result which the request will have if granted; and
- E. state how the exemption or variance will promote the achievement of the purposes of this Rule.
- F. The Commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

[Recompiled 12/30/01]

### **PART 591: STANDARD OFFER SERVICE UNDER THE RESTRUCTURING ACT [ REPEALED]**

[This part was repealed effective October 15, 2008.]

### **PART 592: LOCATION OF LARGE CAPACITY PLANTS AND TRANSMISSION LINES**

#### **17.9.592.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.9.592.1 NMAC - N, 5-1-04]

**17.9.592.2 SCOPE:**

This rule applies to all persons seeking to construct a large capacity plant, whether or not owned or operated by a person that is a public utility subject to regulation by the commission, or transmission lines in connection with such a plant, on a location within New Mexico.

[17.9.592.2 NMAC - N, 5/1/2004; A, 12/27/2022]

**17.9.592.3 STATUTORY AUTHORITY:**

Section 8-8-4 NMSA 1978 and Section 62-9-3 NMSA 1978.

[17.9.592.3 NMAC - N, 5/1/2004; A, 12/27/2022]

**17.9.592.4 DURATION:**

Permanent.

[17.9.592.4 NMAC - N, 5-1-04]

**17.9.592.5 EFFECTIVE DATE:**

May 1, 2004, unless a later date is cited at the end of a section.

[17.9.592.5 NMAC - N, 5-1-04]

**17.9.592.6 OBJECTIVE:**

The purpose of this rule is to specify the contents of an application for approval of the location of a large capacity plant or transmission line pursuant to Section 62-9-3 NMSA 1978.

[17.9.592.6 NMAC - N, 5/1/2004; A, 12/27/2022]

**17.9.592.7 DEFINITIONS:**

In addition to the definitions in Section 62-3-3 NMSA 1978, as used in this rule:

**A. "large capacity plant"** means an electric generating plant in a location within New Mexico designed for, or capable of, operation at a capacity of 300 megawatts or more, for the generation of electricity for sale to the public within or without New Mexico;



**B. "NEPA"** means the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq.; and

**C. "transmission line"** means any electric transmission line, including its interconnection facilities and associated facilities, designed for, or capable of, operations at a nominal voltage of 230 kilovolts or more, to be constructed in connection with, and to transmit electricity from, a large capacity plant constructed after June 18, 1971.

[17.9.592.7 NMAC - N, 5/1/2004; A, 12/27/2022]

**17.9.592.8 PRIOR APPROVAL REQUIRED:**

No person shall begin construction of a large capacity plant or transmission line without obtaining prior approval from the commission.

[17.9.592.8 NMAC - N, 5-1-04]

**17.9.592.9 CONTENTS OF APPLICATION FOR LOCATION APPROVAL OF LARGE CAPACITY PLANT:**

A person seeking to construct a large capacity plant shall file with the commission an application for approval of location, supported by written direct testimony and supporting exhibits, which shall contain:

**A.** a description of the large capacity plant, including, but not limited to:

- (1) a legal description of the property upon which the large capacity plant will be located;
- (2) the size of the large capacity plant;
- (3) fuel specifications including, but not limited to, the type of fuel to be used, if applicable, and any secondary fuel capability, if applicable; and
- (4) a map showing the location of the large capacity plant;

**B.** identification of all applicable land use statutes and administrative regulations, and proof of compliance or a statement of noncompliance with each;

**C.** identification of all applicable air and water pollution control standards and regulations, and proof of compliance or a statement of noncompliance with each;

**D.** all written air and water quality authorizations necessary to begin construction, and necessary to begin operation, of the large capacity plant; if any such authorization

cannot be obtained until after construction of the large capacity plant, proof of application for such authorization;

**E.** the expected date that the large capacity plant will be online;

**F.** proof that the application has been served on all local authorities in each county and township where the large capacity plant will be located, the New Mexico attorney general, the New Mexico environment department, and the New Mexico state engineer; and

**G.** any other information, including photographs, which the applicant wishes to submit in support of the application.

[17.9.592.9 NMAC - N, 5/1/2004; A, 12/27/2022]

**17.9.592.10 CONTENTS OF APPLICATION FOR LOCATION APPROVAL OF TRANSMISSION LINE:**

A person seeking to construct a transmission line shall file with the commission an application for approval of location, supported by written direct testimony and supporting exhibits, which shall contain:

**A.** a description of the transmission line including, but not limited to:

(1) the location of the transmission line and a map depicting the location in electronic format and physical format with a scale not to exceed one inch equals five miles;

(2) identification of the ownership of the land (such as private, bureau of land management, U.S. forest service, state trust, etc.) the transmission line will cross, and the number of feet the transmission line will cross over each owner's land;

(3) the total length of each transmission line in feet;

(4) a description of interconnection facilities; and

(5) a schematic diagram showing the transmission line and the interconnection of the transmission line to the transmission grid;

**B.** identification of all applicable land use statutes and administrative regulations, and proof of compliance or statement of noncompliance with each;

**C.** if required under NEPA, an environmental assessment prepared in connection with the transmission line;

**D.** if required under NEPA, an environmental impact statement and record of decision, or a finding of no significant impact, prepared in connection with the transmission line;

**E.** if preparation of a federal environmental assessment or environmental impact statement is not required under NEPA in connection with the transmission line, then a report, comparable to an environmental impact statement, in the format prescribed in 40 C.F.R. Section 1502.10;

**F.** all written federal, state, and local environmental authorizations necessary to begin construction, and necessary to begin operation, of the transmission line; if any such authorization cannot be obtained until after construction of the transmission line, proof of application for such authorization;

**G.** testimony demonstrating that the transmission line will not unduly impair important environmental values; important environmental values include, but are not limited to:

(1) preservation of air quality and water quality;

(2) preservation of land uses, soils, flora, and fauna; and

(3) preservation of water resources, mineral resources, socioeconomic resources, cultural resources, historic resources, religious resources, visual resources, geologic resources, and geographic resources.

**H.** the expected date that the transmission line will be online;

**I.** proof that the application has been served on all local authorities in each county and township where the transmission line will be located, the New Mexico attorney general, the New Mexico environment department, and the New Mexico state engineer; and

**J.** any other information, including photographs, which the applicant wishes to submit in support of the application.

[17.9.592.10 NMAC - N, 5/1/2004; A, 12/27/2022]

#### **17.9.592.11 ADDITIONAL INFORMATION:**

Upon request from the commission or commission staff, a person seeking approval from the commission of the location of a large capacity plant or transmission line shall, within 13 days of the date that the request is mailed, submit any additional information the commission or commission staff believes is required to approve or deny the application. The commission and commission staff's authority to request additional information does not preclude or restrict interveners from exercising their discovery rights.

[17.9.592.11 NMAC - N, 5/1/2004; A, 12/27/2022]

**17.9.592.12 INCOMPLETE FILINGS:**

To be complete, an application shall meet all applicable requirements of this rule. If the commission determines that an application is incomplete, the commission shall advise the applicant of the deficiency in the application within 30 days of its receipt. The commission shall commence its review of an application, and the statutory deadline in Section 62-9-3 NMSA 1978 shall commence once the commission receives all the information and supporting documentation required by this rule.

[17.9.592.12 NMAC - N, 5/1/2004; A, 12/27/2022]

**17.9.592.13 AVAILABILITY OF APPLICATION:**

At a minimum, the applicant shall make its application available in the county seat of each county in which the large capacity plant or transmission line is located. If available, the applicant shall deposit the application in a public library of a county seat. Additionally, the applicant shall post its application on the applicant's web site.

[17.9.592.13 NMAC - N, 5-1-04]

**17.9.592.14 VARIANCE:**

**A.** An applicant may request a variance from any of the requirements of this rule.

**B.** A petition for variance shall be supported by an affidavit signed by an officer of the applicant or someone with authority to sign for the applicant.

**C.** The commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

**D.** A petition for variance shall:

- (1) identify the section of this rule for which the variance is requested;
- (2) describe the situation that necessitates the variance;
- (3) describe the effect of complying with this rule on the applicant if the variance is not granted; and
- (4) describe the result the variance will have if granted.

**E.** The six-month review period under Section 62-9-3 NMSA 1978 shall be stayed, beginning the date that a request for variance is filed, and ending the date that a

variance petition is granted, or, if the variance petition is denied, the date that the applicant submits the information for which the applicant sought a variance.

[17.9.592.14 NMAC - N, 5/1/2004; A, 12/27/2022]

**17.9.592.15 SAFE HARBOR:**

**A.** The following shall be considered additions to, or modifications of, an existing plant or transmission line for which, under Subsection D of Section 62-9-3 NMSA 1978, no location approval is required. The "existing right-of-way" shall relate to the existing plant's or existing transmission line's existing right-of-way and shall be in place at the time that the safe harbor claim is made.

(1) Maintenance, repairs, and rebuilding, such as phase raising, installation of clearance improvements, replacement or reframing of structures, or line reconductoring entirely within the existing right-of-way.

(2) Addition of circuits or placement of additional structures; for transmission lines these shall be entirely within the existing right-of-way or entirely within 1,200 feet of the existing right-of-way not adjacent to a developed residential, commercial, or industrial area.

(3) Voltage upgrades to a transmission line for which location approval at the upgraded voltage level has already been granted, or voltage upgrades to a transmission line for which the commission by written order has determined that location approval is not required.

(4) Emergency construction due to facilities being out of service or where a failure of a facility is imminent, so long as construction remains entirely within the existing right-of-way or entirely within 1,200 feet of the existing right-of-way not adjacent to a developed residential, commercial, or industrial area.

(5) Construction of a tap line to a new terminus, both of which are entirely within the existing right-of-way or entirely within 1,200 feet of the existing right-of-way not adjacent to a developed residential, commercial, or industrial area.

(6) Replacements to transmission-related electrical stations located entirely within the existing right-of-way or entirely within 1,200 feet of such electrical stations not adjacent to a developed residential, commercial, or industrial area.

(7) Erection of temporary facilities for 12 months or less entirely within the existing right-of-way or entirely within 1,200 feet of the existing right-of-way not adjacent to a developed residential, commercial, or industrial area.

**B.** Notwithstanding the foregoing provisions, if new or replacement conductors, or new or replacement structures will extend for a distance of over one mile in length for a

transmission line, the following requirements shall apply so long as they can be accomplished at reasonable additional cost:

(1) to the extent commercially available, non-specular conductors shall be used in any developed or trafficked areas, unless they pose a significant threat to avian populations; and

(2) structures shall be consistent with, and minimize visual impacts to, the landscape of the area in which the structure is constructed: rural, urban, or industrial.

**C.** Prior to any person constructing, modifying, or adding to plants, facilities, or transmission lines that require location control under Section 62-9-3 NMSA 1978 on land owned or controlled by a federally recognized American Indian tribe, or on land contiguous to such tribal land, that person shall consult with the tribe that owns or controls that land regarding the location of the construction. This required consultation is in addition to meeting the requirements of both Section 62-9-3 NMSA 1978 and this rule.

**D.** At least 120 days before a person commences any activity or installation not listed in Paragraphs (1) to (7) of Subsection A of Section 15 of 17.9.592 NMAC above, that person (the petitioner) shall file with the commission a petition requesting that the commission determine whether location approval is required. The petitioner shall serve a copy of the petition on:

(1) all landowners whose land is adjacent to, or encompassed by, the location of the proposed activity or installation; and

(2) all parties in the public utility's last rate case, if the petitioner is a public utility.

**E.** Public utilities that claim safe harbor for any extensions, system improvements, repairs or replacements, or additions, pursuant to Paragraphs (1) to (7) of Subsection A of Section 15 of 17.9.592 NMAC above, that has an estimated cost to the utility under the uniform system of accounts of \$1,000,000 or more on a total company basis and for which the utility intends to seek rate recovery from its New Mexico customers, regardless of the location, shall file a "440 report" with the commission pursuant to Subparagraph (e) of Paragraph (1) of Subsection A of 17.5.440.8 NMAC.

**F.** Commission staff shall, and any interested party who files a motion to intervene may, file a response to the petition within 45 days of its filing with the commission. If the commission does not act on the petition within 100 days from the date the petition was filed with the commission, the facilities that are the subject of the petition shall be deemed to be additions to, or modifications of, an existing plant or transmission line for the purposes of Subsection D of Section 62-9-3 NMSA 1978, for which location approval shall not be required. The commission's lack of action on a petition within the

100 day period shall not affect any requirement to obtain a certificate of public convenience and necessity pursuant to Section 62-9-1 NMSA 1978.

[17.9.592.15 NMAC - N, 8/31/2011; A, 12/27/2022]

### **PART 593: [RESERVED]**

### **PART 594: CODE OF CONDUCT FOR PUBLIC UTILITIES AND AFFILIATES UNDER THE RESTRUCTURING ACT [ REPEALED]**

[This part was repealed effective October 15, 2008.]

## **CHAPTER 10: GAS SERVICES**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: PROPANE CUSTOMER PROTECTION**

#### **17.10.2.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.10.2.1 NMAC - N, 12-15-10]

#### **17.10.2.2 SCOPE:**

**A.** This rule applies to propane dealers operating within New Mexico subject to the jurisdiction of the New Mexico public regulation commission.

**B.** Nothing in this rule shall supersede a federal or New Mexico law, rule, code or regulation designed to protect customer safety or public safety with respect to propane. If there is a conflict with this rule, such law, rule, code or regulation shall take precedence to the extent of that conflict.

**C.** All proceedings conducted by the commission under this rule shall be governed by the commission's rules of procedure, 1.2.2.2 NMAC through 1.2.2.40 NMAC.

[17.10.2.2 NMAC - N, 12-15-10]

#### **17.10.2.3 STATUTORY AUTHORITY:**

Sections 8-8-4, 8-8-4.1 and 8-8-15 NMSA 1978.

[17.10.2.3 NMAC - N, 12-15-10]

#### **17.10.2.4 DURATION:**

Permanent.

[17.10.2.4 NMAC - N, 12-15-10]

#### **17.10.2.5 EFFECTIVE DATE:**

December 15, 2010; unless a later date is cited at the end of a section.

[17.10.2.5 NMAC - N, 12-15-10]

#### **17.10.2.6 OBJECTIVE:**

The purpose of this rule is to establish a uniform set of standards defining the rights and responsibilities of propane customers and dealers. The purpose of this rule is also to ensure that dealers provide customers with transparent, accurate and timely information. This rule establishes a process within the commission for the resolution of customers' complaints.

[17.10.2.6 NMAC - N, 12-15-10]

#### **17.10.2.7 DEFINITIONS:**

Unless otherwise specified, as used in this rule:

**A. "budget billing plan"** means an agreement between a customer and a dealer intended to levelize or average the monthly billing for propane and propane services;

**B. "customer"** means a purchaser of propane who purchases propane from a dealer to heat the interior of a dwelling or structure or to heat water, is legally liable for the payment of those purchases and does not purchase propane for resale;

**C. "customer rate variation"** means a variation of prices charged by a propane dealer to customers;

**D. "dealer"** means a retail distributor of propane who delivers propane to customers' premises and fills propane tanks at those premises;

**E. "delinquent"** means the status of a bill rendered to a customer for propane service which remains unpaid after the due date of the bill;

**F. "important information for New Mexico propane consumers (IINMPC)"** means a document in Spanish and English for residential customers created and updated by the commission and posted on its website that shall contain at a minimum:



- (1) the toll-free telephone number of the commission's consumer relations division;
- (2) information regarding LIHEAP application forms, qualification requirements, application procedures and locations at which residential customers may submit LIHEAP applications;
- (3) information regarding New Mexico energy\$mart application forms, qualification requirements, application procedures and locations at which residential delivery customers may submit energy\$mart applications; and
- (4) other information as may be specified by the commission from time to time such as:
  - (a) tips for new and existing consumers;
  - (b) a description of propane;
  - (c) questions consumers may ask dealers;
  - (d) service termination rights and obligations as set forth in this rule;
  - (e) tips for budget billing plans; and
  - (f) payment plans and payments;

**G. "LIHEAP"** means the low-income home energy assistance program administered by the New Mexico human services department or a tribe's or pueblo's low-income home energy assistance program administered under Section 27-6-18.1 NMSA 1978;

**H. "New Mexico energy\$mart"** means the low-income weatherization assistance program administered by the New Mexico finance authority;

**I. "payment agreement"** means an agreement between a dealer and a customer in which the customer makes a series of payments scheduled over a period of more than forty-five (45) days to pay the customer's past due balances;

**J. "propane"** means liquefied petroleum gas and LP gas;

**K. "residential customer"** means a person who purchases propane from a dealer to heat the interior of a dwelling house or other structure used as a residence, who is legally liable for the payment of those purchases and who does not purchase propane for resale;

L. **"service"** means the provision of propane by a dealer to a customer to heat the interior of a dwelling or other structure or to heat water;

M. **"schedule of charges"** means the documentation provided by the dealer to the customer identifying and serving as notice of all relevant charges and fees and prices related to propane services.

[17.10.2.7 NMAC - N, 12-15-10]

#### **17.10.2.8 VARIANCE:**

Dealers or customers seeking a variance from this rule shall follow the commission's procedure in 1.2.2.40 NMAC.

[17.10.2.8 NMAC - N, 12-15-10]

#### **17.10.2.9 TANK RENTAL, OWNERSHIP AND REMOVAL:**

A. **Rentals:** a dealer shall disclose to customers, in writing, upon initiation of service and upon request, all annual tank rental fees, including fees for tank removal, propane pump-out, minimum fills and partial fills.

B. **Ownership:** a customer may use his own tank and regulator.

C. **Removal of rental tank:** a customer may change propane dealers for any reason, absent a contractual agreement to the contrary. When a customer who rents a tank from a dealer lawfully changes dealers, the first dealer shall remove its rental tank from the customer's property within thirty (30) days after receiving written notice of the change and shall issue a refund within thirty (30) days for the unused propane and tank rental balances due under terms of the tank rental agreement.

[17.10.2.9 NMAC - N, 12-15-10]

#### **17.10.2.10 BUDGET BILLING PLANS:**

A. A dealer should offer reasonable budget billing plans to its residential customers. The offer of budget billing plans shall not be unreasonably withheld.

B. Budget billing plans shall be binding contracts under New Mexico law and shall be in writing. The pricing and time period language shall be printed in no less than 12-point boldface type of uniform font.

C. Budget billing plans may include a requirement for a deposit sufficient to ensure full payment to the dealer.

**D.** A budget billing plan shall provide that if a credit remains at the end of the budget billing plan term, that credit, including any deposit, shall be reimbursed to the residential customer not later than thirty (30) days after the end date of the plan, unless the dealer and residential customer agree otherwise.

[17.10.2.10 NMAC - N, 12-15-10]

**17.10.2.11 PAYMENTS AND PAYMENT AGREEMENTS:**

**A.** A dealer shall make a reasonable effort to enter into a payment agreement with a residential customer with a delinquent or past due account.

**B.** Payment agreements shall be binding contracts under New Mexico law and shall be in writing. The pricing and time period language shall be printed in no less than 12-point boldface type of uniform font.

**C.** A dealer shall make reasonable efforts to provide service to a residential customer who offers cash payments.

**D.** A dealer shall make reasonable efforts to incorporate LIHEAP payments, if applicable, into payments and payment plans.

[17.10.2.11 NMAC - N, 12-15-10]

**17.10.2.12 CONTENTS OF BILLS AND METERED FUEL TICKETS:**

**A. Bills for propane goods, services and equipment shall include:**

- (1)** the number of gallons metered;
- (2)** the date the bill is due;
- (3)** the amount due for, and explanation of, special services and fees including but not limited to, hazardous materials and environmental fuel surcharges;
- (4)** the total amount due for a previous balance separately presented from the current charges;
- (5)** gross receipts taxes and any other taxes, if not part of the base rate;
- (6)** the address and phone number of the dealer designating where the customer may initiate an inquiry or complaint regarding the bill as rendered of the service provided;

(7) the toll-free number of the consumer relations division of the commission, together with a statement advising customers that they may contact the commission if they are unable to resolve a billing dispute with the dealer; and

(8) a current copy in English and Spanish of the document IINMPC to be provided upon initiation of service for new customers, and annually in October for existing customers.

**B. Metered fuel tickets:**

(1) for those customers who receive metered fuel tickets, if the information in Paragraphs (1)-(7) of Subsection A of this section (above) is omitted from the ticket, dealers shall provide it on a document either attached to the ticket or mailed to the customer within thirty (30) days of delivery;

(2) the document IINMPC shall be provided upon initiation of service for new customers, and annually in October for existing customers.

[17.10.2.12 NMAC - N, 12-15-10]

**17.10.2.13 PUBLIC NOTICE OF CUSTOMER RIGHTS:**

A dealer shall display a current copy of the IINMPC document in English and Spanish at all of its retail locations and on its website if applicable, and shall make this information available to the general public upon request. The document shall contain the telephone number for filing a complaint with the consumer relations division of the commission.

[17.10.2.13 NMAC - N, 12-15-10]

**17.10.2.14 NOTICE, AVAILABILITY AND PUBLIC ACCESS TO SCHEDULE OF CHARGES:**

A dealer shall keep for at least ninety (90) days and provide public access to, its current charges for service, including the current price of propane and pricing categories used to establish customer rate variations. This information shall be available to customers and potential customers upon request. The dealer shall make this information available in writing to new customers before an agreement is entered to commence propane service and to existing customers with the next propane delivery after the effective date of this rule. A dealer is not required to disclose prices under special agreements.

[17.10.2.14 NMAC - N, 12-15-10]

**17.10.2.15 REPORTS TO THE COMMISSION:**

A dealer shall report the information required by Section 17.10.2.14 NMAC within ten (10) business days upon commission request.

[17.10.2.15 NMAC - N, 12-15-10]

**17.10.2.16 QUOTED PRICES AND CHARGES:**

When a customer places a valid order for propane, the dealer shall honor the quoted price for the requested delivery, even if the actual delivery is at some other date for reasons not caused by the customer.

[17.10.2.16 NMAC - N, 12-15-10]

**17.10.2.17 MINIMUM QUANTITY REQUIREMENT:**

Prior to delivery, a dealer shall notify customers of the minimum quantity of propane required for their tank size, and of the charges for that minimal fill and for partial fills below the minimal amount. A dealer shall use reasonable efforts to help a customer maintain an adequate supply of propane. A dealer shall not require a customer to make a minimum purchase of more than 100 gallons at a time or more than the total capacity of the customer's existing tank, whichever is less, unless the customer and the dealer have entered into a budget billing plan. This applies to all deliveries, including the initial installation.

[17.10.2.17 NMAC - N, 12-15-10]

**17.10.2.18 CUSTOMER RECORDS:**

**A.** Upon request, a dealer shall furnish to the customer copies of the customer's records for the prior twelve months. A dealer may charge a reasonable fee for copying these records.

**B.** A dealer shall furnish copies of a customer's records relevant to a matter in dispute to anyone authorized in writing by the customer to receive these records.

**C.** A dealer shall correct any non-disputed mistakes in a customer's payment history that are brought to its attention.

[17.10.2.18 NMAC - N, 12-15-10]

**17.10.2.19 COMPLAINTS:**

**A.** A dealer shall fully and promptly investigate and respond to all oral and written complaints made directly to the dealer by customers or prospective customers. The dealer shall make a good faith attempt to resolve the complaint and shall promptly notify the customer of its proposed disposition of the complaint, but no later than thirty (30) business days after the complaint was made. The dealer shall send written confirmation of its proposed disposition of the complaint to the customer.

**B.** If a dealer cannot resolve a complaint to a customer's satisfaction, the dealer shall provide the complainant with the name, address and current local or toll-free telephone number of the consumer relations division of the commission.

**C.** At any time, a customer may file an informal complaint against a dealer by contacting the consumer relations division or may file a formal complaint with the commission, as stated in 1.2.2.13 NMAC through 1.2.2.15 NMAC. For Native Americans requesting help with translation, commission staff should contact the appropriate tribal or pueblo official for assistance.

**D.** Nothing in this rule shall bar customers or the attorney general from pursuing remedies for complaints under the Unfair Practices Act, Sections 57-12-1 through 57-12-26 NMSA 1978. Nothing in this rule shall bar customers from pursuing remedies for disputes in New Mexico courts.

[17.10.2.19 NMAC - N, 12-15-10]

### **PART 3-619: [RESERVED]**

## **PART 620: RETIREMENT UNITS OF PROPERTY FOR GAS UTILITIES**

### **17.10.620.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

### **17.10.620.2 SCOPE:**

[Recompiled 12/30/01]

### **17.10.620.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

### **17.10.620.4 DURATION:**

[Recompiled 12/30/01]

### **17.10.620.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

### **17.10.620.6 OBJECTIVE:**

[Recompiled 12/30/01]

**17.10.620.7 DEFINITIONS:**

[Recompiled 12/30/01]

**17.10.620.8 LIST OF RETIREMENT UNITS OF PROPERTY FOR GAS UTILITIES:**

All gas utilities subject to the Commission's jurisdiction shall use and comply with the National Association of Railroad and Utilities Commissioners' LIST OF RETIREMENT UNITS OF PROPERTY FOR GAS UTILITIES, 1961, with any subsequent revisions by the National Association of Regulatory Utility Commissioners.

[Recompiled 12/30/01]

**PART 621-629: [RESERVED]**

**PART 630: FILING REQUIREMENTS IN SUPPORT OF RATE SCHEDULES FOR INVESTOR-OWNED NATURAL GAS UTILITIES**

**17.10.630.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

**17.10.630.2 SCOPE:**

The data requirements specified in Appendix A shall apply to the investor-owned natural gas utilities doing business in New Mexico.

[Recompiled 12/30/01]

**17.10.630.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

**17.10.630.4 DURATION:**

[Recompiled 12/30/01]

**17.10.630.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.10.630.6 OBJECTIVE:**

The adoption by the New Mexico Public Service Commission [New Mexico Public Regulation Commission] of the minimum data requirements specified in Appendix A to NMPSC Rule 630 [17.10.630 NMAC], incorporated herein by reference, is pursuant to the authority conferred upon the Commission by the Public Utility Act, NMSA 1978, Section 62-3-1 et seq., and NMPSC Rules 110 and 210 [17.1.2 NMAC and 17.1.210 NMAC] and is for the purpose of defining and specifying the minimum data requirements to be filed in support for a tendered new rate schedule or rate schedule which will supersede, supplement, or otherwise change the provision of a rate schedule required to be on file with this Commission.

[Recompiled 12/30/01]

#### **17.10.630.7 DEFINITIONS:**

When used in Appendix A unless otherwise specified the following definitions will apply:

A. "Accounting Method" means the uniform system of accounting prescribed by the Commission for natural gas utilities.

(1) "Functional Accounting" means the grouping of plant and expense accounts according to the specified function or purpose which the plant or expense performs in rendering the utility service; for example, intangible, gas production and gathering, products extraction, storage, transmission, distribution, and general.

(2) "Primary Account" means the grouping of plant and expenditures by balance sheet account number; for example, accounts 101, 102, 103, etc.

(3) "Detailed Account" means the breakdown of plant and expenditures into subaccounts, that is, gas plant accounts; for example: accounts 301, 302, 303, etc.

B. Accounting Period:

(1) "Calendar Year" means a consecutive twelve-month accounting period beginning with January 1 and ending with December 31; and

(2) "Fiscal Year" means a consecutive twelve-month accounting period.

C. "Adjustment" means a calculation made with reasonable accuracy to the book balance of accounts to reflect an annualization, a known and measurable change, or an estimate based on projection for the full twelve-month period of the Test Year. "Pro Forma Adjustment" means a computation made to develop the effect of an annualization, a known and measurable change, or an estimate based on projection on the financial statements presented for Test Year purposes in a rate case.

D. "Allocation" means the process by which the total cost of service is separated into the major functions of plant, such as intangible, gas production and gathering,



products extraction, storage, transmission, distribution, general; classified into the types of services provided, such as demand, commodity, customer; and assigned to the various classes of customers served within a regulatory jurisdiction or among regulatory jurisdictions.

E. "Annualization" means a computation made to reflect a full twelve-month effect of an item of income or expense which is recorded in the utility's financial statements for only a portion of a year.

F. "Base Period" means the applicant utility's twelve (12) consecutive months of actual experience as reflected on the book balance of accounts, the last day of which shall not be more than one hundred fifty (150) days prior to the date of tender for filing.

G. "Book Balance Amounts" means the amounts actually recorded by the applicant utility on its books of account. Whenever property and/or services are acquired for other than cash the basis for valuation for book purposes shall be explained.

H. "Classification" means the separation of plant and expenses into the principal categories of the services rendered such as demand related, commodity related, customer related, etc.

I. "Cost of Service" means the total annual cost of rendering the utility service expressed in monetary value including a return on invested capital and operational and administrative costs and expenses.

J. "Department" or "Division" means a responsibility center within the corporate structure of a public utility enterprise where revenues and expenses are accumulated as a result of a commodity or service rendered.

K. "Depreciated Original Cost" means the cost of property to the person first devoting it to the public service less the accrued depreciation reserve. Depreciated original cost shall not include the cost of reproduction as a going concern and other elements of value.

L. "Filing" means notification to the Commission by means of a tendered change in rate schedules by a public utility enterprise of its intent to initiate proceedings regarding such change pursuant to the provisions of the Commission's Administrative Code.

(1) The "Filing Date" shall occur on the date on which the tendered change in rate schedules is completed by receipt at the offices of the Commission.

(2) The "Effective Date" shall occur on the date that such tendered change in rate schedules is to become effective by the Commission pursuant to the provisions of the Commission's Administrative Code, thirty (30) days after the filing date, or on such other date as may be ordered by the Commission.

M. "Functionalization" means the separation of costs according to major function or purpose which the plant or expense performs in rendering the utility service; for example, intangible, gas production and gathering, products extraction, storage, transmission, distribution, general, etc.

N. "Lead-Lag Study" is a method sometimes employed in developing the amount of cash working capital to be included in a Rate Base determination for a utility company. The study seeks to measure and quantify the lag (delay) in receipt of revenues from customers from the time service is rendered offset by the lead, that is, the period the utility company has from the time it incurs an expense until cash is actually disbursed in payment for the expense.

O. "Litigation" means all contested matters before regulatory commissions, administrative bodies, and state or federal courts. Litigation also includes arbitration proceedings and other similar dispute resolution proceedings. Uncontested regulatory filings, contract drafting, negotiation and management, routine legal advice and other similar legal matters which are not in dispute are not considered litigation for the purposes of this rule.

P. "Rate Base" means the net investment value upon which the applicant utility shall be permitted to earn a specified return. Generally, the Rate Base represents the value of utility property used and useful in rendering the public utility service and may contain elements of value reflecting the cost of the utility property to the person first devoting it to the public service and other items such as cash working capital, materials, supplies, and prepayments. In accordance with existing New Mexico Statutes [NMSA 1978] the applicant's Rate Base may also reflect the cost of reproduction as a going concern and other elements of value. "Reproduction Cost" means the estimated cost to reproduce an item or property or other asset currently owned at current prevailing prices.

Q. "Rate Class" means a group of the applicant utility's customers which exhibit similar use characteristics and which are grouped together for cost allocation and rate design purposes.

R. "Test Year Period."

(1) Nothing herein shall preclude an applicant utility from adopting either an Historical Test Year Period or a Future Test Year Period, as defined below, as the basis for the determination by the Commission of the applicant utility's total revenue requirements.

(a) "Historical Test Year Period" means the Base Period after all proper adjustments such as for annualizations and known and measurable changes for which period the applicant utility's total revenue requirements shall be determined.

(b) "Future Test Year Period" means the twelve (12) consecutive months immediately following the last day of the applicant utility's twelve (12) months of actual

experience [otherwise the Base Period] adjusted for known and measurable changes and/or estimates based on projections for which period the applicant utility's total revenue requirements shall be determined.

(2) The Test Year Period prescribed in the individual data request schedules shall incorporate the necessary adjustments in conformance with the definition given above for the type of Test Year Period selected by the applicant utility.

[Recompiled 12/30/01]

#### **17.10.630.8 TABLE OF CONTENTS:**

A. Purpose: [17.10.630.6 NMAC]

B. Applicability: [17.10.630.2 NMAC]

C. Definitions: [17.10.630.7 NMAC]

D. Letter of Transmittal: [17.10.630.9 NMAC]

E. Failure to Comply: [17.10.630.10 NMAC]

F. Variances: [17.10.630.11 NMAC]

G. Appendix A: Minimum Data Standard Filing Requirements: [17.10.630.12 and 17.10.630.13 NMAC]

[Recompiled 12/30/01]

#### **17.10.630.9 LETTER OF TRANSMITTAL:**

In the letter of transmittal the applicant shall:

A. notify the New Mexico Public Service Commission [New Mexico Public Regulation Commission] of the tendered rate schedules which will supersede, supplement, or otherwise change any provision of a rate schedule required to be on file with the Commission;

B. include copies of each tendered rate schedule which will supersede, supplement, or otherwise change the provision of a rate schedule required to be on file with the Commission;

C. state the date on which the applicant proposes to make the changes in service, rate, rule, or practice effective;

D. state a brief description of the proposed changes in service and/or rate, the reason for the proposed change, and shall show that all the requisite agreements to the proposed change, including any contract embodied therein, have in fact been obtained;

E. state that notice has been given or will be given as required by the Rules of the New Mexico Public Service Commission [New Mexico Public Regulation Commission];

F. list the documents submitted in support of the proposed changes.

[Recompiled 12/30/01]

**17.10.630.10 FAILURE TO COMPLY:**

The failure of the applicant to fulfill the minimum data requirements specified herein shall constitute sufficient cause for the Commission to reject the applicant's filing pursuant to NMPSC Rule 210 [17.1.210 NMAC].

[Recompiled 12/30/01]

**17.10.630.11 VARIANCES:**

A. Pursuant to NMPSC Rules 110 and 210 [17.1.2 NMAC and 17.1.210 NMAC] an applicant utility unable to comply fully with any data request contained herein due to good and sufficient cause should give notice in writing to the Commission of the applicant utility's inability to comply with the provisions of such data request at least thirty (30) days prior to the actual filing of the Minimum Data Requirements Filing Package.

B. Upon receipt of such notification and after consideration by the Commission of the applicant utility's stated reasons for failure to comply fully with the provisions of the data request, the Commission shall within fifteen (15) days notify the applicant utility in writing of its decision concerning the applicant utility's notice of its inability to comply with the Commission's Data Filing Requirements.

[Recompiled 12/30/01]

**17.10.630.12 APPENDIX A:**

**MINIMUM DATA STANDARD REQUIREMENTS: [CONTENTS]:**

A. Schedule A Series: Summaries of the proposed cost of service:

(1) Sch. A-1: Summary of the overall cost of service and the claimed revenue deficiency. Base Period; Test Year Period.

(2) Sch. A-2: Summary of the revenue increase or decrease at the proposed rates by rate classes. Test Year Period.

(3) Sch. A-3: Summary of the cost of service adjustments by functional classification. Test Year Period.

(4) Sch. A-4: Summary of Rate Base. Base Period; Test Year Period; Test Year Period RCND - -OPTIONAL.

(5) Sch. A-5: Summary of total capitalization and the weighted average cost of capital. Base Period; Test Year Period; Test Year Period RCND - - OPTIONAL.

B. Schedule B Series: Original cost of plant in service:

(1) Sch. B-1: Original cost of plant in service by primary account. Base Period; Test Year Period.

(2) Sch. B-2: Original cost of plant in service by detail account. Base Period; Test Year Period.

(3) Sch. B-3: Original cost of plant in service by monthly balances. Base Period; Test Year Period.

(4) Sch. B-4: Natural gas production and gathering plant. Base Period; Test Year Period.

(5) Sch. B-5: Products extraction and purification plant. Base Period; Test Year Period.

(6) Sch. B-6: Gas storage projects owned. Base Period; Test Year Period.

(7) Sch. B-7: Gas plant leased to others. Base Period; Test Year Period.

(8) Sch. B-8: Plant held for future use. Base Period; Test Year Period.

(9) Sch. B-9: Construction work in progress. Base Period; Test Year Period.

(10) Sch. B-10: Allowance for funds used during construction generated and transferred to plant in service. Base Period; Test Year Period.

C. Schedule C Series: Accumulated provision for depreciation, depletion, amortization, and abandonment:

(1) Sch. C-1: Accumulated provision for depreciation, depletion, amortization, and abandonment by functional classification and detailed plant account. Base Period; Test Year Period.

- (2) Sch. C-2: Depreciation rate study. Base Period; Test Year Period.
- (3) Sch. C-3: Depreciation and amortization methods.

D. Schedule D Series: Original cost of plant in service adjusted to the cost of reproduction as a going concern and other elements of value - - OPTIONAL:

(1) Sch. D-1: Original cost of plant in service adjusted to the cost of reproduction as a going concern and other elements of value - - OPTIONAL. Base Period; Test Year Period.

(2) Sch. D-2: Cost of reproduction as a going concern and other elements of value adjusted for age and condition - -OPTIONAL. Base Period; Test Year Period.

E. Schedule E Series: Working capital allowance:

(1) Sch. E-1: Cash working capital allowance. Base Period; Test Year Period.

(2) Sch. E-2: Materials and supplies, prepayments, and deferred charges. Base Period; Test Year Period.

(3) Sch. E-3: Purchased gas cost account. Base Period; Test Year Period.

(4) Sch. E-4: Inventories of natural gas in storage. Base Period; Test Year Period.

(5) Sch. E-5: Amounts of working capital items charged to operating and maintenance expenses. Base Period; Test Year Period.

F. Schedule F Series: Other property and investments:

(1) Sch. F-1: Other property and investments. Base Period; Test Year Period.

(2) **[RESERVED]**

G. Schedule G Series: Capitalization, the cost of capital, and the overall rate of return:

(1) Sch. G-1: Capitalization, the cost of capital, and the overall rate of return in conformance with an original cost Rate Base. Base Period; Test Year Period.

(2) Sch. G-2: Capitalization, the cost of capital, and the overall rate of return in conformance with a cost of reproduction as a going concern and other elements of value Rate Base - - OPTIONAL. Base Period; Test Year Period.

(3) Sch. G-3: Embedded cost of borrowed capital with term of maturity in excess of one year from date of issue. Base Period; Test Year Period.

(4) Sch. G-4: Cost of short-term borrowed capital including revolving credit agreements and other notes payable. Base Period; Test Year Period.

(5) Sch. G-5: Embedded Cost of preferred stock capital. Base Period; Test Year Period.

(6) Sch. G-6: Ratio of earnings to fixed charges. Base Period; Test Year Period.

(7) Sch. G-7: Issuance restrictions on borrowed and preferred stock capital. Base Period; Test Year Period.

(8) Sch. G-8: Common stock equity capital. Base Period; Test Year Period.

(9) Sch. G-9: Historical activity in common stock, paid-in capital, and retained earnings. Base Period; Test Year Period.

(10) Sch. G-10: Summary of applicant's support for the claimed rate of return on common stock equity capital.

#### H. Schedule H Series: Expenses of operation.

(1) Sch. H-1: Operation and maintenance expenses. Base Period; Test Year Period.

(2) Sch. H-2: Cost of purchased gas. Base Period; Test Year Period.

(3) Sch. H-3: Reconciliation of revenues generated through the purchased gas adjustment clause with purchased gas cost. Base Period; Test Year Period.

(4) Sch. H-4: Payroll distribution and associated payroll taxes, employee benefits and pensions, and other compensations. Base Period; Test Year Period.

(5) Sch. H-5: Expenses associated with advertising, contributions, donations, lobbying and political activities, memberships, and outside services. Base Period; Test Year Period.

(6) Sch. H-6: Other Administrative and General Expenses. Base Period; Test Year Period.

(7) Sch. H-7: Depreciation, depletion, amortization, and abandonment expense. Base Period; Test Year Period.

- (8) Sch. H-8: Taxes other than income taxes. Base Period; Test Year Period.
- (9) Sch. H-9: Federal and state income taxes. Base Period; Test Year Period.
- (10) Sch. H-10: Reconciliation of net income per books to net income for income tax purposes. Base Period; Test Year Period.
- (11) Sch. H-11: Income tax effect as result of applicant joining in a consolidated federal income tax return. Base Period; Test Year Period.
- (12) Sch. H-12: Accumulated tax deferrals. Base Period; Test Year Period.
- (13) Sch. H-13: Investment tax credits. Base Period; Test Year Period.
- (14) Sch. H-14: Expenses associated with affiliated interests. Base Period; Test Year Period.
- (15) Sch. H-15: Expenses associated with nonutility services. Base Period; Test Year Period.
- (16) Sch. H-16: Explanation of the adjustments to expenses of operation.

I. Schedule I Series: Balance sheet, income statement, statement of changes in financial position.

- (1) Sch. I-1: Balance Sheet. Base Period; Test Year Period.
- (2) Sch. I-2: Income Statement. Base Period; Test Year Period.
- (3) Sch. I-3: Statement of changes in financial position. Base Period; Test Year Period.

J. Schedule J Series: Construction program and sources of construction funds.

- (1) Sch. J-1: Construction program. Base Year and Projected.
- (2) Sch. J-2: Sources of construction funds. Base Year and Projected.

K. Schedule K Series: Gas operating revenues and sales volumes:

- (1) Sch. K-1: Gas operating revenues and sales volumes. Base Period; Test Year Period.
- (2) Sch. K-2: Revenues from sales of products extracted from natural gas and from gas processed by others. Base Period; Test Year Period.



L. Schedule L Series: Fully allocated cost of service study:

- (1) Sch. L-1: Allocation of Rate Base - - jurisdictional. Base Period; Test Year Period.
- (2) Sch. L-2: Allocation of Rate Base - - functional Classification. Base Period; Test Year Period.
- (3) Sch. L-3: Allocation of Rate Base - - demand, commodity, and customer. Base Period; Test Year Period.
- (4) Sch. L-4: Allocation of Rate Base to rate classes. Base Period; Test Year Period.
- (5) Sch. L-5: Allocation of total expenses - - jurisdictional. Base Period; Test Year Period.
- (6) Sch. L-6: Allocation of total expenses - - functional classification. Base Period; Test Year Period.
- (7) Sch. L-7: Allocation of total expenses - - demand, commodity, and customer. Base Period; Test Year Period.
- (8) Sch. L-8: Allocation of total expenses to rate classes. Base Period; Test Year Period.
- (9) Sch. L-9: Allocation of total revenue - - jurisdictional. Base Period; Test Year Period.
- (10) Sch. L-10: Allocation of total revenue - - demand, commodity, and customer. Base Period; Test Year Period.
- (11) Sch. L-11: Allocation of total revenue to rate classes. Base Period; Test Year Period.

M. Schedule M Series: Allocated cost of service per billing unit of demand, commodity, and customer by rate classification:

- (1) Sch. M-1: Allocated cost per billing unit of demand, commodity, and customer. Base Period; Test Year Period.
- (2) **[RESERVED]**

N. Schedule N Series: Allocation factors:

(1) Sch. N-1: Allocation factors used to assign items of plant and expenses to the various rate classes. Base Period; Test Year Period.

(2) Sch. N-2: Classification factors used to assign items of plant and expenses to demand, commodity, and customer components. Base Period; Test Year Period.

(3) Sch. N-3: Demand and commodity loss factors. Base Period; Test Year Period.

O. Schedule O Series: Rate of return by rate classes:

(1) Sch. O-1: Rate of return by rate classes. Base Period; Test Year Period.

(2) **[RESERVED]**

P. Schedule P Series: Rate design:

(1) Sch. P-1: Total revenue requirements by rate classes. Base Period;

Test Year Period.

(2) Sch. P-2: Proof of revenue analysis. Test Year Period.

(3) Sch. P-3: Comparison of rates for service under the present and proposed schedules.

(4) Sch. P-4: Explanation of proposed changes to existing rate schedules.

Q. Schedule Q Series: Key operating statistics:

(1) Sch. Q-1: Peak demand information.

(2) Sch. Q-2: Plant in service information.

(3) Sch. Q-3: Property retirements and property investments information.

(4) Sch. Q-4: Operation and maintenance expense information.

(5) Sch. Q-5: Customer information.

(6) Sch. Q-6: Weather data.

(7) Sch. Q-7: Scheduled maintenance information.

(8) Sch. Q-8: Customer service interruption information.

R. Schedule R Series: Required reports:

- (1) Sch. R-1: Natural gas receipts and deliveries.
- (2) Sch. R-2: Load research and conservation plan.
- (3) Sch. R-3: Description of company.
- (4) Sch. R-4: Annual report to stockholders.
- (5) Sch. R-5: Reports to the Securities and Exchange Commission.
- (6) Sch. R-6: Form 2 reports.
- (7) Sch. R-7: Opinion of independent public accountants.

S. Schedule S Series: Testimony and exhibits.

[Recompiled 12/30/01]

**17.10.630.13 APPENDIX A:**

**MINIMUM DATA STANDARD REQUIREMENTS: [NARRATIVE:]**

A. Schedule A Series: Summaries of the proposed cost of service: In this series of schedules the applicant shall show the New Mexico jurisdictional total cost of service in summary form for the Base Period and for the Test Year Period, as appropriate, and the proposed total cost of service in summary form for the Proposed Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package. The summaries of the proposed cost of service shall be provided as specified in the following schedules.

(1) Schedule A-1: Summary of the overall cost of service and the claimed revenue deficiency.

(a) [Base Period]: In this schedule the applicant shall show the cost of service for the Base Period on an unadjusted basis including, but not limited to: revenues, operation and maintenance expenses, depreciation expense, taxes on other than income, taxes on income, and the resulting return.

(b) [Test Year Period]: In this schedule the applicant shall show each of the items included in the Base Period, all adjustments thereto, the sum of each of these items at the end of the Test Year Period, and the revenue deficiency.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule A-2: Summary of the revenue increase or decrease at the proposed rates by rate classes.

(a) [Base Period]: Not required.

(b) [Test Year Period]: In this schedule the applicant shall show by rate class the gas service revenues, showing separately revenues from purchased gas, gas processing by others, product extractions and sales, transportation of gas, and other gas revenues as applicable as of the end of the Base Period. The applicant shall also show all adjustments thereto and revenues as proposed for the Test Year Period including the total revenue and the dollar amount of increase or decrease and this amount expressed as a percent.

(c) The revenue increase shall be the total revenue from the proposed rates less the total revenue from the existing rates for the Test Year Period.

(d) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule A-3: Summary of the cost of service adjustments by functional classification.

(a) [Base Period]: Not required.

(b) [Test Year Period]: In this schedule the applicant shall show by functional classification the account balances for the Base Period and the adjustments made to the Base Period balances to reflect the applicant's cost of service for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule A-4: Summary of Rate Base.

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an original cost basis for the Base Period on an unadjusted basis.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components on an original cost basis for the Base Period, all adjustments made thereto, and the sum of these components for the Test Year Period.

(c) [Test Year Period - - Optional]: At the option of the applicant the Rate Base components as adjusted for the Test Year Period may be adjusted further to reflect the cost of reproduction as a going concern and other elements of value. The information required in this schedule will be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support its proposed rate adjustment.

(d) A full explanation of each of the adjustments made to the component balances of Rate Base at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(5) Schedule A-5: Summary of total capitalization and the weighted average cost of capital.

(a) [Base Period]: In this schedule the applicant shall show the total claimed capitalization and the weighted average cost of capital for the Base Period on an unadjusted basis.

(b) [Test Year Period]: In this schedule the applicant shall show the total claimed capitalization and the weighted average cost of capital as of the end of the Base Period, the adjustments made thereto, and the total claimed capitalization and the weighted average cost of capital for the Test Year Period.

(c) [Test Year Period - - Optional]: At the option of the applicant the total claimed capitalization and weighted average cost of capital as adjusted for the Test Year Period may be adjusted further to reflect the cost of reproduction as a going concern and other elements of value. The information required in this schedule will be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support its proposed rate adjustment.

(d) A full explanation of each of the adjustments made to the claimed total capitalization and the weighted average cost of capital at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

B. Schedule B Series: Original cost of plant in service. In this series of schedules the applicant shall show the amounts of utility plant under the various classifications for the Base Period and for the Test Year Period, as appropriate, and as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule B-1: Original cost of plant in service by primary account.

(a) [Base Period]: In this schedule the applicant shall show the utility plant book balances by primary account at the beginning of the Base Period; the book

balances for additions, retirements, and transfers made thereto during the Base Period; and the book balances at the end of the Base including totals for the original cost of plant in service.

(b) [Test Year Period]: In this schedule the applicant shall show each of the utility plant accounts shown for the Base Period as of the end of the Base Period; all adjustments thereto for additions, retirements, and transfers; and the balances at the end of the Test Year Period including totals for the the original cost of plant as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule B-2: Original cost of plant in service by detail account.

(a) [Base Period]: In this schedule the applicant shall show by functional classification the detailed plant account book balances at the beginning of the Base Period; the book balances for additions, retirements, and transfers made thereto during the Base Period; and the book balances at the end of the Base Period including subtotals by functional classification and totals for the original cost of plant in service.

(b) [Test Year Period]: In this schedule the applicant shall show by functional classification the detailed plant account balances at the end of the Base Period; all adjustments thereto for additions, retirements, and transfers; and the balances at the end of the Test Year Period including subtotals by functional classification and totals for the original cost of plant in service.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule B-3: Original cost of plant in service by monthly balances.

(a) [Base Period]: In this schedule the applicant shall show by functional classification the detailed plant account book balances at the beginning of each month and at the end of the Base Period including subtotals by functional classification and totals for the original cost of plant in service.

(b) [Test Year Period]: In this schedule the applicant shall show by functional classification the detailed plant account book balances at the beginning of each month as adjusted for the Test Year Period and at the end of the Test Year Period including subtotals by functional classification and totals for the original cost of plant in service as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule B-4: Natural gas production and gathering plant.

(a) [Base Period]: In this schedule the applicant shall show with sufficient detail the book balances for natural gas production, including gas reserves owned and acquired, and gathering plant by producing area and type of plant for the Base Period including subtotals and totals by producing areas and type of plant.

(b) [Test Year Period]: In this schedule the applicant shall show with sufficient detail the book balances for natural gas production, including gas reserves owned and acquired, and gathering plant by producing area and type of plant as of the end of the Base Period; all adjustments made thereto; and the balances at the end of the Test Year Period including subtotals and totals by producing area and type of plant.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(5) Schedule B-5: Products extraction and purification plant.

(a) [Base Period]: In this schedule the applicant shall show with sufficient detail the book balances for the product extraction and purification plant by area of location for the Base Period including subtotals and totals by area and type of plant.

(b) [Test Year Period]: In this schedule the applicant shall show with sufficient detail the book balances for the product extraction and purification plant by area of location as of the end of the Base Period; all adjustments made thereto; and the balances at the end of the Test Year Period including subtotals and totals by area and type of plant.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(6) Schedule B-6: Gas storage projects.

(a) [Base Period]: In this schedule the applicant shall show with sufficient detail the book balances for gas storage projects by area of location for the Base Period including subtotals and totals by storage plant and area of location.

(b) [Test Year Period]: In this schedule the applicant shall show with sufficient detail the book balances for gas storage projects by area of location as of the end of the

Base Period; all adjustments made thereto; and the balances at the end of the Test Year Period including subtotals and totals by storage plant and area of location.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(7) Schedule B-7: Gas plant leased to others.

(a) [Base Period]: In this schedule the applicant shall show the gas plant leased to others by functional classification and detailed plant account for the Base Period including subtotals and totals by functional classification.

(b) [Test Year Period]: In this schedule the applicant shall show the gas plant leased to others by functional classification and detailed plant account as of the end of the Base Period; all adjustments thereto; and the balances as of the end of the Test Year Period including subtotals and totals by functional classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(8) Schedule B-8: Plant held for future use.

(a) [Base Period]: In this schedule the applicant shall show a list of plant held for future use as of the end of the Base Period, including a proper description, date of purchase, anticipated use, anticipated date that property will be placed in service, and the book balance of each item of plant at the end of the Base Period including a total of these balances of plant held for future use.

(b) [Test Year Period]: In this schedule the applicant shall show a list of plant held for future use as of the end of the Test Year Period, including a proper description, date of purchase, anticipated use, anticipated date that property will be placed in service, adjustments made to the Base Period balances for the Test Year Period, and the balance of each item of plant at the end of the Test Year Period including a total of these balances of plant held for future use as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(9) Schedule B-9: Construction work in progress. [Report only those items for which \$25,000 or more have been expended by the end of the Base Period.]

(a) [Base Period]: In this schedule the applicant shall show the items included in construction work in progress for the Base Period by functional classification. The



applicant shall include a proper description of the project, work order number, estimated cost of the project, expenditures at the end of the Base Period, and the total book balance for construction work in progress at the end of the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the items included in construction work in progress for the Test Year Period by functional classification. The applicant shall include a proper description of the project, work order number, estimated completion date, total estimated cost of the project, adjustments made thereto for the Test Year Period expenditures, and the total balance for construction work in progress at the end of the Test Year Period as adjusted. The information required in this schedule shall be supplied when the applicant claims construction work in progress to support a rate increase adjustment.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(10) Schedule B-10: Allowance for funds used during construction generated and transferred to plant in service.

(a) [Base Period]: In this schedule the applicant shall show the amounts of allowance for funds used during construction which were generated and transferred to plant in service during the Base Period and for the four years prior thereto along with the corresponding capitalization rates used to calculate the amounts generated.

(b) In addition the applicant shall include a complete explanation of the methods, procedures, and calculations used in computing the amount of funds generated and transferred to plant in service.

(c) [Test Year Period]: In this schedule the applicant shall show the amounts of allowance for funds used during construction as adjusted from the Base Period along with an explanation of the methods, procedures, and calculations used in computing the amount of funds generated and transferred to plant in service.

(d) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

C. Schedule C Series: Accumulated provision for depreciation, depletion, amortization, and abandonment. In this series of schedules the applicant shall show information concerning the accumulated provision for depreciation, depletion, amortization, and abandonment for the Base Period and for the Test Year Period, as appropriate, and as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule C-1: Accumulated provision for depreciation, depletion, amortization, and abandonment by functional classification and detailed plant account.

(a) [Base Period]: In this schedule the applicant shall include the book balance at the beginning of the Base Period for depreciation and amortization by functional classification and detailed plant account; the book balances for accruals, retirements, abandonments, and transfers entered on the books during the Base Period; and the book balances at the end of the Base Period including subtotals by functional classification and totals for the accumulated provision for depreciation and amortization.

(b) [Test Year Period]: In this schedule the applicant shall show by functional classification and detailed plant account the balances for accumulated provision for depreciation and amortization at the end of the Base Period; all adjustments thereto for accruals, retirements, abandonments, and transfers; and the balances at the end of the Test Year Period including subtotals by functional classification and totals for the accumulated provision for depreciation and amortization as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule C-2: Depreciation rate study.

(a) [Base Period]: In this schedule the applicant shall show by functional classification and detailed plant account all changes made during the Base Period to the approved book depreciation rates, the property service lives, or the net values of properties included in the Base Period.

(b) In addition the applicant shall include for any changes made to the book depreciation rates during the Base Period reference to the appropriate supporting study, schedules, or workpapers which shall constitute a part of the applicant's filing package. This information will be in accordance with NMPSC Rule 340 [17.3.340 NMAC].

(c) [Test Year Period]: In this schedule the applicant shall show by functional classification and detailed plant account any changes proposed to the Base Period approved book depreciation rates, the property service lives, or the net service value of properties included in the Base Period.

(d) A full explanation of each of the adjustments made to the Base Period book depreciation rates shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package. This information will be in accordance with NMPSC Rule 340 [17.3.340 NMAC].

(3) Schedule C-3: Depreciation and amortization methods: In this schedule the applicant shall show a full description of the methods, formulae, and procedures used to determine book depreciation and amortization of the applicant's utility plant in

service as applicable to either the Base Period or to the Test Year Period. This schedule shall only be required of those utilities requesting a change in depreciation methods, formulae, or procedures. Otherwise reference to the utility's applicable NMPSC Rule 340 [17.3.340 NMAC] report shall constitute compliance with this schedule.

D. Schedule D Series: Original cost of plant in service adjusted to the cost of reproduction as a going concern and other elements of value - - Optional. In this series of schedules the applicant shall show the original cost of plant in service adjusted to the cost of reproduction as a going concern and other elements of value. The information required in this series shall be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support a rate increase adjustment.

(1) Schedule D-1: Original cost of plant in service adjusted to the cost of reproduction as a going concern and other elements of value - - Optional.

(a) [Base Period]: In this schedule the applicant shall show the original cost of plant in service by functional classification and detailed account at the end of the Base Period adjusted to the cost of reproduction as a going concern and other elements of value as of the end of the Base Period and shall include therein subtotals and the total for the adjusted value of the original cost of plant in service.

(b) In addition the applicant shall state herein the rationale, methods, formulae, and calculations used to adjust the original cost of plant in service.

(c) [Test Year Period]: In this schedule the applicant shall show the original cost of plant in service by functional classification and detailed account as adjusted for the Test Year Period and as adjusted to the cost of reproduction as a going concern and other elements of value and shall include therein subtotals and the total for the adjusted value of the original cost of plant in service.

(d) In addition the applicant shall state herein the rationale, methods, formulae, and calculations used to adjust the original cost of plant in service.

(e) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule D-2: Cost of reproduction as a going concern and other elements of value adjusted

for age and condition - - Optional.

(a) [Base Period]: In this schedule the applicant shall show the adjustment for age and condition of the Base Period cost of reproduction as a going concern and other

elements of value by functional classification and shall include therein the subtotal and the total for the cost of reproduction as a going concern value.

(b) In addition the applicant shall state therein the rationale, methods, formulae, and calculations used to arrive at the value for age and condition of the cost of reproduction as a going concern.

(c) [Test Year Period]: In this schedule the applicant shall show the adjustment for age and condition of the Test Year Period cost of reproduction as a going concern and other elements of value by functional classification and detail account and shall include therein the subtotal and the total for the cost of reproduction as a going concern value.

(d) In addition the applicant shall state therein the rationale, methods, formulae, and calculations used to arrive at the value for age and condition of the cost of reproduction as a going concern.

(e) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

E. Schedule E Series: Working capital allowance. In this series of schedules the applicant shall show the amounts claimed for working capital for the Base Period and for the Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule E-1: Cash working capital allowance.

(a) [Base Period]: In this schedule the applicant shall show the computation for the allowance of cash working capital for the Base Period on an unadjusted basis. At the applicant's option a lead-lag study may be supplied to satisfy the requirements of this data request.

(b) [Test Year Period]: In this schedule the applicant shall show the computation for the allowance of cash working capital as of the end of the Base Period, the adjustments made thereto, and the total claimed cash allowance for the Test Year Period. At the applicant's option a lead-lag study may be supplied to satisfy the requirements of this data request.

(c) A full explanation of each of the adjustments made to the balance for cash working capital allowance as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule E-2: Materials and supplies, prepayments, and deferred charges.

(a) [Base Period]: In this schedule the applicant shall show for each month of the Base Period the beginning monthly book balances and the end-of-period balance for materials and supplies, prepayments, and deferred charges on an unadjusted basis and shall include therein subtotals, totals, and the average of the thirteen (13) balances for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show for each month of the Test Year Period the beginning monthly balance for materials and supplies, prepayments, and deferred charges; all adjustments thereto; and the subtotals, totals, and the average of the thirteen (13) balances for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances for materials and supplies, prepayments, and deferred charges for the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule E-3: Purchased gas cost account.

(a) [Base Period]: In this schedule the applicant shall show for each month of the Base Period and for the two (2) years immediately preceding the Base Period the monthly balances for advances made for purchased gas on an unadjusted basis and shall include therein subtotals, totals, and the average balance for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show for each month of the Test Year Period the monthly book balances for advances made for purchased gas after all adjustment thereto and shall include therein subtotals, totals, and the average balance for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule E-4: Inventories of natural gas in storage.

(a) [Base Period]: In this schedule the applicant shall show for each month of the Base Period on an unadjusted basis the MCF quantities of natural gas in storage by storage facility, the monthly injections and withdrawals made thereto, and the total balance remaining as of the end of the Base Period.

(b) In addition the applicant shall show herein with sufficient detail by storage facility the method of pricing the MCF unit injected and withdrawn and for the quantities remaining in storage.

(c) [Test Year Period]: In this schedule the applicant shall show for each month of the Test Year Period the MCF quantities of natural gas in storage by storage facility as of the end of the Base Period, the estimated or projected monthly injections

and withdrawals anticipated thereto, and the total balance remaining as of the end of the Test Year Period.

(d) In addition the applicant shall show herein with sufficient detail the method of pricing the MCF unit injected and withdrawn and for the quantities remaining in storage by storage facility.

(e) A full explanation of each of the adjustments made to the balances as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(5) Schedule E-5: Amounts of working capital items charged to operating and maintenance expenses.

(a) [Base Period]: In this schedule the applicant shall show for each month of the Base Period the monthly amounts of working capital items charged to operating and maintenance expense on an unadjusted basis and shall include totals for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show for each month of the Test Year Period the monthly amounts of working capital items charged to operating and maintenance expense, all adjustments thereto, and the totals for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances of working capital items charged to operating and maintenance expense as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

F. Schedule F Series: Other property and investments. In this series of schedules the applicant shall show the information requested on investments in other-than-utility property for the Base Period and for the Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package. To the extent that the information required herein has been supplied and is currently on file with the New Mexico Public Service Commission [New Mexico Public Regulation Commission] pursuant to the provisions of NMPSC Rule 450 [17.6.450 NMAC], notice herein that such filing has been made will fulfill the requirements for this series of schedules.

(1) Schedule F-1: Other property and Investments.

(a) [Base Period]: In this schedule the applicant shall show its investments in other-than-utility property as of the beginning of the Base Period and as of the end of the Base Period on an unadjusted basis. The applicant shall include therein a description of the property or investment; the amounts invested; the types of securities owned, loaned, pledged, and/or advanced; the applicable cost rates; the equity in the

undistributed earnings since date of acquisition; and the interest and/or dividend income received from such property or investment.

(b) In addition, if regulatory approval was required for any security acquired or advancement made in connection with such property or investment, the applicant shall state the name of the Commission, the date authorization was granted, and the case or docket number.

(c) [Test Year Period]: In this schedule the applicant shall show its investments in other than utility property as of the end of the Base Period; all adjustments made thereto for the Test Year Period; the balance at the end of the Test Year Period including therein a description of the property or investment; the amounts invested; the types of securities owned, loaned, pledged, and/or advanced; the applicable cost rates; the equity in the undistributed earnings since date of acquisition; and the interest and/or dividend income received from such property or investment.

(d) In addition, if regulatory approval was required for any security acquired or advancement made in connection with such property or investment, the applicant shall state the name of the Commission, the date authorization was granted, and the case or docket number.

(e) A full explanation for each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

G. Schedule G Series: Capitalization, the cost of capital, and the overall rate of return. In this series of schedules the applicant shall show the total capitalization by class of capital, the claimed capital structure, the embedded cost rates including the claimed rate of return on the common stock equity component, and the resulting weighted average cost of capital for the Base Period and for the Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule G-1: Capitalization, the cost of capital, and the overall rate of return in conformance with an original cost Rate Base.

(a) [Base Period]: In this schedule the applicant shall show the claimed capitalization, the cost of capital thereon, and the overall claimed rate of return as of the end of the Base Period on an actual basis; a description of the various classes of capital; the capital structure ratios; the effective embedded cost rates; and the weighted cost rate for each class of capital.

(b) [Test Year Period]: In this schedule the applicant shall show the capitalization; the cost of capital; the dollar amounts outstanding at the end of the Test Year Period; the capital and the overall claimed rate of return as of the end of the Base Period; all adjustments thereto; a description of the various classes of capital; the dollar

amounts outstanding at the end of the Test Year Period; the capital structure ratios; the estimated cost rates; and the weighted cost rate for each class of capital.

(c) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule G-2: Capitalization, the cost of capital, and the overall rate of return in conformance with a cost of reproduction as a going concern and other elements of value Rate Base - - Optional.

(a) [Base Period]: In this schedule the applicant shall show the claimed capitalization, the cost of capital thereon, and the overall claimed rate of return as of the end of the Base Period on an actual basis; the adjustment thereto for the cost of reproduction as a going concern value; a description of the various classes of capital; the dollar amounts outstanding at the end of the Base Period as adjusted; the capital structure ratios; the effective embedded cost rates; and the weighted cost rate for each class of capital.

(b) The information required in this schedule will be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support its proposed rate adjustment.

(c) [Test Year Period]: In this schedule the applicant shall show the capitalization, the cost of capital, and the overall claimed rate of return as of the end of the Test Year Period as adjusted further to the cost of reproduction as a going concern value; a description of the various classes of capital; the dollar amounts outstanding at the end of the Test Year Period as adjusted; the capital structure ratios; the estimated cost rates; and the weighted cost rate for each class of capital.

(d) The information required in this schedule will be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support its proposed rate adjustment.

(e) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule G-3: Embedded cost of borrowed capital with term of maturity in excess of one year from date of issue.

(a) [Base Period]: In this schedule the applicant shall show the embedded cost of borrowed capital based on the actual principal amounts outstanding at the end of the Base Period.



(b) In addition the applicant shall show the following particulars for each class and series of borrowed capital outstanding:

- (i) description of issue;
- (ii) date of issuance;
- (iii) date of maturity;
- (iv) coupon or nominal interest rate;
- (v) principal amount of issue at offering;
- (vi) price at offering;
- (vii) gross proceeds;
- (viii) underwriter's commission, discount, or premium;
- (ix) expense of issue;
- (x) net proceeds: amount; per unit;
- (xi) effective yield to maturity [by reference to any generally acceptable table of bond yields or computer computation];
- (xii) principal amount outstanding at end of Base Period;
- (xiii) annual interest requirements;
- (xiv) weighted effective cost rate;
- (xv) if issue is owned by an affiliate, state name and relationship of owner to applicant; and
- (xvi) if issue is convertible, state terms of conversion.

(c) [Test Year Period]: In this schedule the applicant shall show the cost of borrowed capital [particulars a through p] [(i) through xvi)] after all adjustments to the actual balances and cost rates at the end of the Base Period.

(d) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule G-4: Cost of short-term borrowed capital including revolving credit agreements and other notes payable.

(a) [Base Period]: In this schedule the applicant shall show the cost of short-term borrowed capital based on the actual principal amounts outstanding at the end of the Base Period.

(b) In addition the applicant shall show the following particulars for each class and series of short-term borrowed capital outstanding:

- (i) description of issue;
- (ii) date of issuance;
- (iii) date of maturity;
- (iv) coupon or nominal interest rate;
- (v) principal amount of issue at offering;
- (vi) annual interest requirements;
- (vii) average principal balance outstanding monthly during the period;
- (viii) average weighted interest cost rate on average principal balance outstanding monthly during the period; and
- (ix) if issue is owned by an affiliate, state name and relationship of owner to applicant.

(c) [Test Year Period]: In this schedule the applicant shall show the cost of short-term borrowed capital [particulars a through i] [(i) through (ix)] after all adjustments to the actual balances and cost rates at the end of the Base Period.

(d) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(5) Schedule G-5: Embedded cost of preferred stock capital.

(a) [Base Period]: In this schedule the applicant shall show the embedded cost of preferred stock capital based on the actual principal amounts outstanding at the end of the Base Period.

(b) In addition the applicant shall show the following particulars for each class and series of preferred stock outstanding:

- (i) description of issue [including number of shares offered];
- (ii) date of issuance;
- (iii) dividend rate;
- (iv) price at offering;
- (v) gross proceeds;
- (vi) underwriter's commission, discount, or premium;
- (vii) issuance expense;
- (viii) net proceeds: amount, per unit;
- (ix) effective dividend cost rate;
- (x) principal amount outstanding at end of period;
- (xi) annual dividend requirements;
- (xii) weighted effective cost rate;
- (xiii) if issue is owned by an affiliate, state name and relationship; and
- (xiv) if issue is convertible, state terms of conversion.

(c) [Test Year Period]: In this schedule the applicant shall show the cost of preferred stock capital [particulars a through n] [(i) through (xiv)] after all adjustments to the actual balances and cost rates at the end of the Base Period.

(d) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(6) Schedule G-6: Ratio of earnings to fixed charges.

(a) [Base Period]: In this schedule the applicant shall show the computation of the ratio of earnings to fixed charges for the Base Period on an actual basis and for the four (4) years preceding the Base Period using the following format, where appropriate.

(b) Fixed charges, as defined by the Securities and Exchange Commission:

(i) Interest on Long-term Debt;

(ii) Amortization of Debt Premium, Discount, and Expense;

(iii) Interest on Short-term Debt;

(iv) Other Interest;

(v) Estimated Interest Factor of Lease Rental Charges Total Fixed Charges.

(c) Earnings, as defined by the Securities and Exchange Commission:

(i) Net Earnings;

(ii) Add Fixed Charges, as above.

(d) Earnings Available for Fixed Charges After Provision for Income Taxes:  
Add Income Taxes:

(i) Federal;

(ii) Deferred-net;

(iii) Investment Tax Credit Adjustment;

(iv) Investment Tax Credit;

(v) State.

(e) Earnings Available for Fixed Charges Before Provision for Income Taxes.

(f) Ratio of Earnings to Fixed Charges After Provision for Income Taxes.

(g) Ratio of Earnings to Fixed Charges Before Provision for Income Taxes.

(h) [Test Year Period]: In this schedule the applicant shall show the computation of the ratio of earnings to fixed charges for the Test Year Period after adjustments made to the Base Period balances using the same format as prescribed for the Base Period.

(i) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(7) Schedule G-7: Issuance restrictions on borrowed and preferred stock capital. In this schedule the applicant will show a brief summary of the most current restrictions imposed on the applicant in the issuance of borrowed and preferred stock capital.

(8) Schedule G-8: Common stock equity capital.

(a) [Base Period]: In this schedule the applicant shall show the common stock activity as of the end of the Base Period and for five (5) years preceding the Base Period on an actual basis and shall show therein the following particulars:

- (i) year-end number of shares outstanding;
- (ii) year-end book value per share;
- (iii) annual earning per share;
- (iv) year-end market-to-book value ratio;
- (v) annual cash dividend per share;
- (vi) annual stock dividends per share;
- (vii) dividend yield per share;
- (viii) average monthly high/low market price;
- (ix) stock splits and/or changes in par value;
- (x) sales of common stock;
- (xi) date of sale;
- (xii) number of shares sold;
- (xiii) gross proceeds;
- (xiv) underwriter's commission, discount, or premium;
- (xv) issuance expense; and
- (xvi) type of offering.

(b) [Test Year Period]: In this schedule the applicant shall show the common stock activity as of the end of the Base Period, all adjustments made to the particulars a

through p [(i) through (xvi)] prescribed for the Base Period, and the results as of the end of the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(9) Schedule G-9: Historical activity in common stock, paid-in capital, and retained earnings.

(a) [Base Period]: In this schedule the applicant shall show the historical activity in common stock, paid-in capital, and retained earnings for the last ten (10) years as of the end of each year on an actual basis and shall include therein the beginning balance, additions, reductions, and the ending balance concluding with the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the actual balances for the Base Period, all adjustments to the Base Period balances, and the ending balance for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(10) Schedule G-10: Summary of applicant's support for the claimed rate of return on common stock equity capital. In this schedule the applicant shall state briefly the analyses, methods, and conclusions on which the applicant depends for its support of the claimed rate of return on common stock equity capital.

H. Schedule H Series: Expenses of operation. In this series of schedules the applicant shall show information concerning its expenses of operation by each account of the Uniform System of Accounts prescribed by the New Mexico Public Service Commission [New Mexico Public Regulation Commission] for the Base Period and for the Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule H-1: Operation and maintenance expenses.

(a) [Base Period]: In this schedule the applicant shall show operation and maintenance expenses by functional classification and detailed account on an unadjusted basis by month for the Base Period and shall include therein subtotals and totals by functional classification and detailed account. Amounts included in Account 920, Administrative & General Salaries; Account 923, Outside Services Employed; and Account 928, Regulatory Commission Expenses, shall be further separated to identify those amounts which are litigation expenses as defined by NMSA 1978, Section 62-13-3 and those amounts which are not litigation expenses. Amounts included in any other

detailed account which are litigation expenses as defined by Section 62-13-3 shall also be separately identified.

(b) [Test Year Period]: In this schedule the applicant shall show operation and maintenance expenses by functional classification and detailed account by month for the Base Period, all adjustments made thereto for the Test Year Period, and the balances as of the end of the Test Year Period and shall include therein subtotals and totals by functional classification and detailed account. Test year period litigation expenses should be handled in the same manner as described above for the base period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule H-2: Cost of purchased gas.

(a) [Base Period]: In this schedule the applicant shall show the cost of purchased gas and related MCF volumes by supplier and by month for each month of the Base Period on an unadjusted basis and shall include therein subtotals, totals, and the total system weighted average unit cost.

(b) If the applicant purchases and sells gas under an exchange agreement, sufficient detail shall be shown regarding the total gross MCF volumes exchanged, the related dollar amounts, the parties involved, and the applicant's method for accounting for such transactions.

(c) [Test Year Period]: In this schedule the applicant shall show the cost of purchased gas and related MCF volumes by supplier and by month for each month of the Test Year Period regarding estimates and projections of the total gross MCF volumes exchanged, the related dollar amounts, the parties involved, and the applicant's method for accounting for such transactions.

(d) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule H-3: Reconciliation of revenues generated through the purchased gas adjustment clause with purchased gas cost.

(a) [Base Period]: In this schedule the applicant shall show an analysis of the reconciliation of the cost of purchased gas expense with the revenues generated from the purchased gas adjustment clause in effect based on the book balances for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show an analysis of the reconciliation of the cost of purchased gas expense with the revenues generated from the purchased gas adjustment clause reflecting all adjustments made to the Base Period balances.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule H-4: Payroll distribution, associated payroll taxes, employee benefits and pensions, and other compensations.

(a) [Base Period]: In this schedule the applicant shall show the payroll distribution, associated payroll taxes, employee benefits and pensions, and other compensation separately included in operating expenses on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the payroll distribution, associated payroll taxes, employee benefits and pensions, and other compensation separately included in operating expenses after all adjustments thereto and the balances for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(5) Schedule H-5: Expenses associated with advertising, contributions, donations, lobbying and political activities, memberships, and outside services.

(a) [Base Period]: In this schedule the applicant shall show the expenses incurred as a result of advertising, contributions, donations, lobbying and political activities, memberships, and outside services by month on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the expenses associated with advertising, contributions, donations, lobbying and political activities, memberships, and outside services for the Base Period; all adjustments made thereto; and the balances for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(6) Schedule H-6: Other administrative and general expenses.



(a) [Base Period]: In this schedule the applicant shall show other administrative and general expenses such as transfer credits, regulatory commission expenses, duplicate charges, and other miscellaneous general expenses not shown elsewhere, separately by month for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show other administrative and general expenses such as transfer credits, regulatory commission expenses, duplicate charges, and other miscellaneous general expenses not shown elsewhere, separately by month for the Base Period; all adjustments thereto; and the balances for these items for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(7) Schedule H-7: Depreciation, depletion, amortization, and abandonment expense.

(a) [Base Period]: In this schedule the applicant shall show the depreciation, depletion, amortization, and abandonment expense by functional classification and detailed plant account on an unadjusted basis for the Base Period; the book depreciation rate; and the annual expense accrual. The applicant shall include therein subtotals and totals by functional classification and detailed plant account.

(b) [Test Year Period]: In this schedule the applicant shall show the depreciation, depletion, amortization, and abandonment expense by functional classification and detailed plant account for the Base Period; all adjustments thereto; and the annual expense accrual for the Test Year Period. The applicant shall include therein subtotals and totals by functional classification and detailed plant account.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(8) Schedule H-8: Taxes other than income taxes.

(a) [Base Period]: In this schedule the applicant shall show the taxes, excluding federal and state income taxes, by type of tax accrued, prepaid, and charged on an actual basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the taxes, excluding federal and state income taxes, by type of tax for the Base Period, all adjustments made thereto, and the balances for the Test Year period.

(c) A full explanation of each of the adjustments made to the balances shown for the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(9) Schedule H-9: Federal and state income taxes.

(a) [Base Period]: In this schedule the applicant shall show the computation for federal and state income taxes on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the computation for federal and state income taxes reflecting all adjustments made for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(10) Schedule H-10: Reconciliation of net income per books to net income for income tax purposes.

(a) [Base Period]: In this schedule the applicant shall show the reconciliation of the net income per books to the net income as reported to the Federal Internal Revenue Service for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the reconciliation of the net income as adjusted for the Test Year Period to the net income as would be reported to the Federal Internal Revenue Service for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(11) Schedule H-11: Income tax effect as a result of applicant joining in a consolidated federal income tax return.

(a) [Base Period]: In this schedule the applicant shall show a detailed analysis for the Base Period of the applicant's tax effect as a result of joining in the filing of a consolidated federal income tax return.

(b) [Test Year Period]: In this schedule the applicant shall show a detailed analysis for the Test Year Period of the applicant's tax effect at the proposed revenue as a result of joining in the filing of a consolidated federal income tax return.

(12) Schedule H-12: Accumulated tax deferrals.

(a) [Base Period]: In this schedule the applicant shall show the accumulated tax deferrals by month on an unadjusted basis for the Base Period and shall include therein the actual balances for additions and reductions and the balances as of the end of the Base Period.

(b) In addition the applicant shall show the item giving rise to the tax deferral separately, such as accelerated amortization, liberalized depreciation, asset depreciation range, investment tax credit, job development credit, etc.

(c) [Test Year Period]: In this schedule the applicant shall show the accumulated tax deferrals as of the end of the Base Period, all adjustments thereto for the Test Year Period, and the balances at the end of the Test Year Period.

(d) In addition the applicant shall show the item giving rise to the tax deferral separately, such as accelerated amortization, liberalized depreciation, asset depreciation range, investment tax credit, job development credit, etc.

(e) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(13) Schedule H-13: Investment tax credits.

(a) [Base Period]: In this schedule the applicant shall show an analysis of the investment tax credits earned, utilized, and amortized during the Base Period on an unadjusted basis.

(b) In addition the applicant shall show herein the particulars concerning any sale/leaseback transactions under the safe-harbor lease provisions of the Accelerated Cost Recovery System established by the Economic Recovery Tax Act of 1981 and amendments thereto, such as the investor/lessor, amount of property, cash payment, term of lease, discount, and tax rate.

(c) [Test Year Period]: In this schedule the applicant shall show an analysis of the investment tax credit for the Base Period, all adjustments made thereto for the Test Year Period, and the balances at the end of the Test Year Period.

(d) In addition the applicant shall show herein the particulars concerning any sale/leaseback transactions under the safe-harbor lease provisions of the Accelerated Cost Recovery System established by the Economic Recovery Tax Act of 1981 and amendments thereto, such as the investor/lessor, amount of property, cash payment, term of lease, discount, and tax rate.

(e) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(14) Schedule H-14: Expenses associated with affiliated interests.

(a) [Base Period]: In this schedule the applicant shall show the charges or credits on an unadjusted basis for the Base Period between applicant and any other affiliated or associated company, or for corporate organizations of applicant operating as departments or divisions, including therein the proper account classification; a description of the service performed; and the basis for the determination of the charge or credit. For reporting purposes herein items of \$10,000 or more shall be shown individually; items of \$10,000 or less may be aggregated by type of item.

(b) [Test Year Period]: In this schedule the applicant shall show the charges or credits for the Base Period, all adjustments made thereto, and the balances for the Test Year Period between applicant and any other affiliated or associated company, or for corporate organizations of applicant operating as departments or divisions, including therein the proper account classification; a description of the service performed; and the basis for the determination of the charge or credit. For reporting purposes herein items of \$10,000 or more shall be shown individually; items of \$10,000 or less may be aggregated by type of item.

(c) A full explanation of each of the adjustments made to the balances shown for the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(15) Schedule H-15: Expenses associated with nonutility services.

(a) [Base Period]: In this schedule the applicant shall show the investments, revenues, and expenses pertaining to the applicant's nonutility services on an unadjusted basis for the Base Period. The applicant shall include a full explanation of the rationale, methods, formulae, and calculations used in the allocation of these expenses to the nonutility service.

(b) [Test Year Period]: In this schedule the applicant shall show the investments, revenues, and expenses pertaining to the applicant's nonutility services for the Base Period; all adjustments made thereto; and the balances as of the end of the Test Year Period. The applicant shall include a full explanation of the rationale, methods, formulae, and calculations used in the allocation of these expenses to the nonutility service.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(16) Schedule H-16: Explanation of the adjustments to expenses of operation. In this schedule the applicant shall state in a brief narrative explanation the nature of each adjustment made to the book balances of expenses of operation.

I. Schedule I Series: Balance sheet, income statement, and changes in financial position. In this series of schedules the applicant shall submit copies of the financial forms, as required herein.

(1) Schedule I-1: Balance sheet.

(a) [Base Period]: To satisfy the requirements of this schedule the applicant shall submit a copy of its balance sheet which conforms with the end of the Base Period of operations reported herein and shall include all notes pertaining thereto.

(b) [Test Year Period]: To satisfy the requirements of this schedule the applicant shall submit a copy of its balance sheet which conforms with the end of the Test Year Period of operations reported herein and shall include all notes pertaining thereto.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule I-2: Income statement.

(a) [Base Period]: To satisfy the requirements of this schedule the applicant shall submit a copy of its income statement which conforms with the end of the Base Period of operations reported herein and shall include all notes pertaining thereto.

(b) [Test Year Period]: To satisfy the requirements of this schedule the applicant shall submit a copy of its income statement which conforms with the end of the Test Year Period of operations reported herein and shall include all notes pertaining thereto.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule I-3: Statement of changes in financial position.

(a) [Base Period]: To satisfy the requirements of this schedule the applicant shall submit a copy of its statement of changes in financial position which conforms with the end of the Base Period of operations reported herein and shall include all notes pertaining thereto.

(b) [Test Year Period]: To satisfy the requirements of this schedule the applicant shall submit a copy of its statement of changes in financial position which conforms with the end of the Test Year Period of operations reported herein and shall include all notes pertaining thereto.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

J. Schedule J Series: Construction program and sources of construction funds. In this series of schedules the applicant shall show its proposed construction program and the sources of construction funds as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule J-1: Construction program.

(a) In this schedule the applicant shall show by functional classification the capital requirements and shall include allowance for funds used during construction, related to its construction underway during the Base Period, and for construction planned for the next two (2) succeeding years.

(b) A full explanation of all assumptions and estimates used to arrive at the projections shown shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule J-2: Sources of construction funds.

(a) In this schedule the applicant shall show the planned sources of construction funds by years to conform with the planned construction program and shall include therein the amounts by class of capital and the anticipated cost rates on the proposed financing.

(b) A full explanation of all assumptions and estimates used to arrive at the projections shown shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

K. Schedule K Series: Gas operating revenues and sales volumes. In this series of schedules the applicant shall show the operating revenue from sales of natural gas, natural gas products, and services classified in accordance with the Commission's prescribed Uniform System of Accounts and as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule K-1: Gas operating revenue and sales volumes.

(a) [Base Period]: In this schedule the applicant shall show the book balances by month of the operating revenues from sales of natural gas, natural gas products, and services on an unadjusted basis for the Base Period including totals thereof classified in accordance with the Commission's prescribed Uniform System of Accounts (Account 400) along with the related sales volume of natural gas and natural gas product sales and services.

(b) [Test Year Period]: In this schedule the applicant shall show operating revenues from sales of natural gas, natural gas products, and services by month for the Base Period; all adjustments thereto for the Test Year Period including totals thereof; and be classified in accordance with the Commission's prescribed Uniform System of Accounts (Account 400) along with the related estimated or projected volumes of natural gas and natural gas product sales and services.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule K-2: Revenues from sales of products extracted from natural gas and from gas processed by others.

(a) [Base Period]: In this schedule the applicant shall show for the Base Period the sales of products extracted from natural gas [such as gasoline, butane, propane, and other salable products] processed through:

- (i) facilities owned by the applicant,
- (ii) as designated by an asterisk through facilities owned by an affiliated company, or
- (iii) through facilities owned by others.

(b) The applicant shall state the name of the gas processor in each of the aforementioned cases.

(c) The applicant shall also show separately for each such processing plant the following particulars:

- (i) the volume of natural gas processed,
- (ii) the volume of natural gas consumed as fuel,
- (iii) the volume of natural gas consumed by shrinkage,
- (iv) the wellhead price of the natural gas processed,
- (v) the name of each product extracted,
- (vi) the quantity of each product extracted in gallons,
- (vii) sales revenue received for each product extracted and sold, and
- (viii) sales revenue per gallon of each product extracted and sold.

(d) [Test Year Period]: In this schedule the applicant shall show the information requested for the Base Period as of the end of the Base Period, all adjustments made to the Base Period balances, and the balances for the Test Year Period.

(e) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

L. Schedule L Series: Fully allocated cost of service study. In this series of schedules the applicant shall show the total cost of service for the Base Period and for the Test Year Period separated by jurisdiction and, where applicable, by corporate department or division; functional classification; classified to demand, commodity, and customer; and by rate classification as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule L-1: Allocation of Rate Base -- jurisdictional.

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an unadjusted basis for the Base Period separated by jurisdiction and, where applicable, by corporate department or division.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components after adjustments to the Base Period balances separated by jurisdiction and, where applicable, by corporate department or division.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule L-2: Allocation of Rate Base -- functional classification.

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an unadjusted basis for the Base Period separated by functional classification.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components after adjustments to the Base Period balances separated by functional classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule L-3: Allocation of Rate Base -- demand, commodity, and customer.



(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an unadjusted basis for the Base Period separated as to demand, commodity, and customer.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components after adjustments to the Base Period balances separated by demand, commodity, and customer.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule L-4: Allocation of Rate Base to rate classes.

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an unadjusted basis for the Base Period separated by rate classification.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components after adjustments to the Base Period balances separated by rate classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(5) Schedule L-5: Allocation of total expenses -- jurisdictional.

(a) [Base Period]: In this schedule the applicant shall show the total expenses on an unadjusted basis for the Base Period separated by jurisdiction and, where applicable, by corporate department or division.

(b) [Test Year Period]: In this schedule the applicant shall show the total expenses after adjustments to the Base Period balances separated by jurisdiction and, where applicable, by corporate department or division.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(6) Schedule L-6: Allocation of total expenses -- functional classification.

(a) [Base Period]: In this schedule the applicant shall show the total expenses on an unadjusted basis for the Base Period separated by functional classification.

(b) [Test Year Period]: In this schedule the applicant shall show the total expenses after adjustments to the Base Period balances separated by functional classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(7) Schedule L-7: Allocation of total expenses -- demand, commodity, and customer.

(a) [Base Period]: In this schedule the applicant shall show total expenses on an unadjusted basis for the Base Period separated as to demand, commodity, and customer.

(b) [Test Year Period]: In this schedule the applicant shall show total expenses after adjustments to the Base Period balances separated as to demand, commodity, and customer.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(8) Schedule L-8: Allocation of total expenses to rate classes.

(a) [Base Period]: In this schedule the applicant shall show total expenses on an unadjusted basis for the Base Period separated by rate classification.

(b) [Test Year Period]: In this schedule the applicant shall show total expenses after adjustments to the Base Period balances separated by rate classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(9) Schedule L-9: Allocation of total revenue -- jurisdictional.

(a) [Base Period]: In this schedule the applicant shall show total annual revenue on an unadjusted basis for the Base Period separated by jurisdiction and, where applicable, by corporate department or division.

(b) [Test Year Period]: In this schedule the applicant shall show total annual revenue for the Test Year Period after adjustments to the Base Period balances separated by jurisdiction and, where applicable, by corporate department or division.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(10) Schedule L-10: Allocation of total revenue -- demand, commodity, and customer.

(a) [Base Period]: In this schedule the applicant shall show total annual revenue on an unadjusted basis for the Base Period classified to demand, commodity, and customer class.

(b) [Test Year Period]: In this schedule the applicant shall show total annual revenue for the Test Year Period after adjustments to the Base Period balances classified to demand, commodity, and customer class.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(11) Schedule L-11: Allocation of total revenue to rate classes.

(a) [Base Period]: In this schedule the applicant shall show total annual revenue on an unadjusted basis for the Base Period separated by rate classification.

(b) [Test Year Period]: In this schedule the applicant shall show total annual revenue for the Test Year Period after adjustments to the Base Period balances separated by rate classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

M. Schedule M Series: Allocated cost of service per billing unit of demand, commodity, and customer by rate classification. In this series of schedules the applicant shall show the allocated cost of service by rate classification per billing unit of demand, commodity, and customer as requested in each schedule and developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule M-1: Allocated cost per billing unit of demand, commodity, and customer.

(a) [Base Period]: In this schedule the applicant shall show the total allocated cost of service and the total allocated cost of service per billing unit of demand, commodity, and customer on an unadjusted basis for the Base Period existing rate schedules.

(b) [Test Year Period]: In this schedule the applicant shall show the total allocated cost of service and the total allocated cost of service per billing unit of demand, commodity, and customer for the proposed rate schedules after adjustments to the Base Period balances.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpaper which shall constitute a part of the applicant's filing package.

(2) **[RESERVED]**

N. Schedule N Series: Allocation Factors. In this series of schedules the applicant shall provide a list of the allocation factors used to assign items of plant and expenses to the various rate classes as well as a brief summary of the derivation of the allocation factors used.

(1) Schedule N-1: Allocation factors used to assign items of plant and expenses to the various rate classes.

(a) [Base Period]: In this schedule the applicant shall provide a list of the allocation factors used to assign items of plant and expenses on an unadjusted basis to the rate classes for the Base Period. In addition the applicant shall provide a brief explanation of the derivation of the allocation factors used.

(b) [Test Year Period]: In this schedule the applicant shall provide a list of the allocation factors used to assign items of plant and expenses to the rate classes after adjustments to the Base Period balances. In addition the applicant shall provide a brief explanation of the derivation of the allocation factors used.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule N-2 Classification factors used to assign items of plant and expenses to demand, commodity, and customer components.

(a) [Base Period]: In this schedule the applicant shall provide a tabulation of the classification factors used to assign items of plant and expenses to the appropriate demand, commodity, and customer components on an unadjusted basis for the Base Period showing the classification and providing a brief rationale for the classification.

(b) [Test Year Period]: In this schedule the applicant shall provide a tabulation of the classification factors used to assign items of plant and expenses to the appropriate demand, commodity, and customer components after adjustments to the Base Period balances showing the classification and a brief rationale for the classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule N-3: Demand and commodity loss factors.

(a) [Base Period]: In this schedule the applicant shall provide the demand and commodity loss factors used to assign the cost of service responsibility on an unadjusted basis to the Base Period. In addition the applicant shall supply a brief explanation of the methods, procedures, and formulae used to determine the loss factors and demand and commodity losses.

(b) [Test Year Period]: In this schedule the applicant shall provide the demand and commodity loss factors used to assign the cost of service responsibility after adjustments to the Base Period balances. In addition the applicant shall supply a brief explanation of the methods, procedures, and formulae used to determine the loss factors and demand and commodity losses.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

O. Schedule O Series: Rate of return by rate classification. In this series of schedules the applicant shall show the rate of return and the relative rates of return by rate classification as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule O-1: Rate of return by rate classification.

(a) [Base Period]: In this schedule the applicant shall show the rate of return and the relative rates of return by rate classification for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the rate of return and the relative rates of return by rate classification under the proposed rate schedules for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) **[RESERVED]**

P. Schedule P Series: Rate design. In this series of schedules the applicant shall show the total revenue requirement by rate classification as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule P-1: Total revenue requirements by rate classification.

(a) [Base Period]: In this schedule the applicant shall show the total revenue requirements on an unadjusted basis by rate classification for the Base Period, showing on a separate basis: base revenues, revenues derived from cost of purchased gas, and other revenue.

(b) [Test Year Period]: In this schedule the applicant shall show by rate classification:

(i) the total revenue requirements under existing rate schedules after adjustments to the Base Period balances, showing on a separate basis: base revenues, revenues derived from cost of purchased gas, and other revenue;

(ii) the total revenue requirements under the proposed rates after adjustments to the Base Period balances showing on a separate basis: base revenues, revenues derived from cost of purchased gas, and other revenue; and

(iii) the difference between the total revenue under existing rates and the total revenue under the proposed rates expressed in both dollars and as a percent.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule P-2: Proof of revenue analysis.

(a) [Base Period]: Not required.

(b) [Test Year Period]: To satisfy the requirements of this request the applicant shall include a proof of revenue by rate class utilizing the proposed rate schedules.

(c) A full explanation of each of the adjustments made to the Base Period information shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule P-3: Comparison of rates for service under the present and proposed schedules. To satisfy the requirements of this request the applicant shall include herein a tabulation showing a comparison of the rates for each rate classification for the present and proposed schedules.

(4) Schedule P-4: Explanation of proposed changes to existing rate schedules. In this schedule the applicant shall provide a brief explanation for the proposed change to the Base Period existing rate schedules and shall include therein the justification and support for the proposed change.

Q. Schedule Q Series: Key operating statistics. In this series of schedules the applicant shall provide the statistical data as requested in the following series of schedules and shall include an explanation or reference to the appropriate supporting schedules or workpapers for any adjustments made to the historical data requested or to the data for the Base Period. In addition, detailed explanations of all estimates and assumptions used to arrive at future values of data shall be provided.

(1) Schedule Q-1: Peak demand Information. In this schedule the applicant shall provide the following peak demand data:

- (a) for total system;
- (b) for the New Mexico jurisdiction;
- (c) by functional classification;
- (d) by customer classification and load factor;
- (e) for four (4) years prior to the Test Year Period by month;
- (f) for twelve (12) months of the Test Year Period, and
- (g) for five (5) years beyond Test Year Period by month.

(2) Schedule Q-2: Plant in service information. In this schedule the applicant shall provide the following plant in service data, as requested:

- (a) for total system;
- (b) by New Mexico jurisdiction;
- (c) by functional classification;
- (d) for four (4) years prior to Test Year Period;
- (e) for twelve (12) months of the Test Year, and
- (f) for five (5) years beyond the Test Year Period.

(3) Schedule Q-3: Property retirements and property investments information. In this schedule the applicant shall provide the following property retirements and property investments data, as requested:

- (a) for total system;
- (b) for New Mexico jurisdiction;

- (c) by functional classification;
- (d) for four (4) years prior to the Test Year Period;
- (e) for twelve (12) months of the Test Year Period, and
- (f) for five (5) years beyond Test Year Period.

(4) Schedule Q-4: Operation and maintenance expense information. In this schedule the applicant shall provide the following operation and maintenance expense data, as requested:

- (a) for total system;
- (b) for New Mexico jurisdiction;
- (c) by functional classification excluding purchased gas expense;
- (d) by demand, commodity, and customer;
- (e) by customer classification;
- (f) for four (4) years prior to the Test Year Period;
- (g) for twelve (12) months of the Test Year Period; and
- (h) for five (5) years beyond the Test Year Period.

(5) Schedule Q-5: Customer Information. In this schedule the applicant shall provide the following customer information for the New Mexico jurisdiction and by service area:

- (a) year-end number of customers and average number of customers for the year by customer classification;
- (b) therm or MCF sales per customer by customer classification;
- (c) revenue generated by the above sales per customer class;
- (d) for four (4) years prior to the Test Year Period;
- (e) for the Test Year Period, and
- (f) for five (5) years beyond the Test Year Period.



(6) Schedule Q-6: Weather Data. In this schedule the applicant shall provide weather data, including cooling and heating degree days by service area, used by the applicant to support any adjustments to sales due to weather.

(7) Schedule Q-7: Scheduled maintenance information. In this schedule the applicant shall provide the following scheduled system maintenance data:

- (a) for New Mexico jurisdiction;
- (b) by operating unit;
- (c) for four (4) years prior to the Test Year Period by month;
- (d) for twelve (12) months of the Test Year Period, and
- (e) for five (5) years beyond Test Year Period by month.

(8) Schedule Q-8: Customer service interruption information. In this schedule the applicant shall provide the following customer service interruption data:

- (a) for total system and for the New Mexico jurisdiction by:
  - (i) occurrence,
  - (ii) duration, and
  - (iii) geographical location;
- (b) for four (4) years prior to the Base Period; and
- (c) for twelve (12) months of the Base Period.

R. Schedule R Series: Required reports. In this series of schedules the applicant shall submit a copy of the most current reports as requested.

(1) Schedule R-1: Natural gas receipts and deliveries. To satisfy the requirements of this schedule the applicant shall submit copies of its natural gas account conforming with the Base Period and the Test Year Period of operations.

(2) Schedule R-2: Load research program and conservation plan. To satisfy the requirements of this schedule the applicant shall submit a copy of its latest load research program. The applicant shall also submit its latest conservation plan pursuant to the provisions of NMPSC Rules 420.24 through 420.28 [17.7.420 NMAC] and shall file studies, testimony, and exhibits as required by NMPSC Rule 420 [17.7.420 NMAC].

(3) Schedule R-3: Description of Company. To satisfy the requirements of this schedule the applicant shall submit a statement describing the company and its scope of operations by service area and shall include an organizational chart.

(4) Schedule R-4: Annual Report to stockholders. To satisfy the requirements of this schedule the applicant shall submit a copy of its latest Annual Report to stockholders. If the applicant is a wholly-owned subsidiary, the Annual Report to stockholders of its parent company shall be submitted.

(5) Schedule R-5: Reports to the Securities and Exchange Commission. To satisfy the requirements of this schedule the applicant shall submit copies of its latest SEC Form 10K and SEC Form 10Q and shall include copies of the Form 10Q conforming to the latest Form 10K accounting period. If the applicant is a wholly-owned subsidiary, division, or department, the applicable SEC Forms of its parent company shall be submitted.

(6) Schedule R-6: Form 2 reports. To satisfy the requirements of this schedule the applicant shall submit a copy of the latest Form 2 report required to be on file at the New Mexico Public Service Commission [New Mexico Public Regulation Commission]. Where the applicant has duly filed such report with the New Mexico Public Service Commission [New Mexico Public Regulation Commission], notice herein of the fact will satisfy the requirements of this schedule. In addition, if the applicant is required to file Form 2 with the Federal Energy Regulatory Commission, the latest Form 2 report filed at the Federal Energy Regulatory Commission shall be submitted herein.

(7) Schedule R-7: Opinion of independent public accountants. To satisfy the requirements of this schedule the applicant shall submit a copy of the opinion of its independent certified public accountant stating that an independent examination of the book amounts and accounting adjustments thereto of the applicant utility company's books and records has been made for the Base Period, as defined herein, and that the results thereof are in all material respects in compliance with the Uniform System of Accounts prescribed by the New Mexico Public Service Commission [New Mexico Public Regulation Commission].

S. Schedule S Series: Testimony and exhibits. To the extent that testimony and exhibits are required in support of the materials submitted in compliance with the filing requirements herein, the applicant shall submit testimony and exhibits of such composition, scope, and format so as to serve as the applicant's case-in-chief in the event the matter is set for hearing. Further, any utility seeking recovery of litigation expenses as defined in Section 62-13-3 NMSA 1978 shall file sufficient testimony to enable the Commission to find those expenses were prudently incurred.

[Recompiled 12/30/01]

**PART 631-639: [RESERVED]**

## **PART 640: PURCHASED GAS ADJUSTMENT CLAUSES FOR GAS UTILITIES**

### **17.10.640.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.10.640.1 NMAC - N, 3-15-04]

### **17.10.640.2 SCOPE:**

This rule applies to all natural gas utilities subject to the commission's jurisdiction.

[17.10.640.2 NMAC - N, 3-15-04]

### **17.10.640.3 STATUTORY AUTHORITY:**

NMSA 1978 Sections 8-8-15 and 62-8-7.

[17.10.640.3 NMAC - N, 3-15-04]

### **17.10.640.4 DURATION:**

Permanent.

[17.10.640.4 NMAC - N, 3-15-04]

### **17.10.640.5 EFFECTIVE DATE:**

March 15, 2004, unless a later date is cited at the end of a section.

[17.10.640.5 NMAC - N, 3-15-04]

### **17.10.640.6 OBJECTIVE:**

The purpose of this rule is to establish a procedure by which a natural gas utility may propose a purchased gas adjustment clause (PGAC) that the commission will review pursuant to Subsection E of NMSA 1978 Section 62-8-7. The PGAC is intended to ensure the stability of the utility's annual earnings consistent with the utility's duty to provide adequate service at just and reasonable rates. The PGAC mechanism also is designed to aid in the levelization of the gas cost factor reflected in the PGAC component of the customer's bill.

[17.10.640.6 NMAC - N, 3-15-04]

### **17.10.640.7 DEFINITIONS:**

In addition to the definitions contained in NMSA 1978 Section 62-3-3, as used in this rule, unless otherwise specified:

**A. annual reconciliation factor** means a computed surcharge or credit factor in the PGAC used to collect any revenue shortfall in the PGAC or to refund any excess revenue collected through the PGAC;

**B. annual reconciliation factor implementation period** means that twelve consecutive months comprising the period set forth in the utility's PGAC for the implementation of its annual reconciliation factor;

**C. annual reconciliation period** means the historical period of twelve consecutive months used for purposes of determining the PGAC balancing account under-collection or over-collection;

**D. annual reconciliation report** means a report setting out all costs and revenues applicable to the utility's PGAC and including the calculation of the annual reconciliation factor;

**E. attorney general** means the attorney general of the state of New Mexico and the representatives and consultants of the attorney general's office;

**F. balancing account** means the account containing the current cumulative over-collected or under-collected gas costs or such other costs as ordered by the commission;

**G. balancing account adjustment factor** means a mechanism employed within the gas cost factor statement that allows the utility to make adjustments to the balancing account to manage the utility's balancing account as necessary;

**H. basic gas cost factor** means an interim factor developed during the calculation of the gas cost factor statement that considers all of the normal, recurring gas cost elements;

**I. billing cycle** means a regular periodic interval during which certain customers of the utility are billed. For purposes of this rule, the billing cycle shall be deemed to begin on the day of preparation of bills for mailing for the utility's first billing cycle in which the gas cost factor will become effective;

**J. billing factor** means the gas cost factor applicable for a billing period;

**K. billing period** means that period of time that encompasses the date of the first billing cycle through the date of the last billing cycle;

**L. gas costs** mean those types of costs defined by the utility in its PGAC tariff as approved by the commission for recovery through the utility's PGAC. No gas costs of

customers of the utility not subject to the PGAC shall be included in the utility's PGAC calculations;

**M. gas cost factor** means the gas cost billing rate used in the utility's billing process for recovery of gas costs not included in the base rates;

**N. gas cost factor statement (GCFS)** means the filing required by a utility before an adjustment can be made in its gas cost factor;

**O. gas supply plan** means a planning report that sets forth the steps to provide a reliable gas supply at just and reasonable rates consistent with market conditions, regulatory requirements and other authorized purposes;

**P. general service gas cost factor** means the factor determined within the gas cost factor statement that is billed directly to sales service customers for gas costs. This factor is the sum of the basic gas cost factor, the balancing account adjustment factor, the producer/supplier surcharge or refund factor, the annual reconciliation factor, any other surcharge or refund factor authorized by the commission, and the factor for taxes and commission inspection and supervision fees, if applicable;

**Q. lowest reasonable cost** means gas supply procured at the lowest cost available at the time a gas contract is entered into or a purchase is made, consistent with supply reliability and operational needs of the utility;

**R. month** means a calendar month;

**S. planning period** means a period of twelve consecutive months or longer, beginning and ending in the months specified in the utility's PGAC;

**T. producer/supplier surcharge or refund factor** means a factor utilized to return refunds collected from suppliers or to surcharge additional items billed by suppliers that are not recognized elsewhere in the gas cost factor statement;

**U. purchased gas adjustment clause (PGAC)** means the mechanism that allows the utility to set gas cost billing rates for the purpose of recovering gas costs on a continuing basis and allows for levelization of the gas cost factor reflected in the PGAC component of the customer's bill;

**V. sales customer** means a customer of a utility who purchases gas from the utility rather than from a marketer, broker or other supplier;

**W. staff** means all persons employed by or representing the utility division of the commission;

**X. tariff** means the filed rate schedule, including rates, rules, and forms, setting forth the obligations of the utility and its customers;

**Y. verification period** means that time as established by this rule between the receipt of a gas cost factor statement by the commission and the first day of the first billing cycle in which the proposed gas cost factor will be placed in effect;

**Z. transportation customer** means a customer of the utility who purchases gas from a marketer, broker or supplier other than the utility and/or obtains only transmission and/or distribution services from the utility;

**AA. year** means a consecutive twelve-month period as defined in the utility's PGAC.

[17.10.640.7 NMAC - N, 3-15-04]

#### **17.10.640.9 APPLICATION FOR APPROVAL OF PGAC:**

**A.** Any gas utility without an approved PGAC that requests to use a PGAC for the recovery of gas costs must file an initial application with the commission. The filing requirements for the initial application are set forth in this section and in 17.10.640.12 NMAC.

**(1)** The utility's initial application for use of a PGAC shall include, at a minimum, the following:

**(a)** a detailed description and justification of the gas cost factor calculation methodology the utility proposes to use as a basis for the PGAC;

**(b)** proposed PGAC tariff provisions, which shall contain the specific methodology for calculation of the gas cost factor as provided for in 17.10.640.12 NMAC;

**(c)** identification of the specific months in which the utility proposes to begin and end its annual reconciliation period, as provided for in Subsection C of 17.10.640.13 NMAC, identification of the specific months in which the utility proposes to begin and end its annual reconciliation factor implementation period, as provided for in Subsection E of 17.10.640.13 NMAC, and identification of the annual date proposed for the filing of the utility's gas supply plan and the beginning and ending months proposed for the utility's planning period, as provided for in Subsections B and D of this section;

**(d)** sufficient financial and other necessary information and data to identify and justify the inclusion and recovery of allowable gas costs through the utility's PGAC, including a demonstration that no amounts to be recovered under the operation of the PGAC are included in other tariffs or charges for service; and

**(e)** an initial gas supply plan, as provided for in Subsection B of this section.

**(2)** Sworn testimony and exhibits explaining the utility's proposal and demonstrating that its proposed PGAC complies with this rule shall accompany an initial application for approval to use a PGAC.

**(3)** The utility may submit portions of its gas supply plan and initial application under seal as provided for in Paragraph 3 of Subsection B of this section.

**B.** Any gas utility seeking commission approval to use a PGAC shall file with its initial application pursuant to Subsections A and C of this section a gas supply plan that describes the utility's plans to meet customer demands for supply and transportation services throughout its service area and shows that its procurement policies are designed to ensure that gas supplies are purchased at the lowest reasonable cost. Any utility intending to continue using its approved PGAC shall file a gas supply plan annually pursuant to Subsection D of this section.

**(1)** The utility's gas supply plan shall include, at a minimum, the following:

**(a)** for the utility's planning period, information on the utility's procurement related plans, including supply sources, projected significant system modifications or improvements, types and durations of contracts, generic pricing provisions, storage arrangements, and arrangements for processing, gathering, and transportation by others of utility-owned gas supply;

**(b)** for the utility's planning period, information on projected demands for sales and transportation services;

**(c)** a description of foreseeable market or regulatory developments that may affect the plans described in the gas supply plan; and

**(d)** any other matters as may be ordered by the commission.

**(2)** An officer of the utility shall verify the gas supply plan.

**(3)** The utility may submit under seal any portions of its gas supply plan that reveal its contracted portfolio, its major suppliers, transportation volumes, or its contract pricing, on a contract-by-contract basis, to the extent the utility deems specific information to be confidential. The utility also may seek a protective order under Subsection B of 17.1.2.8 NMAC for other portions of its gas supply plan it considers confidential, but the utility shall have the burden of proving its right to such protection. Any information submitted under seal pursuant to this Paragraph shall remain under seal for a period of two (2) years, after which time it shall become public unless the utility seeks and obtains further protection from the commission. Information submitted under seal shall be available for review by the commission and its designated representatives and by any person who has entered into a confidentiality agreement with the utility in a form approved by commission order.

**C.** An initial PGAC application shall be filed with the commission and shall be reviewed and approved as provided herein.

**(1)** A utility filing an initial PGAC application shall contemporaneously with such filing mail a copy of such application to the attorney general and notification of its filing to the intervenors in the utility's most recent general rate case.

**(2)** A utility's initial PGAC application and proposed PGAC shall be deemed approved thirty (30) days after the filing of the application unless otherwise ordered by the commission.

**(3)** Any person or staff may file a request for a hearing on an initial PGAC application no later than twenty (20) days after the filing of the application. The request for hearing shall set forth clearly the grounds for requiring a hearing and shall indicate whether the proposed hearing shall be limited to specific issues. Upon receipt of a request for hearing, or upon its own motion, the commission may order a hearing, upon reasonable notice, on the initial PGAC application and may suspend the operation of the PGAC proposed in the application, pursuant to NMSA 1978 Section 62-8-7.

**(4)** The commission may approve all or part of the initial PGAC application. Approval of the application shall constitute approval of the utility's use of the proposed PGAC unless otherwise provided in the commission's order.

**(5)** A utility operating with an approved PGAC shall continue to use its approved PGAC until the commission orders otherwise.

**D.** A utility operating with an approved PGAC shall file an annual gas supply plan pursuant to Subsection B of this section on or before the date specified for such filing pursuant to Subsection A of this section and Paragraph 5 of Subsection A of 17.10.640.12 NMAC. If the utility fails to timely file its annual gas supply plan as required by this subsection, the commission may terminate the utility's PGAC and the utility automatically shall be subject to sanctions in accordance with NMSA 1978 Sections 62-12-4 through 62-12-6.

**(1)** A utility filing an annual gas supply plan shall contemporaneously with such filing mail a copy of the report to the attorney general.

**(2)** An annual gas supply plan filed pursuant to this rule shall not be deemed approved by the commission.

**(3)** Staff, the attorney general, or any other interested party may file a request for a hearing no later than twenty (20) days after the filing of the annual gas supply plan. The request for hearing shall set forth clearly the grounds for requiring a hearing and shall indicate whether the proposed hearing shall be limited to specific issues. Upon receipt of a request for hearing or upon its own motion, the commission may order a hearing, upon reasonable notice, on any or all of the issues identified and on continued



use of the PGAC, and may suspend the operation of any changes to the utility's procurement program as described in the gas supply plan, pursuant to NMSA 1978 Section 62-8-7.

**E.** If a utility determines that a deviation from its most recently filed gas supply plan is required to achieve its portfolio's purposes or the objectives of this rule, the utility shall file an update with the commission which explains the deviation from the plan. Such deviation shall be subject to the hearing provisions set forth in Subsection D of this section.

[17.10.640.9 NMAC - N, 3-15-04]

#### **17.10.640.10 AFFILIATE TRANSACTIONS:**

Any utility intending to include a transaction with an affiliate in its PGAC shall comply with the requirements of 17.6.450 NMAC, Affiliate Transactions.

[17.10.640.10 NMAC - N, 3-15-04]

#### **17.10.640.11 CONTINUATION FILING:**

**A.** Each utility operating with a PGAC as part of its tariff shall file an application for continued use of its PGAC at intervals of no more than four (4) years. The application must address the considerations described in Paragraphs (1) through (4) of Subsection E of NMSA 1978 Section 62-8-7. A utility may elect to satisfy this requirement by presenting evidence and testimony either in a rate case or in a discrete filing.

**B.** If the utility fails to timely file its continuation filing as required by Subsection A of this section, the commission may terminate the utility's PGAC and the utility automatically shall be subject to sanctions in accordance with NMSA 1978 Sections 62-12-4 through 62-12-6.

[17.10.640.11 NMAC - N, 3-15-04]

#### **17.10.640.12 PGAC TARIFF AND GAS COST FACTOR STATEMENT:**

**A. Tariff filing.** The information required by Paragraphs 3 through 6 of Subsection A of this section may be included in a utility-specific rule or rate. Each utility shall file a tariff, subject to commission approval, that includes at a minimum the following:

- (1) a general description of the PGAC and its applicability to customers;
- (2) a provision that rate changes shall be effectuated through the filing of a gas cost factor statement as provided for in Subsection B of this section;

(3) the detailed methodology for the calculation of the gas cost factor, including the accounting methodology used to ensure that the effects that transportation imbalances may have on PGAC gas costs are substantially neutralized;

(4) specific identification and definition of all terms applicable to sales customers utilized in the calculation of the gas cost factor, including but not limited to the recovery of unaccounted for gas and any fuel and power used in connection with the transportation and processing of gas;

(5) identification of the annual date for the filing of the gas supply plan as provided for in Subsections B and D of 17.10.640.9 NMAC and of the beginning and ending months of the planning period as defined in Subsection S of 17.10.640.7 NMAC; and

(6) identification of the annual reconciliation period as provided for in Subsection C of 17.10.640.13 NMAC and the annual reconciliation factor implementation period as provided in Subsection E of 17.10.640.13 NMAC.

**B. Gas cost factor statement.** The format for a utility's gas cost factor statement, including definitions, shall be submitted with its application for approval of a PGAC as provided in Section 9 of 17.10.640 NMAC. The GCFS shall include all data necessary for the commission to review and verify the calculation of the resulting commodity billing factor. Each factor or term used, not previously described in this rule, shall be specifically defined in each utility's PGAC. The time period over which gas usage shall be billed using the requested rate shall be specified in the GCFS. Each GCFS filed shall be certified by an officer of the utility. The GCFS shall include, if applicable, calculations of the following:

(1) an actual or estimated basic gas cost factor;

(2) a producer/supplier surcharge or refund factor;

(3) a balancing account adjustment factor;

(4) an annual reconciliation factor;

(5) any other surcharge or refund factor authorized by the commission;

(6) a factor for inspection and supervision fees and taxes to be applied to revenues generated by the resulting billing factor;

(7) a general service gas cost factor resulting from the summation of the above components; and

(8) the amount and the duration of such refund or surcharge, if an optional methodology for passing refunds or surcharges through the PGAC as authorized by Subsection C of this section is implemented by the utility.

**C. Tariff revisions.** At any time that the commission orders changes in the utility's PGAC or the utility proposes changes in its PGAC, the utility shall file a revised tariff as provided for in Subsection A of this section, to the extent that the utility's approved tariff provisions require revisions. The utility's revised tariff shall be deemed approved thirty (30) days after the filing of the revised tariff unless the commission orders otherwise.

**D. Filing verification and factor effective date.** The utility shall file a gas cost factor statement as provided for herein to begin a verification period which shall be no less than fifteen (15) calendar days unless otherwise directed by the commission. The effective date for the new general service gas cost factor shall be deemed to be the first day of the first billing cycle containing the first day of the month in the subsequent calendar month. Unless otherwise directed by the commission, no change in the utility's general service gas cost factor shall be made except at the beginning of a billing cycle. General service gas cost factors will be applied to calendar month consumption. Calendar month consumption may be determined and applied on a pro rata basis if a utility employs a billing cycle application whereby a billing cycle covers portions of two (2) or more months. The commission shall act upon a utility's gas cost factor statement filing within the fifteen (15) day verification period, otherwise the filing is deemed approved.

**E. Gas cost factor hearings.** Staff or any interested party may file a complaint or challenge to the propriety of any costs and revenues included in the utility's PGAC within sixty (60) days of any filing by the utility made pursuant to NMSA 1978 Section 62-10-1. Upon receipt of a complaint or challenge, or upon its own motion pursuant to NMSA 1978 Section 62-10-1, the commission may direct the utility to respond within thirty (30) days. Upon receipt of the utility's response, the commission may require a formal hearing. Pending a hearing, the commission may allow the costs to be placed into the PGAC subject to refund, suspend the inclusion of costs in the PGAC, or take any other reasonable action designed to protect the interests identified in NMSA 1978 Section 62-3-1. To the extent allowed by law, the commission in its discretion may order refunds of amounts collected or surcharges for amounts not collected under the provisions of this rule to the customers of a gas utility when the commission determines, after notice and hearing, that the utility over-collected or under-collected such amounts. Unless otherwise ordered by the commission, formal hearings will not be held prior to the effective date of any adjustment determined in accordance with the provisions of an approved PGAC.

**F. Circumstances materially impacting the cost of gas.** The utility shall describe and explain any circumstances that materially impact its cost of gas in its gas cost factor statement. Unless specifically approved by the commission, the utility shall justify the reasonableness of any costs incurred due to these circumstances prior to the inclusion of any gas costs in their PGAC. If the commission determines to hold a hearing, it shall

provide five (5) days' prior notice to the utility, public, attorney general, and intervenors of record in the utility's most recently filed general rate case.

[17.10.640.12 NMAC - N, 3-15-04]

### **17.10.640.13 ANNUAL PGAC RECONCILIATION:**

**A. Annual reconciliation.** Each utility filing an application for a PGAC or operating with a PGAC under the terms of this rule shall provide for an annual reconciliation of allowable gas costs incurred to billed gas costs as recorded on the books and records of the utility. A utility's proposal for the annual reconciliation shall be consistent with the general provisions described below.

**B. Purpose.** The purpose of the annual reconciliation report is to:

(1) substantiate the appropriateness of the amount of the over-collected or under-collected PGAC dollars remaining in the PGAC balancing account at the end of the annual reconciliation period; and

(2) to establish the annual reconciliation factor for refunding or surcharging customers for that period's PGAC balancing account amount, unless the utility utilizes another commission-approved method for refunding or surcharging customers.

**C. Reconciliation methodology.** In general, the PGAC balancing account amount shall consist of the difference between allowable gas costs incurred during the annual reconciliation period and gas costs billed during the same period. The PGAC balancing account amount shall also contain all applicable amounts included by order of the commission. The reconciliation process shall substantiate the PGAC balancing account amount and shall be performed utilizing the amounts recorded on the books and records of the utility applicable to the annual reconciliation period. The annual reconciliation shall cover a period of twelve (12) consecutive historical months. The specific period that comprises the annual reconciliation period shall be applied for in the utility's initial application filing for a PGAC. The specific period may be changed by commission order.

**D. Annual reconciliation report.** An annual reconciliation report shall be filed with the commission no later than four (4) months following the end of the annual reconciliation period. The annual reconciliation report shall be certified by an officer of the company to be true, correct, and in compliance with the reconciliation methodology determined herein. The annual reconciliation report shall generally consist of, but not be limited to, the following.

(1) **Agreed-upon procedures.** A report by an independent auditor, who shall perform agreed-upon procedures pursuant to Statement on Standards for Attestation Engagements (SSAE) No. 10 and No. 11, or successor auditing standards, shall be

submitted with the annual reconciliation report. The auditor's report shall set forth the procedures and findings of the review.

**(2) Schedule of gas purchases by account number.** A summary schedule shall be submitted detailing all applicable gas purchase dollars and volumes expensed for the annual reconciliation period by account number as prescribed in the applicable uniform system of accounts. The schedule shall also include, but not be limited to, expenses associated with gas storage-related transactions, exchange transactions, and transactions related to the transportation of PGAC-related gas purchases.

**(3) Schedule of gas purchases by supplier.** A summary schedule shall be submitted detailing all applicable gas purchase dollars and volumes expensed for the annual reconciliation period by supplier. Purchases from suppliers totaling less than 3% of total purchase costs for the period shall be summed in an "All Others" category.

**(4) Schedules of PGAC revenues.** Schedules shall be submitted summarizing gas sales dollars and volumes billed and other PGAC revenues collected and attributable to the annual reconciliation period.

**(5) Schedule of costs and revenues billed.** A schedule shall be submitted summarizing the above schedules of costs and billed revenues, gas related taxes, reconciling items, and other applicable amounts for the annual reconciliation period resulting in the total amount under-collected or over-collected from customers. This over-collected or under-collected amount shall include an interest charge or credit at the rate specified by NMSA 1978 Section 62-13-13, or at such other rate as may be approved by the commission.

**(6) Calculation of the annual or other commission-approved reconciliation methodology.** A schedule shall be submitted detailing the calculation of the factor to be utilized in refunding or surcharging the over-collected or under-collected amount.

**E. Untimely filing of annual reconciliation report.** If the utility fails to timely file its annual reconciliation report as required by Subsection D of this section, the commission may terminate the utility's PGAC and the utility automatically shall be subject to sanctions in accordance with NMSA 1978 Sections 62-12-4 through 62-12-6.

**F. Annual reconciliation factor.** The annual reconciliation factor shall be calculated by dividing the over-collection or under-collection amount by the estimated sales volumes in the annual reconciliation factor implementation period. The specific period of time that comprises the annual reconciliation factor implementation period shall be applied for in the utility's initial application filing for a PGAC, and the specific period may be changed by commission order.

#### **17.10.640.14 EXTRAORDINARY CIRCUMSTANCES:**

Notwithstanding the provisions of this rule and specifically Subsection C of 17.10.640.12 NMAC, the commission may direct the utility to alter its collections through the PGAC as provided herein.

**A. Under-collection or over-collection situation.** The utility may apply to the commission or the commission may order a hearing on its own motion whenever the utility or the commission has good reason to believe, on the basis of information available to it at the time, that the presently effective gas cost factor or the gas cost factor adjustment proposed in any gas cost factor statement filed pursuant to Subsection D of 17.10.640.12 NMAC would result in a substantial under-collection or over-collection of revenue.

**B. Substantial gas cost factor adjustments.** The utility may apply to the commission or the commission may order a hearing on its own motion whenever the utility or the commission becomes aware of an extraordinary circumstance under which the gas cost factor adjustment calculated in accordance with this rule will result in a substantial change in the level of the PGAC in the following billing period and excessive fluctuations in the gas cost factor adjustments for future billing periods.

**C. Mitigation of concerns.** After notice and hearing, the commission may order the utility to place in effect, for such period of time as the commission may direct, a specified increase or decrease in the amount of the gas cost factor or take any other action appropriate to the public interest to mitigate the concerns identified in Subsections A and B of this section.

[17.10.640.14 NMAC - N, 3-15-04]

#### **17.10.640.15 EXEMPTION OR VARIANCE:**

**A.** A utility may file a written application for an exemption or variance from this rule or its approved PGAC, which shall be verified by an officer of the utility. The utility's application for an exemption or variance shall:

- (1) describe the need for a variance;
- (2) set out the effect of complying with this rule or the approved PGAC on the utility and its customers as a result of the condition;
- (3) identify any section of this rule or the approved PGAC 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 meet the objectives of this rule;  
and

(6) state why the requested relief is a reasonable alternative.

**B.** A utility filing an application for an exemption or variance shall contemporaneously with such filing mail copies of such application to the attorney general and the intervenors in the utility's most recent general rate case.

**C.** An application by any utility for an exemption or a variance shall stay the application of the affected portion of this rule or its PGAC for that utility for a period of sixty (60) days from the filing of the request, during which time the commission may grant or deny the exemption or variance, require that the utility file additional information in support of the request, or set the matter for hearing. The stay shall be extended automatically if the commission has not taken the above-noted action within sixty (60) days after the filing of the application for variance or exemption.

[17.10.640.15 NMAC - N, 3-15-04]

#### **17.10.640.16 TERMINATION OF PGAC:**

If the commission orders termination of the PGAC, the utility shall perform an annual reconciliation in accordance with the methodology prescribed in 17.10.640.13 NMAC for the period of time between the end of the period included in its last annual reconciliation report and the date of termination of the PGAC. The utility shall file with the commission a final reconciliation report consistent with the requirements of the annual reconciliation report under Subsection D of 17.10.640.13 NMAC and shall calculate and collect or refund a final reconciliation factor consistent with the requirements of Subsection E of 17.10.640.13 NMAC.

[17.10.640.16 NMAC - N, 3-15-04]

#### **PART 641-649: [RESERVED]**

#### **PART 650: SERVICE STANDARDS FOR GAS UTILITIES**

##### **17.10.650.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.10.650.1 NMAC - Rp, 17.10.650.1 NMAC, 11/10/2020]

##### **17.10.650.2 SCOPE:**

17.10.650 NMAC shall apply to any gas utility operating within the state of New Mexico under the jurisdiction of the New Mexico public regulation commission.

[17.10.650.2 NMAC - Rp, 17.10.650.2 NMAC, 11/10/2020]

**17.10.650.3 STATUTORY AUTHORITY:**

Section 8-8-15 NMSA 1978.

[17.10.650.3 NMAC - Rp, 17.10.650.3 NMAC, 11/10/2020]

**17.10.650.4 DURATION:**

Permanent.

[17.10.650.4 NMAC - Rp, 17.10.650.4 NMAC, 11/10/2020]

**17.10.650.5 EFFECTIVE DATE:**

November 10, 2020 unless a later date is cited at the end of a section.

[17.10.650.5 NMAC - Rp, 17.10.650.5 NMAC, 11/10/2020]

**17.10.650.6 OBJECTIVE:**

**A. Intentions:** 17.10.650 NMAC is intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities.

**B. Modifications:** If unreasonable hardship to a utility or to a customer results from the application of any provision herein prescribed, application may be made to the commission for the modification of the provision or for temporary or permanent exemption from its requirements.

**C. Rule revisions:** 17.10.650 NMAC establishes standards to be followed by every gas utility in providing service to customers who are not residential customers as defined in Subsection J of 17.5.410.7 NMAC and in providing service to residential customers except to the extent inconsistent with 17.5.410 NMAC provided, however, that any electric utility may file rules inconsistent with the provisions established herein when permitted by the commission under the provisions of Subsection A of 17.9.560.9 NMAC, or, for residential customers, to conform with 17.5.410 NMAC. When so filed and approved by the commission such utility rules shall take precedence over the provisions established herein.

**D. Adoption:** The adoption of 17.10.650 NMAC shall not preclude the commission from altering or amending it or from making such modifications with respect to its application as may be found necessary to meet exceptional conditions.



**E. Duties:** These regulations shall not relieve any utility from its duties under the laws of this state.

[17.10.650.6 NMAC - Rp, 17.10.650.6 NMAC, 11/10/2020]

#### **17.10.650.7 DEFINITIONS:**

When used in 17.10.650 NMAC unless otherwise specified the following definitions will apply:

**A. "BTU means"** British thermal unit;

**B. "check flow means"** a flow between twenty percent and fifty percent of the meter's rated capacity;

**C. "commission means"** the New Mexico public regulation commission;

**D. "cubic foot of gas shall have the following meanings":**

**(1)** when gas is supplied and metered to customers at the pressure (as defined in Subsection B of 17.10.650.14 NMAC) normally used for domestic customers' appliances and no other basis of measurement is provided for by special contract or in the utility's rules on file with the commission, a cubic foot of gas shall be that quantity of gas which at the temperature and pressure existing in the meter occupies one cubic foot;

**(2)** when gas is supplied to customers at other than the pressure in Paragraph (1) above, the utility shall specify in its rules or special contract the base for measurement of a cubic foot of gas (see Paragraph (2) of Subsection C of 17.10.650.9 NMAC); unless otherwise stated a cubic foot of gas shall be that quantity of gas which at temperature of 60 degrees F. and a pressure of 14.73 psia occupies one cubic foot; and

**(3)** the standard cubic foot of gas for testing the gas itself for heating value shall be that quantity of gas saturated with water vapor which at a temperature of 60 degrees F. and a pressure of 30 inches of mercury occupies one cubic foot; (temperature of mercury = 60 degrees F.; acceleration due to gravity = 32.17 ft. per second; density = 13.595 grams per cubic centimeter;) other bases may be used by the utility and customer when provided for by special contract;

**E. "customer means"** any person, firm, association, corporation, or any agency of the federal, state, or local government being supplied with and responsible for payment for gas service by a gas utility;

**F. "delivery point means"** that point at which the system of the seller connects into the system of the buyer regardless of the location of the meter unless otherwise specified by written contract;

**G. "filed rule means"** rules and regulations filed by a utility with the commission in compliance with 17.1.210 NMAC which have been made effective either through commission approval thereof or by operation of law;

**H. "final notice means"** personal communication with a non-residential customer by telephone, hand delivery or other electronic communications at least two days prior to the specific date of discontinuance of service or if by mail, at least four days prior to the specific date of discontinuance of service, excluding Sundays and holidays observed by the utility, to: remind the non-residential customer of the pending date of discontinuance of service.

**I. "full rated flow means"** a flow of one hundred percent of the rated capacity of a meter;

**J. "gas plant means"** all facilities owned by a gas utility for the production, storage, transmission, and distribution of gas;

**K. "LP-gas means"** liquefied petroleum gas;

**L. "main means"** a gas pipe owned, operated, or maintained by a utility which is used for the transmission or distribution of gas, but does not include "service pipe;"

**M. "meter, without other qualification, means"** any device or instrument which a utility uses to measure a quantity of gas;

**N. "premises means"** a piece of land or real estate, including buildings and other appurtenances thereon;

**O. "psia means"** pounds per square inch, absolute;

**P. "psig means"** pounds per square inch, gauge;

**Q. "service pipe means"** the pipe that runs between a main or a transmission line and a customer's property line;

**R. "special contract means"** a written agreement between a utility and a customer to establish a rate or conditions of utility service, or both, that due to size or load characteristics, or both, differ from those established for general classes of service;

**S. "system emergency means"** an unplanned situation in which a utility's system or a segment of its system is in imminent danger of failure and implementation of normal curtailment or interruption procedures would not rectify the condition;

**T. "therm means"** the unit of heat that is equal to 100,000 British thermal units;

**U. "utility and gas utility"** shall have the meaning given for "public utility" or "utility" in the New Mexico Public Utility Act, Section 62-3-3 NMSA 1978;

**V. "W.C. means"** water column;

**W. "yard line means"** the pipe that runs across a customer's property from the property line to the point of consumption;

**X. "final notice means"** personal communication with a non-residential customer by telephone, hand delivery or other electronic communications at least two days prior to the specific date of discontinuance of service or if by mail, at least four days prior to the specific date of discontinuance of service, excluding Sundays and holidays observed by the utility, to: remind the non-residential customer of the pending date of discontinuance of service.

[17.10.650.7 NMAC - Rp, 17.10.650.7 NMAC, 11/10/2020]

#### **17.10.650.8 [RESERVED]**

[17.10.650.8 NMAC - Rp, 17.10.650.8 NMAC, 11/10/2020]

#### **17.10.650.9 RECORDS AND REPORTS:**

**A. Location of records:** Records shall be located as provided in Section 62-6-17 NMSA 1978.

**B. Retention of records:** Records shall be retained as provided in 17.3.310 NMAC.

**C. Data to be filed with the commission:** The utility shall maintain the following documents and information on a current basis and upon commission request, the utility shall provide the information to the commission within 10 working days:

**(1)** a statement of the standard heating value in BTU's per cubic foot of the gas supplied by the utility in each district, division, or community served;

**(2)** a statement indicating the volumetric measurement base to which all sales of gas at other than standard delivery pressure except where made under special contract are corrected (see Paragraph (2) of Subsection K of 17.10.650 NMAC and Subsection B of 17.10.650.14 NMAC);

**(3)** a map or series of maps showing the utility's operating area (the map shall be revised annually unless such revision is unnecessary, in which event the utility shall notify the commission that the map on file is current); the map should show:

- (a) gas production plant,
- (b) principal storage holders,
- (c) principal transmission mains by size,
- (d) system metering (supply) points,
- (e) state boundary crossings,
- (f) franchise area, and
- (g) names of all incorporated communities served;

(4) the name, title, address, and telephone number of the person who should be contacted in connection with:

- (a) general management duties,
- (b) customer relations (complaints),
- (c) engineering operations,
- (d) meter tests and repairs, and
- (e) emergencies during non-office hours;

(5) notice of accidents, explosions, and leaks:

(a) prompt notice of fatal accidents shall be given to the commission by telephone or telegraph,

(b) prompt notice of any explosion involving any of the utility's system or products shall be given to the commission by telephone or telegraph,

(c) the utility shall maintain information regarding leaks that occur in a transmission or distribution line owned by the company or in a customer's line for at least three years from the date the leak is discovered by the utility, and

(d) the utility shall file a report with the commission within 48 hours after exercising its option to discontinue service under Paragraph (1) of Subsection F of 17.10.650.11 NMAC;

(6) reports of heating value:

(a) each utility shall file reports showing the results of its determinations of the heating value of the gas made in accordance with Subsection F of 17.10.650.14 NMAC,

(b) when the utility obtains its gas supply from another utility which is required to supply BTU reports to the commission under this section, copies of the supplier's reports may be submitted in lieu of compliance with the other requirements of this section, and

(c) these reports shall be provided to the commission within 10 working days of a request for such a report by the commission;

(7) the location at which the utility keeps the various classes of records required by these rules; and

(8) a report detailing the results of all meters (excluding new meters and all orifice meters) tested during the year showing:

(a) total number of meters tested;

(b) percentage breakdown of reasons for tests;

(c) number of meters found to be more than two percent fast; and

(d) number of meters found to be more than two percent slow.

[17.10.650.9 NMAC - Rp, 17.10.650.9 NMAC, 11/10/2020]

#### **17.10.650.10 GENERAL REQUIREMENTS:**

##### **A. Disposition of gas:**

(1) Unless otherwise authorized by the commission all gas sold by a utility shall be on the basis of meter measurement except where the usage is constant and the consumption may be readily computed.

(2) Wherever practicable and exclusive of field usages, consumption of gas within the utility itself or by administrative units associated with it shall be metered.

**B. Meter reading sheets, cards, or records:** The meter reading sheets, cards, or records from which the customer's bills are prepared shall show:

(1) customer's name, address, and rate schedule;

(2) identification number or description of the meter(s);

(3) meter readings;

- (4) if the reading has been estimated; and
- (5) any applicable multiplier or constant.

**C. Meter reading interval:** Meters shall be read monthly except that authority may be obtained from the commission for reading the meters at other than monthly intervals. Commission approval need not be obtained where deviation from monthly meter reading schedules occurs because of changes in meter reading routes. As nearly as practicable utilities shall avoid sending a customer two successive estimated bills.

**D. Condition of meter:** No meter shall be installed which is mechanically defective, has an erroneous correction factor, or has not been tested and adjusted if necessary in accordance with Subsection B of 17.10.650.13 NMAC. However, meters being transferred from one service location to another need not be so tested if the time period prescribed in Paragraph (5) of Subsection A of 17.10.650.13 NMAC has not yet expired unless the utility has reasonable grounds for believing that some particular meter may be registering improperly. The capacity of the meter and the index mechanism should be consistent with the gas requirements of the customer.

**E. Prepayment meters:** Prepayment meters shall not be geared or set so as to result in the charge of a rate or amount higher than would be paid if a standard meter were used except under such special rate schedule as may be filed under 17.1.210 NMAC.

**F. Temporary service:** When the utility renders temporary service to a customer it may require that the customer bear all the costs of installing and removing the service in excess of any salvage realized.

**G. Extension plan:** Each utility shall develop a plan acceptable to the commission for the installation of extensions of mains and service lines where such facilities are in excess of those included in the regular rates for service and for which the customer shall be required to pay all or part of the cost. This plan must be related to the investment that can be made prudently for the probable revenue and expenses to be incurred.

[17.10.650.10 NMAC - Rp, 17.10.650.10 NMAC, 11/10/2020]

#### **17.10.650.11 CUSTOMER RELATIONS:**

**A. Customer information:** Each utility shall:

- (1) maintain up-to-date maps, plans, or records of its entire transmission and distribution systems with such other information as may be necessary to enable the utility to advise prospective customers and others entitled to the information as to the facilities for serving any locality;

- (2) assist the customer or prospective customer in selecting the most economical rate schedule appropriate for their class of service;
  - (3) notify customers affected by a change in rates or schedule classification;
  - (4) post a notice in a conspicuous place in each office of the utility where applications for service are received informing the public that copies of the rate schedules and rules relating to the service of the utility as filed with the commission are available for inspection;
  - (5) upon request inform its customers as to the method of reading meters;
- and
- (6) furnish such additional information as the customer may reasonably request.

**B. Customer deposits:** Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service.

(1) A utility may not require a security deposit or other guarantee of payment as a condition of new or continued service to a customer except in the case of service:

(a) to a customer that has not previously had utility service with the utility and that has not established an acceptable credit rating;

(b) to a customer that has on three or more occasions, within a 12-month period, received a final notice;

(c) as a condition for reconnection of service following discontinuance of service by the utility; or

(d) to a customer that in an unauthorized manner has interfered with or diverted the service of the utility situated on or about or delivered to the customer's premises.

(2) In determining whether a customer who has not previously had utility service with the utility has an acceptable credit rating, a utility shall consider the following:

(a) documentation that the customer has an adequate credit reference from a utility where the customer had prior utility service;

(b) documentation obtained by the utility from a commercial credit source; or

(c) any other reasonable documentation.

**(3)** A utility may give special consideration to a prospective or existing customer in determining if payment by an installment agreements is appropriate.

**(4)** If a utility requires a deposit, it shall have on file with the commission an approved rule setting forth the minimum and maximum deposit that may reasonably be required by the utility in cases involving all types of service. That rule shall conform to the following provisions:

**(a)** a deposit for a customer shall not exceed an amount equivalent to one-sixth of that non-residential customer's estimated annual billings; a utility shall base its deposit criteria upon the most recent available prior 12-month corresponding period at the same service location; or, if there is not a comparable period of service at the same service location, the deposit shall be based upon consumption of similar units in the same area;

**(b)** simple interest on deposits at a rate not less than the rate required by Section 62-13-13 NMSA 1978 shall accrue annually to the customer's credit for the time the deposit is held by the utility; by January 15 of each year the commission shall post on its website the minimum rate to be paid on any deposits required of a customer by any public utility; the deposit shall cease to draw interest on the date it is returned, on the date service is terminated or on the date the refund is sent to the customer's last known address.

**(5)** Each customer that posts a security deposit shall receive in writing at the time of tender of deposit or with the first bill a receipt as evidence thereof. A utility shall provide the means whereby a depositor may establish its claim if its receipt is lost. The receipt shall contain the following minimum information:

**(a)** name of customer;

**(b)** date of payment;

**(c)** amount of payment; and

**(d)** statement of the terms and conditions governing the payment, retention, interest and return of deposits.

**(6)** Refunds: Any non-residential customer that has not received a final notice for the 12-month period from the date of deposit or guarantee for the 12-month period from the date of deposit or guarantee shall promptly receive a credit or refund in the amount of the deposit together with accrued interest due or shall be permitted to terminate any guarantee. If the amount of the deposit exceeds the amount of the current bill, the customer may request a refund in the amount of the excess if such excess exceeds \$25.00. If the customer fails to qualify for a refund of the deposit on the one year anniversary date of the deposit, that account shall be reviewed at least annually, and the amount of the deposit shall be credited if the customer has not



received a final notice during the preceding 12 months. A customer may request a refund at any time after 12- months of payment history, which refund shall promptly be paid if the customer has not received a final notice during the prior 12-month period or a utility may pay such refund in the absence of a request within a reasonable period of time.

(7) Each utility shall maintain records to show:

- (a) the name and address of each depositor;
- (b) the amount and the date of the deposit; and
- (c) each transaction concerning the deposit.

(8) A record of each unclaimed deposit shall be maintained for at least three years during which time the utility shall mail a check or a letter to the customer at its last known address in an effort to return the deposit.

(9) Unclaimed deposits together with accrued interest shall be credited to the appropriate account and shall be handled as required by the Uniform Disposition of Unclaimed Property Act of the state of New Mexico.

**C. Customer bill forms:** The utility shall bill each customer as promptly as possible following the reading of their meter. The bill shall show:

(1) the reading of the meter at the end of the period for which the bill is rendered;

(2) the nominal date on which the meter was read;

(3) the number and kind of units metered;

(4) the applicable rate schedule or identification of the applicable rate schedule;

(5) the gross or net amount of the bill;

(6) the date by which the customer must pay the bill in order to benefit from any discount or to avoid any penalty;

(7) a distinct marking to identify an estimated bill;

(8) any conversions from meter reading units to billing units from recording or other devices or any other factors such as fuel clause adjustments, power factor adjustments, applicable primary discounts for a customer-owned transformer, or billing

unit additions for secondary metering of primary services used in determining the bill; and

(9) a multiplier constant when used to determine billing, whenever applicable;

(10) In lieu of information required by Paragraphs (4), (8), and (9) of this subsection, the utility may incorporate on the bill form a statement advising the customer that any additional information desired relative to the application of the rate schedule can be obtained by contacting one of the utility's offices.

**D. Customer records:** The utility shall retain records as may be necessary to effect compliance with 17.3.310 NMAC and with Subsection E of 17.10.650.11 NMAC, and Subsections D and E of 17.10.650.13 NMAC, and shall show, where applicable, the following:

(1) MCF meter reading;

(2) MCF consumption;

(3) demand charges;

(4) penalties; and

(5) total amount of bill.

**E. Adjustment of bills:** Bills which are incorrect due to meter or billing errors are to be adjusted as follows.

(1) Fast meters: Whenever a meter in service is tested and found to have over-registered more than two percent, the utility shall recalculate the bills for service for the period as determined below.

(a) The bills for service shall be recalculated from the time the error first developed or occurred if that time can be determined.

(b) If the time the error first developed or occurred cannot be determined, it shall be assumed that the over-registration existed for a period equal to one-half the time since the meter was last tested, not to exceed six months, and the bills for service shall be recalculated for that period.

(c) If the recalculated bills indicate that a refund is due an existing customer or a person no longer a customer of the utility, the full amount of the calculated difference between the amount paid and the recalculated amount shall be refunded. The utility shall make refunds to the existing customer and to the next previous customer served through the same meter if the period of refund determined in accordance with this section extends into the period when the said next previous

customer was served through the same meter. The refund to an existing customer may be in cash or as a credit on their bill if a refund is due a person no longer a customer of the utility, a notice shall be mailed to the last known address, and the utility shall upon request made within three months thereafter refund the amount due.

(2) Non-registering meters: Whenever a meter in service is found not to register the utility may render an estimated bill.

(3) Slow meters: Whenever a meter is found to be more than two percent slow the utility may bill the customer for one-half of the undercharge caused by the error indicated by the test for a period of 12 months unless the meter has been tested within the twelve-month period, in which event the customer may be billed for the undercharge caused by the error indicated by the test for the period since the meter was last tested. No back-billing will be sanctioned if the customer has called to the company's attention their doubts as to the meter's accuracy and the company has failed to check it within a reasonable time.

(4) Billing adjustments due to fast or slow meters shall be calculated on the basis that the meter should be one hundred percent accurate. For the purpose of billing adjustments the meter error shall be one-half of the algebraic sum of the error at full-rated flow plus the error at check flow.

(5) When a customer has been overcharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the meter, or other similar reasons, the amount of the overcharge shall be adjusted, refunded, or credited to the customer. The utility will assist the customer in selecting the rate schedule under which the customer is eligible to be billed. However, the utility will not be held responsible to refund any overcharge caused by the customer's failure to select the appropriate rate schedule or to notify the utility of a change in their operations.

(6) When a customer has been undercharged as a result of an incorrect meter reading, incorrect application of the rate schedule, or other similar reasons, the amount of the undercharge may be billed to the customer.

(7) A utility and its special contract customers may make their own agreements with respect to adjustments for errors in measurement.

**F. Reasons for denying or discontinuing service:** Service may be denied or discontinued for any of the reasons listed below unless prohibited under Paragraph (3) of Subsection G of 17.10.650.11 NMAC. Unless otherwise stated the customer shall be allowed a reasonable time in which to comply with the rule before service is discontinued, except as provided in Paragraphs (1), (2), (3), and (4) of this subsection:

(1) without notice in the event of a condition determined by the utility to be hazardous;

- (2) without notice in the event of customer use of equipment in such manner as to adversely affect the utility's equipment or the utility's service to others;
- (3) without notice in the event of customer's tampering with, damaging, or deliberately destroying the equipment furnished and owned by the utility;
- (4) without notice in the event of unauthorized use;
- (5) for violation of, or non-compliance with, the utility's rules on file with and approved by the commission;
- (6) for failure of the customer to fulfill its contractual obligations for service or facilities subject to the regulation by the commission;
- (7) for failure of the customer to permit the utility reasonable access to equipment;
- (8) for non-payment of bill, provided the utility has given the customer final notice;
- (9) for failure of the customer to provide the utility with a deposit as authorized by Subsection B of 17.10.650.11 NMAC, except that a utility may not discontinue service to an existing customer solely for failure to pay a deposit;
- (10) for failure of the customer to furnish such service, equipment, permits, certificates, or rights-of-way as shall have been specified by the utility as a condition to obtaining service, or in the event such equipment or permissions are withdrawn or terminated; or
- (11) for failure to pay for service of the same class at a previous metering point or points.

**G. Reasons insufficient for denying or discontinuing service:**

- (1) The following shall not constitute sufficient cause for denial of or discontinuance of service to a present customer:
  - (a) failure to pay for merchandise purchased from the utility;
  - (b) failure to pay for a different type or class of public utility service;
  - (c) failure to pay the bill of another customer as guarantor thereof; or
  - (d) failure to pay for concurrent service of whatever class at a different metering point.

**(2)** The following shall not constitute sufficient cause for denying service to a prospective customer:

**(a)** delinquency in payment for service by a previous occupant unless the previous occupant still resides at the premises;

**(b)** failure to pay for merchandise purchased from the utility; or

**(c)** failure to pay the bill of another customer as guarantor thereof.

**(3)** Irrespective of any conflict with 17.5.410 NMAC, the following rules regarding disconnection of residential utility service may be implemented on a temporary basis by order of the commission for a period of time, up to and including, the duration of any emergency executive order issued by the governor of New Mexico pertaining to a public health or other emergency condition under either the Public Health Emergency Response Act, Section 12-10A-1 NMSA 1978, and the All Hazards Emergency Management Act, Section 12-10-1 NMSA 1978:

**(a)** all utilities may be prohibited from discontinuing residential utility service for non-payment during the time period the emergency executive orders are in effect;

**(b)** any late fees on residential accounts that would be incurred during the time period of the effectiveness of the emergency executive orders may be required to be waived;

**(c)** utilities may be permitted to temporarily close in-person bill payment locations provided the utility provides notice to residential customers of such closures and identifies in such notice how payment made be made, including electronically or by mail. In the event of the closure of in-person bill payment locations, utilities shall be permitted to continue to collect credit card or bank fees in accordance with their own commission approved and filed tariffs;

**(d)** medical certificates set to expire shall not expire for the duration of the effectiveness of any emergency executive order and may be automatically be extended for 90 days from the end of any emergency executive order; and

**(e)** irrespective of this rule, public utilities are not prohibited from disconnecting service to residential customers due to:

**(i)** an emergency;

**(ii)** safety;

**(iii)** a request to disconnect from the residential customer.

**H. Material changes in character of service:** If under the control of the utility and after adequate notice to customers, material changes in the character of gas service rendered shall be made only with the approval of the commission. Whenever required by any such change the utility shall make any necessary adjustments to the customers' appliances without charge and shall conduct such adjustment program with a minimum of inconvenience to customers.

**I. Customer complaints:** Complaints concerning the charges, practices, facilities, or service of the utility shall be investigated promptly and thoroughly. The utility shall maintain such records of customer complaints as will enable the utility to review and analyze its procedures and actions. The utility shall make such information available to the commission upon request.

[17.10.650.11 NMAC - Rp, 17.10.650.11 NMAC, 11/10/2020]

### **17.10.650.12 ENGINEERING:**

#### **A. Requirements for good engineering practices:**

(1) The gas plant of the utility shall be constructed, installed, maintained, and operated in accordance with accepted good engineering practice in the gas industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

(2) In certain instances the commission may authorize the use of pipe other than steel for low pressure transmission and distribution systems. In no case shall a utility deviate from the use of steel pipe without first obtaining authorization from the commission.

**B. Acceptable standards:** Unless otherwise specified by the commission the utility shall use the applicable provisions in the publications listed below as standards of accepted good practice for construction initiated and operations and testing procedures conducted after the effective date of Second Revised General Order No. 6, codified by 17.10.650 NMAC.

(1) American standard code for "gas transmission and distribution piping system," ASA B31.8-1968.

(2) National board of fire underwriters standard no. 59, July 1962, "the storage and handling of liquefied petroleum gases at utility gas plants".

(3) "Standard methods of gas testing," circular no. 48, national bureau of standards, 1916 (the applicable portions of the circular have been substantially reproduced in the American meter co. handbook E-4 covering the testing of positive displacement gas meters).

(4) "Testing large capacity rotary gas meters, " research paper no. 1741, national bureau of standards journal of research, September 1946.

(5) "Standard method of test for caloric value of gaseous fuels by the waterflow calorimeter," American society for testing materials, standard D 900-55, 1955.

**C. Acceptable references:** The following publications have not been designated as standards but may be used as guides to acceptable practice.

(1) "Accuracy of the recording gas calorimeter when used with gases of high BTU content," by John H. Eiseman, national bureau of standards, and Elwin A. Potter, gas inspection bureau of the District of Columbia, AGA publication no. CEP-55-13.

(2) Orifice metering of natural gas," report No. 3 of the AGA gas measurement committee.

**D. Adequacy of supply:** The production and storage capacity of the utility's plant supplemented by the gas supply regularly available from other sources must be sufficiently large to meet all reasonably expectable demands for firm service.

**E. Inspection of gas plant:** Each utility shall adopt a program of inspection of its gas plant in order to determine the necessity for replacement and repair. The frequency of various inspections shall be based on the utility's experience and accepted good practice. Each utility shall maintain sufficient records to give evidence of compliance with its inspection program.

[17.10.650.12 NMAC - Rp, 17.10.650.12 NMAC, 11/10/2020]

#### **17.10.650.13 INSPECTIONS AND TESTS:**

**A. Utility inspections and tests:** Each utility shall make inspections and tests of meters and associated metering devices as follows:

(1) Pre-installation inspections and tests: Every meter and associated metering device shall be inspected and tested in the utility's meter shop before being placed in service, and the accuracy of each meter shall be within the tolerances permitted by Subsection B of 17.10.650.13 NMAC.

(2) As-found tests: All meters and associated metering devices shall be tested before they are adjusted or repaired, after they are removed from service, except when transferred from one service location to another without testing, as permitted by Subsection D of 17.10.650.10 NMAC. Excepted are those meters which are damaged beyond testing. Such tests shall be made before the meters and associate metering devices are adjusted, repaired, or retired. It will not be mandatory to test meters scheduled for retirement unless there is cause to suspect the accuracy of the meter.

**(3)** Leak tests: Repaired meters and meters that have been removed from service shall be leak tested prior to installation except when a meter is moved from one location to another without testing in cases permitted by Subsection D of 17.10.650.10 NMAC, unless the utility has reasonable grounds for believing that some particular meter may be leaking. New meters shall be leak tested, but testing may be conducted in accordance with a sampling method acceptable to the commission. Each meter tested shall be subjected to an internal pressure of at least 20" W.C. and checked for the presence of leaks by one of the following tests:

- (a)** immersion test;
- (b)** soap test; or
- (c)** pressure drop test of a type acceptable to the commission.

**(4)** Request tests: Upon request by a customer the utility shall test the meter serving them. If the meter has been tested within the last 18 months or within a shorter applicable periodic testing interval specified in Paragraph (5) of Subsection A of 17.10.650.13 NMAC, the utility may charge the customer the applicable amount provided for in its filed rules, such charge to be refunded to the customer whenever the meter proves to be in excess of two percent in error.

**(a)** The customer shall be advised that the customer or their representative may be present when the meter is tested.

**(b)** A complete record of each test shall be kept on file by the utility.

**(5)** Periodic tests: Unless otherwise authorized by the commission each utility shall make periodic tests of meters, associated devices, and instruments to assure their accuracy. Such tests shall be scheduled within the calendar year or earlier when the interval is stated in years; or within the calendar month or earlier when the interval is stated in months. The basic periodic test interval shall not be longer than provided for in the following schedule. (Note: maintenance programs suggested by manufacturers of the following meters and devices should be followed carefully.)

**(a)** Positive displacement meters.

- |                                  |            |
|----------------------------------|------------|
| <b>(i)</b> Up to 250 CF/hr.      | 10 yrs.    |
| <b>(ii)</b> 250 to 1500 CF/hr.   | seven yrs. |
| <b>(iii)</b> 1500 to 3000 CF/hr. | five yrs.  |
| <b>(iv)</b> 3000 to 5000 CF/hr.  | two yrs.   |
| <b>(v)</b> Over 5000 CF/hr.      | one yr.    |



<b>(b)</b> Orifice meters	six mos.
<b>(c)</b> Base pressure correcting devices	24 mos.
<b>(d)</b> Base volume correcting devices	24 mos.
<b>(e)</b> Secondary standards.	
<b>(i)</b> Test bottle, one cubic ft.	10 yrs.
<b>(ii)</b> Dead weight testers	10 yrs.
<b>(f)</b> Working standards.	
<b>(i)</b> Bell provers	three yrs.
<b>(ii)</b> Rotary displacement test meters	five yrs.
<b>(iii)</b> Flow provers	five yrs.
<b>(iv)</b> Laboratory quality indicating pressure gauges	six mos.

**(6)** The basic periodic test interval for positive displacement meters may be extended under the following circumstances:

**(a)** The utility must submit a written application requesting such extension.

**(b)** Such application must show the results of testing meters at the periodic test intervals for several years, and the test results must show that the meters are maintaining a high degree of accuracy.

**(c)** The extended interval for meter tests shall be determined by the commission, and the utility shall report annually, or as may be required, the accuracy status of such meters during the extended interval.

**(d)** Any authorized extension of the basic periodic test interval is subject to cancellation at any time; upon such cancellation the test interval shall be determined by the commission, but such interval shall not be less than the requirements of Paragraph (5) of this subsection.

**B. Test procedures and accuracies:** Meters and associated metering devices shall be tested at the points and adjusted to the tolerances prescribed below. The test of any unit of metering equipment shall consist of a comparison of its accuracy with the accuracy of a standard. The commission will use the applicable provisions of the standard listed in Subsection B of 17.10.650.12 NMAC as criteria of accepted good practice in testing meters.

**(1)** Positive displacement meters.

(a) Accuracy at test points.

- |                                     |                          |
|-------------------------------------|--------------------------|
| (i) Flow                            | Adjusted to within.      |
| (ii) Check flow                     | one and one-half percent |
| (iii) Not less than full rated flow | one and one-half percent |

(b) Overall accuracy: The overall accuracy at check flow and the accuracy at not less than full rated flow shall agree within one percent.

(2) Orifice meters: Accuracy at test points must be within two percent plus or minus.

(3) Timing devices: All recording type meters and associated instruments which have a timing element that serves to record the time at which measurements take place must be adjusted so that the timing element is not in error more than plus or minus four minutes in 24 hours.

(4) General:

(a) All meters and associated metering devices when tested shall be adjusted as closely as practicable to the condition of zero error.

(b) All tolerances are to be interpreted as maximum permissible variations from the condition of zero error. In making adjustments no advantages of the prescribed tolerance limits shall be taken.

**C. Facilities and equipment for meter testing:** Each utility shall maintain or designate a meter shop for the purpose of inspecting, testing, and repairing meters. The shop shall be open for inspection by authorized representatives of the commission at all reasonable times, and the facilities and equipment as well as the methods of measurement and testing employed shall be subject to the approval of the commission.

(1) The area within the meter shop used for testing meters shall be designed so that the meters and meter testing equipment are protected from drafts and excessive changes in temperature. Meters to be tested shall be stored in such manner that the temperature of the meters is substantially the same as the temperature of the prover.

(2) Working standards: Each utility shall own and maintain or have access to at least one approved bell type prover of adequate capacity, and all other equipment necessary to test meters shall be installed in the meter room.

(a) Means shall be provided to maintain the temperature of the liquid in the meter prover at substantially the same level as the ambient temperature in the prover room.

(b) The meter prover shall be maintained in good condition and correct adjustment so that it is capable of determining the accuracy of any service meter to within one half of one percent.

(c) Each utility which has meters too large for testing on a five cubic foot bell prover may use a properly calibrated test meter or a properly designed flow prover for testing the large meters.

(3) Working standards must be checked periodically (see Paragraph (5) of Subsection A of 17.10.650.13 NMAC) by comparison with a secondary standard.

(a) Bell provers must be checked with a one cubic foot bottle which has been calibrated by the national bureau of standards or by the strapping method.

(b) Rotary displacement test meters must be checked with a bell prover of adequate capacity which has been checked as provided in Subparagraph (a) of this paragraph.

(4) Extreme care must be exercised in the use and handling of standards to assure that their accuracy is not disturbed.

(5) Each standard shall be accompanied at all times by a certificate or calibration card, duly signed and dated, on which are recorded the corrections required to compensate for errors found at the customary test points at the time of the last previous test.

(6) Each utility must have such properly calibrated orifices as may be necessary to achieve the rates of flow required to test the meters on its system.

**D. Records of meters and associated metering devices:** Each utility shall maintain records of the following data, where applicable, for each meter and associated metering devices according to 17.3.310 NMAC:

(1) the complete identification--manufacturer, number, type, capacity, multiplier, constants, and pressure rating; and

(2) the dates of installation and removal from service together with the location.

**E. Meter test records:** Each utility shall maintain records of meter tests for the duration set forth in 17.3.310 NMAC. The records shall include the following:

- (1) the date and reason for test;
- (2) the reading of the meter before making any test;
- (3) the accuracy "as found" at check and full rated flow;
- (4) the accuracy "as left" at check and full rated flow; and
- (5) in the event the test of the meter is made by using a standard meter or prover, the utility shall retain all data taken at the time of the test in sufficiently complete forms to permit convenient checking of the test methods and calculations.

[17.10.650.13 NMAC - Rp, 17.10.650.13 NMAC, 11/10/2020]

#### **17.10.650.14 STANDARDS OF QUALITY SERVICE:**

**A. Purity requirements:** All gas supplied to customers shall be substantially free from impurities which may cause corrosion of mains or piping or form corrosive or harmful fumes when burned in a properly designed and adjusted burner.

**B. Pressure limits:** The standard pressure of gas supplied by any gas utility to domestic or commercial customers as measured on the customer's side of any such customer's meter shall not be less than four inches nor more than 14 inches of water pressure. In the case of customers who require higher pressure than the standard established for domestic and commercial service, the utility may supply gas at the desired pressure, and the volume of such gas shall be computed on the basis of a filed rule or special contract covering gas supplied to customers at other than standard pressure. (See Paragraph (2) of Subsection K of 17.10.650.7 NMAC).

#### **C. Pressure surveys and records:**

(1) Each utility shall make a sufficient number of pressure measurements on its mains and at the customer's meter so that it will have substantially accurate knowledge of the pressure in the low, intermediate, and high pressure system in each district, division, or community served by its distribution mains.

(2) All pressure records obtained under this section shall be retained in accordance with 17.3.310 NMAC and shall be available for inspection by the commission's representatives. Notations on each record shall indicate the following:

- (a) the location where the pressure check was made, and
- (b) the time and date of the check.

#### **D. Standards for pressure measurements:**

(1) Secondary standards: Each utility shall own or have access to a dead weight tester, which must be maintained in an accurate condition.

(2) Working standards: Each utility must own or have access to water manometers, mercury manometers, laboratory quality indicating pressure gauges, and field type dead weight pressure gauges as necessary for the proper testing of the indicating and recording pressure gauges used in determining the pressure on the utility's system.

(3) Working standards must be checked periodically (see Paragraph (3) of Subsection C of 17.10.650.13 NMAC) by comparison with a secondary standard.

#### **E. Heating value:**

(1) Manufactured and mixed gas: The average heating value on any one day of manufactured gas and mixed gas including liquefied petroleum gas mixed with air but excluding natural gas when mixed with manufactured or liquefied petroleum gas for peak shaving or emergency purposes shall not exceed or fall below the standard heating value specified by the utility (see Paragraph (1) of Subsection C of 17.10.650.9 NMAC) by more than five percent.

(2) Natural and liquefied petroleum gas: The heating value of natural gas and undiluted, commercially pure liquefied petroleum gas as determined in accordance with Subsection F of 17.10.650.14 NMAC) shall not exceed or fall below the standard heating value (see Paragraph (1) of Subsection C of 17.10.650.9 NMAC) by more than five percent.

(3) Adjustment of customers' appliances: Necessary adjustments of customers' appliances must be made by the utility without charge whenever the monthly average heating value of manufactured or mixed gas or natural gas or liquefied petroleum gas sold subject to thermal adjustment is more than five percent above or below the standard heating value for two successive months or whenever the heating value of natural gas or liquefied petroleum gas not sold subject to thermal adjustment is shown by two successive tests made in accordance with Paragraph (3) of Subsection F of 17.10.650.14 NMAC to be more than five percent above or below the standard heating value.

#### **F. Heating value determination and records:**

(1) Calorimeters used for the determination of the heating value of the gas sold shall be of a type acceptable to the commission.

(a) The calorimetric equipment shall be installed in a suitably located testing station acceptable to the commission and subject to its inspection.

**(b)** The accuracy of all calorimeters as well as the method of making heating value tests shall be acceptable to the commission. Recording calorimeters shall be tested with a standard gas at least once a year.

**(c)** Heating value test records shall be preserved in accordance with 17.3.310 NMAC.

**(2)** The utility shall determine the heating value of manufactured and mixed gas at least once daily and shall make the test during the period of the highest daily peak demands.

**(3)** Except for gas sold subject to thermal adjustment (to which the provisions of (2) above shall be applicable), the utility shall determine the heating value of natural gas and liquefied petroleum gas at least quarterly, provided that whenever any such quarterly test or subsequent test provided for herein indicates a heating value which is above or below the standard heating value by more than five percent, another determination of the heating value shall be made no more than 30 days thereafter.

**(4)** Whenever a special contract between a utility and a customer makes specific provisions for the time and manner of determination of the heating value of the gas delivered to such customer, no additional or other determinations of the heating value of such gas need be made pursuant to the foregoing provisions of this section.

#### **G. Interruptions of service:**

**(1)** Each utility shall keep records of interruptions of service to 50 or more of its customers on any of its distribution systems and shall make an analysis of the records for the purpose of determining steps to be taken to prevent recurrence of such interruptions. Such records should include the following information concerning the interruptions:

**(a)** cause;

**(b)** date and time; and

**(c)** duration.

**(2)** Planned interruptions shall be made at a time that will not cause unreasonable inconvenience to customers and shall be preceded by adequate notice to those who will be affected.

**(3)** Each utility shall notify the utility division of the commission by facsimile or e-mail and confirm by letter to the records division of the commission of any interruption to the service of a major portion of any single distribution system. Each utility shall provide to commission staff all information requested by staff that is reasonably needed to assess the situation.

(4) Each utility shall identify critical customers, including facilities that require natural gas to perform essential life-health-safety services, including other utility services such as electrical generating stations, to establish priority of service and to minimize curtailments to these customers.

(5) Each utility shall identify an emergency coordinator to act as a single point of contact between designated emergency personnel in each community served by the utility in the event of a system emergency.

**H. Curtailment of service plan:** Each utility shall have in place a plan for curtailment of service for system emergencies. Each plan shall be consistent with applicable national and other reliability and safety standards. The plan shall identify various levels of curtailment and conditions that a gas utility must experience for each level as well as specifying the type of actions the utility must undertake to contain or reverse a potential emergency. Each plan must also prescribe the minimum documentation required at each level. The plan must also include information dissemination to customers, the public and governmental entities. Each utility will periodically review and update the plan and will submit a copy of the most current plan version to the records division of the commission as a company rule pursuant to 17.9.210 NMAC.

[17.10.650.14 NMAC - Rp, 17.10.650.14 NMAC, 11/10/2020]

#### **17.10.650.15 SAFETY:**

##### **A. Protective measures:**

(1) Each utility shall exercise reasonable care to protect its employees, its customers, and the general public from hazards to which they may be subjected.

(2) Each utility shall maintain a summary of each accident arising from its operations and make such summaries available to the commission upon request.

**B. Safety program:** Each utility shall adopt and execute a safety program fitted to the size and type of its operations. At a minimum the safety program should:

(1) require employees to use suitable tools and equipment in order to perform their work in a safe manner;

(2) instruct employees in safe methods of performing their work; and

(3) instruct employees who in the course of their work are subject to the hazards of electrical shock, asphyxiation, or drowning in accepted methods of artificial respiration.

**C. Customer piping:** Each customer's piping system shall be tested for leaks before original service is provided.

(1) Pressure test: If local authorities do not require a pressure test of a customer's piping as set forth in American standard installation of gas appliances and gas piping, ASA Z21.30-1964, the utility shall advise the customer of the desirability of having their plumber conduct such a test.

(2) Leakage test: Before permitting the use of gas at any location the piping system shall be tested for leaks by a method at least equal to that described in section "leakage check after gas turn on" in the American standard installation of gas appliances and gas piping, ASA Z21.30-1964.

**D. Gas leaks:**

(1) A report of a gas leak shall be given priority over all other service calls and shall promptly be investigated by the utility at no charge to the customer. Repair work done by the utility on the customer's side of the delivery point may be charged to the customer at the utility's regular rate.

(2) The customer shall be advised of the charges involved prior to the commencement of repair work on their side of the delivery point.

**E. Odorization:** Any gas which is distributed to customers through gas mains or gas services or used for domestic purposes in compressor plants and which does not naturally possess a distinctive odor, to the extent that its presence in the atmosphere is readily detectable at all gas concentrations of one-fifth of the lower explosive limits and above, shall have an odorant added to it to make it so detectable. However, odorization is not necessary for such gas as is delivered for further processing or use where the odorant would serve no useful purpose as a warning agent. Suitable tests must be made to determine whether the odor meets the aforementioned standards.

[17.10.650.15 NMAC - Rp, 17.10.650.15 NMAC, 11/10/2020]

**PART 651-659: [RESERVED]**

**PART 660: NATURAL GAS TRANSPORTATION**

**17.10.660.1 ISSUING AGENCY:**

New Mexico Public Utility Commission [New Mexico Public Regulation Commission]

[Recompiled 12/30/01]

**17.10.660.2 SCOPE:**



The provisions of the Natural Gas Transportation Rule shall apply to the rates, terms, and conditions of the Transportation of natural gas by a Public Utility for a Seller or Purchaser of natural gas. This Rule also applies to the release, sale, or other assignment by a utility of natural gas or natural gas purchase rights to the extent permitted by the Public Utility Act, NMSA 1978, Section 62-1-1 et seq.

[Recompiled 12/30/01]

**17.10.660.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

**17.10.660.4 DURATION:**

[Recompiled 12/30/01]

**17.10.660.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.10.660.6 OBJECTIVE:**

A. The purposes of the Natural Gas Transportation Rule are to implement the Commission's authority pursuant to NMSA 1978, Section 62-6-4.1 to authorize and require the nondiscriminatory and nonpreferential Transportation of natural gas by any person subject to the Commission's jurisdiction for a Seller or Purchaser of natural gas and to implement the related Commission authority pursuant to NMSA 1978, Section 62-8-2 to assure the adequacy of gas supply to New Mexico utilities' Sales Customers and to Transportation Customers paying for standby service.

B. The intent of NMPUC Rule 660 [17.10.660 NMAC] is to encourage lower costs of natural gas for New Mexico consumers by providing competition in natural gas markets through open-access Transportation. Lower fuel costs are an integral part of New Mexico's economic development efforts because they preserve existing jobs, facilitate expansion of the State's businesses, and provide incentives for new industry to locate in New Mexico.

C. The Commission by NMPUC Rule 660 [17.10.660 NMAC] authorizes and requires the nondiscriminatory and nonpreferential Transportation of natural gas by any person subject to the jurisdiction of the Commission for a Transportation Customer of natural gas to the extent of Available Capacity, subject to Capacity Allocation as described in the utility's Commission-authorized rules and tariffs and subject to (d) [D] below.

D. The terms and conditions imposed by NMPUC Rule 660 [17.10.660 NMAC] on the Transportation of natural gas are necessary to safeguard deliverability and

operational efficiency, to prevent undue hardship, and to prevent anticompetitive conduct by a Public Utility.

E. The rates and charges for the Transportation of natural gas under NMPUC Rule 660 [17.10.660 NMAC] shall be just, reasonable, and nondiscriminatory.

[Recompiled 12/30/01]

#### **17.10.660.7 DEFINITIONS:**

When used in the Natural Gas Transportation Rule unless otherwise specified the following definitions will apply.

A. "Affiliate," unless otherwise defined in NMSA 1978, Section 62-3-3 (A) , or a successor statute means: a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a public utility. Control includes instances where a person is an officer, director, partner, trustee or person of similar status or function, or who owns directly or indirectly, or has a beneficial interest in, ten percent or more of any class of securities of a person.

B. "Available Capacity" means the ability of the utility to provide Transportation of natural gas through its existing pipeline and facilities in excess of that required to serve its Current Sales and Transportation Customers. This shall be determined pursuant to NMPUC Rule 660.6 [Subsection B of 17.10.660.10 NMAC].

C. "Broker" means any person engaged in brokering.

D. "Brokering" means the activity of arranging for the purchase and/or sale of natural gas without taking title for delivery within the State of New Mexico under the Public Utility Act as a commodity separate from Transportation which Transportation is subject to the Natural Gas Transportation Rule.

E. "Capacity" means the total maximum volume of natural gas that can flow through a facility over a given period of time.

F. "Capacity Allocation" means the process of assigning Capacity among Transportation Customers and the utility as described in the utility's Commission-authorized rules and tariffs.

G. "Commission" means the New Mexico Public Utility Commission [New Mexico Public Regulation Commission].

H. "Current ... Customer" of a utility means a person who at the specified point in time is a customer or had paid a fee to the utility in preparation for becoming a customer.

I. "Curtailment" means the failure of natural gas to reach the end-user at the burner tip due to a shortage of gas supply. An allocation of Capacity that limits a Transportation Customer's throughput is not a Curtailment.

J. "End-user" means any person that consumes natural gas in New Mexico who uses the Transporting Utility's facilities to obtain the gas for consumption and who, at its current location, is, was, or could become a Sales Customer of the utility.

K. "Firm Transportation Service" means service offered to customers (regardless of class of service) under schedules or contracts which anticipate no Interruptions except as provided in Section 660.9(a) [Paragraph 1 of Subsection E of 17.10.660.10 NMAC].

L. "Interruptible Transportation Service" means low priority service offered to customers under schedules or contracts which anticipate and permit reduction or cessation of service on short notice, by reason of the claim of firm Transportation Customers and higher priority end-users.

M. "Interruption" means the failure of natural gas to reach the end-user at the burner tip due to conditions with the utility's transmission, processing, distribution, storage, or gathering system when such conditions are not caused by failure of gas supply. An allocation of Capacity that limits a Transportation Customer's throughput is not an Interruption.

N. "Marketer" means any person engaged in Marketing.

O. "Marketing" means the activity of buying or selling natural gas for delivery within the State of New Mexico under the Public Utility Act as a commodity separate from Transportation which Transportation is subject to the Natural Gas Transportation Rule. This does not include a utility conducting its own local distribution company sales functions.

P. "Off-peak Period" means all days other than the Peak Period.

Q. "Peak Period," for purposes of determining Available Capacity, means the twenty-four (24) hour period during the past twelve (12) months of greatest total gas throughput. For ratemaking purposes the peak period shall be determined on a utility-by-utility basis.

R. "Pipeline Quality" means natural gas which conforms with industry standards and otherwise meets any other reasonable quality standard filed with the Commission under NMPUC Rule 660.6(f) [Paragraph 5 of Subsection B of 17.10.660.10 NMAC] by the Transporting Utility for the system in which the Transportation is being provided.

S. "Processing" means the removal of any undesired impurities or natural gas liquids at a natural gas processing facility in order to produce Pipeline Quality gas.

T. "Public Utility" or "Utility" means every person subject to the Commission's jurisdiction under NMSA 1978, Section 62-3-3 (G)(2) or a successor statute.

U. "Purchaser" means any person, as defined in NMSA 1978 Section 62-3-3(E), or a successor statute, or a municipality who has taken title to natural gas (or otherwise has legal authority to purchase the natural gas from a Seller) which natural gas is destined for ultimate end-use in New Mexico or is produced in New Mexico.

V. "Released Gas" means a quantity of gas that has been released from its purchase contract obligations either temporarily or permanently.

W. "Sales Customer" means a New Mexico customer of a utility who purchases both natural gas and Transportation as a bundled service from the utility.

X. "Seller" means any person, as defined in NMSA 1978 Section 62-3-3(E), or a successor statute, or a municipality which conveys title to natural gas (or otherwise has the legal authority to sell the natural gas to a Purchaser) which natural gas is destined for ultimate end-use in New Mexico or is produced in New Mexico.

Y. "System Emergency" means an unplanned situation in which a utility's system or a segment of its system is in imminent danger of failure and implementation of normal curtailment or interruption procedures would not rectify the condition.

Z. "Transportation" is the provision of contract carriage apart from the procurement of natural gas and includes exchange, fronthaul, backhaul, displacement or any other means of transporting natural gas including gathering, processing or storage.

AA. "Transportation Customer" means a Seller or Purchaser of natural gas, or a broker or marketer for such Seller or Purchaser who contracts for Transportation services for that natural gas from a utility.

BB. "Transporting Utility" means the utility which provides, or is being asked to provide, Transportation of natural gas for a Transportation Customer.

CC. "Variable Cost" means the cost that varies in the short run with the amount of natural gas transported through the Transportation facilities.

[Recompiled 12/30/01]

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[Recompiled 12/30/01]

#### **17.10.660.9 GENERAL PROVISIONS:**

Short Title: NMPUC Rule 660 [17.10.660 NMAC] may be referred to as the "Natural Gas Transportation Rule."

[Recompiled 12/30/01]

#### **17.10.660.10 REQUESTS, CAPACITY ALLOCATIONS AND RATES:**

A. Natural Gas Transportation: A utility shall transport natural gas on behalf of a Transportation Customer upon request:

(1) subject to its Available Capacity pursuant to NMPUC Rule 660.6 [Subsection B of 17.10.660.10 NMAC] and its Capacity Allocation procedures as described in the utility's Commission-authorized rules and tariffs; and

(2) subject to the rates specified in NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC] and the other terms and conditions specified in the Natural Gas Transportation Rule.

B. Transportation Requests, Contracting for Transportation and Determination of Available Capacity.

(1) A Purchaser or Seller shall furnish to the utility for which it desires to be a Transportation Customer a written Transportation request that provides information set forth in the utility's Commission-authorized tariff such as: the requested volumes applicable to each receipt and delivery point, the time period for the requested Transportation, the quality of the gas, whether the service desired is firm or interruptible, and whether any other available services are requested from the utility. The written request also shall include information concerning the end use of the natural gas which is sufficient to enable the utility to make a determination pursuant to NMPUC Rule 660.9 [Subsection E of 17.10.660.10 NMAC] of the priority that the end-user would be entitled to if it were a Sales Customer of the utility in the event of an Interruption or Curtailment.

(a) In determining whether sufficient Available Capacity exists to provide the requested Transportation the utility shall consider all conventional methods of delivering natural gas that are available to the utility and consistent with its commission-authorized rules and tariffs. Such consideration shall include, but not be limited to, fronthaul,

compression, exchange, flow reversal, backhaul, storage, and displacement, and shall take into account processing facilities and gathering capability, when appropriate. The utility may, at its sole discretion perform exchanges or displacements between segments of its system which are not physically connected by utility-owned facilities. If consistent with the utility's Commission-authorized Capacity Allocation rule, the utility shall separately determine the availability of Capacity during both Peak and Off-peak periods and the availability of both Firm and Interruptible Transportation Service, upon the written request of the Purchaser or Seller. The utility shall take into account a reasonable, maximum and minimum allowable operating pressure to be utilized on any segment of its pipeline system in determining whether Available Capacity exists.

(b) In determining the extent of Available Capacity the utility shall determine the total demand on its Capacity (during Peak and Off-peak periods) over the preceding twelve (12) months or calendar year, weather normalize such demand, adjust for known and measurable additions and/or losses of customers, add a reasonable Capacity margin, and take into consideration other reasonable factors including actual peak demand. The utility shall include all existing demands from Current Sales and Transportation Customers in its determination of Available Capacity.

(c) The utility's determination of Available Capacity shall be consistent with its Commission-authorized rules and tariffs.

(2) In the event that the Available Capacity of the utility is inadequate to provide the requested Transportation but Capacity can be sufficiently enhanced to provide the requested Transportation upon the addition of facilities for added compression, looping, interconnections, gathering lines, or similar facilities, this shall be done pursuant to NMPUC Rule 660.8 [Subsection D of 17.10.660.10 NMAC].

(3) Unless the Transportation Customer agrees in writing to a longer response time, a utility shall, as soon as possible and within thirty (30) days after receiving a written request from a Transportation Customer, notify the Transportation Customer in writing indicating the following:

(a) On what rates, terms, and conditions consistent with NMPUC Rules 660.7 through 660.10 [Subsections C through F of 17.10.660.10 NMAC] it will furnish Transportation. The utility shall also transmit to the Transportation Customer a proposed Transportation agreement.

(b) If the utility declines to provide the requested Transportation the utility shall indicate the reasons why it so declines (making reference to the Natural Gas Transportation Rule). This notice shall include, but not be limited to, the maximum or minimum allowable operating pressure assumed, any factor other than those specifically identified in NMPUC Rule 660.6(b) [Paragraph (1) of Subsection A of 17.10.660.10 NMAC] which it took into consideration, all other details of its determination of Capacity and demands on Capacity (Peak and Off-peak, respectively), and all options considered for each segment of its system for which it determined it has

inadequate Capacity to meet the Transportation request. The information provided in this notice shall be sufficient to demonstrate that its determinations are in compliance with the requirements of the Natural Gas Transportation Rule. The utility shall also send to the Commission a copy of this notice declining to provide Transportation at the same time it provides notice to the person requesting Transportation.

(4) After receiving the written notice from the utility specified in NMPUC Rule 660.6(d) [Paragraph (3) of Subsection B of 17.10.660.10 NMAC] and if the Transportation Customer accepts the utility's proposed rates, terms, and conditions the Transportation Customer shall execute a Transportation agreement with the utility for Transportation consistent with the Natural Gas Transportation Rule, and (unless waived by the utility) within forty-five (45) working days thereafter the Transportation Customer shall commence substantial performance under the agreement. The utility shall retain a copy of all executed Transportation agreements. If requested by the Commission, a copy of the executed Transportation agreement shall be provided to the Commission within ten (10) working days. The Transportation Customer may require the use of the standard transportation agreement filed by the utility pursuant to NMPUC Rule 660.10(d) [Paragraph (4) of Subsection F of 17.10.660.10 NMAC] if a mutually acceptable Transportation agreement cannot be negotiated between the parties.

(5) The utility must file with the Commission a current description of Pipeline Quality standards and of overall system and design characteristics to which delivery arrangements must conform, including specific limitations on major receipt and delivery points, and Capacity limitations on major segments of its transmission system and specific contributed Capacity rights specified in 660.8(b) [Paragraph (2) of Subsection D of 17.10.660.10 NMAC].

C. Capacity Allocation: Except as set forth in NMPUC Rule 660.8 [Subsection D of 17.10.660.10 NMAC] for contributed Capacity, Capacity Allocation shall be performed as described in the utility's commission-authorized rules and tariffs.

D. Contributed Capacity:

(1) In the event that a Transportation Customer seeks Transportation that would require additional facilities or seeks assured Capacity through a utility facility, hereinafter referred to as "incremental Capacity", without being subject to Capacity Allocation under NMPUC Rule 660.7 [Subsection C of 17.10.660.10 NMAC], the customer may contribute incremental Capacity under the conditions set forth here. However, incremental Capacity is assured only at the point that it is added and not at any upstream or downstream point. If Available Capacity of the utility is inadequate to provide the requested Transportation but incremental Capacity can be added by construction of facilities for compression, looping, interconnections, gathering lines, storage, or similar facilities, the utility shall provide the necessary additional facilities upon:



(a) the prepayment or arrangement of a timely payment plan by the Transportation Customer of the costs or reasonable estimated cost involved in providing the facilities;

(b) an amortization of a portion of the costs acceptable to the utility, or

(c) the utility's acceptance of a bond or security guaranteeing the payment of such costs.

(d) The cost recovery method shall be negotiated in good faith between the utility and the transportation customer and shall take into account that certain government entities may be precluded from paying in advance for services provided. Notwithstanding any provision to the contrary in this Natural Gas Transportation Rule, the utility shall not be required to provide such additional facilities unless such addition would reasonably conform to the overall system and design of the utility's existing and planned facilities.

(2) The Transportation Customer who contracted for the incremental Capacity shall have the first right to transport through the contributed incremental Capacity and such incremental Capacity shall not be subject to Capacity Allocation under the utility's Commission-authorized rules and tariffs. The Transportation Customer's right to the incremental Capacity shall be set out in a separate agreement between the utility and the Transportation Customer. Said right may be granted to any Transportation Customer contributing incremental Capacity and shall not necessarily relate to any specific end-use customer. Said right shall continue for a period of time that is limited, reasonable and based on some objective criteria such as the cost of the contributed facility, all as specified by the terms of the separate agreement between the utility and the Transportation Customer.

#### E. Interruptions and Curtailments of Gas Services and System Emergencies:

(1) Interruption of services provided by a utility to its Sales and Transportation Customers shall be in accordance with the same system of class-by-class priorities for Curtailments of gas supply service to its Sales Customers established by rules and practices of the utility filed with the Commission; provided, however, that within each class a Customer shall be subject to Interruption of service as determined by the utility to best maintain the integrity of the utility's natural gas delivery system or avoid a system failure. If an End-user receiving Transportation service was or at its current location could become a Sales Customer of the utility, that End-user shall be deemed to be in the same priority class as similarly situated Sales Customers of the utility for purposes of Interruption of service. In the event of an interruption of service, the utility and affected Transportation Customers shall cooperate in identifying measures which will restore service as soon as possible and minimize unnecessary reliance on system gas supply.

(2) Curtailment of deliveries shall occur according to the type of utility service provided as follows:

(a) Curtailment of deliveries resulting from gas supply shortages from sources supplying gas to Sales Customers shall be in accordance with the system of class-by-class priorities for Curtailments established by rules and practices of the utility filed with the Commission and this shortage shall not be made up using Transportation Customer's supplies unless agreed to by the Transportation Customer. Within each class, Sales Customers shall be subject to Curtailment as determined by the utility to best maintain the integrity of the system or avoid a system failure.

(b) Curtailment of deliveries resulting from gas supply shortages from sources supplying gas to Transportation Customers who have contracted for standby service from the utility shall be in accordance with the same system of class-by-class priorities for Curtailments of gas supply service to its Sales Customers established by rules and practices of the utility filed with the Commission. This shortage shall not be made up using Transportation Customer's supplies unless agreed to by the Transportation Customer. End-users covered by standby contracts shall be deemed to be in the same priority class as similarly situated system Sales Customers for purposes of Curtailment of deliveries.

(c) Curtailment of deliveries resulting from a gas supply shortage from a source supplying gas to a Transportation Customer who does not have a contract for standby service from the utility shall be in accordance with the priorities identified by the Transportation Customer through the utility's nominating procedure. This shortage shall not be made up using the utility's Sales Customer's supplies unless agreed to by the utility.

(3) Notwithstanding paragraphs (a) and (b) [(1) and (2)] above, in case of a System Emergency, Sales and Transportation Customers' gas supply shall be subject to diversion and service interrupted or deliveries curtailed as determined by the utility to best maintain the integrity of the utility's natural gas delivery system or to avoid a partial or complete system failure and in order to maintain service to as many high priority sales and transportation End-users as possible. In the event of such System Emergency, Transportation Customers whose supply is diverted shall be compensated for diverted gas supply at the utility's emergency gas service rate. In the event a Transportation Customer without utility standby service actually uses system supply gas during a System Emergency while unable to deliver supply to the utility, the Transportation Customer will pay for gas actually delivered at the utility's emergency gas service rate.

(4) Former end-users who have opted for other suppliers of Transportation and gas services and Transportation Customers who have not purchased standby service from the utility and are experiencing gas supply shortages shall receive emergency gas services at the discretion of the utility. Such customers may obtain standby service from sources other than the utility.

(5) Where possible, the utility shall provide Transportation and Sales Customers with advance notice of Interruptions, and system emergencies. The following information shall be provided:

(a) estimates of the volumes and time periods of the Interruptions or system emergencies, and

(b) the reasons for such Interruptions and system emergencies.

(6) The utility also shall provide to the Commission within sixty (60) days of the end of an Interruption, Curtailment or System Emergency the following information:

(a) the actual volumes and time periods of the Interruptions, Curtailments or system emergencies of each Transportation Customer, and

(b) the reasons for the Interruptions, Curtailments or system emergencies.

#### F. Rates, Terms, and Conditions for Services:

(1) The rates charged by a utility to a Transportation Customer for services described in NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC] shall be consistent with NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC] as well as just, reasonable, and nondiscriminatory.

(2) Each utility is required to file with the Commission proposed maximum rates and rules for the services described in NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC] which it provides to its Transportation Customers. These rates and service regulations shall be refiled as necessary to comply with any revisions to this Rule. It shall also file a Capacity Allocation Procedure and standard transportation agreement which is subject to disapproval by the Commission. This filing shall be made pursuant to NMSA 1978, Section 62-8-7, and in accordance with the requirements of NMPUC Rules 210.12, 210.13 and 210.14 [17.1.210 NMAC].

(3) Rates and charges which utilities may be allowed to charge for services performed in conjunction with transportation include, but are not limited to, the following:

(a) a transmission rate;

(b) a distribution rate;

(c) an application charge for each Transportation and standby agreement requested;

(d) a monthly administration service charge including, but not limited to, a base charge plus a charge for each additional meter;

- (e) a standby charge;
- (f) a storage rate;
- (g) a Processing rate;
- (h) a gathering rate;
- (i) a treating rate;
- (j) a dehydration rate;
- (k) an emergency gas service rate;
- (l) a charge for customer-requested operation and maintenance of any customer-owned equipment or facilities;
- (m) payment for any customer contribution of incremental Capacity pursuant to NMPUC Rule 660.8 [Subsection D of 17.10.660.10 NMAC] and for utility operation and maintenance of contributed facilities;
- (n) payment for any balancing adjustments required.

(4) The rates and charges filed with the Commission pursuant to NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC] shall be the only rates and charges which a utility may be allowed to charge a Transportation Customer for services required.

(5) The rates and rules specified in NMPUC Rule 660.10(b) [Paragraph 2 of Subsection F of 17.10.660.10 NMAC] shall also specify reasonable and nondiscriminatory terms and conditions for the provision of Transportation services. Such terms and conditions shall be consistent with the provisions of NMPUC Rule 660 [17.10.660 NMAC] and shall include:

(a) the payment terms and conditions for the rates and charges in NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC];

(b) the amount of advance notice, if any, that a Sales Customer must provide a utility of its intent to switch to and from Transportation Customer status pursuant to NMPUC Rule 660.15 [Subsection C of 17.10.660.11 NMAC];

(c) the conditions, if any, under which the Transportation Customer would forfeit its Capacity entitlements pursuant to the utility's Commission-authorized rule on Capacity Allocation and the notice thereof that the utility shall give to its Transportation Customer and the Commission;

(d) any cancellation provisions to protect against nonperformance by the Transportation Customer such as liquidated damages but such provisions shall not include minimum bills for Transportation services; nothing in this provision shall be construed to prohibit minimum bills for Sales Customers;

(e) any balancing terms and conditions for the utility's system or any segment of its system;

(f) any nomination procedures;

(g) any Capacity Allocation procedures;

(h) any other reasonable terms, conditions, or factors.

(6) The filing by the utility pursuant to NMPUC Rule 660.10(b) [Paragraph 2 of Subsection F of 17.10.660.10 NMAC] shall be made in accordance with NMPUC Rules 210.12, 210.13 and 210.14 [17.1.210 NMAC]. The rates and rules filed shall become effective thirty (30) days from the date of filing unless within thirty (30) days from the date of filing the Commission suspends the rates in accordance with NMSA 1978, Section 62-8-7, and other applicable provisions of the Public Utility Act. Rates and rules which have become effective by operation of law and without hearing by the Commission shall not be construed to bear the approval of the Commission but may be subject to inquiry by the Commission at any time.

(7) The rates and charges filed by the utility pursuant to NMPUC Rule 660.10(b) [Paragraph 2 of Subsection F of 17.10.660.10 NMAC] are the maximum rates and charges the utility is allowed to charge.

(8) The utility may offer discount rates lower than the rates filed under NMPUC Rule 660.10(b) [Paragraph 2 of Subsection F of 17.10.660.10 NMAC] to Transportation Customers on a non-discriminatory basis in order to compete for their business. These discount rates must be above the Variable Cost of the service provided. To implement such rates the utility must file the rate schedule negotiated with each Transportation Customer within five (5) days after the execution of each Transportation agreement. The new rate becomes effective as of the initial Transportation service date. The new rate shall be deemed authorized by the Commission and shall not be subject to NMPUC Rules 210.13 and 210.14 [17.1.210 NMAC]. The utility and the Transportation Customer may also negotiate terms and conditions different from those included in its standard Transportation agreement filed with the Commission if not otherwise inconsistent with this Rule.

(9) Any rates negotiated for end-users which are lower than the rates filed in NMPUC Rule 660.10(b) [Paragraph 2 of Subsection F of 17.10.660.10 NMAC] shall be available to all Transportation Customers or Sellers supplying gas to that End-user.

(10) If the Transportation Customer requests, the utility shall transport gas for the Transportation Customer as soon as possible but no later than ten (10) days after executing the Transportation agreement and any rate schedule negotiated with a Transportation Customer or end-user pursuant to NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC] or completion of any facilities construction necessary to perform Transportation.

(11) Within thirty (30) days after the Commission issues a final order on rates which substantially and materially adversely affects the Transportation Customer, the Transportation Customer, after giving notice to the utility and the Commission, may prospectively rescind the acceptance that it gave, under NMPUC Rule 660.6 [Subsection B of 17.10.660.10 NMAC], of the Transportation agreement and two (2) days after said notice (or any later date given in that notice) shall not be obligated to pay any costs of Transportation of any additional volumes of gas, notwithstanding any cancellation provisions in its contract under NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC].

G. Delivery to or by the Utility: It shall be the responsibility of the Transportation Customer requesting Transportation service to make arrangements (except as otherwise provided in NMPUC Rule 660.6(c)) [Paragraph 2 of Subsection B of 17.10.660.10 NMAC] for delivery of the natural gas to the utility and receipt of the natural gas by the Transportation Customer in those cases where:

(1) the utility does not have the necessary facilities to commence the Transportation service at the point of production of the natural gas; or

(2) to complete delivery of natural gas to the point of end use in those cases where the utility does not have the facilities necessary to complete such delivery.

H. Prohibition of Marketing and Brokering, Anti-competitive Conduct, Discriminatory Behavior, and Preferential Treatment by a Utility Under NMSA 1978, Section 62-6-4.1; Complaints and Investigations.

(1) Pursuant to NMSA 1978, Section 62-6-1 as amended, a utility is prohibited from the Marketing and Brokering of natural gas for delivery within New Mexico under the Natural Gas Transportation Rule. This prohibition shall not exclude a utility from transporting natural gas for an Affiliate. This does not prohibit a utility from conducting its own local distribution company sales functions. Any contract to transport natural gas for a Marketing or Brokering Affiliate shall be an arm's-length agreement containing no terms which are unavailable to other End-users, gas Brokers, or Marketers. A utility is prohibited from anticompetitive conduct, discriminatory behavior, and preferential treatment in transporting natural gas.

(2) For purposes of violations of NMSA 1978, Section 62-6-4.1, anticompetitive conduct, discriminatory behavior, and/or preferential treatment by a Public Utility transporting natural gas includes but is not limited to:

(a) a disclosure to a Marketing or Brokering Affiliate of confidential information provided by nonaffiliated Transportation Customers;

(b) a disclosure by a utility of its own confidential information to any Transportation Customer unless it is communicated to all Transportation Customers on the same terms and conditions;

(c) disclosure of information filed with Transportation requests to any Transportation Customer unless it is communicated to all Transportation Customers on the same terms and conditions;

(d) providing any false or misleading information or failure to provide information regarding the availability of capacity for Transportation service;

(e) requiring as a condition of an agreement to release gas, an agreement by the Transportation Customer to obtain services from the Marketing or Brokering Affiliate of the utility or an offer by the utility to provide or expedite Transportation service to its Affiliate for the Released Gas;

(f) providing any false or misleading information about gas releases;

(g) allowing Marketing or Brokering Affiliates preferential access to Released Gas; all Affiliate Brokers and Marketers and all registered Transportation Customers must be notified of gas releases at the same time in the same manner;

(h) lending a Marketing or Brokering Affiliate gas to meet balancing requirements except under terms available to other Transportation Customers;

(i) directing potential customers to the utility's own Marketing or Brokering Affiliate; the utility may provide a list of all registered gas Marketers and Brokers, including their Affiliates;

(j) charging lower rates to a Transportation Customer conditioned on the purchase of gas from the utility's Marketing or Brokering Affiliate;

(k) conditioning the availability of Transportation service upon the use of the utility's Marketing or Brokering Affiliate;

(l) providing exchange or displacement services to one Transportation Customer without making them available to others on the same terms and conditions.

(3) By the authority of NMSA 1978, Section 62-6-4.1 as amended, in order to promote arm's-length transactions between the utility and its Marketing or Brokering Affiliate, the Marketing or Brokering Affiliate shall be housed in separate offices, shall have separate personnel including but not limited to independent contractors for professional services, and shall not have access to the utility's data bases which

concern natural gas Transportation, except for such data bases that are available with contemporaneous access to the utility's other Transportation Customers and on reasonably equivalent terms and conditions.

(4) The procedures set forth in NMSA 1978, Section 62-10-1, and NMPUC Rules 110.42 through 110.53 [17.1.2 NMAC] shall be available to resolve any complaints and investigations arising out of the implementation of the Natural Gas Transportation Rule, including but not limited to:

(a) the utility's improper refusal or failure to promptly transport natural gas;

(b) the rates, terms, and conditions proposed by a utility for the services described in NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC];

(c) Interruptions of services pursuant to NMPUC Rule 660.9 [Subsection E of 17.10.660.10 NMAC]; and

(d) the forfeiture by a Transportation Customer of its priority pursuant to NMPUC Rule 660.9 [Subsection E of 17.10.660.10 NMAC].

(5) By the authority of NMSA 1978, Section 62-6-4.1, as amended, alleged violations of the rules stated in NMPUC Rules 660.12(a) and 660.12(b) [Paragraphs 1 and 2 of Subsection H of 17.10.660.10 NMAC] may be brought before the commission, upon a showing of probable cause, under the complaint procedure contained in NMPUC Rules 110.42 through 110.53 [17.1.2 NMAC]. The burden of proof concerning the alleged violations in NMPUC Rules 660.12(a) and 660.12(b) [Paragraphs 1 and 2 of Subsection H of 17.10.660.10 NMAC] is on the complainant. The Commission upon a finding that a Public Utility is in violation of NMPUC Rules 660.12(a) and 660.12(b) [Paragraphs 1 and 2 of Subsection H of 17.10.660.10 NMAC] may impose upon the utility a civil penalty not to exceed an amount three (3) times the damages established by the complainant in the Commission proceeding and issue such orders including, but not limited to, a cease and desist order to assure the nondiscriminatory and nonpreferential Transportation of natural gas. The standards for determining the monetary damages will be established by the Commission on a case-by-case basis and any monetary damages assessed for violations of NMPUC Rules 660.12(a) and 660.12(b) [Paragraphs 1 and 2 of Subsection H of 17.10.660.10 NMAC] will be paid to the State of New Mexico.

[Recompiled 12/30/01]

#### **17.10.660.11 CONTRACTS:**

A. Modification of Transportation Contracts: A utility shall not enter into any contract for the Transportation of natural gas for a Transportation Customer which does not contain the following provision: This contract, and all its terms and provisions, shall at all times be subject to modification by order of the New Mexico Public Utility Commission



[New Mexico Public Regulation Commission] upon notice and hearing and a finding of good cause therefor. In the event that any party to this contract requests the Commission to take any action which could cause a modification in the provisions of this contract, that party shall provide written notice to the other parties at the time of filing the request with the Commission.

B. Additional Reporting Requirements:

(1) In addition to the reporting requirements recited in NMPUC Rules 660.6(d), 660.6(e), 660.6(f), 660.10(b), 660.14(b), and 660.17(b) [Paragraphs 3, 4, and 5 of Subsection B of 17.10.660.10 NMAC, Paragraph 2 of Subsection F of 17.10.660.10 NMAC, Paragraph 2 of Subsection B of 17.10.660.11 NMAC and Paragraph 2 of Subsection E of 17.10.660.11 NMAC], a utility must provide the Commission, within thirty (30) days of the end of each year, the total quantities of natural gas transported by month for each Transportation Customer.

(2) Utilities must maintain logs showing all requests for Transportation and their disposition. Such a log shall be kept current and shall be made available to members of the public upon request during business hours at the utility's place of business or by photocopy by mail at a reasonable cost. The log will also be filed with the Commission and updated monthly. Such log should include information regarding the date of all Transportation requests; the identity of the Transportation Customer making the request; whether the service requested is interruptible or firm; the identity of the ultimate end-user or delivery point of the gas; the Transportation rates requested and received for such service; the disposition of the request by the utility; the date and an explanation for the disposition of the request; any complaints by the Transportation Customer or End-user concerning the requested or furnished service; and such other information as is required by the utility's commission-authorized rules and tariffs.

C. Current Sales Customers:

(1) Any current Sales Customer of a utility may obtain Transportation from that utility, pursuant to the terms and conditions of the Natural Gas Transportation Rule, for gas supplies which that customer obtains from a Seller supplemental to the customer's existing obligations to purchase gas supplies from that utility.

(2) Subject to waiver by the utility, any current Sales Customer must provide sixty (60) days' notice of intention to partially or fully become a Transportation Customer of the utility or of its intention to cease receiving service from the utility for alternative sources of gas supply and Transportation.

(3) Any current Sales Customer of a utility may elect to purchase natural gas from a Seller and to seek Transportation of those supplies by the same utility as a partial or complete substitute for its purchases of gas supplies from the utility and it may also seek Transportation from parties other than the utility. In either case a reduction in gas purchases by a current Sales Customer reduces the utility's obligation to serve (i.e.,

to provide gas supplies) by the same amount and proportionately reduces the utility's obligation to serve the customer's gas sales requirements under system peak demand conditions. If the Sales Customer completely leaves the system, the customer must reapply for gas service and the utility may charge said customer fees equivalent to those charged a new customer. The utility has no gas supply obligation to Transportation Customers or former End-users who have opted for other suppliers of Transportation and gas services, who are solely responsible for their own gas procurement.

(4) The utility will not refuse to provide natural gas service to any Transportation Customer who requests to reenter or increase its purchases from the utility's system gas supply and who has provided sixty (60) days' notice to the utility of its intention to reenter or increase purchases. The utility may waive or reduce the notice period at its option. Any Transportation Customer providing sixty (60) days' notice to the utility before reentry to or increased purchases from system supply, or for whom the notice period has been waived or reduced, will receive service from the utility as a Sales Customer and be billed under the applicable rate schedule according to its customer classification.

(5) The utility shall provide natural gas to a Transportation Customer who fails to give the utility at least sixty (60) days' notice of reentry or increased purchases if, as, and when such supply is available and the utility is able to provide such supply without curtailing any existing customers, unless the utility has waived or reduced the notice period. The gas shall be supplied at the greater of:

(a) the utility's rate schedule applicable to Sales Customers according to the classification otherwise applicable to the Transportation Customer, or

(b) the utility's actual price of the gas including any Transportation charges and any other related charges incurred by the utility in order to provide the gas.

(6) The utility shall use reasonable efforts to obtain the lowest cost gas which is reasonably available taking into consideration the volume of gas needed for the reentry or increased purchase, the amount of notice given to the utility, the reliability of the supply and the length of time such gas is needed. At the expiration of no more than sixty (60) days from the date of the Transportation Customer's request, it will receive gas service from the utility as a Sales Customer and be billed under the applicable rate schedule according to its customer classification.

D. Gas Under Contract: There shall be no assignment of gas purchase contracts or other gas purchase rights from a utility to its Marketing or Brokering Affiliate without the prior approval of the Commission.

E. Gas Releases:

(1) The utility shall be able to release gas without regard to the contract price of such gas and without any prior notice to the Commission. The utility shall not as a condition of release require a producer subsequently to sell the Released Gas to any Affiliate of the utility or in any other manner provide its Affiliate preferential treatment in the resale of said natural gas during the release period.

(2) The utility shall file a report with the commission within sixty (60) days of any release of natural gas and such report shall contain the following information:

- (a) name of producer and/or Seller,
- (b) period of release,
- (c) volumes released,
- (d) price of the gas,
- (e) actual purchases under released contract for the twelve (12) months prior to release,
- (f) brief explanation of the reason for the release, and
- (g) impact on the PGAC and on the utility's ability to meet its peak day requirements during the period of the release.

(3) The utility shall publicly post on the first day of each month a listing of all gas released during the previous month.

(4) The utility shall make a copy of the release agreement available for inspection by Commission staff upon request.

#### F. Quality of Gas:

(1) A utility may require a Transportation Customer to render the gas transported to be of Pipeline Quality.

(2) If a utility has facilities available to render gas to be of Pipeline Quality, it shall upon request by a Transportation Customer make those facilities available to the Transportation Customer if Capacity is available at the appropriate time.

(3) Such utility may impose just and reasonable rates to render the gas of Pipeline Quality in accordance with NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC].

(4) If the utility does not have such facilities available, it shall be the obligation of the Transportation Customer to make the arrangements to deliver gas of Pipeline Quality to the utility.

G. Status of Investments: Any capital investment fully paid for by a Transportation Customer pursuant to NMPUC Rule 660.8 [Subsection D of 17.10.660.10 NMAC] to expand the Capacity of a utility to serve that customer, or pursuant to NMPUC Rule 660.11 [Subsection G of 17.10.660.10 NMAC] to deliver the gas to the utility and/or to complete delivery of gas to the point of end use, shall be treated as a contribution-in-aid of construction or as an advance-in-aid of construction depending on the utility's line extension policy. Refunds for advances-in-aid of construction shall conform to the refund policy for the utility's line extension rules.

[Recompiled 12/30/01]

#### **17.10.660.12 JURISDICTION AND PROCEDURE:**

A. Federal Jurisdiction: Nothing contained in the Natural Gas Transportation Rule shall be construed to require a utility to enter into an arrangement for the Transportation of natural gas which would result in the utility becoming subject to the jurisdiction of the Federal Energy Regulatory Commission or any successor agency, nor to confer on the Commission authority over transactions which are exclusively within the authority of such federal agency.

B. Amendment: The adoption of the Natural Gas Transportation Rule shall in no way preclude the Commission, after notice and hearing, from altering or amending any provision hereof or from making any modification with respect to its application deemed necessary.

C. Exemption or Variance:

(1) An application for an exemption or a variance from any requirement set forth in NMPUC

Rules 660.5 through 660.19 [17.10.660.10 NMAC through 17.10.660.11 NMAC], except NMPUC Rule 660.12 [Subsection H of 17.10.660.10 NMAC], shall:

(a) identify the portion(s) of the Natural Gas Transportation Rule for which the variance or exemption is requested,

(b) describe the situation which necessitates the exemption or variance,

(c) set out the effect of complying with the Natural Gas Transportation Rule on the utility and its customers if the exemption or variance is not granted,

(d) define the result which the request will have if granted,

(e) state how the exemption or variance will promote the purposes of the Natural Gas Transportation Rule, and

(f) state why the exemption or variance is a more reasonable alternative than the application of the Natural Gas Transportation Rule.

(2) The Commission may consider the application for the exemption or variance with or without a hearing.

(3) If it finds good cause, the Commission may order a hearing on such application and shall promptly provide sufficient advance notice of any such hearing.

D. Motion for Stay Pending a Decision on Exemption or Variance: An application for an exemption or variance may include a motion that the commission stay the application of the affected portion of the Natural Gas Transportation Rule for that Transportation specified in the motion. The Commission may consider such a motion with or without a hearing.

E. Severability: If any part or application of the Natural Gas Transportation Rule is held invalid, the remainder or its application to other situations or persons shall not be affected.

[Recompiled 12/30/01]

## **PART 661-669: [RESERVED]**

## **PART 670: COMPLIANCE WITH SAFETY STANDARDS OF THE LIQUEFIED PETROLEUM GAS BUREAU**

### **17.10.670.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

### **17.10.670.2 SCOPE:**

[Recompiled 12/30/01]

### **17.10.670.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

### **17.10.670.4 DURATION:**

[Recompiled 12/30/01]

**17.10.670.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.10.670.6 OBJECTIVE:**

[Recompiled 12/30/01]

**17.10.670.7 DEFINITIONS:**

[Recompiled 12/30/01]

**17.10.670.8 TABLE OF CONTENTS:**

A. Certificate of Compliance with Safety Requirements and Standards of the LPG Bureau [17.10.670.9 NMAC]

B. Discontinuance of Service for Failure to Comply with Safety Requirements and Standards [17.10.670.10 NMAC]

[Recompiled 12/30/01]

**17.10.670.9 CERTIFICATE OF COMPLIANCE WITH SAFETY REQUIREMENTS AND STANDARDS OF THE LPG BUREAU:**

No public utility engaged in the operation of any facility for the manufacture, storage, distribution, sale, or furnishing to or for the public of mixed or liquefied petroleum gases for light, heat, or power, or other uses by means of any pipeline system operating under municipal authority or franchise shall hereafter connect its distribution system to any customer's installed piping or appliance unless the utility shall first have received and placed in its files a certificate executed by or on behalf of the person, firm, or corporation installing the piping or appliance that the installation meets the minimum safety requirements and standards prescribed by the Construction Industries Committee or the Liquefied Petroleum Gas Bureau of the Construction Industries Division of the New Mexico Regulation and Licensing Department ("LPG Bureau").

[Recompiled 12/30/01]

**17.10.670.10 DISCONTINUANCE OF SERVICE FOR FAILURE TO COMPLY WITH SAFETY REQUIREMENTS AND STANDARDS:**

No public utility distributing liquefied petroleum gas to any customer from its pipeline system shall continue to render the service after receipt of notice from the LPG Bureau that the customer's installation fails to meet the minimum safety requirements and standards prescribed for such installation.

[Recompiled 12/30/01]

## **CHAPTER 11: TELECOMMUNICATIONS**

### **PART 1: GENERAL PROVISIONS[RESERVED]**

### **PART 2: ADMINISTRATIVE FINES FOR TELECOMMUNICATIONS PROVIDERS**

#### **17.11.2.1 ISSUING AGENCY:**

New Mexico State Corporation Commission [New Mexico Public Regulation Commission].

[5-15-96; Recompiled 12/31/01]

#### **17.11.2.2 SCOPE:**

This rule applies to any telecommunications provider as defined herein.

[5-15-96; Recompiled 12/31/01]

#### **17.11.2.3 STATUTORY AUTHORITY:**

Authority for this rule derives from Article 11 of the New Mexico Constitution and Section 63-7-23 NMSA 1978.

[5-15-96; Recompiled 12/31/01]

#### **17.11.2.4 DURATION:**

Permanent.

[5-15-96; Recompiled 12/31/01]

#### **17.11.2.5 EFFECTIVE DATE:**

This rule shall take effect (date of publication in the New Mexico Register) [May 15, 1996.]

[5-15-96; Recompiled 12/31/01]

#### **17.11.2.6 OBJECTIVES:**

The objectives of this rule are to provide procedural rules and regulations for the implementation of 63-7-23 NMSA 1978.

[5-15-96; Recompiled 12/31/01]

#### **17.11.2.7 DEFINITIONS:**

**A.** For purposes of proceedings to impose administrative fines, and as used in this rule, the following terms have the meanings given in the cited section of the New Mexico Statutes Annotated 1978:

- (1) Commission, Section 63-7-23(A)(1) NMSA 1978.
- (2) Telecommunications provider, Section 63-7-23(A)(2) NMSA 1978.

**B.** For purposes of proceedings to impose administrative fines, and as used in this rule, the following terms have the meanings given here:

- (1) **aggravating circumstances** means any circumstance attending a violation of any applicable law or rule or order of the Commission by a telecommunications provider which adds to its injurious consequences.
- (2) **aggrieved by an order** means the order directly results in the denial of some personal or property right, or imposes a burden or obligation upon a telecommunications provider or other person.
- (3) **Commission's Rules of Procedure** means the Rules of Procedure of the New Mexico State Corporation Commission which became effective November 14, 1985.
- (4) **fraudulently concealed** means the employment of artifice planned to prevent inquiry or escape investigation or to mislead or hinder the acquisition of information that could lead to possible action under Section 63-7-23 NMSA 1978 or this rule.
- (5) **mitigating circumstances** means any circumstance attending a violation of any applicable law or rule or order of the Commission by a telecommunications provider which reduces or partially extinguishes its injurious consequences.
- (6) **preponderance of the evidence** means proof by the greater weight of evidence, establishing that which is sought to be proved is more probably true than not true.
- (7) **proceedings to impose an administrative fine** means a proceeding initiated by the Commission pursuant to Section 63-7-23(D) NMSA 1978.



**(8) staff** means the staff of the Commission's Telecommunications Department.

**(9) State** means the State of New Mexico.

**(10) substantial harm to the customers of the telecommunications provider** means having a significant adverse impact on the quality of service or value of service provided to a customer of a telecommunications provider.

[5-15-96; Recompiled 12/31/01]

#### **17.11.2.8 PROCEDURAL RULES:**

**A.** The procedures in Section 63-7-23 NMSA 1978 and the Commission's Rules of Procedure shall apply to proceedings to impose an administrative fine; provided, however, in proceedings to impose an administrative fine, if any provision of this rule or 63-7-23 NMSA 1978 conflict with any provision of the Commission's Rules of Procedure, the provision of this rule or Section 63-7-23 NMSA 1978 shall apply.

**B.** The provisions of Rule 27 of the Commission's Rules of Procedure concerning intervention shall apply to proceedings to impose an administrative fine except that the Commission may grant the intervention only if it appears that the movant would be directly affected by the Commission's decision in the proceeding and that the movant possesses a substantial interest in the subject matter of the proceeding, or that participation of the movant may be in the public interest, or that the movant is a proper party under the law.

[5-15-96; Recompiled 12/31/01]

#### **17.11.2.9 PAYMENT OF ADMINISTRATIVE FINE:**

**A.** Payment of an administrative fine shall be made by certified check or money order payable to the "New Mexico State Corporation Commission" and should be delivered to the Commission's Chief Clerk, in accordance with the terms of the order imposing the administrative fine.

**B.** If payment of an administrative fine is not made in accordance with the terms of the order imposing the administrative fine, the Commission may, without further hearing, suspend or revoke the certificate of public convenience and necessity or other authority of the telecommunications provider to provide public telecommunications service in the state, or take other lawful action to enforce its order.

[5-15-96; Recompiled 12/31/01]

#### **17.11.2.10 LIMITATION OF REMEDIES:**

In addition to the imposition of an administrative fine, the Commission may order such other action or actions as may be appropriate, arising out of the same facts. An administrative fine ordered by the Commission shall be in addition to any other penalty provided by law.

[5-15-96; Recompiled 12/31/01]

**17.11.2.11 SEVERABILITY:**

If any section of this rule, or the applicability of any section to any person, telecommunications provider or circumstance, is for any reason held invalid by a court, the remainder of the rule, or the applicability of such provisions to other persons, telecommunications providers or circumstances, shall not be affected.

[5-15-96; Recompiled 12/31/01]

**PART 3: EXTENDED AREA SERVICE**

**17.11.3.1 ISSUING AGENCY:**

New Mexico State Corporation Commission [New Mexico Public Regulation Commission], Telecommunications Department, Post Office Box 1269, Santa Fe, NM 87504-1269.

[2-28-97; Recompiled 12/31/01]

**17.11.3.2 SCOPE:**

This rule applies to all EAS proceedings and requests.

[2-28-97; Recompiled 12/31/01]

**17.11.3.3 AUTHORITY:**

Article 11 of the New Mexico Constitution.

[2-28-97; Recompiled 12/31/01]

**17.11.3.4 DURATION:**

Permanent.

[2-28-97; Recompiled 12/31/01]

**17.11.3.5 EFFECTIVE DATE:**

February 28, 1997, unless a later date is cited at the end of a section or paragraph.

[2-28-97; Recompiled 12/31/01]

#### **17.11.3.6 OBJECTIVES:**

The purpose of this rule is to establish uniform guidelines, standards and procedures for filing, acceptance and processing of petitions or requests for EAS which may be pending on, applied for, or made, subsequent to the effective date of this rule.

[2-28-97; Recompiled 12/31/01]

#### **17.11.3.7 DEFINITIONS:**

For purposes of this rule:

**A. Access line** means a communications facility extending from a customer's premises to a serving central office comprising a subscriber line.

**B. CCS** means hundred calling seconds, a measure of telephone traffic load obtained by multiplying the number of calls in one hour by the average call duration in seconds and dividing that product by one hundred.

**C. Commission** means the New Mexico State Corporation Commission.

**D. EAS** means extended area service, a switching and trunking arrangement which provides for non-optional, unlimited, two way, flat rate calling service between two or more contiguous exchanges.

**E. Exchange regrouping** means a method of automatically moving an exchange into another rate group (based on the number of access lines available for local calling) if the exchange no longer fits the tariffed definition for its current rate group.

**F. Holding time** means the total duration, in time, of one completed call.

**G. Local exchange company** means a provider of local exchange services.

**H. Rate additive** means the rate, if any, which may be added to subscribers of a local exchange to offset any increased revenue requirement which may be found by the Commission to be due to EAS provision.

**I. Stimulation factor** means the measure of the increase in telephone messages between two exchanges when they are connected by EAS instead of message toll service.

**J. Subscriber** means any person subscribing to a local exchange company for the provision of basic exchange services.

[2-28-97; Recompiled 12/31/01]

#### **17.11.3.8 EAS INQUIRIES:**

The Commission may, on its own motion, initiate an inquiry into an EAS proposal, may set forth its own proposal, and may otherwise initiate the procedures for EAS described herein. In addition, the Commission may initiate an inquiry and trigger such procedures in response to the following:

**A.** A petition signed by at least twenty-five percent or 1,000 customers, whichever is less, of the subscribers of a local exchange company in the telephone exchange from which the petition originates, containing the name and telephone number of each petition signatory, and a verification by the local exchange company that the signatories are subscribers of the local exchange company located within the local exchange for which EAS is sought; or

**B.** A petition filed by the local exchange company who has jurisdiction over an exchange sought to be included in the EAS area.

[2-28-97; Recompiled 12/31/01]

#### **17.11.3.9 FILING REQUIREMENTS:**

Petitions for EAS shall state the boundary and name of each exchange for which EAS is sought.

[2-28-97; Recompiled 12/31/01]

#### **17.11.3.10 TRAFFIC STUDY:**

If an EAS inquiry is initiated, the Commission may order that a traffic study be conducted by the affected local exchange company or companies. Traffic study results shall be reported to the Commission in such time frame as the Commission may order. Traffic study data shall be developed from and based upon a three hundred sixty-five day study of representative calling patterns, shall be in such form, detail and content as the Commission may require, and shall include, at a minimum, the following information, except as provided in 17 NMAC 13.3.11.2 [now subsection B of 17.11.3.11 NMAC] of this rule or ordered by the Commission:

**A.** The number of messages, minutes and revenue per access line per month, over each interexchange route in both directions and in each direction, segregated between business and residential users and combined for both.

**B.** A detailed analysis of the distribution of calling usage among subscribers, over each route and in each direction, segregated between business and residential users and combined, showing, for each category, the number of customers making each of 0 through 15 calls (e.g., 0-1, 0-2, 0-3, etc.), and 16 or more calls per month.

**C.** Data showing, by class of service, the number of access lines in service for each of the exchanges being studied.

**D.** The interexchange toll rates, distance between rate centers, the number and duration of calls and the average revenue per message (ARPM) for the calls studied.

**E.** The number of Foreign Exchange (FX) lines in service and the average calling volumes carried on these lines expressed as calculated messages per month and in CCS units.

[2-28-97; Recompiled 12/31/01]

#### **17.11.3.11 COMMUNITY OF INTEREST:**

**A.** As a guideline for evaluating community of interest, the Commission may consider that a community of interest exists when: (1) the median calling rate over each interexchange route under consideration equals or exceeds five messages per access line per month, and (2) at least fifty-one percent of the residential subscribers in the exchanges affected make at least three calls per month.

**B.** The above notwithstanding, if on any given route between two exchanges, the exchange of petitioning subscribers has less than one-half the number of access lines as the larger exchange, a traffic study of one-way traffic originating in the smaller exchange may be used, in which case the community of interest guidelines may be met if: (1) a median calling rate of five or more messages per access line per month from the smaller exchange to the larger exchange or exchanges to which the smaller exchange seeks inclusion, and (2) at least fifty-one percent of the residential subscribers in the smaller exchange make three or more calls per month to the larger exchange or exchanges to which the smaller exchange seeks inclusion.

**C.** Resolutions of the local government body and location of schools, shopping, business offices and medical facilities may be considered as evidence of community of interest.

**D.** In the event that the interexchange traffic patterns over the areas considered for EAS do not meet community of interest qualifications, the Commission may determine that no further investigation is appropriate and deny the petition; provided however, the Commission may, in its discretion, find that factors, other than traffic patterns, should be considered and may continue the EAS inquiry.

[2-28-97; Recompiled 12/31/01]

### **17.11.3.12 COST STUDY:**

**A.** The affected local exchange company or companies may be ordered by the Commission to initiate a Total Service Long Run Incremental Cost ("TSLRIC") or other appropriate cost study approved for such purpose by the Commission, to determine changes in rates which may result from the EAS; provided however, that lost toll revenue shall not automatically be considered a cost of providing EAS. Such cost study shall consider and develop, for each route, relevant revenues and costs over a one year period immediately following the potential date for initiation of the EAS, and for a one year period, three years subsequent to the potential initiation of the EAS.

**B.** The cost study shall include the following information, unless otherwise ordered by the Commission:

**(1)** Net increases in capital costs resulting from required additions to network capacity, less reduction in required quantities of facilities and equipment utilized for toll services between the exchanges. The added investment will be based upon the additional switching and trunking needs necessary to accommodate the incremental usage at prescribed levels of service, as may be determined from estimates of call stimulation factors and holding time effects due to EAS. Annual charge factors will be applied to the added investment to obtain the additional annual cost attributable to this source.

**(2)** Analysis of increases and decreases in expenses and the net effect on operating expenses.

**(3)** A separate schedule showing local revenue increases resulting from exchange regrouping, as applicable.

**(4)** Analysis, by exchange, of changes in intrastate toll revenues, intrastate access charges, and intrastate access revenues.

**C.** On or before a date ordered by the Commission, the local exchange company or companies shall file with the Commission a summary of the results of the cost study, together with supporting schedules and such detail as will be sufficient to permit identification of study components and verification of study results.

**D.** The Commission may also require the local exchange company or companies to submit recommendations for rate additives, by class of service for each affected exchange.

[2-28-97; Recompiled 12/31/01]

### **17.11.3.13 DIVISION OF COSTS:**

**A.** After the annual average incremental revenue requirement created by the new EAS is established by the Commission, the Commission will determine whether a rate additive will be charged to subscribers in the affected exchanges(s), and the amount of such rate additive. The Commission may order costs to be shared by exchanges not included in the EAS area but within the area served by the same local exchange company or companies.

**B.** In the event that the division of costs indicates that the increment would be more than the Commission determines to be just and reasonable, the Commission may allocate costs in some other fashion, or may determine that no further investigation is warranted, and may deny the EAS petition.

[2-28-97; Recompiled 12/31/01]

### **17.11.3.14 SUBSCRIBER SURVEYS:**

**A.** The Commission may, at any time after initiation of an EAS inquiry, order a subscriber survey by mail to be made of all affected subscribers by the local exchange company or companies.

**B.** The subscriber survey shall contain an explanatory letter stating all pertinent information that would enable the subscriber to make an informed choice of acceptance or rejection of the proposal. The explanatory letter shall contain at least the following items, along with such other items as the Commission may order:

**(1)** A clear and brief explanation of the purpose of the subscriber survey.

**(2)** A tabulation showing, by class of service, any increase in rate, rate additive or other rate change to which subscribers would or might be subject. The explanatory letter shall state separately for each exchange required to be surveyed the amount of local service rate increase, rate additive, or other rate change applicable to that exchange both in the event EAS is granted in all exchanges under consideration, or only the petitioning exchange.

**(3)** A listing of the exchanges and three-digit telephone number prefixes which would become accessible as a local call if the EAS were approved, as well as the number of access lines currently available to subscribers and the number of access lines which would be available as a local call if the EAS were approved, along with current comparable rates in the exchange (so that a comparison could be made with any resulting rate increase).

**(4)** A statement that only signed survey ballots will be counted.

**(5)** The date by which survey ballots must be postmarked to be considered. The return date shall provide, at a minimum, a period of thirty days from the date on

which the subscriber survey is mailed to the subscriber, unless such time period is altered by the Commission.

**C.** The subscriber survey shall include a pre-addressed, return postage-paid survey ballot which shall provide at least the following information:

- (1)** A brief statement of the service proposal being voted on as more fully described in the subscriber survey explanatory letter.
- (2)** Spaces for the subscriber to indicate his or her preference for or against the proposal.
- (3)** Lines for signature, telephone number and date.
- (4)** A space for subscriber comments.
- (5)** A statement of the date by which the ballot must be postmarked in order to be considered in the determination of voting results.

**D.** The subscriber survey shall be a separate mailing, shall contain no additional material or information not contemplated by this rule or ordered and approved by the Commission.

**E.** Both the subscriber survey explanatory letter and the ballot, as well as the envelope (and any graphic or printed material contained thereon) shall require approval of the Commission prior to mailing.

**F.** All costs incurred in connection with preparation of all materials, costs of mailing and cost of collection and tabulation shall be borne by the local exchange company or companies and such costs shall be only those costs found by the Commission to have been reasonable, prudent and necessary.

**G.** The requested EAS may be denied by the Commission upon a finding that:

- (1)** A simple majority of affirmative votes of those voting was not realized, in the aggregate, from the total votes cast in all exchanges in the subscriber survey;
- (2)** A simple majority of affirmative votes of those voting was not realized from a given petitioning exchange (denial in this instance may be only as to that exchange);
- (3)** A simple majority of subscribers of only one exchange vote in favor of the proposal and a simple majority of subscribers of the other affected exchange or exchanges vote against the proposal; or
- (4)** Granting the EAS would not be in the public interest.



[2-28-97; Recompiled 12/31/01]

**17.11.3.15 ALTERNATIVES TO EAS:**

If interexchange traffic patterns are such that subscriber needs may be adequately served by alternative service offerings, or EAS petitions may not fully meet the requirements of this rule but higher than average interexchange message traffic exists, the Commission may give consideration to alternatives to EAS including, but not limited to, optional two-way EAS, mandatory or optional one-way EAS, discount plans, or variations of flat and measured toll rates.

[2-28-97; Recompiled 12/31/01]

**17.11.3.16 SEVERABILITY:**

If any section of this rule, or the applicability of any section to any person, telecommunications provider, specific EAS proceeding and request, LEC or other circumstance, is for any reason held invalid by a court, the remainder of the rule, or the applicability of such provisions to other persons, telecommunications providers, LECs, EAS proceedings and requests, or circumstances, shall not be affected.

[2-28-97; Recompiled 12/31/01]

**PART 4: REGISTRATION REQUIREMENTS FOR RESOLD INTRASTATE LONG DISTANCE TELECOMMUNICATIONS SERVICES AND INTRASTATE OPERATOR SERVICES**

**17.11.4.1 ISSUING AGENCY:**

New Mexico State Corporation Commission [New Mexico Public Regulation Commission].

[11-15-96; Recompiled 12/31/01]

**17.11.4.2 SCOPE:**

This rule applies to all resellers of intrastate long distance telecommunications services within the State of New Mexico and to operator services providers of intrastate long distance telecommunications services offered within the State of New Mexico.

[11-15-96; Recompiled 12/31/01]

**17.11.4.3 AUTHORITY:**

Authority for this rule derives from Article 11 of the New Mexico Constitution and the federal Telecommunications Act of 1996.

[11-15-96; Recompiled 12/31/01]

**17.11.4.4 DURATION:**

Permanent.

[11-15-96; Recompiled 12/31/01]

**17.11.4.5 EFFECTIVE DATE:**

This rule shall take effect on November 15, 1996.

[11-15-96; Recompiled 12/31/01]

**17.11.4.6 OBJECTIVES:**

The objectives of this rule are to impose requirements, on a competitively neutral basis, necessary to ensure the continued quality of telecommunications services and to safeguard consumer and public interests.

[11-15-96; Recompiled 12/31/01]

**17.11.4.7 DEFINITIONS:**

As used in this rule, the following terms have the meanings given here:

**A. Access code** means a sequence of numbers that, when dialed, connect the caller to the provider of resold long distance telecommunications services or intrastate operator services associated with that sequence.

**B. Act** means the New Mexico Telecommunications Act, NMSA 1978, 63-9A-1 **et seq.**

**C. Aggregator** means any person or entity who, in the ordinary course of operations, makes telephones available to the public, transient users of premises, or inmates of an institution, for telephone calls using a provider of intrastate operator services.

**D. Certificate of registration** means a certificate of registration issued by the commission for the provision of public telecommunications services within the State of New Mexico.

**E. Commission** means the New Mexico State Corporation Commission.

**F. 1996 Act** means the federal Telecommunications Act of 1996, 47 U.S.C. 151, **et seq.**

**G. Notice of proposed agency action** means a legally sufficient notification of action proposed to be taken by the commission.

**H. Operator services provider** means any provider of any intrastate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call through any method other than:

(1) Automatic completion with billing to the telephone from which the call originated; or

(2) Completion through an access code used by the consumer with billing to an account previously established with the telecommunications service provider by the consumer.

**I. Public telecommunications services** refers to that definition of the term as set forth in 63-9A-3(L) of the Act.

**J. Reseller** means an entity that provides resold intrastate long distance telecommunications services within New Mexico.

**K. Staff** means the staff of the telecommunications department of the commission.

[11-15-96; Recompiled 12/31/01]

#### **17.11.4.8 CERTIFICATE OF REGISTRATION REQUIRED:**

**A.** No telecommunications service shall be offered in this state except in accordance with the provisions of this rule.

**B.** No resold intrastate long distance or operator telecommunications services shall be offered in this state without the provider thereof first having obtained a certificate of registration to provide such service from the commission.

**C.** No certificate of registration will be issued by the commission unless the commission determines that an applicant's provision of telecommunications services under this rule is consistent with ensuring continuous quality of telecommunications services and safeguarding consumer and public interests.

[11-15-96; Recompiled 12/31/01]

#### **17.11.4.9 EXISTING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY:**

All certificates of public convenience and necessity issued by the commission previous to the effective date of this rule shall continue in full force and will have the same force

and effect as the certificates of registration described herein. Holders of certificates of public convenience and necessity who wish to stop providing continuous and adequate service to the public must first comply with the provisions of this rule before discontinuing providing telecommunications service.

[11-15-96; Recompiled 12/31/01]

**17.11.4.10 PROCEDURES FOR APPLICATION FOR A CERTIFICATE OF REGISTRATION TO PROVIDE RESOLD INTRASTATE LONG DISTANCE TELECOMMUNICATIONS SERVICES:**

**A.** Any person, corporation, municipal corporation, partnership or association proposing to act as a reseller within this state shall first make application to the commission for a certificate of registration. Such application shall conform to the provisions of this rule.

**B.** An application for a certificate of registration to provide resale of long distance telecommunications services must contain the following:

**(1)** Financial information detailing the applicant's financial resources that will support provision of the resold service in a manner that ensures continued quality of telecommunications services and safeguards consumer and public interests. This includes the filing of: (1) monthly balance sheets and monthly income statements of the applicant, or any affiliated entity of the applicant if that entity will provide the financial support for the resold services, covering the most recent twelve-month period available. If the company, or entity providing financial support to the applicant, does not keep monthly financial documentation as described above, then quarterly financial documents covering the most recent twelve-month period shall be provided to the commission in lieu thereof; (2) the most recent audited year-end financial statement available. If the applicant does not maintain audited year-end financial statements, the applicant may provide an unaudited year-end financial statement together with a notarized verification from the applicant's chief financial officer, or person charged with financial responsibility for the company, attesting that the financial statement provided is a true and correct representation of the company's year-end financial position; (3) a detailed description of what the financial information submitted signifies in terms of the applicant's ability to provide resold telecommunications services within this state properly and continuously. This description shall detail the applicant's current financial position and describe the financial trend of the applicant over the last twelve-month period and should be supported by specific references to the financial documents which were provided in conformance with subsections (1) and (2) above.

**(2)** A detailed demonstration of the technical competence of the applicant to provide the telecommunications services addressed in the application including a detailed description of the qualifications and experience of the applicant's management personnel who will oversee provision of the proposed resold telecommunications services.

(3) A detailed description of the proposed market to be served by the applicant with reference to both the geographic market (e.g., Albuquerque, New Mexico) and the customer class (e.g., residential customers).

(4) A detailed description of the exact and particular telecommunications service or services the applicant proposes to provide.

(5) The proposed tariff to be used by the applicant detailing all rates, charges, terms and conditions governing the provision of intrastate long distance telecommunications services and the proposed ratemaking methodology used in determining the tariff's proposed rates.

(6) A demonstration that the applicant is authorized to do business by the corporations department of the commission in New Mexico and that the applicant is in good corporate standing in New Mexico.

(7) A listing of all states in which the applicant is authorized to provide telecommunications services and a statement as to whether or not the applicant is in good standing with the appropriate regulatory agency in each of those states, and, if applicable, a detailed explanation of why the applicant is not in good standing in a given state.

(8) A listing of any states in which the applicant has been denied a certificate of authority or had its pre-existing certification revoked, if applicable, and a detailed explanation of why the applicant's application for authority to provide telecommunications services in another state was rejected or its authority to provide such services revoked, if applicable.

(9) A listing of any state in which an investigation, formal complaint and/or enforcement proceeding against the applicant has been initiated and a detailed description of the subject matter of such proceeding and of the outcome, or, if still pending, the status of such proceeding.

**C.** Upon the applicant's filing of a completed application for a certificate of registration, the commission will expeditiously review the application. After such review, the commission will either: (1) request further information from applicant; (2) issue a notice of proposed agency action; or (3) issue the applicant a notice of inquiry concerning the applicant's application for a certificate of registration. Notices of inquiry regarding an application may result in a hearing subject to the commission's notice and hearing requirements contained in the commission's rules of procedure.

[11-15-96; Recompiled 12/31/01]

#### **17.11.4.11 APPLICATION FOR A CERTIFICATE OF REGISTRATION TO PROVIDE INTRASTATE OPERATOR SERVICES:**

**A.** Any person, corporation, municipal corporation, partnership or association proposing to provide intrastate operator services in New Mexico shall first make application to the commission for a certificate of registration. Such application shall conform to the provisions of this rule.

**B.** Any application for a certificate of registration to provide intrastate operator services must contain the following:

**(1)** Financial information detailing the applicant's financial resources that will support provision of the resold service in a manner that ensures continued quality of telecommunications services and safeguards consumer and public interests. This includes the filing of: (1) monthly balance sheets and monthly income statements of the applicant, or any affiliated entity of the applicant if that entity will provide the financial support for the intrastate operator services, covering the most recent twelve-month period available. If the company, or entity providing financial support to the applicant, does not keep monthly financial documentation as described above, then quarterly financial documents covering the most recent twelve-month period shall be provided to the commission in lieu thereof; (2) most recent audited year-end financial statement available. If the applicant does not maintain audited year-end financial statements, the applicant may provide an unaudited year-end financial statement together with a notarized verification from the applicant's chief financial officer, or person charged with financial responsibility for the company, attesting that the financial statement provided is a true and correct representation of the company's year-end financial position; (3) a detailed description of what the financial information submitted signifies in terms of the applicant's ability to provide intrastate operator services within this state properly and continuously. This description shall detail the applicant's current financial position and describe the financial trend of the applicant over the last twelve-month period and should be supported by specific references to the financial documents which were provided in conformance with subsections (1) and (2) above.

**(2)** A detailed demonstration of the technical competence of the applicant to provide the telecommunications services addressed in its application including a detailed description of the qualifications and experience of the applicant's management personnel who will oversee provision of the proposed intrastate operator services.

**(3)** A detailed description of the proposed market to be served by the applicant with reference to both the geographic market (e.g. Albuquerque, New Mexico) and the customer class (e.g. residential customers).

**(4)** A detailed description of the telecommunications service or services the applicant proposes to provide.

**(5)** The proposed tariff to be used by the applicant detailing all rates, charges, terms and conditions, rules and regulations governing the provision of intrastate operator telecommunications services and the ratemaking methodology used in determining the tariff's proposed rates.

(6) A demonstration that the applicant is authorized to do business by the corporations department of the commission in New Mexico and that the applicant is in good corporate standing in New Mexico.

(7) A listing of all states in which the applicant is authorized to provide telecommunications services and a statement as to whether or not the applicant is in good standing with the appropriate regulatory agency in each of those states, and a detailed explanation of why the applicant is not in good standing in a given state, if applicable.

(8) A listing of any state in which the applicant has been denied certification or had its pre-existing certification revoked, if applicable, and a detailed explanation of why the applicant's application for authority to provide telecommunications services in another state was rejected or its authority to provide such services revoked, if applicable.

(9) A listing of any state in which an investigation, formal complaint and/or enforcement proceeding against the applicant has been initiated and a detailed description of the subject matter of such proceeding and of the outcome, or, if still pending, the status of such proceeding.

C. Upon the applicant's filing of a completed application for a certificate of registration, the commission will expeditiously review the application. Following such review, the commission will either: (1) request further information from the applicant; (2) issue a notice of proposed agency action; or (3) issue the applicant a notice of inquiry concerning the applicant's application for a certificate of registration. Notices of inquiry regarding an application may result in a hearing subject to the commission's notice and hearing requirements contained in the commission's rules of procedure.

[11-15-96; Recompiled 12/31/01]

#### **17.11.4.12 PENDING APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE RESOLD INTRASTATE LONG DISTANCE AND/OR INTRASTATE OPERATOR SERVICES:**

All applications for certificates of public convenience and necessity to provide resold intrastate long distance and/or intrastate operator services within the State of New Mexico still pending as of the effective date of this rule will be deemed applications for certificates of registration to provide such services.

[11-15-96; Recompiled 12/31/01]

#### **17.11.4.13 TRANSFER OF CERTIFICATE:**

An application for transfer of a certificate shall be approved after a hearing pursuant to a notice of proposed agency action, upon a showing of continued financial and technical

competency and the filing, in a format approved by the commission, of the proposed tariff that will be in place after the transfer.

[11-15-96; Recompiled 12/31/01]

#### **17.11.4.14 NOTIFICATION OF CHANGE(S) IN CIRCUMSTANCES:**

Any entity holding a certificate of public convenience and necessity or a certificate of registration for the provision of resold intrastate long distance telecommunications services and/or intrastate operator provider services shall immediately notify the commission in writing of any change(s) in circumstances, including, but not limited to, the following: (1) change in the entity's name, (2) merger of the entity with another entity, (3) acquisition of the entity by another entity, (4) acquisition by the entity of another entity, and (5) transfer of the entity's certificate or a significant portion of the entity's assets to another entity.

[11-15-96; Recompiled 12/31/01]

#### **17.11.4.15 DISCONTINUANCE OF SERVICE:**

Any entity holding a certificate of public convenience and necessity or a certificate of registration to provide resold intrastate telecommunications services and/or intrastate operator services shall do the following prior to discontinuing its service in order to ensure that continued quality of service and consumer interests are ensured and protected:

**A.** No later than sixty days prior to discontinuing its service, the entity shall file with the commission a notice of discontinuance of service containing the following information:

- (1)** The number of customers affected.
- (2)** The form of notification to be given to each customer.
- (3)** Any outstanding debts to local exchange carriers or other carriers whose facilities and services are used to provide resold intrastate long distance telecommunications services and/or intrastate operator services.
- (4)** The arrangement for satisfying such debts prior to and after discontinuance of service.

**B.** No later than forty-five days prior to the date the entity proposes to discontinue its service, the entity shall notify all of its customers of its notice of discontinuance of service and of the proposed date and time of the discontinuance of service and any provisions it has made for continuation of its service, if applicable.



**C.** No later than thirty days after the notice of discontinuance of service is filed, the commission shall issue either: (1) a request for further information from the entity, or; (2) a certificate of approval for discontinuing the service; or (3) a notice of inquiry into the discontinuance which may be subject to the notice and hearing requirements set forth in the commission's rules of procedure.

[11-15-96; Recompiled 12/31/01]

#### **17.11.4.16 TARIFF CHANGES AND NEW SERVICES:**

**A.** Should an applicant propose to change any of the rates, charges, terms and conditions contained in its tariff, it must file an original and five copies of the proposed modified tariff, in a format approved by the commission, including a brief description of the changes, and their likely impact on the applicant and its customers. The most recent rate approved by the commission after notice and hearing will be deemed the "base index rate" for each service on a going forward basis. Changes in rates that fall within a range of fifty percent below to twenty percent above the base index rate shall not require further notice and hearing for approval. The base index rate may be changed after a hearing pursuant to a notice of proposed agency action.

**B.** The rates, charges, terms and conditions for new services shall be reviewed expeditiously by staff. Following this review staff will either: (1) request that a notice of proposed agency action be issued; (2) request further information regarding the proposed changes; or (3) issue a notice of inquiry regarding the proposed changes.

[11-15-96; Recompiled 12/31/01]

#### **17.11.4.17 NOTICE OF PROPOSED AGENCY ACTION:**

The Commission shall set aside a certain day each month to hear a trailing docket which will contain items included in the notice of proposed agency action. The notice of proposed agency action shall be issued at least thirty days prior to the hearing. The commission's chief clerk shall cause the notice of proposed action to be published in a newspaper of general circulation and to be sent to a service list designated for that purpose. A person contesting the proposed agency action must file a written objection to the proposed agency action specifying the basis for such objection with the commission's chief clerk within ten business days of the issuance of the notice of proposed agency action. An original and five copies of the objection must be filed with the commission's chief clerk and the objection must also be served upon the reseller or operator services provider seeking a certificate of registration. The person contesting the certification of the reseller or operator services provider shall have the burden of showing why the proposed agency action is not in the public interest. The hearing officer shall determine whether there is good cause for further commission consideration of the contested matter or if the objection should be dismissed and the certificate of registration issued. Upon a showing of good cause and at the discretion of the hearing officer, a separate docket subject to notice and hearing requirements

contained in the commission's rules of procedure may be established for further commission consideration of the contested matter.

[11-15-96; Recompiled 12/31/01]

**17.11.4.18 SEVERABILITY:**

If any section of this rule, or the applicability of any section to any person, telecommunications provider, aggregator, operator service provider, reseller or circumstance, is for any reason held invalid by a court, the remainder of the rule, or the applicability of such provisions to other persons, telecommunications providers, aggregators, operator service providers, resellers or circumstances, shall not be affected.

[11-15-96; Recompiled 12/31/01]

**PART 5: REGISTRATION REQUIREMENTS FOR LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES WITHIN THE STATE OF NEW MEXICO**

**17.11.5.1 ISSUING AGENCY:**

New Mexico State Corporation Commission [New Mexico Public Regulation Commission].

[11-15-96; Recompiled 12/31/01]

**17.11.5.2 SCOPE:**

This rule applies to all persons or entities that provide local exchange telecommunications services within the State of New Mexico.

[11-15-96; Recompiled 12/31/01]

**17.11.5.3 AUTHORITY:**

Authority for this rule derives from Article 11 of the New Mexico Constitution and the federal Telecommunications Act of 1996.

[11-15-96; Recompiled 12/31/01]

**17.11.5.4 DURATION:**

Permanent.

[11-15-96; Recompiled 12/31/01]

#### **17.11.5.5 EFFECTIVE DATE:**

This rule shall take effect November 15, 1996.

[11-15-96; Recompiled 12/31/01]

#### **17.11.5.6 OBJECTIVES:**

The objectives of this rule are to impose requirements, on a competitively neutral basis, necessary to ensure the continued quality of telecommunications services and to safeguard consumer interests, and to protect the public health, safety and welfare. Furthermore, the rule provides appropriate regulations for the preservation and advancement of universal service.

[11-15-96; Recompiled 12/31/01]

#### **17.11.5.7 DEFINITIONS:**

As used in this rule, the following terms have the meanings given here:

**A.** Act means the New Mexico Telecommunications Act, NMSA 1978, 63-9A-1 et seq.

**B.** Certificate of operating authority means a certificate issued by the commission for the provision of local exchange telecommunications services within the State of New Mexico.

**C.** Certificate of financial and technical competency means a certification that an applicant is capable of providing service.

**D.** Commission means the New Mexico State Corporation Commission.

**E.** LEC means any person or entity that provides local exchange services.

**F.** Local exchange service means the transmission of public two-way switched communications furnished by a telecommunications company within a local exchange area, i.e., a geographic area encompassing one or more local communities, as described in maps, tariffs, or rate schedules filed with the commission, where local exchange rates apply.

**G.** 911 services means a basic or enhanced 911 system, as that term is defined in the Enhanced 911 Act, NMSA 1978, 63-9D-1 et seq., which consists of a telephone service that automatically connects a person dialing the single three-digit number 911 to an established public safety answering point through normal telephone service facilities.

H. 1996 Act means the federal Telecommunications Act of 1996, 47 U.S.C. 151, et seq.

I. Notice of proposed agency action means a legally sufficient notification of action proposed to be taken by the commission.

J. Universal service means the definition of that term and associated principles of universal service as contained in the 1996 Act and as further defined in any rules and regulations promulgated by the Federal Communications Commission pursuant to the 1996 Act and by the commission.

[11-15-96; Recompiled 12/31/01]

#### **17.11.5.8 CERTIFICATE REQUIRED:**

A. No local exchange service shall be offered in this state without a certificate of financial and technical competency and a certificate of operating authority.

B. No certificate of operating authority will be issued by the commission unless the commission determines that an applicant's provision of telecommunications services under this rule is consistent with ensuring continuous quality of telecommunications services, safeguarding consumer interests, protecting the public health, safety and welfare and preserving and advancing universal service.

[11-15-96; Recompiled 12/31/01]

#### **17.11.5.9 EXISTING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY:**

All certificates of public convenience and necessity issued by the commission previous to the effective date of this rule shall continue in full force and will have the same force and effect as the certificates of operating authority described herein. Holders of certificates of public convenience and necessity who wish to stop providing continuous and adequate service to the public must first comply with this rule before discontinuing the provision of telecommunications services.

[11-15-96; Recompiled 12/31/01]

#### **17.11.5.10 PROCEDURES AND APPLICATION REQUIREMENTS FOR A CERTIFICATE OF FINANCIAL AND TECHNICAL COMPETENCY:**

A. Any person, corporation, municipal corporation, partnership or association proposing to operate as a LEC within this state shall first make application to the commission for a certificate of financial and technical competency. Such application shall conform to the provisions of this rule.

**B.** Any application for a certificate of financial and technical competency to provide local exchange telecommunications services must contain the following:

**(1)** Financial information detailing the applicant's financial resources that will support provision of local exchange services in a manner that ensures continued quality of telecommunications services and safeguards consumer and public interests. This includes the filing of: (1) monthly balance sheets and monthly income statements of the applicant, or any affiliated entity of the applicant if that entity will provide the financial support for the local exchange services, covering the most recent twelve-month period available. If the company, or entity providing financial support to the applicant, does not keep monthly financial documentation as described above, then quarterly financial documents covering the most recent twelve-month period shall be provided to the commission in lieu thereof; (2) the most recent audited year-end financial statement available. If the applicant does not maintain audited year-end financial statements, the applicant may provide an unaudited year-end financial statement together with a notarized verification from the applicant's chief financial officer, or person charged with financial responsibility for the company, attesting that the financial statement provided is a true and correct representation of the company's year-end financial position; (3) a detailed description of what the financial information submitted signifies in terms of the applicant's ability to provide local exchange services within this state properly and continuously. This description shall detail applicant's current financial position and describe the financial trend of the applicant over the last twelve-month period and should be supported by specific references to the financial documents which were provided in conformance with subsections (1) and (2) above.

**(2)** A detailed demonstration of the technical competence of the applicant to provide the local exchange services addressed in the application including a detailed description of the qualifications and experience of the applicant's management personnel who will oversee provision of the proposed local exchange services.

**(3)** A detailed description of the proposed market to be served by the applicant with reference to both the geographic market (e.g., Albuquerque, New Mexico) and the customer class (e.g., residential customers).

**(4)** A detailed description of the local exchange services or other telecommunications service or services the applicant proposes to provide.

**(5)** A demonstration that the applicant is authorized to do business in New Mexico and that the applicant is in good corporate standing in New Mexico.

**(6)** A listing of all states in which the applicant is authorized to provide telecommunications services and a statement as to whether or not the applicant is in good standing with the appropriate regulatory agency in each of those states, and a detailed explanation of why the applicant is not in good standing in a given state, if applicable.

**(7)** A listing of any state in which the applicant has been denied a certificate of authority or has had its pre-existing certification revoked, if applicable, and a detailed explanation of why the applicant's application for authority to provide telecommunications services in another state was rejected or its authority to provide such services revoked, if applicable.

**(8)** A listing of any state in which a formal complaint or enforcement proceeding against the applicant has been initiated and a detailed description of the subject matter of such proceedings and of the outcome, or, if still pending, the status of such proceeding.

**C. Additional Information.** In addition to providing the information required in Subsections 10.1 and 10.2 above, an applicant applying to provide local exchange services must also submit the following information:

**(1)** A description of any certificates it holds in the State of New Mexico to provide telecommunications services other than local exchange services. The applicant should refer to the relevant commission docket number wherein any certificate(s) was (were) granted.

**(2)** The method by which the applicant proposes to provide local exchange service, for example, whether it proposes to resell the local exchange services of existing LECs.

**(3)** A description of all facilities that the applicant will utilize to furnish the proposed local exchange services, including any facilities of underlying carriers.

**D. Interconnection.** With its application, the applicant must furnish information detailing the following matters associated with interconnection to provide proposed local exchange services:

**(1)** The identity of all LECs with which the applicant plans to interconnect;

**(2)** The likely timing of initiation of interconnection service and a statement as to when negotiations for interconnection started or when they are likely to start.

**(3)** The applicant must also furnish the commission a copy of any request for interconnection made by the applicant to any LEC.

**E. Billing and Collection.** With its application, the applicant must furnish information detailing how it plans to bill for and collect monies from customers who subscribe to its proposed local exchange service.

**F. 911 Services.** With its application, the applicant must furnish information that details arrangements it plans to make for providing 911 services from each customer's

premises. It must also explain in detail terms and provisions associated with the assessment of 911 service surcharges.

**G. Designation as Essential Telecommunications Carrier.** With its application, the applicant must state whether or not it intends to be designated as an essential telecommunications carrier pursuant to the provisions of the 1996 Act. If the applicant states that it intends to be designated as an essential telecommunications carrier, the applicant must describe the territory in which it proposes to provide the essential telecommunications services.

**H. Commission Review of Application.** Upon the applicant's filing of a completed application for a certificate of financial and technical competency, the commission shall expeditiously review the application. After this review, the commission shall either: (1) request further information from applicant; (2) issue a notice of proposed agency action; or (3) issue a notice of inquiry concerning the applicant's financial and technical competency. Notices of inquiry may result in a hearing subject to the commission's notice and hearing requirements contained in the commission's rules of procedure.

[11-15-96; Recompiled 12/31/01]

#### **17.11.5.11 NOTICE OF PROPOSED AGENCY ACTION:**

The Commission shall set aside a certain day each month to hear a trailing docket which will contain items included in the notice of proposed agency action. The notice of proposed agency action shall be issued at least thirty days prior to the hearing. The commission's chief clerk shall cause the notice of proposed agency action to be published in a newspaper of general circulation and to be sent to a service list designated for that purpose. A person contesting the proposed agency action must file a written objection to the proposed agency action specifying the basis for such objection with the commission's chief clerk within ten business days of the issuance of the notice of proposed agency action. An original and five copies of the objection must be filed with the commission's chief clerk and the objection must also be served upon the applicant seeking a certificate of financial and technical competency. The person contesting the issuance of the certificate of financial and technical competency must state with particularity the basis for the objection. The hearing officer shall determine whether there is probable cause for further commission consideration of the applicant's financial and technical competency to provide local exchange services or if the objection should be dismissed, and the certificate of financial and technical competence issued. Upon a showing of probable cause and at the discretion of the hearing officer, a separate docket subject to notice and hearing requirements contained in the commission's rules of procedure may be established for further commission consideration of the contested matter.

[11-15-96; Recompiled 12/31/01]

#### **17.11.5.12 PROCEDURES AND STANDARDS FOR CERTIFICATE OF OPERATING AUTHORITY:**

The applicant initiates the procedure for a certificate of operating authority by filing its proposed tariffs with rates, terms and conditions.

**A.** No applicant will have operating authority to provide local exchange services unless the commission determines, after notice and hearing, that the applicant's proposed services will: (1) ensure continued quality of service; (2) preserve and advance universal service; (3) safeguard the rights of consumers; (4) protect the public health, safety and welfare; (5) protect the public interest; and (6) provide service at rates that are just and reasonable.

**B.** All tariffs related to the provision of local exchange services are subject to the notice and hearings requirements as provided in Article XI, 7 and 8 of the New Mexico Constitution and the commission's rules of procedure. The commission may require the filing of pre-filed direct testimony and any other information that it deems necessary to carrying out its obligations under the New Mexico Constitution, New Mexico statutes, the commission's rules of procedures, other applicable rules, and the 1996 Act.

[11-15-96; Recompiled 12/31/01]

#### **17.11.5.13 TARIFF CHANGES AND NEW SERVICES:**

Applications for changes of rates, charges, terms and conditions contained in a LEC's tariff, and applications to provide new services must be filed in the manner and format required by the commission and must have the approval of the commission prior to use.

[11-15-96; Recompiled 12/31/01]

#### **17.11.5.14 TRANSFER OF CERTIFICATE:**

A transfer of a certificate of operating authority shall be approved after a hearing upon a showing of continued financial and technical competency if the transfer is approved. An application for a transfer of a certificate of operating authority must contain the proposed tariff (in the format approved by the commission) that will be in place after the transfer and include a statement that the LEC will meet the requirements set forth in section 12 of this rule.

[11-15-96; Recompiled 12/31/01]

#### **17.11.5.15 ASSIGNABILITY OF CERTIFICATES OF OPERATING AUTHORITY:**

Any certificate of operating authority or rights obtained under any such certificate held, owned, or obtained by any entity, may be sold, assigned, leased, or otherwise transferred only after the purchaser, assignee, or lessee has complied with this rule.



[11-15-96; Recompiled 12/31/01]

**17.11.5.16 NOTIFICATION OF CHANGE(S) IN CIRCUMSTANCES:**

Any entity holding a certificate of public convenience and necessity or a certificate of operating authority for the provision of local exchange services shall immediately notify the commission in writing of any change(s) in circumstances, including, but not limited to, any of the following: (1) a change in the entity's name; (2) a merger of the entity with another entity; (3) acquisition of the entity by another entity; (4) acquisition by the entity of another entity; and (5) transfer of a significant portion of the entity's assets to another entity. [11-15-96; Recompiled 12/31/01]

**17.11.5.17 DISCONTINUANCE OF SERVICE:**

An entity holding a certificate of public convenience and necessity or a certificate of operating authority to provide local exchange telecommunications services shall do the following prior to discontinuing any service in order to ensure continued quality of service and to protect consumer interests:

**A.** No later than 90 days prior to discontinuing its service, the entity shall file with the commission a notice of proposed discontinuance of service containing the following information:

- (1) The number of customers affected.
- (2) The form of notification to be given to each customer.
- (3) The total amount of deposits due to customers and the availability of such payment from the entity's escrow account for such deposits.
- (4) Any outstanding debts to local exchange carriers or other carriers whose facilities and services are used to provide local exchange services.
- (5) The arrangement for satisfying such debts to local exchange carriers or other carriers prior to and after discontinuance of service.
- (6) The arrangements made for alternative LECs to serve the entity's local exchange service customers.

**B.** No later than sixty days prior to the proposed date of discontinuance of service, the entity shall notify all of its customers of the exact date and time of the proposed discontinuance of service, the deposit amounts owed to each customer, if any, and the provisions the entity has made for continuation of local exchange service to its customers and the manner in which deposits will be returned to customers.

C. No later than thirty days prior to the proposed date of discontinuance of service, the commission shall issue either: (1) a request for further information from the entity; (2) a notice of proposed agency action proposing approval of discontinuance of the service; or (3) a notice of inquiry into the discontinuance which may be subject to the notice and hearing requirements set forth in the commission's rules of procedure.

[11-15-96; Recompiled 12/31/01]

#### **17.11.5.18 TERRITORY UNDER THREAT OF DISCONTINUANCE OF SERVICE:**

In the event that the commission determines that a given territory in the State of New Mexico previously served by a LEC is likely to lose local exchange service, the commission shall conduct a hearing to determine what further steps should be taken to insure continuance of local exchange service to the affected area. [11-15-96; Recompiled 12/31/01]

#### **17.11.5.19 FILING OF ANNUAL REPORTS:**

Subsequent to receipt of a certificate of operating authority from the commission, each certificated LEC shall file with the commission annual reports of its local exchange service operating results within the State of New Mexico by April 1st of each year. Such reports shall be based on Generally Accepted Accounting Principles. Annual reports to be filed by LECs shall contain all pertinent financial data of their operations as detailed in this rule.

[11-15-96; Recompiled 12/31/01]

#### **17.11.5.20 SEVERABILITY:**

If any section of this rule, or the applicability of any section to any person, telecommunications provider, LEC or circumstance, is for any reason held invalid by a court, the remainder of the rule, or the applicability of such provisions to other persons, telecommunications providers, LECs or circumstances, shall not be affected.

[11-15-96; Recompiled 12/31/01]

### **PART 6: REGISTRATION REQUIREMENTS FOR INTRASTATE COMPETITIVE ACCESS PROVIDER TELECOMMUNICATIONS SERVICES WITHIN THE STATE OF NEW MEXICO**

#### **17.11.6.1 ISSUING AGENCY:**

New Mexico State Corporation Commission [New Mexico Public Regulation Commission].

[11-15-96; Recompiled 12/31/01]

**17.11.6.2 SCOPE:**

This rule applies to all competitive access providers of intrastate telecommunications services within the State of New Mexico.

[11-15-96; Recompiled 12/31/01]

**17.11.6.3 AUTHORITY:**

Authority for this rule derives from Article 11 of the New Mexico Constitution and the federal Telecommunications Act of 1996.

[11-15-96; Recompiled 12/31/01]

**17.11.6.4 DURATION:**

Permanent.

[11-15-96; Recompiled 12/31/01]

**17.11.6.5 EFFECTIVE DATE:**

This rule shall take effect November 15, 1996.

[11-15-96; Recompiled 12/31/01]

**17.11.6.6 OBJECTIVES:**

The objectives of this rule are to impose requirements, on a competitively neutral basis, necessary to ensure the continued quality of telecommunications services and to safeguard consumer and public interests.

[11-15-96; Recompiled 12/31/01]

**17.11.6.7 DEFINITIONS:**

As used in this rule, the following terms have the meanings given here:

**A.** Act means the New Mexico Telecommunications Act, NMSA 1978, 63-9A-1 et seq.

**B.** Certificate of registration means a certificate of registration issued by the commission for the provision of competitive access services within the State of New Mexico.

**C.** Commission means the New Mexico State Corporation Commission.

**D.** CAP means competitive access provider which is an entity that provides telecommunications services to customers over its own facilities but does not provide switched local exchange service.

**E.** 1996 Act means the federal Telecommunications Act of 1996, 47 U.S.C. 151, et seq.

**F.** Notice of proposed agency action means a legally sufficient notification of action proposed to be taken by the commission.

**G.** Staff means the staff of the telecommunications department of the commission.

[11-15-96; Recompiled 12/31/01]

#### **17.11.6.8 CERTIFICATE OF REGISTRATION REQUIRED:**

**A.** No telecommunications service shall be offered in this state except in accordance with the provisions of this rule.

**B.** No CAPservices shall be offered in this state without the provider thereof first having obtained a certificate of registration to provide such services from the commission.

**C.** No certificate of registration will be issued by the commission unless the commission determines that an applicant's provision of CAPservices under this rule is consistent with ensuring continuous quality of telecommunications services and safeguarding consumer interests.

[11-15-96; Recompiled 12/31/01]

#### **17.11.6.9 EXISTING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY:**

All certificates of public convenience and necessity issued by the commission previous to the effective date of this rule shall continue in full force and will have the same force and effect as the certificates of registration described herein. Holders of certificates of public convenience and necessity who wish to stop providing continuous and adequate service to the public must first comply with this rule before discontinuing telecommunications services.

[11-15-96; Recompiled 12/31/01]

#### **17.11.6.10 PROCEDURES FOR APPLICATION FOR A CERTIFICATE OF REGISTRATION TO PROVIDE CAPINTRASTATE TELECOMMUNICATIONS SERVICES:**

**A.** Any person, corporation, municipal corporation, partnership or association proposing to operate as a CAP within this state shall first make application to the commission for a certificate of registration. Such application shall conform to the provisions of this rule.

**B.** Any application for a certificate of registration to provide CAP telecommunications services must contain the following:

**(1)** Financial information detailing the applicant's financial resources that will support provision of CAP services in a manner that ensures continued quality of telecommunications services and safeguards consumer and public interests. This includes the filing of: (1) monthly balance sheets and monthly income statements of the applicant, or any affiliated entity of the applicant if that entity will provide the financial support for the resold services, covering the most recent twelve-month period available. If the company, or entity providing financial support to the applicant, does not keep monthly financial documentation as described above, then quarterly financial documents covering the most recent twelve-month period shall be provided to the Commission in lieu thereof; (2) the most recent audited year-end financial statement available. If applicant does not maintain audited year-end financial statements, the applicant may provide an unaudited year-end financial statement together with a notarized verification from the applicant's chief financial officer, or person charged with financial responsibility for the company, attesting that the financial statement provided is a true and correct representation of the company's year-end financial posture; (3) a detailed description of what the financial information submitted signifies in terms of the applicant's ability to provide CAP services within this state properly and continuously. This description shall detail the applicant's current financial posture and describe the financial trend of the applicant over the last twelve-month period and should be supported by specific references to the financial documents which were provided in conformance with Subsections (1) and (2) above.

**(2)** A detailed demonstration of the technical competence of the applicant to provide the CAP services addressed in the application including a detailed description of the qualifications and experience of the applicant's management personnel who will oversee provision of the proposed CAP services.

**(3)** A precise description of the proposed market to be served by the applicant with reference to both the geographic market (*e.g.*, Albuquerque, New Mexico) and the customer class (*e.g.*, residential customers).

**(4)** A precise description of the exact and particular CAP services and other services the applicant proposes to provide.

**(5)** The proposed tariff to be used by the applicant detailing all rates, charges, rules and regulations governing the provision of intrastate telecommunications services and the proposed ratemaking methodology used in determining the tariff's proposed rates.

(6) A demonstration that the applicant is authorized to do business in New Mexico and that the applicant is in good corporate standing in New Mexico.

(7) A listing of all states in which the applicant is authorized to provide telecommunications services and a statement as to whether or not the applicant is in good standing in each of those states, and a detailed explanation of why the applicant is not in good standing in a given state, if applicable.

(8) A listing of any state in which the applicant has been denied a certificate of authority or has had its pre-existing certification revoked, if applicable, and a detailed explanation of why the applicant's application for authority to provide telecommunications services in another state was rejected or its authority to provide such services revoked, if applicable.

(9) A listing of any state in which an investigation, formal complaint or enforcement proceeding against the applicant has been initiated, and a detailed description of the subject matter of such proceeding and of the outcome, or, if still pending, the status of such proceeding.

C. Upon the applicant's filing of a completed application for registration to provide CAPservices, the commission will expeditiously review the application. After this review, the commission will either: issue a notice of proposed agency action; request further information from the applicant; or issue a notice of inquiry regarding the application. Notices of inquiry regarding an application may result in a hearing subject to the commission's notice and hearing requirements contained in the commission's rules of procedure.

[11-15-96; Recompiled 12/31/01]

#### **17.11.6.11 PROVISION AND/OR USE OF FACILITIES:**

An applicant must furnish information with its application describing in detail the facilities that it will furnish and use to provide the proposed CAPservices. If an applicant plans to use the facilities of an underlying carrier, it must identify such facilities by type and underlying carrier.

[11-15-96; Recompiled 12/31/01]

#### **17.11.6.12 PENDING APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE CAPSERVICES:**

Applications for certificates of public convenience and necessity to provide intrastate CAPservices within the State of New Mexico still pending as of the effective date of this rule will be deemed applications for certificates of registration to provide such services.

[11-15-96; Recompiled 12/31/01]

#### **17.11.6.13 TRANSFER OF CERTIFICATE:**

An application for transfer of a certificate shall be approved after a hearing pursuant to a notice of proposed agency action, upon a showing of continued financial and technical competency and the filing, in a format approved by the commission, of the proposed tariff that will be in place after the transfer.

[11-15-96; Recompiled 12/31/01]

#### **17.11.6.14 NOTIFICATION OF CHANGE(S) IN CIRCUMSTANCES:**

Any entity holding a certificate of public convenience and necessity or a certificate of registration for the provision of CAPservices shall immediately notify the commission in writing of any change(s) in circumstances, including, but not limited to, the following: (1) change in the entity's name, (2) merger of the entity with another entity, (3) acquisition of the entity by another entity, (4) acquisition by the entity of another entity, and (5) transfer of the entity's certificate or a significant portion of the entity's assets to another entity.

[11-15-96; Recompiled 12/31/01]

#### **17.11.6.15 DISCONTINUANCE OF SERVICE:**

Any entity holding a certificate of public convenience and necessity or a certificate of registration to provide CAPservices shall do the following prior to discontinuing any service, in order to ensure continued quality of service and to protect consumer interests:

**A.** No later than ninety days prior to discontinuing its service, the entity shall file with the commission a notice of discontinuance of service containing the following information:

- (1)** The number of customers affected.
- (2)** The form of notification to be given to each customer.
- (3)** Any outstanding debts to carriers whose facilities and services are used to provide CAPservices.
- (4)** The arrangement for satisfying such debts prior to and after discontinuance of service.

**B.** No later than sixty days prior to the date the entity proposes to discontinue its service, the entity shall notify all of its customers of its pending notice of discontinuance with the commission and of the proposed date and time of the discontinuance of service and any provisions it has made for continuation of its service, if applicable.

**C.** No later than thirty days prior to the date the entity proposes to discontinue its service, the commission shall issue either: (1) a request for further information from the entity, or; (2) a certificate of approval for discontinuing the service; or (3) a notice of inquiry into the discontinuance which may be subject to the notice and hearing requirements set forth in the commission's rules of procedure.

[11-15-96; Recompiled 12/31/01]

#### **17.11.6.16 TARIFF CHANGES AND NEW SERVICES:**

**A.** Should an entity propose to change any of the rates, charges, terms and conditions contained in its tariff, it must file an original and five copies of the proposed modified tariff, in a format approved by the commission including a brief description of the changes, and their likely impact on the entity and its customers. The most recent rate approved by the commission after notice and hearing will be deemed the "base index rate" for each service on a going forward basis. Changes in rates that fall within a range of fifty percent below to twenty percent above the base index rate shall not require further notice and hearing for approval. The base index rate may be changed after a hearing pursuant to a notice of proposed agency action.

**B.** The rates, charges, terms and conditions for new services shall be reviewed expeditiously by staff. Following this review staff will either: (1) request that a notice of proposed agency action be issued; (2) request further information regarding the proposed changes; or (3) issue a notice of inquiry regarding the proposed changes.

[11-15-96; Recompiled 12/31/01]

#### **17.11.6.17 NOTICE OF PROPOSED AGENCY ACTION:**

The Commission shall set aside a certain day each month to hear a trailing docket which will contain items included in the notice of proposed agency action. The notice of proposed agency action shall be issued at least thirty days prior to the hearing. The commission's chief clerk shall cause the notice of proposed agency action to be published in a newspaper of general circulation and to be sent to a service list designated for that purpose. A person contesting the proposed agency action must file a written objection to the proposed agency action specifying the basis for such objection with the commission's chief clerk within ten business days of the issuance of the notice of proposed agency action. An original and five copies of the objection must be filed with the commission's chief clerk and the objection must also be served upon the CAPseeking a certificate of registration. The person contesting the certification of the CAPshall have the burden of showing why the proposed agency action is not in the public interest. The hearing officer shall determine whether there is good cause for further commission consideration of the contested matter or if the objection should be dismissed and the certificate of registration issued. Upon a showing of good cause and at the discretion of the hearing officer, a separate docket subject to notice and hearing



requirements contained in the commission's rules of procedure may be established for further commission consideration of the contested matter.

[11-15-96; Recompiled 12/31/01]

**17.11.6.18 SEVERABILITY:**

If any Section of this rule, or the applicability of any Section to any person, telecommunications provider, CAP or circumstance, is for any reason held invalid by a court, the remainder of the rule, or the applicability of such provisions to other persons, telecommunications providers, CAPs or circumstances, shall not be affected.

[11-15-96; Recompiled 12/31/01]

**PART 7: INTRASTATE TELECOMMUNICATION SERVICES DISCOUNTS FOR SCHOOLS AND LIBRARIES**

**17.11.7.1 ISSUING AGENCY:**

New Mexico State Corporation Commission ("Commission") [New Mexico Public Regulation Commission], Telecommunications Department, Post Office Box 1269, Santa Fe, New Mexico, 87504-1269.

[7-1-97; Recompiled 12/31/01]

**17.11.7.2 SCOPE:**

This rule applies to all Commission-regulated entities providing intrastate telecommunications services to schools and libraries in the State of New Mexico.

[7-1-97; Recompiled 12/31/01]

**17.11.7.3 AUTHORITY:**

Authority for this rule derives from Article 11 of the New Mexico Constitution.

[7-1-97; Recompiled 12/31/01]

**17.11.7.4 DURATION:**

Permanent.

[7-1-97; Recompiled 12/31/01]

**17.11.7.5 EFFECTIVE DATE:**

July 1, 1997 unless a later date is cited at the end of a section or paragraph.

[7-1-97; Recompiled 12/31/01]

**17.11.7.6 OBJECTIVES:**

The objective of this rule is to implement discounts for schools and libraries for intrastate telecommunications services consistent with those rules and definitions adopted by the United States Federal Communications Commission ("FCC").

[7-1-97; Recompiled 12/31/01]

**17.11.7.7 DEFINITIONS:**

**[RESERVED]**

[Recompiled 12/31/01]

**17.11.7.8 INTRASTATE TELECOMMUNICATION SERVICES DISCOUNTS FOR SCHOOLS AND LIBRARIES:**

With respect to intrastate telecommunication services, determined by the FCC to be within the definition of universal service, the discount for eligible schools and libraries shall be equal to the discount the FCC sets with respect to interstate service.

[7-1-97; Recompiled 12/31/01]

**PART 8: SLAMMING AND CRAMMING PROTECTION**

**17.11.8.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission ("Commission") [New Mexico Public Regulation Commission], 224 East Palace Avenue, Santa Fe, New Mexico 87501.

[7-1-99; Recompiled 12/31/01]

**17.11.8.2 SCOPE:**

This rule applies to every provider or seller of telecommunications services, billing aggregator, and billing agent which is subject to the jurisdiction of the Public Regulation Commission as provided by state or federal law, including all employees, officers, affiliates, and agents of any such person or entity.

[7-1-99; Recompiled 12/31/01]

**17.11.8.3 STATUTORY AUTHORITY:**

The New Mexico Slamming and Cramming Act, Laws 1999 Ch. 138, the New Mexico Constitution, art. II, 2, the New Mexico Public Regulation Act, NMSA 1978 sections 8-8-4, and 8-8-15(C), NMSA 1978 section 63-7-1.1(A)(2), the New Mexico Telephone and Telegraph Company Certification Act, NMSA 1978 section 63-9-1 et seq., the New Mexico Telecommunications Act, NMSA 1978 section 63-9A-1 et seq., the Cellular Telephone Services Act, NMSA 1978 section 63-9B-1 et seq., and the Rural Telecommunications Act of New Mexico, Laws 1999 Ch. 295.

[7-1-99; Recompiled 12/31/01]

**17.11.8.4 DURATION:**

Temporary, until permanent rules are adopted pursuant to NMSA 1978 section 8-8-15(B).

[7-1-99; Recompiled 12/31/01]

**17.11.8.5 EFFECTIVE DATE:**

July 1, 1999, unless a later date is cited at the end of a section or paragraph.

[7-1-99; Recompiled 12/31/01]

**17.11.8.6 OBJECTIVE:**

The purpose of this rule is to establish standards and procedures to investigate and resolve allegations of unauthorized telecommunications charges (cramming") and unauthorized changes in telecommunications service providers (slamming"). This rule shall be liberally construed to carry out its intended purposes.

[7-1-99; Recompiled 12/31/01]

**17.11.8.7 DEFINITIONS:**

As used in this rule:

**A.** "Authorization" means a letter of agency or oral agreement which meets the requirements of these rules;

**B.** "Billing agent" means any local exchange company or any person that submits bills for telecommunications charges or telecommunications services to a customer;

**C.** "Billing aggregator" means a person that bills customers for goods or services provided by others and that uses a local exchange company as a billing agent;

**D.** "Clear and conspicuous" when used in regard to notification or language means notice that would be reasonably apparent to an average customer or language that would be reasonably understandable to an average customer, provided that this definition shall not be construed to assume that an average customer will have any degree of expertise or sophistication regarding telecommunications services or charges;

**E.** "Commission or NMPRC" means the New Mexico Public Regulation Commission;

**F.** "Cramming" means:

(1) charging a customer for telecommunications services that were not authorized by the customer;

(2) charging a customer for goods or services on a customer's telephone bill that are not telecommunications services; or

(3) using a sweepstakes, contest or drawing entry form as authorization to change or add telecommunications services to a customer's telephone bill;

**G.** "Customer" means the individual whose name appears on the telephone bill, the individual responsible for payment of the telephone bill, or a household member or other individual previously designated in writing by the individual responsible for payment of the telephone bill as being authorized to make decisions concerning telecommunications charges or changes in provider. In the case of a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any legal or commercial entity, customer means the individual previously designated in writing by the organization, corporation or other entity as responsible for payment of the telephone bill, or other decisions about telecommunications charges or changes in telecommunications service providers. No authorization designations allowed under this definition shall be effective unless contained in the account records of the local exchange company as of the date any charge or change in provider is made;

**H.** "Local exchange company" means a provider that provides local exchange services;

**I.** "Local exchange services" means the transmission of two-way interactive communications within a local exchange area described in maps, tariffs or rate schedules filed with the commission where local exchange rates apply;

**J.** "New provider" is any provider, including a reseller of long distance services, that did not bill for services on the customer's last previous telephone billing statement;

**K.** "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity;

**L.** "Provider" means a local exchange company, telephone company, transmission company, telecommunications common carrier, telecommunications company, cellular or other wireless telecommunications service company, cable television service, telecommunications reseller, billing aggregator or other person that bills directly or has a billing contract with a local exchange company;

**M.** "Seller" means a provider or other person that sells telecommunications services;

**N.** "Slamming" means:

(1) changing a customer's telecommunications service provider without the customer's authorization; or

(2) using a sweepstakes, contest or drawing entry form as authorization to change a customer's telecommunications service provider;

**O.** "Telecommunications service" means the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves or other electromagnetic means or goods and services related to the transmission of information that are provided by the provider; provided that a good or service that does not meet the definition of telecommunications service" does not become a telecommunications service merely because it is bundled with a telecommunications service for marketing or billing purposes.

[7-1-99, 7-6-99; Recompiled 12/31/01]

#### **17.11.8.8 RELATIONSHIP TO OTHER COMMISSION RULES:**

Unless otherwise specified, this rule is not intended to supersede any other rule of the Commission but to supplement such rules. Nevertheless, if any provision of this rule is inconsistent with the provisions of any other Commission rule, the provisions of this rule shall apply.

[7-1-99; Recompiled 12/31/01]

#### **17.11.8.9 PROHIBITED ACTS:**

**A.** Any person that changes or causes a customer's telecommunications service provider or service to be changed without obtaining the customer's authorization in accordance with these rules is guilty of slamming" and shall be subject to appropriate penalties as provided by law.

**B.** Any person that places or causes a charge for telecommunications services to be placed on a customer's telephone bill without having obtained the customer's authorization in accordance with these rules is guilty of "cramming" and shall be subject to appropriate penalties as provided by law.

**C.** Any person who places or causes a charge to be placed on a customer's telephone bill for goods or services which are not telecommunications services is guilty of "cramming" and shall be subject to appropriate penalties as provided by law.

[8-16-99; Recompiled 12/31/01]

#### **17.11.8.10 CUSTOMER AUTHORIZATIONS:**

**A.** Customer authorization of any charge or change in provider on the customer's telephone bill shall not be valid unless:

**(1)** such authorization is contained in a letter of agency separate from any sales or solicitation material and which contains, in clear and conspicuous language, a full and complete description of any change process, including the identity of any new provider, and any charge for any product or service on the customer's bill. The letter of agency shall also contain, in clear and conspicuous language, 1) a full and complete description of the rates, fees and charges associated with any new provider and any product or service on the customer's telephone bill, 2) the customer's name and billing address, 3) a notation of each telephone number to be covered by any change in provider, 4) if applicable, a statement that the customer intends to change from one provider to another, and 5) a statement that the customer knows that there may be a charge for the change in service. At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible, comparable to the type size and style used in any promotional materials accompanying the sales/marketing offer. The letter of agency shall be signed by the customer before any change may be made in a customer's provider, and before any charge for any product or service may be placed on a customer's bill; or

**(2)** such authorization is obtained pursuant to an oral agreement where the provider or seller originating the charge or change of provider records the entirety of any and all communications or conversations with the customer leading to such authorization, including all terms and conditions of any such charges or change in provider. Customer authorizations obtained pursuant to an oral agreement shall only be valid if the provider or seller originating the charge or change in provider provides the customer with a full and complete description of the rates, fees and charges associated with any new provider and any product or service on the customer's telephone bill. The customer's authorization pursuant to an oral agreement shall be obtained before any change may be made in a customer's provider, and before any charge for any product or service may be placed on a customer's bill.

**B.** Customer authorization of any charge or change in provider or service on a customer's telephone bill that does not comply with the requirements of these rules shall be void and without effect, except that authorization is not required for charges related to the use of customer-initiated dial-around" services such as 10-10-XXX", directory assistance, operator-assisted calls, and acceptance of collect calls.

**C.** Customer authorization of any charge or change in provider or service on a customer's telephone bill shall be void and without effect if obtained using a sweepstakes, contest, or drawing entry form.

[8-16-99; Recompiled 12/31/01]

#### **17.11.8.11 INFORMATION ON CUSTOMER TELEPHONE BILLS:**

**A.** Any charge or change in provider shall be indicated on the customer's telephone bill in clear and conspicuous language and easily legible type.

**B.** Any person that places or causes a charge to be placed on a customer's telephone bill, and any person that changes or causes a customer's provider to be changed shall:

(1) clearly and conspicuously identify the name of the provider associated with each charge or change of provider on the telephone bill;

(2) include a brief, clear and conspicuous description of the product, service, or change in provider to be placed on the customer's bill, including the amount charged for each product, service, or change in provider or service (including taxes and surcharges). The description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged;

(3) clearly and conspicuously display on each bill a toll-free number or numbers by which customers may inquire or dispute any charge contained on the bill. The toll-free number or numbers shall, at a minimum, be staffed during normal business hours with personnel able to provide sufficient information as necessary to respond to and resolve customer inquiries concerning any charge, service, or change in provider on a customer's bill, provided that after normal business hours a customer is able to leave a recorded message on a 24-hour per day basis concerning any inquiry or complaint regarding unauthorized charges or changes in provider on the customer's telephone bill. If a customer's call to the toll-free number is recorded after normal business hours, the provider or its agent staffing the number must call the customer back by the end of the next business day and keep trying for three days. If the customer cannot be reached in three days, a letter must be sent to the customer stating that the contact could not be made and providing the toll-free number and operating hours when the customer may reach personnel able to assist the customer with resolving questions

or complaints regarding unauthorized charges or changes in provider. A provider may list a toll-free number for a billing agent, clearinghouse, or other third party, provided that such party possesses sufficient information to answer questions concerning the customer's account and is fully authorized to resolve customer complaints on the provider's behalf. Each provider must make its business address available upon request to customers through its toll-free number; and

**(4)** where charges or changes for two or more providers appear on the same telephone bill, separate such charges and provide clear and conspicuous notification of any change in provider, including notification to the customer that a new provider has begun providing service.

**C.** Where a customer's telephone bill contains charges for local exchange service, in addition to other charges, the bill must distinguish between charges for which non-payment will result in disconnection of basic local exchange service, and charges for which non-payment will not result in such disconnection. The local exchange carrier or its billing agent must clearly and conspicuously identify on the customer's telephone bill those charges for which non-payment will not result in disconnection of basic local exchange service.

**D.** At least two times per year at regular intervals, the local exchange company or other billing agent shall deliver to each customer a bill stuffer or separate mailing which 1) explains procedures for resolving customer complaints concerning unauthorized charges or changes in provider on the customer's telephone bill, 2) includes the Commission's toll-free telephone number where customers can obtain assistance with resolving disputed charges or changes in provider, and 3) advises the customer of their right to be absolved of liability for any unauthorized charges or changes in provider for a period of 90 days.

[8-16-99; Recompiled 12/31/01]

#### **17.11.8.12 RESOLUTION OF CUSTOMER COMPLAINTS AND DISPUTES:**

**A.** A customer may contact his or her local exchange company, authorized provider, or the unauthorized provider to report an unauthorized charge or change of provider. Any provider contacted by a customer concerning a disputed charge or change in provider shall notify the local exchange company about the disputed charge or change in provider or service within 24 hours.

**B.** Upon receipt of notification by a customer, another provider, or the local exchange company of a disputed charge or change in provider on a customer's bill, a provider and any billing agent shall immediately cease all efforts to collect payment for the disputed charge or change.

**C.** Customer complaints concerning disputed charges or changes in provider must be submitted to the Consumer Relations Division of the Commission Staff in writing. To



expedite resolution of the complaint, the customer shall provide the Commission Staff with the following information

- (1) a copy of the bill with the disputed charge or change in provider;
- (2) a brief discussion of any unauthorized charge or change in provider, including the dollar amount under dispute;
- (3) a brief discussion outlining the attempts made to resolve the disputed charge or change in provider;
- (4) the names and telephone numbers of the provider or providers contacted by the customer, and the approximate date of any such contact.

**D.** Upon receipt of a customer complaint concerning a disputed charge or change in provider, the Commission Staff shall mail a copy of the customer's complaint to the provider responsible for originating the disputed charge or change in provider, along with a request for verification of the customer's authorization of such charge or change in provider. To aid the Commission Staff in expediting resolution of complaints, each provider shall provide the Commission with the name, address, and telephone number of the appropriate individual or department designated to assist in resolving customer complaints concerning slamming and cramming.

**E.** Within 14 days of the date on which Staff mails the notification of a customer complaint to any provider, the provider originating the disputed charge or change in provider shall submit verification to Staff of the customer's authorization of any such charge or change in provider in the form required under these rules.

**F.** Upon receipt of verification of a customer's authorization of any disputed charge or change in provider, the Commission Staff shall review such verification and make a determination concerning whether the authorization meets the requirements of these rules.

**G.** Once the Commission Staff makes a determination concerning whether a disputed charge or change in provider was authorized by the customer in accordance with these rules, Staff shall promptly mail its determination to the customer and the provider originating the disputed charge or change in provider of its determination. If the customer wishes to contest Staff's initial determination concerning the customer's authorization of the disputed charge or change in provider, the customer shall have 30 days from the date Staff's initial determination is mailed in which to submit any additional evidence or information it believes should be considered by Staff and the Commission in making its final determination concerning the customer's authorization of the disputed charge or change in provider. The Staff shall promptly mail any such additional information or evidence submitted by the customer to the provider.

**H.** If the customer contests Staff's initial determination concerning the customer's authorization of any disputed charge or change in provider by submitting information or evidence contesting the genuineness or authenticity of the customer's authorization submitted to Staff by the provider pursuant to section 12.5, within 15 days of the date Staff mails any such information to the provider, the provider may submit any additional evidence which may be necessary to establish the authenticity or genuineness of the customer's authorization of the disputed charge or change in provider, provided that the provider's right to submit such additional evidence shall not be construed to allow submission of the initial proof of customer authorization required under section 12.5 of this rule.

**I.** After the time period for submission of additional evidence or information concerning the customer's authorization of a disputed charge or change in provider has expired, or upon receiving written notification that the customer or the provider does not wish to submit such additional evidence, Staff shall make a final determination concerning the customer's authorization of the disputed charge or change in provider in accordance with these rules.

**J.** In making its final determination concerning the customer's authorization of a disputed charge or change in provider, Staff shall presume that a disputed charge or change in provider was not authorized whenever

**(1)** any provider fails to provide verification of customer authorization to the Commission Staff in the form and manner required under these rules; or

**(2)** the Commission Staff determines that there is a lack of sufficient evidence confirming that the customer authorized any charge or change in provider in accordance with these rules.

**K.** After receipt of notification of Staff's final determination concerning the customer's authorization of a disputed charge or change in provider, if either the customer or the provider wishes to contest Staff's final determination it shall file a written appeal of Staff's determination with the Commission within 14 days. Thereafter, the Commission will review the evidence submitted in the course of Staff's investigation and issue an Order upholding or reversing Staff's final determination. Where appropriate, the Commission in its discretion may choose to assign a Hearing Examiner to conduct a hearing and take further evidence and testimony as the Commission deems necessary to reach a final determination concerning the customer's authorization of the disputed charge or change in provider.

**L.** If no party files an appeal of Staff's final determination on the disputed charge or change in provider within the 14 day period provided for in these rules, Staff's determination shall become final and have the same force and effect as a final Commission Order for purposes of judicial review.

**M.** After receipt of notification by a customer of a disputed charge or change in provider listed on a customer's bill, and after attempting to informally resolve any such dispute with the customer, if the customer fails to file a complaint with the Commission within 30 days of disputing such a charge or change in provider, a provider may submit a written request to the Commission for a determination of the customer's authorization of the disputed charge or change in provider in the same manner provided for in these rules for customer initiated complaints. In addition to the information required to be filed with a customer initiated complaint, at the time it files any such request for determination, the provider shall also provide the Commission Staff with verification of the customer's authorization of the disputed charge or change in provider in accordance with these rules.

**N.** Upon receipt of a provider's request for determination of a customer's authorization of a disputed charge or change in provider which contains all of the information required under these rules, the Commission Staff shall notify the customer and proceed to make a determination concerning the customer's authorization of the disputed charge or change in provider in accordance with the rules for investigation of customer initiated complaints.

[8-16-99; Recompiled 12/31/01]

#### **17.11.8.13 PAYMENT OF DISPUTED CHARGES:**

**A.** After receipt of notification by a customer or the Commission Staff of a disputed charge or change in provider listed on a customer's bill, no provider, billing agent or local exchange company may require the customer to pay any portion of a disputed charge or any charge or fee related to a disputed charge or change in provider until the customer's authorization of the disputed charge or change in provider has been established in an investigation conducted pursuant to these rules. The local exchange company or any other person that serves as the billing agent shall not allocate any portion of a customer's payment to a disputed charge or change in provider until customer authorization of the disputed charge or change in provider has been verified in accordance with these rules.

**B.** After receipt of notification by a customer or the Commission Staff of a disputed charge or change in provider listed on a customer's bill, no provider or local exchange company may disconnect or threaten to disconnect a customer's local exchange service because the customer refuses to pay charges resulting from the disputed charge or change in provider until the customer's authorization of the disputed charge or change in provider has been established in an investigation conducted pursuant to these rules.

**C.** After investigation of a customer complaint concerning any disputed charge or change in provider, if the Commission Staff makes a final determination that such charge or change in provider was not authorized in accordance with these rules, the provider originating the unauthorized charge or change in service provider shall, as applicable:

- (1) within 30 days refund the full amount of any unauthorized charges paid by the customer;
- (2) within 30 days remove any unauthorized charges from the customer's bill;
- (3) promptly restore the customer's service to the authorized provider; and
- (4) promptly credit any amounts paid by the customer to the authorized provider.

**D.** Any charges or fees for deletion of an unauthorized charge or restoration of service to the authorized provider, and any other costs, fees, or charges of any kind imposed or required as a result of any unauthorized charge or change in provider shall be paid by the provider responsible for originating the unauthorized charge or change in provider.

**E.** After investigating any disputed charge or change in provider, if the Commission or Staff determines that such charge or change in provider was authorized by the customer in accordance with these rules, Staff shall promptly notify the customer and the provider originating such charge or change in provider of its determination, and the provider or billing agent may resume billing the customer for any such charge or change in provider authorized by the customer.

**F. Customer Absolution--** If the Commission or Staff determines that a disputed charge or change in provider was not authorized by the customer, the customer shall be absolved of all liability for any and all such unauthorized charges or change in provider during the first 90 days after the unauthorized charge or change in provider first appeared on the customer's bill.

**G.** Notwithstanding any other provision of these rules, if a customer has failed to report an unauthorized charge or change in provider and as a result has incurred or paid charges or fees in excess of the initial 90 day period from when that charge or change in provider first appeared on the customer's bill, the Commission may determine whether the customer should be held liable for any portion of such charge or change in provider incurred or paid beyond the initial 90 day period, provided that in no event shall a customer be held liable for any charges or fees related to an unauthorized change in provider beyond the initial 90 day absolution period which is in excess of the amount of any such charges or fees the customer would have been liable for to the customer's authorized provider.

**H.** In the event that the Commission or Staff makes a final determination that a customer should be liable for any portion of an unauthorized charge or change in provider beyond the initial 90 day absolution period provided for in these rules, the authorized provider or the local exchange company or other billing agent may attempt to collect any credited amounts of such charges or fees from the unauthorized provider. If the authorized provider, local exchange company or billing agent is unable to reach an

agreement with the unauthorized provider as to the correct amount of such credited payments to be collected from the unauthorized provider, it may submit a complaint requesting a determination to the Commission, along with sufficient information to enable the Commission to make a determination on the appropriate amount of any such payments or credits.

[8-16-99; Recompiled 12/31/01]

#### **17.11.8.14 SALE AND VERIFICATION OF TELECOMMUNICATIONS SERVICES:**

**A.** All providers shall approve all sales scripts and written materials used by its sellers, including contract sellers.

**B.** Any seller that attempts to persuade a customer to purchase telecommunications services or change his provider shall make adequate inquiry to reasonably ensure that he is talking to the customer.

**C.** All sellers shall, at a minimum, clearly and unambiguously:

**(1)** identify himself or herself and the provider that he or she is asking the customer to use or the telecommunications service he or she is asking the customer to purchase; and

**(2)** explain all the material terms and price of the purchase and inform the customer of the fact that a fee may be charged for any change in provider.

**D.** A seller shall not use false or misleading information or tactics that would be considered by a prudent person to be pressure tactics to convince the customer to purchase a telecommunications service or change a provider.

[8-16-99; Recompiled 12/31/01]

#### **17.11.8.15 EMERGENCY FINDINGS:**

The Commission finds that slamming and cramming practices present an immediate threat to the general welfare of the public and that it is necessary and proper to adopt these rules on an emergency basis as provided by section 8-8-15(C) of the Public Regulation Commission Act, 1978 NMSA 8-8-1 et seq.

[7-1-99; Recompiled 12/31/01]

### **PART 9: RETAIL RATE FILING PROCEDURES FOR INCUMBENT RURAL TELECOMMUNICATIONS CARRIERS**

#### **17.11.9.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission, Utility Division.

[1-14-00; Recompiled 12/31/01]

**17.11.9.2 SCOPE:**

This rule applies to incumbent rural telecommunications carriers seeking to establish rates, terms and conditions for new services or to make changes in the rates, terms and conditions of existing services.

[1-14-00; Recompiled 12/31/01]

**17.11.9.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 8-8-4 and 63-9H-7.

[1-14-00; Recompiled 12/31/01]

**17.11.9.4 DURATION:**

Permanent.

[1-14-00; Recompiled 12/31/01]

**17.11.9.5 EFFECTIVE DATE:**

January 14, 2000, unless a later date is cited at the end of a section or paragraph.

[1-14-00; Recompiled 12/31/01]

**17.11.9.6 OBJECTIVE:**

The purpose of this rule is to implement NMSA 1978, Section 63-9H-7 by providing procedures for filing rates for new services and changes in rates for existing services, and for protesting rate increases for residential local exchange service.

[1-14-00; Recompiled 12/31/01]

**17.11.9.7 DEFINITIONS:**

The definitions contained in the Rural Telecommunications Act of New Mexico, NMSA 1978 Sections 63-9H-1 *et seq.*, and in 17 NMAC 1.2 [now 17.1.2 NMAC], Utility Division Procedures, shall apply to this rule.

[1-14-00; Recompiled 12/31/01]

### **17.11.9.8 FILINGS REGARDING CHANGES IN RATES:**

**A.** An incumbent rural telecommunications carrier seeking to establish rates, terms and conditions for new retail public telecommunications services or to make changes in the rates, terms and conditions of existing retail public telecommunications services, other than increases in residential local exchange service rates, shall file with the Commission two (2) copies each of an advice notice, tariffs (including terms and conditions), and an affidavit of publication from a local newspaper in the incumbent rural telecommunications carrier's service area showing publication of the advice notice.

**B.** In addition to the requirements in 17 NMAC 13.9.8.1[now Subsection A of 17.11.9.8 NMAC], an incumbent rural telecommunications carrier seeking reductions in rates for local exchange, vertical, and long distance service to retail end-user customers shall file with the Commission two (2) copies of an affidavit made by the responsible representative of the carrier attesting that the requirements of NMSA 1978 Section 63-9H-7(G) have been met.

**C.** An incumbent rural telecommunications carrier seeking an increase in rates for residential local exchange service shall file with the Commission:

**(1)** for prior approval, two (2) copies of its proposed form of notice to affected subscribers at least fifteen (15) days prior to mailing the form of notice to affected subscribers. If Commission staff do not approve or disapprove the proposed form of notice within five (5) business days, the form of notice shall be deemed approved. Staff approval shall not create a presumption that the Commission finds the form of notice legally sufficient;

**(2)** an original and fourteen (14) copies of an advice notice on or before the date the carrier mails the Commission staff-approved notice of proposed increases in rates to affected subscribers; and

**(3)** two (2) copies of an affidavit attesting that the carrier has mailed the Commission Staff-approved notice to all affected subscribers.

[1-14-00; Recompiled 12/31/01]

### **17.11.9.9 NOTICE TO AFFECTED SUBSCRIBERS OF PROPOSED INCREASES IN RESIDENTIAL LOCAL EXCHANGE SERVICE RATES:**

**A. Written notice required.** An incumbent rural telecommunications carrier proposing an increase in residential local exchange service rates shall mail a written notice filed with the Commission and approved by the Commission Staff to all affected subscribers at least sixty (60) days prior to the effective date of the proposed rate increase. The notice may be mailed to affected subscribers with their billings or separately.

**B. Contents of notice.** In addition to the information required by NMSA 1978, Section 63-9H-7(C), the notice of proposed rate increase shall include

- (1) the existing rate, the proposed rate and the percentage increase;
- (2) the effective date of the last rate increase;
- (3) the effective date of the proposed rate increase;
- (4) a statement that the new rates will go into effect automatically and will not be considered for review and hearing by the Public Regulation Commission unless Commission staff files its own motion for a hearing and demonstrates good cause, or unless at least two and one-half percent (2.5%) of all affected subscribers file a protest with the Commission within sixty (60) days of the date notice was mailed to the affected subscribers, together with a statement of the number of subscribers constituting two and one-half percent (2.5%);
- (5) a statement that procedures for protesting the proposed rate increase are set forth in 17 NMAC 1.2 [now 17.1.2 NMAC], Utility Division Procedures, which can be obtained from, or inspected at, the main office of the incumbent rural telecommunications carrier or the offices of the Commission in Santa Fe, that forms for protests are available from either the incumbent rural telecommunications carrier or the Commission, and providing the telephone numbers and addresses of both the incumbent rural telecommunications carrier and the Commission; and
- (6) a statement that any interested person may examine the rate filings and any related exhibits and papers at the main office of the incumbent rural telecommunications carrier or at the offices of the Commission in Santa Fe.

**C. Grounds for rejection of rate filing.** Failure of an incumbent rural telecommunications carrier to provide the written notice required by NMSA 1978 Section 63-9H-7(C) and this rule to all affected subscribers at least sixty (60) days prior to the effective date of the proposed rate increase shall be grounds for rejection of the proposed rate increase

[1-14-00; Recompiled 12/31/01]

#### **17.11.9.10 PROTESTS OF PROPOSED RATE INCREASES FOR RESIDENTIAL LOCAL EXCHANGE SERVICES:**

**A. Required contents of protest.** Protests by affected subscribers of proposed increases in residential local exchange service rates must be made in writing to the Commission and shall be signed by each protesting subscriber. In addition to the requirements of NMSA 1978, Section 63-9H-7(E), protests shall contain:



(1) the name of the incumbent rural telecommunications carrier whose proposed rates are being protested;

(2) the name, mailing address, and phone number of each protesting subscriber protesting the proposed rate increase; and

(3) the name, mailing address, and phone number of each protesting subscriber's attorney, if any.

**B. Additional information encouraged.** Protesting subscribers are strongly encouraged, but not required, to file with the protest any data, exhibits, illustrations, prepared testimony, or written argument pertinent to the protest which may aid the Commission in its review of the proposed rates. In addition, the affected subscribers should make an effort to serve a copy of the protest on the incumbent rural telecommunications carrier.

**C. Format.** All protests shall show a caption of the proceeding, shall include a space for the docket number, and shall be titled "Protest". When possible, protests shall be typed, double-spaced, on 8 1/2 inch by 11 inch paper fastened only on the left side. Protesting subscribers may, but are not required to, use the form provided in 17 NMAC 13.9.12 [now 17.11.9.12 NMAC] for protests. An incumbent rural telecommunications carrier shall make copies of the Commission's protest form provided in 17 NMAC 13.9.12 [now 17.11.9.12 NMAC] and instructions provided in 17 NMAC 13.9.13 [now 17.11.9.13 NMAC] available to its subscribers upon request. An incumbent rural telecommunications carrier shall also promptly deliver the protest form and instructions to its subscribers upon request.

**D. Filings with the Commission.** Unless the Commission otherwise directs, protesting subscribers shall file with the Commission an original plus one (1) copy of the protest and any accompanying documents.

[1-14-00; Recompiled 12/31/01]

**17.11.9.11 CONFLICTS IN PROCEDURES:**

If any procedure established in this rule conflicts with a procedure set forth in 17 NMAC 1.2 [now 17.1.2 NMAC], Utility Division Procedures, the procedures provided in this rule shall govern.

[1-14-00; Recompiled 12/31/01]

**17.11.9.12 PROTEST FORM:**

IN THE MATTER OF THE )

FILING OF NEW RATES BY )

(insert name of Incumbent Rural Telecommunications Carrier)) CASE NO. \_\_\_\_\_

PROTEST OF PROPOSED RATE INCREASE  
FOR RESIDENTIAL LOCAL EXCHANGE SERVICE

SUBMITTED BY:

Name of Protesting Subscriber: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

(Attach the name, mailing address, and telephone number of each protesting subscriber.)

ATTORNEY INFORMATION:

Attorney's Name: \_\_\_\_\_

Attorney's Address: \_\_\_\_\_

Attorney's City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Attorney's Work Phone: \_\_\_\_\_

(Attach the name, mailing address, and telephone number of the attorney of each protesting subscriber.)

I am a customer of (insert name of incumbent rural telecommunications carrier).

I protest the following rate increase for residential local exchange service being proposed by the above-named

Incumbent Rural Telecommunications Carrier

(insert here the particular rate increase that is being protested)

I protest the rate increase for the following reasons:

In its review of the proposed rate increase, I request that the Commission grant the following relief:

[1-14-00; Recompiled 12/31/01]

### **17.11.9.13 INSTRUCTIONS FOR FILING A PROTEST:**

When an affected subscriber requests a copy of the Commission's protest form, a rural incumbent telecommunications carrier shall provide a copy of the following instructions together with the form contained in 17 NMAC 13.9.12 [now 17.11.9.12 NMAC]:

Instructions for Protesting an Rural Incumbent Telecommunications Carrier's Residential Local Exchange Service Proposed Rate Increase

17 NMAC 13.9 [now 17.11.9 NMAC], Retail Rate Filing Procedures for Incumbent Rural Telecommunications Carriers, implements NMSA 1978, Section 63-9H-7 (1999), a state law passed in 1999 that allows an incumbent rural telecommunications carrier to propose rate increases for residential local exchange service to its customers. If two and one-half percent of all affected subscribers protest to the Commission, the Commission may review the rate increase in a formal rate case. If fewer than two and one-half percent of all affected subscribers protest, the rate increase will go into effect without Commission review.

To file a protest, you must be a subscriber of the incumbent rural telecommunications carrier seeking an increase in rates. The protest must be received by the Commission within sixty (60) days from the date the notice of the proposed rate change was sent to affected subscribers.

To protest, fill out the enclosed protest form as completely as possible. You may leave the case number blank and you do not need to fill out the information about attorneys if you do not have an attorney.

You should deliver a copy of the protest and any accompanying documents to the incumbent rural telecommunications carrier either in person or by mail.

You must also file an original and fourteen (14) copies of the protest form and any accompanying documents.

If you file the protest in person, bring it to: New Mexico Public Regulation Commission, Marian Hall, 224 East Palace Avenue, Santa Fe, New Mexico 87501-2013

If you file the protest by mail, send it to: New Mexico Public Regulation Commission, P.E.R.A. Building, P.O. Box 1269, Santa Fe, NM 87504-1269

For more information, you may call the Commission at 505-827-6940, or contact the incumbent rural telecommunications carrier.

[1-14-00; Recompiled 12/31/01]

## **PART 10: STATE RURAL UNIVERSAL SERVICE FUND**

### **17.11.10.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.11.10.1 NMAC - Rp, 17.11.10.1 NMAC, 3/12/2024]

### **17.11.10.2 SCOPE:**

This rule applies to all entities that provide intrastate retail public telecommunication services and comparable retail alternative services in New Mexico.

[17.11.10.2 NMAC - Rp, 17.11.10.2 NMAC, 3/12/2024]

### **17.11.10.3 STATUTORY AUTHORITY:**

Sections 62-19-9 and 63-9H-6 NMSA 1978.

[17.11.10.3 NMAC - Rp, 17.11.10.3 NMAC, 3/12/2024]

### **17.11.10.4 DURATION:**

Permanent.

[17.11.10.4 NMAC - Rp, 17.11.10.4 NMAC, 3/12/2024]

### **17.11.10.5 EFFECTIVE DATE:**

March 12, 2024, unless a later date is cited at the end of a section.

[17.11.10.5 NMAC - Rp, 17.11.10.5 NMAC, 3/12/2024]

### **17.11.10.6 OBJECTIVE:**

The purpose of this rule is to provide procedures for administering and implementing the New Mexico state rural universal service fund to maintain and support universal service provided by telecommunications carriers that have been designated as eligible telecommunications carriers.

[17.11.10.6 NMAC - Rp, 17.11.10.6 NMAC, 3/12/2024]

### **17.11.10.7 DEFINITIONS:**

In addition to the definitions contained in Section 63-9H-3, NMSA 1978, as used in this rule:

## **A. Definitions beginning with "A":**

(1) Access line means a dial tone line, or its functional equivalent, that provides local exchange service from a carrier's switching equipment to a point of termination at the customer's network interface, and is not limited to wireline or any other technology; for the purposes of this rule, an access line does not include official lines, unbundled network elements/platforms, retail resale, wholesale resale, special access lines and private lines.

(2) Administrator means the person designated by the commission to administer the fund.

(3) Area underserved by broadband means a broadband program proposed project area where fifty percent or more of households and businesses, in the aggregate, have access to broadband service offering speeds of at least 25/3 Mbps but lower than 100/20 Mbps (download/upload). A household has access to broadband service if the household can subscribe within 10 business days of a request.

(4) Area unserved by broadband means a broadband program proposed project area where seventy-five percent or more of the households lack access to broadband service offering speeds of at least 25/3 Mbps (download/upload). A household has access to broadband service if the household can subscribe to that service within 10 business days of a request.

## **B. Definitions beginning with "B":**

(1) Basic local exchange rate means an incumbent local exchange carrier's tariffed, monthly, flat single-line rate charged to its retail customers for the provision of local exchange service; for the purposes of this rule, the "residential" and "business" basic local exchange rates shall include any commission-mandated subscriber line charges or extended area service charges.

(2) Broadband internet access service means a mass-market retail service by wire, wireless or other technology that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints including any capabilities that are incidental to and enable the operation of the communications service, or a functionally equivalent service, but excluding dial-up internet access service. For purposes of this rule, broadband internet access service means a service transmission speed of 25.0 Mbps download/3.0 Mbps upload.

(3) Broadband office means the office of broadband access and expansion.

## **C. Definitions beginning with "C":**

(1) Carrier means an entity that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico.

(2) Commercial mobile radio service (CMRS) means a designation by the federal communications commission for any carrier or licensee whose wireless network is connected to the public switched telephone network or is operated for profit.

(3) Commission means the New Mexico public regulation commission.

(4) Communication connection means a voice-enabled telephone access line, wireless voice connection, unique voice over internet protocol service connection, or other uniquely identifiable functional equivalent as determined by the commission.

(5) Contributing company means any carrier that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico.

(6) Council means the connect New Mexico council, as defined in Section 63-9K-3 NMSA 1978.

**D. Definitions beginning with "D": [RESERVED]**

**E. Definitions beginning with "E":**

(1) Eligible telecommunications carrier (ETC) means a carrier with New Mexico operations that has been designated as eligible to receive disbursements from the fund or from the federal universal service fund, or both, for a designated service area determined by the commission.

(2) Exempt customer means an end-user of telecommunications service that is the state of New Mexico, a county, a municipality or other governmental entity; a public school district; a public institution of higher education; an Indian nation, tribe, or pueblo; a Native American customer who resides on tribal or pueblo land; a private telecommunications network; or a person eligible to receive reduced rates under a low-income telephone assistance plan created by the federal government or the state of New Mexico.

**F. Definitions beginning with "F":**

(1) FCC means the federal communications commission.

(2) Fund means the state of New Mexico universal service fund established pursuant to Section 63-9H-6, NMSA 1978 and this rule.

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

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

**I. Definitions beginning with "I":**

(1) Imputed benchmark revenue means the difference between the affordability benchmark rates established by the commission pursuant to this rule and the carrier's basic local exchange residential and business rates as of July 1, 2014, multiplied by the number of basic local exchange residential and business access lines served by the carrier as of December 31 of the year that precedes the year during which the revenue requirement is being determined pursuant to Subparagraph E of 17.11.10.19 NMAC; imputed benchmark revenue shall not be less than zero.

(2) Interexchange carrier (IXC) means an entity that provides intrastate toll services in New Mexico.

(3) Intrastate retail public telecommunications services means services including, but not limited to, all types of local exchange service; non-basic, vertical or discretionary services, also known as advanced features, or premium services, such as, but not limited to, call waiting, call forwarding, and caller identification (ID); listing services; directory assistance services; cellular telephone and paging services; commercial mobile radio services; personal communications services (PCS); both optional and non-optional operator services; wide area telecommunications services (WATS) and WATS-like services; toll-free services; 900 services and other informational services; message telephone services (MTS) or toll; CENTREX, centron and centron-like services; video conferencing and teleconferencing services; the resale of intrastate retail public telecommunications services; payphone services; services that provide telecommunications through a New Mexico telephone number using voice over internet protocol (VOIP) or comparable technologies; any services regulated by the commission; and such other services as the commission may by order designate from time to time as equivalent or similar to the services listed above, without regard to the technology used to deliver such services.

(4) Intrastate retail public telecommunications services revenue means the revenue collected from the sale of intrastate telecommunications services to end users; for voice over internet protocol (VOIP) and similar services, the portion of total retail revenues attributable to intrastate retail telecommunications shall be equal to the proportion of calls originating and terminating in New Mexico to all calls originating in New Mexico.

(5) Intrastate switched access charge means a charge levied by a carrier for the availability and use of its facilities for origination and termination of intrastate interexchange calls as contained in tariffs approved by the commission.

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

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

**L. Definitions beginning with "L":** Local exchange carrier (LEC) means an entity certificated to provide local exchange service in New Mexico.

**M. Definitions beginning with "M": [RESERVED]**

**N. Definitions beginning with "N":** New Mexico operations means intrastate retail public telecommunications services and comparable retail alternative services provided in New Mexico.

**O. Definitions beginning with "O": [RESERVED]**

**P. Definitions beginning with "P": [RESERVED]**

**Q. Definitions beginning with "Q.": [RESERVED]**

**R. Definitions beginning with "R":** Rural area means:

- (1) any unincorporated area or;
- (2) any city, town or incorporated area with a population of 20,000 or less as reflected in the most recent decennial United States census together with any applicable Tribal census.

**S. Definitions beginning with "S":**

(1) Service area means a geographic area established by the commission in accordance with Section 214(e)(5) of the federal act (47 U.S.C. Section 214(e)(5)).

(2) State rural universal service fund (SRUSF) means the state of New Mexico universal service fund established pursuant to Section 63-9H-6, NMSA 1978 and this rule.

(3) Statewide broadband plan means a plan for the development and expansion of broadband infrastructure and services throughout the state as developed by the New Mexico office of broadband access and expansion.

**T. Definitions beginning with "T": [RESERVED]**

**U. Definitions beginning with "U":** Universal service means basic local exchange service and comparable retail alternative services at affordable rates, service pursuant to a low-income telephone assistance plan, and broadband internet access service to unserved and underserved areas of New Mexico as determined by the commission.

**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]**

[17.11.10.7 NMAC - Rp, 17.11.10.7 NMAC, 3/12/2024]

**17.11.10.8 REDUCTION OF INTRASTATE SWITCHED ACCESS CHARGES:**

The commission may, upon motion of a carrier or the administrator, or upon the commission's own motion, authorize further intrastate switched access charge reductions for a carrier to correspond to any changes in that carrier's tariffed interstate switched access service charge rates, elements or structure subsequent to January 1, 2006.

[17.11.10.8 NMAC - Rp, 17.11.10.8 NMAC, 3/12/2024]

**17.11.10.9 AFFORDABILITY BENCHMARK RATES:**

**A.** Effective January 1, 2020, unless changed by the commission in a proceeding pursuant to Subsection B of 17.11.10.09 NMAC, the residential and business affordability benchmark rates to be utilized in determining the level of support available from the fund are as follows:

(1) the residential benchmark rate for basic local exchange service shall be \$18.00; except that the commission may on its own motion and at any time conduct a review of the residential benchmark rate and change it accordingly, as per Subsection B of 17.11.10.9 NMAC;

(2) the business benchmark rate for basic local exchange service shall be carrier-specific and shall be equal to the business basic exchange rate of each local exchange carrier as of January 1, 2020;

(3) each local exchange carrier shall, on or before May 1 of each year, advise the commission and the administrator in writing of its residential and business basic local exchange rates to be in effect on July 1 of that year and how they were determined;

(4) increases in the residential basic local exchange rates of incumbent rural telecommunications carriers toward the residential benchmark rate established in this section shall be implemented by timely filing of tariff revisions with the commission and shall be effective after 10 days' notice to the carrier's customers and the commission;

**B.** The commission may conduct a proceeding to establish new affordability benchmark rates upon its own motion.

[17.11.10.9 NMAC - Rp, 17.11.10.9 NMAC, 3/12/2024]

#### **17.11.10.10 SELECTION OF ADMINISTRATOR:**

The commission will designate a third-party administrator who will be subject to the supervision and control of the commission for a four-year term. The administrator shall perform services under the terms of a written contract to be entered into between the commission and the administrator. The commission shall procure the services of a subsequent administrator before the expiration of the term of each such contract, or in the event of early termination of such contract, as soon as practicable before or after the early termination.

**A. Criteria for selection:** the commission will issue a request for proposals to select the administrator; the commission shall consider whether the bidder has demonstrated the competence needed to administer the fund and the rate of compensation proposed; the commission shall also consider at a minimum whether the bidder:

- (1) is able to be neutral and impartial;
- (2) is a member of a trade association that advocates positions before this commission or other state commissions in administrative proceedings related to telecommunications issues;
- (3) is an affiliate of any contributing company;
- (4) has a substantial financial interest in any entity or affiliate that provides telecommunications services or comparable retail alternative services; and
- (5) has a board of directors that includes any member with direct financial interests in entities that contribute to or receive support from the fund in this state or any other state.

**B. Termination of administrator's contract:** the commission may terminate the administrator's contract with the commission before the expiration of the term of the contract upon such notice, and under such conditions, as are set forth in the contract.

[17.11.10.10 NMAC - Rp, 17.11.10.10 NMAC, 3/12/2024]

#### **17.11.10.11 EXPENDITURE AUTHORIZATION:**

The commission shall approve an annual budget for administration of the fund. The reasonable expenses incurred in the administration of the fund, in accordance with the terms of the contract between the commission and the administrator, shall be a cost of the fund and shall be recovered from contributions to the fund.

[17.11.10.11 NMAC - Rp, 17.11.10.11 NMAC, 3/12/2024]

#### **17.11.10.12 RESPONSIBILITIES OF ADMINISTRATOR:**

The administrator shall manage the day-to-day operation of the fund in accordance with this rule, applicable law, and the overall supervision and direction of the commission. The administrator shall:

**A.** Fairly, consistently, and efficiently administer fund collections and disbursements in accordance with commission rules and subject to commission oversight.

**B.** Establish an account or accounts in one or more independent financial institutions and ensuring that the monies deposited in the fund are insured to the maximum extent permitted by law and that they earn a return commensurate with that of state funds held on deposit in banks or other financial institutions.

**C.** Ensure that the fund complies with all necessary requirements for exemption from federal, state and local taxes.

**D.** Establish procedures, consistent with the commission's procedural rules and law, and with the commission's approval, for protecting the confidentiality of information submitted pursuant to this rule.

**E.** Report to the commission on fund activities at least once each year; the report shall include fund collections and disbursements, administrative expenditure information, budget projections and such other information as the commission may require.

**F.** Prepare an annual proposed budget for administration of the fund and submit it to the commission for review, revision, rejection or approval at such time in advance of the need for commission approval as the commission may direct, or absent such direction, at a reasonable time.

**G.** Propose to the commission uniform procedures, and develop forms, to identify exempt customers, in consultation with contributing companies.

**H.** Create and maintain the databases necessary to administer the program and account for the funds.

**I.** Develop appropriate forms for use in collecting information from contributing companies and ETCs.

**J.** Pay administrative expenses out of the fund in accordance with the budget approved by the commission.

**K.** Petition the commission to institute an enforcement or other action when the administrator finds that it is otherwise unable to collect amounts properly due from a contributing company under these rules, or when it appears to the administrator that any

contributing company or ETC carrier is otherwise out of compliance with these rules or applicable law.

**L.** Conduct, not less than once every year, such reviews as are necessary to ensure that each contributing company is making its required contributions to the fund and that support from the fund is used for the purpose of the fund.

**M.** Advise the commission of any anticipated material changes to, or fluctuations in, the collection of fund revenues in a timely manner and make recommendations to the commission on ways to address or correct such changes or fluctuations.

[17.11.10.12 NMAC - Rp, 17.11.10.12 NMAC, 3/12/2024]

### **17.11.10.13 DISPUTE RESOLUTION:**

The commission may refer any disputed case between the administrator and a contributing company or between contributing companies to alternative dispute resolution if it finds that doing so would encourage the settlement of the dispute.

#### **A. Mediation:**

(1) if any of the parties or staff makes a request for mediation, the commission may, in its discretion, designate a mediator consistent with Subsection B of 17.1.2.20 NMAC;

(2) the mediator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties and staff; if the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services; the mediator shall not be the hearing examiner who is assigned to the case; the mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and staff at the time the mediator is assigned by the commission and unless all parties agree that the mediator may serve; the mediator shall not subsequent to serving as a mediator participate in the proceeding as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding;

(3) the mediator may be assigned by the commission at the same time as the commission assigns the case to a hearing examiner; the mediator shall not discuss the mediation conference with any commissioner or hearing examiner hearing the case;

(4) the mediator shall notify the parties and staff by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator; the notice may direct the parties and staff to

send the mediator, but not other parties or staff, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the complaint;

(5) if the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution; if the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file a formal complaint with the commission;

(6) nothing shall preclude the commission from using different mediation procedures.

## **B. Arbitration:**

(1) a party may request arbitration of any dispute; the party's request shall be in writing to the commission and shall include a concise statement of the grounds for the complaint, the remedy sought, and an acknowledgment that the party has read 17.1.2.22 NMAC and agrees to be bound by its terms;

(2) the commission or its authorized representative shall forward the request for arbitration to the other party together with a copy of Subsection A of 17.1.2.16 NMAC and 1.2.18 NMAC and require that the other party submit a written response within 10 days of the date of the commission's letter forwarding the request;

(3) if the responding party agrees to arbitration of the dispute, he shall include in his response to the complainant's request a concise statement of his position with regard to the merits of the complaint and an acknowledgment that he has read 17.1.2.22 NMAC and agrees to be bound by its terms; if the responding party will not agree to arbitration, he shall so state in the response;

(4) if the responding party either fails to respond to a request for arbitration or does not agree to arbitration, the initiating party retains the right to proceed with a formal complaint;

(5) if both the initiating party and the responding party agree to arbitration, the commission shall designate an arbitrator; the arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the complaint; the designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve; the parties shall be required to indicate their consent in writing to the designated arbitrator within 10 days of the date of the commission's letter of designation; if the parties request an arbitrator who is not an employee of the commission, the commission shall not approve

the request unless the parties agree in writing to bear the costs as their own pursuant to Sections 8-8-4 and 62-13-3 NMSA 1978;

(6) any employee of the commission designated to arbitrate the matter under these provisions shall not participate in a subsequent proceeding on the complaint as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding;

(7) the commission may assign docket numbers to arbitration proceedings for purposes of record management but the proceeding remains an informal proceeding;

(8) nothing shall preclude the commission from using different arbitration procedures.

### **C. Arbitration Procedures:**

(1) once designated and approved by the parties, the arbitrator shall proceed to render a decision in the arbitration proceeding within 60 days of the date the responding party agreed to arbitration except for good cause; if the arbitrator at any time determines that it is unlikely that the dispute can be resolved without substantially affecting the interests of other ratepayers or the public, he may so inform the parties and staff and terminate the proceeding without prejudice to the initiating party's right to file a formal complaint;

(2) the arbitrator shall fix a time and place for an informal hearing and shall serve notice of the hearing on both parties and on staff at least 10 days in advance of the hearing; he may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths; the parties and staff may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute; the arbitrator shall decide the relevancy and materiality of the evidence offered, and conformity to the New Mexico rules of evidence or to rules of evidence contained in the commission's rules, is not necessary; no stenographic or electronic record will be made of the testimony at hearing unless requested by a party, who shall bear the cost of the record, or by staff;

(3) discovery will be permitted but only with leave of the arbitrator who shall not allow discovery which unduly complicates, burdens, or impedes the expeditious and informal nature of the proceeding;

(4) whenever the arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall so advise the parties and staff, who may be present at the inspection or investigation; in the event that one or both of the parties or the staff are not present, the arbitrator shall make an oral or written report to the parties and staff and afford them an opportunity to comment;

(5) at the close of or soon after the hearing, the arbitrator will issue a brief written decision; findings of fact and conclusions of law are not necessary; the arbitrator's decision will be binding on the parties and can be implemented by the commission to the extent such implementation is necessary; however, the decision will not be a decision of the commission and shall have no precedential effect;

(6) unless agreed to by all the parties and staff, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process; nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them;

(7) nothing in this rule shall be construed to mean that the commission has waived its review of any decision or that the commission consents to be bound by arbitration.

[17.11.10.13 NMAC - Rp, 17.11.10.13 NMAC, 3/12/2024]

#### **17.11.10.14 VARIANCES AND WAIVERS:**

Any person may petition the commission for variance or waiver of any provision of this rule for good cause shown.

##### **A. General requirements:**

(1) a contributing company or ETC may petition for an exemption or a variance from any of the requirements of this rule;

(2) such petition may include a motion that the commission stay the affected portion of this rule for the transaction specified in the motion;

(3) petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by an officer of the contributing company or ETC or someone with authority to sign for the contributing company or ETC;

(4) the commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

##### **B. Contents of the petition.** A petition for an exemption or variance shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the contributing company or ETC and its customers, or on its competitive affiliates and their customers, if the exemption or variance is not granted;

(4) describe the result the request will have if granted;

(5) state how the exemption or variance will achieve the purposes of this rule and the Rural Telecommunications Act of New Mexico;

(6) state why the proposed alternative is in the public interest and is a better alternative than that provided by this rule;

(7) state why the exemption or variance would have no anticompetitive effect; and

(8) state why the requested exemption or variance would not place an undue burden on the fund.

[17.11.10.14 NMAC - Rp, 17.11.10.14 NMAC, 3/12/2024]

#### **17.11.10.15 GENERAL REPORTING REQUIREMENTS:**

**A. Reports require declaration:** all reports filed with the commission or the administrator must be filed with a declaration from the chief financial officer of the entity or the person who prepared the reports on behalf of the entity that the information is correct and the filing is made subject to the penalty of perjury provided for in Section 30-25-1 NMSA 1978.

**B. Time for reporting:** where no date is specified for a report, or when a request is made by the administrator for information necessary for the administration of the fund, the administrator shall specify when the report must be filed.

**C. Reporting forms:** contributing companies and ETCs shall report information in the manner prescribed by the administrator. The administrator shall not require reporting that will be unduly burdensome.

**D. Electronic filing:** the administrator shall accept electronic reporting when practicable.

**E. Confidentiality:** the commission shall have access to all information reported to the administrator. Contributing companies may request that company-specific information required by the reporting requirements of this rule be treated as confidential by so indicating at the time the information is submitted. The commission shall make all decisions regarding disclosure of company-specific information and may request further information or justification from the contributing company to ensure uniformity of confidential treatment of all information submitted by contributing companies. Nothing



in this rule shall preclude commission issuance of an umbrella protective order identifying what reported data shall be, or shall not be, deemed confidential. The administrator shall keep confidential all company-specific information obtained from contributing companies for which confidential treatment is requested, shall not use such information except for purposes of administering the fund, and shall not disclose such information in company-specific form unless directed to do so by the commission.

**F.** The commission may require the administrator to modify any of its report formats to solicit additional information necessary for the administration of the state universal service program, including possible addition of a revenue report or to delete information that is not necessary.

[17.11.10.15 NMAC - Rp, 17.11.10.15 NMAC, 3/12/2024]

#### **17.11.10.16 [RESERVED]**

[17.11.10.16 NMAC - Rp, 17.11.10.16 NMAC, 3/12/2024]

#### **17.11.10.17 REPORTS:**

ETCs shall comply with the reporting requirements established by the commission as set forth in 17.11.27 NMAC. In addition, carriers shall report the following information to the administrator in a form prescribed by the administrator, regarding facilities and activities during the preceding calendar year:

**A.** On or before May 1 of each year, contributing companies, including ETCs, shall report the number and type of New Mexico access lines and New Mexico communication connections subscribed to in total and the number of such access lines and communication connections that are exempt from paying the SRUSF surcharge.

**B.** On or before July 1 of each year, ETCs receiving support from the fund (except those receiving only support pursuant to 17.11.11 or 17.11.10.31 NMAC) shall file with the commission a report, in a form approved by the commission, demonstrating that the ETC's payments from the fund were used for the purpose stated in Subsection A of 17.11.10.27 NMAC. If any ETC required to file information with the commission under Subsection B of 17.11.10.17 NMAC fails to comply on or before the applicable reporting deadline, the administrator shall withhold any disbursements otherwise due to the non-compliant ETC until the ETC has complied.

[17.11.10.17 NMAC - Rp, 17.11.10.17 NMAC, 3/12/2024]

#### **17.11.10.18 CONTACT PERSONS:**

All contributing companies and ETCs shall file with the administrator the name, address, phone number and e-mail address of a contact person and shall keep the information current.

[17.11.10.18 NMAC - Rp, 17.11.10.18 NMAC, 3/12/2024]

**17.11.10.19 ANNUAL DETERMINATION OF FUND:**

**A.** The administrator shall determine the amount of the fund for the next calendar year and submit its findings to the commission on or before November 10 of each year to enable commission approval on or before November 20 of each year in order to provide carriers with sufficient time to implement any change in the surcharge rate.

**B.** In the event the commission orders a change in fund support, pursuant to 17.11.10.14 or 17.11.10.25 NMAC of this rule or otherwise, that necessitates a fund amount greater than that which the commission has previously established, the commission may order an adjustment to the amount of the fund, subject to the annual fund cap set forth in Subsection C of 17.11.10.19 NMAC.

**C.** The amount of the fund shall be equal to the sum of each ETC's revenue requirement, calculated pursuant to this section, plus any other fund requirements determined by the commission, including pursuant to 17.11.10.25, 17.11.10.31 or 17.11.11 NMAC, plus projected administrative expenses and a prudent fund balance; provided however, the total amount of the fund shall not exceed a cap of thirty million dollars (\$30,000,000.00) per year.

**D.** Only carriers holding state ETC status as of October 1 shall be included in the calculation of funding requirements for the subsequent calendar year.

**E.** Except where the commission has established an alternative or additional amount pursuant to 17.11.10.25 or 17.11.10.31 NMAC, the revenue requirement for 2018 and each year thereafter for each ETC that was eligible as of July 1, 2005 and is a local exchange carrier shall be equal to the carrier's 2014 SRUSF revenue requirement adjusted by the annual percentage change in the number of access lines served by the carrier as of December 31 of the prior calendar year compared to the number of access lines served by the carrier as of December 31, 2014, and then reduced by the carrier's imputed benchmark revenue. For 2021, the access lines used for the comparison to 2014 shall be as of December 31, 2019, adjusted annually thereafter. The SRUSF revenue requirement formula under this section may be stated arithmetically as follows: revenue requirement minus imputed benchmark revenue.

**F.** The revenue requirement for an ETC that became an ETC after July 1, 2005 or that became an ETC prior to July 1, 2005, but is not a local exchange carrier, shall be determined annually by the administrator in conjunction with the administrator's determination of fund size, and shall be in accordance with the support rate determined by the commission pursuant to 17.11.10.23 NMAC.

**G.** For an ETC that is not eligible for funding pursuant to rate rebalancing per Subsection K of Section 63-9H-6 NMSA 1978 that has been previously authorized for support pursuant to Subsection M of Section 63-9H-6 NMSA 1978, that ETC may

petition for ongoing funding pursuant to Subsection K of Section 63-9H-6 NMSA 1978, subject to the following:

(1) the commission shall award an applicant ongoing fund support at no less than the average access line amount of funding support for comparable carriers; provided that an eligible telecommunications carrier receiving fund support pursuant to the subsection shall not offer basic local exchange residential and business services at rate levels lower than the rates for such services charged by any of the comparable carriers used for the determination of the level of support;

(2) the commission shall act upon a request for ongoing fund support within one hundred twenty days of the filing of the request.

[17.11.10.19 NMAC - Rp, 17.11.10.19 NMAC, 3/12/2024]

#### **17.11.10.20 DETERMINATION OF SRUSF SURCHARGE RATE AND CONTRIBUTION:**

**A.** The administrator shall recommend the amount of the SRUSF surcharge rate for the next calendar year, on or before September 1 to enable commission approval on or before October 1, based upon monthly and annual reports filed by ETCs and contributing companies, broadband program grants awarded by the commission, and any other pertinent and reliable information available to the administrator or the commission, and applying the annual fund cap set forth in Subsection C of 17.11.10.19 NMAC.

**B.** The commission shall either set a percentage surcharge rate equal to the annual fund requirement determined by the commission divided by the sum of intrastate retail public telecommunications service revenue, or in the alternative, set a fixed charge applicable to each non-exempt communication connection equal to the annual fund requirement determined by the commission divided by the number of non-exempt communication connections for all contributing carriers in New Mexico. The surcharge rate or fixed charge may be adjusted to account for any material deficit or surplus projected to exist at the start of the fund year, subject to the annual fund cap.

**C.** Each contributing company's monthly contribution shall equal the state rural universal service fund surcharge rate multiplied by its intrastate retail telecommunications revenues or non-exempt communication connections, as determined by the commission, in New Mexico for the month.

**D.** If, for any month the administrator finds that the fund balance is insufficient to meet the total obligations of the fund, (including support pursuant to 17.11.10.19, 17.11.10.25, 17.11.10.31, and 17.11.11 NMAC) plus administrative expenses and maintenance of a prudent fund balance, the administrator shall prorate all payments to each ETC, with the exception of payments pursuant to 17.11.10.31 NMAC and 17.11.11 NMAC. In the event the administrator determines that such a prorated reduction in

payments is reasonably likely to occur, the administrator shall immediately notify the commission and the commission will take prompt action to increase contribution requirements, subject to the annual fund cap set forth in Subsection C of 17.11.10.19 NMAC, or otherwise account for the shortfall and will provide for true-up payments for any underpayments occurring if prorated reduced payments are required before the contribution requirements can be increased. If the fund accumulates a surplus beyond what the administrator and the commission believes is prudent under the circumstances, the administrator may, with the commission's approval, decrease contribution requirements so as to lower the fund balance to an appropriate level.

**E.** Each contributing company shall remit its monthly contribution to the administrator on a schedule to be determined by the administrator.

[17.11.10.20 NMAC - Rp, 17.11.10.20 NMAC, 3/12/2024]

#### **17.11.10.21 RECOVERY OF CONTRIBUTIONS:**

**A.** A contributing company shall recover the amount of its contributions to the fund from its end-user customers in a manner that is not, either by act or omission, deceptive or misleading. Such recovery shall be made in a fair, equitable and nondiscriminatory manner, and no over-recovery of contributions shall be permitted.

**B.** A contributing company required to provide service in accordance with commission approved tariffs shall not recover contributions from its end-user customers except as permitted under commission approved modifications to those tariffs.

**C.** The commission may, after notice and hearing, order modifications to a contributor's method of recovering contributions from its end-user customers.

[17.11.10.21 NMAC - Rp, 17.11.10.21 NMAC, 3/12/2024]

#### **17.11.10.22 FUND DISBURSEMENTS:**

**A.** The administrator shall make a monthly disbursement to each ETC eligible to receive such a payment from collected revenues in the fund, on a schedule to be determined by the administrator.

**B.** The amount of each ETC's monthly disbursement shall be one-twelfth of its revenue requirements computed in accordance with 17.11.10.19 NMAC, subject to proration as provided in Subsection E of 17.11.10.20 NMAC.

**C.** Only carriers holding ETC status as of October 1 shall be eligible to receive disbursements from the fund during the year that begins the following January 1.

**D.** The administrator shall not pay, and shall hold in escrow, any disbursements otherwise due to an ETC that is also a contributing company, if that company shall not be in compliance with its contribution requirements.

[17.11.10.22 NMAC - Rp, 17.11.10.22 NMAC, 3/12/2024]

#### **17.11.10.23 DESIGNATION OF ETCS:**

**A.** Any carrier operating in New Mexico and designated as a state ETC as of July 1, 2005 and which has not lost that designation is automatically designated as an ETC for the purposes of this rule. If at any subsequent time a carrier loses ETC designation status, it shall no longer be eligible to receive support from the fund.

**B.** Other carriers may file a petition for designation as an ETC in accordance with 17.11.10.24 NMAC.

**C.** On its own motion or in response to a petition, the commission may, after notice and hearing and for good cause shown, modify, suspend, or revoke an ETC designation.

**D.** The commission may, upon request, establish the ETC's amount of amount of an ETC's support from the fund, if any in accordance with the requirements of 17.11.10.25 NMAC.

[17.11.10.23 NMAC - Rp, 17.11.10.23 NMAC, 3/12/2024]

#### **17.11.10.24 PETITIONS FOR ETC DESIGNATION AND AMOUNT OF SUPPORT:**

**A.** Any entity seeking designation as a state or federal ETC must file a petition with the commission. In the case of a petition for ETC designation, for state or federal universal service fund the petition shall:

(1) include a description of the proposed service area for which it seeks designation that is consistent with the federal requirements relating to service areas set forth in 47 CFR 54.207;

(2) demonstrate that the entity meets the requirements in Section 214(e) of the federal act (47 U.S.C. Section 214(e)) to be designated as a federal ETC;

(3) for federal USF support, demonstrate how the applicant meets the requirements of 47 CFR 54.101 through 54.203;

(4) demonstrate that the proposed designation is in the public interest;

(5) demonstrate that the proposed ETC is financially and technically competent to provide the supported services for federal or state support;

- (6) demonstrate the petitioner's ability to remain functional in emergency situations;
- (7) demonstrate that the petitioner will satisfy applicable consumer protection and service quality standards;
- (8) demonstrate that granting ETC status to the petitioner in the designated area is likely to result in more customer choice;
- (9) address the impact of designation of the petitioner on the size of the state fund or federal USF;
- (10) address the unique advantages and disadvantages of the petitioner's service offering;
- (11) demonstrate the petitioner's willingness and ability to offer service throughout the designated service area within a reasonable time frame, or time frame required by state or federal law; and
- (12) provide such other information as the commission or the administrator may find appropriate.

**B.** A petition by an ETC for an amount of support shall demonstrate that granting the proposed support is in the public interest and, where required, shall include the information required by 17.11.10.25 NMAC.

**C.** Consideration of the public interest will apply in all ETC designation proceedings. The commission is not required to designate additional ETCs in any service area, if not in the public interest.

**D.** The commission shall, after such notice and hearing as the commission shall prescribe, enter its written order approving or denying a company's petition. An order approving a petition for ETC designation shall specify the service area for which designation is made and an order approving a petition for an amount of support shall state the amount and type of approved state or federal fund support.

**E.** The commission may approve a petition for designation as a federal ETC in conjunction with a petition for designation as a state ETC.

**F.** The commission shall require annual verification from each ETC that it continues to meet the requirements herein for designation as an ETC and for provision of support from the state fund or federal USF.

[17.11.10.24 NMAC - Rp, 17.11.10.24 NMAC, 3/12/2024]

**17.11.10.25 PETITION FOR SUPPORT BASED ON NEED:**

**A.** An ETC serving in a rural area of the state may petition the commission for support from the fund when such payments are needed to ensure the widespread availability and affordability of universal service in the rural area(s) of the state served by the ETC.

**B.** In addition to establishing need as described in Subsection A of this section, a petition for support based on need shall identify the geographic area for which support is requested, and shall demonstrate with particularity how the proposed payments from the fund will be used in a manner consistent with the use of fund support requirements set forth in 17.11.10.27 NMAC.

**C.** In support of the petition, the ETC must make available to the commission such information from the ETC that the commission deems necessary, including but not limited to information relating to the ETC's regulated revenues, expenses, and investments, to determine whether support is needed to ensure the widespread availability and affordability of universal service in the area identified in the petition.

**D.** The commission shall resolve each petition for support based on need with or without a hearing no later than six months following the filing date of the petition, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.

**E.** Companies reporting the use of funds granted by the commission under this section shall provide, on a semi-annual basis, the following:

(1) Specific details of projects for which fund support is used; itemized by the categories of capital expenditures (CapEx) and the related operations expenditures (OpEx).

(a) Project descriptions will explain the objectives or intended goal of the project. Such as increased capacity or efficiency, redundancy, expansion of network or services.

(b) Project prioritizations of buildout plans in technical terms that include locations, maps as applicable, milestones and benchmarks to measure performance and assure compliance. The description shall also provide project status, spending plans and metrics.

(c) Narratives of the projects that explain the current and ongoing status of completion or ready for service dates (RFS), and other pertinent facts (i.e., project delays, permit status, surveys, right of ways issues) for reporting purposes. The term ready for service ("RFS") means a description of projects where construction is complete and the project is operational.

(2) The period for the reporting of project details shall be semi-annual, at a minimum, to continue for the period that funds are awarded.

(3) Semi-annual financial reporting on a project specific or company-wide basis, depending if the award is specific to network improvements and projects, or for the financial stability of the ETC receiving the award.

[17.11.10.25 NMAC - Rp, 17.11.10.25 NMAC, 3/12/2024]

#### **17.11.10.26 COMPLIANCE WITH CONTRIBUTION REQUIREMENTS:**

**A.** If the administrator finds that a contributing company has not contributed the amount required by this rule, the administrator shall notify the contributing company in writing. The administrator shall request the company to pay the deficiency in its contribution.

**B.** The contributing company shall pay the requested amount within 21 days of the date of the notice or seek dispute resolution as provided in this rule.

**C.** If attempts by the administrator to collect the total requested amount from a contributing company or to resolve a dispute are unsuccessful, the administrator shall notify the commission in writing.

**D.** Upon request by the administrator, a complaint filed by an interested party, or on its own motion, the commission, after providing notice and an opportunity for a hearing in accordance with 17.1.2 NMAC, may issue an order requiring a contributing company to pay any arrearage in contributions that the commission finds to exist and may also impose interest, a fine or other appropriate administrative penalties or requirements or bonding to assure future compliance with contribution requirements. In the event that a contributing company fails or refuses to comply with a commission order issued pursuant to this provision, the commission may petition the appropriate district court for appropriate injunctive relief and for enforcement of the commission's order.

**E.** The commission may take the same types of action set forth in Subsection D of 17.11.10.26 NMAC in the event that it finds, after a proceeding of the type specified in Subsection D of 17.11.10.26 NMAC, that a contributing company or an ETC has, in any other way, violated any provision of this rule or of the rural telecommunications act of New Mexico, Sections 63-9H-1 NMSA 1978 *et seq.*

[17.11.10.26 NMAC - Rp, 17.11.10.26 NMAC, 3/12/2024]

#### **17.11.10.27 USE OF FUND SUPPORT:**

**A.** An ETC shall use fund support in a manner consistent with the rural telecommunications act, Sections 63-9H-1 NMSA 1978 *et seq.*, Section 254 of the federal telecommunications act (47 U.S.C. 254), and commission rules and orders. Fund support must be used to maintain and support universal service; provided, however, that each ETC receiving support pursuant to 17.11.10.19 or 17.11.10.25 NMAC must expend no less than sixty percent of the support it receives to deploy and



maintain broadband internet access services in rural areas of the state, Subsection F of Section 63-9H-6 NMSA 1978.

**B.** If the commission finds, in a proceeding on its own motion or on the motion of the administrator or an interested party, that an ETC has used fund support for purposes other than to preserve and advance universal service or that the ETC has failed to satisfy the sixty percent minimum expenditure requirement referenced in Subsection A of 17.11.10.27 NMAC, the commission may impose an appropriate administrative remedy, which may include, but need not be limited to, ordering the ETC to refund amounts paid to it from the fund and withholding future payments.

[17.11.10.27 NMAC - Rp, 17.11.10.27 NMAC, 3/12/2024]

#### **17.11.10.28 ACCESS TO BOOKS, RECORDS AND PROPERTY:**

**A.** The administrator or the commission shall have access to the books of account, records and property of all contributing companies and ETCs to the extent necessary to verify information reported or required to be reported pursuant to this rule. The administrator or commission may direct a contributing company or ETC to send copies of records to the administrator or commission or may inspect records at the offices of the contributing company or ETC, at the administrator's or commission's discretion.

**B.** In the normal course of business, the administrator will give at least three days' notice of its plans to inspect records in the offices of a contributing company or ETC. The administrator may apply to the commission to procure a subpoena in order to inspect records without notice.

[17.11.10.28 NMAC - Rp, 17.11.10.28 NMAC, 3/12/2024]

#### **17.11.10.29 REVIEW AND AUDIT OF ADMINISTRATOR AND FUND:**

The administrator shall provide the commission with a financial statement of the fund and the administration of the fund on an annual basis by May 1. The commission shall engage a qualified independent auditor to audit each such financial statement and to submit a written opinion to the commission.

[17.11.10.29 NMAC - Rp, 17.11.10.29 NMAC, 3/12/2024]

#### **17.11.10.30 ADVISORY BOARD:**

**A.** The commission shall establish and appoint an advisory board composed of representatives from participating contributing companies and ETCs, the attorney general, the commission staff, and any representative(s) of one or more consumer groups or organizations that the commission may choose to appoint. The members shall include no more than one representative from each of the following types of telecommunications carriers and entities providing comparable intrastate retail services:

incumbent rural telecommunications carriers; incumbent local exchange carriers other than incumbent rural telecommunications carriers; competitive local exchange carriers not ETC-designated; ETC-designated competitive local exchange carriers; commercial mobile radio service providers not-ETC-designated; and ETC-designated commercial mobile radio service providers. Any other type of telecommunications carriers or providers of comparable intrastate retail service may petition the commission for representation by no more than one member of that type of carrier or service provider on the advisory board, which the commission may grant by order. The commission shall resolve any dispute among the carriers or service providers of each type as to who shall be the member of the advisory board. The members representing participating contributors shall each be appointed for a term of three years. Members of the board may be reappointed to subsequent terms with the approval of the commission. Expenses incurred by a member in connection with participation on the advisory board shall not be reimbursed from the fund.

**B.** The advisory board shall meet periodically with the administrator and shall provide advice and consultation to the administrator as provided under this rule. Where deemed necessary by the advisory board, it shall make recommendations to the commission or the administrator, or both, relating to potential matters related to administration of the fund. Should the members of the advisory board not agree on a recommendation to the commission or administrator on any particular matter, the advisory board may provide a majority recommendation as well as a minority recommendation as to the resolution of any such identified issue. In addition, any member of the advisory board may, with advance written notice to the other members of the advisory board, provide individual recommendations or other information to the commission and the administrator that it deems appropriate. The advisory board is intended to be a forum within which to build consensus on matters relating to the administration of the fund, while not deterring any interested party from communicating its concerns relating to the administration of the fund to the advisory board, or, subject to advance written notice to the other members of the advisory board, directly to the commission.

**C.** The advisory board members shall elect a chair, vice-chair, and secretary to serve on the board for two years, subject to additional terms as elected from within the board. For the purpose of conducting business, a majority of the board members present at any meeting shall constitute a quorum.

[17.11.10.30 NMAC - Rp, 17.11.10.30 NMAC, 3/12/2024]

#### **17.11.10.31 BROADBAND PROGRAM:**

**A.** It is the goal of the commission that New Mexico consumers have access to high-quality broadband service from both wireline and mobile broadband providers. Pursuant to Subsection N of Section 63-9H-6, NMSA 1978, ETCs may separately apply to the commission for grants to fund the construction and maintenance of facilities that are capable of providing broadband internet access service to areas unserved or

underserved by broadband in the state. Applications must be primarily for coverage of the construction costs of new facilities, but such applications may include a request for maintenance costs of those facilities as well. Each grant that is awarded will provide up to seventy five percent of the budgeted project cost, with the ETC applying the remainder from its own funds. Projects receiving any source of third-party funding other than potential loan funds, FCC high-cost fund legacy support or connect America fund support (including mobility fund support) will not be eligible. Each applicant shall provide a detailed description in their application of the origin and type of funding provided for the carrier match, and a certification that those monies are not duplicative of other purposes or projects other than SRUSF broadband program projects. In evaluating applications, the commission shall seek to avoid duplication of service using the same technology. Awards of support under this section shall be consistent with federal universal service support programs and be based on the best use of the fund for rural areas of the state. For purposes of administering the broadband program, the commission may find that a broadband program proposed project area is a rural area, notwithstanding the definition of rural area in Subsection U of 17.11.10.7 NMAC, if it determines that:

- (1) the area otherwise has the characteristics of a rural area;
- (2) the area is unserved or underserved by broadband; and
- (3) the public interest requires that the area be classified as rural.

**B.** Funding of the broadband program. At least eight million dollars (\$8,000,000.00) of the fund shall be dedicated annually to the broadband program. The amount of funding allocated to the broadband program shall not be subject to proration under Subsection E of 17.11.10.20 NMAC. To the extent a year's broadband program funding is not exhausted by grants awarded during that year, the funds will rollover to the following year.

**C.** Applicants for broadband program grants may request that company-specific information contained within an application be treated as confidential. The commission shall make all decisions regarding disclosure of company-specific information and may request further information or justification from the contributing company to ensure uniformity of confidential treatment of all information submitted by contributing companies. Nothing in this rule shall preclude commission issuance of an umbrella protective order identifying what reported data shall be, or shall not be, deemed confidential. The commission staff or a third-party contractor, shall keep confidential all company-specific information obtained from applicants for broadband program grants for which confidential treatment is requested, shall not use such information except for purposes of analyzing the applications, and shall not disclose such information in company-specific form unless directed to do so by the commission.

**D.** Minimum requirements for eligible projects. The commission will consider projects on a technology-neutral basis. Projects that apply technologies including,

without limitation, wireline, mobile wireless, and fixed wireless technologies are all eligible for broadband fund grants. A project must meet the following requirements to be eligible for a grant award:

- (1) support broadband internet access service at speeds of at least 25.0 Mbps download/3.0 Mbps upload to all households and businesses in the proposed project area;
- (2) support voice grade telephony service to all households and businesses in the proposed project area. For this purpose, a voice over internet protocol (VOIP) based service is acceptable, as well as traditional voice telephony services and mobile voice services;
- (3) support access to emergency 911 services; and
- (4) offer a latency that is sufficiently low to support real-time, interactive applications.

**E. Contents of grant applications.** An application for support from the broadband program shall include, at a minimum:

- (1) a proposal to build telecommunications network facilities to service an area where the applicant is designated as a state ETC;
- (2) a detailed build plan setting forth a description of the facilities to be deployed, including all costs of constructing facilities; and
- (3) a map showing where service and coverage will be provided. This requirement can be met by providing:
  - (a) for a wireline network, a map showing all homes, businesses, and other end user locations passed; or
  - (b) for a wireless network, a coverage map generated using a radio frequency propagation tool generally used in the wireless industry;
- (4) an estimate of the number of road miles and square miles to be covered and population and population density of the area covered;
- (5) the amount of support requested from the broadband program and the amount of the applicant's financial match, and a description of any type, amount, and purpose of subsidy or financial support the applicant is currently receiving or is scheduled to receive in the area designated in the application;
- (6) a description of the technology to be deployed, including data throughput speeds and latency characteristics of the service to be delivered to customers;

(7) a demonstration that the area to be served is an area unserved by broadband or an area underserved by broadband as defined in 17.11.10.7 NMAC. If the area to be served contains served, unserved and underserved areas, the application and map shall identify which portions of the area are served, unserved and which are underserved. Each served, unserved, and underserved area shall be clearly identified through color coding on the map submitted with the application. Each served, unserved, and underserved area shall be clearly identified through individual color coding indicators on all city street grid maps submitted with the applications. Satellite views are not acceptable for the application's requirement for mapping;

(8) a demonstration of the estimated customer subscription rates and revenues from the services to be offered as a result of the proposed construction sufficient to justify support from the broadband program;

(9) a commitment to provide a minimum twenty-five percent match of funds;

(10) if the project is a wireless network deployment, a commitment to allow collocation on reasonable terms by other providers of commercial mobile wireless service or any public safety network and to abide by the FCC's collocation requirements for awardees under the federal universal service program;

(11) sample terms and conditions for the service and proposed prices;

(12) explain how the proposed deployment will contribute to the enhancement of digital equity and digital inclusion in the proposed service territory;

(13) explain how the awards of support are consistent with federal universal service support programs;

(14) a certification by an authorized representative affirming that all information set forth in the application is true and correct;

(15) any other requirements to ensure accountability as the commission may develop and approve in a proceeding to determine the form and contents of grant applications; and

(16) applications and mapping information must also be submitted contemporaneously with the New Mexico department of information technology broadband division.

**F.** The ETC must make the following commitments and include them in its application:

(1) the broadband service must be offered at reasonably comparable rates for comparable services in urban areas;

(2) the broadband service must be provided for at least seven years following project completion;

(3) the ETC must abide by commission reporting requirements sufficient to monitor the progress of the project deployment and to ensure that all grant funds are being used efficiently and for the purpose intended; and

(4) the ETC must commit to respond to commission inquiries regarding service-related complaints and commit to attempt to resolve service-related complaints in a reasonable manner.

**G. Procedure for awarding support from the fund:**

(1) On or before May 1 of each year, the commission shall open a non-adjudicative, administrative docket and establish a deadline for filing applications for broadband program support for the following calendar year. The telecom bureau, or a third-party contractor, shall review and summarize all timely applications. Only carriers holding ETC status as of October 1 shall be eligible to receive disbursements from the fund during the year that begins the following January 1.

(2) Interested persons may seek intervention in these proceedings, pursuant to 1.2.2.23 NMAC.

(3) On or before September 1, the telecom bureau shall make a presentation to the commission, with analysis of the applications for awards. The telecom bureau, or a third-party contractor, may communicate with applicants to request additional information or clarify information presented in the applications in order to prepare its presentation. Such presentations shall be considered by the commission but shall not bind the commission.

(4) At the September 1 presentation, the telecom bureau shall present a summary of projects. The telecom bureau shall provide the following information for each project on a single spreadsheet.

(a) cost per customer served or passed;

(b) type of technology;

(c) whether area is unserved or underserved (or, if area includes both, in what proportions);

(d) download and upload speed of service;

(e) monthly rates that the grantee intends to charge for the service; and

(f) telecom bureau comments on the project.

(5) On or before October 15, the commission, in coordination with the broadband office and the council, for prioritization and alignment with the statewide broadband plan, shall issue a decision approving or denying in whole or in part, each application. Among the factors that the commission will consider when selecting proposed projects for funding are the download and upload speeds that a project will provide and whether the project will serve an area unserved by broadband or an area underserved by broadband.

(6) On or before November 1, any interested person may file with the commission a request for reconsideration, in whole or in part, of any award of funds. Requests for reconsideration will not be valid after November 1.

(7) On or before December 1, the commission shall dispose of any motions for reconsideration.

**H. Conditions for disbursement of awarded funds:**

(1) The awardee commits to complete construction of its project within three years from the date of the commission's final order approving an award pursuant to 17.11.10.31 NMAC.

(2) For each awarded project, project reports shall be submitted to staff, consultant(s), and administrator(s) semiannually, during June and December and at the mid-point and completion of the project that provide information regarding the status of the project in a form accepted by staff. Semi-annual reports shall be submitted June 30, and December 31 of the calendar year. The midpoint disbursement report shall describe ETC progress on project milestones at the mid-point of the completion of the project pursuant to Paragraph (1) of Subsection E of 17.11.10.25 NMAC, prior to the release of a mid-point disbursement. The mid-point and final reports may be filed concurrently with the submission of the semi-annual reports, but may not be combined into one report. Within 30 days after project completion, the awardee shall submit a final report in a form accepted by staff demonstrating that the project as completed meets the coverage requirements set forth in the application, including a certification from an officer or director that all program requirements have been met.

(3) Prior to the initial disbursement, the ETC must notify the commission in writing that it is prepared to commence the project with regard to project engineering, ordering or delivery of required equipment, labor requirements, and that all permits have been granted to begin construction. The administrator shall disburse one third of the award promptly following receipt of the ETC's written notice that it is prepared to commence the project, one third at the midpoint of the project, and the remaining third upon project completion. The second and third payments may be requested as a single disbursement upon completion and are contingent upon the submission of acceptable project status reports pursuant to Paragraph (2) of Subsection H of 17.11.10.31 NMAC. The commission may, within 30 days after submission of a report, order additional

information to be provided, suspend payment by the administrator, or take other action as necessary after notice and hearing.

(4) Any applicant found to have willfully misrepresented information in an application, is found to have used support unlawfully, or fails to meet the commitments set forth in the application, may be subject to refund of award funds or other actions of the commission.

[17.11.10.31 NMAC - Rp, 17.11.10.31 NMAC, 3/12/2024]

## **PART 11: LIFELINE AND LINKUP BENEFITS**

### **17.11.11.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.11.11.1 NMAC - N, 11-15-10]

### **17.11.11.2 SCOPE:**

This rule applies to all entities that have been designated by the commission as eligible telecommunications carriers and that may receive disbursements from the state rural universal service fund or the federal universal service fund.

[17.11.11.2 NMAC - N, 11-15-10]

### **17.11.11.3 STATUTORY AUTHORITY:**

Sections 8-8-4, 63-9C-4 and 63-9H-6 NMSA 1978.

[17.11.11.3 NMAC - N, 11-15-10]

### **17.11.11.4 DURATION:**

Permanent.

[17.11.11.4 NMAC - N, 11-15-10]

**17.11.11.5 EFFECTIVE DATE: November 15, 2010, unless a later date is cited at the end of a section.**

[17.11.11.5 NMAC - N, 11-15-10]

### **17.11.11.6 OBJECTIVE:**



The purpose of this rule is to ensure that each eligible telecommunications carrier designated by the commission provides lifeline and link-up benefits intended to make basic telecommunications services available to qualifying individuals and households under specified public assistance programs or income-based criteria. Lifeline and linkup have also been known in New Mexico as low-income telephone assistance programs or "LITAP."

[17.11.11.6 NMAC - N, 11-15-10]

#### **17.11.11.7 DEFINITIONS:**

**A. Applicant** means an eligible customer of an eligible telecommunications carrier.

**B. Carrier** means an entity that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico.

**C. Eligible telecommunications carrier ("ETC")** means a carrier that has been designated by the commission as eligible to receive disbursement from the state rural universal service fund or the federal universal service fund.

**D. Federal poverty guidelines** means the poverty guidelines issued each year by the federal health and human services department and published in the federal register.

**E. Income** means all income actually received by all members of the household. This includes salary before deductions of taxes, public assistance benefits, inheritances, alimony, child support payments, workers' compensation benefits, gifts, lottery winnings, and the like. The only exceptions are student financial aid, military housing and cost-of-living allowances, irregular income from occasional small jobs such as baby-sitting or lawn mowing, and the like.

**F. Responsible agency** means the state government agency or other entity designated by the commission to administer the certification, verification and continued verifications of lifeline enrollment.

[17.11.11.7 NMAC - N, 11-15-10]

#### **17.11.11.8 ELIGIBILITY REQUIREMENTS:**

**A. Program-Based Criteria.** All ETCs shall provide lifeline and linkup benefits to any applicant who self-certifies, under penalty of perjury, that his or her household is eligible for public assistance under one or more of the following programs:

- (1) temporary assistance to needy families (TANF);
- (2) food stamps;

- (3) low income home energy assistance program (LIHEAP);
- (4) medicaid;
- (5) supplemental security income;
- (6) national school lunch program; or
- (7) federal public housing assistance.

**B. Income Based Criteria.** All ETCs shall provide lifeline and linkup benefits to any applicant who certifies, with supporting documentation and under penalty of perjury, that his or her household income is at or below 150 percent of the applicable federal poverty guidelines upon annual publication by the U.S. department of health and human services in the federal register.

(1) Income-based eligibility is based, in part, on household size. Therefore, an applicant must certify, under penalty of perjury, the number of individuals residing in his or her household.

(2) An applicant must certify, under penalty of perjury, that the documentation supporting income-based certification accurately represents the applicant's annual household income. The following documents, or any combination of these documents, are acceptable to support certification based upon income:

- (a) prior year's state, federal or tribal tax returns;
- (b) current year-to-date earnings statement from an employer or three consecutive months of paycheck stubs;
- (c) social security administration statement of benefits;
- (d) veteran's administration statement of benefits;
- (e) retirement/pension statement of benefits;
- (f) unemployment/workers' compensation statement of benefits;
- (g) federal or tribal notice of participation in bureau of Indian affairs general assistance; or
- (h) divorce decree or child support wage assignment statement.

**C. Application.** The application form for participation in lifeline and linkup benefits shall be available from each ETC, the commission's consumer relations division, and

the responsible agency, if one has been designated by the commission. Each completed application shall contain the following information, where applicable:

- (1) applicant's name, telephone number and home address;
- (2) the particular public assistance program(s), if applicable, and identification of the ETC that the applicant anticipates will provide service;
- (3) an affirmative statement that the applicant qualifies for lifeline or linkup benefits;
- (4) an affirmative statement under penalty of perjury affirming that the applicant is participating in one of the programs listed in Subsection A of 17.11.11.8 NMAC, or a statement under penalty of perjury affirming that the applicant's household income is at or below 150 percent of the federal poverty guideline; and if the application is based on income criteria, a statement under penalty of perjury that identifies the number of individuals residing in the household and affirms that the documentation presented to support income-based eligibility accurately represents the applicant's household income;
- (5) the following affirmative statement under penalty of perjury that the applicant is not receiving lifeline benefits of any kind on any other telephone or wireless account: "I agree to notify (name of carrier) when I no longer participate in any of the above qualifying public assistance programs or when there has been a change in the size or income level of my household. I certify under penalty of perjury the above information and attached documentation are true and that I and no one else is receiving lifeline benefits at this address, on either a telephone or wireless telephone account"; and
- (6) the applicant's signature.

**D. Document Retention.** The ETC or responsible agency shall retain eligibility applications for three (3) calendar years.

**E. Tribal Land Lifeline and Linkup Benefits.** Customers who live on tribal lands and who qualify for state lifeline and linkup benefits based on the program or income criteria set forth in Subsections A and B of 17.11.11.8 NMAC are eligible to receive prescribed federal benefits. Such federal benefits are not within the scope of, nor governed by, this rule.

[17.11.11.8 NMAC - N, 11-15-10]

#### **17.11.11.9 CONTINUING ELIGIBILITY:**

**A. Annual Verification.** The continuing eligibility of customers for lifeline benefits shall be verified annually.

**B. Verification Methods.** The ETC or responsible agency shall verify the continued eligibility of lifeline customers under the program-based and income-based eligibility criteria. The ETC or responsible agency shall establish methods by which program-based and income-based eligibility shall be verified on an annual basis including, but not limited to, self-certification, reviews of state computer data bases, beneficiary audits, income documentation, or the continued eligibility of a statistically valid sample of lifeline customers.

**C. Restoration Of Service And Payment Plans.** ETCs must restore service for any customer who has had telephone service discontinued for nonpayment of basic service charges, provided that the customer was not a participant in LITAP at the time of discontinuance, but now qualifies. The ETC must also make a reasonable payment arrangement allowing six months for payment for past due basic service charges.

**D. Termination Notices and Dispute Resolution.** If a customer fails to establish continued eligibility, the ETC or responsible agency shall notify the customer of its intent to discontinue the customer's eligibility and the basis for that decision.

(1) The eligibility termination notice shall be in writing and shall be delivered to the customer's mailing address.

(2) The eligibility termination notice must allow the customer at least 60 days to demonstrate continued eligibility consistent with the rule. The customer's participation in lifeline service may not be discontinued during this 60-day period.

(3) The eligibility termination notice shall include a statement advising the customer of the option to continue local telephone service after termination of lifeline service benefits at the non-discounted rate.

(4) If the customer fails to provide proof of continued eligibility as required, or the ETC or responsible agency does not accept the customer's proof of continue eligibility, the ETC or responsible agency shall notify the customer in writing of its determination to discontinue the customer's participation in lifeline benefits. The notice shall include instructions for filing an appeal of the determination.

(5) If the customer disputes the non-eligibility determination, he or she shall notify the ETC or responsible agency. If the customer is still unable to resolve the dispute, he or she may appeal a non-eligibility determination within sixty (60) days of the date of the notice from the ETC or responsible agency by filing a written notice of appeal with the commission. Lifeline benefits will continue pending an appeal of a non-eligibility determination.

(6) An appeal pursuant to this rule shall be addressed by the commission consistent with the complaint procedures set forth in the commission's Consumer Protection rule (17.11.16 NMAC).

[17.11.11.9 NMAC - N, 11-15-10]

#### **17.11.11.10 LIFELINE AND LINKUP BENEFITS:**

**A. Benefits.** Lifeline benefits provided by ETCs shall consist of basic service, or its functional equivalent, and usage charges, less a discount of not less than \$3.50 and any other lifeline benefits established by the federal communications commission. ETCs shall provide linkup benefits in accordance with the federal linkup program utilizing the eligibility criteria set forth in Subsections A and B of 17.11.11.8 NMAC.

**B. Deposits.** When customer security deposits are otherwise required, they will be waived for lifeline service customers if the customer voluntarily elects to receive toll blocking.

**C. Nonrecurring Charge Waiver.** Lifeline customers will receive a waiver of the nonrecurring charge for changing the type of local exchange usage service to lifeline, or changing from flat rate service to message rate service, or vice versa, but only one such waiver shall be allowed during any 12-month period.

**D. Termination.** Lifeline benefits shall not be terminated for nonpayment of toll service.

**E. Restrictions.** A lifeline customer may receive lifeline and linkup benefits only for the customer's principal service line. Lifeline and linkup benefits are not available for service lines used for business purposes.

**F. Other Services.** A lifeline customer will not be required to purchase other services from the ETC, nor prohibited from purchasing other services, either separately or in a bundle with lifeline supported services, unless the customer has failed to comply with the ETC's terms and conditions for those services.

[17.11.11.10 NMAC - N, 11-15-10]

#### **17.11.11.11 FUNDING OF LIFELINE AND LINKUP BENEFITS:**

**A. Reporting Requirements.** All ETCs seeking cost recovery shall submit to the commission a monthly report, on or before the 15<sup>th</sup> day of each month, containing a description of the ETC's lifeline and linkup benefits. The report shall contain monthly information on:

(1) the foregone revenue resulting from the discounts provided to lifeline customers;

(2) the amounts of administrative, advertising, voucher and other lifeline and linkup expenses, including only those administrative costs borne by the ETCs over and

above what they have expended in connection with their federal universal service duties;

- (3) interest accrual amounts on lifeline and linkup funds; and
- (4) the number of lifeline customers.

**B. Cost Recovery.** The total cost of providing lifeline service, including the administrative costs of the ETCs as provided at Paragraph (2) of Subsection A of 17.11.11.11 NMAC, and the costs incurred by the responsible agency, shall be recovered and funded from the state rural universal service fund pursuant to 17.11.10 NMAC.

**C. ETC Payment.** Within thirty (30) days after review and audit of an ETC's monthly report, the administrator of the state rural universal service fund shall disburse an amount equal to the ETC's lifeline and linkup expenses as provided in this rule, plus lifeline discounts up to \$3.50 per lifeline subscriber.

[17.11.11.11 NMAC - N, 11-15-10]

## **PART 12: [RESERVED]**

## **PART 13: COMPETITIVE TELECOMMUNICATIONS SERVICES**

### **17.11.13.1 ISSUING AGENCY:**

New Mexico State Corporation Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

### **17.11.13.2 SCOPE:**

[Recompiled 12/30/01]

### **17.11.13.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

### **17.11.13.4 DURATION:**

[Recompiled 12/30/01]

### **17.11.13.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

#### **17.11.13.6 OBJECTIVE:**

It is the purpose of these regulations together with the Commission's Rules of Procedure, other rules and regulations of the Commission relating to telecommunications heretofore or hereafter promulgated by the Commission and orders of the Commission heretofore or hereafter issued by the Commission to administer the Act pursuant to Section 13 thereof.

[Recompiled 12/30/01]

#### **17.11.13.7 DEFINITIONS:**

As used in the Telecommunications Act Regulations:

A. "Commission" means the New Mexico State Corporation Commission [New Mexico Public Regulation Commission];

B. "Act" means the New Mexico Telecommunications Act, Laws 1985, Chapter 242;

C. "Public Telecommunications Service" refers to that definition of the term as set forth in Section 3.B of the Act;

D. "certificate" means a certificate of public convenience and necessity issued by the Commission for the provision of public telecommunications service within the State of New Mexico.

[Recompiled 12/30/01]

#### **17.11.13.8 RULES AND REGULATIONS FOR COMPETITIVE TELECOMMUNICATIONS SERVICES:**

A. On January 24, 1985, the New Mexico State Corporation Commission [New Mexico Public Regulation Commission] ("Commission") issued an Order establishing the above-entitled Docket for purposes of adopting regulations for competitive telecommunications services. The Order directed any person or entity to submit comments or alternatives to the Commission regarding the proposal for regulation filed by the Commission by Mountain States Telephone and Telegraph Company (Mountain Bell) proposal for regulations on or before February 20, 1985. After review of the proposals for regulation, the Commission prepared, issued and delivered its proposed set of rules concerning the subject of this docket to all parties listed on Exhibit A attached to the January 24, 1985 Order. Publication of this proceeding was made in the Albuquerque Journal on January 28, 1985. A public hearing was held before the Commission on March 8, 1985 at which time comments were received addressing the proposed regulations issued by the Commission.

B. On April 11, 1985 Staff for the Commission submitted a Motion for Leave to File Further Proposed Regulations. Staff's motion cited the April 5, 1985 signing into law by the Governor of New Mexico of the New Mexico Telecommunications Act (House Bills 271 and 559), as the rationale for the filing of further proposed regulations. The Commission, finding good cause in Staff's Motion ordered that further proposed regulations be submitted by May 20, 1985.

C. The Commission, having reviewed all proposals submitted for regulations for competitive services, and having reviewed and considered the testimony during the March 8, 1985 hearing hereby adopts the following regulations for competitive telecommunications services in New Mexico.

[Recompiled 12/30/01]

**17.11.13.9 TITLE:**

These regulations may be cited as the Telecommunications Act Regulations.

[Recompiled 12/30/01]

**17.11.13.10 CERTIFICATE REQUIRED:**

A. No public telecommunications service shall be offered in this state except in accordance with the provisions of the Act and these regulations.

B. No public telecommunications service shall be offered in this state without the provider thereof first having obtained a certificate to provide such service from the Commission.

[Recompiled 12/30/01]

**17.11.13.11 EXISTING CERTIFICATES:**

A. All certificates heretofore issued by the Commission shall continue in full force provided the holder thereof has fully complied with the applicable provisions relating to continuous and adequate service to the public imposed by statute or the Commission at the time of issuance of the certificate or subsequent amendment.

B. The holder of any existing certificate shall continue to render continuous and adequate service to the public as required by statute or the Commission at the time of issuance thereof or by any subsequent amendment. Such holder shall not discontinue, reduce or impair service to a certificated area as established by the certificate, or part of a certificated area, except for ordinary discontinuance or service for nonpayment of charges, nonuse, or similar reasons in the ordinary course of business, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby;



except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction or impairment of service, without regard to the provision of this section.

C. Nothing in this section shall be construed as requiring the authorization of the Commission for any installation, replacement or other changes in plant, operation or equipment which will not impair the adequacy or quality of service provided.

[Recompiled 12/30/01]

#### **17.11.13.12 ADDITIONAL CERTIFICATES:**

A. Any person, corporation, municipal corporation, partnership or association proposing to construct or operate any plant or equipment for the provision of public telecommunications service shall first make application to the Commission for a certificate to construct or operate such plant or equipment. Such application shall conform to the Commission's Rules of Procedure relating to pleadings then in effect and shall contain a verified statement reflecting how the public convenience and necessity requires the plant, equipment and service or services applied for.

B. The application for a certificate shall contain sufficient information to demonstrate that,

(1) it is economically feasible to operate the proposed plant or equipment successfully and continuously for the furnishing of public telecommunications service;

(2) the applicant has sufficient financial resources to provide the proposed public telecommunications service properly and continuously;

(3) the applicant has competent and experienced management and personnel to provide the proposed public telecommunications service;

(4) the applicant is willing and able to conform to the constitution and laws of the State of New Mexico and to the rules and regulations of the Commission; and

(5) the applicant is in every respect willing and able to provide public telecommunications service properly and continuously.

C. The application for a certificate shall include:

(1) a precise description of the exact and particular public telecommunications service or services the applicant proposes to provide;

(2) a precise description of the geographical area that the applicant proposes to service and obtain a certificate for together with an accurate map thereof;

(3) the names of all entities certificated by the Commission to provide public telecommunications service of a similar nature or functional equivalent of that applied for within the geographical area that the applicant proposes to serve; and

(4) if applicable, the manner in which the issuance of the certificate applied for will promote competition in the provision of public telecommunications service within the geographical area for which the proposed service or services are to be provided;

(5) proposed tariffs containing the rates and ratemaking methodology to be used in providing the proposed service.

[Recompiled 12/30/01]

#### **17.11.13.13 NOTICE OF APPLICATIONS FOR CERTIFICATES:**

A. The Commission, upon filing of an application for a certificate, shall set the time and place for a hearing thereon and such other and further procedural dates and requirements as the Commission shall deem proper.

B. The Commission will require the applicant to serve notice of the application together with all procedural and hearing dates on all known interested parties and shall require the applicant to cause similar notice of the application and the procedural and hearing dates to be published in a newspaper of general circulation in the geographical area where the proposed service is to be offered at least ten days prior to the hearing on the application.

C. The Commission may entertain intervention in a proceeding involving an application for a certificate by any interested person and may require the filing of written testimony concerning the application at any time the Commission sees fit.

[Recompiled 12/30/01]

#### **17.11.13.14 HEARINGS-CERTIFICATES:**

A. All hearings conducted pursuant to an application for a certificate shall be conducted pursuant to the Commission's Rules of Procedure unless otherwise provided herein or by order of the Commission.

B. The burden of establishing that the issuance of a certificate is in the public interest and that all requirements for the issuance of a certificate have been met shall rest with the applicant for such certificate.

C. The Commission shall determine when and upon what conditions plant, equipment or services may be provided and shall determine such terms and conditions that will attach to the exercise of the rights afforded by certificates. Unless otherwise provided by the Commission, all certificates issued by the Commission shall carry the

requirements set forth in Section 5.B [Subsection B of 17.11.13.11 NMAC] of these regulations for the holders of existing certificates.

[Recompiled 12/30/01]

#### **17.11.13.15 ASSIGNABILITY-CERTIFICATES:**

Any certificate or rights obtained under any such certificate held, owned or obtained by any entity, may be sold, assigned or leased only after a determination by the Commission that the purchaser, assignee or lessee is capable of rendering adequate and continuous public telecommunications service.

[Recompiled 12/30/01]

#### **17.11.13.16 MANNER OF REGULATION-COMPETITIVE SERVICES:**

A. Commission regulation of a public telecommunications service that is subject to competition shall be obtained through the filing of a "Petition for Determination" by any interested party or entity including the Commission's staff.

B. A petition for determination (hereafter sometimes referred to as "petition") shall contain at least the following information:

(1) relevant facts regarding the nature of the public telecommunications service or services for which a determination is sought including the names of competitor(s) by location providing or ready and willing to provide the same or similar service or services or a functionally equivalent alternative or substitute service within the same market area which meets the same general customer needs within that area;

(2) the minimum rate or charge proposed to be charged for the service that is the subject of the petition or the proposed range of charges for such service or services;

(3) a cost study demonstrating that the minimum rate proposed to be charged for the service that is the subject of the petition is not less than the true cost of providing such service;

(4) a full and adequate description of the market area for which the proposed minimum rate or range of rates is to apply;

(5) the type of customer affected by the competitive service together with an estimate of the number of customers so affected;

(6) if an applicant provides regulated telecommunications services in New Mexico, the applicant shall specify the loss, if any, in net contribution expected, due to competition in the competitive service and how the applicant proposes to adjust rates in their non-competitive services, to compensate for the loss of contribution.

C. Notice by publication of the filing of a petition shall be given to concerned parties in the form directed by the Commission and such notice shall be further served on such persons and entities by the petitioner as directed by the Commission.

D. Unless otherwise ordered by the Commission, a petition will be treated as a rate filing request pursuant to Article XI of the New Mexico Constitution.

E. Except as provided in the regulations or the Commission, the Commission's Rules of Procedure shall apply to all proceedings instituted pursuant to a petition.

F. The burden of establishing that a service is subject to competition and that it is in the best public interest for the Commission to establish a minimum rate or range or rates shall rest with the petitioner.

G. In ruling on a petition, the Commission will determine, based on the evidence presented, if it is in the public interest to establish a minimum rate or range of rates for a particular service. The Commission may attach such terms and conditions on the provision of a service by a minimum rate or range of rates as the Commission determines to be in the public interest.

[Recompiled 12/30/01]

#### **17.11.13.17 MINIMUM PRICING POLICY:**

A. Unless otherwise ordered by the Commission upon specific request by the applicant containing ample justification for the request and why none of the pricing methodologies discussed below are applicable to the petition, the information provided with or contained in a petition shall be such that it will provide the Commission with the minimum price or the range of prices for a competitive public telecommunications service developed through one of the following pricing methodologies:

(1) Direct Cost Pricing:

(a) This methodology shall start with the total current cost of the investments involved with the competitive service and develop the broad categories of service, including interstate if applicable, that are using that investment.

(b) It shall further develop for the categories of service, current maintenance expenses using maintenance to investment ratios, current overhead administrative expenses using overhead administrative expenses to investment ratios and current ad valorem taxes using ad valorem taxes to investment ratios.

(c) Where investment is shared with non-competitive service or services, it shall in the calculation of separate [separate] competitive service costs develop the dollar amount of usage sensitive investment to be used by the competitive service through allocations based on usage by the board categories of service, and apply the

factors from subparagraph A.2 [1 (b)] of this section to obtain a reasonable allocation of shared costs and allocated costs of the competitive service.

(2) Fully Allocated Cost Pricing: This methodology shall utilize a "Stand Alone Cost Study" which uses a basic building block approach to develop the investments for competitive services. It shall develop, for the competitive service, expenses for maintenance activities, installation activities and other support activities as applicable. It shall reflect current labor rates, all expenses common to the investment shared between competitive and non-competitive services fairly prorated between such services, apply an expected return to investments, and utilize an appropriate tax factor applied to return.

(3) Incremental Cost Pricing: This methodology identifies the incremental forward-looking cost caused by placing one or more additional units in service. The general categories or direct costs included in an incremental cost study include annual capital costs and operating expenses. The capital costs are the annual costs of depreciation, cost of money, and income taxes. The operating expenses are the annual costs of maintenance, administration, ad valorem and other taxes.

(4) Avoidable Cost Pricing: This methodology is applicable to services associated with items of equipment that are restricted. The avoidable cost study identifies the costs which can be avoided if the equipment is eliminated or removed from service.

B. After filing of a petition, the Commission may order that the applicant file another cost study utilizing a pricing methodology of the Commission's choice if the Commission decides that the cost study originally filed does not meet the circumstances of the petition. The applicant shall continue to have the burden of establishing that a service is subject to competition and that it is in the public interest for the Commission to establish a minimum rate or range of rates.

C. Upon request by the Commission, prior to or during hearing upon the petition, applicant shall submit such additional data, information, or exhibits, as may be specified by the Commission.

D. If an applicant files with the Commission in its petition a cost methodology which differs from the cost methodology employed to allocate costs for the same or similar service in a prior proceeding, the applicant shall file with the petition a summary description of how the costing methodology differs and why it differs from the cost methodology employed to allocate costs for the same or similar service in the prior proceeding.

[Recompiled 12/30/01]

#### **17.11.13.18 EFFECT OF DETERMINATION:**

In granting a petition for determination, the Commission will:

A. Make a finding that multiple persons or entities are providing or ready to provide the same or similar service or services or a functionally equivalent alternative or substitute service and that such persons or entities are making such service or services reasonably available in the same market area which generally meets the same customer needs;

B. Identify the market area wherein the particular service is subject to competition;

C. Establish a minimum rate or range of rates to be charged for such competitive service within the particular market area which shall not be less than the cost of providing such service unless the Commission finds that the service should be priced above cost for a specific reason;

D. Give its approval to and authorize the petitioner to change from time to time the rates and charges for such service; provided that the Commission shall be notified within ten days prior to any such change in rates and charges and that such change in rates and charges shall not be set below the approved minimum rate;

E. Authorize the removal of the price of any such competitive service from any public tariff which is on file with the Commission;

F. Authorize, if the Commission deems it necessary, an open docket solely for the filing and disposition of further matters pertaining to a competitive service; and

G. Provide for filing of the minimum price or range prices with the Commission as proprietary information.

[Recompiled 12/30/01]

#### **17.11.13.19 GENERAL POLICIES:**

A. A finding that a particular service is subject to competition within a particular market area of the state does not mean that the Commission has found that the service is competitive in other market areas or statewide.

B. After making a determination that a service is competitive, the Commission may reverse such finding if it is subsequently established that the Commission cannot then make the affirmative findings for a competitive service of Section 12.A [Subsection A of 17.11.13.18 NMAC] hereof.

[Recompiled 12/30/01]

#### **17.11.13.20 CONFIDENTIALITY OF INFORMATION:**

A petitioner may request that the Commission designate information contained in its Petition for Determination and any proceedings in connection therewith as confidential, including but not limited to cost analysis for such services. In ruling on any such request for confidentiality, the Commission will take into account the interests of the petitioner, the competitors, and the public interest.

[Recompiled 12/30/01]

#### **17.11.13.21 REGULATION OF INDIVIDUAL CONTRACTS:**

A. In accordance with the provisions of this section, the Commission may regulate the rates, charges, and service conditions for individual contracts for public telecommunications services in a manner which facilitates competition.

B. At any time, the provider of public telecommunications service may file a verified application with the Commission to provide a public telecommunications service or a combination of services on an individual contract basis. The application shall:

- (1) Describe the telecommunications services to be offered.
- (2) Describe the party to be served by the service(s) and the parties offering the service(s).
- (3) If the individual contract would be for the provision of a combination of services, the application shall identify such services as have been determined to be competitive by the Commission pursuant to a Petition for Determination and which services the applicant offers as non-competitive and the price therefore which has been set by the Commission.
- (4) Contain such additional information as shall be reasonably related to the determination of the existence of competition for the service or services that are the subject of the individual contract.
- (5) Contain such additional information as shall reasonably reflect that the applicant's proposal to provide the services meets the minimum price authorized by the Commission for the competitive services and the price set forth in tariffs approved by the Commission for the non-competitive services.
- (6) Contain any additional information which demonstrates that the individual contract will meet or exceed the cost of the applicant in providing the services thereunder.

C. The Commission shall approve or deny the application within ten days of the filing or such longer period as the Commission shall order. The Commission may deny the application upon a finding that the application fails to set forth prescribed information, that the subject matter or comparable services are not being offered to

customers by parties other than the applicant, or that applicant's proposal to provide service does not meet the applicant's cost of providing the service.

D. After Commission approval of the application, the provider shall file with the Commission the final contract or other evidence of the service to be provided within ten days after the conclusion of negotiations therefore, together with the charges and other conditions of the service which shall be maintained by the Commission as confidential subject to an appropriate protective order.

[Recompiled 12/30/01]

**17.11.13.22 SEVERABILITY:**

If any part or application of these regulations is held invalid the remainder or its application to other situations or persons shall not be affected.

[Recompiled 12/30/01]

**PART 14: IN THE MATTER OF THE COMMISSION'S INQUIRY INTO THE APPROPRIATE REGULATORY STANDARDS APPLICABLE TO NON-FACILITIES BASED RESELLER**

**17.11.14.1 ISSUING AGENCY:**

New Mexico State Corporation Commission [New Mexico Public Regulation Commission] - Telecommunications Division.

[Recompiled 12/30/01]

**17.11.14.2 SCOPE:**

[Recompiled 12/30/01]

**17.11.14.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

**17.11.14.4 DURATION:**

[Recompiled 12/30/01]

**17.11.14.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.11.14.6 OBJECTIVE:**



The purpose of these rules and regulations, together with the Commission's Rules and Procedure, and other rules and regulations of the Commission relating to telecommunications heretofore or hereafter promulgated by the Commission, and Orders of the Commission heretofore or hereafter issued by the Commission, is to administer the Act, pursuant to the provisions of Section 13 thereof.

[Recompiled 12/30/01]

#### **17.11.14.7 DEFINITIONS:**

As used in the Rules of Regulations for Non-Facilities Based Resellers of Telecommunications Services:

A. "Commission" means the New Mexico State Corporation Commission [New Mexico Public Regulation Commission].

B. "Act" means the New Mexico Telecommunications Act, Section 63-9A-1 et seq. NMSA.

C. "Public telecommunications services" refers to that definition of the term as set forth in Section 3(L) of the New Mexico Telecommunications Act.

D. "Certificate" means a certificate of public convenience and necessity issued by the State Corporation Commission [Public Regulation Commission] for the provision of public telecommunication services within the State of New Mexico.

[Recompiled 12/30/01]

#### **17.11.14.8 RULES AND REGULATIONS FOR NON-FACILITIES BASED RESELLERS OF PUBLIC TELECOMMUNICATIONS SERVICES:**

This matter came before the New Mexico State Corporation Commission [New Mexico Public Regulation Commission] ("Commission") pursuant to its own inquiry into the applicable regulatory standards to be applied to non-facilities based resellers of public telecommunications service within the State of New Mexico; and the Commission, having reviewed the comments submitted by the various parties, and having reviewed and considered the arguments of counsel, hereby adopts the following rules and regulations for non-facilities based resellers of Telecommunications Services in New Mexico.

[Recompiled 12/30/01]

#### **17.11.14.9 TITLE:**

These regulations maybe cited as the Rules and Regulations for Non-Facilities Based Resellers of Public Telecommunication Service.

[Recompiled 12/30/01]

**17.11.14.10 CERTIFICATE REQUIRED:**

A. No reseller shall offer public telecommunications services in this state except in accordance with the provisions of the Act, and these Rules and Regulations.

B. No reseller shall offer public telecommunications services in this state without the provider thereof first having obtained a Certificate to provide such service from the Commission.

[Recompiled 12/30/01]

**17.11.14.11 EXISTING CERTIFICATES:**

A. All Certificates heretofore issued by the Commission to resellers shall continue to full force and effect.

B. All Certificates heretofore issued by the Commission to resellers shall be subject to the provisions of these rules and regulations.

[Recompiled 12/30/01]

**17.11.14.12 CERTIFICATE APPLICATIONS:**

A. Any person, corporation, municipal corporation, partnership or association proposing to act as a reseller within this state shall first make application to the Commission for a certificate. Such application shall conform to the provisions of the Act and to the Commission's Rules and Procedures relating to pleadings, procedure and practice before the Commission.

B. The application for certificate shall contain sufficient information to demonstrate that:

(1) it is economically feasible to operate the proposed services successfully and continuously;

(2) the applicant has sufficient financial resources to provide the proposed telecommunications services properly and continuously;

(3) the applicant has competent and experienced management personnel to provide the proposed telecommunications service;

(4) the applicant is willing and able to conform to the constitution and laws of the State of New Mexico and to the rules and regulations of the Commission;

(5) the applicant is in every respect willing and able to provide public telecommunications services properly and continuously.

C. The application for certificate shall include:

(1) a precise description of the exact and particular public telecommunication service or services the applicant proposes to provide;

(2) precise description of the geographical area the applicant proposes to service and obtain a certificate therefore, together with a[n] accurate map thereof;

(3) the proposed tariff to be used by the reseller detailing all rates, charges, rules and regulations governing the provisions of intrastate telecommunications services.

[Recompiled 12/30/01]

#### **17.11.14.13 NOTICE OF APPLICATIONS FOR CERTIFICATES:**

A. The Commission, upon the filing of an application for a certificate, shall set the time and place for hearing thereon and such other and further procedural dates and requirements of the Commission as it shall deem proper. The Commission will require the applicant to serve notice of the application together with all procedural and hearing dates on all known interested parties, and further require the applicant to cause a similar notice of the application and the procedural and hearing dates to be published in the newspaper of general circulation in the geographical area where the proposed services to be offered at least 20 days prior to the date of hearing on the application.

B. The Commission may entertain intervention in a proceeding involving an application for a certificate by any interested person and may require the filing of written testimony concerning the application at any time the Commission sees fit.

[Recompiled 12/30/01]

#### **17.11.14.14 HEARING:**

A. All hearings conducted pursuant to an application for a certificate shall be conducted pursuant to the Commission's Rules of Procedure, unless otherwise provided herein or by order of the Commission.

B. The burden of establishing that the issuance of a certificate is in the public interest and that all requirements for the issuance of a certificate have been met shall rest with the applicant for such certificate.

C. The Commission shall determine when and upon what conditions the public telecommunication services proposed to be offered by the reseller may be provided and

shall determine such terms and conditions as will attach to the exercise of the rights afforded by the certificate.

[Recompiled 12/30/01]

**17.11.14.15 ADDITIONAL PROVISIONS:**

A. Resellers desiring to change their approved rates and charges, to either increase such rates or decrease such rates, shall file with the commission an application for adjustment of rates and charges. The application shall contain New Mexico specific data indicating the then current earnings, investment and expenses of the company as a whole within the state.

B. The application shall be filed in the office of the chief clerk, who shall assign a docket number to such application.

C. The Commission, upon the filing of an application for adjustment of rates and charges, shall set the time and place for hearing thereon, and such further procedural dates and requirements as the commission shall deem proper. The commission will require the applicant to cause a notice of the application and other procedural and hearing dates to be published in a newspaper of general circulation in the geographic area where the reseller's public telecommunication services are offered.

D. The Commission may entertain intervention in a proceeding for an adjustment of rates and charges by interested persons.

E. All hearings pursuant to an application for adjustment of rates and charges shall be conducted pursuant to the Commission's Rules of Procedure, unless otherwise ordered by the commission.

F. In determining and fixing rates and charges of a reseller pursuant to application for adjustment of such rates and charges, the Commission shall consider rates to be just and reasonable where state specific revenues are sufficient to produce an operating ratio for the company within a range of 60% to 90%.

G. On or before April 1, 1989, and on such date of each year thereafter, resellers shall file with the Commission annual reports of their New Mexico Intrastate operating results. Such reports shall be based upon Generally Accepted Accounting Principles (GAAP). Annual reports to be filed by resellers shall contain all pertinent financial data of their operations. Data to be contained in the annual reports shall include, but not be limited to:

- (1) rate base if any;
- (2) expenses, split into various categories such as access charge expenses, expenses for purchase of other services from LEC's or IXC's such as MTS, WATS and

PL services, foreign exchange services and local services, billings and collection services, administrative expenses, commercial and marketing expenses, advertising expenses, depreciation expenses, ad valorem taxes, federal, state and local income taxes, franchise taxes, gross receipts taxes and other such expenses;

(3) revenues split into various services or service categories offered by resellers;

(4) number of customers in the state and traffic or call volume (number of messages and minutes of use) and quantities of other services such as number of circuits.

H. Resellers shall not be required to carry their books on Uniform System of Accounts. The data submitted in the annual report should be divided into intrastate and interstate operations so that the Commission is able to assess the reasonableness of the profitability and continued viability of the resellers' intrastate operations.

[Recompiled 12/30/01]

#### **17.11.14.16 SEVERABILITY:**

If any part or section of these rules and regulation, or the application thereof is determined to be invalid, the remainder of the rules of regulations, and the application thereof shall remain in full force and effect. Done and entered on record this 29th day of December, 1988.

- A. Jerome D. Block, Chairman,
- B. Eric P. Serna, Commissioner,
- C. John A. Elliott, Commissioner,
- D. ATTEST: Richard I. Harris, Chief Clerk.

[Recompiled 12/30/01]

### **PART 15: RULE CONCERNING PAYPHONE PROVIDERS**

#### **17.11.15.1 ISSUING AGENCY:**

New Mexico State Corporation Commission [New Mexico Public Regulation Commission] - Telecommunications Division.

[Recompiled 12/30/01]

#### **17.11.15.2 SCOPE:**

This rule is applicable to all payphones operating in New Mexico.

[Recompiled 12/30/01]

**17.11.15.3 STATUTORY AUTHORITY:**

This rule is adopted pursuant to Article XI of the New Mexico Constitution.

[Recompiled 12/30/01]

**17.11.15.4 DURATION:**

[Recompiled 12/30/01]

**17.11.15.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.11.15.6 OBJECTIVE:**

The purpose of this rule is to establish statewide uniform regulations governing payphones so as to ensure reasonable compensation for payphone providers while protecting consumers against unreasonable rates and restrictions, inadequate service, and payphones in disrepair.

[Recompiled 12/30/01]

**17.11.15.7 DEFINITIONS:**

As used in this rule, the following terms have the meanings provided, unless a different meaning is clearly expressed in the context in which the term is used. The Commission will interpret the definitions broadly enough to ensure compliance with the purpose of this rule.

A. Commission means the New Mexico State Corporation Commission [New Mexico Public Regulation Commission].

B. Consumer means the person initiating a telephone call at a payphone.

C. Equal access code means an access code that allows the consumer to obtain an equal access connection to the carrier or operator service provider associated with that code.

D. Institutional Payphone means a payphone accessible only to a captive population, such as a jail, prison, other penal facility or mental hospital.

E. Local Call means a telephone call which originates and terminates within the same local calling area as defined by the local exchange company for the area in which the call originates.

F. Payphone means a telephone instrument capable of providing and/or reselling public telecommunications service by coin or other billing method.

G. Payphone Provider means a person or entity which provides and/or resells public telecommunications service by coin or other billing method from a payphone.

H. Toll call means a telephone call which originates and terminates in different local calling areas as defined by the local exchange company for the area in which the call originates.

I. "Watrous" Payphone means a payphone provided by a local exchange company which the Commission has determined to be necessary for public health and safety reasons.

[Recompiled 12/30/01]

#### **17.11.15.8 RULE CONCERNING PAYPHONE PROVIDERS:**

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- Q. Transition from old rule to this rule. [17.11.15.21 NMAC]
- R. Waiver. [17.11.15.22 NMAC]
- S. Severability. [17.11.15.23 NMAC]

[Recompiled 12/30/01]

#### **17.11.15.9 EXEMPTIONS:**

A. Institutional payphones are exempt from sections 9[c], 11, 13, and 14 [Subsection C of 17.11.15.13 NMAC, Sections 15, 17 and 18 of 17.11.15 NMAC] of this rule.

B. Payphones owned by local exchange companies are exempt from sections 9[a], 9[b], 11[h], and 12[e] [Subsections A and B of 17.11.15.13 NMAC, Subsection H of 17.11.15.15 NMAC, and Subsection E of 17.11.15.16 NMAC] of this rule.

[Recompiled 12/30/01]

#### **17.11.15.10 REGISTRATION REQUIREMENTS:**

A. Prior to offering or providing any public telecommunications service through a payphone, all payphone providers must register with the Commission.

B. An application for registration as a payphone provider in New Mexico must be filed on the form prescribed by the Commission.

C. An equipment report for each payphone instrument operating in New Mexico must be filed with the Commission on the form prescribed by the Commission.

D. In addition to the application for registration and the equipment report(s), the payphone provider must file a copy of the display card to be posted at every instrument containing all the information required by Section 13 [17.11.15.17 NMAC].



E. Registration may be denied for failure to provide the required information or documents, or for failure to remit the required fees. Notice of denial will include a statement indicating the reason for rejection.

F. Registration shall be renewed annually by filing an annual report on a form prescribed by the Commission. The annual report shall be submitted by February 15th of each year and shall contain information regarding the prior calendar year. At a minimum, the form shall require the payphone provider to update any information contained in its original application for registration or last annual report, as appropriate. The form also shall require the payphone provider to submit a summary of complaints it has received, separated by type of complaint, and a statement describing what the payphone provider has done in response to such complaints.

[Recompiled 12/30/01]

#### **17.11.15.11 ACKNOWLEDGMENT OF REGISTRATION:**

A. Upon receipt of the required forms, fees, and documents, the commission will issue an acknowledgment of registration.

B. Local exchange companies shall not provide public access lines to payphones until the payphone provider submits a copy of its acknowledgment of registration.

[Recompiled 12/30/01]

#### **17.11.15.12 FEES:**

The Commission may by order establish a fee schedule for registration of payphone providers and payphones operating in New Mexico.

[Recompiled 12/30/01]

#### **17.11.15.13 PAYPHONE RATES AND CHARGES:**

A. The maximum allowable rate for a local sent paid call placed from a non-local exchange company-owned payphone shall be determined periodically by the Commission following notice and a public hearing.

B. The maximum allowable rate for a local directory assistance call placed from a non-local exchange company-owned payphone shall be determined periodically by the Commission following notice and a public hearing.

C. Every payphone operating in New Mexico shall be required to provide access for the calls listed below without the use of coins or cards of any type, and without any charge to the consumer.

- (1) emergency calls (911 or "0").
- (2) calls to report equipment malfunctions (repair).
- (3) calls to obtain a refund.
- (4) access to all operator services providers.
- (5) incoming calls.

D. Neither the consumer nor any third party may be billed for any surcharges imposed by the payphone provider nor for any other rate or charge that is not approved for that call by the Commission.

[Recompiled 12/30/01]

#### **17.11.15.14 RESPONSIBILITIES OF THE PAYPHONE PROVIDER:**

A. The payphone provider shall not contract for intrastate operator services or interexchange services with any company not certificated by the Commission to provide such services. Any payphone provider using payphones with automated technology must itself be certificated by the Commission as an operator services provider before such automated payphones are put into operation.

B. The payphone provider shall be responsible for all public access line charges.

C. The payphone provider shall be responsible for repairing, maintaining and servicing the payphone instrument.

D. All payphones installed in New Mexico shall comply with state and local laws, Commission rules, current National Electrical Code and National Electrical Safety Code requirements, and the generally accepted telecommunications industry technical standards of the National Association of Regulatory Utility Commissioners.

E. The payphone provider shall notify the Commission in writing within thirty (30) days of the following changes:

- (1) The location and phone number of any payphones that are newly installed or removed.
- (2) Change in name or d/b/a under which the payphone provider is doing business.
- (3) Changes in name of the payphone provider or its responsible official.
- (4) Changes in mailing address or telephone number of payphone provider.

(5) Acquisition of payphone locations registered to another payphone provider.

F. The payphone provider shall be responsible for paying all required fees to the Commission.

[Recompiled 12/30/01]

#### **17.11.15.15 PAYPHONE SERVICE AND EQUIPMENT REQUIREMENTS:**

The following requirements apply to all payphones operating in New Mexico, except institutional payphones, and are the responsibility of the payphone provider:

A. Each outdoor payphone must have lighting at night if alternating current is available within fifty feet of the payphone.

B. Coinless payphones are permitted only when at least one coin-operated payphone is available at the same location. All coin-operated payphones must be capable of accepting nickels, dimes and quarters.

C. The dial tone must be available without coin.

D. Immediate coin return shall be required for uncompleted coin calls.

E. The payphone instrument must be maintained in good repair.

F. Payphones operating in New Mexico must comply with all applicable federal, state and local laws regarding accessibility by hearing impaired or physically disabled persons.

G. All payphones installed in New Mexico must provide both local and toll service.

H. A separate public access line is required for each payphone instrument installed.

I. An audible bell or other sound shall be required to indicate an incoming call.

J. Payphone providers shall check each payphone location at least monthly in order to ensure that they have made a local telephone directory available at each payphone location.

K. The payphone provider may place reasonable limitations on the duration of local calls made to or from a payphone, but no time limits may be placed on emergency phone calls.

L. All payphones operating in New Mexico shall allow the consumer to use "800" and "950" access code numbers as well as equal access codes to obtain access to the consumer's desired provider of operator services.

M. All payphones must connect the consumer to the operator service provider of the consumer's choice as quickly as the payphone provider's equipment allows.

[Recompiled 12/30/01]

#### **17.11.15.16 INSTITUTIONAL PAYPHONE SERVICE AND EQUIPMENT REQUIREMENTS:**

The following requirements apply to all institutional payphones operating in New Mexico:

- A. The dial tone must be available without coin.
- B. The payphone instrument must be maintained in good repair.
- C. Payphones operating in New Mexico must comply with all applicable federal, state and local laws regarding accessibility by hearing impaired or physically disabled persons.
- D. All payphones installed in New Mexico must provide both local and toll service.
- E. A separate public access line is required for each payphone instrument installed.
- F. The payphone provider may place reasonable limitations on the duration of calls made from a payphone.

[Recompiled 12/30/01]

#### **17.11.15.17 SIGNAGE REQUIREMENTS:**

- A. The information required by this section must be posted on or near the payphone instrument, in plain view of consumers.
- B. All required instructions must be provided in both English and Spanish.
- C. The sign must contain the following information, organized in a logical manner, and designed for ease of use and comprehension:
  - (1) dialing instructions for:
    - (a) emergencies (911 or "0");

- (b) directory assistance;
- (c) obtaining rates for toll calls;
- (d) obtaining operator assistance; and
- (e) reporting service problems (repair).

(2) any restrictions on phone use such as limitations on the duration of incoming or outgoing calls;

(3) the payphone provider's name, address and telephone number;

(4) telephone number of the payphone instrument;

(5) the name, address and telephone number of the presubscribed operator services provider and of any other telecommunications toll service provider.

(6) the rate for a local call and for a local directory assistance call.

D. The payphone provider shall comply with all signage requirements adopted by the Federal Communications Commission.

[Recompiled 12/30/01]

#### **17.11.15.18 WATROUS PAYPHONES:**

The commission shall determine annually which payphones should be "Watrous" payphones and the appropriate local exchange company to provide them. No "Watrous" payphone shall be disconnected without prior written authorization from the State Corporation Commission [Public Regulation Commission].

[Recompiled 12/30/01]

#### **17.11.15.19 COMPLAINTS:**

Complaints regarding violations of this rule may be made by any consumer by writing a letter addressed to the attention of the Director of Telecommunications, State Corporation Commission [Public Regulation Commission], P.O. Drawer 1269, Santa Fe, New Mexico 87504-1269.

[Recompiled 12/30/01]

#### **17.11.15.20 ENFORCEMENT:**

A. Initiation of proceedings: Upon receipt of a complaint alleging a violation of this rule, or on its own motion, the Commission may initiate enforcement proceedings in accordance with the Rules of Procedure for the State Corporation Commission [Public Regulation Commission].

B. Penalties: The Commission may assess such penalties as allowed by law, including but not limited to:

- (1) statutory fines;
- (2) public access line disconnection; or
- (3) revocation of registration.

C. Other penalties: The assessment of any penalty by the Commission for a violation of this rule does not preclude the assessment of a penalty by any other New Mexico agency for violation of its rules arising from the same cause.

[Recompiled 12/30/01]

#### **17.11.15.21 TRANSITION FROM OLD RULE TO THIS RULE:**

A. Registration: Payphone providers currently registered under the Commission's COCOTs regulation pursuant to Docket No. 1084 (SCC Rule No. 85-8, In the Matter of Adoption of Rules and Regulations for the Placement and Operation of Customer Owned Coin Operated Telephones) shall continue to be authorized as payphone providers. The Commission shall notify currently registered payphone providers on a staggered basis as to the form and manner of filing reregistration forms and equipment reports to bring them into compliance with the requirements of this rule.

B. Equipment: Payphone providers may petition the Commission for permission to continue using existing equipment that does not meet the requirements of this rule. If the Commission finds, after notice and a public hearing, that the petitioner has shown that there is good cause to grant such permission, that it is in the public interest to do so, and that it will not violate FCC requirements, the Commission may approve the petition.

[Recompiled 12/30/01]

#### **17.11.15.22 WAIVER:**

The Commission recognizes that public health and safety may in rare cases require an exception to a requirement contained in this rule. In those cases, the payphone provider may petition the Commission for a waiver of a particular requirement. After notice to all interested parties, the Commission will hold a public hearing on the matter. The burden will be on the payphone provider to prove that the circumstances regarding

a particular payphone will adversely affect the public health and safety if a waiver of a certain requirement is not granted.

[Recompiled 12/30/01]

**17.11.15.23 SEVERABILITY:**

If any part of this rule is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[Recompiled 12/30/01]

**PART 16: CONSUMER PROTECTION**

**17.11.16.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.11.16.1 NMAC - Rp, 17.11.16.1 NMAC, 2-1-06]

**17.11.16.2 SCOPE:**

This rule applies to all carriers, except incumbent rural telecommunications carriers, authorized by the commission to provide retail telecommunications services in New Mexico.

**A.** Where the commission has approved an alternative form of regulation plan for an ILEC, and a provision in the approved plan is inconsistent with a provision in this rule, the provision in the approved plan shall apply.

**B.** Where the commission has approved an alternative form of regulation plan for an ILEC, and the approved plan is silent with respect to the subject matter of a provision in this rule, the provision in this rule shall apply.

[17.11.16.2 NMAC - Rp, 17.11.16.2 NMAC, 2-1-06]

**17.11.16.3 STATUTORY AUTHORITY:**

NMSA 1978 Sections 8-8-4, 8-8-15, 63-9A-8.2, 63-9B-4, 63-9B-6, 63-9G-4, and 63-9G-8.

[17.11.16.3 NMAC - Rp, 17.11.16.3 NMAC, 2-1-06]

**17.11.16.4 DURATION:**

Permanent.

[17.11.16.4 NMAC - Rp, 17.11.16.4 NMAC, 2-1-06]

**17.11.16.5 EFFECTIVE DATE:**

February 1, 2006, unless a later date is cited at the end of a section.

[17.11.16.5 NMAC - Rp, 17.11.16.5 NMAC, 2-1-06]

**17.11.16.6 OBJECTIVE:**

The purpose of this rule is to ensure that carriers provide accurate and timely information to customers about their telecommunications services, and that their business conduct toward customers is courteous, efficient, and respectful of the customer's privacy. The rule also specifies procedures relating to discontinuance of basic local exchange service, the resolution of complaints and billing disputes, and customer deposits, and provides the commission with tools for monitoring carriers' compliance.

[17.11.16.6 NMAC - Rp, 17.11.16.6 NMAC, 2-1-06]

**17.11.16.7 DEFINITIONS:**

As used in this rule:

**A. access line** means a dial tone line that provides local exchange service from a LEC's switching equipment to a point of termination at the customer's network interface;

**B. basic local exchange service** means the customer's voice grade access to the public switched network, dual tone multifrequency (DTMF) signaling or its functional equivalent, and access to emergency services (911 and E-911), operator services, toll services, directory assistance, and toll blocking services for qualifying low income customers, but does not include discretionary services;

**C. billing agent** means any person that submits bills for telecommunications services to a customer on behalf of a carrier;

**D. carrier** means any person that furnishes telecommunications service to the public subject to the jurisdiction of the commission, regardless of the facilities used and regardless of whether the person relies in part or entirely on another carrier's facilities, and includes wireless carriers;

**E. chronically delinquent** means the status of a residential customer who during the prior twelve (12) months has been disconnected by a carrier for nonpayment or who on three (3) or more occasions during the prior twelve months has not paid a bill by the date a subsequent bill is rendered;



**F. competitive local exchange carrier (CLEC)** means a carrier that provides competitive local exchange service in its service area and is not an ILEC;

**G. complaint** means an oral or written expression of dissatisfaction with a carrier's charges or services (including a request for repair) made to a carrier by or on behalf of a customer;

**H. customer** means a person that has applied for or is currently receiving telecommunications services;

**I. delinquent** means the status of a bill rendered to a residential customer for telecommunications service which remains unpaid after the due date of the bill;

**J. discontinuance of service** means the intentional cessation of basic local exchange service by a LEC not voluntarily requested by a customer;

**K. discretionary service** means voice mail, caller ID, caller name ID, call waiting, 3-way calling, call forwarding, call return, call blocker, and auto redial, and any similar service sold as an add-on to a customer's basic local exchange service;

**L. incumbent local exchange carrier (ILEC)** means a person that was authorized to provide local exchange service in New Mexico on February 8, 1996, or a successor or assignee of the person; a carrier will also be treated as an ILEC if the federal communications commission determines that such provider (or class or category of carrier) shall be treated as an ILEC pursuant to 47 U.S.C. Section 251(h)(2);

**M. incumbent rural telecommunications carrier (IRTC)** has the meaning given in NMSA 1978 Section 63-9H-3;

**N. local exchange carrier (LEC)** includes incumbent local exchange carriers and competitive local exchange carriers;

**O. medical professional** means a licensed physician, physician's assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner;

**P. network interface** means the point at which the network side of telecommunications service meets the customer side;

**Q. primary local exchange line** means the first exchange access line installed by any LEC to serve a customer at the customer's premises, as distinct from additional lines that may be ordered at the same or a subsequent time at the same premises;

**R. small business customer** means a customer subscribing to ten (10) or fewer exchange access lines;

**S. telecommunications service** has the meaning given to the term "public telecommunications service" in NMSA 1978 Section 63-9A-3;

**T. wire center** means a facility where local exchange access lines converge and are connected to a switching device which provides access to the public switched network, and includes remote switching units and host switching units;

**U. wireless carrier** means a telecommunications carrier licensed by the federal communications commission to provide wireless service in New Mexico.

[17.11.16.7 NMAC - Rp, 17.11.16.7 NMAC, 2-1-06]

#### **17.11.16.8 DISCONNECTION OF BASIC LOCAL EXCHANGE SERVICE AND ALLOCATION OF PARTIAL PAYMENTS:**

**A.** A LEC may not disconnect, or threaten to disconnect, either directly or through the use of ambiguous, deceptive, or misleading language, a customer's basic local exchange service for failure to pay charges for toll or discretionary services.

**B.** A LEC shall offer toll blocking upon a customer's request.

**C.** A LEC may impose involuntary toll blocking on a customer's primary local exchange line for failure to pay charges for toll service. However, the toll blocking must be provided without charge and the LEC must remove the toll blocking when the bill is paid.

**D.** A LEC shall credit customer's partial payments for current bills or past due amounts first to basic local exchange service, unless the customer instructs the LEC to allocate the payment in a different manner. A LEC shall provide to the customer or the consumer relations division of the commission upon request of either written verification of oral instructions given by a customer.

[17.11.16.8 NMAC - Rp, 17.11.16.8 NMAC, 2-1-06]

#### **17.11.16.9 ACCESS TO AND AUDIT OF DATA:**

Unless otherwise authorized by the commission, a carrier shall make all records required by this rule available to the commission, staff with the consent of the commission, or its authorized representatives at any time upon reasonable notice. A carrier shall make customer proprietary network information available to the commission to the extent allowed by law. A carrier shall retain all records required by this rule for at least two (2) years. The commission, or staff with the consent of the commission, may periodically audit the timeliness and accuracy of carriers' customer service and repair records.

[17.11.16.9 NMAC - Rp, 17.11.16.9 NMAC, 2-1-06]

#### **17.11.16.10 CUSTOMER COMPLAINT TRACKING:**

**A.** A wireline carrier shall maintain a record of all oral and written complaints, including informally resolved billing disputes, made by or on behalf of customers, which shall contain:

- (1) the date the complaint was lodged;
- (2) the class of customer (residential or business);
- (3) the category of the complaint (based on the consumer relations division's list of complaint categories); and
- (4) the region within the state (e.g., by wire center, exchange, county).

**B.** A carrier shall not retaliate against a customer for any complaint made by the customer to the commission or any other person.

**C.** Upon request of the commission or staff, and for a specified time period not to exceed two (2) years, a wireline carrier shall compile and submit to the commission reports that state the total number of complaints recorded pursuant to Subsection A of this section and the number of such complaints categorized by the:

- (1) the category of the complaint;
- (2) region within the state (e.g., by wire center, exchange, county); and
- (3) class of customer (residential or business).

**D.** A carrier shall cooperate with the commission, the consumer relations division, and staff in resolving complaints.

[17.11.16.10 NMAC - Rp, 17.11.16.10 NMAC, 2-1-06]

#### **17.11.16.11 ACCESS TO SERVICE AND RATE INFORMATION:**

**A.** A carrier shall maintain comprehensive, understandable, accurate, and up-to-date service and rate information. A carrier:

- (1) shall provide a toll-free telephone number by which customers can access such information and shall, upon request, mail written information to a customer;
- (2) shall provide such information to disabled customers in a form accessible to them;

**(3)** shall provide such information in English and Spanish as requested by the customer; and

**(4)** may provide such information electronically (e.g., by email or text message) if a customer agrees in writing.

**B.** A carrier shall provide:

**(1)** information regarding the rates for direct dialed calls;

**(2)** information regarding all relevant charges and rates for calls using a credit card or calling card;

**(3)** details on all advance payments or termination procedures and charges that may apply;

**(4)** information regarding where and how a customer may subscribe to the carrier's services;

**(5)** an explanation of charges on customers' bills;

**(6)** information regarding proposed changes in services and rates;

**(7)** information regarding the availability of service; and

**(8)** information describing the commission's procedures for resolving slamming and cramming disputes, as set forth in 17.13.8 NMAC, Slamming and Cramming Protection.

**C.** A LEC shall also provide information regarding:

**(1)** the timing of installation of primary local exchange lines or additional lines;  
and

**(2)** rates for repair work done on the customer's side of the network interface.

**D.** A carrier shall provide notice of a rate or fee increase or a new charge for an existing service prior to the implementation of the rate increase or new charge. The notice shall be provided in a bill, a bill insert, or by separate mailing, in a form and manner that clearly identifies every rate or fee increase or new charge as such. A carrier shall provide notice of a rate decrease by no later than the next bill following the billing cycle in which the rate decrease was implemented. This notice requirement shall not apply to increases or decreases in taxes or other government-related fees.

**E.** When a customer initially subscribes to basic local exchange service, a LEC shall inform the customer, in English or Spanish, as requested by the customer:

(1) that a low income telephone assistance program (LITAP) is available to qualifying residential customers and shall ask if the customer would like to receive further information about the program. If the customer answers affirmatively, the LEC shall inform the customer:

(a) that applications are available at its billing offices or that the LEC will mail an application to the customer;

(b) that the customer must submit to the LEC a completed application and proof that the customer meets the eligibility requirements for one or more need-based assistance programs administered by the human services department;

(c) if the customer does not have such proof, the LEC shall advise the customer to contact his or her local human services department income support division office or call the HSD customer help desk at its toll free telephone number for information on how to obtain proof of eligibility;

(d) of other community assistance programs that may be available; and

(e) that the customer may obtain additional assistance from the commission's consumer relations division and the LEC shall provide the toll-free telephone number of the commission's consumer relations division.

(2) that a third party notification program is available to residential customers; and

(3) of the existence of "900" number calling, specifically noting that the calling party incurs a charge each time a "900" number is called, and shall offer "900" number blocking at no charge to the customer.

F. The commission strongly encourages each carrier to make service and rate information accessible to customers on its website and at its business offices or customer service centers open to the public, where these exist.

[17.11.16.11 NMAC - Rp, 17.11.16.11 NMAC, 2-1-06]

#### **17.11.16.12 FAIR MARKETING PRACTICES:**

A. Any carrier subject to the commission's jurisdiction shall, in all oral or written contacts with customers:

(1) provide timely, courteous, and accurate information;

(2) explain services, and switching and discontinuance of service, accurately and unambiguously;

(3) not represent discretionary services as essential;

(4) not engage in any unfair or deceptive trade practice, including but not limited to the unfair or deceptive trade practices and unconscionable trade practices defined in NMSA 1978 Section 57-12-2;

(5) upon a customer-initiated inquiry about services, make a good-faith effort to identify the service that is the most economical for the customer, based on the customer's representation of his or her telecommunications requirements.

**B.** Upon request of the commission or staff, a carrier shall provide its sales scripts, marketing materials, and sales and marketing practices and procedures to the commission for review. A carrier may petition for a protective order pursuant to the commission's rules of procedure prior to providing the requested information.

[17.11.16.12 NMAC - Rp, 17.11.16.12 NMAC, 2-1-06]

### **17.11.16.13 TARIFFS AND BOUNDARY MAPS:**

**A.** Unless specifically exempted by the commission, a LEC shall file with the commission tariffs containing rates, charges, terms, and conditions for all intrastate services that specifically set forth:

(1) the conditions and circumstances under which the LEC, or entities under contract to the LEC, will make line extensions or extensions of service to customers within the exchange area;

(2) minimum standards for discontinuance of residential basic local exchange service;

(3) the LEC's deposit policy; and

(4) charges for service connections, extensions and line mileage.

**B.** Where possible, a LEC shall post tariffs on its website and make copies available for inspection by the public during regular business hours at its business offices in New Mexico.

**C.** Each ILEC shall file with the commission an exchange area boundary map for each of its exchanges in New Mexico. Each map shall clearly show the boundary lines of the exchange area the ILEC holds itself out as serving. Where a portion of the boundary line is not located on section lines, waterways, railroads, etc, the exchange boundary lines shall be located by appropriate measurement to an identifiable location. Maps generally shall contain the detail shown on county highway maps. The map shall be to a scale and in sufficient detail to permit a person in the field to locate the exchange service area boundaries.

[17.11.16.13 NMAC - Rp, 17.11.16.13 NMAC, 2-1-06]

**17.11.16.14 BILLS:**

A carrier shall provide easily readable, readily understandable detailed bills that:

**A.** itemize services, usage, and charges, including quantities of units and per-unit charges, unless the customer selects an alternative billing option offered by the carrier;

**B.** separately identify each nonrecurring and recurring charge;

**C.** describe and itemize charges for repair work on the customer's side of the network interface according to whether they are for labor, materials, travel, or other necessary expenses which must be specified;

**D.** include the name and toll-free number of the carrier;

**E.** include, where applicable, the name and toll-free number of the billing agent;

**F.** include a statement, in English or Spanish, as requested by the customer, advising customers that if they have a question about their bill, they should first contact the carrier; and

**G.** include the toll-free number of the consumer relations division of the commission together with a statement advising customers that they may contact the commission if they are unable to resolve a billing inquiry with the carrier.

[17.11.16.14 NMAC - Rp, 17.11.16.14 NMAC, 2-1-06]

**17.11.16.15 INFORMATION REQUIRED SEMI-ANNUALLY:**

**A.** A LEC shall semi-annually provide information to customers in English and Spanish. A LEC need not provide all of the information at the same time and may choose to provide it in a prominent place on a customer's bill or in a bill insert. The following information is required:

**(1)** the statement described in paragraph (6) of subsection A of 17.11.16.19 NMAC;

**(2)** a statement, using commonly understood descriptions and examples, that basic local exchange service will not be discontinued for failure to pay charges for toll or discretionary services;

**(3)** notification that a third party notification program is available to residential customers;

(4) notification that up-to-date service and rate information is available as provided in subsection A of 17.11.16.11 NMAC; and

(5) notification that a low income telephone assistance program (LITAP) is available to qualifying residential customers; that applications for the program are available at the LEC's billing offices or that the LEC will mail an application to a customer if the customer calls the customer service department of the LEC at [insert toll-free telephone number of the customer service department] to request an application; that the customer must submit to the LEC a completed application and proof that the customer meets the eligibility requirements for one or more need-based assistance programs administered by the human services department; that if the customer does not have proof of eligibility, the customer should contact his or her local human services department income support division office or call the HSD customer help desk at its toll free telephone number for information on how to obtain proof of eligibility that other community assistance programs may be available; and that the customer may obtain additional assistance from the commission's consumer relations division and the LEC shall provide the toll-free telephone number of the commission's consumer relations division.

**B.** In the event a court of competent jurisdiction determines that Subsection B of 17.11.16.30 NMAC is invalid, a LEC shall semi-annually notify customers that they have the right to request that the carrier not disclose to any person, other than to employees of the carrier who have a need for the information in the course of providing telecommunications services, information about the customer, including the customer's calling patterns.

[17.11.16.15 NMAC - Rp, 17.11.16.15 NMAC, 2-1-06]

#### **17.11.16.16 BILLING DISPUTES AND ERRORS, GENERAL REFUNDS AND BILL CREDITS:**

**A.** In the event of a dispute between a customer and a carrier concerning a bill for telecommunications services, the carrier may require the customer to pay the undisputed portion of the bill to avoid discontinuance of service for non-payment. The carrier shall make an investigation appropriate to the case, and report the results to the customer. In the event the dispute is not reconciled, the carrier shall advise the customer that the customer may file a complaint with the commission for disposition of the matter.

**B.** Whenever the billing for service has not been determined accurately because of a carrier's omission or negligence, the carrier shall:

- (1) notify customers that an adjustment has been made;
- (2) explain the reasons for the adjustment;



(3) offer and enter into reasonable payment arrangements in accordance with the following criteria:

(a) whenever a carrier has overbilled a customer for service and the customer has paid the overbilled amount, the carrier shall credit the total overbilled amount within a reasonable time, but in no event later than the second bill after the carrier becomes aware of the error;

(b) whenever a carrier has underbilled a customer for service, the carrier may add the underbilled amount to the customer's next regular bill, unless the amount exceeds the customer's average bill for the preceding six (6) months, in which case the customer may elect to make payments, without interest, over a time period equal to the period over which the errors were accumulated;

(4) upon request, send the customer written verification of the payment arrangements agreed to by the customer and the carrier; a carrier may provide written verification electronically if the customer agrees.

[17.11.16.16 NMAC - Rp, 17.11.16.16 NMAC, 2-1-06]

#### **17.11.16.17 DISCONTINUANCE OR INTERRUPTION OF SERVICE:**

**A. Discontinuance without prior notice.** A LEC may discontinue basic local exchange service to a customer without prior notice in the event of:

- (1) a condition determined by the LEC to be hazardous;
- (2) a customer's use of equipment in such manner as to adversely affect the LEC's service to others;
- (3) a customer's tampering with, or negligently or intentionally damaging or destroying equipment furnished and owned by the carrier; or
- (4) unauthorized use of service provided by the carrier.

**B. Discontinuance with prior notice.** Pursuant to 17.11.16.18 and 17.11.16.19 NMAC, a LEC may discontinue basic local exchange service to a customer with prior notice:

- (1) for nonpayment of a delinquent account for basic local exchange service;
- or
- (2) for failure to post a security deposit or guarantee.

**C. Temporary interruption without notice.** A LEC may temporarily and without notice interrupt service for an operational emergency, necessary and unavoidable network maintenance, or reasons related to the public safety and welfare.

[17.11.16.17 NMAC - Rp, 17.11.16.17 NMAC, 2-1-06]

#### **17.11.16.18 PROHIBITIONS ON DISCONTINUANCE OF SERVICE:**

A LEC shall not discontinue basic local exchange service:

**A.** to any residence where a seriously or chronically ill person resides, or will re-establish service to such a residence, if, at least two (2) days prior to the proposed service discontinuance date specified in the notice:

(1) the LEC receives a medical certification, valid for thirty (30) days, on the form prescribed by the commission in 17.11.16.33 NMAC or a substantially similar form, from a medical professional stating that discontinuance of service might endanger the customer's life or health;

(2) the LEC receives a financial certification, valid for ninety (90) days, on the form prescribed by the commission in 17.11.16.34 NMAC or a substantially similar form, from the customer stating that the customer does not have the financial resources to pay the charges for telecommunications services; and

(3) the residential customer enters into a payment plan with the LEC;

**B.** for nonpayment of the disputed portion of a bill; or

**C.** for delinquency in payment for service to a previous occupant of the same premises unless the previous occupant continues to reside at the premises or the new customer is legally liable for the debt of the previous occupant.

[17.11.16.18 NMAC - Rp, 17.11.16.18 NMAC, 2-1-06]

#### **17.11.16.19 REQUIREMENTS PRIOR TO DISCONTINUANCE OF SERVICE:**

**A. Fifteen day notice.** At least fifteen (15) days before a LEC discontinues basic local exchange service to a customer, the LEC shall mail written notice to the customer stating its intent to discontinue service and setting forth the customer's rights regarding discontinuance of service. The notice shall be in English and Spanish, shall be dated, and shall be in simple, nontechnical language. The notice shall be sent by U.S. Mail, postage prepaid, to the last address for the customer known to the LEC. A fifteen-day notice of discontinuance shall contain:

(1) the toll-free telephone number and working hours of LEC personnel responsible for administering the procedures in this section;

**(2)** the amount owed and the specific date service will be discontinued unless the customer pays the amount due or makes other arrangements with the LEC concerning payment of the charges; upon request, the LEC shall provide information to the customer concerning the outstanding charges, including the dates of the service interval over which the outstanding charges were incurred and the date and amount of the last payment;

**(3)** a statement that basic local exchange service cannot be discontinued for failure to pay charges for toll or discretionary services;

**(4)** a statement that, if the customer pays the portion of the bill which the customer does not dispute, the LEC shall review the portion of the bill which the customer does dispute;

**(5)** a statement that a customer may file a complaint with the consumer relations division of the commission if the customer disagrees with the LEC's determination concerning discontinuance of service;

**(6)** a statement in capital letters of the cost of reconnection;

**(7)** for residential customers, a statement that:

**(a)** the LEC will not discontinue basic local exchange service to a residence where a seriously or chronically ill person resides, or will re-establish service to such a residence, if, at least two (2) days prior to the proposed service discontinuance date specified in the notice:

**(i)** the LEC receives a medical certification, valid for thirty (30) days, on the form prescribed by the commission in 17.11.16.33 NMAC or a substantially similar form, from a medical professional stating that discontinuance of service might endanger the customer's life or health;

**(ii)** the LEC receives a financial certification, valid for ninety (90) days, on the form prescribed by the commission in 17.11.16.34 NMAC or a substantially similar form, from the customer stating that the customer does not have the financial resources to pay the charges for telecommunications services; and

**(iii)** the residential customer enters into a payment plan with the LEC;

**(b)** if service has been discontinued, the LEC shall reestablish service within twelve (12) hours after the residential customer has satisfied the requirements of subparagraphs (a)(i) through (a)(iii) of paragraph (6) of this subsection;

**(c)** the residential customer will not be relieved of the obligation to pay for services rendered if service is continued or reestablished under the provisions of this paragraph; and

(d) timely delivery by a residential customer to the LEC of duly executed medical certification and financial certification forms shall be adequate to delay discontinuance of service for at least thirty (30) days and that the LEC may, in its discretion, delay the discontinuance for a longer period;

(8) for residential customers, blank copies of the medical certification form prescribed by the commission in 17.11.16.33 NMAC and the financial certification form prescribed by the commission in 17.11.16.34 NMAC, or substantially similar forms; these forms include an agreement to enter into a payment plan with the LEC;

(9) for residential customers, the following statement in capital letters, "If you have difficulty paying this bill, and feel you may qualify for assistance from the low income telephone assistance program (LITAP), contact a customer service representative at [insert toll-free telephone number of the carrier's customer service department]. You may obtain an application for the low income telephone assistance program at our billing offices or we can mail an application to you. You should return the completed application and proof that you meet the eligibility requirements for one or more need-based assistance programs administered by the human services department to us at [insert name and mailing address of carrier's office]. If you do not have such proof, you should contact your local human services department income support division office or call the HSD customer help desk at its toll free telephone number for information on how to obtain proof of eligibility."

**B. Two-day notice.** Each LEC shall take reasonable steps to communicate with a customer by telephone or personal contact at least two (2) days prior to the actual date of discontinuance of service to remind the customer of the pending date of discontinuance of service, advise the customer again of the availability of financial assistance for telecommunications services payments, and obtain payment of delinquent accounts. The LEC employee who personally contacts a residential customer shall note any information made known to the employee by the residential customer regarding any resident's serious illness or life endangering health condition, such as whether a resident is physically disabled, frail, or elderly. Such information shall immediately be reported in writing to a LEC employee authorized to prevent discontinuance. That employee shall either delay the discontinuance if it is apparent that the forms required by Subparagraphs (a)(i) and (a)(ii) of Paragraph (7) of subsection A of this section will be received or state in writing why discontinuance of service will not be delayed. The LEC and LEC employee shall be held harmless for errors made in good faith in noting, acting upon, or failing to act upon the information made known by the residential customer.

**C. Third-party notification.** Each LEC shall offer its residential customers a third party notification program and shall notify residential customers that such program is available. The LEC shall extend the third party notification program to those residential customers who notify the LEC in writing of their desire to participate in the program and designate a specific person, organization, or governmental agency that is ready, willing, and able to assist the residential customer with the payment of LEC bills. Upon receipt

of such notice and designation from a residential customer, a LEC shall not discontinue service to a participating customer for nonpayment of past due charges without providing the fifteen (15) day notice and the two (2) day notice required by this section.

**D. Hours when service may be discontinued.** A LEC may discontinue service to a residential customer Monday through Thursday during the hours from 8:00 a.m. to two (2) hours before the LEC's business office regularly closes. A LEC may not discontinue service less than twenty-four (24) hours prior to a holiday or weekend unless the LEC's business office is open for receipt of payment of past due charges and LEC personnel are available to restore service during the holiday or weekend once payment is received.

[17.11.16.19 NMAC - Rp, 17.11.16.19 NMAC, 2-1-06]

#### **17.11.16.20 PAYMENT PLANS:**

**A.** A LEC shall attempt to arrange a plan for the payment of past due LEC charges when a residential customer who has not been chronically delinquent indicates an inability to pay the charges. The LEC shall not discontinue service to the residential customer while a payment plan is being negotiated.

**B.** The LEC shall also inform the customer that a low income telephone assistance program (LITAP) is available to qualifying residential customers and shall ask if the customer would like to receive further information about the program. If the customer answers affirmatively, the LEC shall inform the customer:

(1) that applications are available at its billing offices or that the LEC will mail an application to the customer;

(2) that the customer must submit to the LEC a completed application and proof that the customer meets the eligibility requirements for one or more need-based assistance programs administered by the human services department;

(3) that, if the customer does not have such proof, the LEC shall advise the customer to contact his or her local human services department income support division office or call the HSD customer help desk at its toll free telephone number for information on how to obtain proof of eligibility;

(4) of other community assistance programs that may be available; and

(5) that the customer may obtain additional assistance from the commission's consumer relations division and the LEC shall provide the toll-free telephone number of the commission's consumer relations division.

**C.** Each LEC shall provide a procedure for reviewing residential customer allegations that a proposed payment plan is unreasonable, that a LEC charge is not due

and owing, or that the customer has not violated an existing payment plan. The procedure shall grant the reviewing employee authority to order appropriate corrective action. A LEC shall not discontinue service until the review is completed. If a residential customer fails to comply with a payment plan and the LEC decides to discontinue service due to such failure, the LEC shall notify the customer as prescribed in Subsection B of 17.11.16.19 NMAC. The LEC shall submit the procedure to staff for approval thirty (30) days prior to implementing the procedure. If staff and the LEC cannot resolve any differences regarding the procedure, staff will present the issues to the commission for determination.

[17.11.16.20 NMAC - Rp, 17.11.16.19 NMAC, 2-1-06]

#### **17.11.16.21 RESTORATION OF SERVICE:**

**A.** Upon request of a customer, a LEC shall promptly restore service that has been temporarily discontinued by the LEC when the cause for discontinuance of service has been eliminated, applicable restoration or reconnection charges have been paid, and, if required, satisfactory credit arrangements have been made. At all times, the LEC shall make a reasonable effort to restore service on the day restoration is requested, and shall restore service no later than the next business day following the day on which the cause for discontinuance of service has been eliminated.

**B.** A LEC shall restore service to a residential customer within twelve (12) hours of receipt of the medical certification form prescribed by the commission in 17.11.16.33 NMAC and the financial certification form prescribed by the commission in 17.11.16.34 NMAC, or substantially similar forms which include an agreement to enter into a payment plan with the LEC.

[17.11.16.21 NMAC - Rp, 17.11.16.20 NMAC, 2-1-06]

#### **17.11.16.22 COMPLAINTS AND APPEALS:**

**A.** A carrier shall fully and promptly investigate and respond to all complaints made directly to the carrier by customers. The carrier shall make a good faith attempt to resolve the complaint and shall notify the customer promptly of its proposed disposition of the complaint. Upon request, the carrier shall send written confirmation of its proposed disposition of the complaint to the customer.

**B.** If a carrier's customer representatives cannot resolve a complaint to a customer's satisfaction, the carrier shall provide the complainant with the name, address and current local or toll-free telephone number of the consumer relations division of the commission.

**C.** Upon receipt of a complaint forwarded by the commission on behalf of a customer, a carrier shall make a suitable investigation. A carrier shall provide an initial response to the commission within ten (10) business days after the carrier receives the

complaint. When the carrier has concluded its investigation of a complaint, the carrier shall provide a written response to the commission detailing the results of the carrier's investigation and its proposed resolution. A complaint forwarded by the commission on behalf of a customer shall not be considered resolved until the Consumer Relations Division closes the complaint.

[17.11.16.22 NMAC - Rp, 17.11.16.21 NMAC, 2-1-06]

### **17.11.16.23 CUSTOMER DEPOSIT POLICY:**

17.11.16.23 NMAC through 17.11.16.28 NMAC apply only to wireline carriers that require deposits of residential and small business customers for services regulated by the commission and to wireless carriers that require deposits of their customers.

**A.** A carrier that requires deposits shall develop a written deposit policy that allows applicants for service to establish credit, and existing customers to reestablish credit, and shall make a copy of its policy available to any customer who inquires about the criteria for deposits.

**B.** A carrier shall determine credit worthiness in an equitable and nondiscriminatory manner. The decision to require a deposit shall be based solely on the customer's credit history and shall not be based upon location, income level, source of income, occupation, race, creed, sex, sexual orientation, national origin, marital status, or number of dependents.

**C.** A carrier may, in accordance with 17.11.16.24 NMAC, at any time require from a customer a deposit intended to guarantee payment for services provided by the carrier.

**D.** The carrier shall establish a mechanism for internal review of a deposit requirement in the event a customer challenges the initial determination of the terms of such deposit. Should a customer continue to challenge the proposed terms of the deposit after such review is completed, the carrier shall provide the customer with the name, address and current local or toll-free telephone number of the consumer relations division of the commission for further review.

**E.** The carrier shall provide:

**(1)** a copy of its written deposit policy and associated procedures to each of its employees who process applications for service; and

**(2)** either a copy of its written deposit policy and associated procedures or a specific tariff cite, if such policy and procedures are included in tariffs filed with the commission, to the director of the consumer relations division of the commission.

[17.11.16.23 NMAC - Rp, 17.11.16.22 NMAC, 2-1-06]

#### **17.11.16.24 CRITERIA FOR ESTABLISHING THE NEED FOR AND AMOUNT OF A DEPOSIT:**

**A.** A LEC shall use the criteria in this subsection to determine whether to require a deposit or other guarantee of payment as a condition of new or continued service.

**(1)** A LEC may require an existing customer to make a deposit if the customer's payment record shows substantial nonpayment for intrastate services provided by the LEC in any two (2) of the last six (6) months, or any three (3) of the last twelve (12) months. A LEC may require a deposit even if such customer has paid part of the amount owed before the date service is to be discontinued for nonpayment.

**(2)** A LEC may, without notice, require an existing customer to pay a deposit in full before service is restored whenever service has been disconnected for non-payment of outstanding charges.

**(3)** A LEC shall not require a deposit if the customer furnishes, to the LEC's satisfaction, a written guarantee from a third party to secure payment of the customer's bills for intrastate services provided by the LEC. A LEC shall not require the guarantee amount to exceed the maximum amount of the deposit that would otherwise have been required. The guarantee shall remain in effect until terminated in writing by the guarantor, or until the customer has achieved a satisfactory payment record for services for twelve (12) consecutive months. A LEC shall terminate the guarantee five (5) business days after receiving written notice from the guarantor or five (5) business days after a twelve (12) month period of satisfactory payment.

**(4)** A LEC shall not require a deposit if the customer has been a customer of the LEC for a similar type of service within a preceding twelve (12) consecutive month period, and the customer's credit was satisfactory and is not otherwise impaired.

**B.** The commission may authorize a LEC to waive deposit requirements for low-income customers eligible for tariffed discount programs.

**C.** A carrier shall not require a deposit of a customer that exceeds three (3) times the average monthly bill for telecommunications services provided by that carrier for the same class of customers; wireless carriers may instead use three (3) times the monthly plan fee for wireless services for that customer. An estimate of monthly billing may be used for the purpose of determining a deposit if the carrier can reasonably demonstrate that the customer's usage may be substantially different than the average usage for the same class of service or the monthly plan fee.

**D.** A carrier may adjust the amount of deposit at the request of the customer or at the carrier's initiative at any time the character, purpose, or degree of the customer's use of the service has materially changed, or there are indications it will change.



**E.** A LEC may require a deposit in addition to any advance, contribution, or guarantee it may require in connection with the construction of lines or facilities, as provided in the line extension policy of the LEC's tariffs on file with the commission.

**F.** If a customer files a complaint regarding a proposed discontinuance of service, the commission may, upon motion by the carrier, require the customer to deposit cash or post bond with the carrier, in an amount deemed reasonable by the commission, pending resolution of the disputed proposed discontinuance.

[17.11.16.24 NMAC - Rp, 17.11.16.23 NMAC, 2-1-06]

#### **17.11.16.25 LIMITATIONS ON THE USE OF DEPOSITS:**

**A.** The making of a deposit shall not relieve any customer of the obligation to pay current bills when due. A carrier may require a deposit for services provided by another carrier only if the carrier is the billing agent for that carrier. The carrier shall not apply deposits for services provided by the carrier to an account for services provided by another carrier, even if the carrier is the billing agent for the other carrier. A LEC shall not require a deposit for, or refuse to connect, basic local exchange service because of a customer's indebtedness for toll or discretionary services.

**B.** A carrier shall not require any security for payment of intrastate or wireless services other than a cash deposit or a third-party guarantee. In no event shall any indebtedness related to the furnishing of intrastate or wireless services or the extension of facilities result in a lien, mortgage or other security interest in any real or personal property of the customer, unless the indebtedness has been reduced to a judgment by a court of law.

**C.** If requested by the customer that has made the deposit, a carrier may, in its discretion, transfer a deposit to another customer.

[17.11.16.25 NMAC - Rp, 17.11.16.24 NMAC, 2-1-06]

#### **17.11.16.26 INTEREST ON DEPOSITS:**

A carrier shall accrue simple interest on deposits at the interest rate the carrier charges for late payment of bills or the rate specified in NMSA 1978 Section 62-13-13, whichever is greater. A carrier shall accrue interest on a deposit for the time it holds the deposit, calculated from the date the carrier receives the deposit to the date the carrier refunds the deposit or credits the amount of the deposit to the customer's account. The carrier may, at its option, pay interest directly to the customer or credit the interest to the customer's account.

[17.11.16.26 NMAC - Rp, 17.11.16.25 NMAC, 2-1-06]

#### **17.11.16.27 DEPOSIT RECORDS:**

**A.** A carrier shall maintain a record of each deposit until one (1) year after the deposit is returned. The record shall contain:

- (1)** the name of each customer making a deposit;
- (2)** the premises occupied by the customer when making the deposit and each successive premise occupied while the deposit is retained by the carrier; and
- (3)** the amount of the deposit and the date it was received by the carrier.

**B.** Upon receipt of a deposit, a carrier shall provide to the customer a receipt showing the deposit date, the name and billing address of the customer, and the amount of the deposit.

[17.11.16.27 NMAC - Rp, 17.11.16.26 NMAC, 2-1-06]

#### **17.11.16.28 REFUND OF DEPOSITS:**

**A.** Upon discontinuance of service, or when a customer establishes credit by other means, a carrier shall promptly refund any deposit, plus accrued interest, or the balance of a deposit, if any, in excess of the unpaid bills for intrastate or wireless services furnished by the carrier. A transfer of service from one location to another within the area served by a carrier shall not be deemed a discontinuance of service if the character of the service remains unchanged.

**B.** When a deposit, plus accrued interest, is applied to the liquidation of unpaid bills, a carrier shall mail, or otherwise deliver to the customer, a statement showing the amount of the original deposit, plus any accrued interest, the amount of unpaid bills, plus any interest, liquidated by the deposit, and the balance remaining due either to the customer or the carrier.

**C.** A carrier shall annually review accounts of customers with deposits and, unless the carrier has obtained sufficient factual information to determine that a customer is an unsatisfactory credit risk based upon the criteria prescribed in 17.11.16.24 NMAC, the carrier shall promptly refund a customer's deposit, plus accrued interest, upon satisfactory payment of all proper charges for twelve (12) consecutive months. A carrier may, at its option, refund a deposit plus accrued interest in whole or in part at an earlier time.

**D.** A carrier shall pay any balance due a customer within thirty (30) calendar days after service is discontinued and the carrier has rendered a final bill, without demand or notice from the customer.

**E.** When a carrier is unable to refund a deposit on the first attempt, the carrier shall continue its efforts to refund the deposit.

**F.** When a carrier refunds a deposit, it shall, upon customer request, render to the depositor a statement showing the amount of the deposit, the period the deposit was held, and the amount of interest accrued.

[17.11.16.28 NMAC - Rp, 17.11.16.27 NMAC, 2-1-06]

**17.11.16.29 PRIVACY:**

The commission hereby adopts by reference the federal communications commission's rules on customer proprietary network information codified at 47 CFR 64.2001-64.2009.

[17.11.16.29 NMAC - Rp, 17.11.16.28 NMAC, 2-1-06]

**17.11.16.30 CONFIDENTIALITY; OPERATOR ASSISTED CALLS:**

**A.** A carrier shall consider all communications by customers to be confidential in nature. A carrier shall take reasonable steps to minimize the potential for access by other entities to those communications. The carrier's operators and employees shall not listen to any conversation between customers, except when necessary to provide operator services, and shall not repeat or divulge the nature of any conversation or any information inadvertently overheard. A carrier shall ensure that its operators and employees comply strictly with this requirement.

**B.** A carrier shall adopt suitable rules and instructions to be followed by its operators and employees governing the language and methods to be used when providing assistance to customers. Specifically, operators and employees shall be courteous, considerate, and efficient in handling customer calls. For intrastate operator assisted calls, a carrier shall accurately record when a customer-requested connection is established and when it is terminated.

[17.11.16.30 NMAC - Rp, 17.11.16.29 NMAC, 2-1-06]

**17.11.16.31 TROUBLE ISOLATION CHARGE PROHIBITED:**

If a customer reports trouble on a line, a LEC shall, without charge to the customer and by use of whatever means necessary, determine whether the trouble is on the LEC or customer side of the network interface. For a LEC subject to an alternative form of regulation plan on January 1, 2006, this section shall not be effective until the expiration of its alternative form of regulation plan.

[17.11.16.31 NMAC - N, 2-1-06]

**17.11.16.32 EXEMPTION OR VARIANCE:**

**A.** Any carrier may petition for an exemption or variance from any of the requirements of this rule. Such petition shall:

- (1) identify the section of this rule for which the exemption or variance is requested;
- (2) describe the situation which necessitates the exemption or variance;
- (3) describe the effect of complying with this rule on the carrier and its customers, and on its competitive affiliates and their customers, if the exemption or variance is not granted;
- (4) state how the exemption or variance will achieve the purposes of this rule and the New Mexico Telecommunications Act;
- (5) state why the proposed alternative is in the public interest and is better than the requirement in the rule; and
- (6) state why the exemption or variance would have no anticompetitive effect.

**B.** Such petition may include a motion that the commission stay the affected portion of this rule for the transaction specified in the motion.

**C.** Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by an officer of the carrier or other person with authority to bind the carrier.

**D.** The commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

[17.11.16.32 NMAC - N, 2-1-06]

### **17.11.16.33 MEDICAL CERTIFICATION FORM:**

#### **MEDICAL CERTIFICATION FORM (VALID FOR 30 DAYS)**

NOTE: You must complete both parts of this Medical Certification Form and a Financial Certification Form to continue receiving telecommunications service.

I, [insert printed name of residential customer], hereby certify that I am the person responsible for the charges for telecommunications service at [insert service address], that a seriously or chronically ill person, [insert name of seriously or chronically ill person] resides there, and that I am financially unable to pay my bill at this time. I understand that this certification does not relieve me of the responsibility to pay my bill, and that I must reapply for financial certification every 90 days. In addition, I understand that I must make arrangements for a payment plan with [insert name of LEC] in order to continue receiving telecommunications service.

[date] [customer's telephone number] [customer's signature]

I, [insert name of medical professional] certify that I am a licensed physician, physician's assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner who holds license number [insert license number] and that on [insert date] I examined [insert name of seriously or chronically ill person] who I am informed resides at [insert service address]. Said person is seriously or chronically ill with [describe condition]. Discontinuance of telecommunications service to this residence might endanger this person's health or life during the recovery period. This certification is valid for 30 days.

[signature of medical professional] [office address and telephone number of medical professional]

[17.11.16.33 NMAC - N, 2-1-06]

#### **17.11.16.34 FINANCIAL CERTIFICATION FORM:**

FINANCIAL CERTIFICATION FORM (VALID FOR 90 DAYS)

NOTE: You must complete this Financial Certification Form and a Medical Certification Form to continue receiving telecommunications service.

FINANCIAL SELF-CERTIFICATION (VALID FOR 90 DAYS)

I, [insert printed name] hereby certify that I am the person responsible for the charges for telecommunications service at [insert service address], that a seriously or chronically ill person, [insert name of seriously or chronically ill person], resides there, and that I do not have the financial resources to pay the charges for telecommunications service.

I understand that this certificate does not relieve me of the responsibility to pay my bill, and that I must submit another Financial Certification Form every 90 days.

I understand that if I provide false information, I could be denied medical emergency telecommunications services.

[customer's signature] [date]

[customer's social security number] [customer's telephone number] [service address]

[city] [state] [zip code]

[17.11.16.34 NMAC - N, 2-1-06]

### **PART 17: INFRASTRUCTURE AND HIGH SPEED DATA SERVICES**

#### **17.11.17.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission

[17.11.17.1 NMAC – N, 1-1-01]

**17.11.17.2 SCOPE:**

This rule applies to all incumbent local exchange carriers.

**A.** Where the Commission has approved an alternative form of regulation plan for an ILEC, and a provision in the approved plan is inconsistent with a provision in this rule, the provision in the approved plan shall apply.

**B.** Where the Commission has approved an alternative form of regulation plan for an ILEC, and the approved plan is silent with respect to the subject matter of a provision in this rule, the provision in this rule shall apply.

**C.** All ILECs, including those operating under an approved alternative form of regulation plan, shall comply with the reporting requirements set forth in this rule.

[17.11.17.2 NMAC – N, 1-1-01]

**17.11.17.3 STATUTORY AUTHORITY:**

NMSA 1978 Sections 8-8-4, 8-8-15, 63-7-1.1, and 63-9A-8.2.

[17.11.17.3 NMAC – N, 1-1-01]

**17.11.17.4 DURATION:**

Permanent.

[17.11.17.4 NMAC – N, 1-1-01]

**17.11.17.5 EFFECTIVE DATE:**

January 1, 2001, unless a later date is cited at the end of a section.

[17.11.17.5 NMAC – N, 1-1-01]

**17.11.17.6 OBJECTIVE:**

The purpose of this rule is to impose requirements on incumbent local exchange carriers to ensure adequate investment in a telecommunications infrastructure in New Mexico capable of providing high-speed data services, and to encourage the competitive supply of high-speed data services, promote the timely provision of local exchange service, and ensure that New Mexico's quality of service standards are

upheld. The requirements in this rule are in addition to the requirements in the federal Telecommunications Act of 1996, Pub. L. 104-104 (1996).

[17.11.17.6 NMAC – N, 1-1-01]

#### **17.11.17.7 DEFINITIONS:**

As used in this rule:

**A. basic local exchange service** means the customer's voice grade access to the public switched network, Dual Tone Multifrequency (DTMF) signaling or its functional equivalent, and access to emergency services (911 and E-911), operator services, toll services, directory assistance, and toll blocking services for qualifying low income customers.

**B. carrier** means any person that furnishes telecommunications service to the public subject to the jurisdiction of the Commission, regardless of the facilities used and regardless of whether the person relies in part or entirely on another carrier's facilities.

**C. competitive local exchange carrier (CLEC)** means a carrier that provides competitive local exchange service in its service area and is not an ILEC.

**D. high-speed data services** means technology that supports data transmission at a minimum rate of 56 kilobits per second in the consumer-to-carrier direction, and at a minimum rate of 200 kilobits per second in the carrier-to-consumer direction.

**E. incumbent local exchange carrier (ILEC)** means a person, or an affiliate of a person, that was authorized to provide local exchange service in New Mexico on February 8, 1996, or a successor or assignee of the person or affiliate. A carrier will also be treated as an ILEC if the Federal Communications Commission determines that such provider (or class or category of carrier) shall be treated as an ILEC pursuant to 47 U.S.C. Section 251(h)(2).

**F. interconnection** means the linking of two (2) networks for the mutual exchange of traffic, but does not include the transport and termination of traffic.

**G. loop** means a transmission facility between a distribution frame (or its equivalent) in a central office and a demarcation point at an end user customer premises.

**H. unbundled network element (UNE)** means a facility or equipment used in the provision of a telecommunications service that an ILEC must provide to any requesting carrier on an unbundled basis, pursuant to Section 251(c)(3) of the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996). The term includes, but is

not limited to, features, functions, and capabilities that are provided by means of such facility or equipment, including but not limited to, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

[17.11.17.7 NMAC – N, 1-1-01]

**17.11.17.8 CAPITAL INVESTMENT:**

**A.** An ILEC's annual investment in telecommunications infrastructure shall be adequate and sufficient to meet and maintain:

- (1)** the timely provision of basic local exchange service;
- (2)** the requirements for infrastructure upgrades and deployment of high-speed data services set forth in this rule; and
- (3)** the quality of service standards adopted by the Commission.

**B.** An ILEC shall meet at least annually with the Commission regarding the status of the ILEC's infrastructure investments in New Mexico.

[17.11.17.8 NMAC – N, 1-1-01]

**17.11.17.9 DISTRIBUTION PLANT:**

An ILEC shall develop and implement a plan to upgrade its distribution plant to:

- A.** relieve congestion on routes marked by high line growth;
- B.** meet demand for and enhance the quality of basic local exchange service;
- C.** facilitate the introduction and deployment of high-speed data services; and
- D.** meet the quality of service standards adopted by the Commission.

[17.11.17.9 NMAC – N, 1-1-01]

**17.11.17.10 INTEROFFICE TRANSMISSION FACILITIES:**

**A.** An ILEC shall develop and implement a plan to deploy and/or upgrade transport facilities on interoffice routes marked by high growth in order to:

- (1)** meet demand for and enhance the quality of basic local exchange service;
- (2)** facilitate the introduction and deployment of high-speed data services;



- (3) meet the quality of service standards adopted by the Commission;
- (4) relieve congestion;
- (5) improve service;
- (6) route traffic more efficiently;
- (7) accommodate growth in traffic; and
- (8) support the services and features offered by the ILEC.

**B.** An ILEC may lease such facilities from other carriers rather than build its own facilities.

[17.11.17.10 NMAC – N, 1-1-01]

#### **17.11.17.11 SWITCHING PLANT:**

**A. Replace analog switches.** An ILEC shall replace all analog central office switches with digital central office equipment by January 1, 2002.

**B. Upgrade existing digital switches.**

(1) An ILEC shall upgrade its existing digital switching equipment to:

- (a) address line congestion;
- (b) accommodate growth in traffic;
- (c) support the offering of new features; and

(d) support the following CLASS services in all exchanges: caller ID, caller name ID, call waiting, 3-way calling, call forwarding, call return, call blocker, and auto redial.

(2) By January 1, 2002, an ILEC shall upgrade at least fifty (50) percent of its digital switches in accordance with the requirements of this subsection.

(3) By January 1, 2003, an ILEC shall upgrade one hundred (100) percent of its digital switches in accordance with the requirements of this subsection.

**C. Specific investments.** An ILEC shall make specific investments which shall include, but not be limited to:

- (1) high-capacity line cards;

(2) upgrades of processors, switch hardware, and switch software to support new features and services; and

(3) upgrades of other related switching equipment.

[17.11.17.11 NMAC – N, 1-1-01]

#### **17.11.17.12 DEPLOYMENT OF HIGH-SPEED DATA SERVICES:**

An ILEC shall commit resources and field technicians toward providing high-speed data services in both urban and rural areas of New Mexico.

**A.** By January 1, 2003, an ILEC shall offer high-speed data services in all exchanges serving 5,000 or more access lines.

**B.** In all exchanges serving fewer than 5,000 access lines, an ILEC shall provide high-speed data services within eighteen (18) months of a demonstration of demand equal to the smaller of

(1) ten (10) percent of the number of access lines in the exchange; or

(2) seventy-five (75) access lines.

[17.11.17.12 NMAC – N, 1-1-01]

#### **17.11.17.13 LINE SHARING:**

An ILEC shall provide CLECs with access to UNEs and interconnection arrangements required for the provision of line sharing in compliance with all applicable Commission and FCC orders and rules.

[17.11.17.13 NMAC – N, 1-1-01]

#### **17.11.17.14 REPORTING REQUIREMENTS:**

**A. Initial report.** By February 1, 2001, an ILEC shall submit to the Commission a report identifying:

(1) all exchanges and the number of access lines served by each exchange;

(2) those exchanges in which high-speed data services are currently provided, and the type of high-speed data service deployed;

(3) the analog switches currently deployed in New Mexico, and a plan for replacing them with digital switches by January 1, 2002; and

(4) the digital switches currently deployed in New Mexico that require upgrading in accordance with subsection B of 17.11.17.11 NMAC.

**B. Annual reports:** An ILEC shall file an annual report with the Commission no later than March 31 of each year. The annual report shall include, but not be limited to:

(1) a list of all exchanges and the number of access lines served by each exchange;

(2) a description of the general level of capital investment in telecommunications infrastructure made over the prior calendar year;

(3) a description and quantification of investment in distribution plant made pursuant to 17.11.17.9 NMAC;

(4) a description and quantification of investment in interoffice transport facilities made pursuant to 17.11.17.10 NMAC;

(5) a list of analog switches replaced with digital switches pursuant to subsection A of 17.11.17.11 NMAC;

(6) a list of digital switches upgraded pursuant to subsection B of 17.11.17.11 NMAC;

(7) a description and quantification of investment in and deployment of high-speed data services in exchanges made pursuant to 17.11.17.12 NMAC and the number of requests for high-speed data service in exchanges serving fewer than 5,000 access lines; and

(8) a description of actions taken in accordance with the line sharing requirements in 17.11.17.13 NMAC.

**C. Additional reports.** The Commission may, at any time, request any additional information it may deem necessary.

**D. Confidentiality.** An ILEC may request, and the Commission may grant, a protective order for portions of these reports pursuant to 17 NMAC 1.2, Utility Division Procedures.

[17.11.17.14 NMAC – N, 1-1-01]

#### **17.11.17.15 EXEMPTION OR VARIANCE:**

**A. General requirements.**

(1) An ILEC may petition for an exemption or a variance from any of the requirements of this rule.

(2) Such petition may include a motion that the Commission stay the affected portion of this rule for the transaction specified in the motion.

(3) Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by an officer of the ILEC or someone with authority to sign for the ILEC.

(4) The Commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

**B. Contents of the petition.** A petition for an exemption or variance shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the ILEC and its customers, and on its competitive affiliates and their customers, if the exemption or variance is not granted;

(4) describe the result the request will have if granted;

(5) state how the exemption or variance will achieve the purposes of this rule and the New Mexico Telecommunications Act;

(6) state why the proposed alternative is in the public interest and is a better alternative than that provided by this rule; and

(7) state why the exemption or variance would have no anticompetitive effect.

[17.11.17.15 NMAC – N, 1-1-01]

## **PART 18: INTERCONNECTION FACILITIES AND UNBUNDLED NETWORK ELEMENTS**

### **17.11.18.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission

[17.11.18.1 NMAC - N, 1-1-01]

### **17.11.18.2 SCOPE:**

This rule applies to all telecommunications carriers authorized by the commission to provide local exchange service in New Mexico.

[17.11.18.2 NMAC - N, 1-1-01]

**17.11.18.3 STATUTORY AUTHORITY:**

NMSA 1978 Sections 8-8-4, 8-8-15 and 63-9A-8.2.

[17.11.18.3 NMAC - N, 1-1-01]

**17.11.18.4 DURATION:**

Permanent.

[17.11.18.4 NMAC - N, 1-1-01]

**17.11.18.5 EFFECTIVE DATE:**

January 1, 2001, unless a later date is cited at the end of a section.

[17.11.18.5 NMAC - N, 1-1-01]

**17.11.18.6 OBJECTIVE:**

The purpose of this rule is to facilitate the provision of local exchange services in New Mexico by prescribing the interconnection via direct or indirect means of all providers of local exchange services and the unbundling of the networks of ILECs, and establishing quality of service standards for wholesale services provided by ILECs. The requirements in this rule are in addition to the requirements in the federal Telecommunication Act of 1996, Pub. L. 104-104 (1996).

[17.11.18.6 NMAC - N, 1-1-01]

**17.11.18.7 DEFINITIONS:**

As used in this rule:

A. bill-and-keep arrangement means neither of two interconnecting LECs charges the other for the transport and termination of local calls that originate on the other LEC's network;

B. carrier means any person that furnishes telecommunications service to the public subject to the jurisdiction of the commission, regardless of the facilities used and regardless of whether the person relies in part or entirely on another carrier's facilities;

C. competitive local exchange carrier (CLEC) means a carrier that provides local exchange and exchange access service in its service area and is not an ILEC;

D. element includes an ILEC's UNEs, ILEC-provided collocation and other methods of obtaining interconnection and access to UNEs, and an ILEC's transport and termination of local traffic originated by an interconnecting LEC whenever explicit reciprocal compensation charges are established;

E. embedded costs means costs an ILEC incurred in the past that are recorded in the ILEC's books of accounts;

F. forward-looking common costs means economic costs efficiently incurred in providing a group of UNEs or services (which may include all UNEs or services provided by the ILEC) that cannot be attributed directly to individual UNEs or services;

G. forward-looking cost of capital means the cost of obtaining debt and equity financing in the capital markets;

H. incumbent local exchange carrier (ILEC) means a person, or an affiliate of a person, that was authorized to provide local exchange and exchange access service in New Mexico on February 8, 1996 or a successor or assignee of such person or affiliate; a telecommunications provider will also be treated as an ILEC if the federal communications commission determines that such provider (or class or category of provider) shall be treated as an ILEC pursuant to 47 U.S.C. Section 251(h)(2);

I. interconnection means the linking of two networks for the mutual exchange of traffic, but does not include the transport and termination of traffic;

J. local call means a local exchange service call for which the originating location (defined as the location of the NID serving the originating end user) and the terminating location (defined as the location of the NID serving the terminating end user) are located within the local calling area defined for the originating end user, including all mandatory emergency alert system ("EAS") exchanges and any optional EAS exchanges to which the originating end user subscribes;

K. local exchange carrier (LEC) means a provider of local exchange and exchange access service and includes both CLECs and ILECs;

L. network interface device (NID) means the cross-connect device used to connect loop facilities to intra-premises cabling or inside wiring at an end user's premises;

M. opportunity costs means the revenues the ILEC would have received for the sale of telecommunications services in the absence of competition from telecommunications carriers that purchase UNEs;

N. originating LEC means the LEC that serves the end user who originates a local call;

O. physical collocation has the meaning given in 47 C.F.R. Section 51.5;

P. retailing costs include the costs of marketing, billing, collection and other functions associated with offering retail telecommunications services to subscribers who are not telecommunications carriers;

Q. rural local exchange carrier (rural LEC) has the meaning given in 47 U.S.C. Section 153(37) for "rural telephone company";

R. terminating LEC means the LEC that serves the end user who receives a local call;

S. total element long run incremental cost (TELRIC) (of a UNE) means the forward-looking cost over the long run of the total quantity of facilities and functions directly attributable to, or reasonably identifiable as incremental to, a UNE, assuming the ILEC's provision of other UNEs;

T. unbundled network element (UNE) means a facility or equipment used in the provision of a telecommunications service that an ILEC must provide to any requesting telecommunications carrier on an unbundled basis, pursuant to Section 251(c)(3) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); the term includes, but is not limited to, features, functions and capabilities that are provided by means of such facility or equipment, including but not limited to, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service;

U. virtual collocation has the meaning given in 47 C.F.R. Section 51.5.

[17.11.18.7 NMAC - N, 1-1-01; A, 08-15-06]

#### **17.11.18.8 INTERCONNECTION OF LOCAL EXCHANGE CARRIERS:**

All LECs shall interconnect directly or indirectly with the facilities and equipment of other LECs for the seamless provision of local exchange service.

A. Interconnection to ILEC networks. Each ILEC shall, upon request, allow any other LEC to interconnect with its network for the purpose of providing local exchange and exchange access services. Rates, terms and conditions for interconnection shall be just, reasonable, nondiscriminatory and in accordance with the requirements of this rule.

B. Quality of interconnection. The interconnection provided by the ILEC must be at least equal in quality to that provided by the ILEC to itself or any subsidiary, affiliate, or other party to which the ILEC provides interconnection.

C. Points of interconnection.

(1) An ILEC shall allow any other LEC to interconnect to its network at any technically feasible point.

(2) The ILEC and the requesting LEC shall negotiate meet points of interconnection. Each party shall be responsible for the costs of constructing facilities to the meet point and neither party may impose a meet point that would require one party to incur significantly greater construction costs to build to the meet point than the other party.

(3) Each LEC shall construct and maintain its facilities at the point of interconnection in accordance with accepted engineering standards and practices in the exchange carrier industry.

(4) Each terminating LEC will make available to each originating LEC all technical references to documents issued by industry standards bodies or equipment manufacturers that define the engineering specifications necessary for the originating LEC's equipment to interface with the terminating LEC's interconnection facilities.

D. Joint facilities construction and use. LECs may jointly construct interconnection facilities and apportion the cost and expense between any joint users of those facilities.

[17.11.18.8 NMAC - N, 1-1-01]

**17.11.18.9 RECIPROCAL COMPENSATION:**

Interconnecting LECs shall establish reciprocal compensation arrangements for the transport and termination of local calls pursuant to 47 U.S.C. Section 252(d)(2), 47 C.F.R. Section 51.701-717 and the requirements of this section. All local calls, including calls used for voice communications, data communications and connection to the internet or an internet services provider, shall be subject to the reciprocal compensation arrangements.

A. Interconnecting LECs may by mutual agreement establish bill-and-keep arrangements to satisfy their reciprocal compensation obligations or may negotiate explicit rates for reciprocal compensation in accordance with 47 U.S.C. Section 252 and this rule.

B. A LEC that has entered into a bill-and-keep arrangement may, ninety (90) days following the effective date of such agreement, petition the commission to initiate negotiation of explicit reciprocal compensation charges. The commission shall grant such petition if the petitioning party demonstrates that the amount of local traffic handed off from one network to the other, measured on a monthly basis, is out of balance in either direction by more than ten percent (10%) for three consecutive months.



C. If two interconnecting LECs are unable to determine mutually agreeable rates for reciprocal compensation, the commission shall establish explicit reciprocal compensation rates.

(1) The commission shall establish a reciprocal compensation rate structure that is consistent with the costs incurred by LECs for the transport and termination of local calls.

(2) If only one of the interconnecting LECs is an incumbent, then unless paragraph 3 of this subsection applies, the commission shall establish symmetrical reciprocal compensation rates (i.e., the same rates will apply to the transport and termination of traffic originating with either LEC), based on the ILEC's forward-looking economic costs, calculated as prescribed in 17.11.18.15 NMAC.

(3) If only one of the interconnecting LECs is an incumbent, the other LEC may file a cost study with the commission to demonstrate that its forward-looking economic costs for transport and termination of local calls are higher than those of the interconnecting ILEC. If the commission finds that costs for transport and termination of local calls are disparate, the commission shall establish asymmetric rates for reciprocal compensation, based on the forward-looking economic costs for transport and termination of local calls incurred by each LEC.

(4) If both interconnecting LECs are incumbents, or neither is an incumbent, the commission shall establish symmetrical reciprocal compensation rates based on the larger LEC's forward-looking economic costs, calculated as prescribed in 17.11.18.15 NMAC.

[17.11.18.9 NMAC - N, 1-1-01; A, 08-15-06]

#### **17.11.18.10 ACCESS REQUIREMENTS:**

A. To rights-of-way.

(1) A LEC shall provide to interconnecting LECs non-discriminatory access to all facility rights-of-way, conduits, ducts, poles and pole attachments, and building entrance facilities under its ownership or control, provided that the LEC requesting access has obtained all required authorizations from third-party property owners and appropriate government authorities.

(2) When two interconnecting LECs are unable to negotiate mutually acceptable terms and conditions for access to rights-of-way, the commission shall determine any unresolved matters.

B. To emergency call networks. All LECs shall cooperate to insure the seamless operation of emergency call networks, including 911, E-911 and 0-dialed calls.

(1) An ILEC shall allow LECs to interconnect at its E-911 tandem so that each LEC's customers may place calls to public safety answering points by dialing 911.

(2) A LEC shall not charge another LEC for any service, activity, or facility associated with the provision of 911 or E-911 services other than call transport and termination charges.

C. To telephone numbers. Each interconnecting LEC shall be responsible for contacting the north American numbering plan administrator (NANPA) to obtain its own NXX or NXX-X codes and to initiate NXX or NXX-X assignment requests.

D. To operator services and directory assistance databases. Interconnecting LECs shall make available to each other non-discriminatory access to their databases for operator services and directory assistance.

E. To signaling networks and databases. Interconnecting LECs shall make available to each other:

(1) non-discriminatory access to their signaling systems, databases, facilities and protocols used in the routing of local and interexchange traffic, including signaling protocols used in the query of call processing databases such as 800 database service, alternate billing service (ABS) and line information data base (LIDB); and

(2) the signaling resources and information necessary for interconnecting LECs' routing of local and interexchange traffic.

[17.11.18.10 NMAC - N, 1-1-01; A, 08-15-06]

#### **17.11.18.11 OBLIGATIONS OF ALL LECS:**

A. Dialing parity. LECs must provide dialing parity to competing providers of local exchange service and intrastate toll service so that the end users of an interconnecting carrier do not have to dial more digits than the LEC's own end users, or incur dial delays that exceed the LEC's quality of service, in order to complete local calls through the interconnected facilities.

B. Number portability. To the extent technically feasible, LECs shall provide number portability in accordance with the requirements in 47 C.F.R. 51.203.

C. Interoperability of operator services. Interconnecting LECs shall negotiate mutual agreements to ensure the interoperability of non-optional operator services between their networks, including but not limited to the ability of operators on each network to perform such operator functions as completing collect calls, third-party calls, call screening, busy line verification calls and busy line interrupt.

D. Mutual billing and collection agreements.

(1) Interconnecting LECs shall provide each other with answer and disconnect supervision. Interconnecting LECs shall enter into mutual billing and collection agreements for the accurate and timely exchange of billing records information to support:

(a) billing end users, including the exchange of telephone number information, the use of non-proprietary calling cards and the collect billing of third-party calls to a number served by another LEC;

(b) determining intercompany settlements for local and non-local traffic; and

(c) validating the jurisdictional nature of traffic.

(2) The billing data exchanged shall be provided in accordance with national industry standards.

E. Disclosure of customer proprietary network information. Interconnecting LECs shall not disclose customer-proprietary network information to each other without the express and affirmative consent of the affected end user and shall protect customer-proprietary network information in compliance with 47 U.S.C. Section 702 and applicable federal and state rules.

[17.11.18.11 NMAC - N, 1-1-01]

#### **17.11.18.12 INTERCONNECTION OBLIGATIONS OF ILECS:**

##### A. Unbundling of ILEC networks.

(1) At a minimum, ILECs shall unbundle their networks to the extent required by the federal communications commission ("FCC") in 47 C.F.R. Sections 51.307 through 51.321. Nothing in this rule precludes the commission from requiring ILECs to undertake further unbundling of their networks, including further unbundling of network elements pursuant to 17.11.18.8 NMAC through 17.11.18.13 NMAC.

(2) Rates for UNEs shall be based on the ILEC's forward-looking economic costs, calculated as prescribed in 17.11.18.15 NMAC.

B. Collocation. ILECs shall provide for the collocation of equipment necessary for interconnection or access to the ILEC's UNEs, in accordance with 47 C.F.R. Section 51.323 and the requirements of this rule. An ILEC shall offer collocation pursuant to rates, terms and conditions that are just, reasonable, and nondiscriminatory. A LEC may request either physical collocation or virtual collocation from an ILEC, and the ILEC shall provide the requested form of collocation, except that the ILEC may provide virtual collocation if the commission determines that physical collocation is not practical for technical reasons or because of space limitations.

C. Exemptions for certain rural ILECs. An ILEC that qualifies as a rural LEC shall be exempt from the requirements of 47 U.S.C. Section 251(c) and this section until it has received a request for interconnection or purchase of a UNE.

D. Procedure for termination of exemption of certain rural ILECs.

(1) A party requesting interconnection or purchase of a UNE from a rural ILEC shall submit a copy of its request to the commission.

(2) The commission shall conduct a hearing for the purpose of determining whether to terminate the rural ILEC's exemption.

(3) In evaluating the request for interconnection or purchase of a UNE, the commission shall consider whether:

(a) the request is technically feasible; in making this determination, the commission may consider evidence brought by the requesting party concerning the provision of interconnection arrangements and UNEs by similarly situated rural ILECs in New Mexico or other states;

(b) the request is unduly economically burdensome to the rural ILEC or its customers; in making this determination, the commission may require the rural ILEC to provide an estimate of the costs of complying with the request and information on its costs and revenues beyond that included in the company's periodic reports to the commission;

(c) granting the request would be consistent with the objectives of universal service and the specific requirements of 47 U.S.C. Section 254 (exclusive of subsections (b)(7) and (c)(1)(D)); in making this determination, the commission may consider the potential benefits to end users from the provision of competitive services in the rural ILEC's service territory, as well as the potential impact of granting the request on the rural ILEC.

(4) The commission shall issue a final ruling on the request within one hundred twenty (120) days of receipt of the request.

(5) If the commission terminates a rural ILEC's exemption, it shall establish a schedule for implementing the request for interconnection or purchase of a UNE.

[17.11.18.12 NMAC - N, 1-1-01]

#### **17.11.18.13 WHITE-PAGES TELEPHONE DIRECTORY LISTINGS:**

A. Interconnecting LECs shall ensure that all end users in their service territories have access to white-pages telephone directories and directory listing information from directory assistance operators for all listed end users in their service territories. An ILEC

or a CLEC satisfies the requirement to provide "access to white-pages telephone directories" if it, or its directory publisher, provides reasonable notice to end users of the option to receive such directories upon request, free of charge, and within a reasonable time of the request.

B. Each ILEC shall be designated the initial white-pages telephone directory provider ("white-pages provider") in its service territory and shall assume the responsibilities set forth in this section. With commission approval, a different LEC may be designated as the white-pages provider for the ILEC's service territory and may assume the responsibilities set forth in this section.

C. The white-pages provider shall cause to be published annually, in a white-pages telephone directory, the name, address, and telephone number for all listed end users within the territory served by the ILEC regardless of whether the end user subscribes to the local exchange service of the ILEC or another LEC. The white-pages provider shall publish all listings in alphabetical sequence by end user name with no distinctions made in the style, size, or format of listings supplied by CLECs and the ILEC.

(1) The white-pages provider shall not include in the white-pages directories or directory assistance databases the telephone numbers of end users who elect not to be published.

(2) The white-pages provider shall not include in the white-pages directories end users who elect not to be directory listed but shall include them in the directory assistance databases.

D. The white-pages provider shall include the same directory listings information in its directory assistance database, and shall provide all interconnecting LECs with access to that database for the purpose of providing directory assistance. The white-pages provider shall update its directory assistance database to include the listing for a new customer of a CLEC within seventy-two (72) hours of receipt of the listing from the CLEC.

E. The white-pages provider shall cause each CLEC to receive sufficient copies of the white-pages telephone directory to enable each CLEC to satisfy its obligations under Subsection A.

F. The white-pages provider shall provide space in the customer guide pages of the white-pages directory to a CLEC for the purpose of notifying customers how to reach the CLEC to request service, contact repair service, dial directory assistance, reach an account representative, request buried cable local service and contact the special needs center for customers with disabilities.

G. The white-pages provider shall provide premium listings in its white-pages telephone directory to the end users of CLECs on the same terms and conditions it offers premium listings to its own customers.

H. The white-pages provider shall provide CLECs a minimum of ninety (90) days' notice of deadlines associated with publication of the white-pages telephone directory. Each CLEC shall be responsible for ensuring it provides the white-pages provider with its directory listings information in a timely and accurate fashion. CLECs shall bear all responsibility for errors or omissions in the directory listings information provided to the white-pages provider.

I. The white-pages provider shall provide accurate and current directory listings information and updates to non-affiliated publishers of yellow-pages advertising directories in a non-discriminatory manner.

[17.11.18.13 NMAC - N, 1-1-01; A, 08-15-06; A, 12-14-12]

#### **17.11.18.14 COSTING AND PRICING STANDARDS:**

A. General pricing standard. An ILEC shall offer elements to requesting LECs at rates, terms and conditions that are just, reasonable and nondiscriminatory. An ILEC shall not charge different rates for elements based on the class of customers served by the requesting LEC or the type of service provided by the requesting LEC.

B. Cost study required. An ILEC shall conduct a cost study using the methodology set forth in 17.11.18.15 NMAC and shall provide supporting documentation in accordance with 17.11.18.16 NMAC to prove to the commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element.

[17.11.18.14 NMAC - N, 1-1-01]

#### **17.11.18.15 COSTING METHODOLOGY:**

A. Formula. The forward-looking economic cost of an element shall be calculated as the sum of:

- (1) the total element long-run incremental cost (TELRIC) of the element; and
- (2) a reasonable allocation of forward-looking common costs.

B. Calculation of TELRIC.

(1) Least cost technology. An ILEC shall calculate TELRIC on the basis of the most economically efficient choice of technology, or mix of technologies, in the long run, provided that such choice shall be:

(a) restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

(b) consistent with the level of output necessary to satisfy current demand levels for all services using the UNE in question; and

(c) consistent with overall network design and topology requirements.

(2) Forward-looking cost of capital. In calculating the TELRIC of an element, an ILEC shall use the forward-looking cost of capital.

(3) Depreciation rates. In calculating forward-looking economic costs of elements, an ILEC shall use depreciation rates for capital assets that reflect changes in the economic value of those assets over time.

C. Reasonable allocation of forward-looking common costs. The commission shall consider an allocation of forward-looking common costs to an element to be reasonable if the ILEC demonstrates that:

(1) the sum of the allocation of forward-looking common costs plus the TELRIC of the element does not exceed the stand-alone costs associated with the element; in this context, stand-alone costs are the total forward-looking costs, including corporate costs, that would be incurred to produce a given element if that element were provided by an efficient firm that produced nothing but the given element; and

(2) the sum of the allocation of forward-looking common costs for all elements and services equals the total forward-looking common costs, exclusive of retailing costs, attributable to operating the ILEC's total network so as to provide all the elements and services offered.

D. Factors that may not be considered. In calculating the forward-looking economic cost of an element, an ILEC shall not consider embedded costs, retailing costs, opportunity costs, revenues associated with elements or telecommunications service offerings other than the element for which a rate is being established.

E. Units. The forward-looking economic cost per unit of an element equals the forward-looking economic cost of the element, calculated as prescribed in 17.11.18.15 NMAC, divided by a reasonable projection of the sum of the total number of units of the element the ILEC is likely to provide to requesting LECs and the total number of units of the element the ILEC is likely to use in offering its own services, during a reasonable measuring period.

(1) For elements an ILEC offers on a flat-rate basis, the number of units shall be the discrete number of UNEs the ILEC uses or provides (e.g., local loops or local switch ports).

(2) For elements an ILEC offers on a usage-sensitive basis, the number of units shall be the unit used to measure usage of the element (e.g., minutes of use or number of call-related database queries).

[17.11.18.15 NMAC - N, 1-1-01; A, 08-15-06]

#### **17.11.18.16 SUPPORTING DOCUMENTATION:**

When an ILEC files a cost study with the commission in support of its forward-looking economic cost estimates, it must also file a complete set of supporting workpapers and source documents.

A. The workpapers must clearly and logically present all data used in developing the estimate and shall provide a narrative explanation of all formulas or algorithms applied to the data. The workpapers must allow others to replicate the methodology and calculate equivalent or alternative results using equivalent or alternative assumptions.

B. The workpapers must clearly set forth all significant assumptions and identify all source documents used in preparing the cost estimate.

C. The workpapers must be organized so that a person with expertise in analyzing forward-looking cost studies, but otherwise initially unfamiliar with the particular study, will be able to work from the initial investment, expense and demand data to the final cost estimate. The workpapers must clearly identify what each number used in developing the estimate represents.

D. The source of any data relied on in the study should be clearly identified and readily available, if not included with the workpapers.

E. Any figures expressed in terms of dollars per unit must be traceable to the original source documents containing the number of dollars and units from which the figures were calculated.

F. To the extent practicable, an ILEC shall provide all data and workpapers in an electronic file on an electronically-formatted device using commercially available spreadsheet or database software formats. Each electronically-formatted device must contain a "read me" or similar file that describes the contents of each file on the device and provides an explanation of the definitions, formulas, equations and data on the device.

G. An ILEC shall provide an index or detailed table of contents of the workpapers and source documents.

[17.11.18.16 NMAC - N, 1-1-01; A, 08-15-06]

#### **17.11.18.17 NEGOTIATION OF INTERCONNECTION AGREEMENTS:**

Interconnecting LECs shall engage in good-faith negotiations and cooperative planning to achieve mutually agreeable interconnection arrangements pursuant to 47 U.S.C. Section 252 and the procedures set forth in this rule. An ILEC may negotiate and enter



into a binding agreement for interconnection with a requesting LEC pursuant to 47 U.S.C. Section 252(a)(1), without regard to the requirements set forth in 17.11.18.8 NMAC through 17.11.18.16 NMAC.

A. Unless the negotiating parties establish a mutually agreeable date, negotiations shall be deemed to begin on the date an ILEC receives a request for interconnection from a LEC.

B. A request for interconnection shall:

- (1) be in writing and be hand-delivered or sent by certified mail or facsimile;
- (2) identify the initial specific issues to be resolved, the specific underlying facts and the requesting LEC's proposed resolution of each issue;
- (3) include as appendices any other material necessary to support the request; and
- (4) identify the person authorized to negotiate for the requesting LEC.

C. The requesting LEC may identify additional issues for negotiation without causing an alteration of the date on which negotiations are deemed to begin.

D. The ILEC from which interconnection is sought shall respond to the interconnection request no later than fourteen (14) business days from the date the request is received. The response shall:

- (1) be in writing and be hand-delivered or sent by certified mail or facsimile;
- (2) respond specifically to the requesting LEC's proposed resolution of each initial issue, identify the specific underlying facts upon which the response is based and, if the response is not in agreement with the requesting LEC's proposed resolution of each issue, state the responding LEC's proposed resolution of each issue;
- (3) include as appendices any other material necessary to support the response; and
- (4) identify the person authorized to negotiate for the responding LEC.

E. At any point during the negotiations required by this section, a LEC may request the commission to participate in the negotiations and mediate differences arising in the course of the negotiations.

[17.11.18.17 NMAC - N, 1-1-01; A, 08-15-06]

#### **17.11.18.18 SUBMITTAL OF AGREEMENTS TO THE COMMISSION:**

A. Within sixty days of the execution of a negotiated agreement, the negotiating parties shall submit the agreement to the commission for approval.

B. A carrier submitting a negotiated interconnection agreement (or amendment to a negotiated agreement) to the commission pursuant to 47 U.S.C. Section 252(e) shall submit the original and two copies of the agreement accompanied by an original and two copies of an advice notice on the form prescribed by the commission in 17.11.18.24 NMAC or a substantially similar form. Each carrier shall sequentially number advice notices filed during each calendar year. A carrier may submit more than one agreement or amendment under a single advice notice provided that all agreements and amendments so submitted involve the same parties and are filed simultaneously.

C. The submitting carrier shall serve copies of the advice notice on the New Mexico Attorney General and shall, within five business days after filing, either:

(1) publish the advice notice once in a newspaper of general circulation in the State of New Mexico; or

(2) post and maintain the advice notice to the carrier's internet website until thirty (30) days after the subject agreement is approved or deemed approved, in which case the advice notice shall also provide the website address.

D. Within thirty (30) days after the date the advice notice is filed, any person, including the commission's telecommunications bureau staff, believing that the commission should reject an agreement filed in accordance with these procedures, or any portion thereof, may file an original and two copies of a request for rejection of the agreement or portion thereof with the Commission's Utility Division, Marian Hall, 224 East Palace Avenue, Santa Fe, New Mexico 87501. A request for rejection must state with particularity the basis for rejecting the agreement or portion thereof pursuant to 47 U.S.C. Section 252, including any violations of the standards set out in 47 U.S.C. Section 252(e)(2)(A). When it is filed with the commission, a request for rejection must be served on the contracting parties at their addresses listed in the advice notice and the New Mexico Attorney General by the person making the request. Within thirteen (13) days after the request is filed, the parties to the agreement or any other interested person may file a reply to the request.

E. Upon receipt of a request for rejection, the matter will be automatically assigned a case number and assigned on a rotating basis to a hearing examiner employed by the commission who shall preside over the proceedings and take all actions necessary and convenient thereto within the limits of the hearing examiner's authority unless otherwise ordered by the commission. The hearing examiner shall then determine whether a hearing should be held.

F. Unless the commission acts to approve or reject an agreement, an agreement submitted pursuant to this section shall be deemed approved pursuant to 47 U.S.C. Section 252(e)(4) ninety days (90) after submission.

[17.11.18.18 NMAC - N, 1-1-01; 17.11.18.18 NMAC - N, 08-15-06]

#### **17.11.18.19 MEDIATION OF INTERCONNECTION AGREEMENTS:**

A LEC that is unable to negotiate an interconnection agreement with an ILEC may petition the commission to mediate any unresolved issues. The LEC shall serve a copy of such petition on the parties to the negotiation. The commission may appoint a hearing examiner as a mediator.

A. Within fifteen (15) days of the filing of the petition, each party shall submit to the mediator a written statement summarizing the dispute and providing all relevant documentation concerning the unresolved issues.

B. The mediation proceeding shall be confidential. All documents exchanged and submitted during the mediation, except the parties' initial statements and the final mediated agreement, shall be kept confidential unless the mediating parties agree to the disclosure of any such material.

C. The mediator shall not have the authority to impose a settlement on the parties but shall attempt to help them satisfactorily resolve the dispute. The mediator shall be authorized to make oral and written recommendations of resolution at any point in the mediation proceeding. In the event the mediating parties fail to reach resolution of their differences, the mediator, before terminating the mediation proceeding, shall submit to the parties a final proposed agreement. If a party does not accept the mediator's final proposed agreement, it shall advise the mediator in writing within ten (10) days of the mediator's issuance of the proposed agreement of the specific reasons for its refusal.

D. The mediation proceeding shall be terminated when:

- (1) the parties have executed a mediated agreement;
- (2) one or more of the parties files with the commission a written declaration that the mediation proceeding is terminated; the party must provide a detailed explanation for its decision to terminate the mediation; or
- (3) the mediator files with the commission a written declaration that further efforts at mediation would be futile.

E. If the parties reach a mediated agreement, they shall submit it to the commission for approval. The mediator shall submit a report certifying that, to the best of the mediator's knowledge and belief, the agreement satisfies the standards prescribed in 47 U.S.C. Section 252(e) and all of its subparts.

F. The commission shall approve or reject the mediated agreement in accordance with the standards prescribed in 47 U.S.C. Section 252(e) and all of its subparts within thirty (30) days of its submittal.

[17.11.18.19 NMAC - N, 1-1-01; 17.11.18.19 NMAC - Rn, 17.11.18.18 NMAC & A, 08-15-06]

#### **17.11.18.20 ARBITRATION OF INTERCONNECTION AGREEMENTS:**

A LEC that is unable to negotiate an interconnection agreement with an ILEC may petition the commission to arbitrate any unresolved issues.

A. To initiate arbitration, a LEC shall:

(1) file a petition with the commission not less than one hundred thirty-five (135) days nor more than one hundred sixty (160) days after the date on which its request for interconnection was received by the ILEC;

(2) provide all relevant documentation concerning the unresolved issues;

(3) provide all relevant documentation concerning the position of each party with respect to unresolved issues;

(4) provide all relevant documentation concerning any issue discussed and resolved by the parties; and

(5) on the same day it sends the petition to the commission, send a copy of the petition and documentation to the ILEC with which it has been unable to reach an agreement.

B. The ILEC may, within twenty-five (25) days after it receives the petition, respond to the LEC's petition and provide additional information to the LEC and the commission.

C. The commission shall resolve all issues presented to it within nine months from the date the ILEC received the request for interconnection.

D. The commission shall approve or reject the arbitrated agreement in accordance with the standards prescribed in 47 U.S.C. Section 252(e) and all of its subparts within thirty (30) days after its submission by the parties.

[17.11.18.20 NMAC - N, 1-1-01; 17.11.18.20 NMAC - Rn, 17.11.18.19 NMAC; A, 08-15-06]

#### **17.11.18.21 STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS:**

An ILEC may, pursuant to 47 U.S.C. Section 252(f), prepare and file with the commission a statement of terms and conditions for interconnection that it generally offers within New Mexico.

A. The commission shall approve, modify, or reject the statement in accordance with the requirements set forth in 47 U.S.C. Section 252(f), subsections (2)-(4).

B. The submission or approval of a statement of generally available terms and conditions shall not relieve an ILEC of its duty to negotiate the terms and conditions of an interconnection agreement pursuant to 47 U.S.C. Section 251(c)(1).

[17.11.18.21 NMAC - N, 1-1-01; 17.11.18.21 NMAC - Rn, 17.11.18.20 NMAC, 08-15-06]

#### **17.11.18.22 SUSPENSION OR MODIFICATION OF CERTAIN REQUIREMENTS FOR RURAL LECs:**

A. Interconnection obligations. A rural LEC serving fewer than two percent of the aggregate subscriber lines installed nationwide may file an application with the commission for suspension or modification of the requirements of 47 U.S.C. Section 251, subsections (b) and (c), and 17.11.18.8 NMAC through 17.11.18.13 NMAC applicable to the local exchange service facilities specified in the application.

B. Costing and pricing requirements. An ILEC that qualifies as a rural LEC may file an application with the commission for suspension or modification of the requirements of 17.11.18.14 NMAC through 17.11.18.16 NMAC.

C. Standards for approval. Consistent with the public interest, convenience and necessity, the commission may grant the application to the extent and for the duration the commission deems necessary to avoid:

- (1) a significant adverse economic impact on users of telecommunications services generally;
- (2) imposing a requirement that is unduly economically burdensome; or
- (3) imposing a requirement that is technically unfeasible.

D. Timeframe for commission action. The commission shall act upon an application within one hundred eighty (180) days of its receipt. Pending such action, the commission may temporarily suspend or modify the requirement to which the application applies with respect to the provider filing the application.

[17.11.18.22 NMAC - N, 1-1-01; 17.11.18.22 NMAC - Rn, 17.11.18.21 NMAC & A, 08-15-06]

#### **17.11.18.23 QUALITY OF SERVICE STANDARDS APPLICABLE TO ILEC INTERCONNECTION FACILITIES AND UNES:**

In the event a standard for a specific interconnection facility or UNE is not prescribed in this rule, an ILEC shall meet generally accepted industry standards for that facility or

UNE established by the institute of electrical and electronics engineers (IEEE), the American national standards institute (ANSI), Bellcore, or the FCC.

[17.11.18.23 NMAC - N, 1-1-01; 17.11.18.23 - Rn, 17.11.18.22 NMAC, 08-15-06]

#### **17.11.18.24 ADVICE NOTICE FORM:**

ADVICE NOTICE

[name of submitting carrier]

[ICA Advice Notice No. yy-yyy, e.g., 05-001]

[name of contracting carrier]

[Insert name of submitting carrier] gives notice to the public and the Commission of the submission of the negotiated interconnection agreement[s] described below pursuant to 47 U.S.C. Section 252(e). Notices, inquiries, protests and comments regarding this submission should be directed to:

[insert contact information for representative of each contracting party]

Description of Agreement[s]

[Insert brief description of agreement with information such as the type of agreement, parties and general purpose, e.g., "Interconnection Agreement between Qwest Corporation and AT&T Communications of the Mountain States, Inc., providing rates, terms and conditions for interconnection, unbundled network elements, ancillary services and resale of telecommunications services."]

[If the agreement amends a previous agreement, identify the agreement that is the subject of the amendment, e.g., "The amendment modifies the interconnection agreement between the parties approved in Case No.\_\_\_\_, filed by Qwest Corporation with Advice Notice No. ."]

[If applicable, add a similar description of each additional agreement or amendment between the same parties.]

Within thirty (30) days after the date of the filing of this Advice Notice, any person, including Commission Staff, believing that the Commission should reject the agreement[s] submitted with this Advice Notice or any portions thereof, must file an original and two copies of a request for rejection with the Commission's Utility Division, P.O. Box 1269, Santa Fe, New Mexico 87504. A request for rejection must state with particularity the basis for rejecting the agreement[s] or portions thereof pursuant to 47 U.S.C. Section 252, including any violations of the standards set out in 47 U.S.C. Section 252(e)(2)(A). When it is filed with the Commission, a request for rejection must

be served on the contracting parties at their addresses listed above and on the New Mexico Attorney General, Post Office Drawer 1508, Santa Fe, New Mexico 87504-1508, by the person making the request. Within thirteen (13) days after the request is filed, the parties to the agreement or any other interested person may file a reply to the request.

Within five business days after the date of the filing of this Advice Notice, [insert name of submitting carrier] will cause a copy of this Advice Notice to be published in [insert name of newspaper] or post a copy of this Advice Notice to its website at [insert website address].

Respectfully Submitted,

[name of submitting carrier]

By:

[signature of representative of submitting carrier]

[printed name of representative of submitting carrier]

[title of representative of submitting carrier]

[17.11.18.24 NMAC - N, 08-15-06]

## **PART 19: EXPEDITED PROCEDURES FOR COMPETITIVE LOCAL EXCHANGE CARRIERS**

### **17.11.19.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.11.19.1 NMAC – N, 1-1-01]

### **17.11.19.2 SCOPE:**

This rule applies to all competitive local exchange carriers and all persons seeking to provide competitive local exchange services in New Mexico.

[17.11.19.2 NMAC – N, 1-1-01]

### **17.11.19.3 STATUTORY AUTHORITY:**

NMSA 1978 Sections 8-8-4, 8-8-15, and 63-9A-8.2.

[17.11.19.3 NMAC – N, 1-1-01]

**17.11.19.4 DURATION:**

Permanent.

[17.11.19.4 NMAC – N, 1-1-01]

**17.11.19.5 EFFECTIVE DATE:**

January 1, 2001, unless a later date is cited at the end of a section.

[17.11.19.5 NMAC – N, 1-1-01]

**17.11.19.6 OBJECTIVE:**

The purpose of this rule is to establish expedited procedures for registration, tariff changes, promotions, and new services, and contracts for competitive local exchange carriers.

[17.11.19.6 NMAC – N, 1-1-01]

**17.11.19.7 DEFINITIONS:**

In addition to the definitions in NMSA 1978 Section 63-9A-3, as used in this rule:

- A. affiliate** has the meaning given in 47 U.S.C Section 153(33).
- B. carrier** means any person that furnishes telecommunications service to the public subject to the jurisdiction of the Commission, regardless of the facilities used and regardless of whether the person relies in part or entirely on another carrier's facilities.
- C. certificate of registration** means the operating authority issued by the Commission for the provision of local exchange services in New Mexico.
- D. competitive local exchange carrier (CLEC)** means a carrier that provides competitive local exchange service in its service area and is not an ILEC, but shall not include an ILEC affiliate unless the ILEC executes an affidavit stating that the ILEC does not and will not confer benefits on its affiliate that are not conferred on equal, non-discriminatory terms on non-affiliates and that the ILEC will abide by all Commission rules and orders governing affiliate transactions.
- E. contract** means an agreement to provide specific services to an individual customer for a specified period of time.
- F. incumbent local exchange carrier (ILEC)** means person, or an affiliate of a person, that was authorized to provide local exchange service in New Mexico on



February 8, 1996, or a successor or assignee of the person or affiliate. A carrier will also be treated as an ILEC if the Federal Communications Commission determines that such provider, or class or category of carrier, shall be treated as an ILEC pursuant to 47 U.S.C. Section 251(h)(2).

**G. promotion** means a special rate for a service provided by a CLEC which is available for a limited period of time, and may include rebates, price reductions or waivers of charges in conjunction with market trials or other sales-related activities.

[17.11.19.7 NMAC – N, 1-1-01]

#### **17.11.19.8 CERTIFICATE OF REGISTRATION REQUIRED:**

**A.** No person shall offer competitive local exchange services in New Mexico without having first obtained from the Commission a certificate of registration to provide such service.

**B.** Any person seeking to provide competitive local exchange services in New Mexico shall file an application with the Commission for a certificate of registration in accordance with the provisions of this rule.

**C.** All certificates of public convenience and necessity issued by the Commission prior to January 1, 2001 shall be continued and shall have the same force and effect as certificates of registration issued pursuant to this rule.

**D.** A holder of a certificate of public convenience and necessity that intends to cease providing continuous and adequate service to the public must comply with the provisions of this rule regarding discontinuance of service.

[17.11.19.8 NMAC – N, 1-1-01]

#### **17.11.19.9 PENDING APPLICATIONS:**

All applications for certificates of financial and technical competency or certificates of operating authority to provide telecommunications services as a CLEC filed and pending as of January 1, 2001 shall be deemed applications for certificates of registration to provide such services pursuant to this rule.

[17.11.19.9 NMAC – N, 1-1-01]

#### **17.11.19.10 CONTENTS OF APPLICATION:**

An application for a certificate of registration shall contain:

- A.** the name, address, and telephone number of the applicant;
- B.** the name, address and telephone number of the person responsible for regulatory

contacts and customer dispute resolution on behalf of the applicant;

**C.** a description of the applicant's existing operations and general service and operating areas in any other jurisdictions;

**D.** a list of the applicant's parent, subsidiary, and affiliated companies that act as carriers in New Mexico, together with the principal addresses and telephone numbers of each;

**E.** a general description of the facilities and equipment that will be used to provide services, including whether the service will be offered on a facilities basis, a resale basis, or a combination of both;

**F.** evidence of the applicant's managerial and technical resources and ability to provide service. The applicant may submit resumes of key personnel, a narrative, or a combination of both.

**G.** the applicant's most current income statement and balance sheet, or other appropriate documentation of applicant's financial resources and ability to provide service;

**H.** a statement that the applicant is aware of and will comply with Commission rules governing the provision of basic local exchange service by a CLEC;

**I.** the disclosure of any formal actions against the applicant by any court or state or federal regulatory agency that resulted in any type of penalty or sanction within the five (5) years preceding the date the application is filed;

**J.** if the applicant is a corporation, evidence that the applicant is authorized by the Corporations Bureau of the Commission to do business in New Mexico and that it is in good corporate standing in New Mexico;

**K.** if the applicant is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners, managers (as defined in NMSA 1978 Section 53-19-2), and the applicant's agent for service of process in New Mexico, and the date the business entity was created;

**L.** initial tariffs or price lists for regulated telecommunications services, including a narrative description of the regulated telecommunications services to be offered and the geographic area and markets to be served;

**M.** a statement of whether the applicant is drawing from the federal or state universal service fund or other explicit support funds, including a statement of whether the applicant intends to seek Commission designation as an eligible carrier;

**N.** a report of any judgment, penalty, or sanction entered in any other jurisdiction that could adversely affect the applicant's ability to provide telecommunications services in New Mexico; and

**O.** if the applicant is a regulated carrier, any other information the Commission may reasonably require to accomplish the purposes of this rule.

[17.11.19.10 NMAC – N, 1-1-01]

#### **17.11.19.11 COMMISSION PROCEDURE:**

Staff shall review an application for a certificate of registration within thirty (30) calendar days to determine whether it is complete. If the application is incomplete, staff will

return it to the applicant. If the application is complete, staff shall present it to the Commission for issuance of a certificate of registration. The Commission shall issue a certificate of registration if it finds that the applicant possesses adequate financial resources and technical competency to provide competitive local exchange service and that issuance of the certificate of registration is in the public interest.

[17.11.19.11 NMAC – N, 1-1-01]

#### **17.11.19.12 REPORTING REQUIREMENTS:**

Every CLEC shall file an annual report with the Commission by April 1 of each year, unless a different date is ordered by the Commission, updating the information described in subsections A, B, D, E, J, and M of 17.11.19.10 NMAC in the time, manner and form prescribed by the Commission.

[17.11.19.12 NMAC – N, 1-1-01]

#### **17.11.19.13 TRANSFER OF A CERTIFICATE OF REGISTRATION:**

**A.** Any holder of a certificate of registration to provide competitive local exchange service in New Mexico seeking to transfer the certificate to another person shall first apply to the Commission for approval of the transfer.

**B.** The Commission shall approve an application for transfer of a certificate of registration upon receipt of a completed application and a copy of the tariff proposed to take effect upon approval of the transfer.

[17.11.19.13 NMAC – N, 1-1-01]

#### **17.11.19.14 NOTICE OF CHANGE IN CIRCUMSTANCES:**

A CLEC shall notify the Commission in writing prior to any change in circumstances, including, but not limited to:

- A.** a change in the carrier 's name, phone number or address;
- B.** a change in the name, phone number or address of the person responsible for regulatory contacts and customer dispute resolution;
- C.** merger of the carrier with another carrier;
- D.** acquisition of the carrier by another carrier;
- E.** acquisition by the carrier of another carrier;
- F.** transfer of the carrier 's certificate;

**G.** transfer of a significant portion of the carrier 's assets to another carrier;  
and

**H.** any other change in control of the carrier.

[17.11.19.14 NMAC – N, 1-1-01]

#### **17.11.19.15 DISCONTINUANCE OF SERVICE:**

**A.** Prior to discontinuing service, a CLEC shall:

**(1)** no later than thirty days prior to discontinuing service, file with the Commission a notice of discontinuance of service showing:

**(a)** the number of customers affected; and

**(b)** the form of notice to be given to each customer.

**(2)** no later than thirty days prior to discontinuing service, notify its customers of its intent to discontinue service, the proposed date and time of discontinuance, and any provisions it has made for continuation of service, if applicable.

**B.** This section does not apply to the withdrawal by a CLEC of a specific service offering, as long as the CLEC continues to offer local exchange service through other service offerings generally available in the affected service area.

[17.11.19.15 NMAC – N, 1-1-01]

#### **17.11.19.16 TARIFF CHANGES, PROMOTIONS, AND NEW SERVICES:**

**A. Filing requirements.** Whenever a CLEC proposes to change its tariff to include a new service or promotion, or to change any of the rates, charges, terms and conditions in its tariff, it shall file with the Commission an original and five (5) copies of the proposed tariff changes at least ten (10) business days prior to their implementation. A CLEC shall include in its filing a sequentially numbered Transmittal Letter (e.g., 2000-1, 2000-2, etc.) containing a description of the proposed tariff changes. The proposed tariff changes shall comply with all applicable Commission rules. The tariff changes may go into effect after ten (10) business days, unless staff notifies the CLEC within ten (10) business days of its concerns regarding the proposed tariff changes. If staff and the CLEC are able to resolve staff's concerns, the proposed tariff changes may go into effect and no public hearing shall be required.

**B. Staff protests.** If staff and the CLEC are unable to resolve staff's concerns, staff shall file a protest with the Records Management Bureau of the Administrative Services Division, and the proposed tariff change shall not go into effect. The Records Management Bureau shall assign a docket number to staff's protest. Staff's protest shall include a case caption and a heading that states "Staff Protest."

The protest shall include as an attachment the proposed tariff changes filed by the CLEC and any additional information furnished to staff by the CLEC. The CLEC shall have the burden of showing, after notice and a public hearing, why the proposed new service, promotion, or tariff change is in the public interest.

**C. Electronic filing requirements.** On the same day it files paper copies of the proposed tariff changes with the Commission, the CLEC shall also submit an electronic copy of the Transmittal Letter containing the identity of the telecommunications company, a summary of the proposed new service, promotion or tariff change, and its effective date. The Commission may prescribe additional form, content, manner of filing, or other requirements.

**D. Notice to customers.** The CLEC shall provide notice of a rate change to affected customers in the first bill mailed to the customer following the effective date of the change.

[17.11.19.16 NMAC – N, 1-1-01]

#### **17.11.19.17 CONTRACT FILING REQUIREMENTS:**

**A.** A CLEC that offers intrastate telecommunications services under contract shall file a notice of contract with the Commission within ten (10) calendar days of concluding contract negotiations. The notice shall include:

- (1) the name of the CLEC offering the service;
- (2) the name and address of the customer;
- (3) a summary of the contract containing a description of the services to be offered and the prices, terms and conditions for the offered services; and
- (4) a statement confirming that the prices to be charged for the regulated telecommunications services cover the Commission-defined cost of providing the service and represent a competitive offer.

**B.** A CLEC may file standard contract forms with the Commission and may thereafter reference a standard form in its notice of contract in lieu of providing a contract summary.

**C.** A CLEC may note in a notice of contract a customer's request for confidentiality of the customer's name and address.

**D.** Any carrier or other interested person may, within ten (10) business days of the date the notice of contract is filed, petition the Commission for access to any notice of contract. The Commission shall grant access, subject to any protective orders and to a customer's request for confidentiality of its name and address.

**E.** A contract shall be deemed effective ten (10) business days after the notice of contract is filed unless expressly suspended by order of the Commission for good cause. If the Commission

suspends the contract, the Commission shall issue its final order on the merits of any disputed matter within sixty (60) days of the initial filing of the notice of contract.

F. The Commission may disapprove a contract based on the notice of contract:

(1) for failure of the CLEC to show that the prices to be charged for the regulated telecommunications service cover the Commission-defined cost of providing the service, including the imputed price of wholesale service elements if required by the Commission;

(2) for failure to show a competitive offer, consistent with NMSA 1978 Section 63-9A-9; or

(3) upon a showing that the contract is otherwise unlawful.

[17.11.19.17 NMAC – N, 1-1-01]

## **PART 20: EXPEDITED INTER-CARRIER COMPLAINT PROCEDURES**

### **17.11.20.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.11.20.1 NMAC – N, 1-1-01]

### **17.11.20.2 SCOPE:**

This rule applies to all carriers providing telecommunications services in New Mexico.

[17.11.20.2 NMAC – N, 1-1-01]

### **17.11.20.3 STATUTORY AUTHORITY:**

NMSA 1978 Sections 8-8-4, 8-8-15, and 63-9A-8.2.

[17.11.20.3 NMAC – N, 1-1-01]

### **17.11.20.4 DURATION:**

Permanent.

[17.11.20.4 NMAC – N, 1-1-01]

### **17.11.20.5 EFFECTIVE DATE:**

January 1, 2001, unless a later date is cited at the end of a section.

[17.11.20.5 NMAC – N, 1-1-01]

**17.11.20.6 OBJECTIVE:**

The purpose of this rule is to establish expedited complaint procedures for resolving disputes between carriers.

[17.11.20.6 NMAC – N, 1-1-01]

**17.11.20.7 DEFINITIONS:**

As used in this rule:

**A.** carrier means any person that furnishes telecommunications service to the public subject to the jurisdiction of the Commission, regardless of the facilities used and regardless of whether the person relies in part or entirely on another carrier's facilities.

**B.** telecommunications provision includes the New Mexico Telecommunications Act, NMSA 1978 Section 63-9A-1 et seq.; any order or rule of the Commission issued pursuant to the New Mexico Telecommunications Act; the federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) and related Federal Communications Commission regulations and orders; a tariff or price list filed with the Commission; or a contract or interconnection agreement between carriers.

[17.11.20.7 NMAC – N, 1-1-01]

**17.11.20.8 EXCEPTION:**

The procedure established in this rule is an exception to 17.1.2.17 and 17.1.2.18 NMAC.

[17.11.20.8 NMAC – N, 1-1-01]

**17.11.20.9 RIGHT TO FILE EXPEDITED COMPLAINT:**

Pursuant to NMSA 1978 Section 8-8-12.1, any carrier may file an expedited complaint with the Commission setting forth any act or omission by another carrier alleged to be in violation of any telecommunications provision or otherwise adversely affecting quality of service between carriers.

[17.11.20.9 NMAC – N, 1-1-01]

**17.11.20.10 NOTICE OF INTENT TO FILE EXPEDITED COMPLAINT:**

At least ten (10) calendar days prior to filing an expedited complaint with the Commission, the complainant carrier shall provide written notice to the Commission and

the respondent carrier that the complainant carrier intends to file an expedited complaint. The notice of intent to file an expedited complaint must:

**A.** identify the telecommunications provision that the complainant carrier alleges was violated by the respondent carrier's act or omission and specifically describe how the respondent carrier's conduct or failure to act allegedly violates the telecommunications provision; or

**B.** identify the telecommunications service that the complainant carrier alleges was adversely affected by the respondent carrier's act or omission and specifically describe how the respondent carrier's conduct or failure to act adversely affects the provision of telecommunications service between carriers; and

**C.** be delivered and served in the manner set forth in 17.11.20.12 NMAC.

[17.11.20.10 NMAC – N, 1-1-01]

#### **17.11.20.11 CONTENTS OF EXPEDITED COMPLAINT:**

The expedited complaint shall clearly state that it is filed pursuant to this rule and shall conform to the requirements of 17.1.2 NMAC, Utility Division Procedures, governing pleadings. The expedited complaint must also:

**A.** contain a statement, including specific facts, demonstrating that the complainant carrier engaged in good faith negotiations with the respondent carrier to resolve the disagreement, and that the parties failed to resolve the issue;

**B.** contain a copy of the telecommunications provision that the complainant carrier contends is being violated, or a statement explaining how the respondent carrier's act or omission is adversely affecting quality of service between carriers;

**C.** set forth facts demonstrating failure to comply with the telecommunications provision, or facts demonstrating conduct adversely affecting quality of service between carriers. The factual statement must be supported by one or more affidavits, declarations or other sworn statements, made by persons having personal knowledge of the relevant facts; and

**D.** certify that written notice of intent to file an expedited complaint was delivered and served in the manner set forth in 17.11.20.12 NMAC.

[17.11.20.11 NMAC – N, 1-1-01]

#### **17.11.20.12 SERVICE OF NOTICE OF INTENT AND COMPLAINT:**

The complainant carrier shall, on or before the respective dates the notice of intent and expedited complaint are filed with the Commission:



**A.** deliver the notice of intent or expedited complaint to the respondent carrier's authorized representative, attorney of record, or designated agent for service of process; and

**B.** serve the notice of intent or expedited complaint on:

(1) the respondent carrier's representatives with whom the complainant carrier conducted the negotiations required by subsection A of 17.1.2.16 NMAC; and

(2) all parties designated in the interconnection agreement to receive notices.

[17.11.20.12 NMAC – N, 1-1-01]

**17.11.20.13 ANSWER:**

The respondent carrier shall satisfy, answer or otherwise respond to the expedited complaint within ten (10) calendar days of the date the expedited complaint is delivered. The answer shall be filed with the Commission and delivered to the complainant carrier on the same day.

[17.11.20.13 NMAC – N, 1-1-01]

**17.11.20.14 PRE-HEARING CONFERENCE:**

**A.** The Commission, or a hearing examiner designated by the Commission, shall hold a pre-hearing conference no later than fifteen (15) calendar days after the date the expedited complaint was filed. At the discretion of the presiding officer, the pre-hearing conference may be conducted by telephone.

**B.** The presiding officer shall determine whether the issues raised in the expedited complaint can be decided based on the pleadings and submissions, or whether further proceedings are necessary.

**C.** If the presiding officer determines that further proceedings are necessary, the presiding officer shall establish a schedule for receiving additional facts or evidence and may, in his or her discretion, schedule a hearing to explore the facts and issues raised in the expedited complaint and the answer. If the presiding officer determines a hearing is necessary, he or she shall schedule the hearing for no later than thirty (30) calendar days from the date the expedited complaint was filed.

**D.** The presiding officer may rule on any motions and schedule any discovery necessary in the proceeding.

[17.11.20.14 NMAC – N, 1-1-01]

**17.11.20.15 RECOMMENDED DECISION:**

The hearing examiner shall issue a recommended decision within forty-five (45) calendar days after the date the expedited complaint was filed. The parties may file exceptions to the recommended decision on a schedule established by the hearing examiner.

[17.11.20.15 NMAC – N, 1-1-01]

**17.11.20.16 COMMISSION DECISION:**

The Commission shall issue a final decision containing findings of fact and conclusions of law within sixty (60) calendar days after the date the expedited complaint was filed.

[17.11.20.16 NMAC – N, 1-1-01]

**17.11.20.17 EXTENSION OF TIME FOR GOOD CAUSE:**

For good cause shown, the Commission or hearing examiner may extend the time for resolution of a complaint filed pursuant to this rule beyond sixty (60) days. An order for extension of time shall state with specificity the reasons for and length of the extension. Any such extension may, if appropriate, also include extensions of any other procedural deadlines established by this rule.

[17.11.20.17 NMAC – N, 1-1-01]

**17.11.20.18 JOINDER AND CONSOLIDATION:**

The Commission may allow joinder or consolidation in one hearing of all matters upon which the expedited complaint is founded. However, an expedited complaint shall not be defective for misjoinder or nonjoinder of parties or causes.

[17.11.20.18 NMAC – N, 1-1-01]

**PART 21: EXPEDITED PROCEDURES FOR INTRASTATE LONG DISTANCE PROVIDERS**

**17.11.21.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.11.21.1 NMAC – N, 1-1-01]

**17.11.21.2 SCOPE:**

This rule applies to all carriers providing intrastate long distance telecommunications services in New Mexico except incumbent local exchange carriers with fewer than

50,000 access lines. Procedures for these carriers are provided in 17.11.9 NMAC, Retail Rate Filing Procedures for Incumbent Rural Telecommunications Carriers.

[17.11.21.2 NMAC – N, 1-1-01]

**17.11.21.3 STATUTORY AUTHORITY:**

NMSA 1978 Sections 8-8-4, 63-7-1.1, 63-9A-8, and 63-9A-8.1.

[17.11.21.3 NMAC – N, 1-1-01]

**17.11.21.4 DURATION:**

Permanent.

[17.11.21.4 NMAC – N, 1-1-01]

**17.11.21.5 EFFECTIVE DATE:**

January 1, 2001, unless a later date is cited at the end of a section.

[17.11.21.5 NMAC – N, 1-1-01]

**17.11.21.6 OBJECTIVE:**

The purpose of this rule is to establish expedited procedures for certifying intrastate long distance providers and modifying intrastate long distance tariffs.

[17.11.21.6 NMAC – N, 1-1-01]

**17.11.21.7 DEFINITIONS:**

In addition to the definitions in NMSA 1978 Section 63-9A-3, as used in this rule:

**A.** carrier means any person that furnishes telecommunications service to the public subject to the jurisdiction of the Commission, regardless of the facilities used and regardless of whether the person relies in part or entirely on another carrier's facilities.

**B.** certificate of registration means the operating authority issued by the Commission for the provision of intrastate long distance telecommunications services in New Mexico.

**C.** incumbent local exchange carrier (ILEC) means person, or an affiliate of a person, that was authorized to provide local exchange service in New Mexico on February 8, 1996, or a successor or assignee of the person or affiliate. A carrier will also be treated as an ILEC if the Federal Communications Commission determines that such

provider, or class or category of carrier, shall be treated as an ILEC pursuant to 47 U.S.C. Section 251(h)(2). An ILEC shall be considered an IXC for purposes of this rule to the extent it provides intrastate long distance telecommunications service or local exchange service outside its service area, as defined by the Commission.

**D.** interexchange carrier (IXC) means a telecommunications carrier providing intrastate long distance telecommunications service that has no common ownership interest, unless through a separate subsidiary, with an incumbent local exchange carrier providing telecommunications service in New Mexico.

**E.** promotion means a means a special rate for a service provided by an intrastate long distance provider which is available for a limited period of time, and may include rebates, price reductions, or waivers of charges in conjunction with common business practices such as market trials or other sales-related activities.

[17.11.21.7 NMAC – N, 1-1-01]

#### **17.11.21.8 CONFLICTS:**

In the event any provision of this rule conflicts with a provision of 17.11.4 NMAC, Registration Requirements for Resold Intrastate Long Distance Telecommunications Services and Intrastate Operator Services, the provisions of this rule shall control.

[17.11.21.8 NMAC – N, 1-1-01]

#### **17.11.21.9 CERTIFICATE OF REGISTRATION REQUIRED:**

**A.** No person shall offer intrastate long distance telecommunications services in New Mexico without having first obtained a certificate of registration from the Commission to provide such service.

**B.** Any person seeking to provide intrastate long distance telecommunications services in New Mexico shall file an application with the Commission for a certificate of registration in accordance with the provisions of this rule.

**C.** All certificates of public convenience and necessity and certificates of registration issued by the Commission prior to January 1, 2001 shall be continued and shall have the same force and effect as certificates of registration issued pursuant to this rule.

**D.** A holder of a certificate of public convenience and necessity or a certificate of registration that intends to cease providing continuous and adequate service to the public must comply with the provisions of this rule regarding discontinuance of service.

[17.11.21.9 NMAC – N, 1-1-01]

#### **17.11.21.10 PENDING APPLICATIONS AND TARIFF CHANGES:**

**A.** All applications for certificates of registration filed by IXCs pursuant to 17.11.4 NMAC, Registration Requirements for Resold Intrastate Long Distance Telecommunications Services and Intrastate Operator Services, pending as of the effective date of this rule shall be deemed applications for certificates of registration filed pursuant to this rule.

**B.** All proposed tariff changes filed pursuant to 17.11.4 NMAC, Registration Requirements for Resold Intrastate Long Distance Telecommunications Services and Intrastate Operator Services, pending as of the effective date of this rule shall be deemed proposed tariff changes filed pursuant to this rule.

[17.11.21.10 NMAC – N, 1-1-01]

#### **17.11.21.11 CONTENTS OF APPLICATION:**

An application for a certificate of registration to provide intrastate long distance telecommunications services must contain:

- A.** the name, address, and telephone number of the applicant;
- B.** the name, address and telephone number of the person responsible for regulatory contacts and customer dispute resolution on behalf of the applicant;
- C.** a description of the applicant's existing operations and general service and operating areas in any other jurisdictions;
- D.** a list of the applicant's parent, subsidiary, and affiliated companies, together with the principal addresses and telephone numbers of each;
- E.** a general description of the facilities and equipment that will be used to provide services, including whether the service will be offered on a facilities basis, a resale basis, or a combination of both;
- F.** a statement that the applicant is aware of and will comply with the Commission's rules, particularly 17.11.8 NMAC, Slamming and Cramming Protection;
- G.** disclosure of any formal actions against it by any court or state or federal regulatory agency that resulted in any type of penalty or sanctions within the five (5) years prior to the date of filing application. If such action has occurred, the applicant shall file a report regarding such action and any remedial actions taken;
- H.** if the applicant is a corporation, evidence that the applicant is authorized by the corporations bureau of the Commission to do business in New Mexico and that it is in good corporate standing in New Mexico;

**I.** if the applicant is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners and managers, the applicant's agent for service of process in New Mexico, and the date the business entity was created;

**J.** initial tariffs or price lists for regulated telecommunications services, including a narrative description of the services to be offered and the geographic area and markets to be served. Initial tariffs shall not contain misleading, potentially misleading, deceptive, or fraudulent names, rates, terms or conditions; and

**K.** if the applicant is a regulated carrier, any other information the Commission may reasonably require to accomplish the purposes of this rule..

[17.11.21.11 NMAC – N, 1-1-01]

#### **17.11.21.12 COMMISSION PROCEDURE:**

Staff shall review an application for a certificate of registration within thirty (30) calendar days after filing to determine whether it is complete. If the application is incomplete, staff will return it to the applicant. If the application is complete, the Director of the Utility Division, or his designee, shall issue a certificate of registration if he finds that the applicant is fit to provide intrastate long-distance telecommunications services, and that issuance of the certificate of registration is in the public interest.

[17.11.21.12 NMAC – N, 1-1-01]

#### **17.11.21.13 REPORTING REQUIREMENTS:**

An intrastate long distance provider shall file an annual report with the Commission by April 1 of each year, unless a different date is ordered by the Commission, updating the information required by subsections A through I of 17.11.21.11 NMAC in the time, manner and form prescribed by the Commission.

[17.11.21.13 NMAC – N, 1-1-01]

#### **17.11.21.14 TRANSFER OF CERTIFICATE:**

**A.** Any holder of a certificate of registration to provide intrastate long distance telecommunications services in New Mexico seeking to transfer the certificate to another person shall first apply to the Commission for approval of the transfer.

**B.** The Commission shall approve an application for transfer of a certificate of registration upon receipt of a completed application and a copy of the tariff proposed to take effect upon approval of the transfer. The application shall meet the requirements of 17.11.21.11 NMAC.

[17.11.21.14 NMAC – N, 1-1-01]

**17.11.21.15 NOTICE OF CHANGE IN CIRCUMSTANCES:**

An intrastate long distance provider shall notify the Commission in writing prior to any change in circumstances, including, but not limited to:

- A.** a change in the intrastate long distance provider 's name, address or phone number;
- B.** a change in the name, address or phone number of the person responsible for regulatory contacts and customer dispute resolution;
- C.** merger of the intrastate long distance provider with another carrier;
- D.** acquisition of the intrastate long distance provider by another carrier;
- E.** acquisition by the intrastate long distance provider of another carrier;
- F.** transfer of the intrastate long distance provider 's certificate;
- G.** transfer of a significant portion of the intrastate long distance provider 's assets to another carrier; and
- H.** any other change in control of the intrastate long distance provider.

[17.11.21.15 NMAC – N, 1-1-01]

**17.11.21.16 DISCONTINUANCE OF SERVICE:**

- A.** Prior to discontinuing service, an intrastate long distance provider shall:
  - (1) no later than thirty (30) days prior to discontinuing service, file with the Commission a notice of discontinuance of service showing:
    - (a) the number of customers affected; and
    - (b) the form of notice to be given to each customer.
  - (2) no later than thirty (30) days prior to discontinuing service, notify its customers of its intent to discontinue service, the proposed date and time of discontinuance, and any provisions it has made for continuation of its service, if applicable.
- B.** This section does not apply to individual service withdrawals of an intrastate long distance provider.

**17.11.21.17 TARIFF CHANGES, PROMOTIONS, AND NEW SERVICES:**

**A.** Tariffs not to be misleading. No proposed tariff change concerning a new service, promotion, or change in the rates, terms or conditions of a tariff shall contain misleading, potentially misleading, deceptive, or fraudulent names, rates, terms or conditions.

**B.** Intrastate long distance providers. Whenever an intrastate long distance provider proposes to change its tariff to include a new service or promotion, or to change any of the rates, charges, terms and conditions in its tariff, it shall file with the Commission an original and five (5) copies of the proposed tariff changes at least ten (10) business days prior to their implementation. The intrastate long distance provider shall include in its filing a sequentially numbered Transmittal Letter, (e.g., 2000-1, 2000-2, etc.) containing a description of the proposed tariff changes. The proposed tariff change shall comply with all applicable Commission rules. The tariff changes may go into effect after ten (10) business days unless staff notifies the intrastate long distance within ten (10) business days of its concerns regarding the proposed tariff changes. If staff and the intrastate long distance provider are able to resolve staff's concerns, the proposed tariff changes may go into effect and no public hearing shall be required.

**C.** ILECs with 50,000 or more access lines. Whenever an ILEC with 50,000 or more access lines proposes to change its tariff to include a new long distance service or long distance promotion, or to change any of the long distance rates, charges, terms and conditions in its tariff, it shall file with the Commission an original and five (5) copies of the proposed tariff changes at least ten (10) business days prior to their implementation. The ILEC shall include in its filing a sequentially numbered Transmittal Letter, (e.g., 2000-1, 2000-2, etc.) containing a description of the proposed tariff changes. The ILEC shall also include in its filing an affidavit stating it has met any imputation requirements required by the Commission. The proposed tariff change shall comply with all applicable Commission rules. The tariff changes may go into effect after ten (10) business days unless staff notifies the ILEC within ten (10) business days of its concerns regarding the proposed tariff changes. If staff and the intrastate long distance provider are able to resolve staff's concerns, the proposed tariff changes may go into effect and no public hearing shall be required.

**D.** Staff protests. If staff and the company are unable to resolve staff's concerns, staff shall file a protest with the Records Management Bureau of the Administrative Services Division, and the proposed tariff change shall not go into effect. The Records Management Bureau shall assign a docket number to staff's protest. Staff's protest shall include a case caption and a heading that states "Staff Protest." The protest shall include as an attachment the proposed tariff changes filed by the company and any additional information furnished to staff by the company. The applicant shall have the burden of showing, after notice and hearing, why the proposed new service, promotion, or tariff change is in the public interest.



**E.** Filing requirements. On the same day it files paper copies of the proposed tariff changes with the Commission, the intrastate long distance provider shall also submit an electronic copy of the Transmittal Letter containing the identity of the telecommunications company, a summary of the proposed new service, promotion or tariff change, and its effective date. The Commission may prescribe additional form, content, manner of filing, or other requirements.

**F.** Notice to customers. The IXC shall provide notice of a rate change to affected customers in the first bill mailed to the customer following the effective date of the change.

[17.11.21.17 NMAC – N, 1-1-01; A, 3-14-01]

## **PART 22: QUALITY OF SERVICE**

### **17.11.22.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.11.22.1 NMAC - Rp, 17.11.22.1 NMAC, 2-1-06]

### **17.11.22.2 SCOPE:**

This rule applies to all local exchange carriers, except incumbent rural telecommunications carriers, authorized by the commission to provide retail telecommunications services in New Mexico, except that 17.11.22.18 NMAC applies to all carriers offering operator assistance in New Mexico.

**A.** Where the commission has approved an alternative form of regulation plan for an ILEC, and a provision in the approved plan is inconsistent with a provision in this rule, the provision in the approved plan shall apply.

**B.** Where the commission has approved an alternative form of regulation plan for an ILEC, and the approved plan is silent with respect to the subject matter of a provision in this rule, the provision in this rule shall apply.

[17.11.22.2 NMAC - Rp, 17.11.22.2 NMAC, 2-1-06]

### **17.11.22.3 STATUTORY AUTHORITY:**

NMSA 1978 Sections 8-8-4, 8-8-15, 63-9A-8.2, 63-9B-4, and 63-9B-6.

[17.11.22.3 NMAC - Rp, 17.11.22.3 NMAC, 2-1-06]

### **17.11.22.4 DURATION:**

Permanent.

[17.11.22.4 NMAC - Rp, 17.11.22.4 NMAC, 2-1-06]

**17.11.22.5 EFFECTIVE DATE:**

February 1, 2006, unless a later date is cited at the end of a section.

[17.11.22.5 NMAC - Rp, 17.11.22.5 NMAC, 2-1-06]

**17.11.22.6 OBJECTIVE:**

The purpose of this rule is to establish standards, procedures, reporting requirements, penalties, and customer credits to ensure that carriers provide telecommunications services to retail customers at an adequate quality of service level and in a manner consistent with the promotion of universal service.

[17.11.22.6 NMAC - Rp, 17.11.22.6 NMAC, 2-1-06]

**17.11.22.7 DEFINITIONS:**

As used in this rule:

**A. access line** means a dial tone line that provides local exchange service from a carrier's switching equipment to a point of termination at the customer's network interface;

**B. answer** means a company representative is ready to assist the customer or is ready to accept information necessary to process the call;

**C. basic local exchange service** means the customer's voice grade access to the public switched network, dual tone multifrequency (DTMF) signaling or its functional equivalent, and access to emergency services (911 and E-911), operator services, toll services, directory assistance, and toll blocking services for qualifying low income customers;

**D. busy hour** means the uninterrupted period of sixty (60) minutes during the day when traffic is at a maximum;

**E. carrier** means any person that furnishes telecommunications service to the public subject to the jurisdiction of the commission, regardless of the facilities used and regardless of whether the person relies in part or entirely on another carrier's facilities;

**F. circumstances beyond the reasonable control of an ILEC** means delays caused by:

(1) a vendor in the delivery of necessary equipment or supplies, where the ILEC has made a timely order of the equipment or supplies;

(2) local or tribal government entities in approving easements or access to rights-of-way, where the ILEC has made a timely application for such approval;

(3) the customer;

(4) negligent or willful misconduct by third parties not in privity with the ILEC;  
or

(5) force majeure (meaning causes which are outside the control of the ILEC and could not be avoided by the exercise of due care, including but not limited to terrorism, explosions, fires, floods, severe storms, epidemics, civil unrest, wars, injunctions, strikes, work stoppages, and other emergencies and catastrophes);

**G. competitive local exchange carrier (CLEC)** means a carrier that provides competitive local exchange service in its service area and is not an ILEC;

**H. customer** means any person that has applied for or is currently receiving telecommunications services;

**I. designed services** means the provisioning of regulated circuits requiring treatment, equipment, or engineering design purchased from an ILEC's tariff or on an individual contract basis, including but not limited to analog private line services, DDS, DS-1 (including channelized), DS-3, ISDN-BRI, and special assemblies, where all facilities and equipment provided are physically located in the state of New Mexico;

**J. discretionary services** means voice mail, caller ID, caller name ID, call waiting, 3-way calling, call forwarding, call return, call blocker, and auto redial, and any similar service sold as an add-on to a customer's basic local exchange service;

**K. end office switch** means a switch to which a telephone subscriber is connected; frequently referred to as a class 5 office, it is the last central office before the subscribers (sic) phone equipment and is the switch that actually delivers dial tone to the subscriber;

**L. facilities-based CLEC** means a CLEC providing local exchange service that relies predominantly on its own facilities, including switching equipment, to route calls for at least twenty-five (25) percent of the local exchange access lines it serves;

**M. held order** means any order for telecommunications service that is not filled within the time frames set forth in 17.11.22.14 NMAC or within fifteen (15) calendar days of the time frames set forth in 17.11.22.12;

**N. high density zone** means all wire centers that the ILEC has classified within its lowest cost density pricing zone pursuant to 47 C.F.R. Section 69.123;

**O. incumbent local exchange carrier (ILEC)** means a person, or an affiliate of a person, that was authorized to provide local exchange service in New Mexico on February 8, 1996, or a successor or assignee of the person or affiliate; a carrier will also be treated as an ILEC if the federal communications commission determines that such provider (or class or category of carrier) shall be treated as an ILEC pursuant to 47 U.S.C; Section 251(h)(2) but does not include an incumbent rural telecommunications carrier;

**P. incumbent rural telecommunication carrier (IRTC)** has the meaning given in NMSA 1978 Section 63-9H-3;

**Q. installation commitment** means a date pledged by a LEC to provide basic local exchange service or designed services to a customer;

**R. local exchange carrier (LEC)** includes incumbent local exchange carriers and competitive local exchange carriers;

**S. low density zone** means all wire centers that the ILEC has classified within any zone other than the lowest cost density pricing zone pursuant to 47 C.F.R. Section 69.123;

**T. primary local exchange line** means the first exchange access line installed by a LEC to serve a customer at the customer's premises, as distinct from additional lines that may be ordered at the same or a subsequent time at the same premises;

**U. repeat trouble report** means a trouble report received within thirty (30) days of a closed trouble report on the same line regarding the same trouble;

**V. tandem switch** (local, access, or toll) means an intermediary switch or connection other than the end office switch between an originating call location and the final destination of a call; it serves to connect end office switches without the need for direct interoffice trunking;

**W. trouble report** means notification of trouble or perceived trouble by a subscriber, third party, or employee acting on behalf of a subscriber to a LEC's repair office; it shall include troubles reported on access lines by the LEC's own retail customers and the retail customers of LECs that purchase wholesale services from the LEC but shall not include troubles associated with customers' unfamiliarity with new features or customer premises equipment, or extraordinary or abnormal conditions of operation;

**X. wire center** means a facility where local exchange access lines converge and are connected to a switching device which provides access to the public switched network, and includes remote switching units and host switching units.

[17.11.22.7 NMAC - Rp, 17.11.22.7 NMAC, 2-1-06]

### **17.11.22.8 REPORTING REQUIREMENTS FOR ILECS:**

Unless otherwise specified, an ILEC shall provide data both by wire center listed alphabetically by name, and on a statewide average basis. An ILEC shall submit all reports to the commission in printed and electronic spreadsheet format. An ILEC shall file separate reports for nondesigned and designed services for the categories specified in subsections A through F. An ILEC shall file reports quarterly, except for held order reports, which shall be filed monthly, but shall compile data on a monthly basis. Reports shall be filed with the commission within thirty (30) days of the period covered by the report.

**A. Trouble reports.** An ILEC shall maintain an accurate and complete record of all trouble reports, categorized as out-of-service trouble reports or all other trouble reports, and shall note the wire center associated with each trouble report. Trouble reports received after 4:00 p.m. Monday through Friday shall be deemed received at 8:00 a.m. the following business day. Each ILEC shall report the number of trouble reports in each category received at each wire center and the number of access lines in service at each wire center.

**B. Trouble report rate.** An ILEC shall report the trouble report rate for out-of-service and all other trouble reports for each wire center (number of trouble reports per hundred access lines per wire center) and, where applicable, the reason a wire center exceeded the trouble report rate.

**C. Trouble reports cleared.** An ILEC shall report the percentage of out-of-service and all other trouble reports cleared by each wire center within twenty-four (24) hours, and the average repair interval for out-of-service trouble reports.

**D. Repeat trouble report rate.** An ILEC shall report the repeat trouble report rate for out-of-service and all other trouble reports for each wire center (number of repeat trouble reports per hundred access lines per wire center) and, where applicable, the reason a wire center exceeded the applicable repeat trouble report rate.

**E. Installation of primary local exchange lines within established time frames.** An ILEC shall calculate and report by wire center the percentage of orders for primary local exchange lines installed within the time frames established in 17.11.22.12 NMAC, excluding installations not completed due to circumstances beyond the reasonable control of the ILEC or for which a waiver or variance has been granted.

**F. Average repair interval.** An ILEC shall report, by wire center, the average interval for repairing service.

**G. Held orders.**

**(1) Non-designed services.** An ILEC shall report, by wire center and on a statewide average basis, the number of held orders for non-designed services in each of the following categories, and shall, upon request of the commission, provide an explanation for the level of held orders in any particular category. For primary local exchange lines, an ILEC shall also report the number of held orders as a percentage of the total switched access lines in service each month:

- (a)** total;
- (b)** business customers;
- (c)** residence customers;
- (d)** primary local exchange lines;
- (e)** additional lines;
- (f)** orders held for 15-30 days;
- (g)** orders held 31-90 days;
- (h)** orders held 91-180 days;
- (i)** orders held over 180 days;
- (j)** orders for which waiver petitions are pending or have been granted; and
- (k)** orders cancelled by the customer.

**(2) Designed services.** An ILEC shall report the number of held orders for designed services in each of the following categories and shall, upon request of the commission, provide an explanation for the level of held orders in any particular category:

- (a)** wire center;
- (b)** orders held for 15-30 days;
- (c)** orders held for 31-90 days;
- (d)** orders held for 91-180 days;
- (e)** orders held for over 180 days;
- (f)** orders for which waiver petitions are pending or have been granted; and

(g) orders cancelled by the customer.

**H. Business office and repair office answer time.** An ILEC shall report separately for its business office and its repair office the percentage of calls answered within the time frames specified in 17.11.22.20 NMAC.

**I. Carrier profile.** No later than March 1 of each year, ILECs shall also report the following information to the commission, based on its operations as of December 31 of the previous year:

- (1) total number of switched access lines in service;
- (2) total number of residence switched access lines in service;
- (3) total number of business switched access lines in service; and
- (4) total number of orders received.

[17.11.22.8 NMAC - Rp, 17.11.22.8 NMAC, 2-1-06]

#### **17.11.22.9 OUTAGES:**

**A.** A LEC shall report outages affecting more than one thousand five hundred (1500) customers and lasting longer than thirty (30) minutes to the consumer relations division of the commission by telephone, facsimile, e-mail, or in person within ninety (90) minutes of the onset of the outage, or, for outages not occurring during business hours, at the start of the next business day.

**B.** A LEC shall submit a subsequent written report stating the location, duration, number of customers affected, cause and corrective action taken. Both the initial and subsequent outage reports shall state whether 911 circuits were affected.

**C.** A LEC shall file on a quarterly basis a record of each outage in the preceding three (3) months for which the LEC was unable to provide emergency service and an explanation of why emergency service was unavailable.

[17.11.22.9 NMAC - Rp, 17.11.22.9 NMAC, 2-1-06]

#### **17.11.22.10 PROVISION OF SERVICE DURING MAINTENANCE OR EMERGENCIES:**

**A. Emergency procedures.** Each ILEC and facilities-based CLEC shall establish, and instruct its employees regarding, procedures for preventing or mitigating interruption to or impairment of telecommunications service in emergencies resulting from power failures, sudden and prolonged increases in traffic, illness of operators, or force majeure. ILECs and facilities-based CLECs shall file written plans detailing their

emergency procedures with the telecommunications bureau of the commission no later than sixty (60) days after certification by the commission. Any changes to the plan shall be filed with the telecommunications bureau of the commission within thirty (30) days of the change.

**B. Reserve power requirements.** ILECs and facilities-based CLECs shall maintain in each local wire center, toll switching office, and tandem switching office a minimum of four (4) hours of battery reserve rated for peak traffic load requirements and shall:

(1) install a permanent auxiliary power unit in toll and tandem switching offices and in wire centers serving 10,000 or more access lines;

(2) have available a mobile power unit which normally can be delivered and connected within four (4) hours or the time limit of the available battery reserve for wire centers serving fewer than 10,000 lines.

**C. Maintenance scheduling.** ILECs and facilities-based CLECs shall schedule maintenance requiring extended service interruptions when it will cause minimal inconvenience to customers. To the extent possible, ILECs and facilities-based CLECs shall notify customers in advance of extended service interruptions. Based upon their prior experience, ILECs and facilities-based CLECs shall make emergency service available in any area that may experience service interruptions affecting 1,000 or more access lines and lasting more than four (4) hours between the hours of 8:00 a.m. to 10:00 p.m. If an ILEC or facilities-based CLEC cannot provide emergency service, it shall file a report of the service interruption with the telecommunications bureau of the commission.

**D. Loss of switch plan.** Each ILEC and facilities-based CLEC shall develop a contingency plan to prevent or minimize service interruptions due to the loss of a wire center switch that serves more than 10,000 access lines or is the toll or tandem switching office for 10,000 access lines. The plan shall describe the actions and systems installed to prevent or minimize the probability of such an occurrence as well as the actions and systems available to minimize the extent of any incurred service interruption. ILECs and facilities-based CLECs shall file the plans with the telecommunications bureau of the commission no later than sixty (60) days after certification by the commission. Any changes to the plan shall be filed with the telecommunications bureau within thirty (30) days of the change.

[17.11.22.10 NMAC - Rp, 17.11.22.10 NMAC, 2-1-06]

#### **17.11.22.11 ACCESS TO AND AUDIT OF DATA:**

Unless otherwise authorized by the commission, a LEC shall make all records required by this rule available to the commission, staff, or its authorized representatives at any time upon reasonable notice. A LEC shall make customer proprietary network information available to the commission to the extent allowed by law. A LEC shall retain



records of reports, measurements, summaries, and backup information for at least two (2) years. The commission or staff may periodically audit a LEC's quality of service data.

[17.11.22.11 NMAC - Rp, 17.11.22.11 NMAC, 2-1-06]

#### **17.11.22.12 INSTALLATION OF BASIC LOCAL EXCHANGE SERVICE:**

**A. Order tracking.** At the time of each service order, a LEC shall provide to each applicant for basic local exchange service a unique indicator that will permit an applicant to track and verify the order.

**B. Premises within 1000 feet of distribution terminal.**

**(1)** Whenever an ILEC receives an application for installation of a primary local exchange line for a premises that is within 1000 feet of a distribution terminal, the ILEC shall provision service within five (5) business days of receipt of the service request, or by such later date as the customer may request.

**(2)** When an ILEC cannot fill an order for a primary local exchange line within ten (10) business days of receipt of the order, it shall provide written notice to the customer noting the date of the service order and stating the expected installation date and the reason for the delay. This notice must be postmarked within ten (10) business days of the date the service order is received by the ILEC. The ILEC shall promptly notify the customer of any changes in the expected installation date.

**C. Premises 1000 feet or more from distribution terminal.** Whenever an ILEC receives an application for installation of a primary local exchange line for a premises that is 1000 feet or more from a distribution terminal, the ILEC shall provision service within thirty (30) business days of receipt of the service request, or by such later date as the customer may request, unless installation cannot be completed due to circumstances beyond the reasonable control of the ILEC.

**D. Line extension policy.** Each ILEC shall file its line extension policy for commission review and approval by March 1, 2001 and shall file any subsequent material changes to the policy for commission review and approval in accordance with commission procedures for tariff changes.

[17.11.22.12 NMAC - Rp, 17.11.22.12 NMAC, 2-1-06]

#### **17.11.22.13 ALTERNATIVE SERVICE:**

An ILEC shall provide alternative service to a customer whose order is held, unless the customer was the cause of the delay.

**A.** Where wireless phone service or equivalent service is available, an ILEC shall offer to pay for the customer to receive such service.

(1) The ILEC shall cover all nonrecurring charges, including charges for the wireless handset, all monthly recurring charges, and unlimited local calling until the ILEC completes the service request. The ILEC may supply the customer with a wireless handset and a prearranged service plan or a voucher to obtain the same from a third party.

(2) The customer shall be responsible for paying roaming and long distance charges.

**B.** Where wireless phone service or equivalent service is not available, the ILEC shall offer the customer free of charge a telephone number, a listing, and the customer's choice of either:

(1) free remote call forwarding of that number until service is provided; or

(2) a free voice mailbox to which the customer's calls may be directed until service is provided.

[17.11.22.13 NMAC - Rp, 17.11.22.13 NMAC, 2-1-06]

#### **17.11.22.14 INSTALLATION OF DESIGNED SERVICES:**

**A. Confirmation of service order.** Within three (3) business days of receipt of a customer's order for designed services, an ILEC shall notify the customer of the proposed installation date and the customer's remedies for the ILEC's failure to meet the proposed installation date.

**B. Held order standard.** An ILEC shall complete eighty-five (85) percent of installations for designed services in accordance with the installation intervals set forth in subsections C and D of this section.

**C. Installation interval – facilities available.** Where facilities exist, the installation interval shall be ten (10) business days.

**D. Installation interval – new facilities required.** Where new facilities are needed to provide designed service, the ILEC shall install the service within forty-five (45) calendar days, unless the customer requests a later date. If the order is not completed within forty-five (45) calendar days or the later date requested by the customer, the customer shall receive a credit of the nonrecurring charge except when the ILEC can establish that delay was caused by circumstances beyond its reasonable control.

(1) When the delay is caused by circumstances beyond the ILEC's reasonable control and the commission has granted a waiver of the held order standard

pursuant to 17.11.22.25 NMAC, the period of delay shall be added to the time period allowed for installation of the service.

(2) An ILEC shall report any case in which it claims the delay is caused by circumstances beyond the reasonable control of the ILEC to the affected customer who shall have the right to challenge the exception.

**E. Credits for failure to comply with installation interval.** The following credits shall apply when an ILEC fails to meet designed services installation intervals during the preceding calendar year.

% installed within installation interval	Amount per day late to be credited to customer for failure to meet held order standard
85% to 100%	no credit applies
75% to 84%	\$ 200
65% to 74%	\$ 500
55% to 64%	\$1,000
45% to 54%	\$1,500
35% to 44%	\$3,000
0 to 34%	\$5,000

**F. Calculation and payment of credits.** By February 1 of each year, beginning in 2002, the ILEC shall submit a report showing its calculation of the credits specified in subsection E of this section, and shall, no later than March 15 of that year, apply the appropriate credit to the bill of each customer who experienced a held order during the prior calendar year. If the customer is no longer a customer of record as of the date the credit is issued, the ILEC shall mail payment to the former customer.

[17.11.22.14 NMAC - Rp, 17.11.22.14 NMAC, 2-1-06]

**17.11.22.15 OUT-OF-SERVICE CREDITS FOR DESIGNED SERVICES:**

**A.** When service is out for the designated time period, then unless the customer caused the out-of-service condition, an ILEC shall credit the stated amount to the customer's account, unless otherwise determined by customer contract.

Period out of service, in clock hours, whether continuous or discontinuous	Credit for DS-1 services	Credit for DS-3 services	Credit for ISDN-BRI services
Less than 4 hours in a 12 hour period	no credit	no credit	no credit
4 to 8 hours in a 24 hour period	\$120	\$1000	no credit
8 to 16 hours in a 36 hour	\$210	\$2100	no credit

period			
16 to 24 hours in a 48 hour period	\$240	\$2400	no credit
24 to 48 hours in a 60 hour period	\$300	\$3000	\$10 per day
More than 48 hours in a 72 hour period	The greater of \$420 or 100% of the total monthly recurring charge	The greater of \$4000 or 100% of the total monthly recurring charge	\$10 per day

**B.** Whenever an ILEC fails to repair an out-of-service condition for DS-1 or DS-3 service within twenty-four (24) clock hours of notification, it shall credit the pro rata cost of the circuit and trunks to the customer's account.

[17.11.22.15 NMAC - Rp, 17.11.22.15 NMAC, 2-1-06]

**17.11.22.16 DIRECTORY ASSISTANCE AND INTERCEPT:**

**A.** An ILEC shall list basic local exchange service customers (except those customers requesting otherwise) in the directory assistance database within twenty-four (24) hours of service connection, except during times of regular maintenance, in which case the listing shall occur within forty-eight (48) hours of service connection.

**B.** If an ILEC makes an error in the listed number or name of any customer, then until a new directory is published, the ILEC shall make, at no charge to the customer, whatever special arrangements are necessary and reasonable to ensure that calling parties are able to reach the customer whose listed number or name is in error.

**C.** If an ILEC makes an error in the number, name or address of any listing of any customer, the ILEC shall place the customer's correct name, address and telephone number in the files of the directory assistance and intercept operators within seventy-two (72) hours of confirmation of the error.

**D.** When a customer's telephone number is changed at the request of the customer after a directory is published, the LEC shall provide intercept service for all calls to the former number for the lesser of sixty (60) days or until a new directory is issued. If the change is made at the initiative of the LEC, the LEC shall provide intercept service for the former number at no charge to the customer for the greater of sixty (60) days or the remaining life of the current directory. The LEC shall provide the correct number to its information operator within twenty-four (24) hours of the number change (except during times of regular maintenance, in which the case the listing shall occur within forty-eight (48) hours of service connection) or send it to the carrier providing information operator service within twenty-four (24) hours if the local exchange carrier does not provide its own service. The LEC's intercept recording shall state how the caller can obtain the new number.

[17.11.22.16 NMAC - Rp, 17.11.22.16 NMAC, 2-1-06]

**17.11.22.17 NETWORK CALL COMPLETION REQUIREMENTS FOR DIRECT DIALED CALLS:**

**A.** An ILEC shall maintain sufficient wire center and interoffice channel capacity and any other necessary facilities to meet the following minimum requirements during any normal busy hour:

(1) dial tone within three (3) seconds for ninety-eight (98) percent of call attempts on the switched network;

(2) correct termination of ninety-eight (98) percent of properly dialed intraoffice or interoffice calls within an extended service area; and

(3) correct termination of ninety-eight (98) percent of properly dialed intraLATA calls when the call is routed entirely over the network of the ILEC.

**B.** Unless otherwise authorized by the commission, a carrier providing toll service shall maintain sufficient switching and network channel capacity and any other necessary facilities so that ninety-eight (98) percent of properly dialed intrastate toll calls are correctly terminated.

**C.** An ILEC shall terminate a properly dialed call in one of the following ways:

(1) the calling party shall receive an indication of ringing and a ringing signal shall be delivered to the station location of the called party; if the called party answers, a connection shall be established between the calling and called parties;

(2) if the called number is busy, the calling party shall receive a busy signal, unless the called party has subscribed to a voice messaging, call forwarding, or call waiting service;

(3) if the ILEC cannot establish a connection between the calling and called parties, the calling party shall receive an announcement or an appropriate overflow signal that is different than a called party busy signal; a call terminated in this way shall not be considered correctly terminated for purposes of calculating the percentage of correctly terminated calls required by subsections A and B of this section;

(4) if a call is made to a non-working code or inoperative customer number, it shall be directed to the ILEC's intercept service.

[17.11.22.17 NMAC - Rp, 17.11.22.17 NMAC, 2-1-06]

**17.11.22.18 NETWORK CALL COMPLETION REQUIREMENTS FOR OPERATOR ASSISTED CALLS:**

A carrier offering operator assistance to the public shall answer eighty-five (85) percent of directory, intercept, toll and local assistance calls within ten (10) seconds. The following are not answers:

- A.** an acknowledgement that the customer is waiting on the line;
- B.** a dropped call;
- C.** directing the call to a company representative or mechanized system incapable of providing assistance to the customer; or
- D.** directing the call to a system that will only take a message from the customer.

[17.11.22.18 NMAC - Rp, 17.11.22.18 NMAC, 2-1-06]

#### **17.11.22.19 QUALITY OF SERVICE STANDARDS FOR NON-DESIGNED SERVICES:**

**A. Installation of primary local exchange lines.** An ILEC shall complete at least ninety-six (96) percent of all requests for installation of primary local exchange lines within the time frames established 17.11.22.12 NMAC.

**B. Held orders for primary local exchange lines.** An ILECs annual held order rate for primary local exchange lines shall not exceed 0.035 percent. The annual held order rate shall be the average of the monthly held order rates. The monthly held order rate shall be calculated as the number of an ILEC's held orders for primary local exchange lines as of the last day of the month, excluding orders for which waivers have been granted, expressed as a percentage of the total number of the ILEC's switched access lines in service at the end of that month.

#### **C. Trouble reports.**

**(1)** An ILEC's trouble report rate shall not exceed five (5) trouble reports per month per 100 access lines in service per wire center.

**(2)** An ILEC's repeat trouble report rate shall not exceed 18% of total monthly trouble reports, on a wire center basis.

#### **D. Out-of-service clearances.**

**(1)** An ILEC shall clear eighty-five (85) percent of out-of-service trouble reports in each month within twenty-four (24) hours, on a wire center basis.

**(2)** The monthly average repair interval in a wire center shall not exceed twenty (20) hours.

[17.11.22.19 NMAC - Rp, 17.11.22.19 NMAC, 2-1-06]

**17.11.22.20 TIMELY RESPONSE BY CUSTOMER SERVICE REPRESENTATIVES:**

**A. Standards.** An ILEC's business and repair offices shall answer calls within an average of thirty-five (35) seconds. If a carrier uses an automated response system, the system shall transfer calls to a customer service representative within an average of thirty-five (35) seconds of the customer's selection or within forty (40) seconds if the customer does not make a selection. An ILEC shall ensure that no more than one (1) percent of calls to its business offices reach a busy signal and that no more than one (1) percent of calls to its repair offices reach a busy signal.

**B. Reports.** An ILEC shall file an exception report within thirty (30) calendar days of the end of any month in which it failed to meet any of the standards set forth in Subsection A of this section. The report shall identify each offending business office and repair office, the percent of calls answered, the percent of calls reaching a busy signal, the reason for failure to meet the respective standard, the remedial action taken by the ILEC, and any known results of that remedial action.

[17.11.22.20 NMAC - Rp, 17.11.22.20 NMAC, 2-1-06]

**17.11.22.21 AGGREGATE CUSTOMER CREDITS:**

This section applies only to non-designed services.

**A. Annual compliance reports.**

(1) By February 15 of each year, each ILEC shall submit to the commission a report detailing, on a statewide basis, its compliance in the preceding calendar year with the quality of service standards set forth in this rule. The report shall also list each wire center alphabetically and shall indicate for each wire center which of the standards set forth in subsections C and D of 17.11.22.19 NMAC the ILEC failed to meet and the months in which the ILEC failed to meet the standard.

(2) The report shall include the details of the calculations made pursuant to 17.11.22.22 NMAC to determine the credit obligations the ILEC has incurred for the preceding calendar year, including those that are the subject of a petition for waiver or variance.

**B. Payment of credits.**

(1) An ILEC shall issue a one-time credit on customer bills for an equal amount of the aggregate customer credits incurred in any given year to each customer active in the billing cycle in which the credits are issued.

(2) An ILEC shall issue aggregate customer credits in a billing cycle that begins by May 1 for all quality of service standards that are not the subject of a petition for waiver or variance or for which such a petition has been denied by January 31.

(3) An ILEC shall issue aggregate customer credits for all quality of service standards for which a petition for a waiver or variance has been denied after January 31 in a billing cycle that begins within ninety (90) days of the date the petition was denied.

(4) An ILEC need not issue aggregate customer credits for those quality of service standards for which it has been granted a waiver.

[17.11.22.21 NMAC - Rp, 17.11.22.21 NMAC, 2-1-06]

#### **17.11.22.22 CALCULATION OF AGGREGATE CUSTOMER CREDITS:**

This section applies only to nondesigned services.

**A. Installation of service.** For any calendar year in which an ILEC failed to achieve, on a statewide basis, the ninety-six (96) percent installation standard for primary local exchange lines, the ILEC shall incur the following credit obligations:

(1) for each percentage point from .1 to 3.0 percentage points less than the benchmark: .06 percent of the ILEC's total intrastate revenues for the year;

(2) for each percentage point from 3.1 to 7.0 percentage points less than the benchmark: .10 percent of the ILEC's total intrastate revenues for the year;

(3) for each percentage point from 7.1 to 12.0 percentage points less than the benchmark: .13 percent of the ILEC's total intrastate revenues for the year; and

(4) for each percentage point over 12.0 percentage points less than the benchmark: .16 percent of the ILEC's total intrastate revenues for the year.

**B. Held orders up to 180 days.** For any calendar year in which an ILEC failed to achieve, on a statewide basis, the 0.035% held order standard, the ILEC shall incur the following credit obligations:

(1) for each .001 increment from .001 to .005 percentage points in excess of the benchmark: .06 percent of the ILEC's total intrastate revenues for the year;

(2) for each .001 increment from .006 to .01 percentage points in excess of the benchmark: .1 percent of ILEC's total intrastate revenues for the year;

(3) for each .001 increment from .011 to .015 percentage points in excess of the benchmark: .13 percent of the ILEC's total intrastate revenues for the year; and



(4) for each .001 percentage point increment over .015 percentage points in excess of the benchmark: .16 percent of ILEC's total intrastate revenues for the year.

**C. Held orders in excess of 180 days:** For each month during a calendar year in which an ILEC had, as of the last day of the month, one or more held orders pending for more than 180 days, an ILEC shall incur the following credit obligations:

(1) for each month with 1 to 5 such orders as of the last day of the month: .01 percent of an ILEC's total intrastate revenues for the year;

(2) for each month with 6 to 10 such orders as of the last day of the month: .015 percent of ILEC's total intrastate revenues for the year; and

(3) for each month with 11 or more such orders as of the last day of the month: .02 percent of ILEC's total intrastate revenues for the year.

**D. Trouble reports.** For any calendar year in which an ILEC failed to achieve, on a statewide basis, an average trouble report rate of 5.0 trouble reports per 100 access lines, the ILEC shall incur the following credit obligations:

(1) for an annual average trouble report rate from .1 to 2.0 reports per 100 access lines in excess of the benchmark, .06% of the ILEC's total intrastate revenues for the year;

(2) for an annual average trouble report rate from 2.1 to 4.0 reports per 100 access lines in excess of the benchmark, .1% of the ILEC's total intrastate revenues for the year;

(3) for an annual average trouble report rate from 4.1 to 6.0 reports per 100 access lines in excess of the benchmark, .13% of the ILEC's total intrastate revenues for the year; and

(4) for an annual average trouble report rate more than 6.0 reports per 100 access lines in excess of the benchmark, .16% of the ILEC's total intrastate revenues for the year.

**E. Out-of-service clearances.** For any calendar year in which an ILEC failed to achieve, on a statewide basis, an average out-of-service clearance rate of eighty-five (85) percent in twenty-four (24) hours, the ILEC shall incur the following credit obligations:

(1) for each percentage point from .1 to 3.0 percentage points less than the benchmark, .02% of the ILEC's total intrastate revenues for the year;

(2) for each percentage point from 3.1 to 7.0 percentage points less than the benchmark, .03% of the ILEC's total intrastate revenues for the year;

(3) for each percentage point from 7.1 to 12.0 percentage points less than the benchmark, .04% of the ILEC's total intrastate revenues for the year; and

(4) for each percentage point beyond 12.0 percentage points less than the benchmark, .05% of the ILEC's total intrastate revenues for the year.

**F. Repeat trouble reports.** For any calendar year in which an ILEC failed to achieve, on a statewide basis, an average repeat trouble report rate of eighteen (18) percent, the ILEC shall incur the following credit obligations:

(1) for a repeat trouble report rate from 0.1 to 5.0 percentage points in excess of the benchmark, .06% of total intrastate revenues for the year;

(2) for a repeat trouble report rate from 5.1 to 10.0 percentage points in excess of the benchmark, .1% of total intrastate revenues for the year;

(3) for a repeat trouble report rate from 10.1 to 15.0 percentage points in excess of the benchmark, .13% of total intrastate revenues for the year; and

(4) for a repeat trouble report rate more than 15.0 percentage points in excess of the benchmark, .16% of total intrastate revenues for the year.

**G. Wire center-specific standards.** In addition to the credit obligations based on statewide performance, an ILEC shall incur a credit obligation of \$3.00 per access line in service at a given wire center for each wire center-specific standard set forth in subsections C and D of 17.11.22.19 NMAC the ILEC failed to achieve at that wire center for two consecutive months or any three months in a calendar year.

[17.11.22.22 NMAC - Rp, 17.11.22.22 NMAC, 2-1-06]

### **17.11.22.23 INDIVIDUAL CUSTOMER CREDITS:**

**A. Out-of-service clearances.** A LEC shall automatically make appropriate adjustments to a customer's bill whenever service from the LEC is interrupted and remains out of order for more than eight (8) hours during a continuous twenty-four (24) hour period after the customer reports it or the LEC finds it, whichever occurs first.

(1) The LEC shall provide a credit on the monthly bill for LEC services that is proportional to the duration of the service interruption. Each occurrence of a loss of service for eight (8) hours during a twenty-four (24)-hour time period shall count as one day and every month shall be considered to have thirty (30) days.

(2) The LEC shall not be required to provide an adjustment for loss of service due to:

(a) the negligence or willful act of the customer;

(b) a malfunction of facilities other than those under control of the LEC;

(c) force majeure; or

(d) the inability of the LEC to gain access to the customer's premises when necessary.

**B. Held orders.** For each customer whose order is held, an ILEC shall:

(1) provide a credit of \$45 for each primary residential line, and a credit of \$135 for each primary business line it fails to install within the time frames set forth in 17.11.22.12 NMAC;

(2) pay the sum of \$300 and three (3) times the installation charge for each primary residential or business line not installed within seven (7) days of the time frames set forth in 17.11.22.12 NMAC;

(3) waive the service charge for the first month of service once service is provided; and,

(4) for each customer whose premises is located where wireless phone service or equivalent service is not available, provide a credit of two (2) times the basic local exchange service rate for every month or partial month the customer's order is held.

[17.11.22.23 NMAC - Rp, 17.11.22.23 NMAC, 2-1-06]

#### **17.11.22.24 RATEMAKING TREATMENT OF PENALTIES AND CREDITS:**

Regardless of the form of regulation, an ILEC shall not recover from customers through its rates the costs it incurs for penalties imposed pursuant to NMSA 1978 Section 63-7-23 or credits provided to customers pursuant to this rule.

[17.11.22.24 NMAC - Rp, 17.11.22.24 NMAC, 2-1-06]

#### **17.11.22.25 EXEMPTION OR VARIANCE:**

##### **A. General requirements.**

(1) Any carrier may petition for an exemption or variance from any of the requirements of this rule.

(2) Such petition may include a motion that the commission stay the affected portion of this rule for the transaction specified in the motion.

(3) Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by an officer of the carrier or other person with authority to bind the carrier.

(4) The commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

#### **B. Waiver of held order standard.**

(1) An ILEC may petition for a waiver of the held order standard in 17.11.22.19 NMAC for circumstances beyond the reasonable control of the ILEC. The petition shall be filed with the commission within thirty (30) calendar days of the installation dates established in 17.11.22.12 NMAC and shall be accompanied by an affidavit executed by a person employed by the ILEC who is knowledgeable concerning the facts surrounding the waiver request. At the same time, the ILEC shall serve a copy of the waiver petition on the affected customers.

(2) The petition shall include:

(a) the names and addresses of all known customers who will be affected by the waiver request and an estimate of the number of unknown customers who might be affected;

(b) a detailed explanation of the relief being sought;

(c) the date when the service orders are expected to be filled; and

(d) a detailed explanation of the circumstances giving rise to the waiver request.

(3) The telecommunications bureau of the commission shall approve or disapprove the petition for waiver of the held order standard within thirty (30) calendar days of its submittal. The order shall not be counted as a held order and the ILEC shall not be required to pay credits while the petition is pending before the telecommunications bureau.

(4) Neither a waiver or a waiver petition shall relieve the ILEC of its obligations to provide alternative service to the individual customer unless the customer failed to provide the necessary facilities to enable the ILEC to complete the order or otherwise caused the delay.

(5) Where a waiver request is granted, the ILEC need not count any order subject to the waiver as a held order for purposes of this rule.

**C. All other exceptions.** A petition for an exemption or variance from any other requirement of this rule shall:

- (1) identify the section of this rule for which the exemption or variance is requested;
- (2) describe the situation which necessitates the exemption or variance;
- (3) describe the effect of complying with this rule on the carrier and its customers, and on its competitive affiliates and their customers, if the exemption or variance is not granted;
- (4) state how the exemption or variance will achieve the purposes of this rule and the New Mexico Telecommunications Act;
- (5) state why the proposed alternative is in the public interest and is better than the requirement in the rule; and
- (6) state why the exemption or variance would have no anticompetitive effect.

[17.11.22.25 NMAC - Rp, 17.11.22.25 NMAC, 2-1-06]

## **PART 23: RETAIL SERVICE PRICING STANDARDS FOR MID-SIZE CARRIERS**

### **17.11.23.1 ISSUING AGENCY:**

The New Mexico Public Regulation Commission.

[17.11.23.1 NMAC - N, 4-1-2006]

### **17.11.23.2 SCOPE:**

This rule applies to all mid-size carriers.

[17.11.23.2 NMAC - N, 4-1-2006]

### **17.11.23.3 STATUTORY AUTHORITY:**

NMSA 1978 Sections 63-9A-5.1 and 63-9A-5.2.

[17.11.23.3 NMAC - N, 4-1-2006]

### **17.11.23.4 DURATION:**

Permanent.

[17.11.23.4 NMAC - N, 4-1-2006]

**17.11.23.5 EFFECTIVE DATE:**

April 1, 2006, unless a later date is cited at the end of a section.

[17.11.23.5 NMAC - N, 4-1-2006]

**17.11.23.6 OBJECTIVE:**

The purpose of this rule is to establish retail service pricing standards for mid-size carriers.

[17.11.23.6 NMAC - N, 4-1-2006]

**17.11.23.7 DEFINITIONS:**

As used in this rule:

A. basic services means retail telecommunications services that provide residence or business customers with an individual primary line providing voice grade access to the public switched network;

B. basket means a collection of retail telecommunications services grouped together in order to calculate permissible changes in the price ceilings for the services;

C. bundle means a combination of regulated services and unregulated services in a single retail product offering; the unregulated services may be obtained by a mid-size carrier from another entity;

D. commission notice means a letter of notice filed by a mid-size carrier at the New Mexico public regulation commission;

E. cost means the cost incurred by a mid-size carrier to provide a service in New Mexico;

F. customer notice means notice of changes in service prices, terms, or conditions provided by a mid-size carrier to retail customers via bill message or, at the option of the mid-size carrier, via bill insert, direct mail, or publication in newspapers;

G. effective price means the current tariffed price for a retail telecommunications service;

H. initial price means a mid-size carrier's rates on file at the commission on the first date that the carrier is regulated under this rule. The first established price of a new service introduced after the effective date of this rule shall be considered its initial price;

I. mid-size carrier means any telecommunications company with more than fifty thousand but less than three hundred seventy-five thousand access lines in New Mexico;

J. non-basic services means retail telecommunications services that are not a basic service, a switched access service or a wholesale service governed by an interconnection agreement;

K. package means the combination of two or more regulated services in a single retail product offering by a mid-size carrier;

L. price ceiling means the maximum price at which a basic or non-basic service may be offered;

M. price floor means the lowest price at which a basic or non-basic service may be offered;

N. promotion means the offering of a new or existing telecommunications product or service at a new or reduced price or on modified terms for a temporary period;

O. service area refers to the territory served by a mid-size carrier within a single wire center.

[17.11.23.7 NMAC - N, 4-1-2006]

#### **17.11.23.8 PRICING FLEXIBILITY:**

In recognition of factors that distinguish mid-size carriers from other carriers, this rule establishes pricing flexibility for mid-size carriers and an objective mechanism by which mid-size carriers may adjust prices.

##### **A. Basic Services.**

(1) **Effective Price.** The effective price of a basic service may be any price that is less than or equal to the price ceiling for the service and greater than or equal to the price floor for the service.

##### **(2) Price Ceilings.**

(a) The initial price ceiling for each basic service shall be its initial price.

(b) Each price ceiling shall be adjusted once annually by the percentage change in the average national price for residential and business single lines reported in the most recent statistics of communications common carriers published by the federal communications commission.

(i) For residential and business customers, price indices shall be calculated based on the tables entitled "average residential rates for local service in urban areas" and "average local rates for businesses with a single line in urban areas," respectively.

(ii) For residential and business customers, the applicable price indices shall be calculated based on the rows entitled "total monthly charge" and "total connection charge."

(c) If the index declines in a year, the price ceiling shall not be reduced; however, the price ceiling will not be increased subsequently until the index surpasses its value in the year prior to the decline.

(d) A mid-size carrier may change the price ceiling of a basic service by filing tariff sheets reflecting the change and providing notice as required in 17.11.23.9 NMAC.

(3) Price Floors. The price floor for a basic service shall be the average cost of providing the service in New Mexico.

(4) Rebalancing. The commission may revise the price ceiling for a basic service as part of a revenue-neutral rate rebalancing, as provided by NMSA 1978 Section 63-9A-5.1(E). Subsequent changes to a revised price ceiling shall be based on subsequent changes in the appropriate index.

#### B. Non-Basic Services.

(1) Effective Price. The effective price of a non-basic service may be any price that is less than or equal to the price floor for the service.

(2) Price Ceilings.

(a) The initial price ceiling for each non-basic service shall be its initial price.

(b) A mid-size carrier may change the price ceiling of a non-basic service by providing notice.

(c) An increase in the price ceiling for a non-basic service other than a custom calling service will be presumed to be reasonable and will be permitted to become effective by the commission if the increase is not greater than five percent in any twelve-month period.

(d) For purposes of calculating changes to price ceilings for custom calling features other than public interest services, such features shall be considered as a basket of services. An increase in the price ceiling for a custom calling feature will be presumed to be reasonable and will be permitted to become effective by the commission if the increase in the sum of the price ceilings of the features in the basket,



weighted by the number of subscribers to each custom calling feature, is not greater than twenty percent and the increase for any individual feature is not greater than fifty percent in any twelve-month period beginning February 1 of each year.

(e) If the price ceiling of a non-basic service is proposed to be increased by an amount that is greater than twenty percent in any twelve-month period or if the price ceiling for any individual custom calling feature is proposed to be increased more than fifty percent in any twelve-month period, the commission may take such action as it deems appropriate, including denial or suspension and investigation of the proposed changes in price ceilings.

(3) Price Floors. The price floor for a non-basic service shall be the average cost of providing the service in New Mexico.

(4) Public Interest Services. Notwithstanding the provisions of this rule, a mid-size carrier shall not withdraw the following products and services without express approval of the commission: 911, call trace, caller ID blocking, non-published and non-listed directory services, and discounted services, such as the low income telephone assistance program (LITAP) and lifeline, provided to qualified persons. A mid-size carrier may not increase the price ceiling for 911 services by more than five percent in any twelve-month period without express approval of the commission. A mid-size carrier may not increase the price ceiling for other public interest services by more than ten percent in any twelve-month period without express approval of the commission.

### C. Packages.

(1) Authority. A mid-size carrier may offer a combination of basic and non-basic services in a single package as authorized by NMSA 1978 Section 63-9A-5.1(G).

(2) Effective Price. The effective price of a package may be any price that is less than or equal to the price ceiling of the package and greater than or equal to the price floor of the package.

(3) Price Ceilings. The price ceiling for a package shall be less than or equal to the sum of the price ceilings of the components of the package. If the package permits customers to choose elements of the package, the highest such price ceiling shall be calculated assuming the customer chooses the most expensive compatible options.

(4) Price Floors. The price floor for a package shall be the sum of the price floors of the components of the package.

### D. Bundles.

(1) Effective Price. The effective price of a bundle may be any price that is less than or equal to the price ceiling of the bundle and greater than or equal to the price floor of the bundle.

(2) Price Ceiling. The initial price ceiling for an existing bundle is the initial price of the bundle. The initial price ceiling for a new bundle is the initial maximum price which shall be less than or equal to the sum of the price ceilings of the regulated services plus the sum of the stand-alone prices of the unregulated services.

(3) Price Floor. The price floor of a bundle is the sum of the price floors of the regulated services plus the cost to the mid-size carrier of acquiring the unregulated services.

#### E. Prices within Service Areas.

(1) One floor and one ceiling per service. A single price ceiling and a single price floor shall apply to each basic and non-basic service offered by a mid-size carrier in the state.

(2) Prices within and between service areas. A mid-size carrier may charge different prices for basic and non-basic services to customers in different service areas. A mid-size carrier shall charge the same price for a basic or non-basic service to all customers within a service area unless the mid-size carrier demonstrates to the commission that market conditions vary within a service area.

#### F. Introducing or Withdrawing Non-basic Services, Packages and Bundles.

(1) Commission notice of introductions. Subject to commission suspension under 17.11.23.10 NMAC, a mid-size carrier may offer a new non-basic service, bundle or package by filing a tariff and commission notice no less than ten days prior to the effective date of the tariff.

(2) Commission notice of withdrawals. Subject to commission suspension under 17.11.23.10 NMAC, a mid-size carrier may withdraw any non-basic service, package or bundle from its tariff, except public interest services, by filing a revised tariff and commission notice no less than ten days prior to the effective date of the tariff.

(3) Consumer notice of withdrawals. A mid-size carrier shall notify affected customers of a service to be withdrawn at least ten days before the service is withdrawn.

G. Promotions. A mid-size carrier may offer promotions such as special incentives, discounts, or temporary rate waivers by filing a commission notice not less than three days prior to the effective date of the promotion.

H. Individual Contracts. A mid-size carrier may offer basic and non-basic services on an individual contract basis pursuant to NMSA 1978 Section 63-9A-9 by providing notice to the commission of the individual contract. If the commission does not act within five days of receiving the notice, the individual contract shall be deemed approved by the commission.

[17.11.23.8 NMAC - N, 4-1-2006]

### **17.11.23.9 TARIFFS, PRICE LISTS AND NOTICE:**

A. Tariffs. A mid-size carrier shall maintain a tariff on file with the commission that contains the price ceiling and effective price by service area for each basic service, non-basic service, package and bundle offered by the mid-size carrier.

B. Changes to Terms and Conditions. A mid-size carrier may propose non-price related changes to terms and conditions in its tariffs by filing commission notice and tariff sheets reflecting the modified terms and conditions. Subject to commission suspension under 17.11.23.10 NMAC, the modified terms and conditions of such non-price related changes shall become effective ten days after a mid-size carrier files such commission notice and tariff sheets.

#### C. Notice of Price Ceiling Changes and Effective Price Changes.

(1) Notice. Subject to commission suspension under 17.11.23.10 NMAC, a mid-size carrier may change the effective price or the price ceiling of a basic service, non-basic service, package or bundle by providing notice as provided in this subsection.

(2) Notice of changes in price ceilings. No less than ten days prior to the effective date of an increase in a price ceiling, the mid-size carrier shall provide notice to the commission and to the New Mexico Attorney General and shall cause notice of the increase to be published in a newspaper with statewide circulation. For decreases to price ceilings, commission notice shall be made no less than one day prior to the effective date of the new price ceiling. No customer notice of decreases in price ceilings is required.

(3) Notice of changes in effective prices. Commission notice of increases in effective price shall be made not less than ten days prior to the effective date of the new price. Commission notice of decreases in effective price shall be made no less than one day prior to the effective date of the new price. Consumer notice of effective price increases shall be made not less than ten days or more than seventy-five days prior to the effective date of the new price. No consumer notice of decreases in effective prices is required.

(4) Website posting of changes in effective price. Each change in effective price shall be reflected on a mid-size carrier's website on or before the date the change becomes effective.

(5) Affidavit Required. Any tariffed change in the effective price or the price ceiling of a basic service, non-basic service, package or bundle must be accompanied by an affidavit, signed by a person with personal knowledge, stating that the effective price is above or equal to the price floor for the service.

(6) Cost Studies. Upon request of the commission or commission staff, a mid-size carrier shall produce a cost study demonstrating how the mid-size carrier calculated the cost of a service.

[17.11.23.9 NMAC - N, 4-1-2006]

#### **17.11.23.10 SUSPENSION:**

Pursuant to NMSA 1978 Section 63-9A-5.1(G), the commission may suspend a tariff introducing a new service, withdrawing a non-basic service, or changing the effective price or the price ceiling of a basic service or a non-basic service under circumstances limited to ensuring compliance with applicable rules, cost considerations, or a finding that the tariff filing is not consistent with the public interest.

[17.11.23.10 NMAC - N, 4-1-2006]

#### **17.11.23.11 REVIEW AND REPORT TO LEGISLATURE:**

Two years after the effective date of this rule, the commission and any mid-size carrier shall independently review the provisions of this rule and, subsequently, shall report their findings to the legislature. All or part of such findings may be reported to the legislature either jointly or separately.

[17.11.23.11 NMAC - N, 4-1-2006]

#### **17.11.23.12 WAIVERS:**

Pursuant to NMSA 1978 Section 63-9A-5.1(H), a mid-size carrier may petition the commission for a waiver of any provision of this rule for good cause shown. Without limitation, extraordinary changes in a carrier's costs caused by administrative, legislative, or judicial action beyond the control of the carrier shall constitute good cause.

[17.11.23.12 NMAC - N, 4-1-2006]

#### **17.11.23.13 ADJUSTMENTS FOR EXOGENOUS COST CHANGES:**

A mid-size carrier, staff, or other interested party may petition the commission to incorporate exogenous cost changes resulting from extraordinary changes in a mid-size carrier's cost caused by administrative, state or federal legislative changes, or judicial action beyond the control of the mid-size carrier. Such adjustments make take the form

of a change in rates, or surcharges or credits on consumers' bills. The commission shall issue a decision on a petition for an exogenous cost adjustment no later than one-hundred and twenty days after the petition is submitted.

[17.11.23.13 NMAC - N, 4-1-2006]

## **PART 24: QUALITY OF SERVICE STANDARDS APPLICABLE TO MID-SIZE CARRIERS**

### **17.11.24.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.11.24.1 NMAC - N, 4-1-2006]

### **17.11.24.2 SCOPE:**

This rule applies to all mid-size carriers.

[17.11.24.2 NMAC - N, 4-1-2006]

### **17.11.24.3 STATUTORY AUTHORITY:**

NMSA 1978 Sections 63-9A-5.1 and 63-9A-5.2.

[17.11.24.3 NMAC - N, 4-1-2006]

### **17.11.24.4 DURATION:**

Permanent.

[17.11.24.4 NMAC - N, 4-1-2006]

### **17.11.24.5 EFFECTIVE DATE:**

April 1, 2006, unless a later date is cited at the end of a section.

[17.11.24.5 NMAC - N, 4-1-2006]

### **17.11.24.6 OBJECTIVE:**

The purpose of this rule is to establish quality of service standards applicable to mid-size carriers.

[17.11.24.6 NMAC - N, 4-1-2006]

#### **17.11.24.7 DEFINITIONS:**

As used in this rule:

A. access line means a dial tone line that provides local exchange service from a mid-size carrier's switching equipment to a point of termination at the customer's network interface;

B. basic services means retail telecommunications services that provide residence or business customers with an individual primary line providing voice grade access to the public switched network;

C. circumstances beyond a mid-size carrier's control are limited to:

(1) failure to obtain necessary rights-of-way or permits despite the filing of timely applications;

(2) extraordinary weather and other acts of God; or

(3) supplier issues, vendor issues, and work stoppages;

D. customer means any person that has applied for or is currently receiving telecommunications services;

E. designed services means the provisioning of end user tariffed circuits requiring special treatment, special equipment, or special engineering design; examples include PBX trunks, rotary lines, DDS, DS-1, DS-3, ISDN-BRI, and special assemblies;

F. designed services held order means an order for designed services where facilities are not available that is not provisioned within forty-five calendar days after the receipt of the customer's order or within forty-five calendar days after the customer's requested service date; an order shall not be considered a held order if the customer was the cause of the delay;

G. held order means an order for a basic service placed by a customer whose premises are within one thousand feet of an existing terminal or pedestal, which, due to a lack of facilities, is not completed within thirty days after the receipt of the order (or within thirty days after the customer's requested service date, where the customer requested a date more than five days after submission of the order); an order shall not be considered a held order if the customer was the cause of the delay;

H. mid-size carrier means any telecommunications company with more than fifty thousand but less than three hundred seventy-five thousand access lines in New Mexico;

I. non-basic services means retail telecommunications services that are not a basic service, a switched access service or a wholesale service governed by an interconnection agreement;

J. out-of-service trouble report is a report from a customer of an inability to receive or place calls on an access line due to lack of dial tone or severe noise that prevents effective communication;

K. repeat trouble report is a network trouble report on an access line within thirty days of a closed trouble report concerning the same problem on the same line;

L. telecommunications company means a person that provides public telecommunications service;

M. trouble report means notification of trouble or perceived trouble by a customer, third party, or employee acting on behalf of a customer to a mid-size carrier's repair office, including trouble reported on the access lines of the mid-size carrier's retail customers, but not including troubles associated with a customer's unfamiliarity with new features or customer premises equipment, or extraordinary or abnormal conditions of operation.

[17.11.24.7 NMAC - N, 4-1-2006]

#### **17.11.24.8 REPORTING REQUIREMENTS AND SERVICE STANDARDS:**

For each requirement in this section of the rule, a mid-size carrier shall compile service quality data on a monthly basis by wire center or exchange, as specified, and statewide. A mid-size carrier shall prepare each report of its data for the commission in printed format and in electronic spreadsheet format, listing each wire center or exchange, as specified, alphabetically by name. Within thirty days after the end of each calendar year, a mid-size carrier shall file its service quality report with the commission. Delays caused by customers may be excluded from a mid-size carrier's calculations.

##### **A. Held orders - basic services.**

(1) Service standards. A mid-size carrier's annual held order rate for basic services shall not exceed .035%. A mid-size carrier shall notify each customer affected by a held order of the projected service date for that order.

(2) Annual reporting requirements. The annual held order rate shall be the average of the monthly held order rates. The monthly held order rate shall be calculated as the number of a mid-size carrier's held orders for basic service lines as of the last day of the month, excluding orders for which waivers have been granted, expressed as a percentage of the total number of the mid-size carrier's access lines in service at the end of the month. A mid-size carrier shall report annually for each wire center and statewide:

- (a) the number of held orders;
- (b) the number of total access lines;
- (c) the number of held orders expressed as a percent of total access lines;
- (d) the number of held orders excluded from the calculations;
- (e) the number of held orders pending for more than one hundred eighty days, excluding designed services; and
- (f) the number of unfilled orders for designed services pending for more than one hundred eighty days.

(3) Reporting of unfilled orders when construction cannot be completed due to circumstances beyond mid-size carrier's control. Within thirty days of the end of the month in which the mid-size carrier incurs a held order that is not filled because the mid-size carrier must undertake construction of facilities in order to provide the requested service, and such construction cannot be completed in compliance with the held order standard due to circumstances beyond the mid-size carrier's control, the mid-size carrier shall file a report to the commission with the following information:

- (a) order number;
- (b) wire center;
- (c) application date;
- (d) requested date of service;
- (e) the circumstances beyond the mid-size carrier's control that have caused the order to be delayed;
- (f) explanation of what steps the mid-size carrier has taken within the thirty-day period since the order was received to overcome the circumstances beyond the mid-size carrier's control;
- (g) the date the customer notification letter was sent;
- (h) job number; and
- (i) an affidavit from a manager having direct knowledge of the conditions leading to the mid-size carrier being unable to provide service for the orders on the list.

(4) Waivers. Upon the filing of a report pursuant to Paragraph (3) of Subsection A of 17.11.24.8 NMAC, the mid-size carrier is granted a waiver exempting



any order that is the subject of a report from the reporting requirements of Paragraph (2) of Subsection A of 17.11.24.8 NMAC. Waivers are granted for up to one year from the report filing date. At the end of the one-year period, the mid-size carrier must remove the order from the waivers list and the order shall be subject to the applicable basic services installation interval standards and reporting requirements.

B. Installation of basic services.

(1) Service standards. A mid-size carrier's annual installation rate for basic services shall be at least ninety-six percent of basic service requests provisioned within five working days of the date such requests were received or by such later dates as requested by customers.

(2) Reporting requirement. A mid-size carrier shall report annually for each exchange and statewide the percent of service requests for basic services that were provisioned within five working days of each service request date or by such later dates as requested by customers. Held orders shall not be included in the calculations.

C. Installation of designed services.

(1) Service standards.

(a) Within three working days of receipt of a customer's request for designed services, a mid-size carrier shall inform the customer whether necessary facilities are available to provision the service.

(b) Where facilities are available, no less than eighty-five percent of service requests for designed services shall be provisioned within fifteen calendar days of the dates such requests were received or by the dates requested by customers, whichever is later.

(c) Where facilities are not available, no less than eighty-five percent of service requests for designed services shall be provisioned within forty-five calendar days of the dates such requests were received or by the dates requested by customers, whichever is later.

(2) Annual reporting requirements. A mid-size carrier shall report annually for each exchange and statewide the percent of requests for designed services provisioned within fifteen working days, where facilities are available, and within forty-five days, where facilities are not available, for each month in the year. The reported percent of requests shall be a twelve-month average percent calculated using twelve months of data in the calendar year. Wholesale orders for designed services and designed services orders involving third parties may be excluded from the calculations.

(3) Reporting of unfilled orders when construction cannot be completed due to circumstances beyond mid-size carrier's control. Within thirty days of the end of the

month in which a mid-size carrier incurs a designed services held order that is not filled because the mid-size carrier must undertake construction of facilities in order to provide the requested service, and such construction cannot be completed in compliance with the held order standard due to circumstances beyond the mid-size carrier's control, the mid-size carrier shall file a report to the commission with the following information:

- (a) order number;
- (b) wire center;
- (c) application date;
- (d) requested date of service;
- (e) the circumstances beyond the mid-size carrier's control that have caused the order to be delayed;
- (f) explanation of what steps the mid-size carrier has taken within the forty-five day period since the order was received to overcome the circumstances beyond the mid-size carrier's control;
- (g) the date the customer notification letter was sent;
- (h) job number; and
- (i) an affidavit from a manager having direct knowledge of the conditions leading to the mid-size carrier being unable to provide service for the orders on the list.

(4) Waivers. Upon the filing of a report pursuant to Paragraph (3) of Subsection C of 17.11.24.8 NMAC, the mid-size carrier is granted a waiver exempting any order that is the subject of a report from the reporting requirements of Paragraph (2) of Subsection C of 17.11.24.8 NMAC. Waivers are granted for up to one year from the report filing date. At the end of the one-year period, the mid-size carrier must remove the order from the waivers list and the order shall be subject to the applicable basic services installation interval standards and reporting requirements.

#### D. Trouble reports.

(1) Service standard. A mid-size carrier's annual trouble report rate shall not exceed five reports per month per one hundred access lines in service.

(2) Reporting requirements. A mid-size carrier shall report annually for each wire center and statewide the percent of access lines for which trouble reports were received during each month in the year.

#### E. Out-of-service trouble reports.

(1) Service standard. A mid-size carrier's annual out-of-service rate shall be at least eighty-five percent of out-of-service trouble reports cleared within twenty-four hours.

(2) Reporting requirements. A mid-size carrier shall report annually for each wire center and statewide the number of access lines for which out-of-service trouble reports were received during each month in the year and the percent cleared each month. Out-of-service trouble reports received after 4:00 p.m. Monday through Friday shall be deemed as received at 8:00 a.m. the following business day.

F. Repeat trouble reports.

(1) Service standard. A mid-size carrier's annual repeat trouble report rate shall not exceed eighteen percent of total monthly trouble reports.

(2) Reporting requirements. A mid-size carrier shall report annually for each wire center and statewide the percent of access lines for which repeat trouble reports were received during each month in the year.

[17.11.24.8 NMAC - N, 4-1-2006]

**17.11.24.9 OUTAGES:**

A. Initial outage report. A mid-size carrier shall report outages lasting longer than one hour and affecting more than one thousand five hundred customers to the consumer relations division of the commission by telephone, facsimile, email, or in person within ninety minutes of the onset of the outage or, for outages not occurring during business hours, at the start of the next business day.

B. Subsequent outage report. A mid-size carrier shall submit a subsequent written report stating the location, duration, number of customers affected, cause and corrective action taken. Both the initial and subsequent outage reports shall state whether 911 circuits were affected.

C. Quarterly outage reports. A mid-size carrier shall file quarterly a record of each outage in the preceding three months for which the mid-size carrier was unable to provide emergency service and an explanation of why emergency service was unavailable.

[17.11.24.9 NMAC - N, 4-1-2006]

**17.11.24.10 PROVISION OF SERVICE DURING MAINTENANCE OR EMERGENCIES:**

A. Emergency procedures. Each mid-size carrier shall establish and instruct its employees regarding procedures for preventing or mitigating interruption to or

impairment of telecommunications service in emergencies resulting from power failures, sudden and prolonged increases in traffic, illness of operators, fire, storm, or acts of God. Mid-size carriers shall file written plans detailing their emergency procedures with the telecommunications bureau of the commission within sixty days after certification by the commission or adoption of this rule, whichever is later. Any changes to the plan shall be filed with the telecommunications bureau of the commission within thirty days of the change.

B. Reserve power requirements. Mid-size carriers shall maintain in each local central office, toll switching office, and tandem switching office a minimum of four hours of battery reserve rated for peak traffic load requirements and shall:

(1) install a permanent auxiliary power unit in toll and tandem switching offices and in central offices serving ten thousand or more access lines; and

(2) have available a mobile power unit which normally can be delivered and connected within four hours for central offices serving fewer than ten thousand access lines.

C. Maintenance scheduling. Mid-size carriers shall schedule maintenance requiring extended service interruptions when it will cause minimal inconvenience to customers and, to the extent possible, shall notify customers in advance of extended service interruptions. Mid-size carriers shall make emergency service available in any area that experiences service interruptions affecting one thousand or more access lines and lasting more than four hours between the hours of 8:00 a.m. and 10:00 p.m. If a mid-size carrier cannot provide emergency service during such a scheduled maintenance period, it shall file a report of the occurrence with the telecommunications bureau of the commission.

D. Loss of switch plan. Each mid-size carrier shall develop a contingency plan to prevent or minimize service interruptions due to the loss of a central office switch that serves more than ten thousand access lines or is the toll or tandem switching office for more than ten thousand access lines. The plan shall describe the actions and systems installed to prevent or minimize the probability of such an occurrence as well as the actions and systems available to minimize the extent of any incurred service interruption. Mid-size carriers shall file the plans with the telecommunications bureau of the commission within sixty days after certification by the commission or after adoption of this rule, whichever is later. Any changes to the plan shall be filed with the telecommunications bureau within thirty days of the change.

[17.11.24.10 NMAC - N, 4-1-2006]

#### **17.11.24.11 ACCESS TO AND AUDIT OF DATA:**

Unless otherwise authorized by the commission, a mid-size carrier shall make all records required by this rule available to the commission or its authorized representative

at any time upon request. A mid-size carrier shall make customer proprietary network information available to the commission to the extent allowed by law. A mid-size carrier shall retain records of reports, measurements, summaries, and backup information for at least two years. A mid-size carrier's service quality data shall be subject to periodic audit by the commission.

[17.11.24.11 NMAC - N, 4-1-2006]

**17.11.24.12 LINE EXTENSION:**

Each mid-size carrier shall file, pursuant to 17.11.24.16 NMAC, a tariff describing its line extension policy and any subsequent modifications to its line extension policy.

[17.11.24.12 NMAC - N, 4-1-2006]

**17.11.24.13 TIMELY RESPONSE BY CUSTOMER SERVICE REPRESENTATIVES:**

A. Service standards. A mid-size carrier's business offices and repair centers shall answer ninety percent of calls within twenty seconds. If a carrier uses an automatic response system, the system shall answer ninety-five percent of calls within fifteen seconds of the customer's selection or within forty seconds if the customer does not make a selection. A mid-size carrier shall ensure that no more than one percent of calls to its business offices reach a busy signal and that no more than one percent of calls to its repair centers reach a busy signal.

B. Reporting requirement. A mid-size carrier shall file an exception report within twenty-one calendar days of the end of any month in which it failed to meet any of the standards set forth in 17.11.24.13(A) NMAC. The report shall identify each offending repair center or business office, the percent of calls answered, the percent of calls reaching a busy signal, the reason for failure to meet the respective standard, the remedial action taken by the mid-size carrier, and any known results of that remedial action.

[17.11.24.13 NMAC - N, 4-1-2006]

**17.11.24.14 DIRECTORY ASSISTANCE AND INTERCEPT:**

A. Service standard. A mid-size carrier shall list basic service customers (except those customers requesting otherwise) in the directory assistance database within twenty-four hours of service connection, except during times of regular maintenance, in which case the listing shall occur within forty-eight hours of service connection.

B. Errors in listing. If a mid-size carrier makes an error in the listed number or name of any customer, then until a new directory is published, the mid-size carrier shall make, at no charge to the customer, whatever special arrangements are necessary and reasonable to ensure that calling parties are able to reach the customer whose listed

number or name is in error. If a mid-size carrier makes an error in the listed number, name or address of any customer, the mid-size carrier shall place the customer's correct name, address and telephone number in the files of the directory assistance and intercept operators within seventy-two hours of confirmation of the error.

C. Intercept service. When a customer's telephone number is changed at the request of the customer after a directory is published, the mid-size carrier shall provide intercept service for all calls to the former number for the lesser of sixty days or until a new directory is issued. If the change is made at the initiative of the mid-size carrier, the mid-size carrier shall provide intercept service for the former number at no charge to the customer for the greater of sixty days or the remaining life of the current directory. The mid-size carrier shall provide the correct number to its information operator within twenty-four hours of the number change (except during times of regular maintenance, in which case the listing shall occur within forty-eight hours of service connection) or send it to the carrier providing information operator service within twenty-four hours if the local exchange carrier does not provide its own service. The mid-size carrier intercept recording shall state how the caller can obtain the new number.

[17.11.24.14 NMAC - N, 4-1-2006]

#### **17.11.24.15 WAIVERS:**

Pursuant to NMSA 1978 Section 63-9A-5.1(H), a mid-size carrier may petition the commission for a waiver of this rule for good cause shown.

[17.11.24.15 NMAC - N, 4-1-2006]

#### **17.11.24.16 TARIFFS:**

A mid-size carrier may propose changes to terms and conditions in its tariffs related to this rule by filing with the commission a notice and tariff sheets reflecting the modified terms and conditions. The modified terms and conditions shall become effective ten days after a mid-size carrier files such commission notice and tariff sheets, unless the commission suspends the mid-size carrier's proposed tariffs.

[17.11.24.16 NMAC - N, 4-1-2006]

#### **17.11.24.17 REVIEW AND REPORT TO LEGISLATURE:**

Two years after the effective date of this rule, the commission and any mid-size carrier shall independently review the provisions of this rule and, subsequently, shall report their findings to the legislature. All or part of such findings may be reported to the legislature either jointly or separately.

[17.11.24.17 NMAC - N, 4-1-2006]

## **PART 25: CONSUMER PROTECTION STANDARDS APPLICABLE TO MID-SIZE CARRIERS**

### **17.11.25.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.11.25.1 NMAC - N, 4-1-2006]

### **17.11.25.2 SCOPE:**

This rule applies to all mid-size carriers.

[17.11.25.2 NMAC - N, 4-1-2006]

### **17.11.25.3 STATUTORY AUTHORITY:**

NMSA 1978 Section 63-9A-5.1(F)(1).

[17.11.25.3 NMAC - N, 4-1-2006]

### **17.11.25.4 DURATION:**

Permanent.

[17.11.25.4 NMAC - N, 4-1-2006]

### **17.11.25.5 EFFECTIVE DATE:**

April 1, 2006, unless a later date is cited at the end of a section.

[17.11.25.5 NMAC - N, 4-1-2006]

### **17.11.25.6 OBJECTIVE:**

The purpose of this rule is to establish consumer protection standards applicable to mid-size carriers.

[17.11.25.6 NMAC - N, 4-1-2006]

### **17.11.25.7 DEFINITIONS:**

As used in this rule:

A. access line means a dial tone line that provides local exchange service from a mid-size carrier's switching equipment to a point of termination at the customer's network interface;

B. basic local exchange service means the customer's voice grade access to the public switched network, dual tone multifrequency (DTMF) signaling or its functional equivalent, and access to emergency services (911 and E-911), operator services, toll services, directory assistance, and toll blocking services for qualifying low income customers, but does not include discretionary services;

C. consumer means any person that has applied for or is currently receiving telecommunications services, either residential or business;

D. discretionary service means voice mail, caller ID, caller name ID, call waiting, three-way calling, call forwarding, call return, call blocker, auto redial, and any similar service sold as an add-on to a consumer's basic local exchange service;

E. LITAP means the low income telephone assistance program;

F. mid-size carrier means a telecommunications company with more than fifty thousand but less than three hundred seventy-five thousand access lines in the state;

G. primary line means the first exchange access line installed by a mid-size carrier to serve a consumer at the consumer's premise, as distinct from additional lines that may be ordered at the same time or subsequently;

H. telecommunications company means a person that provides public telecommunications service;

I. wire center means a facility where local exchange access lines converge and are connected to a switching device which provides access to the public switched network, and includes remote switching units and host switching units.

[17.11.25.7 NMAC - N, 4-1-2006]

#### **17.11.25.8 DISCONNECTION OF BASIC LOCAL EXCHANGE SERVICE AND ALLOCATION OF PARTIAL PAYMENTS:**

A. Failure to pay. A mid-size carrier shall not disconnect a consumer's basic local exchange service for failure to pay charges for toll or discretionary services.

B. Toll blocking offer. A mid-size carrier shall offer toll blocking upon a consumer's request.

C. Involuntary toll blocking. A mid-size carrier may impose involuntary toll blocking on a consumer's primary line for failure to pay charges for toll service. However, the toll



blocking must be provided without charge and the mid-size carrier must remove the toll blocking when the bill is paid.

D. Partial payments. A consumer's partial payments for current bills or past due amounts shall be credited first to basic local exchange service unless the consumer instructs the mid-size carrier in writing to allocate the payment in a different manner.

[17.11.25.8 NMAC - N, 4-1-2006]

#### **17.11.25.9 ACCESS TO AND AUDIT OF DATA:**

Unless otherwise authorized by the commission, a mid-size carrier shall make all records required by this rule available to the commission or its authorized representatives at any time upon reasonable notice. A mid-size carrier shall make consumer proprietary network information available to the commission to the extent allowed by law. A mid-size carrier shall retain all records required by this rule for at least two years. The timeliness, accuracy, and courteousness of mid-size carriers' consumer service and repair bureau representatives shall be subject to periodic audit by the commission.

[17.11.25.9 NMAC - N, 4-1-2006]

#### **17.11.25.10 CONSUMER COMPLAINT TRACKING:**

A. Records maintained. A mid-size carrier shall maintain a record of all oral and written complaints, including informally resolved billing disputes, made by or on behalf of consumers which shall contain:

- (1) the name and address of the consumer or complainant;
- (2) the date the complaint is lodged;
- (3) the class of consumer (residence or business);
- (4) the category (i.e., nature) of the complaint;
- (5) the resolution of the complaint; and
- (6) the date the complaint is resolved.

B. Consumer relations. A mid-size carrier shall not retaliate against a consumer for any complaint made by the consumer to the commission or any other person.

C. Commission report. Upon request of the commission or staff, a mid-size carrier shall compile and submit to the commission reports that state the total number of

complaints received during a specified period not to exceed two years and the number of such complaints categorized by the:

- (1) category of the complaint;
- (2) region within the state (e.g., by wire center, exchange, county); and
- (3) class of consumer (residential or business).

D. Resolving complaints. A mid-size carrier shall cooperate with the commission and the commission's consumer relations division and staff in resolving complaints.

[17.11.25.10 NMAC - N, 4-1-2006]

#### **17.11.25.11 ACCESS TO PRODUCT AND PRICING INFORMATION; ADHERENCE TO FAIR MARKETING PRACTICES:**

A. Product and pricing information. A mid-size carrier shall make product and pricing information available to consumers upon request. When a consumer initially subscribes to basic local exchange service, a mid-size carrier shall provide information about LITAP, including a toll-free number the consumer can call to obtain further information about LITAP and the requirements for eligibility.

B. Fair marketing. A mid-size carrier shall adhere to all applicable state and federal laws and regulations governing fair marketing of telecommunications services.

[17.11.25.11 NMAC - N, 4-1-2006]

#### **17.11.25.12 TARIFFS AND BOUNDARY MAPS:**

A. Tariffs. Upon certification by the commission to provide services in the state, a mid-size carrier shall file tariffs which specifically set forth:

- (1) rates, charges, terms, and conditions for all intrastate services;
- (2) conditions and circumstances under which the mid-size carrier, or entities under contract to the mid-size carrier, will make special construction available to applicants within the exchange area;
- (3) minimum standards for discontinuance of residential basic local exchange service consistent with 17.11.25.16 NMAC; and
- (4) charges for service connections, extensions and line mileage.

B. Public access to tariffs and price lists. A mid-size carrier shall post tariffs and price lists on its website and shall, upon request, make copies of tariffs and price lists available for review by the public.

C. Boundary maps. Upon certification by the commission, each mid-size carrier shall file an exchange area boundary map for each of its exchanges in New Mexico. Each map shall clearly show the boundary lines of the exchange area the mid-size carrier holds itself out as serving. Where a portion of the boundary line is not located on section lines, waterways, railroads, etc, the exchange boundary lines shall be located by appropriate measurement to an identifiable location. Maps generally shall contain the detail shown on county highway maps. Each map shall be to a scale and in sufficient detail to permit a person to locate the exchange service area boundaries.

[17.11.25.12 NMAC - N, 4-1-2006]

#### **17.11.25.13 BILLS:**

A mid-size carrier shall provide easily readable, readily understandable bills.

A. Itemization. A mid-size carrier's bills shall itemize services, usage, and charges, including quantities of units and per-unit charges.

B. Nonrecurring and recurring charges. A mid-size carrier's bills shall separately identify nonrecurring and recurring charges.

C. Toll-free access to mid-size carrier. A mid-size carrier's bills shall include the name and toll-free number of the mid-size carrier.

D. Right to dispute statement. A mid-size carrier's bills shall include a statement, in English and Spanish, advising consumers that they have a right to dispute the bill.

E. Toll-free access to commission. A mid-size carrier's bills shall include the toll-free number of the consumer relations division of the commission.

[17.11.25.13 NMAC - N, 4-1-2006]

#### **17.11.25.14 INFORMATION REQUIRED SEMI-ANNUALLY:**

A. Information provided in English and Spanish. A mid-size carrier shall semi-annually provide information to consumers in English and Spanish. A mid-size carrier need not provide all of the information at the same time and may choose to provide it in a prominent place on a consumer's bill or in a bill insert. The following information is required:

(1) a statement that basic local exchange service will not be discontinued to any residence where a seriously ill or chronically ill person resides if the person

responsible for the telephone service charges does not have the financial resources to pay the charges and if a licensed physician, physician's assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner certifies that discontinuance of service might endanger that person's health or life and the certificate is delivered to a manager or officer of the mid-size carrier at least two days prior to the due date of a bill for telephone service;

(2) a statement, using commonly understood descriptions and examples, that basic local exchange service will not be discontinued for failure to pay charges for toll or discretionary services;

(3) notification that service and rate information is available in telephone directories, on the mid-size carrier's web site, by calling a toll-free telephone number, or in other written materials such as brochures which the mid-size carrier shall provide upon request; and

(4) a brief description of LITAP, a toll-free number the consumer can call to obtain further information about LITAP, and the name and telephone number of the human services department (HSD) employee designated to determine eligibility for LITAP.

B. Information regarding consumer calling patterns. A mid-size carrier shall semi-annually notify consumers that they have the right to request that the mid-size carrier not disclose to any person, other than to employees of the mid-size carrier who have a need for the information in the course of providing telecommunications services, information about the consumer, including the consumer's calling patterns.

[17.11.25.14 NMAC - N, 4-1-2006]

#### **17.11.25.15 BILLING DISPUTES, OVERBILLINGS AND UNDERBILLINGS:**

A. Billing disputes. In the event of a dispute between a consumer and a mid-size carrier concerning a bill for intrastate telecommunications services, the mid-size carrier may require the consumer to pay the undisputed portion of the bill to avoid discontinuance of service for non-payment. The mid-size carrier shall make an investigation appropriate to the case, and report the results to the consumer. In the event the dispute is not reconciled, the mid-size carrier shall advise the consumer that the consumer may file a complaint with the commission for disposition of the matter.

B. Overbilling and underbilling. Whenever the billing for service has not been determined accurately because of a mid-size carrier's omission or negligence, the mid-size carrier shall offer and enter into reasonable payment arrangements in accordance with the following criteria:

(1) When a mid-size carrier has overbilled a consumer for service and the consumer has paid the overbilled amount, the mid-size carrier shall credit the total

overbilled amount within a reasonable time, but in no event later than the second bill after the mid-size carrier becomes aware of the error.

(2) Whenever a mid-size carrier has underbilled a consumer for service, the mid-size carrier may add the underbilled amount to the consumer's next regular bill, unless the amount exceeds the consumer's average bill for the preceding six months, in which case the consumer may elect to make payments, without interest, over a time period equal to the period over which the errors were accumulated.

[17.11.25.15 NMAC - N, 4-1-2006]

#### **17.11.25.16 DISCONTINUANCE OR INTERRUPTION OF SERVICE:**

A. Discontinuance without prior notice. A mid-size carrier may discontinue basic local exchange service to a consumer without prior notice in the event of:

- (1) a condition determined by the mid-size carrier to be hazardous;
- (2) a consumer's use of equipment in such manner as to adversely affect the mid-size carrier's equipment or service to others;
- (3) a consumer's tampering with, damaging, or deliberately destroying equipment furnished and owned by the mid-size carrier; or
- (4) unauthorized use of service provided by the mid-size carrier.

B. Discontinuance with prior notice. Pursuant to 17.11.25.17 and 17.11.25.18 NMAC, a mid-size carrier may discontinue basic local exchange service to a consumer with prior notice:

- (1) for nonpayment of a delinquent account; or
- (2) for failure to post a security deposit or guarantee.

C. Temporary interruption without notice. A mid-size carrier may temporarily and without notice interrupt service for an operational emergency, necessary and unavoidable network maintenance, or reasons related to the public safety and welfare.

[17.11.25.16 NMAC - N, 4-1-2006]

#### **17.11.25.17 PROHIBITIONS ON DISCONTINUANCE OF SERVICE:**

A mid-size carrier shall not discontinue basic local exchange service for the reasons listed in this section.

A. Persons who are ill. A mid-size carrier shall not discontinue basic local exchange service to any residence where a seriously ill or chronically ill person resides, if the person responsible for the telecommunications service charges does not have the financial resources to pay the charges and a licensed physician, physician assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner certifies that discontinuance of service might endanger that person's health and the certificate is delivered to a manager or officer of the mid-size carrier at least two days prior to the date scheduled for discontinuance of service.

B. Nonpayment. A mid-size carrier shall not discontinue basic local exchange service for nonpayment of:

- (1) the disputed portion of a bill;
- (2) amounts billed for discretionary services.

C. Previous occupant. A mid-size carrier shall not discontinue basic local exchange service for a delinquency in payment for service to a previous occupant of the same premises unless the previous occupant continues to reside at the premises or the new customer is legally liable for the debt of the previous occupant.

D. Estimated bills. A mid-size carrier shall not discontinue basic local exchange service for failure of a consumer to pay an estimated bill rendered in violation of applicable commission rules.

[17.11.25.17 NMAC - N, 4-1-2006]

#### **17.11.25.18 REQUIREMENTS PRIOR TO DISCONTINUANCE OF SERVICE:**

A. Written notice required. At least fifteen days before a mid-size carrier discontinues service to a consumer, the mid-size carrier shall hand-deliver or mail written notice to the consumer of its intent to discontinue service. The notice shall be in English and Spanish, and shall be in simple language. The notice shall be hand-delivered or sent by U.S. Mail, postage prepaid, to the last address for the consumer known to the mid-size carrier.

B. Contents of written notice. A notice of discontinuance shall contain:

- (1) the name, title, address, telephone number, and working hours of mid-size carrier personnel responsible for administering the procedures in this section;
- (2) the amount owed and the specific date service shall be discontinued unless the consumer pays the amount due or makes other arrangements with the mid-size carrier concerning payment of the charges. Upon request, the mid-size carrier shall provide information to the consumer concerning the outstanding charges, including the

dates of the service interval over which the outstanding charges were incurred and the date and amount of the last payment;

(3) a statement that if the consumer pays the portion of the bill which the consumer does not dispute, the mid-size carrier shall review the portion of the bill which the consumer does dispute;

(4) a statement that a consumer may file a complaint with the commission if the consumer disagrees with the mid-size carrier's determination concerning discontinuance of service;

(5) statement that basic local exchange service shall not be discontinued to a residence where a seriously ill or chronically ill person resides if the person responsible for the telecommunications service charges does not have the financial resources to pay the charges and a licensed physician, physician assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner certifies that discontinuance of service might endanger that person's health and the certificate is delivered to a manager or officer of the mid-size carrier at least two days prior to the date scheduled for discontinuance of service; and a statement that if service has been discontinued a mid-size carrier shall re-establish service within twelve hours of receipt of the certificate;

(6) a form for certifying that a consumer is eligible to continue service pursuant to NMSA 1978 Section 63-9A-8.3 and a form for certifying that a consumer does not have the financial resources to pay the charges;

(7) a statement in capital letters of the cost of reconnection; and

(8) the following statement in capital letters, "If you have difficulty paying this bill, and feel you may qualify for assistance in paying your telecommunications bills, contact [name and telephone number of HSD employee] to find out if you are eligible for the low income telephone assistance program (LITAP)."

### C. Payment plans.

(1) A mid-size carrier shall attempt to arrange a plan for the payment of past due mid-size carrier charges when a residential consumer who has not been chronically delinquent indicates an inability to pay the charges. The mid-size carrier shall not discontinue service to the residential consumer while a payment plan is being negotiated. The mid-size carrier shall also maintain a list of organizations in the area that may provide assistance to consumers in paying telecommunications bills and shall make application forms for LITAP available upon request.

(2) Each mid-size carrier shall provide a procedure for reviewing residential consumer allegations that a proposed payment plan is unreasonable, that a mid-size

carrier charge is not due and owing, or that it has not violated an existing payment plan. A mid-size carrier shall not discontinue service until the review is completed.

[17.11.25.18 NMAC - N, 4-1-2006]

#### **17.11.25.19 RESTORATION OF SERVICE:**

A. Restoration after payment of charges. A mid-size carrier shall promptly restore service within two business days after payment of all past-due charges, including in part any required deposit and a charge for restoration of service, if any.

B. Restoration for persons who are ill. A mid-size carrier shall restore service to a residential consumer within twelve hours of receipt of a medical certificate and a form certifying that the consumer does not have the financial resources to pay the charges.

[17.11.25.19 NMAC - N, 4-1-2006]

#### **17.11.25.20 COMPLAINTS AND APPEALS:**

A. Responding to complaints from consumers. A mid-size carrier shall fully and promptly investigate and respond to all oral and written complaints made directly to the mid-size carrier by applicants or consumers. The mid-size carrier shall make a good faith attempt to resolve the complaint and shall notify the consumer promptly of its proposed disposition of the complaint. Upon request, the mid-size carrier shall send written confirmation of its proposed disposition of the complaint to the consumer.

B. Escalation of complaints. If a mid-size carrier's consumer representative cannot resolve a complaint to a consumer's satisfaction, the consumer representative shall offer to refer the consumer to a supervisor for further consideration. If the consumer still expresses dissatisfaction after attempting to resolve the matter with the supervisor, the mid-size carrier shall provide the complainant with the name, address and current local or toll-free telephone number of the consumer relations division of the commission.

C. Responding to consumer complaints via the commission. Upon receipt of an oral or written complaint from the commission on behalf of a consumer or applicant, a mid-size carrier shall make a suitable investigation. A mid-size carrier shall provide an initial oral or written response to the commission within ten business days after the mid-size carrier receives the complaint. Upon resolution of the complaint, a mid-size carrier shall provide a written response to the commission detailing the mid-size carrier's disposition of the complaint.

[17.11.25.20 NMAC - N, 4-1-2006]

#### **17.11.25.21 WAIVERS:**



Pursuant to NMSA 1978 Section 63-9A-5.1(H), a mid-size carrier may petition the commission for a waiver of a rule for good cause shown.

[17.11.25.21 NMAC - N, 4-1-2006]

#### **17.11.25.22 REVIEW AND REPORT TO LEGISLATURE:**

Two years after the effective date of this rule, the commission and any mid-size carrier shall independently review the provisions of this rule and, subsequently, shall report their findings to the Legislature. All or part of such findings may be reported to the Legislature either jointly or separately.

[17.11.25.22 NMAC - N, 4-1-2006]

#### **17.11.25.23 TARIFFS:**

A mid-size carrier may propose changes to terms and conditions in its tariffs related to this rule by filing with the commission a notice and tariff sheets reflecting the modified terms and conditions. The modified terms and conditions shall become effective ten days after a mid-size carrier files such commission notice and tariff sheets unless the commission suspends the mid-size carrier's proposed tariffs.

[17.11.25.23 NMAC - N, 4-1-2006]

#### **17.11.25.24 INITIAL TROUBLE ISOLATION:**

If a consumer reports trouble on a line, a mid-size carrier shall, without charge to the consumer and by use of whatever means necessary, determine whether the trouble is on the mid-size carrier or consumer side of the network interface.

[17.11.25.24 NMAC - N, 4-1-2006]

### **PART 26: 811 SERVICES**

#### **17.11.26.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.11.26.1 NMAC - N, 2-28-07]

#### **17.11.26.2 SCOPE:**

This rule applies to all telecommunications carriers operating in New Mexico subject to the jurisdiction of the commission pursuant to applicable laws.

[17.11.26.2 NMAC - N, 2-28-07]

### **17.11.26.3 STATUTORY AUTHORITY:**

The New Mexico Public Regulation Act, Sections 8-8-4 and 8-8-15 NMSA 1978; Chapter 63, Article 7, Sections 63-7-1.1A(1) and 63-7-1.1A(2) NMSA 1978; the New Mexico Telephone and Telegraph Company Certification Act, Section 63-9-1 et seq. NMSA 1978; the New Mexico Telecommunications Act, Section 63-9A-1 et seq. NMSA 1978; the Cellular Telephone Services Act, Section 63-9B-1 et seq. NMSA 1978; and the Rural Telecommunications Act of New Mexico, Section 63-9H-1 et seq. NMSA 1978.

[17.11.26.3 NMAC - N, 2-28-07]

### **17.11.26.4 DURATION:**

Permanent.

[17.11.26.4 NMAC - N, 2-28-07]

### **17.11.26.5 EFFECTIVE DATE:**

February 28, 2007, unless a later date is cited at the end of a section.

[17.11.26.5 NMAC - N, 2-28-07]

### **17.11.26.6 OBJECTIVE:**

The purpose of this rule is to implement 811 as the toll-free, abbreviated dialing code to be used by the public to provide advance notice of excavation activities to one call notification systems and thereby to underground facilities operators as required by federal law.

[17.11.26.6 NMAC - N, 2-28-07]

### **17.11.26.7 DEFINITIONS:**

[RESERVED]

### **17.11.26.8 RELATIONSHIP TO OTHER COMMISSION RULES:**

Unless otherwise specified, this rule is not intended to supersede any other rule of the commission but to supplement such rules. Nevertheless, if any provision of this rule is inconsistent with the provisions of any other commission rule, the provisions of this rule shall apply. The responsibilities of New Mexico one call notification systems relating to 811 implementation are prescribed in 18.60.6 NMAC.

[17.11.26.8 NMAC - N, 2-28-07]

#### **17.11.26.9 RESPONSIBILITIES OF TELECOMMUNICATIONS CARRIERS:**

All telecommunications carriers operating in New Mexico shall route all 811 calls made in the state of New Mexico to New Mexico One Call, Inc.

**A. Local calls.** All wireline telecommunications carriers operating in New Mexico shall route all 811 calls made within New Mexico One Call, Inc.'s local calling area to New Mexico One Call, Inc.'s local phone number.

**B. Toll calls.** All wireline telecommunications carriers operating in New Mexico shall route all 811 calls made within New Mexico but outside New Mexico One Call, Inc.'s local calling area to New Mexico One Call, Inc.'s toll free phone number.

**C. Wireless carriers.** Wireless and other non-wireline telecommunications carriers operating in New Mexico may route 811 calls either to New Mexico One Call Inc.'s local phone number or to New Mexico One Call Inc.'s toll free phone number.

[17.11.26.9 NMAC - N, 2-28-07]

#### **17.11.26.10 TARIFFS FOR 811 SERVICES:**

**A. Tariffed rates prohibited.** A wireline telecommunications carrier shall not impose any rate, charge or fee for the provision of 811 services as required by this rule.

**B. Terms and conditions to be filed as tariffs.** A wireline telecommunications carrier shall file terms and conditions for the provision of 811 services as tariffs pursuant to applicable law.

[17.11.26.10 NMAC - N, 2-28-07]

### **PART 27: REPORTING REQUIREMENTS FOR ELIGIBLE TELECOMMUNICATIONS CARRIERS**

#### **17.11.27.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.11.27.1 NMAC - N, 02-14-08]

#### **17.11.27.2 SCOPE:**

This rule applies to all entities that have been designated by the commission as telecommunications carriers eligible to receive disbursements from the state rural universal service fund or the federal universal service fund.

[17.11.27.2 NMAC - N, 02-14-08]

**17.11.27.3 STATUTORY AUTHORITY:**

Sections 8-8-4 and 63-9H-6 NMSA 1978.

[17.11.27.3 NMAC - N, 02-14-08]

**17.11.27.4 DURATION:**

Permanent.

[17.11.27.4 NMAC - N, 02-14-08]

**17.11.27.5 EFFECTIVE DATE:**

February 14, 2008, unless a later date is cited at the end of a section.

[17.11.27.5 NMAC - N, 02-14-08]

**17.11.27.6 OBJECTIVE:**

The purpose of this rule is to ensure that each telecommunications carrier designated by the commission as eligible to receive disbursements from the state rural universal service fund or the federal universal service fund annually provides certifications and information to the commission reflecting its receipt and use of universal service fund support for intended purposes and verifying that it continues to meet the requirements for designation as an eligible telecommunications carrier.

[17.11.27.6 NMAC - N, 02-14-08]

**17.11.27.7 DEFINITIONS:**

**A. "Carrier"** means an entity that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico.

**B. "Commission"** means the New Mexico public regulation commission.

**C. "Eligible telecommunications carrier (ETC)"** means a carrier that has been designated by the commission as eligible to receive disbursements from the state rural universal service fund or the federal universal service fund.

**D. "Federal high-cost universal service fund (USF) support"** means monetary support received from the federal USF under that category of the federal USF denominated as high cost loop support.

**E. "Service area"** means a geographic area established by the commission in accordance with Section 214(e)(5) of the federal act (47 U.S.C. Section 214(e)(5)).

**F. "State rural universal fund (SRUSF) support"** means monetary support received from the New Mexico state rural universal service fund established pursuant to Section 63-9H-6 NMSA 1978.

**G. "Supported services"** means the services supported by the federal high cost universal service support mechanisms.

[17.11.27.7 NMAC - N, 02-14-08]

#### **17.11.27.8 REPORTING REQUIREMENTS:**

On or before August 10, 2008, and on or before August 10 of each year thereafter, each carrier designated by the commission as an ETC shall submit a written report to the commission containing the information and certifications set forth in this rule.

**A. Supporting affidavit:** each report shall be submitted with an affidavit by a person or officer of the carrier with personal knowledge of the contents of the report declaring that the contents of the report are correct.

**B. Contents of report:** each report shall contain the following certifications and information.

(1) Each ETC receiving federal high-cost USF support shall (i) certify that it will use the federal high-cost USF support only for the provision, maintenance and upgrading of facilities and services for which such support is intended; and (ii) for January 1 through December 31 of the previous year, provide a factual presentation of the expenses and investments made with federal high-cost USF support and a narrative description of how the funds were spent. The factual presentation may consist of either cost documentation submitted by the carrier to the national exchange carrier association in its role as a contractor for the universal service administrative company for purposes of receiving federal high-cost support, or data that identifies total high-cost USF support received, network infrastructure maintenance and support costs, and capitalized costs. The narrative description shall consist of a service quality improvement plan for the current year and a progress report on the carrier's plan for January 1 through December 31 of the previous year. The report, which may include maps, shall demonstrate how the support was used during the previous year to improve coverage, service quality or capacity throughout the service area for which the carrier is designated as an ETC, how the carrier will use the support to improve coverage, service quality or capacity throughout the service area in the current year, and an explanation regarding any network improvement targets that have not been completed.

(2) Each ETC receiving SRUSF support shall (i) certify that it will use the SRUSF support in a manner consistent with the New Mexico rural telecommunications act, the federal telecommunications act and the commission's rules and orders; and (ii) for January 1 through December 31 of the previous year, describe how the SRUSF support (excluding SRUSF support received in connection with revenue neutral

recovery for access charge reductions implemented pursuant to law) was used to preserve and advance universal service.

(3) A certification that the ETC is in compliance with the requirements of the federal communications commission's Outage Report Regarding Disruptions to Communications, 47 C.F.R.63.100, and that it has provided the commission with a copy of any such outage reports for January 1 through December 31 of the previous year and the number filed in that period.

(4) Information on the number of requests to the ETC for USF supported services from potential customers within the ETC's service area that were unfilled for the previous year, together with a detailed explanation of how the ETC attempted to provide service to those potential customers.

(5) A certification that the ETC continues to provide its customers with the toll-free number for the commission's consumer relations division and to advise its customers that they may contact the commission if they are unable to resolve service or billing problems with the carrier.

(6) Information on the number of customer complaints reported to the commission relating to USF supported services per 1000 handsets or lines for January 1 through December 31 of the previous year. Each complaint shall be identified in one of the following categories: (a) out-of-service/trouble, (b) billing, (c) installation or (d) other. The carrier shall provide a description of its efforts to resolve the complaints.

(7) A certification that the ETC is in compliance with applicable service quality standards and customer protection rules, including the CTIA consumer code for wireless service.

(8) A certification that the ETC is in compliance with its plan for emergency situations, including procedures for loss of a switch, maintaining sufficient reserve power, and minimizing service interruptions.

(9) A certification that the ETC advertises or publicizes the availability of and charges for USF supported services, lifeline/linkup services and tribal lifeline/linkup services using media of general distribution, including advertisements or publications reasonably calculated to reach those likely to qualify, and information on the number and location of such advertisements or publications for January 1 through December 31 of the previous year.

(10) Each competitive ETC must certify that it is offering a local usage plan comparable to the plan offered by the incumbent carrier in the relevant service area.

**C.** Compliance by an ETC with the reporting requirements of this rule satisfies the ETC's annual verification requirements under Subsection F of 17.11.10.24 NMAC.

**D.** Upon compliance by an ETC with the reporting requirements of this rule, the commission will timely provide appropriate certification to the federal communications commission of the ETC's use of federal high-cost USF support in accordance with applicable federal law.

[17.11.27.8 NMAC - N, 02-14-08]

**17.11.27.9 CONFIDENTIALITY:**

Forward-looking information that is a trade secret is protected under the Inspection of Public Records Act. Any person seeking certification of its ETC status and desiring to protect as confidential material any information filed in compliance with this rule shall file a request pursuant to the applicable commission rule concerning protective orders, which can be found at Subsections A and B of 17.1.2.8 NMAC.

[17.11.27.9 NMAC - N, 02-14-08]

**17.11.27.10 VARIANCES AND EXEMPTIONS:**

Any ETC may petition the commission for a variance or exemption from any provision of this rule for good cause shown.

**A. General requirements:**

(1) any ETC may petition for a variance or exemption from any of the requirements of this rule;

(2) such petition may include a motion that the commission stay the affected portion of this rule for the transaction specified in the motion;

(3) petitions for a variance or exemption and motions for a stay must be supported by an affidavit signed by an officer of the ETC or someone with authority to sign for the ETC;

(4) the commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

**B. Contents of the petition: a petition for a variance or exemption shall:**

(1) identify the section of this rule for which the variance or exemption is requested;

(2) describe the situation which necessitates the variance or exemption;

(3) describe the effect of complying with this rule on the ETC and its customers, or on its competitive affiliates and their customers, if the variance or exemption is not granted;

(4) describe the result the request will have if granted;

(5) state why the proposed alternative is in the public interest and is a better alternative than that provided by this rule;

(6) state why the variance or exemption would have no anticompetitive effect.

[17.11.27.10 NMAC - N, 02-14-08]

## **PART 28: INMATE CALLING SERVICE PROVIDERS**

### **17.11.28.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.11.28.1 NMAC - Rp, 17.11.28.1 NMAC 11/7/2023]

### **17.11.28.2 SCOPE:**

This rule is applicable to all inmate calling service providers ("ICSPs") certified to operate within the state of New Mexico and also to those ICSPs that apply to the commission to operate within the state of New Mexico.

[17.11.28.2 NMAC - Rp, 17.11.28.2 NMAC 11/7/2023]

### **17.11.28.3 STATUTORY AUTHORITY:**

Paragraph (10) of Subsection B of Section 8-8-4 et seq., Sections 63-7-1.1 and 63-9A-5, NMSA 1978.

[17.11.28.3 NMAC - Rp, 17.11.28.3 NMAC 11/7/2023]

### **17.11.28.4 DURATION:**

Permanent.

[17.11.28.4 NMAC - Rp, 17.11.28.4 NMAC 11/7/2023]

### **17.11.28.5 EFFECTIVE DATE:**

November 7, 2023, unless a later date is cited at the end of a section.



[17.11.28.5 NMAC - Rp, 17.11.28.5 NMAC 11/7/2023]

**17.11.28.6 OBJECTIVE:**

The purpose of this rule is to establish statewide uniform regulations governing ICSPs so as to ensure reasonable rate regulation for ICSPs while protecting consumers against unreasonable rates and inadequate service.

[17.11.28.6 NMAC - Rp, 17.11.28.6 NMAC 11/7/2023]

**17.11.28.7 DEFINITIONS:**

As used in this rule, the following terms have the meanings provided, unless a different meaning is clearly expressed in the context in which the term is used. The commission will interpret the definitions broadly enough to ensure compliance with the purpose of this rule:

**A.** Terms starting with the letter "A" are defined as follows:

(1) **"ancillary service charge"** means any charge that is assessed on the consumer for the use of additional features of inmate calling services that is not included in the per-minute charges assessed for individual calls. The types of ancillary service charge are as follows: automated payment fees, fees for single-call and related services, live agent fees, paper bill fees, statement fees and third-party financial transaction fees.

(2) **"authorized fee"** means a government-authorized, but discretionary, fee which a provider must remit to a federal, state, or local government, and which a provider is permitted, but not required, to pass through to consumers. An authorized fee may not include a markup, unless the markup is specifically authorized by a federal, state, or local statute, rule, or regulation.

(3) **"automated payment fee"** means a credit card payment, debit card payment, or bill processing fee, including a fee for payments made by interactive voice response (IVR), web, or kiosk.

(4) **"average daily population (ADP)"** means the sum of all incarcerated persons in a facility for each day of the preceding calendar year, divided by the number of days in the year.

**B.** Terms starting with the letter "B": **[RESERVED]**

**C.** Terms starting with the letter "C" are defined as follows:

(1) **"collect calling"** means an arrangement whereby the called party takes affirmative action clearly indicating that it will pay the charges associated with a call originating from an institutional phone.

(2) **"commission"** means the New Mexico public regulation commission.

(3) **"complaint"** means an oral or written expression of dissatisfaction with an ICSP's rates, fees, charges, or services, including a request for repair involving service outage, made to the ICSP, correctional institution, or to the commission by or on behalf of a consumer or user of inmate calling services.

(4) **"consumer"** means the person paying an ICSP for an inmate calling service.

(5) **"correctional facility or correctional institution"** means a jail or a prison.

**D.** Term starting with the letter "D" is defined as follows: **"debit calling"** means a presubscription or comparable service which allows an incarcerated person, or someone acting on an incarcerated person's behalf, to fund an account set up through a provider that can be used to pay for inmate calling service calls originated by the incarcerated person.

**E.** Terms starting with the letter "E": **[RESERVED]**

**F.** Terms starting with the letter "F" are defined as follows:

(1) **"fees for single-call and related services"** means billing arrangements whereby an incarcerated person's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the ICSP or does not want to establish an account.

(2) **"flat rate calling"** means a calling plan under which a provider charges a single fee for an inmate calling service call, regardless of the duration of the call.

**G.** Terms starting with the letter "G": **[RESERVED]**

**H.** Terms starting with the letter "H": **[RESERVED]**

**I.** Terms starting with the letter "I" are defined as follows:

(1) **"incarcerated person"** means a person detained at a jail or prison, regardless of the duration of the detention.

(2) **"inmate calling service"** means a service, regardless of the technology used to deliver the service, initiated by an incarcerated person to place intrastate calls

to individuals outside the correctional facility where the incarcerated person is being held.

(3) **"inmate calling service provider, or provider (ICSP)"** means a provider of inmate calling service.

(4) **"institutional phone"** means a telephone instrument, or other device capable of initiating calls, accessible only to incarcerated persons.

**J.** Terms starting with the letter "J" are defined as follows:

(1) **"jail"** means a facility of a local, state, or federal law enforcement, mental health, or other agency that is used primarily to hold individuals who are:

- (a) awaiting adjudication of criminal charges;
- (b) post-conviction or committed to confinement of one year or less; or
- (c) post-conviction or awaiting transfer to another facility.

The term also includes city, county or regional facilities that have contracted with a private company to manage day-to-day operations; privately-owned and operated facilities primarily engaged in housing city, county or regional incarcerated persons; facilities operated by the Federal bureau of prisons and facilities used to detain individuals pursuant to a contract with U.S. immigration and customs enforcement; juvenile detention centers; and secure mental health facilities.

(2) **"jurisdictionally mixed charge"** means any charge consumers may be assessed for use of inmate calling services that are not included in the per-minute charges assessed for individual calls and that are assessed for, or in connection with, uses of inmate calling services to make such calls that have interstate or international components and intrastate components that are unable to be segregated at the time the charge is incurred.

**K.** Terms starting with the letter "K": **[RESERVED]**

**L.** Term starting with the letter "L" is defined as follows: **"live agent fee"** means a fee associated with the optional use of a live operator to complete inmate calling service transactions.

**M.** Term starting with the letter "M" is defined as follows: **"mandatory tax or mandatory fee"** means a fee that a provider is required to collect directly from consumers, and remit to federal, state, or local governments. A mandatory tax or fee that is passed through to a consumer for, or in connection with ICSP services may not include a markup, unless the markup is specifically authorized by a federal, state, or local statute, rule, or regulation.

**N.** Terms starting with the letter "N": **[RESERVED]**

**O.** Terms starting with the letter "O": **[RESERVED]**

**P.** Terms starting with the letter "P" are defined as follows:

(1) **"paper bill fee"** means a fee associated with providing customers of ICSPs an optional paper billing statement. This fee is also referred to as a statement fee.

(2) **"per-call, or per-connection charge"** means a one-time fee charged to a consumer at call initiation.

(3) **"prepaid calling"** means a presubscription or comparable service in which a consumer, other than an incarcerated person, funds an account set up through an ICSP. Funds from the account can then be used to pay for inmate calling services, including calls that originate with an incarcerated person.

(4) **"prepaid collect calling"** means a calling arrangement that allows an incarcerated person to initiate an inmate calling services call without having a pre-established billing arrangement and also provides a means, within that call, for the called party to establish an arrangement to be billed directly by the ICSP for future calls from the same incarcerated person.

(5) **"prison"** means a facility operated by a territorial, state, or federal agency that is used primarily to confine individuals convicted of felonies or held for other reasons and sentenced or committed to terms in excess of one year. The term also includes public and private facilities that provide outsource housing to other agencies such as the department of correction and the federal bureau of prisons; and facilities that would otherwise fall under the definition of a jail but in which the majority of incarcerated persons are post-conviction or are committed to confinement for sentences of longer than one year.

**Q.** Terms starting with the letter "Q": **[RESERVED]**

**R.** Term starting with the letter "R" is defined as follows: "rate cap" means the maximum allowable rates, fees, and ancillary service charges for intrastate calls initiated from an institutional phone as approved by the commission.

**S.** Terms starting with the letter "S": **[RESERVED]**

**T.** Term starting with the letter "T" is defined as follows: **"third-party financial transaction fee"** means the exact fee, with no markup, that an ICSP is charged by a third party to transfer money or to process a financial transaction to facilitate a consumer's ability to make an account payment via a third party.

**U.** Term starting with the letter "U" is defined as follows: "**user**" means a person who makes or receives a call through an inmate calling service.

**V.** Terms starting with the letter "V": **[RESERVED]**

**W.** Terms starting with the letter "W": **[RESERVED]**

**X.** Terms starting with the letter "X": **[RESERVED]**

**Y.** Terms starting with the letter "Y": **[RESERVED]**

**Z.** Terms starting with the letter "Z": **[RESERVED]**

[17.11.28.7 NMAC - Rp, 17.11.28.7 NMAC 11/7/2023]

#### **17.11.28.8 EXEMPTIONS:**

ICSPs are exempt from 17.11.15 NMAC, rule concerning payphone providers, 17.11.16.11 NMAC, consumer protection, access to service and rate information, and SCC 94-02-TC, rule concerning operator services providers.

[17.11.28.8 NMAC - Rp, 17.11.28.8 NMAC 11/7/2023]

#### **17.11.28.9 APPLICATION FOR CERTIFICATION OF REGISTRATION:**

**A.** Providers seeking to offer or provide any telecommunications service through an institutional phone must register with the commission in the format provided by the commission.

(1) To be included with the application for registration, the ICSP must file a copy of the information to be posted or supplied at every institutional phone or otherwise provided to the confined persons containing all the information as spelled out in this rule.

(2) Registration may be denied for failure to provide the required information or documents, or for failure to remit the required fees. Notice of denial will include a statement indicating the reason for rejection. Denial may be cured if the stated reasons for rejection are made within thirty (30) days of service of the notice.

**B.** Registration shall be renewed annually by filing an annual report on a form prescribed by the commission. The annual report shall be submitted by April 1st of each year and shall contain information regarding the prior year. At a minimum, the ICSP shall update any information contained in its original application for registration or last annual report, as appropriate.

[17.11.28.9 NMAC - Rp, 17.11.28.9 NMAC 11/7/2023]

#### **17.11.28.10 CONTENTS OF APPLICATION FOR REGISTRATION:**

An application for a certificate of registration to provide inmate calling services must contain:

- A.** the name, address, e-mail address and telephone number of the applicant;
- B.** the name, address, e-mail address, and telephone number of the person responsible for regulatory contacts and customer dispute resolution on behalf of the applicant;
- C.** a description of the applicant's business operations and general service offerings nationally, and in New Mexico, including operating areas in any other city, county, state or federal jurisdictions;
- D.** a statement that the applicant is aware of and will comply with the commission's rules;
- E.** disclosure of any formal actions against it by any court or city, county, state or federal regulatory agency that resulted in any type of penalty or sanctions within the five years prior to the date of filing the application; if such action has occurred, the applicant shall file a report regarding such action and any remedial actions taken;
- F.** disclosure of any settlement or stipulation with any city, county, state or federal regulatory agency or jurisdiction within the three years prior to the date of filing the application that resulted in a payment to the agency with or without any admission of wrongdoing;
- G.** if the applicant is a corporation, evidence that the applicant is authorized by the corporations bureau of the office of the New Mexico secretary of state to do business in New Mexico and that it is in good corporate standing in New Mexico;
- H.** if the applicant is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners and managers, the applicant's agent for service of process in New Mexico, and the date the entity was created;
- I.** initial tariffs for regulated telecommunications services, including a narrative description of the services to be offered and the geographic area and markets to be served; initial tariffs shall not contain misleading, potentially misleading, deceptive, or fraudulent names, rates, fees, charges, terms, or conditions;
- J.** if the applicant is a regulated carrier, any other information the commission may reasonably require to accomplish the purpose of this rule; and

**K.** a list of the applicant's parent, subsidiary, and affiliated companies are to be provided, including the principal address and telephone numbers of the applicant's parent, subsidiary, and affiliated companies that are carriers in New Mexico.

[17.11.28.10 NMAC - Rp, 17.11.28.10 NMAC 11/7/2023]

**17.11.28.11 DISCLOSURE OF RATES, FEES AND CHARGES:**

**A.** All ICSPs must disclose their rates, fees, and charges to consumers.:

(1) For all intrastate calls, the ICSP shall comply with all rate disclosure requirements adopted by the federal communications commission in Title 47 C.F.R. Section 64.710 (operator services for prison inmate phones) and 64.6110 (consumer disclosure of incarcerated person calling services rates), including any amendments thereto.

(2) Rates, fees and charges applied pursuant to this rule shall be made available to the consumer prior to the commencement of the transaction without the consumer having to dial a separate telephone number or access a separate website. Such information shall include an equally prominent disclosure of alternative funding or refunding mechanisms that are free of ancillary service charges.

**B.** The information required by this section must be delivered to the correctional institution by the ICSP for posting on or near the institutional phone, in plain view of confined persons, provided that such signage is allowed by the correctional institution. The posted signage must clearly and simply disclose all applicable rates, fees and charges for inmate calling services set forth in this rule and provide the contact information for the ICSP for consumer and user complaints as well as the mailing address of the commission's consumer relations division for unresolved consumer or user complaints. The information required by this section, with the exception of the mailing address of the commission's consumer relations division, also must be made available via telephone free of charge to the user, including each time a funding transaction related to a prepaid account takes place.

**C.** An ICSP shall disclose all rate information, including all applicable per-call and per-minute rates, in simple and clear language.

**D.** All required information and instructions, if allowed by the correctional institution, must be provided in both English and Spanish, and an ICSP must supply each facility it serves with a display placard or other means of informing confined persons.

**E.** Consumers and incarcerated persons shall be advised of and have access to ICSP and commission contact information for consumer complaints. Consumers shall be provided with the contact information on their bills when their bills include charges for collect calling, or each time a funding transaction related to a prepaid calling account takes place. ICSPs shall also advise consumers and incarcerated persons of the

mailing address of the commission's consumer relations division for consumer complaints.

[17.11.28.11 NMAC - Rp, 17.11.28.11 NMAC 11/7/2023]

#### **17.11.28.12 COMPLAINTS:**

Complaints regarding violations of this rule shall be governed by 1.2.2.13 NMAC through 1.2.2.20 NMAC and 17.11.16.22 NMAC with the exceptions stated below. All other procedural matters shall be handled in accordance with 1.2.2 NMAC and 1.2.3 NMAC. The requirements of the commission's rules governing complaints are modified by the following: filing fees for complaints are hereby waived for complaints related to inmate calling services. A person making an informal or formal complaint against an ICSP shall not be required to pay for notice to be published of public hearing, and may participate in mediation, arbitration or hearing via telephone. The commission's rules governing complaints shall be liberally construed to permit complaints against ICSPs to be filed, processed, and heard by the commission.

[17.11.28.12 NMAC - Rp, 17.11.28.12 NMAC 11/7/2023]

#### **17.11.28.13 ENFORCEMENT:**

**A. Initiation of proceedings:** Upon receipt of a complaint alleging a violation of this rule, or on its own motion, the commission may initiate proceedings in accordance with its rules of procedure 1.2.2.13 NMAC through 1.2.2.15 NMAC.

**B. Penalties:** Following notice and hearing and upon a proper finding that a violation of this rule has occurred, the commission may, consistent with its statutory authority, assess fines or penalties or other such remedies as may be provided for by law, including revocation of authority to provide inmate calling service. The remedy imposed by the commission may be reduced or rescinded if violations or findings of non-compliance are corrected within 30 days from the date of the commission's final order.

**C. Other penalties:** The assessment of any penalty by the commission for a violation of this rule shall not preclude the assessment of a penalty by any other New Mexico agency for violation of its rules arising from the same cause.

[17.11.28.13 NMAC - Rp, 17.11.28.13 NMAC 11/7/2023]

#### **17.11.28.14 INMATE CALLING SERVICE RATES, FEES AND CHARGES:**

**A.** All ICSPs must file tariffs with the commission which set forth the services provided along with any rates, fees, or charges for those services and list each correctional institution to which those rates, fees, or charges apply. Tariffs shall also identify the billing and collection methods utilized by the ICSP such as collect calling,



debit calling, prepaid calling or prepaid collect calling. No tariff or proposed tariff shall contain misleading, potentially misleading, deceptive, or fraudulent names, rates, fees, charges, terms or conditions.

**B.** Rate caps shall be determined periodically by the commission on its own motion following notice and a public hearing, but no more frequently than once every three years, with one exception: if the federal communications commission issues an order revising any of its rate caps applying to interstate inmate calling services, the commission may conduct a review of the rate caps adopted in this rule, following notice and a public hearing, within less than three years of its last rate caps review. In the absence of a hearing by the commission, the rate caps previously established will remain in effect.

**C.** Any changes in ICSP rates, fees or charges and any cessation or commencement of an inmate calling service at a particular correctional institution resulting from a new, renewed, or amended contract between an ICSP and the correctional institution must be reflected in a proposed tariff amendment filed no later than 90 days after the final award of the contract to the ICSP or after any agreement to change the rates, fees or charges is reflected in a renewed or amended contract.

(1) The ICSP shall file with the commission an original and five copies of the proposed tariff changes within the time frame provided for in this rule, or in the alternative, file the proposed tariff in accordance with any electronic filing policy adopted by the commission modifying that requirement. The ICSP shall include in its filing a sequentially numbered transmittal letter, (e.g., 2010-1, 2010-2, etc.) containing a description of the proposed tariff changes. The proposed tariff shall be served on the attorney general and all interested persons requesting service of such changes in a docket established by the commission for such filings. The proposed tariff change shall comply with all applicable commission rules. The proposed tariff changes may go into effect 15 business days after the tariff filing unless staff, attorney general or an interested person, notifies the ICSP within said 15 business days of its concerns regarding the proposed tariff changes. If staff and the ICSP are able to resolve the stated concerns within 15 business days after the tariff filing, the proposed tariff changes may go into effect and no public hearing shall be required.

(2) If the interested person, attorney general, staff, and the ICSP are unable to resolve the concerns, staff shall file a protest with the records management bureau of the administrative services division, and promptly send a copy to the ICSP and the proposed tariff change shall not go into effect. The records management bureau shall assign a docket number to the protest. The protest shall include a case caption and a heading that states "protest". The protest shall include as an attachment the proposed tariff changes filed by the ICSP and any additional information furnished to the interested person, attorney general, and staff by the ICSP. The applicant shall have the burden of showing, after notice and hearing, why the proposed new service, promotion, or tariff change is in the public interest.

(3) On the same day it files the proposed tariff changes with the commission, the ICSP shall also submit an electronic copy of the transmittal letter containing the identity of the telecommunications company, a summary of the proposed new service, promotion or tariff change, and its effective date. The commission may prescribe additional form, content, manner of filing, or other requirements. The foregoing shall be served on the staff, attorney general, and all interested persons requesting service of such filings.

(4) The ICSP shall provide notice of a rate change to incarcerated persons and consumers by promptly providing signage with the new rates for the correctional institution in the manner described in Subsection B of 17.11.28.11 NMAC, and via telephone free of charge each time a funding transaction related to a prepaid account takes place.

**D.** Any other changes in ICSP rates, fees, charges, or type of service, and any addition of a new service must be reflected in a proposed tariff amendment. No such change may be effectuated by the ICSP prior to commission approval of the tariff amendment.

(1) The ICSP shall file with the commission an original and five copies of the proposed tariff changes within the time frame provided for in this rule, or in the alternative file the proposed tariff in accordance with any electronic filing policy adopted by the commission modifying that requirement. The ICSP shall include in its filing a sequentially numbered transmittal letter, (e.g., 2010-1, 2010-2, etc.) containing a description of the proposed tariff changes. The proposed tariff shall be served on the attorney general and all interested persons requesting service of such changes in a docket established by the commission for such filings. The proposed tariff change shall comply with all applicable commission rules. The proposed tariff changes may go into effect 15 business days after the tariff filing unless staff, the attorney general, or an interested person notifies the ICSP within said 15 business days of its concerns regarding the proposed tariff changes. If the interested persons, the attorney general, staff, and the ICSP are able to resolve the concerns within 15 business days after the tariff filing, the proposed tariff changes may go into effect and no public hearing shall be required.

(2) If staff, the attorney general, the interested person, and the ICSP are unable to resolve the concerns, staff, the attorney general, or any interested person may file a protest with the records management bureau of the administrative services division, and promptly send a copy to the ICSP and the proposed tariff change shall not go into effect. The records management bureau shall assign a docket number to protest. The protest shall include a case caption and a heading that states "protest". The protest shall include as an attachment the proposed tariff changes filed by the ICSP and any additional information furnished to staff, the attorney general and all interested persons, by the ICSP. The applicant shall have the burden of showing, after notice and hearing, why the proposed new service, promotion, or tariff change is in the public interest.

(3) On the same day it files the proposed tariff changes with the commission, the ICSP shall also submit an electronic copy of the transmittal letter containing the identity of the telecommunications company, a summary of the proposed new service, promotion or tariff change, and its effective date. The commission may prescribe additional form, content, manner of filing, or other requirements. The foregoing shall be served on staff, attorney general, and all interested persons requesting service of such filings.

(4) The ICSP shall provide notice of a rate change to incarcerated persons and consumers by promptly providing signage with the new rates for the correctional institution in the manner described in Subsection B of 17.11.28.11 NMAC, and via telephone free of charge each time a funding transaction related to a prepaid account takes place.

**E.** Every institutional phone in New Mexico shall provide access to the services listed below without the use of coins or cards of any type, and without any charge to the consumer:

- (1) any call to obtain a refund;
- (2) access to automated operator services necessary to establish a call.

**F.** An ICSP may not bill any rate, fee, or ancillary service charge that is not part of its tariff.

**G.** An ICSP may not bill or charge any ancillary service charge in connection with the establishment of, funding to, or refunding from an account in the consumer's name used for the prepayment of inmate calling service that has not been previously approved for that purpose by the commission.

**H.** An ICSP may assess ancillary service charges that are included in the ICSP's filed tariffs subject to rate caps and prohibitions stated herein.

**I.** Effective dates: The rate caps and prohibitions established pursuant to this rule:

- (1) apply to prisons 30 days from the effective date of this rule;
- (2) apply to jails with a ADP of 150 or greater 60 days from the effective date of this rule;
- (3) apply to and jails with an ADP of 25 to 149 90 days from the effective date of this rule; and
- (4) apply to jails with an ADP of 0 to 25 150 days from the effective date of this rule.

[17.11.28.14 NMAC - Rp, 17.11.28.14 NMAC 11/7/2023]

**17.11.28.15 RESPONSIBILITIES OF THE INMATE CALLING SERVICE PROVIDER:**

**A.** An ICSP shall not contract for any intrastate operator services or interexchange services with any entity that is out of compliance with the applicable certification requirements of the commission.

**B.** The ICSP shall be responsible for all public access line charges associated with the provision of inmate calling service.

**C.** The ICSP shall be responsible for paying all required regulatory fees to the commission.

**D.** Subject to compliance with any access requirements of the correctional institution, ICSPs will make available to the commission, subject to notice and coordination, any institutional phone for purposes of making test calls, free of charge, to telephone numbers of the commission's choosing.

**E.** All institutional phones and the telecommunications facilities used for the transmission of service are subject to periodic inspections to ensure compliance with commission requirements. Findings of non-compliance will be brought to the attention of the ICSP and the correctional institution by letter and the ICSP will have 30 days to restore compliance with commission requirements.

**F.** The ICSP shall be responsible for repairing, servicing and maintaining in good repair the institutional phones through which it provides service.

**G.** All institutional phones installed in New Mexico shall comply with state and local laws, commission rules, current national electrical code and national electrical safety code requirements, and the generally accepted telecommunications industry technical standards.

**H.** All calls initiated from an institutional phone will be outbound calls that are either collect calling, debit calling, prepaid calling or prepaid collect calling.

**I.** An ICSP shall provide a means for an incarcerated person who has not had an opportunity to arrange for prepaid calling services to make an outgoing collect call.

**J.** The minimum allowance for the duration of a call initiated from an institutional phone shall be determined by the correctional institution.

**K.** No more than three institutional phones will share a common voice-grade (non-broadband) access line or channel, unless otherwise specifically authorized by the commission.

**L.** Institutional phones operating in New Mexico must comply with all applicable federal, state and local laws regarding accessibility by hearing impaired or physically disabled persons.

**M.** All ICSPs must provide intrastate service at each correctional institution they serve.

**N.** Inmate calling service transmission quality shall be at least equivalent to generally accepted industry standards for wireline, voice-grade circuits, except that ICSPs will not be held responsible for calls terminating to cordless landlines, cell phones, or other non-traditional landline devices. There will be no transmission delay, feedback, excessive noise, or echo perceptible to either the incarcerated person or the called party. The commission will make the final determination as to the acceptable level of transmission service quality.

[17.11.28.15 NMAC - Rp, 17.11.28.15 NMAC 11/7/2023]

#### **17.11.28.16 RESTRICTIONS ON INMATE CALLING SERVICE:**

Operators of correctional institutions have the authority to limit or deny access to institutional phones at times and in circumstances deemed proper by the correctional institution. However, no ICSP may take any action to discriminate among incarcerated persons in providing access to its tariffed telecommunications services at the correctional institutions. If telephone conversations carried on ICSP facilities are recorded, the ICSP shall provide a notice, via a recorded message, disclosing that fact to persons using the facilities. Pursuant to the correctional institution's procedures, the ICSP shall provide the means by which communications between incarcerated persons and their legal counsel, or counsel's staff, may be exempted from any requirement of the correctional institution that telephone conversations be recorded if permission is provided by the correctional institution. The incarcerated person, their counsel, or counsel's staff may request from the correctional institution that such calls be exempted from recording, and, if the correctional institution grants the request, the ICSP shall accommodate the request and provide verification of the exemption from recording.

[17.11.28.16 NMAC - Rp, 17.11.28.16 NMAC 11/7/2023]

#### **17.11.28.17 CALL RATE CAPS:**

**A.** No ICSP may charge, in the jails it serves with ADP per month of less than 1,000 per month, a per-minute rate for intrastate debit calling, prepaid calling, collect calling, or prepaid collect calling in excess of:

#### **RATE CAPS CHART**

**Prepaid**

Intrastate	Incarcerated Person	Prepaid Collect	Collect
Local per call	\$0.00	\$0.00	\$0.00
Per minute	\$0.15	\$0.15	\$0.15
15-min call	\$2.25	\$2.25	\$3.25
<b>IntraLATA</b>			
Local per call	\$0.00	\$0.00	\$0.00
Per minute	\$0.15	\$0.15	\$0.15
15-min call	\$2.25	\$2.25	\$3.25
<b>InterLATA</b>			
Local per call	\$0.00	\$0.00	\$0.00
Per min	\$0.15	\$0.15	\$0.15
15-min call	\$2.25	\$2.25	\$3.25

**B.** No ICSP may charge, in jails it serves with ADP per month of 1,000 or more, a per-minute rate for intrastate debit calling, prepaid calling, or prepaid collect calling in excess of:

#### **RATE CAPS CHART**

<b>Prepaid</b>			
Intrastate	Incarcerated Person	Prepaid Collect	Collect
Local per call	\$0.00	\$0.00	\$0.00
Per minute	\$0.14	\$0.14	\$0.14
15-min call	\$2.10	\$2.10	\$3.10
<b>IntraLATA</b>			
Local per call	\$0.00	\$0.00	\$0.00
Per minute	\$0.14	\$0.14	\$0.14
15-min call	\$2.10	\$2.10	\$3.10
<b>InterLATA</b>			
Local per call	\$0.00	\$0.00	\$0.00
Per min	\$0.14	\$0.14	\$0.14
15-min call	\$2.10	\$2.10	\$3.10

**C.** No ICSP may charge, in prisons it serves, a per-minute rate for intrastate debit calling, prepaid calling, collect calling, or prepaid collect calling in excess of:

#### **RATE CAPS CHART**

##### **Prepaid**

Intrastate	Incarcerated Person	Prepaid Collect	Collect
Local per call	\$0.00	\$0.00	\$0.00
Per minute	\$0.12	\$0.12	\$0.12
15-min call	\$1.80	\$1.80	\$2.80
<b>IntraLATA</b>			
Local per call	\$0.00	\$0.00	\$0.00
Per minute	\$0.12	\$0.12	\$0.12
15-min call	\$1.80	\$1.80	\$2.80
<b>InterLATA</b>			
Local per call	\$0.00	\$0.00	\$0.00
Per minute	\$0.12	\$0.12	\$0.12
15-min call	\$1.80	\$1.80	\$2.80

**D.** For purposes of this section, the initial ADP shall be calculated, for all of the correctional facilities covered by an inmate calling service contract, by summing the total number of incarcerated persons from January 1, 2015, through January 19, 2016, divided by the number of days in that time period.

**E.** In subsequent years, for all of the correctional facilities covered by an inmate calling service contract, the ADP will be the sum of the total number of incarcerated persons from January 1st through December 31st divided by the number of days in the year and will become effective on January 31st of the following year.

[17.11.28.17 NMAC - Rp, 17.11.28.17 NMAC 11/7/2023]

**17.11.28.18 ANCILLARY SERVICE CHARGES:**

**A.** An ICSP shall not charge an ancillary service charge that is not among the types of ancillary service charge listed in the definition of ancillary service charge at Paragraph (1) of Subsection A of 17.11.28.7 NMAC.

**B.** No ICSP may charge a rate for a permitted ancillary service charge in excess of:

- (1) for automated payment fees -- \$3.00 per use;
- (2) for single-call and related services – the exact transaction fee charged by the third-party provider, with no markup, plus the adopted, per-minute rate - \$3.00;
- (3) for live-agent fees -- \$5.95 per use;
- (4) for paper bill/statement fees -- \$2.00 per use; and

(5) for third-party financial transaction fees – the exact fees, with no markup, that result from the transaction. - \$3.00 per transaction.

**C.** No ICSP may charge more than one type of ancillary service charge for any single payment transaction.

[17.11.28.18 NMAC - N, 11/7/2023]

#### **17.11.28.19 RATE CAP VARIANCES:**

The commission may permit an ICSP to impose rates higher than the rate caps as provided for in the rate caps chart in 17.11.28.17 NMAC as may be amended from time to time or as stated in a separate commission order for good cause shown.

**A.** An ICSP seeking a variance under this rule must file a petition for variance with the commission providing the following information:

- (1) the correctional institution at which the rate that exceeds the rate cap would be applied;
- (2) the rate to be applied and the respective existing rate cap; and
- (3) the reason for which a higher rate will be applied shall include the following information about the proposed service for the call type for which the variance is sought:
  - (a) projected monthly and yearly call volume by call type, for the next three calendar years;
  - (b) projected monthly and yearly expense and revenue by call type, for the next three calendar years;
  - (c) projected monthly and yearly average call duration by call type, for the next three calendar years;
  - (d) actual monthly and yearly call volume by call type, for the previous two calendar years;
  - (e) actual monthly and yearly expense and revenue by call type, for the previous two calendar years; and
  - (f) actual monthly and yearly average call duration by call type, for the previous two calendar years.

**B.** The petition must include a sworn statement by a knowledgeable representative of the petitioner attesting to the truth and accuracy of its contents. The petition shall be



served on staff, the attorney general, and any other interested party requesting service of such filings, in a docket established by the commission for such filings.

**C.** The petition shall be accompanied by a proposed tariff change that incorporates the higher rate that the petitioner seeks to impose. All ICSP tariffs shall include a section for rate variances in which all such higher rates are to be listed.

**D.** At the request of the petitioner, the information provided pursuant to Paragraphs (1) and (3) of Subsection A herein will be treated as confidential and subject to a protective order of the commission. Confidential information shall be handled under the terms of the protective order and will not be disclosed to any person who has not executed a nondisclosure agreement under the protective order.

**E.** Staff, the attorney general and interested parties shall review the petition for variance within 45 days to determine whether it is supported by the information provided. Any interested party may file a written statement with the commission in support of or opposition to the petition within the same 45-day period. The ICSP shall have 15 days to respond to any filed statement of position.

**F.** In the absence of any commission action on the petition, the petition will be deemed granted and the proposed tariff change will be deemed approved 60 calendar days from the filing of the petition.

**G.** ICSPs are not subject to 1.2.2.40 NMAC for matters related to rate variances pursuant to this rule.

[17.11.28.19 NMAC - N, 11/7/2023]

#### **17.11.28.20 BILLING-RELATED CALL BLOCKING:**

No ICSP may prohibit or prevent completion of a collect calling call or decline to establish or otherwise degrade collect calling solely for the reason that it lacks a billing relationship with the called party's communications service provider unless the ICSP offers debit calling, prepaid calling, or prepaid collect calling.

[17.11.28.20 NMAC - N, 11/7/2023]

#### **17.11.28.21 CONSUMER PROTECTION:**

**A.** The ICSP shall complete a call only upon a positive response from the consumer that the consumer accepts all previously disclosed charges for the call. The provider shall allow consumers the opportunity to decline and thus terminate the call at no charge to the consumer. If the ICSP does not receive a positive response within a period not exceeding 20 seconds from the last prompt, the call shall be terminated without charge. ICSPs shall not charge for any calls that are not accepted by the called party.

B. Where not superseded by the express language of this rule, the commission's consumer protection rule, 17.11.16 NMAC, applies, except for those provisions that by their language apply only to non-ICSPs.

[17.11.28.21 NMAC - Rp, 17.11.28.18 NMAC 11/7/2023]

#### **17.11.28.22 REPORTING REQUIREMENTS:**

A. Each ICSP shall file with the commission copies of all reports submitted to the federal communications commission (FCC), pursuant to 47 CFR § 64.6060, including confidential data bearing on the ICSP's operations and services in New Mexico. For those copies filed with the commission, an ICSP may redact or exclude data pertaining to the ICSP's operations in states other than New Mexico, whether that data is public or confidential. The reports shall be filed with the commission within five business days of their filing with the FCC.

B. Each ICSP shall comply with the reporting requirements of an intrastate long distance provider, pursuant to 17.11.21.13 NMAC.

C. Upon request from the commission, ICSPs must, in a timely manner, and in accordance with confidentiality agreements between the ICSP and commission staff as necessary, submit data requested by the commission relating to its New Mexico operations, including but not limited to, revenue, expenses and facilities/usage data by an institutional facility.

D. ICSPs shall report to the commission not later than April 1 the complaints it received about the service provided in New Mexico during the preceding calendar year. Complaints shall be categorized by type of complaint with a description of how each complaint was handled. The categories of complaints shall include at least the following: service, billing, rates, and other.

E. The New Mexico attorney general's office shall also be served the information from ICSPs detailed in Subsections A, C, and D above. Other interested parties may petition the commission for access to that information subject to the commission's rules regarding the treatment of confidential information.

F. Not later than March 15 of each year, commission staff will provide a letter to each correctional institution in New Mexico and to the respective ICSPs with information about the commission's jurisdiction over ICSPs.

[17.11.28.22 NMAC - Rp, 17.11.28.19 NMAC 11/7/2023]

#### **17.11.28.23 TAXES AND FEES:**

No ICSP may charge any taxes or fees to users of inmate calling services, other than those permitted under the definition in Paragraph (A)(2) of 17.11.28.7 NMAC and Section 17.11.28.18.

[17.11.28.23 NMAC - N, 11/7/2023]

**17.11.28.24 PER-CALL, OR PER-CONNECTION CHARGES:**

No ICSP may impose a per-call or per-connection charge on a consumer.

[17.11.28.24 NMAC - N, 11/7/2023]

**17.11.28.25 MINIMUM AND MAXIMUM PREPAID CALLING ACCOUNT BALANCES:**

**A.** No ICSP may institute a minimum balance requirement for a consumer to use debit or prepaid calling.

**B.** No ICSP may prohibit a consumer from depositing at least \$50 per transaction to fund a debit or prepaid calling account.

[17.11.28.25 NMAC - N, 11/7/2023]

**17.11.28.26 CONSUMER PREPAID ACCOUNT BALANCES:**

**A.** No ICSP may charge any rates or fees to a prepaid account unless such rate or fee is contained in a current tariff that has been approved by the commission.

**B.** Prepaid accounts are deemed to be "utility deposits" for purposes of Section 2 of the Uniform Unclaimed Property Act, Section 7-8A-1 NMSA 1978

**C.** If a prepaid account has not been subject to any activity for six months, the ICSP shall refund the balance of the prepaid account to the account holder. If an ICSP is unable to locate the account holder or otherwise effectuate a refund within eighteen months of the most recent date of activity, the ICSP shall deliver the balance of the prepaid account to the taxation and revenue department or its agent for administration under the terms of the Uniform Unclaimed Property Act, Section 7-8A-1 NMSA 1978.

[17.11.28.26 NMAC - N, 11/7/2023]

**17.11.28.27 TRANSFER OF CERTIFICATE:**

Any holder of a certificate of registration to provide inmate calling services in New Mexico seeking to transfer the certificate to another person shall first apply to the commission for approval of the transfer. The commission shall approve an application for transfer of a certificate of registration upon receipt of a completed application and a copy of the tariff proposed to take effect upon approval of the transfer. The application shall meet the requirements of 17.11.12.10 NMAC.

[17.11.28.27 NMAC - Rp, 17.11.28.20 NMAC 11/7/2023]

**17.11.28.28 NOTICE OF CHANGE IN CIRCUMSTANCE:**

An ICSP shall notify the commission in writing of the following change in circumstances:

- A. a change in the ICSP's name, address, or phone number;
- B. a change in the name, address, or phone number of the person responsible for regulatory contacts and consumer dispute resolution;
- C. merger of the ICSP with another provider;
- D. acquisition of the ICSP by another provider;
- E. acquisition by the ICSP of another provider;
- F. transfer of the ICSP certificate;
- G. transfer of a significant portion of the ICSP's assets to another provider; and
- H. any other change in control of the ICSP.

[17.11.28.28 NMAC - Rp, 17.11.28.21 NMAC 11/7/2023]

**17.11.28.29 DISCONTINUANCE OF SERVICE:**

A. Prior to discontinuing service, an ICSP shall, no later than 30 days prior to discontinuing service, file with the commission a notice of discontinuance of service showing the number of correctional institutions affected.

B. This section does not apply to individual service withdrawals of an ICSP.

[17.11.28.29 NMAC - Rp, 17.11.28.22 NMAC 11/7/2023]

**17.11.28.30 SEVERABILITY:**

If any part of this rule is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[17.11.28.30 NMAC - Rp, 17.11.28.24 NMAC 11/7/2023]

**17.11.28.31 VARIANCES:**

A. Any IOSPP may petition the commission for a variance from any requirement of this rule.

**B.** A petition for a variance shall be supported by an affidavit signed by an officer of the petitioner or a person with authority to sign for the petitioner.

**C.** Any petition for a variance must contain the information required by the commission's procedural rules under 1.2.2.40 NMAC.

**D.** The petitioning ICSP must serve a copy of the petition for a variance upon staff, the attorney general, and any interested person that has made a written request to the commission to be notified of such petitions.

[17.11.28.31 NMAC - Rp, 17.11.28.25 NMAC 11/7/2023]

## **PART 29-697: [RESERVED]**

## **PART 698: ORDER NO. 2681, REGULATIONS PROVIDING FOR THE INTERCHANGE OF TELEPHONE AND TELEGRAPH MESSAGES AND THE INTERCONNECTION OF TELEPHONE AND TELEGRAPH LINES**

### **17.11.698.1 ISSUING AGENCY:**

The State Corporation Commission of New Mexico [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

### **17.11.698.2 SCOPE:**

[Recompiled 12/30/01]

### **17.11.698.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

### **17.11.698.4 DURATION:**

[Recompiled 12/30/01]

### **17.11.698.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

### **17.11.698.6 OBJECTIVE:**

[Recompiled 12/30/01]

### **17.11.698.7 DEFINITIONS:**

[Recompiled 12/30/01]

**17.11.698.8 IN THE MATTER OF REGULATIONS PROVIDING FOR THE INTERCHANGE OF TELEPHONE AND TELEGRAPH MESSAGES AND THE INTERCONNECTION OF TELEPHONE AND TELEGRAPH LINES, ORDER NO. 2681:**

A. WHEREAS, Article XI, Section 16, of the Constitution of the State of New Mexico provides: "All telephone and telegraph lines, operated for hire, shall receive and transmit each other's messages without delay or discrimination, and make and maintain connections with each other's lines, under such rules and regulations as may be prescribed by the Commission," and

B. WHEREAS, no such rules and regulations have ever been prescribed by the Commission; and

C. WHEREAS, it appears certain the facts and conditions that may be involved in each case of transmitting messages of other carriers without delay or discrimination, or making connections with the lines of other carriers, will to a large extent vary from case to case depending upon the advantages to the public and the reasonableness of the means and costs that may be involved; and

D. WHEREAS, the Commission now deems it necessary and advisable to promulgate rules and regulations pursuant to the aforesaid constitutional provision, IT IS THEREFORE ORDERED:

(1) Upon the petition of any telephone or telegraph company operating intrastate in New Mexico, or upon the petition of twenty-five (25) of the customers of any such carrier, or upon the Commission's own motion, the Commission upon the filing of such a petition shall fix a time and place for hearing thereon. All parties shall be given ten (10) days' notice of such time and place for hearing by the Commission. The Commission shall cause notice of such hearing to be served at least five (5) days before the hearing upon any officer or owner of the telephone or telegraph company involved in the proposed interchange of messages or interconnection of lines and facilities and on other interested parties as determined by the Commission, and any such telephone or telegraph company is hereby declared to be an interested party in such proceedings and may offer testimony for or against the granting of the relief requested in such petition. Any other interested person may offer testimony at such hearing. The Commission shall fix the time and place for any such hearing. If the Commission, after investigation and hearing, finds from the evidence that an interchange of messages or the interconnection of lines and facilities will be of advantage to the public and best serve the public interest or public convenience and necessity, it may issue an order requiring the interchange or interconnection upon such terms and conditions as, in its judgment, the public convenience and necessity may require; otherwise the relief requested in such petition shall be denied. In making any such order the Commission shall take into consideration the matters and things set forth in the following paragraphs of these rules.

(2) It is not intended these rules shall apply to the interconnection or interchange of messages with so-called "service station" lines where the carrier provides the switching, directory and rental of equipment service, nor to situations where the purpose of the connection primarily involves interchange of local messages within an exchange or interconnection of lines and facilities for local calls only, as distinguished from long distance calls.

(3) No order affecting such interchange of messages or interconnection of lines and facilities shall be entered by the Commission without notice and a hearing. All parties shall be entitled to be heard, through themselves or their counsel, and shall have process to enforce the attendance of witnesses. At the hearing held pursuant to such notice, the Commission may take such testimony as may be offered or as it may desire, and may make such other and further investigation as, in its opinion, is desirable.

(4) Each witness who shall appear before the Commission, by its order, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid by the State out of the State Corporation Commission [Public Regulation Commission] fund upon the presentation of proper vouchers; but no witnesses subpoenaed at the instance of parties other than the Commission shall be entitled to compensation from the State for attendance and travel.

(5) No person shall be excused from attending and testifying or from producing books and papers before the Commission, or in obedience to the subpoena of the said Commission, whether such subpoena be signed or issued by one (1) or more of the members of the said Commission, in any investigation held by or before the said Commission or in any cause or proceeding in any court by or against the said Commission, relative to matters provided for in these rules, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; provided, that nothing herein contained shall be construed as requiring any person to produce any books or papers, or to testify in response to any inquiry, not pertinent to some question lawfully before such Commission or court for determination. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be required to testify or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or in any such cause or proceedings; provided, that no person testifying shall be exempted from prosecution and punishment for perjury committed in so testifying.

(6) In case of failure or refusal on the part of any person to comply with any subpoena issued by said Commission or any member thereof, or on the refusal of any witness to testify or answer as to any matters regarding which he may be lawfully interrogated, any district court in this State, or any judge thereof, on application of a member of said Commission may issue an attachment for such person and compel him to comply with such subpoena and to attend before the Commission and produce such documents and give his testimony upon such matters as may be lawfully required and such court or judge shall have the power to punish for contempt as in cases of

disobedience of a like subpoena issued by or from such court, or a refusal to testify therein.

(7) Whenever the Commission shall make any order or determination, or issue any subpoena, notice or writ, notice thereof may be served on the person affected thereby, by delivering a copy of such order, subpoena, notice or writ, signed by or in the name of the chairman of said Commission to any such person or an officer or agent of such person, as in the case of civil process, which service may be executed by any member of said Commission, the secretary or any employee thereof, or by any sheriff in this State. A copy of such order, subpoena, notice or writ, with the service endorsed thereon, must be returned to the said Commission and entered of record as a part of the proceedings and such endorsement and return shall be prima facie evidence that such order, subpoena, notice or writ has been duly served.

(8) Any order issued by the Commission after completion of its investigation and hearing shall be a final order within the meaning of these rules.

(9) If it be determined such an interchange or interconnection is needed and if the telephone companies involved cannot agree upon the method of interchange or point of interconnection or other conditions including the proration or other adjustment of construction costs that may be incurred in making the physical arrangements of the facilities of either or both or all carriers involved, then the Commission on the basis of the evidence presented to it upon such matters will determine the proper method of interchange or point of interconnection which will be reasonable and just to the two or more telephone or telegraph companies involved and will determine the obligations of each of the telephone or telegraph companies.

(10) In any proceeding in which a proper point of interconnection is in question, the Commission will give consideration to costs that may be required of each of the carriers and, where possible, will avoid circuitous routing. Substantial consideration will be given to the nearest point at which a connection may be made with established or proposed toll routes capable of handling the toll messages offered at the point of interconnection.

(11) The Commission will consider and determine whether an undue burden will be placed upon any one or more of such telephone and telegraph companies involved in the interconnection; whether the facilities of the carriers involved in the proposed interconnection or interchange of messages are properly qualified; whether the facilities and equipment of the carriers whose lines are proposed to be interconnected meet the normal construction standards; and particularly the communication requirements and community of interest of the public.

(12) In order to better meet and carry out the provisions of the constitution as stated above the Commission may provide the arrangement for the interchange or interconnection which shall be for a limited trial period pending further proceedings before the Commission.



(13) The Commission shall arrange for the service of all interim and final orders upon each and all of the parties to such proceedings before the Commission.

(14)

(a) Any telephone or telegraph company, or any other person in interest, being dissatisfied with any order or determination of the Commission, not removable to the supreme court of the State of New Mexico under the provisions of Section 7, Article XI of the Constitution of the State of New Mexico, may commence an action in the district court for Santa Fe County against the Commission as defendant, to vacate and set aside such order or determination, on the ground that it is unlawful, unreasonable or confiscates the property of the dissatisfied telephone or telegraph carrier. In any such proceeding, the court may grant relief by injunction, mandamus or other extraordinary remedy. In such action the Complaint shall be served with the Summons.

(b) The answer of the Commission to the complaint shall be served and filed within twenty (20) days after service of the complaint, whereupon said action shall be at issue without further pleading and stand ready for trial upon ten (10) days' notice.

(c) Any person not a party to the action, but having an interest in the subject thereof, may be made a party.

(d) All such actions shall have precedence over any civil cause of a different nature, and the district court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions without a jury.

(15) Every action to vacate or amend any determination or order of the Commission or to enjoin the enforcement thereof or to prevent such order or determination from becoming effective shall be commenced, and every appeal to the courts or right of recourse to the courts shall be taken or exercised within ninety (90) days after the entry or rendition of such order or determination, the right to commence any such action, or to take or exercise any such appeal or right of recourse to the courts, shall terminate absolutely at the end of such ninety (90) days.

(16) Any party to said action, within thirty (30) days after service of a copy of the said order or judgment of the district court, may appeal to the Supreme Court, and the cause shall be placed on the calendar of the then pending term and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.

(17) In such actions and proceedings in court all processes shall be served and the practice and rules of evidence shall be the same as in civil actions, except as otherwise provided.

(18) A copy of these rules will be mailed to each telephone and telegraph carrier in the State of New Mexico subject to the jurisdiction of this Commission.

(19) DONE at Santa Fe, New Mexico, this 19th day of September, 1963.  
STATE CORPORATION COMMISSION OF NEW MEXICO, G.W. Fails, Chairman,  
M.E. Morgan, Commissioner, Columbus Ferguson, Commissioner, ATTEST R. C.  
Cybert, Director, Traffic and Rate Division.

[Recompiled 12/30/01]

## **CHAPTER 12: WATER SERVICES**

### **PART 1: GENERAL PROVISIONS FOR WATER UTILITIES**

#### **17.12.1.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

#### **17.12.1.2 SCOPE:**

[Recompiled 12/30/01]

#### **17.12.1.3 STATUTORY AUTHORITY:**

NMPSC Rules 710 through 780 [17.12.1 NMAC, 17.12.720 NMAC through 17.12.780 NMAC] governing the application for Certificates of Public Convenience and Necessity, the application for rate increases, and annual reporting by water utilities is issued pursuant to NMPSC Rule 120 [17.1.120 NMAC] and NMSA 1978, Sections 62-3-1, 62-3-3(F)(3), 62-3-4, 62-6-1, 62-6-4, 62-6-16, 62-6-18, 62-6-19, 62-6-20, 62-6-21, 62-6-22, 62-8-3, 62-8-10, and 62-9-1.

[Recompiled 12/30/01]

#### **17.12.1.4 DURATION:**

[Recompiled 12/30/01]

#### **17.12.1.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

#### **17.12.1.6 OBJECTIVE:**

A. The adoption by the New Mexico Public Service Commission [New Mexico Public Regulation Commission] of the minimum data requirements specified in NMPSC Rules 710 through 780 [17.12.1 NMAC, 17.12.720 through 17.12.780 NMAC] is for the purpose of defining and specifying the annual filing requirements for water utilities and

minimum data requirements to be filed in support for a tendered new rate schedule or rate schedules which will supersede, supplement, or otherwise change the provision of a rate schedule required to be on file with the Commission and the minimum data requirements for Certificates of Public Convenience and Necessity.

B. The failure of the applicant to fulfill the minimum data requirements specified in NMPSC Rules 710 through 780 [17.12.1 NMAC, 17.12.720 through 17.12.780 NMAC] shall constitute sufficient cause for the Commission to seek sanctions against a water utility or to reject an applicant's filing pursuant to NMPSC Rule 210 [17.1.210 NMAC].

(1) Pursuant to NMPSC Rules 110 and 210 [17.1.2 NMAC and 17.1.210 NMAC] an applicant utility unable to comply fully with any data requests contained herein due to good and sufficient cause should give notice in writing to the Commission of the applicant utility's inability to comply with the provisions of such data request at least thirty (30) days prior to the filing of any report or action governed by NMPSC Rules 710 through 780 [17.12.1 NMAC, 17.12.720 through 17.12.780 NMAC].

(2) Upon receipt of such notification and after consideration by the Commission of the applicant utility's stated reasons for inability to comply fully with the provisions of NMPSC Rules 710 through 780 [17.12.1 NMAC, 17.12.720 through 17.12.780 NMAC], the Commission shall within fifteen (15) days notify the applicant utility in writing of its decision concerning the applicant utility's notice.

[Recompiled 12/30/01]

#### **17.12.1.7 DEFINITIONS:**

When used in NMPSC Rules 710 through 780 [17.12.1 NMAC, 17.12.720 through 17.12.780 NMAC] unless otherwise specified the following definitions will apply.

A. "Accounting Method" means the uniform system of accounting prescribed by the Commission.

(1) "Functional Accounting" means the grouping of plant and expense accounts according to the specified function or purpose which the plant or expense performs in rendering the utility service, such as source of supply, pumping, water treatment, transmission, distribution, etc.

(2) "Primary Account" means the grouping of plant and expenses by balance sheet account number, such as accounts 101, 102, 103, etc.

(3) "Detailed Account" means the breakdown of plant and expenses into subaccounts, that is, utility plant accounts, such as accounts 301, 302, 303, etc.

B. "Accounting Period":

(1) "Calendar Year": a consecutive twelve-month accounting period beginning with January 1 and ending with December 31; and

(2) "Fiscal Year": a consecutive twelve-month accounting period.

C. "Adjustment" means a calculation made with reasonable accuracy to the book balance of accounts to reflect a known and measurable change or estimate based on projection for the full twelve-month period of the Test Year. "Pro Forma Adjustment" means a computation made to develop the effect of a known and measurable change on the financial statements presented for Test Year purposes in a rate case.

D. "Allocation" means the process by which the total cost of service is classified into the types of services provided such as demand, commodity, base, extra capacity, and customer, and assigned to the various classes of customers served within a regulatory jurisdiction or among regulatory jurisdictions.

E. "Annualization" means a computation made to reflect a full twelve-month effect of an item of income or expense which is recorded in the utility's financial statements for only a portion of a year.

F. "Base Period" means the applicant utility's twelve (12) consecutive months of actual experience as reflected on the book balance of accounts, the last day of which shall not be more than one hundred fifty (150) days prior to the date of tender for filing with a Future Test Year Period.

G. "Book Balance Accounts" means the amounts actually recorded by the applicant utility on its books of account. Whenever property and/or services are acquired for other than cash, the basis for valuation for book purposes shall be explained.

H. "Classification" means the separation of plant and expenses into the principal categories of the services rendered, such as demand related, commodity related, customer related, etc.

I. "Classification of Water Utilities": For purposes of efficient administration of the Commission's regulatory authority under NMPSC Rules 710 through 780 [17.12.1 NMAC, 17.12.720 through 17.12.780 NMAC], water utilities are divided into three (3) groups:

(1) "Class A and B Water Utilities" are those jurisdictional water utilities having annual operating revenues which have averaged more than \$500,000 for a consecutive three-year period;

(2) "Class C Water Utilities" are those jurisdictional water utilities having annual operating revenues which have averaged more than \$50,000 but less than \$500,000 for a consecutive three-year period; and

(3) "Class D Water Utilities" are those jurisdictional water utilities having annual operating revenues which have averaged less than \$50,000 for a consecutive three-year period.

J. "Cost of Service" means the total annual cost of rendering the utility service expressed in monetary value, including a rate of return on invested capital.

K. "Department" or "Division" means a responsibility center within the corporate structure of a public utility enterprise where revenues and expenses are accumulated as a result of a commodity or service rendered by such Department or Division.

L. "Depreciated Original Cost" (Book Value of Property) means the cost of property on the books of the utility to the person first devoting it to the public service less the accrued depreciation reserve. Depreciated original cost shall not include the cost of reproduction as a going concern nor any other consideration of other than book value.

M. "Filing" means notification to the Commission by means of a tendered change in tariff sheets and payment of the required fees by a public utility regarding such change pursuant to the provisions of the Commission's Code of Rules and Regulations.

(1) The "Filing Date" shall occur on the date on which the tendered change in tariff sheets is received at the offices of the Commission.

(2) The "Effective Date" shall occur on the date that such tendered change in tariff sheets is permitted to become effective by the Commission -- thirty (30) days after the filing date or on such other date as may be ordered by the Commission.

N. "Functionalization" means the separation of costs according to major function or purpose which the plant or expense performs in rendering the utility service; for example, source of supply, pumping, water treatment, transmission and distribution, etc.

O. "Lead-Lag Study" is a method sometimes employed in developing the amount of cash working capital to be included in a Rate Base determination for a utility company. The study seeks to measure and quantify the lag (delay) in receipt of revenues from customers from the time service is rendered offset by the lead, that is, the period the utility company has from the time it incurs an expense until cash is actually disbursed in payment of the expense.

P. "Litigation" means all contested matters before regulatory commissions, administrative bodies, and state or federal courts. Litigation also includes arbitration proceedings and other similar dispute resolution proceedings. Uncontested regulatory filings, contract drafting, negotiation and management, routine legal advice and other similar legal matters which are not in dispute are not considered litigation for the purposes of this rule.

Q. "Rate Base" means the net investment value upon which the applicant utility shall be permitted to earn a specified return. Generally the Rate Base represents the value of utility property used and useful in rendering the public utility service and may contain elements of value reflecting the cost of the utility property to the person first devoting it to the public service and other items, such as cash working capital, materials, supplies, and prepayments. In accordance with New Mexico statutes the applicant's Rate Base may also reflect the cost of reproduction as a going concern and other elements of value.

R. "Rate Class" means a group of customers which exhibit similar use characteristics and which are grouped together for cost allocation, rate design, and billing purposes.

S. "Reproduction Cost" means the estimated cost to reproduce an item or property or other asset currently owned at current prevailing prices.

T. "Test Year Period": Nothing herein shall preclude an applicant utility from adopting either an Historical Test Year Period or a Future Test Year Period, each as defined below, as the basis of the determination by the Commission of the applicant utility's total revenue requirements.

(1) "Historical Test Year Period": The applicant utility's twelve (12) months of actual experience adjusted for known and measurable changes, annualizations, or other changes for which period the applicant utility's total revenue requirements shall be determined.

(2) "Future Test Year Period": The twelve (12) consecutive months immediately following the last day of the applicant utility's twelve (12) months of actual experience [otherwise the Base Period] adjusted for known and measurable changes or estimates based on projections for which period the applicant utility's total revenue requirements shall be determined. The Test Year Period prescribed in the individual data request schedules shall incorporate the necessary adjustments in conformance with the definition given above for the type of Test Year Period selected by the applicant utility.

U. "Water Unit Measurement": The standard unit measure of water consumption shall be expressed in gallons. To change cubic feet of water to gallons, the conversion factor of 7.481 shall be used. To change barrels of water to gallons, the conversion factor of 42 shall be used.

V. "Water Utility": means every corporation, individual, partnership, company, builder, developer, or other person not otherwise engaged solely in interstate commerce which owns, operates, leases, or controls any plant, property, or facility for supply, storage, or furnishing to or for the public water for manufacturing, municipal, domestic, or other uses. The definition excludes:

(1) irrigation districts, the principal business of which is to supply water for irrigation;

(2) municipal water systems, which are governed under the provisions of NMSA 1978, Sections 3-23-1 et seq. and 3-27-1 et seq.;

(3) railroads, which only incidental to their railroad business or occasionally furnish water under limited or revocable agreements, or which sell to a utility or municipality for resale, or which sell to another railroad or to the state or federal government or an agency thereof, water out of surplus water supplies acquired and held primarily for railroad purposes;

(4) cooperatives, organized under NMSA 1978, Section 53-4-1 et seq., which provide water service to members only;

(5) water and sanitation districts, which are governed under the provisions of NMSA 1978, Section 73-2-1 et seq.

[Recompiled 12/30/01]

#### **17.12.1.8 TABLE OF CONTENTS:**

A. Introduction: [17.12.1.9 NMAC]

B. Purpose: [17.12.1.6 NMAC]

C. Authority: [17.12.1.3 NMAC]

D. Definitions: [17.12.1.7 NMAC]

[Recompiled 12/30/01]

#### **17.12.1.9 INTRODUCTION:**

NMPSC Rules 710 through 780 [17.12.1 NMAC, 17.12.720 NMAC through 17.12.780 NMAC] govern annual reporting; Certificates of Public Convenience and Necessity; system design, construction, and operation; customer services; rate filings; and utility accounting for water utilities operating under the Commission's jurisdiction.

A. Annual Report Forms are required to be filed for every calendar year by April 30 of each year. Attached to this report shall be SEC Form 10K, if applicable, and NMPSC Rule 710 [17.12.1 NMAC] Form 1 regarding jurisdictional customer numbers. NMPSC Rule 720 [17.12.720 NMAC] provides that water utilities shall file Annual Reports in either of two (2) formats. Smaller water utilities may file an abbreviated Annual Report form.

B. Under NMPSC Rule 720 [17.12.720 NMAC] regulated water utilities are required to maintain financial accounts in either of two (2) formats. Larger water utilities shall keep their financial records according to the NARUC Uniform System of Accounts for Class A and B Water Utilities. Smaller water utilities may keep their financial records either pursuant to the New Mexico Uniform System of Accounts for Class C and D Water Utilities or according to the NARUC Uniform System of Accounts for Class C and D Water Utilities.

C. Provision for rate filings is divided into the levels of operation set out in the classification of water utilities herein below. NMPSC Rules 730 and 780 [17.12.730 NMAC and 17.12.780 NMAC] provide that water utilities shall file for rates in one (1) of three (3) formats. The larger utilities must file the most comprehensive package. Middle-sized utilities may file a simpler package. The smaller utilities may file the most abbreviated package.

D. No water utility subject to the Commission's jurisdiction shall commence construction nor operation without first obtaining a Certificate of Public Convenience and Necessity. NMPSC Rule 740 [17.12.740 NMAC] provides that every filing for a certificate from the Commission shall be made pursuant to NMPSC Rules 110.35 through 110.38 [17.1.2 NMAC] and must demonstrate proposed system and service compliance when operational.

E. The Minimum Standards for Design, Construction, and Operation set forth in NMPSC Rule 750 [17.12.750 NMAC] establish the measurements the Commission will require in connection with questions which pertain to expense, capital, Rate Base, prudence, adequacy, or convenience and necessity. These system standards may reasonably be exceeded in any particular application. The minimum standards apply to all new water utilities seeking initial certification after the effective date of General Order No. 42, codified by NMPSC Rules 710 through 780 [17.12.1 NMAC, 17.12.720 through 17.12.780 NMAC], and to new expansion, construction, and repair of existing facilities of already certified utilities.

F. The Customer Service Rules and Regulations, NMPSC Rule 760 [17.12.760 NMAC], establish the responsibilities and rights of jurisdictional water utilities and their residential customers in their water service relationship. Nothing herein shall prevent any utility from adopting Service Rules and Regulations which do not conflict with but which are additional to those set forth herein to cover special circumstances.

[Recompiled 12/30/01]

## **PART 2-369: [RESERVED]**

## **PART 370: UNIFORM CLEAN WATER TESTING FEE ADJUSTMENT CLAUSE**

### **17.12.370.1 ISSUING AGENCY:**



New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

**17.12.370.2 SCOPE:**

[Recompiled 12/30/01]

**17.12.370.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

**17.12.370.4 DURATION:**

[Recompiled 12/30/01]

**17.12.370.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.12.370.6 OBJECTIVE:**

[Recompiled 12/30/01]

**17.12.370.7 DEFINITIONS:**

[Recompiled 12/30/01]

**17.12.370.8 TABLE OF CONTENTS:**

- A. Clean Water Testing Fee Adjustment Clause [17.12.370.9 NMAC]
- B. Inclusion in Billings [17.12.370.10 NMAC]
- C. Other Water Testing Fee Adjustment Clause Not Permitted [17.12.370.11 NMAC]
- D. Reporting Requirements [17.12.370.12 NMAC]

[Recompiled 12/30/01]

**17.12.370.9 CLEAN WATER TESTING FEE ADJUSTMENT CLAUSE:**

A. Any public water utility electing to incorporate a clean water testing adjustment clause in any rate schedule shall use the following language: Billings under this schedule may be increased by an amount equal to the customer's pro rata share of testing expenses incurred by the utility in the prior billing months. For purposes of this

schedule, "testing expenses" means only the actual costs paid by the utility to others for sampling and testing required by federal or state law. For purposes of this schedule, "pro rata share" means the total amount of testing expenses incurred in the prior billing months divided by the total number of customers served by the utility in the billing month. A utility can spread these costs out and collect them from its customers over a three-month period, rather than in a single month. A utility can also choose to collect its actual costs from customers using a monthly charge that is adjusted once every three months to reflect changes in the utility's actual costs.

B. The intent of this rule is to allow water utilities to collect the actual costs associated with clean water testing requirements imposed by federal or state law in a uniform manner for all water utilities under the jurisdiction of the Commission.

[Recompiled 12/30/01]

#### **17.12.370.10 INCLUSION IN BILLINGS:**

Should a water utility elect to collect these expenses through an adjustment clause, the amount to be collected shall be collected from every customer on a pro rata basis as defined in NMPSC Rule 370.1 [17.12.370.9 NMAC]. The amount shall be added to the utility billings by a clean water testing surcharge and shall be so identified in a separate line item on the customer's bill.

[Recompiled 12/30/01]

#### **17.12.370.11 OTHER WATER TESTING FEE ADJUSTMENT CLAUSE NOT PERMITTED:**

No testing fee adjustment clause inconsistent with that allowed by this Rule shall be used by any water utility in any rate schedule.

[Recompiled 12/30/01]

#### **17.12.370.12 REPORTING REQUIREMENTS:**

A verified report showing actual amounts expended for sampling and testing and amounts collected through a clean water testing fee adjustment clause shall be attached to the utility's annual report. The utility shall be required to maintain all records, invoices, and other information necessary to verify actual expenses and collections.

[Recompiled 12/30/01]

#### **PART 371-719: [RESERVED]**

## **PART 720: UNIFORM SYSTEMS OF ACCOUNTS AND ANNUAL REPORT FORMS FOR WATER UTILITIES**

### **17.12.720.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

### **17.12.720.2 SCOPE:**

[Recompiled 12/30/01]

### **17.12.720.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

### **17.12.720.4 DURATION:**

[Recompiled 12/30/01]

### **17.12.720.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

### **17.12.720.6 OBJECTIVE:**

[Recompiled 12/30/01]

### **17.12.720.7 DEFINITIONS:**

When used in this system of accounts unless otherwise specified the following definitions will apply.

A. "Accounts" means the accounts prescribed in this system of accounts.

B. "Amortization" means the gradual extinguishment of an account by distributing such amount over a fixed period, over the life of the asset or liability to which it applies, or over the period during which it is anticipated the benefit will be realized.

C. "Associated Companies" means companies or persons that directly or indirectly through one (1) or more intermediaries control, are controlled by, or are under common control with the accounting company.

D. "Book Cost" means the amount at which property is recorded in these accounts without deduction of related provisions for accrued depreciation, amortization, or for other purposes.

E. "Commission," unless otherwise indicated by the context, means the New Mexico Public Service Commission [New Mexico Public Regulation Commission].

F. "Cost" means the amount of money actually paid for property or services. When the consideration given is other than cash, the value of such consideration shall be determined on a cash basis.

G. "Cost of Removal" means the cost of demolishing, dismantling, tearing down, or otherwise removing utility plant, including the cost of transportation and handling incidental thereto.

H. "Depreciation," as applied to depreciable utility plant, means the loss in service value not restored by current maintenance incurred in connection with the consumption or prospective retirement of utility plant in the course of service from causes which are known to be in current operation and against which the utility is not protected by insurance. Among the causes to be given consideration are wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand, and requirements of public authorities. (See "Depreciation Accrual Rates.")

I. "Minor Items of Property" means the associated parts or items of which retirement units are composed. (See "List of Retirement Units.")

J. "Net Salvage Value" means the salvage value of property retired less the cost of removal.

K. "Original Cost" as applied to utility plant means the cost of such property to the person first devoting it to public service.

L. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, or any organized group of persons whether incorporated or not, or any receiver or trustee.

M. "Property Retired," as applied to utility plant, means property which has been removed, sold, abandoned, destroyed, or which for any cause has been withdrawn from service.

N. "Replacing" or "Replacement," when not otherwise indicated in the context, means the construction or installation of utility plant in place of property retired together with the removal of the property retired.

O. "Retained Earnings" means the accumulated net income of the utility less distributions to stockholders or owners and other adjustments.

P. "Retirement Units" means those items of utility plant which, when retired with or without replacement, are accounted for by crediting the book cost thereof to the utility plant account in which included. (See "List of Retirement Units.")

Q. "Salvage Value" means the amount received for property retired less any expenses incurred in connection with the sale or in preparing the property for sale; or if retained, the amount at which the material recoverable is chargeable to materials and supplies or other appropriate account.

R. "Service Life" means the time between the date utility plant is includable in utility plant in service or utility plant leased to others and the date of its retirement.

S. "Utility," as used herein and when not otherwise indicated in the context, means any public utility to which this system of accounts is applicable.

[Recompiled 12/30/01]

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(2) Annual Report Forms for Class A and B Water Utilities

(3) Annual Report Forms for Class C and D Water Utilities

[Recompiled 12/30/01]

#### **17.12.720.9 UNIFORM SYSTEMS OF ACCOUNTS:**

Under NMPSC Rule 720 [17.12.720 NMAC] regulated water utilities are required to maintain financial accounts in either of two (2) formats. Class A and Class B water utilities as defined in NMPSC Rule 710 [17.12.1 NMAC] shall keep their financial records according to the NARUC Uniform System of Accounts for Class A and Class B Water Utilities. Class C and Class D water utilities as defined in NMPSC Rule 710 [17.12.1 NMAC] may keep their financial records either pursuant to the New Mexico Uniform System of Accounts for Class C and Class D Water Utilities, included in the Appendix to NMPSC Rule 720 [17.12.720 NMAC], or according to the NARUC Uniform System of Accounts for Class C and Class D Water Utilities.

[Recompiled 12/30/01]

### **17.12.720.10 ANNUAL REPORT FORMS:**

Water utilities are required to file Annual Reports for every calendar year by April 30 of the next year. NMPSC Rule 720 [17.12.720 NMAC] provides that water utilities shall file Annual Reports in either of two (2) formats. Class A and Class B water utilities as defined in NMPSC Rule 710 [17.12.1 NMAC] shall file Annual Reports in the form provided by the Commission for Class A and Class B Water Utilities and included in the Appendix to NMPSC Rule 720 [17.12.720 NMAC]. Class C and Class D water utilities as defined in NMPSC Rule 710 [17.12.1 NMAC] may file either an abbreviated Annual Report form provided by the Commission, included in the Appendix to NMPSC Rule 720 [17.12.720 NMAC], or the form provided for Class A and Class B Water Utilities.

[Recompiled 12/30/01]

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[Recompiled 12/30/01]

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[Recompiled 12/30/01]

**17.12.720.13 GENERAL INSTRUCTIONS:**

A. Records:

- (1) Each utility shall keep its books of account and all other books, records, and papers which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit a ready identification, analysis, and verification of all facts relevant thereto.
- (2) The books and records referred to herein include not only accounting records in a limited technical sense but all other records, such as minute books, stock

books, reports, correspondence, memoranda, etc., which may be useful in developing the history of or facts regarding any transaction.

(3) No utility shall destroy any such books or records unless the destruction thereof is permitted by rules and regulations of the Commission.

(4) In addition to prescribed accounts, clearing accounts, temporary or experimental accounts, and subdivision of any account may be kept provided the integrity of the prescribed accounts is not impaired.

(5) All amounts included in the accounts prescribed herein for utility plant and operating expenses shall be just and reasonable, and any payments or accruals by the utility in excess of just and reasonable charges shall be included in account 426, Miscellaneous Income Deductions.

(6) The arrangement or sequence of the accounts prescribed herein shall not be controlling as to the arrangement or sequence in report forms which may be prescribed by the Commission.

B. Accounting Period: Each utility shall keep its books on a monthly basis so that for each accounting period all transactions applicable thereto, as nearly as may be ascertained, shall be entered in the books of the utility. Each utility shall close its books at the end of each calendar year unless otherwise authorized by the Commission.

C. Submittal of Questions: To maintain uniformity of accounting utilities shall submit questions of doubtful interpretation to the Commission for consideration and decision.

D. Item Lists: Lists of "items" appearing in the texts of the accounts or elsewhere herein are for the purpose of more clearly indicating the application of the prescribed accounting. The lists are intended to be representative but not exhaustive. The appearance of an item in a list warrants the inclusion of the item in the account mentioned only when the text of the account also indicates inclusion inasmuch as the same item frequently appears in more than one list. The proper entry in each instance must be determined by the texts of the accounts.

E. Accounting to be on Accrual Basis:

(1) The utility is required to keep its accounts on the accrual basis. This requires the inclusion in its accounts of all known transactions of appreciable amount which affect the accounts. If bills covering such transactions have not been received or rendered, the amounts shall be estimated and appropriate adjustments made when the bills are received.

(2) When payments are made in advance for items such as insurance, rents, taxes, or interest, the amount applicable to future periods shall be charged to account

166, Prepayments, and spread over the periods to which applicable by credits to account 166 and charged to the accounts appropriate for the expenditures.

F. Extraordinary Items: It is the intent that net income shall reflect all items of profit and loss during the period with the sole exception of prior period adjustments as described in General Instruction 7 [G]. Those items related to the effects of events and transactions which have occurred during the current period and which are not typical or customary business activities of the company shall be considered extraordinary items. Commission approval must be obtained to treat an item as extraordinary. Such request must be accompanied by complete detailed information. (See Accounts 433 and 434.)

G. Prior Period Items: Items relating to transactions which occurred prior to the current calendar year but were not recorded in the books of account shall be included in the same accounts in which they would have been recorded had the item been recorded in the proper period. Such items relate to events or transactions which occurred in a prior period or periods, the accounting effects of which could not be determined with reasonable assurance at the time usually because of major uncertainty then existing. When the amount of a prior period item is relatively so large its inclusion for a single month would distort the accounts for that month, the amount may be distributed in equal amounts to the accounts for the current and remaining months of the calendar year. However, if the amount of any prior period item is so large that the company believes its inclusion in the income statement would seriously distort the net income for the year, the company may request Commission approval to record the amount in account 439, Adjustments to Retained Earnings. Such a request must be accompanied by adequate justification.

H. Operating Reserves: Accretions to operating reserve accounts made by charges to operating expenses shall not exceed a reasonable provision for the expense. Material balances in such reserve accounts shall not be diverted from the purpose for which provided unless the permission of the Commission is first obtained.

[Recompiled 12/30/01]

#### **17.12.720.14 UTILITY PLANT INSTRUCTIONS:**

##### **A. Utility Plant to be Recorded at Cost:**

(1) All amounts included in the accounts for utility plant acquired as an operating unit or system shall be stated at the cost incurred by the person who first devoted the property to utility service, and all other utility plant shall be included in the accounts at the cost incurred by the utility except as otherwise provided in the texts of the intangible plant accounts. Where the term "cost" is used in the detailed plant accounts, it shall have the meaning stated in this paragraph.

(2) When the consideration given for property is other than cash, the value of such consideration shall be determined on a cash basis. In the entry recording such

transaction the actual consideration shall be described with sufficient particularity to identify it. The utility shall be prepared to furnish the Commission the particulars of its determination of the cash value of the consideration if other than cash.

(3) When property is purchased under a plan involving deferred payments, no charge shall be made to the utility plant accounts for interest, insurance, or other expenditures occasioned solely by such form of payment.

(4) Utility plant contributed to the utility or constructed by the utility from contributions of cash or its equivalent shall be charged to the utility plant accounts at cost of construction, estimated if not known. There shall be credited to the accounts for accumulated depreciation and amortization the estimated amount of depreciation and amortization applicable to the property at the time of its contribution to the utility. The difference between the amounts included in the utility plant accounts and the accumulated depreciation and amortization shall be credited to account 271, Contribution in Aid of Construction.

B. Components of Construction Cost: The cost of construction of property chargeable to the utility plant accounts shall include, where applicable, the cost of labor, materials and supplies, transportation, work done by others for the utility, injuries and damages incurred in construction work, privileges and permits, special machine service, allowance for funds used during construction, and such portion of general engineering, administrative salaries and expenses, insurance, taxes, and other analogous items as may be properly includable in construction costs.

C. Overhead Construction Costs:

(1) All overhead construction costs, such as engineering, supervision, general office salaries and expenses, construction engineering and supervision by others than the accounting utility, legal expenses, insurance, injuries and damages, relief and pensions, taxes and allowance for funds used during construction shall be charged to particular jobs or units on the basis of the amounts of such overheads reasonably applicable thereto, to the end that each job or unit shall bear its equitable portion of such costs, and that the entire cost of the unit, both direct and overhead, shall be deducted from the plant accounts at the time the property is retired.

(2) As far as practicable, the determination of payroll charges includable in construction overheads shall be based on time card distributions thereof. Where this procedure is impractical, reasonable estimates of amounts to cover assumed overhead costs are permitted.

D. Utility Plant Purchased or Sold: When utility plant constituting an operating unit or system is acquired by purchase, merger, consolidation, liquidation, or otherwise, the Commission shall be contacted for the proper accounting treatment of the transaction.

E. Expenditures on Leased Property:

(1) The cost of substantial initial improvements (including repairs, rearrangements, additions, and betterments) made in the course of preparing for utility service property leased for a period of more than one (1) year and the cost of subsequent substantial additions, replacements, or betterments to such property shall be charged to the utility plant account appropriate for the class of property leased. If the service life of the improvement is terminable by action of the lease, then the cost, less net salvage, of the improvements shall be spread over the life of the lease by charges to account 425, Miscellaneous Amortizations. However, if the service life is not terminated by action of the lease but by depreciation proper, then the cost of the improvements less net salvage shall be accounted for as depreciable plant.

(2) If improvements made to property leased for a period of more than one (1) year are of relatively minor cost, or if the lease is for a period of not more than one (1) year, the cost of the improvements shall be charged to the account in which the rent is included.

#### F. Land and Land Rights:

(1) The accounts for land and land rights include the cost of land owned in fee by the utility and rights, interests, and privileges held by the utility in land owned by others, such as leaseholds, easements, water and water power rights, diversion rights, submersion rights, rights-of-way, and other like interests in land. Do not include in the accounts for land and land rights and rights-of-way costs incurred in connection with first clearing and grading of land and rights-of-way and the damage costs associated with the construction and installation of plant. Such costs shall be included in the appropriate plant accounts directly benefited.

(2) The cost of buildings and other improvements (other than public improvements) shall not be included in the land accounts. If, at the time of acquisition of an interest in land, such interest extends to buildings or other improvements (other than public improvements) which are then devoted to utility operations, the land and improvements shall be separately appraised and the cost allocated to land and buildings or improvements on the basis of the appraisals. If the improvements are removed or wrecked without being used in operations, the cost of removing or wrecking shall be charged and the salvage credited to the account in which the cost of the land is recorded.

(3) When the purchase of land for utility operations requires the purchase of more land than needed for such purposes, the charge to the specific land account shall be based upon the cost of the land purchased less the fair market value of that portion of the land which is not to be used in utility operations. The portion of the cost measured by the fair market value of the land not to be used shall be included, in account 105, Property Held for Future Use, or account 121, Nonutility Property, as appropriate.

(4) The items of cost to be included in the accounts for land and land rights are as follows:



(a) cost, first, of acquisition including mortgages and other liens assumed (but not subsequent interest thereon);

(b) condemnation proceedings, including court and counsel costs;

(c) fees, commissions, and salaries to brokers, agents, and others in connection with the acquisition of the land or land rights;

(d) leases, cost of voiding upon purchase to secure possessions of land;

(e) removing, relocating, or reconstructing property of others, such as buildings, highways, railroads, bridges, cemeteries, churches, telephone and power lines, etc., in order to acquire quiet possession;

(f) special assessments levied by public authorities for public improvements on the basis of benefits for new roads, new bridges, new sewers, new curbing, new pavements, and other public improvements, but not taxes levied to provide for the maintenance of such improvements;

(g) surveys in connection with the acquisition, but not amounts paid for topographical surveys and maps where such costs are attributable to structures or plant equipment erected or to be erected or installed on such land;

(h) taxes assumed, accrued to date of transfer of title;

(i) title, examining, clearing, insuring, and registering in connection with the acquisition and defending against claims relating to the period prior to the acquisition;

(j) appraisals prior to closing title;

(k) filing satisfaction of mortgage;

(l) documentary stamps;

(m) photographs of property at acquisition;

(n) fees and expenses incurred in the acquisition of water rights and grants;

(o) sidewalks and curbs constructed by the utility on public property; and

(p) labor and expenses in connection with securing rights-of-way where performed by company employees and company agents.

#### G. Structures and Improvements:

(1) The accounts for structures and improvements include the cost of all buildings and facilities to house, support, or safeguard property of persons, including all fixtures permanently attached to and made a part of buildings and which cannot be removed therefrom without cutting into the walls, ceilings, or floors, or without in some way impairing the buildings, and improvements of a permanent nature on or to land. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way and the damage costs associated with construction and installation of plant.

(2) The cost of specially provided foundations not intended to outlast the machinery or apparatus for which provided and the cost of angle irons, castings, etc., installed at the base of any item of equipment shall be charged to the same account as the cost of the machinery, apparatus, or equipment.

(3) The items of cost to be included in the accounts for structures and improvements are as follows:

- (a) architects' plans and specifications including supervision;
- (b) athletic field structures and improvements;
- (c) boilers, furnaces, piping, wiring, fixtures, and machinery for heating, lighting, signaling, ventilating and air conditioning systems, plumbing, vacuum cleaning systems, incinerator and smoke pipe flues, etc.;
- (d) commissions and fees to brokers, agents, architects, and others;
- (e) conduit (not to be removed) with its contents;
- (f) damages to abutting property during construction;
- (g) drainage and sewerage systems;
- (h) excavation, including shoring, bracing, bridging, refill, and disposal of excess excavated material, cofferdams around foundation, pumping water from cofferdam during construction, test borings;
- (i) fences and fence curbs (not including protective fences isolating items of equipment which shall be charged to the appropriate equipment account).
- (j) fire protection systems when forming a part of a structure;
- (k) foundations and piers for machinery constructed as a permanent part of a building or other item listed herein;

- (l) grading and clearing when directly occasioned by the building of a structure;
- (m) intrasite communication system, poles, pole fixtures, wires, and cables;
- (n) landscaping, lawns, shrubbery, etc.
- (o) leases, voiding upon purchase to secure possession of structures;
- (p) leased property, expenditures on;
- (q) lighting fixtures and outside lighting system;
- (r) painting, first cost;
- (s) permanent paving, concrete, brick, flagstone, asphalt, etc., within the property lines;
- (t) permits and privileges;
- (u) platforms, railings, and gratings when constructed as a part of a structure;
- (v) retaining walls except when identified with land;
- (w) sidewalks, culverts, curbs, and streets constructed by the utility on its property;
- (x) storage facilities constituting a part of a building;
- (y) vaults constructed as part of a building; and
- (z) water basins or reservoirs.

#### H. Equipment:

(1) The cost of equipment chargeable to the utility plant accounts, unless otherwise indicated in the text of an equipment account, includes the net purchase price thereof, sales taxes, investigation and inspection expenses necessary to such purchase, expenses of transportation when borne by the utility, labor employed, materials and supplies consumed, and expenses incurred by the utility in unloading and placing the equipment in readiness to operate. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way and the damage costs associated with construction and installation of plant.

(2) Exclude from equipment accounts hand and other portable tools, which are likely to be lost or stolen or which have relatively small value (\$50.00 or less) or

short life, unless the correctness of accounting therefor as utility plant is verified by current inventories. Special tools acquired and included in the purchase price of equipment shall be included in the appropriate plant account. Portable drills and similar tool equipment when used in connection with the operation and maintenance of a particular plant or department, such as pumping, transmission, and distribution, etc., or in "stores," shall be charged to the plant account appropriate for their use.

I. Additions and Retirements of Utility Plant:

(1) For the purpose of avoiding undue refinement in accounting for additions to and retirements and replacements of utility plant, all property shall be considered as consisting of (1) retirement units and (2) minor items of property. Each utility shall use the list of retirement units included herein.

(2) The addition and retirement of retirement units shall be accounted for as follows.

(a) When a retirement unit is added to utility plant, the cost shall be added to the appropriate utility plant account.

(b) When a retirement unit is retired from utility plant, with or without replacement, the book cost shall be credited to the utility plant account in which it is included. If the retirement unit is depreciable, the book cost of the unit retired and credited to utility plant shall be charged to the accumulated provision for depreciation applicable to such property. The cost of removal and the salvage shall be charged or credited, as appropriate, to such depreciation account.

(3) The addition and retirement of minor items of property shall be accounted for as follows.

(a) When a minor item of property which did not previously exist is added to plant, the cost charged shall be to expense.

(b) When a minor item of property is retired and not replaced, the book cost shall be credited to the utility plant account in which it is included; in the event the minor item is a part of depreciable plant, the account accumulated provision for depreciation shall be charged with the book cost and cost of removal and credited with the salvage.

(c) When a minor item of depreciable property is replaced, the cost of replacement shall be charged to expense.

(4) The book cost of utility plant retired shall be the amount at which such property is included in the utility plant accounts plus all components of construction costs. The book cost shall be determined from the utility's records and if this cannot be done, it shall be estimated.

(5) The book cost of land retired shall be credited to the land account. If the land is sold, the difference between the book cost and the sale price of the land (less commissions and other expenses of making the sale) shall be included in account 422, Gains (Losses) From Disposition of Property, unless otherwise authorized or required by the Commission. If the land is not used in utility service but is retained by the utility, the book cost shall be charged to account 105, Property Held for Future Use, or account 121, Nonutility Property, as appropriate.

(6) The book cost less net salvage of utility plant retired shall be charged in its entirety to account 110, Accumulated Provision for Depreciation and Amortization of Utility Plant. Any amounts which by approval or order of the Commission are charged to account 182, Extraordinary Property Losses, shall be credited to account 110, Accumulated Provision for Depreciation and Amortization of Utility Plant.

[Recompiled 12/30/01]

#### **17.12.720.15 OPERATING EXPENSE INSTRUCTIONS:**

##### **A. Maintenance:**

(1) The cost of maintenance includes contract material, contract labor, materials, overheads, and other expenses incurred in maintenance work. A list of work operations applicable generally to utility plant is included hereunder.

(2) Materials recovered in connection with the maintenance of property shall be credited to the maintenance account.

(3) If the book cost of any property is carried in account 106, Utility Plant Purchased or Sold, the cost of maintaining such property shall be charged to the account for maintenance, the book cost of which is carried in other utility plant in service accounts. Maintenance of property leased from others shall be treated as provided in Operating Expense Instruction 2. Items:

(a) Direct field supervision of maintenance.

(b) Inspecting, testing, and reporting on condition of plant specifically to determine the need for repairs, replacements, rearrangements, and changes and inspecting and testing the adequacy of repairs which have been made.

(c) Work performed specifically for the purpose of preventing failure, restoring serviceability, or maintaining life of plant.

(d) Rearranging and changing the location of plant not retired.

(e) Repairing for reuse materials recovered from plant.

(f) Testing for, locating, and clearing trouble.

(g) Net cost of installing, maintaining, and removing temporary facilities to prevent interruption in service.

(h) Replacing or adding minor items of plant which do not constitute a retirement unit. (See Utility Plant Instruction 9.)

**B. Rents:**

(1) Expense shall include all rents, including taxes paid by the lessee on leased property, for property used in utility operations.

(2) When a portion of property or equipment rented from others for use in connection with utility operations is subleased, the revenue derived from such subleasing shall be credited to the rent revenue account in operating revenues; provided, however, that in case the rent was charged to a clearing account, amounts received from subleasing the property shall be credited to such clearing account.

(3) The cost, when incurred by the lessee, of operating and maintaining leased property shall be charged to expense as if the property were owned.

(4) The cost incurred by the Lessee of additions and replacements to utility plant leased from others shall be accounted for as provided in Utility Plant Instruction 5.

[Recompiled 12/30/01]

**17.12.720.16 BALANCE SHEET ACCOUNTS:**

**A. Utility Plant:**

(1) 101 - Utility Plant in Service:

(a) This account shall include the original cost of utility plant, included in the plant accounts prescribed herein owned and used by the utility in its utility operations, and having an expectation of life in service of more than one (1) year from date of installation.

(b) The cost of additions to and betterments of property leased from others which are includable in this account shall be maintained in subdivisions separate and distinct from those relating to owned property. (See Utility Plant Instruction 5.)

(2) 104 - Utility Plant Leased to Others:

(a) This account shall include the original cost of utility plant owned by the utility but leased to others as operating units or systems where the lessee has exclusive possession.

(b) The property included in this account shall be classified according to the detailed accounts prescribed for utility plant in service, and this account shall be maintained in such detail as though the property were used by the owner in its utility operations.

(3) 105 - Property Held for Future Use:

(a) This account shall include the original cost of property owned and held for future use in utility service under a definite plan for such use. There shall be included herein property acquired but never used by the utility in utility service but held for such service in the future under a definite plan, and property previously used by the utility in utility service but retired from such service and held pending its reuse in the future, under a definite plan, in utility service.

(b) In the event that property recorded in this account shall no longer be needed or appropriate for future utility operations, the company shall notify the Commission of such condition and request approval to remove such property from this account.

(c) Gains or losses from the sale of land and land rights or other disposition of such property previously recorded in this account and not placed in utility service shall, unless otherwise authorized or required by the Commission, be recorded directly in account 422, Gains (Losses) from Disposition of Property. However, when determined to be significant by the Commission the gain or loss shall be transferred to account 253, Other Deferred Credits, or account 183, Other Deferred Debits. Such deferred amounts shall then be amortized to account 422, Gains (Losses) from Disposition of Property, unless otherwise authorized or required by the Commission.

(d) The property included in this account shall be classified according to the detailed accounts prescribed for utility plant in service, and the account shall be maintained in such detail as though the property were in service. Note: Materials and supplies, meters held in reserve, or normal spare capacity of plant in service shall not be included in this account.

(4) 106 - Utility Plant Purchased or Sold:

(a) This account shall be charged with the cost of utility plant acquired as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise, and shall be credited with the selling price of like property transferred to others pending the distribution to appropriate accounts in accordance with Utility Plant Instruction 4.

(b) Within six (6) months from the date of acquisition or transfer of property recorded herein there shall be filed with the Commission the proposed journal entries to clear from this account the amounts recorded herein.

(5) 107 - Construction Work in Progress: This account shall include the total of the balances of work orders for utility plant in process of construction but not ready for service at the date of the balance sheet.

(6) 110 - Accumulated Provision for Depreciation and Amortization of Utility Plant:

(a) This account shall be credited with the following:

(i) amounts charged to account 403, Depreciation Expense, and any other appropriate amortizations affecting utility plant matters;

(ii) amounts of depreciation applicable to utility properties acquired as operating units or systems (see Utility Plant Instruction 4);

(iii) amounts chargeable to account 182, Extraordinary Property Losses, when authorized by the Commission; and

(iv) amounts of depreciation applicable to utility plant donated to the utility;

(b) At the time of retirement of utility plant, this account shall be charged with the book cost of the property retired and the cost of removal, and shall be credited with the salvage value and any other amounts recovered, such as insurance.

(c) The utility is restricted in its use of the provisions for depreciation to the purposes set forth above. It shall not divert any portion of this account to retained earnings or make any use thereof without authorization by the Commission.

B. Other Property and Investments:

(1) 121 - Nonutility Property:

(a) This account shall include the book cost of land, structures, equipment, or other tangible or intangible property owned by the utility but not used in utility service and not property includable in account 105, Property Held for Future Use.

(b) This account shall be subdivided so as to show the amount of property used in operations which are nonutility in character but nevertheless constitute a distinct operating activity of the company (such as operation of a sewer department where such activity is not classed as a utility) and the amount of miscellaneous property not used in operations. The records in support of each subaccount shall be maintained so as to show an appropriate classification of the property.



(2) 124 - Other Investments:

(a) This account shall include the book cost of investments not accounted for elsewhere.

(b) The records shall be maintained in such manner as to show the amount of each investment and the investment advances to each person.

(3) 125 - Special Funds: This account shall include the amount of cash and book cost of investments which have been segregated in special funds for bond retirements, property additions and replacements, insurance, employees' pensions, savings, relief, hospital, and other purposes not provided for elsewhere. A separate account with appropriate title shall be kept for each fund.

C. Current and Accrued Assets: Current and accrued assets are cash; those assets which are readily convertible into cash or are held for current use in operations or construction; current claims against others, payment of which is reasonably assured; and amounts accruing to the utility which are subject to current settlement, except such items for which accounts other than those designated as current and accrued assets are provided. There shall not be included in the group of accounts any accounts designated as current and accrued assets of any item, the amount or collectibility of which is not reasonably assured unless an adequate provision for possible loss has been provided. Items of current character but of doubtful value may be written down and for record purposes carried in these accounts at nominal value.

(1) 131 - Cash and Working Funds: This account shall include the amount of cash on hand and in banks and cash advanced to officers, agents, employees, and others, as petty cash or working funds. Special cash deposits for payment of interest, dividends, or other special purposes shall be included in this account in separate subdivisions which shall specify the purpose for which each such special deposit is made. Note: Special Deposits for more than one (1) year which are not offset by current liabilities shall not be charged to this account but to account 125, Special Funds.

(2) 132 - Temporary Cash Investments:

(a) This account shall include the book cost of investments, such as demand and time loans, bankers' acceptances, United States Treasury Certificates, marketable securities, certificates of deposit, and other similar investments acquired for the purpose of temporarily investing cash.

(b) This account shall be so maintained as to show separately temporary cash investments in securities of associated companies and of others. Records shall be kept of any pledged investments.

(3) 142 - Customer Accounts Receivable:

(a) This account shall include amounts due from customers for utility service and for merchandising, jobbing, and contract work. This account shall not include amounts due from associated companies.

(b) This account shall be maintained so as to show separately the amounts due from merchandising, jobbing, and contract work.

(4) 143 - Other Accounts Receivable:

(a) This account shall include amounts due the utility upon or from notes receivable, or other debt owed to the utility, and open accounts other than amounts due from associated companies and from customers for utility services and merchandising, jobbing, and contract work.

(b) This account shall be maintained so as to show separately amounts due on subscriptions to capital stock and from officers and employees, but the account shall not include amounts advanced to officers or others as working funds. (See account 131, Cash and Working Funds.)

(5) 144 - Accumulated Provision for Uncollectible Accounts:

(a) This account shall be credited with amounts provided for losses on accounts receivable which may become uncollectible and also with collections on accounts previously charged hereto.

(b) This account shall be subdivided to show the provision applicable to the following classes of accounts receivable: Utility Customers; Merchandising; Jobbing and Contract Work; Officers and Employees; Other.

(i) Note A: Accretions to this account shall not be made in excess of a reasonable provision against losses of the character provided for.

(ii) Note B: If provisions for uncollectible notes receivable or for uncollectible receivables from associated companies are necessary, separate subaccounts therefor shall be established under the account in which the receivable is carried.

(6) 146 - Accounts Receivable from Associated Companies: These accounts shall include notes and drafts upon which associated companies are liable and which mature and are expected to be paid in full not later than one (1) year from date of issue, together with any interest thereon and debit balances subject to current settlement in open accounts with associated companies. Items which do not bear a specific due date but which have been carried for more than twelve (12) months and items which are not paid within twelve (12) months from due date shall be transferred to account 124, Other Investments. Note: On the balance sheet accounts receivable from an associated company may be set off against accounts payable to the same company.

(7) 150 - Materials and Supplies:

(a) This account shall include the cost of fuel on hand and unapplied materials (except meters). It shall include also the book cost of materials recovered in connection with construction, maintenance, or the retirement of property, such materials being credited to construction, maintenance, or accumulated depreciation provision, respectively, and included herein as follows.

(i) Reusable materials consisting of large individual items shall be included in this account at original cost, estimated if not known. The cost of repairing such items shall be charged to the maintenance account appropriate for the previous use.

(ii) Reusable materials consisting of relatively small items, the identity of which (from the date of original installation to the final abandonment or sale thereof) cannot be ascertained without undue refinement in accounting, shall be included in this account at current prices new for such items. The cost of repairing such items shall be charged to the appropriate expense account as indicated by previous use.

(iii) Scrap and nonusable materials included in this account shall be carried at the estimated net amount realized therefrom. The difference between the amounts realized for scrap and nonusable materials sold and the net amount at which the materials were carried in this account as far as practicable shall be adjusted to the accounts credited when the materials were charged to this account.

(b) Materials and supplies issued shall be credited hereto and charged to the appropriate construction, operating expense, or other account on the basis of a unit price determined by the use of cumulative average, first-in-first-out, or such other method of inventory accounting as conforms with accepted accounting standards consistently applied.

(c) Inventories of materials, supplies, fuel, etc., shall be taken at least annually and the necessary adjustments shall be made to bring this account into agreement with the actual inventories. In effecting the adjustments, large differences which can be assigned to important classes of materials shall be equitably adjusted among the accounts to which such classes of materials have been charged since the previous inventory. Other differences shall be equitably apportioned among the accounts to which materials have been charged.

(d) Items

(i) Invoice price of materials less cash or other discounts.

(ii) Transportation charges when practicable to include as part of the cost of particular materials to which they relate.

(iii) Custom duties and excise taxes.

(iv) Costs of inspection and special tests prior to acceptance.

(v) Insurance and other directly assignable charges.

(8) 166 - Prepayments:

(a) This account shall include the amount of rents, taxes, insurance, interest, and like disbursements made in advance of the period to which they apply. As the periods covered by such prepayments expire, credit this account and charge the proper operating expense or other account with the amount applicable to the period.

(b) This account shall be kept or supported in such manner as to disclose the amount of each class of prepayments.

(9) 170 - Other Current and Accrued Assets: This account shall include the book cost of all other current and accrued assets, appropriately designated and supported so as to show the nature of each asset included herein.

#### D. Equity Capital:

(1) 201 Common Stock:

(2) 215 - Accumulated Retained Earnings (or Losses): This account shall include the amount of all retained earnings, including those appropriated or set aside for specific purposes. Separate subaccounts shall be maintained under such titles as will designate the purpose for which each appropriation was made.

(3) 218 - Noncorporate Proprietorship: This account shall include the investment in an unincorporated utility by the proprietor thereof, and shall be charged with all withdrawals from the business by its proprietor. At the end of each calendar year, the net income for the year, as developed in the income account, shall be transferred to this account. (See optional accounting procedure provided in Note C, hereunder.)

(a) Note A: Amounts payable to the proprietor as just and reasonable compensation for services performed shall not be charged to this account but to appropriate operating expense or other accounts.

(b) Note B: When the utility is owned by a partnership, a separate account shall be kept to show the net equity of each member therein and the transactions affecting the interest of each such partner.

(c) Note C: This account may be restricted to the amount considered by the proprietor to be the permanent investment in the business, subject to change only by

additional investment by the proprietor or the withdrawal of portions thereof not representing net income. When this option is taken, the retained earnings accounts shall be maintained and entries thereto shall be made in accordance with the texts thereof.

E. Long Term Debt:

(1) 223 - Advances from Associated Companies:

(a) This account shall include the face value of notes payable to associated companies and the amount of open book accounts representing advances from associated companies. It does not include notes and open accounts representing indebtedness subject to current settlement which are includable in account 233, Notes Payable to Associated Companies, or account 234, Accounts Payable to Associated Companies.

(b) The records supporting the entries to this account shall be so kept that the utility can furnish complete information concerning each note and open account.

(2) 224 - Other Long Term Debt:

(a) This account shall include, until maturity, all long term debt. This covers such items as notes, loans, receivers certificates, real estate mortgages executed or assumed, assessments for public improvements, notes and unsecured certificates of indebtedness now owned by associated companies, receipts outstanding for long term debt, and other obligations maturing more than eighteen (18) months from date of issue or assumption.

(b) Records shall be maintained to show separately for each item all details as to date of obligation, date of maturity, interest dates and rates, security for the obligation, etc.

F. Current and Accrued Liabilities: Current and accrued liabilities are those obligations which have either matured or which become due within one (1) year from the date thereof; except, however, bonds, receivers' certificates, and similar obligations which shall be classified as long term debt until date of maturity; accrued taxes, such as income taxes, which shall be classified as accrued liabilities even though payable more than one (1) year from date; compensation awards, which shall be classified as current liabilities regardless of date due; and minor amounts payable in installments which may be classified as current liabilities. If a liability is due more than one (1) year from date of issuance or assumption by the utility, and it shall be credited to a long term debt of issuance or assumption by the utility, it shall be credited to a long term debt account appropriate for the transaction, except, however, the current liabilities previously mentioned.

(1) 231 - Notes Payable: This account shall include the face value of all notes, drafts, acceptances, or other similar evidences of indebtedness payable on demand, or within a time not exceeding one (1) year from date of issue, to other than associated companies.

(2) 232 - Accounts Payable: This account shall include all amounts payable by the utility within one (1) year which are not provided for in other accounts.

(3) 233 - Notes Payable to Associated Companies:

(4) 234 - Accounts Payable to Associated Companies: These accounts shall include amounts owed to associated companies on notes, drafts, acceptances, or other similar evidences of indebtedness, and open accounts payable on demand for not more than one (1) year from date of issuance or creation. Note: Exclude from these accounts notes and accounts which are includable in account 223, Advances from Associated Companies.

(5) 235 - Customer Deposits: This account shall include all amounts deposited with the utility by customers as security for the payment of bills.

(6) 236 - Taxes Accrued:

(a) This account shall be credited with the amount of taxes accrued during the accounting period, corresponding debits being made to the appropriate accounts for tax charges. Such credits may be based upon estimates, but from time to time during the year as the facts become known the amount of the periodic credits shall be adjusted so as to include as nearly as can be determined in each year the taxes applicable thereto. Any amount representing a prepayment of taxes applicable to the period subsequent to the date of the balance sheet shall be shown under account 166, Prepayments.

(b) If accruals for taxes are found to be insufficient or excessive, correction therefor shall be made through current tax accruals. However, if such corrections are so large as to seriously distort current expenses, see General Instruction 9.

(c) Accruals for taxes shall be based upon the net amount payable after credit for any discounts and shall not include any amounts for interest on tax deficiencies or refunds. Interest received on refunds shall be credited to account 419. Interest and Dividend Income and interest paid on deficiencies shall be charged to account 431, Other Interest Expense.

(d) The records supporting the entries to this account shall be kept so as to show for each class of taxes the amount accrued, the basis for the accrual, the accounts to which charged, and the amount of tax paid.

(7) 237 - Interest Accrued: This account shall include the amount of interest accrued but not matured on all liabilities of the utility, not including, however, interest

which is added to the principal of the debt on which incurred. Supporting records shall be maintained so as to show the amount of interest accrued on each obligation.

(8) 238 - Other Current and Accrued Liabilities: This account shall include the amount of all other current and accrued liabilities not provided for elsewhere appropriately designated and supported so as to show the nature of each liability: Items:

(a) Dividends declared but not paid.

(b) Matured long term debt.

(c) Matured interest.

(d) Taxes collected through payroll deductions or otherwise, including sewage charges collected by the utility, pending transmittal to the proper taxing authority.

#### G. Deferred Credits:

(1) 252 - Advances for Construction: This account shall include advances by, or on behalf of, customers for construction which are to be refunded either wholly or in part. When a person is refunded the entire amount to which he is entitled according to the agreement or rule under which the advance was made, the balance, if any, remaining in this account shall be credited to 271, Contributions in Aid of Construction.

(2) 253 - Other Deferred Credits: This account shall include gains on disposition of property, net of income taxes deferred by authorization of the Commission, advance billings and receipts, and other deferred credit items not provided for elsewhere, including amounts which cannot be entirely cleared or disposed of until additional information has been received.

(3) 255 - Accumulated Deferred investment Tax Credits:

(a) Prior to any use of this account the utility must file with the Commission, for the purpose of obtaining authorization, a copy of its proposed plan of accounting for deferred investment tax credits. The utility shall not use these accounts unless such use has been authorized by the Commission. This account shall be credited and account 412, Investment Tax Credits, debited with all investment tax credits deferred by companies authorized to use deferral accounting rather than recognizing in the income statement the total benefits of the investment tax credit as realized. There can be neither changes in accounting method for utility operations nor transfers from this account, except as authorized herein or as may otherwise be authorized by the Commission. (See account 412.)

(b) This account shall be debited and account 412 credited with a proportionate amount determined in relation to the average useful life of utility property

to which the tax credits relate or such lesser period of time as may be adopted and consistently followed by the company.

(c) Subdivisions of this account by department shall be maintained for deferred investment tax credits that are related to nonutility or other operations. Contraentries affecting such account subdivisions shall be appropriately recorded. Use of deferral or nondeferral accounting procedures adopted for nonutility or other operations are to be followed on a consistent basis.

(d) Separate records for each utility and nonutility operation shall be maintained identifying the properties giving rise to the investment tax credits for each year with the weighted average service life of such properties and any unused balances of such credits. Such records are not necessary unless the tax credits are deferred.

H. Operating Reserves: 265 - Miscellaneous Operating Reserves:

(1) This account shall include all operating reserves maintained by the utility.

(2) This account shall be maintained in such manner as to show the amount of each separate reserve and the nature and amounts of the debits and credits thereto.

(3) Note: This account includes only such reserves as may be created for operating purposes and does not include any reservations of income, the credits for which should be carried in account 215, Appropriated Retained Earnings.

I. 271 - Contributions in Aid of Construction:

(1) This account shall include donations or contributions in cash, services, or property from states, municipalities, or other governmental agencies, individuals, and others for construction purposes.

(2) The credits to this account shall not be transferred to any other account without the approval of the Commission.

(3) The records supporting the entries to this account shall be so kept that the utility can furnish information as to the purpose of each donation; the conditions, if any, upon which it was made; the amount of donations from (a) states, (b) municipalities, (c) customers, and (d) others; and the amount applicable to each utility department.

(4) Note: There shall not be included in this account advances for construction which are ultimately to be repaid wholly or in part. (See account 252, Advances for Construction.)

J. 283 - Accumulated Deferred Income Taxes:



(1) This account shall be credited and account 410, Provision for Deferred Income Taxes, shall be debited with an amount equal to that by which taxes on income payable for the year are lower because of the current use of deductions, including accelerated amortization or liberalized depreciation in the computation of income taxes, which deductions for general accounting purposes will not be fully reflected in the utility's determination of annual net income until subsequent years.

(2) Records with respect to entries to this account, as described above, and the account balance shall be so maintained as to show the factors of calculation with respect to each annual amount of the item or class of items other than accelerated amortization or liberalized depreciation, for which tax deferral accounting by the utility is authorized by the Commission.

[Recompiled 12/30/01]

#### **17.12.720.17 UTILITY PLANT ACCOUNTS:**

##### **A. Intangible Plant:**

(1) 301 - Organization: This account shall include all fees paid to federal or state governments for the privilege of incorporation and expenditures incident to organizing the corporation, partnership, or other enterprise and putting it into readiness to do business.

##### **(a) Items:**

(i) Cost of obtaining certificates authorizing an enterprise to engage in the public utility business.

(ii) Fees and expenses for incorporation.

(iii) Fees and expenses for mergers or consolidations.

(iv) Office expenses incident to organizing the utility.

(v) Stock and minute books and corporate seal.

(b) Note A: This account shall not include any discounts upon securities issued or assumed; nor shall it include any costs incident to negotiating loans, selling bonds, or other evidences of debt, or expenses in connection with the authorization, issuance, and sale of capital stock.

(c) Note B: Exclude from this account and include in the appropriate expense account the cost of preparing and filing papers in connection with the extension of the term of incorporation unless the first organization costs have been written off. Where charges are made to this account for expenses incurred in mergers, consolidations, or

reorganizations, amounts previously included herein or in similar accounts in the books of the companies concerned shall be excluded from this account.

(2) 302 - Franchises and Consents:

(a) This account shall include amounts paid to the federal government, to a state, or to a political subdivision thereof in consideration for franchises, consents, or certificates running in perpetuity or for a specified term or more than one year, together with necessary and reasonable expenses incident to procuring such franchises, consents, or certificates of permission and approval, including expenses of organizing and merging separate corporations, where statutes require, solely for the purpose of acquiring franchises.

(b) If a franchise, consent, or certificate is acquired by assignment, the charge to this account in respect thereof shall not exceed the amount paid therefor by the utility to the assignor, nor shall it exceed the amount paid by the original grantee, plus the expense of acquisition to such grantee. Any excess of the amount actually paid by the utility over the amount above specified shall be charged to account 426, Miscellaneous Income Deductions.

(c) When any franchise has expired, the book cost thereof shall be credited hereto and charged to account 426, Miscellaneous Income Deductions, or to account 110, Accumulated Provision for Depreciation and Amortization of Utility Plant, as appropriate.

(d) Records supporting this account shall be kept so as to show separately the book cost of each franchise or consent.

(e) Note: Annual or other periodic payments under franchises shall not be included herein but in the appropriate operating expense account.

(3) 303 - Miscellaneous Intangible Plant:

(a) This account shall include the cost of patent rights, licenses, privileges, and other intangible property necessary or valuable in the conduct of utility operations and not specifically chargeable to any other account.

(b) When any item included in this account is retired or expires, the book cost thereof shall be credited hereto and charged to account 426, Miscellaneous Income Deductions, or to account 110, Accumulated Provision for Depreciation and Amortization of Utility Plant, as appropriate.

(c) This account shall be maintained in such a manner that the utility can furnish full information with respect to the amounts included herein.

B. Utility Land and Structures:

(1) 310 - Utility Land and Rights-of-Way: This account shall include the cost of all utility land, land rights, and rights-of-way. (See Utility Plant Instruction 6 [F].)

(2) 311 - Utility Structures and Improvements: This account shall include the cost in place of structures and improvements used and useful in connection with utility operations. (See Utility Plant Instruction 7 [G].)

C. Source of Supply Plant:

(1) 312 - Collecting and Impounding Reservoirs: This account shall include the cost in place of structures and improvements used for impounding, collecting, and then storing water in the source of supply system.

(a) Items:

(i) Aerators (when installed as an integral part of collecting and impounding reservoirs).

(ii) Bridges and culverts.

(iii) Clearing land.

(iv) Dams.

(v) Drainage conduits.

(vi) Embankments.

(vii) Fish ladders and elevators.

(viii) Fences.

(ix) Gate houses and equipment.

(x) Landscaping.

(xi) Lighting systems.

(xii) Retaining walls.

(xiii) Roads and paths.

(xiv) Sewers.

(xv) Spillways and channels.

(xvi) Any other permanent improvement to collecting and impounding reservoirs.

(b) **[RESERVED]**

(2) 314 - Wells and Springs: This account shall include the cost installed of wells and springs used as a source of water supply.

(a) Items:

(i) Clearing land.

(ii) Collecting basins.

(iii) Collecting pipes.

(iv) Fences.

(v) Landscaping.

(vi) Lighting systems.

(vii) Overflow spillways and channels.

(viii) Sewers.

(ix) Springs and appurtenances.

(x) Wells, casings, and appurtenances, including cost of test wells and nonproductive wells drilled as part of a project resulting in a source of water within the same supply area.

(3) 317 - Other Water Source Plant: This account shall include the cost installed of other water source plant which is not properly includable in other source of supply plant accounts.

D. Pumping Plant:

(1) 325 - Electric Pumping Equipment: This account shall include the cost installed of pumping equipment driven by electric power.

(a) Items:

(i) Motors for driving pumps.

(ii) Pumps, including setting, gearing, shafting, and belting.

(iii) Water piping within station, including valves.

(iv) Auxiliary equipment for motors and pumps such as oiling systems, cooling systems, condensers, etc.

(v) Electric power lines and switching.

(vi) Regulating recording, and measuring devices.

(vii) Foundations, frames, and bed plates.

(viii) Ladders, stairs, and platforms if a part of pumping unit.

(2) 328 - Other Pumping Equipment: This account shall include cost of equipment used in pumping operations not properly includable in account 325 such as gas engine and gasoline engine pumping equipment.

E. Water Treatment Plant: 332 - Water Treatment Equipment: This account shall include the cost installed of apparatus equipment and other facilities used for the treatment of water.

F. Transmission and Distribution Plant:

(1) 342 - Distribution Reservoirs and Tanks: This account shall include the cost in place of reservoirs, tanks, standpipes, and appurtenances used in storing water for distribution. (See Utility Plant Instruction 7.)

(a) Items:

(i) Aerators (when installed as an integral part of distribution reservoirs).

(ii) Bridges and culverts.

(iii) Clearing land.

(iv) Dams.

(v) Embankments.

(vi) Fences.

(vii) Foundations.

(viii) Gates and gate houses.

- (ix) Landscaping.
- (x) Lighting systems.
- (xi) Piping system within reservoirs.
- (xii) Retaining walls.
- (xiii) Roads and paths.
- (xiv) Rust-proofing apparatus.
- (xv) Sewers.
- (xvi) Spillways and channels.
- (xvii) Standpipes.
- (xviii) Superstructures.
- (xix) Tanks.
- (xx) Towers.
- (xxi) Valves and appurtenances.
- (xxii) Valve vaults and houses.
- (xxiii) Water level control apparatus.

(b) **[RESERVED]**

(2) 343 - Mains:

(a) This account shall include the cost installed of mains and appurtenances.

(b) Records supporting this account shall be so kept as to show separately the cost of mains for different sizes and types.

(c) Items:

- (i) Air chambers.
- (ii) Blow-offs and overflows.
- (iii) Bridges and culverts.

- (iv) Electrolysis control equipment.
- (v) Gauges and recorders.
- (vi) Jointing and jointing materials.
- (vii) Manholes.
- (viii) Meters and appurtenances.
- (ix) Municipal inspection or permits.
- (x) Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
- (xi) Pipes.
- (xii) Placing mains and accessories.
- (xiii) Pressure regulators.
- (xiv) Protection of street openings.
- (xv) Shut-offs.
- (xvi) Special castings.
- (xvii) Sterilizing new mains.
- (xviii) Surge tanks.
- (xix) Trenching, including shoring, bracing, bridging, pumping, backfill, and disposal of excess excavated material.
- (xx) Tunnels.
- (xxi) Valves and appurtenances.
- (xxii) Valve vaults.

(3) 345 - Services:

- (a) This account shall include the cost installed of service pipes and accessories leading to the customer's meter.

(b) A complete service begins with the connection on the main and extends to, but does not include, the connection with the customer's meter. A stub service extends from the main to the property line or the curb stop.

(c) Services which have been used but have become inactive shall be retired from utility plant in service immediately if there is no prospect for reuse, and, in any event, shall be retired by the end of the second year following that during which the service became inactive unless reused in the interim.

(d) Items:

(i) Corporation stops or toes.

(ii) Gate valves and boxes.

(iii) Goose necks.

(iv) Jointing and jointing material.

(v) Municipal inspection or permits.

(vi) Pavement disturbed, including cutting replacing pavement, pavement base, sidewalks.

(vii) Pipes.

(viii) Placing pipes and accessories.

(ix) Protection of street openings.

(x) Service or curb boxes.

(xi) Service or curb stops.

(xii) Tapping main.

(e) Note A: When a customer pays all or part of the cost of the service and such cost is properly includable in this account, the amount borne or contributed by the customer shall be credited to account 271, Contributions in Aid of Construction.

(4) 346 - Meters:

(a) This account shall include the cost of meters, devices, and appurtenances attached thereto used for measuring the quantity of water delivered to users whether actually in service or held in reserve.



(b) When a meter is permanently retired from service, the amount at which it is included herein shall be credited to this account.

(c) The records covering meters shall be so kept that the utility can furnish information as to the number of meters of each type and size in service and in reserve as well as the location of each meter included in this account.

(d) Items:

(i) Meters, including badging and initial testing.

(ii) Remote meter registers.

(e) Note A: This account shall not include meters from recording the output of a supply or treatment plant or those located on mains. It includes only those meters to record water delivered to customers, including company use, and those used elsewhere in the system if a type available for general use.

(f) Note B: The utility shall maintain meter records in a form and manner to readily allow all meters to be classified as to type and size. Such records shall also indicate for utility owned meters whether the meter is in service or is held in reserve and the number of meters in service owned by customers.

(5) 347 - Meter Installations:

(a) This account shall include the cost of labor employed, materials used, and expenses incurred in connection with the original installation of customers' meters and devices and appurtenances attached thereto.

(b) When a meter installation is permanently retired from service, the cost thereof shall be credited to this account.

(c) Items:

(i) Installation labor (first installations only).

(ii) Meter coupling.

(iii) Meter bars.

(iv) Meter yokes.

(v) Meter fittings, connections, and shelves.

(vi) Meter vaults or boxes.

(vii) Stops.

(d) Note A: The cost of labor in removing and resetting meters shall be charged to account 920.2 or 922.

(e) Note B: The utility may include the cost of meter installations in account 346, Meters.

(6) 348 - Hydrants:

(a) This account shall include the cost installed of hydrants in service owned by the utility.

(b) Records shall be kept so as to show number, size (nominal diameter or bottom connection), number and size of hose connections, diameter of main to which attached, and type of hydrants classified as to public use and private use.

(c) Items:

(i) Connections to main.

(ii) Excavation, backfill, and disposal of excess excavated material.

(iii) Hydrants and fittings, including barrel and shoe.

(iv) Manholes.

(v) Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.

(vi) Pipe, including leads and drains.

(vii) Tee at main.

(viii) Valves and valve boxes.

G. General Plant:

(1) 391 - Office Furniture and Equipment:

(a) This account shall include the cost of office furniture and equipment owned by the utility devoted to utility service and not permanently attached to buildings, except the cost of such furniture and equipment which the utility elects to assign to other plant accounts on a functional basis.

(b) If the utility has equipment includable in this account at more than one location, separate records shall be maintained for each location.

(c) Items:

- (i) Book cases and shelves.
- (ii) Desks, chairs, and desk equipment.
- (iii) Drafting room equipment.
- (iv) Filing, storage, and other cabinets.
- (v) Floor covering.
- (vi) Library and library equipment.
- (vii) Mechanical office equipment such as accounting machines, typewriters, computers, etc.
- (viii) Safes.
- (ix) Tables.

(2) 392 - Transportation Equipment: This account shall include the cost of transportation vehicles used for utility purposes.

(a) Items:

- (i) Airplanes.
- (ii) Automobiles.
- (iii) Bicycles.
- (iv) Electrical vehicles.
- (v) Motor trucks.
- (vi) Motorcycles.
- (vii) Repair cars or trucks.
- (viii) Tractors and trailers.
- (ix) Other transportation vehicles.

(b) **[RESERVED]**

(3) 393 - Stores Equipment:

(a) This account shall include the cost of equipment used for the receiving, shipping, handling, and storage of materials and supplies.

(b) If the utility has equipment includable in this account at more than one location, separate records shall be maintained for each location.

(c) Items:

- (i) Chain falls.
- (ii) Counters.
- (iii) Cranes (portable).
- (iv) Elevating and stacking equipment (portable).
- (v) Hoists.
- (vi) Lockers.
- (vii) Scales.
- (viii) Shelving.
- (ix) Storage bins.
- (x) Trucks, hand and power driven.
- (xi) Wheelbarrows.

(4) 394 - Tools, Shop and Garage Equipment: This account shall include the cost of tools, implements, and equipment used in construction, repair work, general shops, and garages and not specifically provided for or includable in other accounts.

(a) Items:

- (i) Air compressors.
- (ii) Anvils.
- (iii) Automobile repair shop equipment.

- (iv) Battery charging equipment.
- (v) Belts, shafts, and countershafts.
- (vi) Boilers.
- (vii) Cable pulling equipment.
- (viii) Concrete mixers.
- (ix) Drill presses.
- (x) Derricks.
- (xi) Electric equipment.
- (xii) Engines.
- (xiii) Forges.
- (xiv) Furnaces.
- (xv) Foundations and settings specially constructed for and not expected to outlast the equipment for which provided.
- (xvi) Gas producers.
- (xvii) Gasoline pumps, oil pumps, and storage tanks.
- (xviii) Greasing tools and equipment.
- (xix) Hoists.
- (xx) Ladders.
- (xxi) Latches.
- (xxii) Machine tools.
- (xxiii) Motor-driven tools.
- (xxiv) Motors.
- (xxv) Pipe threading and cutting tools.

- (xxvi) Pneumatic tools.
- (xxvii) Pumps.
- (xxviii) Riveters.
- (xxix) Smithing equipment.
- (xxx) Tool racks.
- (xxxi) Vises.
- (xxxii) Welding apparatus.
- (xxxiii) Work benches.

(b) **[RESERVED]**

(5) 395 - Laboratory Equipment:

(a) This account shall include the cost installed of laboratory equipment used for general laboratory purposes and not specifically provided for or includable in other departmental or functional plant accounts.

(b) If the utility has equipment includable in this account at more than one location, separate records shall be maintained for each location.

(c) Items:

- (i) Autoclaves.
- (ii) Barometers.
- (iii) Cameras.
- (iv) Centrifuge.
- (v) Distilling apparatus.
- (vi) Furnaces.
- (vii) Microscopes.
- (viii) Ovens.
- (ix) Pitometers.

- (x) Rain gauges.
- (xi) Refrigerators.
- (xii) Scales.
- (xiii) Sterilizers.
- (xiv) Stop watches.
- (xv) Testing machines.
- (xvi) Thermometers.
- (xvii) Voltmeters.
- (xviii) Other bacteriological, electric, chemical, hydraulic, or research equipment.

(6) 396 - Power Operated Equipment:

(a) This account shall include the cost of power operated equipment used in construction or repair work exclusive of equipment includable in other accounts. Include, also, the tools and accessories acquired for use with such equipment and the vehicle on which such equipment is mounted.

(b) Items:

- (i) Air compressors, including driving unit vehicle.
- (ii) Backfilling machines.
- (iii) Boring machines.
- (iv) Bulldozers.
- (v) Cranes and hoists.
- (vi) Diggers.
- (vii) Engines.
- (viii) Pile drivers.
- (ix) Pipe cleaning machines.

- (x) Pipe coating or wrapping machines.
- (xi) Tractors - crawler type.
- (xii) Trenches.
- (xiii) Other power operated equipment.

(c) Note: It is intended that this account include only such large units as are generally self-propelled or mounted on moveable equipment.

(7) 397 - Communication Equipment:

(a) This account shall include the cost installed of telephone, telegraph, and wireless equipment for general use in connection with utility operations.

(b) Items:

- (i) Antennae.
- (ii) Booths.
- (iii) Cables.
- (iv) Distribution boards.
- (v) Extension cords.
- (vi) Gongs.
- (vii) Handsets, manual and dial.
- (viii) Insulators.
- (ix) Intercommunicating sets.
- (x) Loading coils.
- (xi) Operators' desks.
- (xii) Poles and fixtures used wholly for telephone and telegraph wires.
- (xiii) Radio transmitting and receiving sets.
- (xiv) Remote control equipment and lines.



- (xv) Sending keys.
- (xvi) Storage batteries.
- (xvii) Switchboards.
- (xviii) Telautograph circuit connections.
- (xix) Telegraph receiving sets.
- (xx) Telephone and telegraph circuits.
- (xxi) Testing instruments.
- (xxii) Towers.
- (xxiii) Underground conduit used wholly for telephone and telegraph wires and cable wires.

(8) 398 - Miscellaneous Equipment:

(a) This account shall include the cost of equipment apparatus, etc., used in utility operations which is not includable in any other account.

(b) Items:

- (i) Hospital and infirmary equipment.
- (ii) Kitchen equipment.
- (iii) Recreation equipment.
- (iv) Radios.
- (v) Restaurant equipment.
- (vi) Soda fountains.
- (vii) Operator's cottage furnishings.
- (viii) Electric signs advertising the corporate name or symbol, plant or facility name, or otherwise serving only the general purpose of acquainting the public with the facilities and services of the utility. (The cost of operating such signs shall be charged to account 930, Customer Information and Sales Expenses.)
- (ix) Other miscellaneous equipment.

(c) Note: Miscellaneous equipment of the nature indicated above wherever practicable shall be included in the utility plant accounts on a functional basis.

(9) 399 - Other Tangible Property: This account shall include the cost of tangible utility plant not provided for elsewhere.

[Recompiled 12/30/01]

#### **17.12.720.18 INCOME ACCOUNTS:**

##### **A. Utility Operating Income:**

(1) 400 - Operating Revenues: There shall be shown under this caption the total amount included in the operating revenue accounts provided herein and in similar accounts for other utility department. Separate subaccounts shall be maintained for each utility department.

(2) 401 - Operation and Maintenance Expense: There shall be shown under this caption the total amount included in the expense accounts provided herein.

##### **(3) 403 - Depreciation Expense:**

(a) This account shall include the amount of depreciation expense for all classes of depreciable utility plant in service.

(b) The utility shall keep such records of property and property retirements as will reflect the service life of property which has been retired and also such records as will reflect the percentage of salvage and cost of removal for property retired.

(c) Note A: Depreciation expense applicable to property included in account 104, Utility Plant Leased to Others, shall be charged to account 413, Income from Utility Plant Leased to Others.

##### **(4) 408 - Taxes Other Than Income Taxes:**

(a) This account shall include the amount of ad valorem, gross revenue or gross receipts taxes, regulatory agency general assessments for purposes of public utility regulation, state unemployment insurance, franchise taxes, federal excise taxes, social security taxes, and all other taxes assessed by federal, state, county, municipal, or other local governmental authorities, except income taxes.

(b) This account shall be charged in each accounting period with the amount of taxes applicable thereto, with concurrent credits to account 236, Taxes Accrued, or account 166, Prepayments, as appropriate. When it is not possible to determine the exact amount of taxes, the amount shall be estimated and adjustments made in current accruals as the actual tax levies become known.

(c) The charges to this account shall be made or supported so as to show the amount of each tax and the basis upon which each charge is made. In the case of a utility rendering a number of utility services, taxes includable in this account shall be assigned directly to the utility department the operation of which gave rise to the tax in so far as practicable. Where the tax is not attributable to a specific utility department, it shall be distributed among the utility departments or nonutility operations on an equitable basis.

(5) 409 - Income Taxes:

(a) This account shall include the amount of state and federal income taxes properly accruable during the period covered by the income statement to meet the actual liability for such taxes. Concurrent credits for the tax accruals shall be made to account 236, Taxes Accrued, and as the exact amount of taxes becomes known, the current tax accruals shall be adjusted by a charge or credit to this account, unless such adjustment is properly includable in account 439, Adjustments to Retained Earnings, so that this account as nearly as can be ascertained shall include the actual taxes payable by the utility. (See General Instruction 9 for prior period adjustment.)

(b) The accruals for state and federal income taxes shall be apportioned to Utility Operating Income (by department), Other Income and Deductions, and Extraordinary Items so that, as nearly as practicable, each tax shall be included in the expenses of the utility department, Other Income and Deductions, or Extraordinary Items, the income from which gave rise to the tax. The income tax effect of amounts recorded in account 439, Adjustments to Retained Earnings, shall be recorded in that account. The tax effects relating to interest charges, other than interest specifically applicable to indebtedness on property in accounts 121 and 124, shall be included in account 409, Income Taxes, Utility Operating Income.

(c) Note A: Taxes assumed by the utility on interest shall be charged to account 431, Other Interest Expense.

(d) Note B: Interest on tax refunds or deficiencies shall not be included in this account but in account 419, Interest and Dividend Income, or account 431, Other Interest Expense, as appropriate.

(6) 410 - Provision for Deferred Income Taxes: This account shall be debited, and Accumulated Deferred Income Taxes shall be credited with an amount equal to any deferral of taxes on income as provided by the texts of account 283.

(7) 412 - Investment Tax Credits:

(a) This account shall be debited with the total amount of investment tax credits used in calculating the reported current year's income taxes, except to the extent that such investment tax credits are to be passed on to customers currently, as approved or directed by the Commission.

(i) Where the investment tax credits are passed on to customers currently, they are to be treated solely as a reduction in income taxes for the year and no entries would be necessary.

(ii) When a company is using deferral accounting for the investment tax credits allowed for the current year, account 255, Accumulated Deferred Investment Tax Credits, shall be credited with an equal amount of the investment tax credits debited to this account.

(b) A company which has deferred its investment tax credits will amortize these deferred tax amounts by crediting this account and debiting account 255. Such annual amortization shall be allocated proportionately over the average useful life of the property to which the tax credits relate or such lesser period as may be adopted and consistently used by the company.

(c) This account shall be kept so that the debits and credits relating to the utility and to each nonutility operation may be readily identified.

(8) 413 - Income from Utility Plant Leased to Others:

(a) This account shall include revenues from utility property leased by the utility to others, and which property is properly includable in account 104, Utility Plant Leased to Others, and the expenses attributable to such property. Records shall show separately revenues and expenses.

(b) Note: Related operating taxes shall be recorded in account 408, Taxes Other than Income Taxes, Utility Operating Income, and income taxes shall be recorded in account 409, Income Taxes, Utility Operating Income, identified separately.

(9) 414 - Gains (Losses) from Disposition of Utility Property:

(a) This account shall include, when authorized or required by the Commission, gains and losses from the sale, conveyance, exchange, or transfer of utility property to another. (See Utility Plant Instructions 4, 6, and 9 and account 422, Gains (Losses) from Disposition of Property.) The income tax effect attributable to gains and losses recorded in this account shall be recorded in account 409, Income Taxes, Utility Operating Income.

(b) This account shall be maintained so that the transactions and details underlying each gain or loss will be readily identifiable.

B. Other Income and Deductions: Other Income:

(1) 415 - Revenues from Merchandising, Jobbing, and Contract Work:

(2) 416 - Costs and Expenses of Merchandising, Jobbing, and Contract Work:

(a) This account shall include, respectively, all revenues derived from the sale of merchandise and jobbing or contract work, including any profit or commission accruing to the utility on jobbing work performed by it as agent under contracts whereby it does jobbing work for another for a stipulated profit or commission, and all expenses incurred in such activities.

(b) Records in support of this account shall be kept as to permit ready summarization of revenues, costs, and expenses by such major items as are feasible.

(3) 417 - Income from Nonutility Operations:

(a) This account shall include revenues and expenses applicable to operations which are nonutility in character but nevertheless constitute activity of the enterprise as a whole, such as performing work for and customer's facilities, providing sewage disposal service where applicable statutes do not define such operation as a utility, or the operation of any organization for furnishing services to others.

(b) Items: Revenues:

(i) Charges for installing meters owned by customers.

(ii) Charges for tapping mains and installing services when not includable in account 345, Services.

(iii) Revenues from sales of meters to customers or others for installation on customers' premises.

(iv) Revenues from sale of water appliances and from piping and other jobbing or contract work.

(v) Discounts and allowances made in settlement of bills for merchandise and jobbing work.

(c) Expenses:

(i) Cost of merchandise sold and materials used for jobbing work, including transportation, storage, and handling.

(ii) Payroll and related labor costs and expenses of employees engaged in selling, delivery, and installation of appliances or of jobbing or contract work.

(iii) Clerical labor and expenses in merchandise and jobbing activities.

(iv) Inventory adjustments applicable to merchandise and jobbing stock.

(v) Light, heat, and power.

(vi) Losses from uncollectible accounts.

(vii) Shop expense.

(viii) Tool expenses.

(ix) Supervision of merchandise and jobbing activities.

(4) 418 - Nonoperating Rental Income:

(a) This account shall include all rent revenues and related expenses of land, buildings, or other property included in account 121, Nonutility Property, which is not used in operations covered by account 417.

(b) The expenses shall include all elements of costs incurred in the ownership and rental of the property and the accounts shall be maintained so as to permit ready summarization as follows: Operation, Maintenance, Rents, Depreciation, Amortization.

(c) Note: Related operating taxes shall be recorded in account 408.2, Taxes Other Than Income Taxes, Other Income and Deductions, and income taxes shall be recorded in account 409.2, Income Taxes, Other Income and Deductions.

(5) 419 - Interest and Dividend Income:

(a) This account shall include interest revenues on securities, loans, notes, advances, special deposits, tax refunds, and all other interest-bearing assets and dividends on stocks of other companies whether the securities on which the interest and dividends are received are carried as investments or included in sinking or other special fund accounts.

(b) All expenses, excluding operating taxes and income taxes, applicable to security investments and to interest and dividend revenues thereon, shall be charged hereto.

(c) Note A: Related operating taxes shall be recorded in account 408, Taxes Other Than Income Taxes, Other Income and Deductions, and income taxes shall be recorded in account 409, Income Taxes, Other Income and Deductions.

(d) Note B: Interest accrued, the payment of which is not reasonably assured, dividends receivable which have not been declared or guaranteed, and interest or dividends upon reacquired securities issued or assumed by the utility shall not be recorded.

(6) 421 - Miscellaneous Nonoperating Income:

(a) This account shall include all revenue and expense items, except taxes, properly includable in the income account and not provided elsewhere. Related operating taxes shall be recorded in account 408, Taxes Other Than Income Taxes, Other Income and Deductions, and income taxes shall be recorded in account 409, Income Taxes, Other Income and Deductions.

(b) Items:

(i) Profit on sale of timer. (See Utility Plant Instruction 6.)

(ii) Profits from operations of others realized by the utility under contracts.

(iii) Gain on disposition of investments and reacquisition and resale or retirement of utility's debt securities and investment.

(7) 422 - Gains (Losses) from Disposition of Property:

(a) This account shall include gains and losses on the sale, conveyance, exchange, or transfer of utility or other property to another unless otherwise authorized or required by the Commission. (See Utility Plant Instructions 4, 6 and 9, and account 414, Gains (Losses) from Disposition of Utility Property.) The income tax effect attributable to gains and losses shall be recorded in account 409, Income Taxes, Other Income and Deductions.

(b) This account shall be maintained so that the transactions and details underlying each gain or loss will be readily identifiable.

(8) Other Income Deductions: 425 - Miscellaneous Amortizations:

(a) This account shall include amortization charges not includable in other accounts which are properly deductible in determining the income of the utility before interest charges.

(b) Items:

(i) Amortization of utility plant acquisition adjustments or of intangibles included in utility plant in service when not authorized to be included in utility operating expenses by the Commission.

(ii) Amortization of amounts in account 182, Extraordinary Property Losses, when not authorized to be included in utility operating expenses by the Commission.

(9) 426 - Miscellaneous Income Deductions:

(a) This account shall include miscellaneous expense items which are nonoperating in nature but which are properly deductible before determining total

income before interest charges. Separate subaccounts shall be maintained for each category of expense as indicated by the following item list.

(b) Items:

(i) Donations for charitable, social, or community welfare purposes.

(ii) Life insurance of officers and employees where utility is beneficiary (net premiums less increase in such surrender value of policies).

(iii) Penalties or fines for violation of statutes pertaining to regulation.

(iv) Expenditures for the purpose of: a) Influencing public opinion with respect to the election or appointment of public officials, or the adoption, repeal, revocation, or modification of referenda, legislation, or ordinances. b) Influencing public opinion with respect to obtaining approval, modification, or revocation of franchises. c) Influencing the decisions of public officials not including such expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the utility's existing or proposed operations.

(v) Loss relating to investments in securities written off or written down.

(vi) Loss on sale of investments.

(vii) Loss on reacquisition, resale, or retirement of utility's debt securities.

(viii) Preliminary survey and investigation expenses related to abandoned projects when not written off to the appropriate operating expense account.

(ix) Golf club dues, social club dues, and service club dues (Kiwanis, Rotary, etc.), house charges, and items of a similar nature whether such expenditures are made directly by the utility or indirectly by payment or reimbursement to associated companies, officers, or other employees, or by any other employees, or by any other direct or indirect means.

C. Interest Charges:

(1) 427 - Interest on Long Term Debt:

(a) This account shall include in each accounting period the amount of interest applicable thereto on outstanding long term debt issued or assumed by the utility, the liability for which is included in account 224, Long Term Debt.

(b) This account shall be so kept or supported as to show the interest accruals on each item of long term debt.



(2) 431 - Other Interest Expense:

(a) This account shall include in each accounting period all interest charges not provided for elsewhere.

(b) Items:

(i) Interest on notes payable on demand or maturing one (1) year or less from date and on open accounts, except notes and accounts with associated companies.

(ii) Interest on customers' deposits.

(iii) Interest on claims and judgments, tax assessments, and assessments for public improvements past due.

(iv) Income and other taxes levied upon bondholders of utility and assumed by it.

(v) Interest on debt to associated companies.

D. Extraordinary Items:

(1) 433 - Extraordinary Income: Upon approval of the Commission, this account shall be credited with nontypical, noncustomary, infrequently recurring gains which would significantly distort the current year's income computed before extraordinary items, if reported other than as extraordinary items. The applicable income tax effects of this account shall be recorded in account 409, Income Taxes, identified separately.

(2) 434 - Extraordinary Deductions: Upon approval of the Commission, this account shall be debited with nontypical, noncustomary, infrequently recurring losses which would significantly distort the current year's income computed before extraordinary items. The applicable income tax effects of this account shall be recorded in account 409, Income Taxes, identified separately.

[Recompiled 12/30/01]

**17.12.720.19 RETAINED EARNINGS ACCOUNTS:**

A. 435 - Balance Transferred from Income: This account shall include the net credit or debit transferred from income for the year.

B. 436 - Appropriations of Retained Earnings:

(1) This account shall include appropriations of retained earnings.

(2) Item:

(a) Appropriations required under terms of mortgages, orders of court, contracts, or other agreements.

(b) Appropriations required by action of regulatory authorities.

(c) Other appropriations made at option of utility for specific purposes.

C. 438 - Dividends Declared:

(1) This account shall include amounts declared payable out of retained earnings as dividends on actually outstanding common stock issued by the utility.

(2) Dividends shall be segregated for each class of common stock as to those payable in cash, stock, and other forms. If not payable in cash, the medium of payment shall be described with sufficient detail to identify it.

D. 439 - Adjustments to Retained Earnings:

(1) This account shall include significant nonrecurring transactions relating to prior periods. Other than transactions of stock as specified in paragraph B [(2)] below, all entries to this account must receive prior Commission approval. These transactions are limited to those adjustments which (a) can be specifically identified with and related to the business activities of particular prior periods, (b) are not attributable to economic events occurring subsequent to the date of the financial statements for the prior period, (c) depend primarily on determinations by persons other than the management, and (d) were not susceptible to reasonable estimation prior to such determination. This account shall also include the related income tax effects (State and Federal) on items included herein. All items included in this account shall be sufficiently described in the entries relating thereto as to permit ready analysis.

(2) Adjustments, charges, or credits due to losses on reacquisition, resale, or retirement of the company's own capital stock shall be included in this account.

(3) Item:

(a) Significant nonrecurring adjustments or settlement of income taxes.

(b) Significant amounts resulting from litigation or similar claims.

(c) Significant amounts relating to adjustments or settlements of utility revenue under rate processes.

(d) Significant adjustments to plant in service depreciation and amortization as a result of Commission direction.

(e) Write-off of unamortized capital stock expenses.

[Recompiled 12/30/01]

**17.12.720.20 OPERATING REVENUE ACCOUNTS:**

A. Sales of Water:

(1) 460 - Unmetered Sales to General Customers:

(a) This account shall include the net billing for water supplied for residential, commercial, and industrial (except irrigation) purposes where the charge is not dependent in any way on the quantity of water delivered but is based on diameter of service pipe, room, foot of frontage, or other similar unit.

(b) Records shall be maintained so that the estimated quantity of water sold and the amount of revenue under each rate schedule shall be readily available.

(c) This account shall be subdivided at least as follows whenever possible: 460.1 Metered Sales to Residential Customers; 461.2 Metered Sales to Commercial Customers; 461.3 Metered Sales to Public Authorities; 461.4 Metered Sales to Public Authorities

(2) 464 - Other Sales of Water to Customers: This account shall include all revenue for water sold to customers not properly includable in either accounts 460 or 461.

B. Other Operating Revenues:

(1) 471 - Miscellaneous Service Revenues:

(a) This account shall include revenues for all miscellaneous services and charges billed to customers which are not specifically provided for in other accounts.

(b) Items:

(i) Fees for changing or reconnecting service.

(ii) Profit on maintenance of appliances, piping, or other installations on customers' premises.

(iii) Net credit or debit (cost less net salvage and less payment from customers) on closing of work order for plant installed for temporary service of less than one (1) year.

(iv) Recovery of expenses in connection with unauthorized taking of water (billing for the water used shall be included in the appropriate water revenue account).

(2) 472 - Rents from Water Property:

(a) This account shall include rents received for the use by others of land, buildings, and other property devoted to water operations by the utility.

(b) When property owned by the utility is operated jointly with others under a definite arrangement for apportioning the actual expenses among the parties to the arrangement, any amounts received by the utility for interest or return or in reimbursement of taxes or depreciation on the property shall be credited to this account.

(c) Note: Do not include in this account rents from property constituting an operating unit or system. (See account 413, Income from Utility Plant Leased to Others.)

(3) 474 - Other Water Revenues:

(a) This account shall include revenues derived from water operations not includable in any of the foregoing accounts.

(b) Items:

(i) Commissions on sales or distribution of water of others when sold under rates filed by such others.

(ii) Compensation for minor or incidental services provided for others, such as customers billing, engineering, etc.

(iii) Profit or loss on sale of material and supplies not ordinarily purchased for resale.

[Recompiled 12/30/01]

**17.12.720.21 OPERATIONS AND MAINTENANCE EXPENSE ACCOUNTS:**

A. Source of Supply Expenses:

(1) 601 - Purchased Water.

(a) This account shall include the cost at the point of delivery of water purchased for resale. This includes charges for readiness to serve and the portion applicable to each accounting period of annual or more frequent payments for the right to divert water at the source of supply.

(b) The records supporting this account shall be so kept as to show for each supplier from which water is purchased, point of delivery, quantity purchased, basis of charges, and the cost of water purchased.

(2) **[RESERVED]**

B. Pumping Expenses:

(1) 622 - Fuel or Power Purchased for Pumping:

(a) This account shall include the cost of fuel or power purchased used directly in operation of pumps.

(b) This account shall also include the cost of power transferred to water pumping operations from other departments under joint facility arrangements.

(c) Item:

- (i) Diesel fuel.
- (ii) Electric power.
- (iii) Gasoline.
- (iv) Gas.
- (v) Other fuel or power.
- (vi) Steam.

(2) **[RESERVED]**

C. Water Treatment:

(1) 631 - Chemicals:

(a) This account shall include the cost of all chemicals used in the treatment of water. Include also the entire cost of any chemicals manufactured by the utility.

(b) Items:

- (i) Activated carbon.
- (ii) Ammonia.
- (iii) Caustic soda.

- (iv) Chlorine.
- (v) Copper sulphate.
- (vi) Fluorine compound.
- (vii) High test hypochlorite.
- (viii) Iron sulphate.
- (ix) Lime.
- (x) Soda ash.
- (xi) Sodium chlorite.
- (xii) Sulphate of alumina.
- (xiii) Sulphuric acid.
- (xiv) Other chemicals.

(2) **[RESERVED]**

D. General Expenses: Salaries:

(1) 920.1 - Salaries Paid to Owner(s): This account shall include the compensation (salaries, bonuses, and other consideration for services) of owners of the utility properly chargeable to utility operations.

(2) 920.2 - Salaries Paid to Other Employees: This account shall include the compensation (salaries, wages, bonuses, and other consideration for services) of employees of the utility, permanent or temporary and other than the owner(s), properly chargeable to utility operations.

(3) 921 - Administrative and Office Expenses:

(a) This account shall include office supplies and other expenses incurred in connection with the general administration of the utility's operations which are assignable to specific administrative or general departments and are not specifically provided for in other accounts.

(b) Items:

- (i) Bank messenger and service charges.

(ii) Books, periodicals, bulletins, and subscriptions to newspapers, newsletters, tax services, etc.

(iii) Building service expenses for customer accounts, sales, and administrative and general purposes.

(iv) Communication service (telephone, etc.)

(v) Cost of individual items of office equipment used by general departments which are of small value or short life.

(vi) Membership fees and dues in trade, technical, and professional associations paid by utility for employees. (Company memberships are includable in account 930.)

(vii) Office supplies and expenses.

(viii) Payment of court costs, witness fees, and other expenses of legal department.

(ix) Postage, printing, and stationery.

(x) Meals, traveling, and incidental expenses.

(4) 922 - Maintenance, Repairs, and Supplies: This account shall include all Transmission and Distribution expenses, including supplies and expenses associated with the operation and maintenance of all utility plant, such as wells, reservoirs, tanks, mains, services, hydrants, meters, pumps, water treatment equipment, etc., and including contract labor and equipment costs.

(5) 923 - Outside Services Employed:

(a) This account shall include the fees and expenses of professional consultants and others for general services which are not applicable to a particular operating function nor to other accounts. It shall also include the pay and expenses of persons engaged for a special or temporary administrative or general purpose in circumstances where the person so engaged is not considered as an employee of the utility.

(b) This account shall be so maintained as to permit ready summarization according to the nature of service and the person furnishing the same.

(c) Items:

(i) Fees, pay, and expenses of accountants and auditors, actuaries, appraisers, attorneys, engineering consultants, management consultants, negotiators, public relations counsel, tax consultants, etc.

(ii) Supervision fees and expenses paid under contracts for general management services.

(6) 924 - Property Insurance:

(a) This account shall include the cost of insurance or reserve accruals to protect the utility against losses and damages to owned or leased property used in its utility operations. It shall also include the cost of labor and related supplies and expenses incurred in property insurance activities.

(b) Recoveries from insurance companies or others for property damages shall be credited to that account charged with the cost of the damage. If the damaged property has been retired, the credit shall be to the appropriate account for accumulated provision for depreciation.

(c) Records shall be kept so as to show the amount of coverage for each class of insurance carried, the property covered, and the applicable premiums. Any dividends distributed by mutual insurance companies shall be credited to the accounts to which the insurance premiums were charged.

(d) Items:

(i) Premiums payable to insurance companies for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.

(ii) Amounts credited to account 265, Operating Reserve, for similar protection.

(iii) Special costs incurred in procuring insurance.

(iv) Insurance inspection service.

(v) Insurance counsel brokerage fees and expenses.

(7) 926 - Employees Pensions and Benefits:

(a) This account shall include pensions paid to or on behalf of retired employees, or accruals to provide for pensions, or payments for the purchase of annuities for the purpose when the utility has definitely, by contract, committed itself to a pension plan under which the pension funds are irrevocably devoted to pension purposes, and payments for employee accident, sickness, hospital, and death benefits, or insurance therefor. Include, also, expenses incurred in medical, educational, or



recreational activities for the benefit of employees and administrative expenses in connection with employee pensions and benefits.

(b) The utility shall maintain a complete record of accruals or payments for pensions and be prepared to furnish full information to the Commission of the plan under which it has created or proposes to create a pension fund and a copy of the declaration of trust or resolution under which the pension plan is established.

(c) There shall be credited to this account the portion of pensions and benefits expenses which is applicable to nonutility operations or which is charged to construction unless such amounts are distributed directly to the accounts involved and are not included herein in the first instance.

(d) Records in support of this account shall be kept so that the total pensions expense, the total benefits expense, the administrative expenses included herein, and the amounts of pensions and benefits expenses transferred to construction or other accounts will be readily available.

(e) Items:

(i) Payment of pensions under a nonaccrual of nonfunded basis.

(ii) Accruals for or payments to pension funds or to insurance companies for pension purposes.

(iii) Group and life insurance premiums (credit dividends received).

(iv) Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

(v) Payments for accident, sickness, hospital, and death benefits or insurance.

(vi) Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

(vii) Expenses in connection with educational and recreational activities for the benefit of employees.

(f) Note A: The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in employee pension and benefit activities may be included in account 920 and 921, as appropriate.

(g) Note B: Salaries paid to employees during periods of nonoccupational sickness may be charged to appropriate account 920.2 or 922.

(8) 928 - Regulatory Commission Expenses:

(a) This account shall include all expenses (except pay of regular employees only incidentally engaged in such work properly) includable in utility operating expenses, incurred by the utility in connection with formal cases before regulatory commission or other regulatory bodies, or cases in which such a body is a party.

(b) Amounts of regulatory commission expenses which by approval or direction of the Commission are to be spread over future periods shall be charged to account 183, Other Deferred Debits, and amortized by charges to this account.

(c) The utility shall be prepared to report the cost of each formal case.

(i) Salaries, fees, retainers, and expenses of counsel, solicitors, attorneys, accountants, engineers, clerks, attendants, witnesses, and others engaged in the prosecution of, or defense against, petitions or complaints presented to regulatory bodies, or in the valuation of property owned or used by the utility in connection with such cases.

(ii) Office supplies and expenses, payments to public service or other regulatory commissions, stationery and printing, traveling expenses, and other expenses incurred directly in connection with formal cases before regulatory commissions.

(9) 930 - Miscellaneous General Expenses:

(a) This account shall include the cost of labor and expenses incurred in connection with the general management of the utility not provided for elsewhere.

(b) Items: Expenses:

(i) Industry association dues for company memberships.

(ii) Contributions for conventions and meetings of the industry.

(iii) Institutional or goodwill advertising. (See note below.)

(iv) Public notices of financial, operating, and other data required by regulatory statutes, not including, however, notices required in connection with security issues or acquisitions of property.

(10) Transportation Expenses:

(a) This account shall include the cost of labor, materials used, and expenses incurred in the operation and maintenance of general transportation equipment of the utility.

(b) Items:

- (i) Insurance on transportation equipment.
- (ii) License fees for vehicles and drivers.
- (iii) Rents for equipment and garages.
- (iv) Repairs of transportation equipment.
- (v) Supplies such as gas, oil, tires, tubes, grease, etc.

(c) Note: Transportation expenses applicable to construction shall not be included in operating expenses.

[Recompiled 12/30/01]

#### **17.12.720.22 APPENDIX:**

##### **LIST OF RETIREMENT UNITS:**

A. The retirement units listed herein are prescribed and are to be accounted for in accordance with Utility Plant Instruction 10, Additions and Retirements of Utility Plant, of the Uniform System of Accounts.

B. The retirement units listed are of maximum size.

C. The appearance of a retirement unit under an account warrants the inclusion of the unit in the account mentioned only when the text of the account also indicates the inclusion even though the same unit frequently appears under more than one account.

D. Any item of property which is not properly a "retirement unit" is a minor item of property.

E. Utility Land and Structures:

(1) 306 - Structures and Improvements:

(a) Air conditioning system, ventilating system, heating system, or any combination thereof.

(b) Bulkhead, retaining wall, etc.

(c) Drainage and sewage systems.

(d) Equipment item, such as a generator, engine, turbine, compressor, or similar item of equipment includable in structures, with or without associated wiring, control equipment, etc.

(e) Fence, complete with gates.

(f) Fire escape system.

(g) Fire protection system.

(h) Floor.

(i) Foundation.

(j) Light and power system.

(k) Plumbing system.

(l) Refrigeration system.

(m) Roof, with or without supporting members. (A structure of irregular shape having more than one roof level may have several isolated roofs, each of which shall be considered an entire roof. In the case of structures to which lateral extensions been made, even though having but one level, that part of the roof covering an entire section built at one time shall be considered an entire roof.)

(n) Structure, complete.

(o) Water supply system, including well.

(p) Yard drainage system.

(q) Yard lighting system.

(2) 312 - Collecting and Impounding Reservoirs:

(a) Apron.

(b) Boom.

(c) Bridge or draw span.

(d) Bulkhead.

(e) Cribbing, system of, when not part of a dike, embankment, road, etc.

- (f) Dam.
- (g) Dike or embankment, with or without riprap or core wall.
- (h) Fence, complete.
- (i) Fish ladder, elevator or lock system.
- (j) Forebay.
- (k) Flume, tunnel, or canal.
- (l) Gate.
- (m) Gate hoist.
- (n) Gate hoist track.
- (o) Gate house and equipment.
- (p) Gate section.
- (q) Gravity section.
- (r) Heating or thawing system.
- (s) Intake house, when not a part of structure.
- (t) Lighting system, including wire, supports, fixtures, etc.
- (u) Lock, navigation.
- (v) Penstock.
- (w) Pier.
- (x) Piling, system of, to protect any of the structures.
- (y) Power and control system.
- (z) Road, complete.
- (aa) Sluice or wasteway.
- (bb) Sewer, complete.

- (cc) Stability testing equipment.
- (dd) Substructure, power plant.
- (ee) Tailrace.
- (ff) Tank, surge (complete with surge pipe, visor, housing, heating system, etc.)
- (gg) Trash rack.
- (hh) Trash rack with mechanism.
- (ii) Valve, power operated or other relatively costly valve.
- (jj) Walkway.
- (kk) Wall, wing, cut-off, baffle, retaining.

(3) 314 - Wells and Springs:

- (a) Casing, complete.
- (b) Collecting basin.
- (c) Collecting pipe.
- (d) Fence.
- (e) Lighting system.
- (f) Overflow spillway and channel.
- (g) Screen or strainer, complete.
- (h) Sewer, complete.
- (i) Well or spring structure.

(4) 317 - Other Water Source Plant: Each principal item of water source plant included in the account.

(5) 325 - Electric Pumping Equipment:

- (a) Air lift compressor or pump.

- (b) Automatic control apparatus.
- (c) Crane or hoist.
- (d) Driving unit for each pump.
- (e) Electric power line and related equipment.
- (f) Governor mechanism.
- (g) Meter.
- (h) Oiling system.
- (i) Pump.
- (j) Regulating or recording apparatus.

F. Water Treatment Plant:

- (1) 332 - Water Treatment Equipment:
  - (a) Aerators (except when located at reservoir):
    - (i) Air compressor.
    - (ii) Substructure.
    - (iii) Superstructure.
    - (iv) Coke or other filter medium, complete replacement.
  - (b) Chemical Treating Plant:
    - (i) Agitating equipment.
    - (ii) Ammonia machine.
    - (iii) Carbonating equipment.
    - (iv) Chemical manufacturing plant.
      - (v) Chlorine machine.
    - (vi) Coke, complete replacement.

- (vii) Dry fine.
- (viii) Dry storage bin.
- (ix) Electrolytic cell.
- (x) Elevator (when not part of structure).
- (xi) Fluoridation equipment.
- (xii) Gravity feed or pump feed apparatus.
- (xiii) Rate controller.
- (xiv) Solution feed equipment.
- (xv) Switchboard.
- (xvi) Weighing equipment.

(2) **[RESERVED]**

G. Transmission and Distribution Plant:

- (1) 342 - Distribution Reservoirs and Tanks:
- (a) Aerator.
  - (b) Bridge or culvert.
  - (c) Dam.
  - (d) Embankment.
  - (e) Fence.
  - (f) Gate.
  - (g) Gate house.
  - (h) Lighting system.
  - (i) Retaining wall.
  - (j) Road.



- (k) Sewer, complete.
  - (l) Spillway or channel.
  - (m) Standpipe.
  - (n) Elevated tank.
  - (o) Water level control and recording apparatus.
- (2) 343 - Mains:
- (a) Bridge or culvert.
  - (b) Canal.
  - (c) Gate.
  - (d) Gatehouse.
  - (e) Gauge or recorder.
  - (f) Main, two or more standard lengths of, including fittings, or one continuous run of 24 feet or more.
  - (g) Manhole or vault.
  - (h) Meter.
  - (i) Meter house.
  - (j) Pressure regulator.
  - (k) Tunnel.
- (3) 345 - Services: Service, main to curb or property line or main to meter, if extension beyond curb or property line is owned by utility.
- (4) 346 - Meters: Meter.
- (5) 347 - Meter Installations: Meter installation.
- (6) 348 - Hydrants:
- (a) Hydrant lead.

(b) Hydrant.

(c) Note: The hydrant lead includes the fitting at the connection with the main, piping, excavation, backfill, pavement cut and replaced, and the hydrant cell. The hydrant includes the hydrant and fittings, excavation, backfill, etc.

(7) 349 - Other Transmission and Distribution Plant:

(a) Cistern or basin.

(b) Fountain.

(c) Water trough.

(8) 391 - Office Furniture and Equipment: Each principal item of equipment, such as:

(a) Office equipment--accounting machine, adding machine, calculating machine, coin counters, signature writer, typewriter.

(b) Office furniture--desk, cabinet, safe, file.

(c) Duplicating equipment--blueprint machine, photostatic machine, offset press, photocopy machine, transcopy machine.

(d) Mechanical processing equipment--key punch, sorters, tabulators, electronic calculators.

(9) 392 - Transportation Equipment: Each principle item of equipment, such as:

(a) Airplane.

(b) Automobile.

(c) Boat.

(d) Electrical vehicle.

(e) Motor truck.

(f) Motorcycle.

(g) Tractor.

(h) Trailer, wagon, etc.

(10) 393 - Stores Equipment: Each principal item of equipment, such as:

(a) Shop equipment and tools--drill press, welding machine, forge, furnace, lathe, planer, shaper.

(b) Garage and repair equipment--gasoline or oil pump, battery charging set, car lift, power-driven greasing machine.

(c) Tools and work equipment--pneumatic tool, welding set, power saw, transit, level, concrete mixer.

(11) 395 - Laboratory Equipment: Each principal item of equipment, such as:

(a) Centrifuge.

(b) Dynamometer.

(c) Oscillograph.

(d) Meter testing equipment.

(e) Transformer, testing, and loading.

(12) 396 - Power Operated Equipment: Each principal item of equipment, such as:

(a) Air compressor, including driving unit and vehicle.

(b) Backfilling machine.

(c) Boring machine.

(d) Brush grinder.

(e) Bulldozer.

(f) Crane or hoist.

(g) Digger.

(h) Pipe coating or wrapping machine.

(i) Pipe cleaning machine.

(j) Tractor.

(k) Trencher.

(13) 397 - Communication Equipment: Each principal item or set of equipment, such as:

- (a) Antenna and supporting structure.
- (b) Carrier current coupling capacitor.
- (c) Carrier current transmitting and receiving set.
- (d) Intercommunicating telephone apparatus.
- (e) Microwave apparatus.
- (f) Receiver, stationary or mobile.
- (g) Storage battery set or motor generator set.
- (h) Teletype apparatus.
- (i) Transmitter, stationary or mobile.

(14) 398 - Miscellaneous Equipment: Each principal item of equipment includable in this account.

(15) 399 - Other Tangible Property: Units to be assigned as items if property is included herein.

[Recompiled 12/30/01]

## **PART 721-729: [RESERVED]**

## **PART 730: FILING REQUIREMENTS IN SUPPORT OF RATE SCHEDULES FOR CLASS A AND B UTILITIES**

### **17.12.730.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

### **17.12.730.2 SCOPE:**

[Recompiled 12/30/01]

**17.12.730.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

**17.12.730.4 DURATION:**

[Recompiled 12/30/01]

**17.12.730.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.12.730.6 OBJECTIVE:**

The purpose of NMPSC Rule 730 [17.12.730 NMAC] is to define and specify the minimum data requirements to be filed by water utilities in support of a tendered new rate schedule or rate schedules which will supersede, supplement, or otherwise change the provision of a rate schedule required to be on file with the Commission.

[Recompiled 12/30/01]

**17.12.730.7 DEFINITIONS:**

[Recompiled 12/30/01]

**17.12.730.8 TABLE OF CONTENTS:**

- A. Purpose [17.12.730.6 NMAC]
- B. Minimum Data Requirements for Rate Filings [17.12.730.9 NMAC]
- C. Letter of Transmittal to Accompany Rate Filing Package for Class A and B Water Utilities [17.12.730.10 NMAC]
- D. Appendix: Minimum Data Standard Requirements - -Class A and B Water Utilities [17.12.730.11 NMAC and 17.12.730.12 NMAC]

[Recompiled 12/30/01]

**17.12.730.9 MINIMUM DATA REQUIREMENTS FOR RATE FILINGS:**

Provisions for rate filings are divided into the three levels of operation set out in the classification of water utilities in NMPSC Rule 710.4 [Section 7 of 17.12.1 NMAC]. NMPSC Rule 730 [17.12.730 NMAC] provides that water utilities shall file for rates in one (1) of three (3) formats. Class A and Class B water utilities as defined in NMPSC Rule 710.4 [Section 7 of 17.12.1 NMAC], must file the most comprehensive package,

set forth in the Appendix to NMPSC Rule 730 [17.12.730 NMAC]; Class C water utilities as defined in NMPSC Rule 710.4 [Section 7 of 17.12.1 NMAC] may file a simpler package, set forth in the Appendix to NMPSC Rule 780 [17.12.780 NMAC]; Class D water utilities as defined in NMPSC Rule 710.4 [Section 7 of 17.12.1 NMAC] may file the most abbreviated package, set forth in the Appendix to NMPSC Rule 780 [17.12.780 NMAC].

[Recompiled 12/30/01]

**17.12.730.10 LETTER OF TRANSMITTAL TO ACCOMPANY RATE FILING PACKAGE FOR CLASS A AND B WATER UTILITIES:**

. In the Letter of Transmittal the applicant shall:

A. notify the New Mexico Public Utility Commission [New Mexico Public Regulation Commission] of the tendered rate schedules which will supersede, supplement, or otherwise change any provision of a separate schedule required to be on file with the Commission;

B. include copies of each tendered rate schedule which, will supersede, supplement, or otherwise change the provision of a rate schedule required to be on file with the Commission;

C. state the date on which the applicant proposes to make the changes in service or rate, rule, or practice effective;

D. state a brief description of the proposed changes in service and/or rate, the reason for the proposed change, and shall show that all the requisite agreements to the proposed change, including any contract embodied therein, have in fact been obtained;

E. state that notice has been given or will be given as required by the Rules of the New Mexico Public Utility Commission [New Mexico Public Regulation Commission]; and

F. list the documents submitted in support of the proposed changes.

[Recompiled 12/30/01]

**17.12.730.11 APPENDIX:**

**MINIMUM DATA STANDARD REQUIREMENTS CLASS A AND B WATER UTILITIES: [CONTENTS]:**

A. Schedule A Series: Summaries of the proposed cost of service

(1) Sch. A-1: Summary of the overall cost of service and the claimed revenue deficiency: Base Period; Test Year Period.

(2) Sch. A-2: Summary of the revenue increase or decrease at the proposed rates by rate classes: Test Year Period.

(3) Sch. A-3: Summary of the cost of service adjustments by functional classification and primary account: Test Year Period.

(4) Sch. A-4: Summary of Rate Base: Base Period; Test Year Period; Test Year Period RCND.

(5) Sch. A-5: Summary of total capitalization and the weighted average cost of capital: Base Period; Test Year Period; Test Year Period RCND.

B. Schedule B Series: Original cost of plant in service.

(1) Sch. B-1: Original cost of plant in service by primary account: Base Period; Test Year Period.

(2) Sch. B-2: Original cost of plant in service by detail account: Base Period; Test Year Period.

(3) Sch. B-3: Construction work in progress: Base Period; Test Year Period.

(4) Sch. B-4: Allowance for funds used during construction generated and capitalized: Base Period; Test Year Period.

(5) Sch. B-5: Plant held for future use: Base Period; Test Year Period.

C. Schedule C Series: Accumulated provision for depreciation and amortization.

(1) Sch. C-1: Accumulated provision for depreciation and amortization by functional classification and detailed plant account: Base Period; Test Year Period.

(2) Sch. C-2: Depreciation rate study: Base Period; Test Year Period.

D. Schedule D Series: Original cost of plant in service adjusted to the cost of reproduction as a going concern value - - OPTIONAL

(1) Sch. D-1: Original cost of plant in service adjusted to the cost of reproduction as a going concern value - - OPTIONAL: Base Period; Test Year Period.

(2) Sch. D-2: Cost of reproduction as a going concern and other elements of value adjusted for age and condition - - OPTIONAL: Base Period; Test Year Period.

E. Schedule E Series: Working capital allowance.

- (1) Sch. E-1: Cash working capital allowance: Base Period; Test Year Period.
- (2) Sch. E-2: Materials and supplies, prepayments, and deferred charges: Base Period; Test Year Period.
- (3) Sch. E-3: Fuel stock inventories: Base Period; Test Year Period.
- (4) Sch. E-4: Amounts of working capital items charged to operating and maintenance expense: Base Period; Test Year Period.

F. Schedule F Series: Other Property and investments: Sch. F-1: Other property and investments: Base Period; Test Year Period.

G. Schedule G Series: Capitalization, the cost of capital, and the overall rate of return.

- (1) Sch. G-1: Capitalization, the cost of capital, and the overall rate of return in conformance with an original cost Rate Base: Base Period; Test Year Period.
- (2) Sch. G-2: Capitalization, the cost of capital, and the overall rate of return in conformance with a cost of reproduction as a going concern value Rate Base - - OPTIONAL: Base Period; Test Year Period.
- (3) Sch. G-3: Embedded cost of borrowed capital with term of maturity in excess of one (1) year from date of issue: Base Period; Test Year Period.
- (4) Sch. G-4: Cost of short-term borrowed capital including revolving credit agreements and other notes payable: Base Period; Test Year Period.
- (5) Sch. G-5: Embedded cost of preferred stock capital: Base Period; Test Year Period.
- (6) Sch. G-6: Common stock equity capital: Base Period; Test Year Period.
- (7) Sch. G-7: Historical activity in common stock, paid-in capital, and retained earnings for five years prior to the base period: Base Period; Test Year Period.

H. Schedule H Series: Expenses of operation:

- (1) Sch. H-1: Operation and maintenance expenses: Base Period; Test Year Period.
- (2) Sch. H-2: Cost of purchased water; Base Period; Test Year Period.



(3) Sch. H-3: Fuel of power purchased for pumping: Base Period; Test Year Period.

(4) Sch. H-4: Payroll distribution and associated payroll taxes: Base Period; Test Year Period.

(5) Sch. H-5: Expenses associated with advertising, contributions, donations, lobbying and political activities, memberships, and outside services: Base Period; Test Year Period.

(6) Sch. H-6: Other administrative and general expenses: Base Period; Test Year Period.

(7) Sch. H-7: Depreciation and amortization expense: Base Period; Test Year Period.

(8) Sch. H-8: Taxes other than on income: Base Period; Test Year Period.

(9) Sch. H-9: Federal and state income taxes: Base Period; Test Year Period.

(10) Sch. H-10: Reconciliation of net income per books to net income for income tax purposes: Base Period; Test Year Period.

(11) Sch. H-11: Income tax effect as result of applicant joining in a consolidated federal income tax return: Base Period; Test Year Period.

(12) Sch. H-12: Accumulated tax deferrals: Base Period; Test Year Period.

(13) Sch. H-13: Investment tax credits: Base Period; Test Year Period.

(14) Sch. H-14: Expenses associated with affiliated interests: Base Period; Test Year Period.

(15) Sch. H-15: Expenses associated with nonutility services: Base Period; Test Year Period.

(16) Sch. H-16: Explanation of the adjustments to operation and maintenance expenses: Base Period; Test Period.

I. Schedule I Series: Construction program and sources of construction funds.

(1) Sch. I-1: Construction program: Base Year and Projected.

(2) Sch. I-2: Sources of construction funds: Base Year and Projected.

J. Schedule J Series: Fully allocated cost of service study.

(1) Sch. J-1: Allocation of Rate Base - - jurisdictional: Base Period; Test Year Period.

(2) Sch. J-2: Allocation of Rate Base - - functional classification: Base Period; Test Year Period.

(3) Sch. J-3: Allocation of Rate Base - - demand, commodity, and customer: Base Period; Test Year Period.

(4) Sch. J-4: Allocation of Rate Base to rate classes: Base Period; Test Year Period.

(5) Sch. J-5: Allocation of total expenses - - jurisdictional: Base Period; Test Year Period.

(6) Sch. J-6: Allocation of total expenses - - functional classification: Base Period; Test Year Period.

(7) Sch. J-7: Allocation of total expenses - - demand, commodity, and customer: Base Period; Test Year Period.

(8) Sch. J-8: Allocation of total expenses to rate classes: Base Period; Test Year Period.

K. Schedule K Series: Allocated cost of service per billing unit of demand, commodity, and customer by rate classification.

(1) Sch. K-1: Allocated cost per billing unit of demand: Base Period; Test Year Period.

(2) Sch. K-2: Allocated cost per billing unit of commodity: Base Period; Test Year Period.

(3) Sch. K-3: Allocated cost per customer unit: Base Period; Test Year Period.

L. Schedule L Series: Allocation and classification factors:

(1) Sch. L-1: Allocation factors used to assign items of plant and expenses to rate classes: Base Period; Test Year Period.

(2) Sch. L-2: Classification factors used to assign items of plant and expenses to demand commodity, and customer: Base Period; Test Year Period.

M. Schedule M Series: Rate of return by rate classes: Sch. M-1: Rate of return by rate classes: Base Period; Test Year Period.

N. Schedule N Series: Rate design:

- (1) Sch. N-1: Total revenue requirements by class: Base Period, Test Year Period.
- (2) Sch. N-2: Proof of revenue: Test Year Period.
- (3) Sch. N-3: Comparison of rates for service under the present and proposed schedules.
- (4) Sch. N-4: Explanation of proposed rate schedule changes.

O. Schedule O Series: Key operating statistics:

- (1) Sch. O-1: Monthly water production.
- (2) Sch. O-2: Monthly water sales.

P. Schedule P Series: Reports:

- (1) Sch. P-1: Description of company.
- (2) Sch. P-2: Annual Report to the NMPSC.
- (3) Sch. P-3: Auditor's report.

Q. Schedule Q Series: Testimony and exhibits.

[Recompiled 12/30/01]

**17.12.730.12 APPENDIX:**

A. Schedule A Series: Summaries of the proposed cost of service: In this series of schedules the applicant shall show the cost of service in summary form for the Base Period and for the Test Year Period as appropriate and as developed from the supporting schedules and work papers included elsewhere in the applicant's filing package.

(1) Schedule A-1: Summary of the overall cost of service and the claimed revenue deficiency.

(a) [Base Period]: In this schedule the applicant shall show the cost of service for the Base Period on an unadjusted basis including, but not limited to revenues, operation and maintenance expenses, depreciation expense, taxes on other than income, taxes on income, and the resulting return.

(b) [Test Year Period]: In this schedule the applicant shall show each of the items included in the Base Period, all adjustments thereto, the sum of each of these items at the end of the Test Year Period, and the revenue deficiency.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule A-2: Summary of the revenue increase or decrease at the proposed rates by rate classification:

(a) [Base-Period]: Not required.

(b) [Test Year Period]: In this schedule the applicant shall show by rate class the revenue for the Base Period, adjustments thereto, and as proposed for the Test Year Period, and the dollar amount of revenue increase or decrease and this amount expressed as a percent.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule A-3: Summary of the cost of service adjustments by functional classification:

(a) [Base Period]: Not required.

(b) [Test Year Period]: In this schedule the applicant shall show by functional classification the account balances for the Base Period and the adjustments made to the Base Period balances to reflect the applicant's cost of service for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule A-4: Summary of Rate Base:

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an original cost basis for the Base Period on an unadjusted basis.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components on an original cost basis for the Base Period, all adjustments made thereto, and the sum of these components for the Test Year Period.

(c) [Test Year Period - - Optional]: At the option of the applicant, the Rate Base components as adjusted for the Test Year Period may be adjusted further to reflect the cost of reproduction as a going concern and other elements of value.

(d) The information required in this schedule will be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support its proposed rate adjustment.

(e) A full explanation of each of the adjustments made to the component balances of Rate Base at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(5) Schedule A-5: Summary of total capitalization and the weighted average cost of capital:

(a) [Base Period]: In this schedule the applicant shall show the total claimed capitalization and the weighted average cost of capital for the Base Period on an unadjusted basis.

(b) [Test Year Period]: In this schedule the applicant shall show the total claimed capitalization and the weighted average cost of capital as of the end of the Base Period, the adjustments made thereto, and the total claimed capitalization and the weighted average cost of capital for the Test Year Period.

(c) [Test Year Period - - Optional]: At the option of the applicant, the total claimed capitalization and weighted average cost of capital as adjusted for the Test Year Period may be adjusted further to reflect the cost of reproduction as a going concern and other elements of value.

(d) The information required in this schedule will be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support its proposed rate adjustment.

(e) A full explanation of each of the adjustments made to the claimed total capitalization and the weighted average cost of capital at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

B. Schedule B Series: Original cost of plant service: In this series of schedules the applicant shall show the amounts of utility plant under the various classifications for the Base Period and for the Test Year Period as appropriate and as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule B-1: Original cost of plant in service by primary account:

(a) [Base Period]: In this schedule the applicant shall show the utility plant book balances by primary account at the beginning of the Base Period and the book balances at the end of the Base Period including totals for the original cost of plant in service.

(b) [Test Year Period]: In this schedule the applicant shall show each of the utility plant accounts shown for the Base Period as of the end of the Base Period; estimates or projections for additions, retirements, and transfers; and the balances at the end of the Test Year Period including totals for the original cost of plant as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule B-2: Original cost of plant in service by detail account:

(a) [Base Period]: In this schedule the applicant shall show by functional classification the book balances at the beginning of the Base Period; the book balances for additions, retirements, and transfers made thereto during the Base Period; and the book balances at the end of the Base Period including subtotals by functional classification and totals for the original cost of plant in service.

(b) [Test Year Period]: In this schedule the applicant shall show by functional classification the balances at the end of the Base Period; estimates or projections for additions, retirements, and transfers; and the balances at the end of the Test Year Period including subtotals by functional classification and totals for the original cost of plant in service.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule B-3: Construction work in progress:

(a) [Base Period]: In this schedule the applicant shall show the items included in construction work in progress for the Base Period by functional classification including a proper description of the project, work order number, estimated cost of the project, expenditures at the end of the Base Period, and the total book balance for construction work in progress at the end of the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the items included in construction work in progress for the Test Year Period by functional classification including a proper description of the project, work order number, estimated completion date, total estimated cost of the project, adjustments made thereto for the Test Year Period, expenditures at the end of the Test Year Period, and the total balance for construction work in progress at the end of the Test Year Period as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule B-4: Allowance for funds used during construction:

(a) [Base Period]: In this schedule the applicant shall show the amount of allowance for funds used during construction generated and transferred to plant in service during the Base Period and for the two (2) years prior thereto along with the corresponding capitalization rates used to calculate the amounts generated.

(b) In addition, the applicant shall include a complete explanation of the methods, procedures, and calculations used in computing the amount of funds generated and transferred to plant in service.

(c) [Test Year Period]: In this schedule the applicant shall show the amount of allowance for funds used during construction as adjusted from the Base Period along with an explanation of the methods, procedures, and calculations used in computing the amount of funds generated and transferred to plant in service.

(d) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(5) Schedule B-5: Plant held for future use:

(a) [Base Period]: In this schedule the applicant shall show a list of plant held for future use as of the end of the Base Period including a proper description, date of purchase, anticipated use, anticipated date that property will be placed in service, and the book balance of each item of plant at the end of the Base Period including a total of these balances of plant held for future use.

(b) [Test Year Period]: In this schedule the applicant shall show a list of plant held for future use as of the end of the Test Year Period including a proper description, date of purchase, anticipated use, anticipated date that property will be placed in service, adjustments made to the Base Period balances for the Test Year Period, and the balance of each item of plant at the end of the Test Year Period including a total of these balances of plant held for future use as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

C. Schedule C Series: Accumulated provision for depreciation and amortization: In this series of schedules the applicant shall show information concerning the accumulated provision for depreciation and amortization for the Base Period and for the

Test Year Period as appropriate and as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule C-1: Accumulated provision for depreciation and amortization by functional classification:

(a) [Base Period]: In this schedule the applicant shall include the book balance at the beginning of the Base Period for depreciation and amortization by functional classification and detailed plant account; the book balances for accruals, retirements, abandonments, and transfers entered on the books during the Base Period; and the book balances at the end of the Base Period including subtotals by functional classification and totals for the accumulated provision for depreciation and amortization.

(b) [Test Year Period]: In this schedule the applicant shall show by functional classification the balances for accumulated provision for depreciation and amortization at the end of the Base Period; estimates or projections for accruals, retirements, abandonments, and transfers; and the balances at the end of the Test Year Period including subtotals by functional classification and totals for the accumulated provision for depreciation and amortization as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule C-2: Depreciation rate study:

(a) [Base Period]: In this schedule the applicant shall show by functional classification all changes made during the Base Period to the approved book depreciation rates, the property service lives, or the net values of properties included in the Base Period

(b) In addition the applicant shall include for any changes made to the book depreciation rates during the Base Period reference to the appropriate supporting study, including methods, formulae, procedures, schedules, or workpapers which shall constitute a part of the applicant's filing package. This information will be in accordance with NMPSC Rule 340 [17.3.340 NMAC].

(c) [Test Year Period]: In this schedule the applicant shall show by functional classification any changes proposed to the Base Period approved book depreciation rates, the property service lives, or the net service value of properties included in the Base Period.

(d) A full explanation of each of the adjustments made to the Base Period book depreciation rates shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package. This information will be in accordance with NMPSC Rule 340 [17.3.340 NMAC].



D. Schedule D Series: Original cost of plant in service adjusted to the cost of reproduction as a going concern and other elements of value-Optional: In this series of schedules the applicant shall show the original cost of plant in service adjusted to the cost of reproduction as a going concern and other elements of value. The information required in this series shall be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support a rate increase adjustment.

(1) Schedule D-1: Original cost of plant in service adjusted to the cost of reproduction as a going concern and other elements of value - - Optional:

(a) [Base Period]: In this schedule the applicant shall show the original cost of plant in service by functional classification for the Base Period adjusted to the cost of reproduction as a going concern and other elements of value as of the end of the Base Period and shall include therein subtotals and the total for the adjusted value of the original cost of plant in service.

(b) In addition the applicant shall state herein the rationale, methods, formulae, and calculations used to adjust the original cost of plant in service.

(c) [Test Year Period]: In this schedule the applicant shall show the original cost of plant in service by functional classification for the Test Year Period adjusted to the cost of reproduction as a going concern and other elements of value and shall include therein subtotals and the total for the adjusted value of the original cost of plant in service.

(d) In addition, the applicant shall state herein the rationale, methods, formulae, and calculations used to adjust the original cost of plant in service.

(e) A full explanation of each of the estimates or projections made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule D-2: Cost of reproduction as a going concern value adjusted for age and condition - - Optional:

(a) [Base Period]: In this schedule the applicant shall show the adjustment for age and condition of the Base Period cost of reproduction as a going concern and other elements of value by functional classification and shall include therein the subtotal and the total for the cost of reproduction as a going concern value.

(b) In addition, the applicant shall state the rationale, methods, formulae, and calculations used to arrive at the value for age and condition of the cost of reproduction as a going concern.

(c) [Test Year Period]: In this schedule the applicant shall show the adjustment for age and condition of the Test Year Period cost of reproduction as a going concern and other elements of value by functional classification and detail account and shall include therein the subtotal and the total for the cost of reproduction as a going concern value.

(d) In addition the applicant shall state therein the rationale, methods, formulae, and calculations used to arrive at the value for age and condition of the cost of reproduction as a going concern.

(e) A full explanation of each of the estimates or projections made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

E. Schedule E Series: Working capital allowance: In this series of schedules the applicant shall show the amounts claimed for working capital for the Base Period and for the Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule E-1: Cash working capital allowance:

(a) [Base Period]: In this schedule the applicant shall show the computation for the cash allowance of working capital for the Base Period on an unadjusted basis. At the applicant's option a lead-lag study may be supplied to satisfy the requirements of this schedule.

(b) [Test Year Period]: In this schedule the applicant shall show the computation for the cash allowance of working capital as of the end of the Base Period, the adjustments made thereto, and the total claimed cash allowance for the Test Year Period. At the applicant's option a lead-lag study may be supplied to satisfy the requirements of this schedule.

(c) A full explanation of each of the adjustments made to the balance for cash allowance as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule E-2: Materials and supplies, prepayments, and deferred charges:

(a) [Base Period]: In this schedule the applicant shall show for each month of the Base Period the beginning monthly book balances for materials and supplies, prepayments, and deferred charges on an unadjusted basis and shall include therein subtotals and totals for the period and the average balance for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show for each month of the Test Year Period the beginning monthly balance for materials and supplies, prepayments, and deferred charges; all adjustments thereto; and the subtotals and totals for the period and the average balances for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances for materials and supplies, prepayments, and deferred charges as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule E-3: Fuel stock inventories and fuel stock expenses:

(a) [Base Period]: In this schedule the applicant shall show for each month of the Base Period the beginning monthly book balances of fuel stock inventories and fuel stock expenses on an unadjusted basis and shall include therein subtotals and totals for the period and the average balance for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show for each month of the Test Year Period the beginning monthly book balances of fuel stock inventories and fuel stock expenses, all adjustments thereto, and the subtotals and totals for the period and the average balance for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances for fuel inventories and fuel stock expenses as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule E-4: Amounts of working capital items charged to operating and maintenance expenses:

(a) [Base Period]: In this schedule the applicant shall show for the Base Period the amounts of working capital, items charged to operating and maintenance expense on an unadjusted basis and shall include therein subtotals and totals for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show for the Test Year Period the amounts of working capital items charged to operating and maintenance expense, all adjustments thereto, and the subtotals and totals for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances of working capital items charged to operating and maintenance expense as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

F. Schedule F Series: Other property and investments: In this series of schedules the applicant shall show the information requested on other property and investments for the Base Period and for the Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

To the extent that the information required herein has been supplied and is currently on file with the New Mexico Public Service Commission [New Mexico Public Regulation Commission] pursuant to the provisions of NMPSC Rule 450 [17.6.450 NMAC], notice of such filing will fulfill the requirements for these series of schedules.

(1) Schedule F-1: Other property and investments:

(a) [Base Period]: In this schedule the applicant shall show its investments in other-than-utility property for the Base Period on an unadjusted basis including therein a description of the property or investment; the amounts invested; the types of securities owned, loaned, pledged, and/or advanced; the applicable cost rates; the equity in the undistributed earnings since date of acquisition; and the interest and/or dividend income received from such property or investment. In addition, if regulatory approval was required for any security acquired or advancement made in connection with such property or investment, the applicant shall state the name of the Commission, the date authorization was granted, and the case or docket number.

(b) [Test Year Period]: In this schedule the applicant shall show its investments in other-than-utility property as of the end of the Base Period; all adjustments made thereto for the Test Year Period; and the balance at the end of the Test Year Period including therein a description of the property or investment; the amounts invested; the types of securities owned, loaned, pledged, and/or advanced; the applicable cost rates; the equity in the undistributed earnings since date of acquisition; and the interest and/or dividend income received from such property or investment.

(c) In addition, if regulatory approval was required for any security acquired or advancement made in connection with such property or investment, the applicant shall state the name of the Commission, the date authorization was granted, and the case or docket number. A full explanation for each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) **[RESERVED]**

G. Schedule G Series: Capitalization, the cost of capital, and the overall rate of return: In this series of schedules the applicant shall show the total claimed capitalization by class of capital, the claimed capital structure, the embedded cost rates including the claimed rate of return on the common stock equity component, and the resulting weighted average cost of capital for the Base Period and for the Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule G-1: Capitalization, the cost of capital, and the overall rate of return in conformance with an original cost Rate Base:

(a) [Base Period]: In this schedule the applicant shall show the claimed capitalization, the cost of capital thereon, and the overall claimed rate of return for the Base Period on an actual basis; a description of the various classes of capital outstanding; the capital structure ratios; the effective embedded cost rates; and the weighted cost rate for each class of capital.

(b) [Test Year Period]: In this schedule the applicant shall show the claimed capitalization, the cost of capital thereon, and the overall claimed rate of return as of the end of the Base Period; all adjustments thereto; a description of the various classes of capital; the dollar amounts outstanding at the end of the Test Year Period; the capital structure ratios; the estimated or projected cost rates; and the weighted cost rate for each class of capital.

(c) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule G-2: Capitalization, the cost of capital, and the overall rate of return in conformance with a cost of reproduction as a going concern and other elements of value Rate Base - Optional

(a) [Base Period]: In this schedule the applicant shall show the claimed capitalization, the cost of capital thereon, and the overall claimed rate of return as of the end of the Base Period on an actual basis; the adjustment thereto for the cost of reproduction as a going concern value; a description of the various classes of capital; the dollar amounts outstanding at the end of the Base Period as adjusted; the capital structure ratios; the effective embedded cost rates; and the weighted cost rate for each class of capital. The information required in this schedule will be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support its proposed rate adjustment.

(b) [Test Year Period]: In this schedule the applicant shall show the capitalization, the cost of capital, and the overall claimed rate of return as of the end of the Test Year Period as adjusted further to the cost of reproduction as a going concern value; a description of the various classes of capital; the dollar amounts outstanding at the end of the Test Year Period as adjusted; the capital structure ratios; the estimated cost rates; and the weighted cost rate for each class of capital. The information required in this schedule will be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support its proposed rate adjustment.

(c) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the

appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule G-3: Embedded cost of borrowed capital with term of maturity in excess of one year from date of issue.

(a) [Base Period]: In this schedule the applicant shall show the embedded cost of borrowed capital based on the actual principal amounts outstanding at the end of the Base Period.

(b) In addition the applicant shall show the following particulars for each class and series of borrowed capital outstanding:

- (i) description of issue;
- (ii) date of issuance;
- (iii) date of maturity;
- (iv) coupon or nominal interest rate;
- (v) principal amount of issue at offering;
- (vi) price at offering;
- (vii) gross proceeds;
- (viii) underwriter's commission, discount, or premium;
- (ix) expense of issue;
- (x) net proceeds: amount; per unit;
- (xi) effective yield to maturity: [by reference to any generally acceptable table of bond yields or computer computation];
- (xii) principal amount outstanding at end of Base Period;
- (xiii) annual interest requirements;
- (xiv) weighted effective cost rate;
- (xv) if issue is owned by an affiliate, state name and relationship of owner to applicant; and
- (xvi) if issue is convertible, state terms of conversion.

(c) [Test Year Period]: In this schedule the applicant shall show the cost of borrowed capital [particulars a through p] [i through xv] after all adjustments to the actual balances and cost rates at the end of the Base Period.

(d) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule G-4: Cost of short-term borrowed capital including revolving credit agreements

and other notes payable:

(a) [Base Period]: In this schedule the applicant shall show the cost of short-term borrowed capital based on the actual principal amounts outstanding at the end of the Base Period.

(b) In addition the applicant shall show the following particulars for each class and series of short-term borrowed capital outstanding:

- (i) description of issue;
- (ii) date of issuance;
- (iii) date of maturity;
- (iv) coupon or nominal interest rate;
- (v) principal amount of issue at offering;
- (vi) annual interest requirements;
- (vii) average principal balance outstanding monthly during the period;
- (viii) average weighted interest cost rate on average principal balance outstanding monthly during the period; and
- (ix) if issue is owned by an affiliate, state name and relationship of owner to applicant.

(c) [Test Year Period]: In this schedule the applicant shall show the cost of short-term borrowed capital [particulars a through i] [i through ix] after all adjustments to the actual balances and cost rates at the end of the Base Period.

(d) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(5) Schedule G-5: Embedded cost of preferred stock capital:

(a) [Base Period]: In this schedule the applicant shall show the embedded cost of preferred stock capital based on the actual principal amounts outstanding at the end of the Base Period.

(b) In addition the applicant shall show the following particulars for each class and series of preferred stock outstanding:

- (i) description of issue [including number of shares offered];
- (ii) date of issuance;
- (iii) dividend rate;
- (iv) price at offering;
- (v) gross proceeds;
- (vi) underwriter's commission, discount, or premium;
- (vii) issuance expense;
- (viii) net proceeds: amount; per unit;
- (ix) effective dividend cost rate;
- (x) principal amount outstanding at end of period;
- (xi) annual dividend requirements;
- (xii) weighted effective cost rate;
- (xiii) if issue is owned by an affiliate, state name and relationship; and
- (xiv) if issue is convertible, state terms of conversion.

(c) [Test Year Period]: In this schedule the applicant shall show the cost of preferred stock capital [particulars a through n] [i through xiv] after all adjustments to the actual balances and cost rates at the end of the Base Period.



(d) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(6) Schedule G-6: Common stock equity capital:

(a) [Base Period]: In this schedule the applicant shall show the common stock activity for the Base Period on an actual basis showing therein the following particulars:

- (i) year-end number of shares outstanding;
- (ii) year-end book value per share;
- (iii) annual earning per share;
- (iv) annual cash dividends per share;
- (v) annual stock dividends per share;
- (vi) dividends declared;
- (vii) stock splits and/or changes in par value;
- (viii) sales of common stock;
- (ix) date of sale;
- (x) number of shares sold;
- (xi) gross proceeds;
- (xii) underwriter's commission, discount, or premium;
- (xiii) issuance expense;
- (xiv) net proceeds per share; and
- (xv) type of offering.

(b) [Test Year Period]: In this schedule the applicant shall show the common stock activity as of the end of the Base Period, all adjustments made to the particulars a through o [i through xv] prescribed for the Base Period, and the results as of the end of the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(7) Schedule G-7: Historical activity in common stock, paid-in capital, and retained earnings:

(a) [Base Period]: In this schedule the applicant shall show the historical activity over the five (5) years prior to the Base Period in common stock, paid-in capital, and retained earnings as of the end of each year on an actual basis and shall include therein the beginning balance, additions, reductions, and the ending balance concluding with the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the actual balances for the Base Period; all adjustments to the Base Period balances as a result of estimates, projections, and anticipated changes thereto; and the ending balance for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

H. Schedule H Series: Expenses of Operation: In this series of schedules the applicant shall show information concerning its expenses of operation by each account of the Uniform System of Accounts prescribed by the New Mexico Public Service Commission [New Mexico Public Regulation Commission] for the Base Period and for the Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule H-1: Operation and maintenance expenses:

(a) [Base Period]: In this schedule the applicant shall show operation and maintenance expenses by functional classification and detailed account on an unadjusted basis by month for the Base Period and shall include therein subtotals and totals by functional classification and detailed account. Amounts included in Accounts 601 and 603, Salaries and Wages; Accounts 630 through 635, Contractual Services; and Accounts 665 through 667, Regulatory Commission Expenses, shall further be separated to identify those amounts in each detailed account which are litigation expenses as defined by NMSA 1978, Section 62-13-3 and those amounts which are not litigation expenses. Amounts included in any other detailed account which are litigation expenses as defined by Section 62-13-3 shall also be separately identified.

(b) [Test Year Period]: In this schedule the applicant shall show operation and maintenance expenses by functional classification and detailed account as of the end of the Base Period, all adjustments thereto, and the corresponding adjusted balances as of the end of the Test Year Period and shall include therein subtotals and totals by

functional classification and detailed account. Test year period litigation expenses should be handled in the same manner as described above for the base period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule H-2: Cost of purchased water:

(a) [Base Period]: In this schedule the applicant shall show the cost of purchased water by month on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the cost of purchased water as of the end of the Base Period, all adjustments thereto, and the balances as of the end of the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule H-3: Fuel or power purchased for pumping:

(a) [Base Period]: In this schedule the applicant shall show the fuel or power purchased for pumping by month on an unadjusted basis for the Base Period by type of fuel used.

(b) [Test Year Period]: In this schedule the applicant shall show the fuel or power purchased for pumping by month as of the end of the Base Period, all adjustments thereto, and the balances as of the end of the Test Year Period by type of fuel used.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule H-4: Payroll distribution and associated payroll taxes:

(a) [Base Period]: In this schedule the applicant shall show the payroll distribution and the associated payroll taxes included in operation and maintenance expenses on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the payroll distribution and the associated payroll taxes included in operation and maintenance expenses as of the end of the Base Period, all adjustments made thereto, and the balances as of the end of the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(5) Schedule H-5: Expenses associated with advertising, contributions, donations, lobbying and political activities, memberships, and outside services:

(a) [Base Period]: In this schedule the applicant shall show the expenses incurred as a result of advertising, contributions, donations, lobbying and political activities, memberships, and outside services on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the expenses associated with advertising, contributions, donations, lobbying and political activities, memberships, and outside services by month as of the end of the Base Period; all adjustments made thereto; and the balances for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(6) Schedule H-6: Other administrative and general expenses:

(a) [Base Period]: In this schedule the applicant shall show other administrative and general expenses such as transfer credits, regulatory commission expenses, duplicate charges, and other miscellaneous general expenses not shown elsewhere separately, on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show other administrative and general expenses such as transfer credits, regulatory commission expenses, duplicate charges, and other miscellaneous general expenses not shown elsewhere separately, after adjustments thereto for the Test Year Period and the balances as of the end of the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(7) Schedule H-7: Depreciation and amortization expense:

(a) [Base Period]: In this schedule the applicant shall show the depreciation and amortization expense by functional classification on an unadjusted basis for the Base Period, the book depreciation rate, and the annual expense accrual as of the end of the Base Period and shall include therein subtotals and totals by functional classification.

(b) [Test Year Period]: In this schedule the applicant shall show the depreciation and amortization expense by functional classification as of the end of the Base Period, all adjustments thereto, and the annual expense accrual as of the end of the Test Year Period and shall include therein subtotals and totals by functional classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(8) Schedule H-8: Taxes other than on income:

(a) [Base Period]: In this schedule the applicant shall show the taxes, excluding federal and state income taxes, by type of tax accrued, prepaid, and charged on an actual basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the taxes, excluding federal and state income taxes, by type of tax for the Base Period, all adjustments made thereto for the Test Year Period, and the balances for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown for the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(9) Schedule H-9: Federal and state income taxes:

(a) [Base Period]: In this schedule the applicant shall show the computation for federal and state income taxes on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the computation for federal and state income taxes reflecting all adjustments made for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(10) Schedule H-10: Reconciliation of net income per books to net income for income tax purposes:

(a) [Base Period]: In this schedule the applicant shall show the reconciliation of the net income per books to the net income as reported to the Federal Internal Revenue Service for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the reconciliation of the net income as adjusted for the Test Year Period to the net income as would be reported to the Federal Internal Revenue Service for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(11) Schedule H-11: Income tax effect as a result of applicant joining in a consolidated federal income tax return:

(a) [Base Period]: In this schedule the applicant shall show a detailed analysis for the Base Period of the applicant's tax effect as a result of joining in the filing of a consolidated federal income tax return.

(b) [Test Year Period]: In this schedule the applicant shall show a detailed analysis for the Test Year Period of the applicant's tax effect at the proposed revenue as a result of joining in the filing of a consolidated federal income tax return.

(12) Schedule H-12: Accumulated tax deferrals:

(a) [Base Period]: In this schedule the applicant shall show the accumulated tax deferrals on an unadjusted basis for the Base Period and shall include therein the actual balances for additions and reductions and the balances as of the end of the Base Period.

(b) In addition the applicant shall show the item giving rise to the tax deferral separately, such as accelerated amortization, liberalized depreciation, asset depreciation range, investment tax credit, job development credit, etc.

(c) [Test Year Period]: In this schedule the applicant shall show the accumulated tax deferrals as of the end of the Base Period, all adjustments thereto for the Test Year Period, and the balances at the end of the Test Year Period.

(d) In addition the applicant shall show the item giving rise to the tax deferral separately, such as accelerated amortization, liberalized depreciation, asset depreciation range, investment tax credit, job development credit, etc.

(e) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(13) Schedule H-13: Investment tax credits:

(a) [Base Period]: In this schedule the applicant shall show an analysis of the investment tax credits earned, utilized, and amortized during the Base Period on an unadjusted basis.

(b) In addition, the applicant shall show herein the particulars concerning any sale/leaseback transactions under the safe-harbor lease provisions of the Accelerated Cost Recovery System established by the Economic Recovery Tax Act of 1981 and amendments thereto, such as the investor/lessor, amount of property, cash payment, term of lease, discount, and the tax rate.

(c) [Test Year Period]: In this schedule the applicant shall show an analysis of the investment tax credit as of the end of the Base Period, all adjustments made thereto for the Test Year Period, and the balances at the end of the Test Year Period.

(d) In addition the applicant shall show herein the particulars concerning any sale/leaseback transactions under the safe-harbor lease provisions of the Accelerated Cost Recovery System established by the Economic Recovery Tax Act of 1981 and amendments thereto, such as the investor/lessor, amount of property, cash payment, term of lease, discount, and the tax rate.

(e) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(14) Schedule H-14: Expenses associated with affiliated interests:

(a) [Base Period]: In this schedule the applicant shall show the charges or credits on an unadjusted basis for the Base Period between applicant and any other affiliated or associated company, or for corporate organizations of applicant operating as departments or divisions, including therein the proper account classification; a description of the service performed; and the basis for the determination of the charge or credit. For reporting purposes herein items of \$10,000 or more shall be shown individually; items of \$10,000 or less may be aggregated.

(b) [Test Year Period]: In this schedule the applicant shall show the charges or credits for the Base Period, all adjustments made thereto, and the balances as of the end of the Test Year Period between applicant and any other affiliated or associated company, or for corporate organizations of applicant operating as departments or divisions, including therein the proper account classification; a description of the service performed; and the basis for the determination of the charge or credit. For reporting purposes herein items of \$10,000 or more shall be shown individually; items of \$10,000 or less may be aggregated.

(c) A full explanation of each of the adjustments made to the balances shown for the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(15) Schedule H-15: Expenses associated with nonutility services:

(a) [Base Period]: In this schedule the applicant shall show the investments, revenues, and expenses pertaining to the applicant's nonutility services on an unadjusted basis for the Base Period. In addition the applicant shall provide a full explanation of the methods and procedures used in allocating costs and expenses between the applicant utility and nonutility services.

(b) [Test Year Period]: In this schedule the applicant shall show the investments, revenues, and expenses pertaining to the applicant's nonutility services as of the end of the Base Period; all adjustments made thereto; and the balances as of the end of the Test Year Period. In addition the applicant shall provide a full explanation of the methods and procedures used in allocating costs and expenses between the applicant utility and nonutility services.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(16) Schedule H-16: Explanation of the adjustments to expenses of operation: In this schedule the applicant shall state in a brief narrative explanation the nature of each adjustment made to the book balances of operation and maintenance expenses.

I. Schedule I Series: Construction program and sources of construction funds: In this series of schedules the applicant shall show its proposed construction program and the sources of construction funds as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule I-1: Construction program:

(a) In this schedule the applicant shall show the capital requirements, including allowance for funds used during construction anticipated to be generated, related to its construction underway during the Base Period and construction planned for the next two (2) succeeding years by functional classification.

(b) A full explanation of all assumptions and estimates used to arrive at the projections shown shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule I-2: Sources of construction funds:

(a) In this schedule the applicant shall show the planned sources of construction funds by years to conform with the planned construction program and shall include therein the amounts by class of capital and the anticipated cost rates on the proposed financing.



(b) A full explanation of all assumptions and estimates used to arrive at the projections shown shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

J. Schedule J Series: Fully allocated cost of service study: In this series of schedules the applicant shall show the total cost of service for the Base Period and the cost of service for the Test Year Period separated by jurisdiction and, where applicable, by corporate department or division; functional classification; the cost components classified to demand, commodity, and customer; and where applicable by rate classification as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule J-1: Allocation of Rate Base - - jurisdictional:

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an unadjusted basis for the Base Period separated by jurisdiction and, where applicable, by corporate department or division.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components after adjustments to the Base Period balances separated by jurisdiction and, where applicable, by corporate department or division.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule J-2: Allocation of Rate Base - - functional classification.

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an unadjusted basis for the Base Period separated by functional classification.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components after adjustments to the Base Period balances separated by functional classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule J-3: Allocation of Rate Base - - demand, commodity, and customer:

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an unadjusted basis for the Base Period separated as to demand, commodity, and customer.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components after adjustments to the Base Period balances separated by demand, commodity, and customer.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(4) Schedule J-4: Allocation of Rate Base to rate classes:

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an unadjusted basis for the Base Period separated into rate classes.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components after adjustments to the Base Period balances separated into rate classes.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(5) Schedule J-5: Allocation of total expenses - - jurisdictional:

(a) [Base Period]: In this schedule the applicant shall show the total expenses on an unadjusted basis for the Base Period separated by jurisdiction and, where applicable, by corporate department or division.

(b) [Test Year Period]: In this schedule the applicant shall show the total expenses after adjustments to the Base Period balances separated by jurisdiction and, where applicable, by corporate department or division.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(6) Schedule J-6: Allocation of total expenses - - functional classification:

(a) [Base Period]: In this schedule the applicant shall show the total expenses on an unadjusted basis for the Base Period separated by functional classification.

(b) [Test Year Period]: In this schedule the applicant shall show the total expenses after adjustments to the Base Period balances separated by functional classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(7) Schedule J-7: Allocation of total expenses - - demand, commodity, and customer:

(a) [Base Period]: In this schedule the applicant shall show total expenses on an unadjusted basis for the Base Period classified as to demand, commodity, and customer.

(b) [Test Year Period]: In this schedule the applicant shall show total expenses after adjustments to the Base Period balances classified as to demand, commodity, and customer.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(8) Schedule J-8: Allocation of total expenses to rate classes:

(a) [Base Period]: In this schedule the applicant shall show total expenses on an unadjusted basis for the Base Period separated by rate classes.

(b) [Test Year Period]: In this schedule the applicant shall show total expenses after adjustments to the Base Period balances separated by rate classes.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

K. Schedule K Series: Allocated cost of service per billing unit of demand, commodity, and customer by rate classification: In this series of schedules the applicant shall show the allocated cost of service by rate classification per billing unit of demand, commodity, and customer as requested in each schedule and developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package. Whenever possible the applicant utility may combine the information requested in Schedules K-1, K-2, and K-3 into one schedule for ease of presentation.

(1) Schedule K-1: Allocated cost per billing unit of demand:

(a) [Base Period]: In this schedule the applicant shall show the total allocated cost of service and the total allocated cost of service per billing unit of demand on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the total allocated cost of service and the total allocated cost of service per billing unit of demand after adjustments to the Base Period balances.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpaper which shall constitute a part of the applicant's filing package.

(2) Schedule K-2: Allocated cost per billing unit of commodity:

(a) [Base Period]: In this schedule the applicant shall show the total allocated cost of service and the total allocated cost of service per billing unit of commodity on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the total allocated cost of service and the total allocated cost of service per billing unit of commodity after adjustments to the Base Period balances.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule K-3: Allocated cost per customer unit:

(a) [Base Period]: In this schedule the applicant shall show the total allocated cost of service and the total allocated cost of service per customer unit on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the total allocated cost of service per customer unit after adjustments to the Base Period balances.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

L. Schedule L Series: Allocation and classification factors: In this series of schedules the applicant shall provide a list of the allocation and classification factors used to assign items of plant and expenses to the various rate classes as well as a brief summary of the derivation of the allocation and classification factors used:

(1) Schedule L-1: Allocation factors used to assign items of plant and expenses to rate classes:

(a) [Base Period]: In this schedule the applicant shall provide a list of the allocation factors used to assign items of plant and expenses on an unadjusted basis to the Base Period existing rate schedules.

(b) In addition, the applicant shall provide a brief explanation of the derivation of the allocation factors used.

(c) [Test Year Period]: In this schedule the applicant shall provide a list of the allocation factors used to assign items of plant and expenses to the proposed rate schedules after adjustments to the Base Period balances.

(d) In addition, the applicant shall provide a brief explanation of the derivation of the allocation factors used.

(e) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule L-2: Classification factors used to assign items of plant and expenses to demand, commodity, and customer:

(a) [Base Period]: In this schedule the applicant shall provide a tabulation of the classification factors used to assign items of plant and expenses to the appropriate demand, commodity, and customer on an unadjusted basis to the Base Period existing rate schedules, showing therein the account number, a description of the account, the classification, the allocation factor, and a brief rationale for the classification.

(b) [Test Year Period]: In this schedule the applicant shall provide a tabulation of the classification factors used to assign items of plant and expenses to the appropriate demand, commodity, and customer under the proposed rate schedules after adjustments of the Base Period balances, showing therein the account number, a description of the account, the classification, the allocation factor, and a brief rationale for the classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

M. Schedule M Series: Rate of return by rate classes: [Base Period]: In this schedule the applicant shall show the rate of return and the relative rate of return by rate classes as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule M-1: Rate of return by rate classes:

(a) [Base Period]: In this schedule the applicant shall show the rate of return and the relative rate of return by rate classes for the Base Period existing rate schedules.

(b) [Test Year Period]: In this schedule the applicant shall show the rate of return and the relative rate of return by rate classes under the proposed rate schedules for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) **[RESERVED]**

N. Schedule N Series: Rate design: In this series of schedules the applicant shall show the total revenue requirement by rate class as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule N-1: Total revenue requirements by rate class:

(a) [Base Period]: Not required.

(b) [Test Year Period]: In this schedule the applicant shall show the total revenue requirements for the proposed rate classes and the total difference from the revenues to be derived from existing rates applied to the Test Year Period with this difference expressed as a percent.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(2) Schedule N-2: Proof of revenue:

(a) [Test Year Period]: To satisfy the requirements of this request the applicant shall include a proof of revenue for the proposed rate schedules.

(b) A full explanation of each of the adjustments made to the Base Period information shall be referenced to the appropriate supporting schedules or workpapers which shall constitute a part of the applicant's filing package.

(3) Schedule N-3: Comparison of rates for service under the present and proposed schedules: To satisfy the requirements of this request the applicant shall include herein a comparison of the rates for service under the present and proposed rate schedules.

(4) Schedule N-4: Explanation of proposed rate schedule changes: In this schedule the applicant shall provide a brief explanation for the proposed change to the Base Period existing rate schedules and shall include therein the justification and support for the proposed change.

O. Schedule O Series: Key operating statistics: In this series of schedules the applicant shall provide the statistical data as requested in the following series of schedules and shall include therein an explanation or reference to the appropriate supporting schedules or workpapers for any adjustments made to the historical data requested or to the data for the Base Period. In addition, detailed explanations of all estimates and assumptions used to arrive at future values of data shall be provided.

(1) Schedule O-1: Monthly water production: In this schedule the applicant shall provide monthly water production data as requested:

- (a) for total system,
- (b) by service area [if applicable],
- (c) designate the monthly peak day,
- (d) for two (2) years prior to the Base Period,
- (e) for twelve (12) months of the Base Period, and
- (f) as estimated for the Test Year Period.

(2) Schedule O-2: Monthly water sales: In this schedule the applicant shall provide monthly water sales data as requested:

- (a) for total system,
- (b) by service area [if applicable],
- (c) by rate classes,
- (d) or two (2) years prior to Base Period,
- (e) for twelve (12) months of the Base Year, and
- (f) as estimated for the Test Year Period.

P. Schedule P Series: Required reports: In this series of schedules the applicant shall submit the most current reports as requested herein.

(1) Schedule P-1: Description of company: To satisfy the requirements of this schedule the applicant shall submit a statement describing the company and its scope of operations by service areas and shall include an organizational chart.

(2) Schedule P-2: Annual Report to NMPSC [NMPRC]: To satisfy the requirements of this schedule the applicant shall submit a copy of its latest Annual Report required to be on file at the New Mexico Public Service Commission [New Mexico Public Regulation Commission]. Where the applicant has duly filed such report with the New Mexico Public Service Commission [New Mexico Public Regulation Commission], notice herein of the fact will satisfy the requirements of this schedule.

(3) Schedule P-3: Auditor's report:

(a) To satisfy the requirements of this schedule the applicant shall submit a copy of the opinion of its independent certified public accountant stating that an independent examination of the book amounts and accounting adjustments thereto of the applicant utility company's books and records has been made for the Base Period and the results thereof are in all material respects in compliance with the Uniform System of Accounts prescribed by the New Mexico Public Service Commission [New Mexico Public Regulation Commission].

(b) Where an independent examination of the book amounts and accounting adjustments of the applicant utility's books and records has not been made by an independent certified public accountant, the certification required herein shall be made by a duly authorized officer of the applicant utility.

Q. Schedule Q Series: Testimony and exhibits: To the extent that testimony and exhibits are required in support of the materials submitted in compliance with the filing requirements herein, the applicant shall submit testimony and exhibits of such composition, scope, and format so as to serve as the applicant's case-in-chief in the event the matter is set for hearing. Further, any utility seeking recovery of litigation expenses as defined in Section 62-13-3 NMSA 1978 shall file sufficient testimony to enable the Commission to find those expenses were prudently incurred.

[Recompiled 12/30/01]

## **PART 731-739: [RESERVED]**

## **PART 740: CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR WATER UTILITIES**

### **17.12.740.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]



**17.12.740.2 SCOPE:**

[Recompiled 12/30/01]

**17.12.740.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

**17.12.740.4 DURATION:**

[Recompiled 12/30/01]

**17.12.740.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.12.740.6 OBJECTIVE:**

[Recompiled 12/30/01]

**17.12.740.7 DEFINITIONS:**

[Recompiled 12/30/01]

**17.12.740.8 TABLE OF CONTENTS:**

- A. Certificates of Public Convenience and Necessity Required [17.12.740.9 NMAC]
- B. Application [17.12.740.10 NMAC]
- C. Conformance with Minimum Standards of Design, Construction, and Operation [17.12.740.11 NMAC]
- D. Conformance with Provisional Customer Rules and Regulations [17.12.740.12 NMAC]
- E. Minimum Data Requirements [17.12.740.13 NMAC]
- F. Filing Fees [17.12.740.14 NMAC]
- G. Assistance of Commission Staff [17.12.740.15 NMAC]

[Recompiled 12/30/01]

**17.12.740.9 CERTIFICATES OF PUBLIC CONVENICNCE AND NECESSITY REQUIRED:**

Every jurisdictional water utility shall obtain from the Public Service Commission [Public Regulation Commission] a certificate of public convenience and necessity prior to selling water to the public or when otherwise required.

[Recompiled 12/30/01]

**17.12.740.10 APPLICATION:**

Each applicant must file with the Commission an application for a certificate of public convenience and necessity as prescribed in NMPSC Rules 110.35 through 110.38 [17.1.2 NMAC]. (NMPSC Rules 110.35 through 110.38 were previously in effect as Fourth Revised General Order No. 1, Rule 2.)

[Recompiled 12/30/01]

**17.12.740.11 CONFORMANCE WITH MINIMUM STANDARDS OF DESIGN, CONSTRUCTION, AND OPERATION:**

Each applicant for a certificate of public convenience and necessity must meet certain minimum standards for design, construction, and operation as required by the Commission. If an applicant is unable to conform to any specific design, construction, or operation standard, the company should apply for a variance from such standard.

[Recompiled 12/30/01]

**17.12.740.12 CONFORMANCE WITH PROVISIONAL CUSTOMER RULES AND REGULATIONS:**

Each applicant for a certificate of public convenience and necessity shall have prescribed customer service rules and regulations substantially similar to the service rules and regulations required by the Commission. If an applicant is unable to conform to any recommended customer service rule or regulation, the company should apply for a variance from such rule or regulation.

[Recompiled 12/30/01]

**17.12.740.13 MINIMUM DATA REQUIREMENTS:**

The following exhibits must be attached to and made a part of a water utility's application for a certificate of public convenience and necessity:

A. Evidence of Ownership.

- (1) Corporation - - certificate of incorporation and by-laws;
- (2) Partnership - - articles of co-partnership;

- (3) Subsidiary affiliation;
- (4) Company officials;
- (5) Business address;
- (6) Actual location of plant facilities.

B. Statement showing franchise rights of applicant to distribute water in the community in which service is proposed.

C. Evidence of economic feasibility.

- (1) Proposed Facilities:
  - (a) Cost of proposed facilities;
  - (b) Financing of proposed facilities; (Supply details of all present and proposed financing arrangements.)

- (2) Revenue requirements:
  - (a) Source of funding for operation and maintenance;
  - (b) Revenues;
  - (c) Expenses;
  - (d) Depreciation;
  - (e) Taxes;
  - (f) Return (net income).

D. Copies of maps of the system: The design of the system shall be approved by a registered professional engineer and approved by the Environmental Improvement Division of the New Mexico Health and Environment Department. Maps shall include location of wells, storage, tanks, fire hydrants, sizes of mains, total length of mains (in feet).

E. Easement and right-of-way policy.

F. Evidence of system adequacy (present and 3 years projected).

- (1) Source of water supply (wells, springs, water rights information, etc.);

- (2) Number of wells in service;
- (3) Pumping capacity of each pump in service;
- (4) Type of storage (pressure tank, etc.);
- (5) Storage tank capacity (gallons);
- (6) Type of water treatment (chlorine, etc.);
- (7) Annual supply of water to system (gallons);
- (8) Estimated system losses (gallons);
- (9) Number of customers by customer class.

G. Original cost listing of plant items. If plant has already been constructed and is in operation, the utility shall:

(1) Provide a list of plant items and show the original cost of each plant item as prescribed in the NMPSC Annual Report;

(2) Submit a completed NMPSC Annual Report with case filing if the plant has been in operation for at least twelve (12) months.

H. Copies of tariff schedules and operating rules and regulations.

(1) Rate schedules for each customer class;

(2) Copies of operating rules and regulations.

I. A rate study setting rates that would apply if the system were developed to 85% of its potential plant-in-service capacity based on NMPSC Rules 750.12 and 750.23 [Subsection A of 17.12.750.11 NMAC and Subsection C of 17.12.750.14 NMAC]. The study should include but not be limited to:

(1) Estimated cost of service and supporting documents;

(2) Type of services being provided, i.e., fire protection, irrigation, or other services that would be included in determining system capacity capabilities;

(3) Estimated or actual water usage per month per customer per customer class;

(4) Potential meter connections based on existing source of supply capacity, treatment facilities, NMPSC Rule 750.12, NMPSC Rule 750.23 [Subsection A of

17.12.750.11 NMAC, Subsection C of 17.12.750.14 NMAC] if fire protection is provided, and other provided services that would utilize these source of supply facilities (NMPSC Rules 750.12 and 750.23 were previously in effect as Commission General Order No. 42, Minimum Standards for Design Construction and Operation of Water Utilities, Sections 4 and 8.);

(5) Potential meter connections based on existing transmission facilities (include all services provided that would utilize these transmission facilities); and

(6) Potential meter connections based on existing distribution facilities, (include all services provided that would utilize these distribution facilities).

[Recompiled 12/30/01]

#### **17.12.740.14 FILING FEES:**

A filing fee of \$25.00 must accompany the application. In addition, there is a \$1.00 filing fee for each tariff number (excluding Table of Contents).

[Recompiled 12/30/01]

#### **17.12.740.15 ASSISTANCE OF COMMISSION STAFF:**

The Commission Staff will be available to meet with an applicant and/or anyone representing the applicant's interests in the matter to answer any questions the applicant may have.

[Recompiled 12/30/01]

#### **PART 741-749: [RESERVED]**

### **PART 750: MINIMUM STANDARDS FOR DESIGN, CONSTRUCTION, AND OPERATION OF WATER UTILITIES**

#### **17.12.750.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

#### **17.12.750.2 SCOPE:**

A. Applicability: NMPSC Rule 750 [17.12.750 NMAC] is applicable to all water utilities under the jurisdiction of the New Mexico Public Service Commission [New Mexico Public Regulation Commission].

B. Variances: In those cases where the application of any of the provisions of NMPSC Rule 750 [17.12.750 NMAC] results in undue hardship or expense to the utility, it may request specific relief from the Commission.

[Recompiled 12/30/01]

**17.12.750.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

**17.12.750.4 DURATION:**

[Recompiled 12/30/01]

**17.12.750.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.12.750.6 OBJECTIVE:**

The purpose of NMPSC Rule 750 [17.12.750 NMAC] is to promote good public utility practices, to encourage efficiency and economy, and to establish minimum standards to be observed in the design, construction, and operation of waterworks facilities by water utilities operating under the jurisdiction of the Commission. The standards herein prescribed are intended as minimum standards. The provisions hereof shall not be construed to require the replacement or abandonment of facilities in use at the time of the initial adoption of these provisions in former General Order No. 42 unless the Commission so directs.

[Recompiled 12/30/01]

**17.12.750.7 DEFINITIONS:**

[Recompiled 12/30/01]

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H. Water Supply Measurement: [17.12.750.15 NMAC]

- (1) Measuring Devices
- (2) Records

[Recompiled 12/30/01]

**17.12.750.9 RECORDS AND REPORTS:**

A. System Maps: Each utility shall maintain on file drawings or maps of the water system. Such maps or drawings shall be clear and legible. Unless the Commission authorizes otherwise these records shall show the following:

- (1) location of all sources of supply, water treatment plants, pumping stations, storage facilities, distribution system - - including valves, hydrants, and interconnections with other systems--and size, material, and location of all mains;
- (2) location, size, and kind of each service pipe, including any pertinent items such as curb valves, meter pits, etc.;
- (3) layout of all principal pumping stations, water treatment, and filter plants to show size, location, and character of all major equipment, pipelines, connections, valves, and other equipment used in connection therewith; and
- (4) delineation of special high pressure zones, if applicable.

B. Construction Dates: Each utility shall maintain at its office the date of construction of all principal items of plant and extensions of mains.

C. Meter Records: Each utility shall maintain at its office the installation and meter test history on each water meter.

D. Other Records: Monthly records should be maintained on energy usage, water production, water purchases, and water consumption. Records of chemical usage should be maintained.



E. Location of Records: All records required by NMPSC Rule 750 [17.12.750 NMAC] shall be kept at the principal office of the utility or other suitable storage place located within the state and shall be made available to representatives, agents, or employees of the Commission upon reasonable notice and at all reasonable hours.

F. Reports to the Commission: The utility shall furnish the results of summaries of any tests required by NMPSC Rule 750 [17.12.750 NMAC] to the Commission at such times and in such form as the Commission may require. The utility shall also furnish the Commission with any information concerning the utility's facilities or operations which the Commission may request and need for determining rates or judging the practices of the utility.

[Recompiled 12/30/01]

#### **17.12.750.10 SAFETY:**

A. Safety Requirements: Each utility shall exercise reasonable care to reduce the hazards to which its employees, its customers, and the general public may be subjected as a result of the utility's operations. The utility shall require employees to use suitable tools and equipment for performing their work safely, shall instruct employees in safe methods of performing their work, and shall maintain suitable first aid equipment for employees.

B. Accident Reporting: The utility shall promptly notify the Commission in the event of a fatal accident involving the utility, and it shall notify the Commission of any other accidents when prescribed by the Commission.

[Recompiled 12/30/01]

#### **17.12.750.11 WATER SUPPLY:**

Water Supply Requirements: Each utility shall furnish and maintain sufficient facilities to provide a continuous and adequate supply of water. The total supply system capacity shall meet the daily design maximum peak demand and shall meet the design average-day demand with the largest pump or well out of service. Unless other acceptable provisions are made, a minimum of two (2) supply sources shall be provided.

[Recompiled 12/30/01]

#### **17.12.750.12 PRESSURES:**

A. Pressure Required: Under normal conditions of use including the expected peak demands, water pressure at the customer's meter shall be not less than 30 p.s.i.g. nor more than 125 p.s.i.g.

B. Main Sizing: As new mains are installed or as mains which have reached the end of their useful lives are replaced, the new or replacement main shall be sized and designed to accommodate the standards contained herein.

C. Delineation of Minimum Normal Operating Pressures: Other minimum normal operating pressures are applicable within delineated areas as set forth on the utility's Commission- approved tariff sheets or as provided for in special agreements.

D. Pressure Gauges: Each utility shall provide itself with one or more pressure gauges for each separate water system.

E. Pressure Surveys: It is suggested that at regular intervals each utility make a survey of pressures in its distribution system at or near the time of maximum usage. The records of these surveys should show the date, time, and location of the test.

F. Customer Transfer Pumps: No utility shall furnish water service to any customer who utilizes a transfer pump to pump water from the utility's water main into the customer's plumbing facilities unless backflow prevention is provided. Consideration shall be given both to deteriorating pressure in the mains and also to any potential hazard which might be created if contamination should be introduced into the system through a cross-connection when a negative pressure is induced in the water main by a customer's transfer pump.

[Recompiled 12/30/01]

#### **17.12.750.13 TRANSMISSION AND DISTRIBUTION SYSTEM:**

A. Transmission Systems: The transmission pipelines from sources of supply shall be designed to deliver in combination with related storage facilities and to the limits of the capacity of those sources of supply the maximum requirements of that portion of the system which is dependent upon such transmission pipelines.

B. Distribution System:

(1) Minimum Pipe Sizes: The distribution system shall be of adequate size and designed in conjunction with related facilities so as to maintain the minimum pressures required herein.

(2) Depth of Mains: Water mains should be installed below the frost line to prevent freezing and should have adequate cover over the top of the pipe for protection against surface loads.

(3) Dead Ends: Insofar as practicable the utility shall design its distribution system so as to avoid dead ends in its mains. Where dead ends are necessary the utility shall provide a means for flushing the mains. Mains with dead ends shall be flushed as often as necessary to maintain the proper quality of the water.

(4) Segmentation of System: Valves shall be provided in distribution mains at reasonable intervals so that repairs may be effected by the utility with interruptions to the service of a minimum number of customers. At intersections valves shall be installed on all connecting mains.

(5) Grid Systems: Wherever feasible the distribution system shall be laid out in a properly segmented grid so that in case of breaks or repairs the interruption of service to customers can be kept to a minimum.

[Recompiled 12/30/01]

#### **17.12.750.14 DESIGN AND CONSTRUCTION:**

A. Minimum Requirements for Materials, Equipment, and Installation: Materials, equipment, and installation shall be suitable for the pressures experienced and shall meet minimum requirements prescribed by the New Mexico Environmental Improvement Division and any other governmental body with jurisdiction over the facility.

B. Standardizing: To preclude costly duplication of stocked piping material the utility may properly require that a specific material shall be used throughout at the discretion of the utility. Special consideration shall be given to standardization of valve and hydrant opening direction and to units of registration on water meters.

C. Systems Used for Fire Protection: When fire protection is provided by the utility as a part of the water service, the utility shall not misrepresent its fire protection capabilities.

#### **D. Service Connections:**

(1) The size, design, material, and installation of the service pipe shall conform to the reasonable requirements of the utility, provided that the minimum size of the pipe shall not be less than 3/4-inch. The minimum size of meters shall be 5/8-inch.

(2) Whenever feasible all service pipes shall be installed below the frost line to prevent freezing and at a depth adequate to protect the pipes from surface activity, gardening, etc.

(3) Service connections should not be connected to hydrant branch lines and should not cross intervening properties even with the protection of easements.

E. General Construction: The design and construction of the utility's water plant shall conform to standard acceptable engineering practices. It shall be designed and operated to provide adequate and safe service to customers and shall conform to the requirements of the New Mexico Environmental Improvement Division with reference to sanitation and potability of water.

F. Disinfection of Facilities: All new mains, pumps, tanks, wells, other facilities for handling potable water and, insofar as practicable, repaired mains and other facilities shall be thoroughly disinfected before being connected to the system. The method of disinfection shall be as approved by the New Mexico Environmental Improvement Division.

[Recompiled 12/30/01]

#### **17.12.750.15 WATER SUPPLY MEASUREMENT:**

A. Measuring Devices: Each utility shall install a suitable totalizing measuring device or otherwise determine production at each source of supply so that an accurate record may be maintained of the quantity of water produced by each source, the quantity treated by the utility, and the quantity distributed into the mains.

B. Records: At least once each month the quantity produced from each source of supply shall be determined. Twelve-month totals by sources shall be recorded and transmitted to the Commission in the utility's Annual Report. Such records shall further show actual annual metered consumption and any other properly estimated revenue-producing unmetered water, and the difference between these figures shall be shown as a percentage of nonrevenue (unaccounted-for) water. Unaccounted-for water exceeding fifteen percent (15%) of the total production should be given special attention in order to reduce excessive losses of water.

[Recompiled 12/30/01]

### **PART 751-759: [RESERVED]**

## **PART 760: CUSTOMER SERVICE RULES AND REGULATIONS FOR WATER UTILITIES**

### **17.12.760.1 ISSUING AGENCY:**

New Mexico Public Public Regulation Commission.

[17.12.760.1 NMAC - Rp, 17.12.760.1 NMAC, 11/10/2020]

### **17.12.760.2 SCOPE:**

17.12.760 NMAC shall apply to any water utility operating within the state of New Mexico under the jurisdiction of the New Mexico public regulation commission.

[17.12.760.2 NMAC - Rp, 17.12.760.2 NMAC, 11/10/2020]

### **17.12.760.3 STATUTORY AUTHORITY:**

Section 8-8-15 NMSA 1978; Sections 62-3-1 NMSA 1978, 62-3-3 NMSA 1978, 62-3-4 NMSA 1978, 62-6-1 NMSA 1978, 62-6-4 NMSA 1978, 62-6-16 NMSA 1978, 62-6-18 NMSA 1978, 62-6-19 NMSA 1978, 62-6-20 NMSA 1978, 62-6-21 NMSA 1978, 62-6-22 NMSA 1978, 62-8-3 NMSA 1978, 62-8-10 NMSA 1978, and 62-9-1 NMSA 1978.

[17.12.760.3 NMAC - Rp, 17.12.760.3 NMAC, 11/10/2020]

**17.12.760.4 DURATION:**

Permanent.

[17.12.760.4 NMAC - Rp, 17.12.760.4 NMAC, 11/10/2020]

**17.12.760.5 EFFECTIVE DATE:**

November 10, 2020 unless a later date is cited at the end of a section.

[17.12.760.5 NMAC - Rp, 17.12.760.5 NMAC, 11/10/2020]

**17.12.760.6 OBJECTIVE:**

17.12.760 NMAC is intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by water utilities under the jurisdiction of the public regulation commission, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon such water utilities. If unreasonable hardship to such a water utility or to a customer of such a water utility results from the application of any provision herein prescribed, application may be made to the commission for the modification of the provision or for temporary or permanent exemption from its requirements. The public regulation commission is not precluded from altering or amending 17.12.760 NMAC or from making such modifications with respect to its application as may be found necessary to meet exceptional conditions. These regulations shall not relieve any water utility operating within the state of New Mexico subject to the jurisdiction of the public regulation commission from its duties under the laws of this state.

[17.12.760.6 NMAC - Rp, 17.12.760.6 NMAC, 11/10/2020]

**17.12.760.7 DEFINITIONS:**

**[RESERVED]**

[17.12.760.7 NMAC - Rp, 17.12.760.7 NMAC, 11/10/2020]

**17.12.760.8 [RESERVED]**

[17.12.760.8 NMAC - Rp, 17.12.760.8 NMAC, 11/10/2020]

### **17.12.760.9 CUSTOMER SERVICE RULES AND REGULATIONS:**

The customer service rules and regulations set forth in 17.12.760 NMAC establish the responsibilities and rights of jurisdictional water utilities and their residential customers in their water service relationship. Nothing herein shall prevent any utility from adopting customer service rules and regulations which do not conflict with but which are additional to those set forth herein to cover special circumstances.

[17.12.760.9 NMAC - Rp, 17.12.760.9 NMAC, 11/10/2020]

### **17.12.760.10 FORMAT FOR CUSTOMER SERVICE RULES AND REGULATIONS:**

**A.** For the convenience of the utilities the customer service rules and regulations herein are set forth in the appropriate format. (See 17.12.760.10 NMAC.pdf)

**B.** But for the utility's ability to disconnect residential service due to an emergency, safety concerns, or by customer request, the following rules regarding disconnection of residential utility service may be implemented on a temporary basis by order of the commission for a period of time, up to and including, the duration of any emergency executive order issued by the governor of New Mexico pertaining to a public health or other emergency condition under either the Public Health Emergency Response Act, Section 12-10A-1 NMSA 1978, and the All Hazards Emergency Management Act, Section 12-10-1 NMSA 1978:

**(1)** all utilities may be prohibited from discontinuing residential utility service for non-payment during the time period the emergency executive orders are in effect;

**(2)** any late fees on residential accounts that would be incurred during the time period of the effectiveness of the emergency executive orders may be required to be waived;

**(3)** utilities may be permitted to temporarily close in-person bill payment locations provided the utility provides notice to residential customers of such closures and identifies in such notice how payment made be made, including electronically or by mail. In the event of the closure of in-person bill payment locations, utilities shall be permitted to continue to collect credit card or bank fees in accordance with their own commission approved and filed tariffs;

**(4)** medical certificates set to expire shall not expire for the duration of the effectiveness of any emergency executive order and may be automatically be extended for 90 days from the end of any emergency executive order.

[17.12.760.10 NMAC - Rp, 17.12.760.10 NMAC, 11/10/2020]

### **17.12.760.11 [RESERVED]**

[17.12.760.11 NMAC - Rp, 17.12.760.11 NMAC, 11/10/2020]

## **PART 761-769: [RESERVED]**

## **PART 770: SMALL WATER UTILITIES**

### **17.12.770.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.12.770.1 NMAC - Rp, NMPSC Rule 770, 7/31/2007]

### **17.12.770.2 SCOPE:**

This part governs the filing and review of changes in rates proposed by small water utilities as defined by Section 62-8-7.1A NMSA 1978 (2005).

**A. Exception for 50 percent or more rate increase proposal for small water utilities with 1,500 or fewer service connections.** The provisions of 17.12.770.1 NMAC through 17.12.770.16 NMAC shall not apply to small water utilities, as defined by Section 62-8-7.1(B) NMSA 1978, if any of the criterion in Paragraphs (1), (2), (3) or (4) below apply. When any criterion listed below applies, Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC relating to the application for new rates shall apply to the filing and review of a proposed rate or rates by a small water utility.

(1) A proposed rate increase would increase the utility's revenue requirement fifty (50) percent or more over a twelve (12) month period.

(2) A proposed rate increase would increase any rate for any customer class for any given level of consumption fifty (50) percent or more over a twelve (12) month period.

(3) A utility proposes to increase a seasonally-adjusted rate and that increase would result in an increase in the rate of fifty (50) percent or more.

(4) A utility proposes to institute a rate where no rate had existed previously.

**B. Exception for more than an 8 percent rate increase proposal for small water utilities with more than 1,500 but less than 5,000 service connections.** The provisions of 17.12.770.1 NMAC through 17.12.770.16 NMAC shall not apply to small water utilities, as defined by Section 62-8-7.1A NMSA 1978, if any of the criterion in Paragraphs (1), (2), (3) or (4) below apply. When any criterion listed below applies, Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC relating to application for new rates shall apply to the filing and review of a proposed rate or rates by a small water utility.

(1) A proposed rate increase would increase the utility's revenue requirement by more than eight percent (8%) over a twelve (12) month period.

(2) A proposed rate increase would increase any rate for any customer class for any given level of consumption by more than eight (8) percent over a twelve (12) month period.

(3) A utility proposes to increase a seasonally-adjusted rate and that increase would result in an increase in the rate of more than eight (8) percent over a twelve (12) month period.

(4) A utility proposes to institute a rate where no rate had existed previously.

C. A rate application by a small water utility shall comply with the provisions of 17.1.2.53 NMAC if any of the criteria listed in 17.12.770.2 NMAC applies.

[17.12.770.2 NMAC - Rp, NMPSC Rule 770.3, 7/31/2007]

**17.12.770.3 STATUTORY AUTHORITY:**

Sections 8-8-4, 62-3-1, 62-3-2.1, 62-3-4, 62-6-4, 62-8-3, 62-8-7 and 62-8-7.1 NMSA 1978.

[17.12.770.3 NMAC - Rp, NMPSC Rule 770.3, 7/31/2007]

**17.12.770.4 DURATION:**

Permanent.

[17.12.770.4 NMAC - N, 7/31/2007]

**17.12.770.5 EFFECTIVE DATE:**

July 31, 2007, unless a later date is cited at the end of a section.

[17.12.770.5 NMAC - Rp, NMPSC Rule 770, 7/31/2007]

**17.12.770.6 OBJECTIVE:**

The purpose of 17.12.770 NMAC is to carry out the explicit legislative intent of Sections 62-3-2.1 and 62-8-7.1 NMSA 1978, as amended, to limit governmental regulation of rate setting by small water utilities and to provide a degree of regulatory oversight of small water utilities that is proportionate to the need and benefit of such regulation.

[17.12.770.6 NMAC - Rp, NMPSC Rule 770.1, 7/31/2007]



### **17.12.770.7 DEFINITIONS:**

In addition to the definitions in 17.12.1.7 NMAC, certain terms as used in this rule are defined as follows.

**A. Advice notice** means a listing by a water utility of proposed changes in tariff schedules and proposed effective dates that has been provided to the public and filed with the commission.

**B. Operating district or division** means any area of utility operations which is geographically distinct and distant from other utility operations, and which would otherwise be operated as a separate stand-alone utility but for its classification as a business unit within the single utility.

**C. Rate** shall have the meaning given in Section 62-3-3H NMSA 1978.

**D. Ratepayer** means a person in whose name service is carried. As stated in Section 62-8-7.1A NMSA 1978 "each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer."

**E. Small water utility** means a public utility as defined in Sections 62-3-3G(3) NMSA 1978 with less than an aggregate of five thousand (5,000) service connections in any utility operating district or division in New Mexico averaged over the previous three (3) consecutive years.

[17.12.770.7 NMAC - N, 7/31/2007]

### **17.12.770.8 PROCEDURES FOR 2% RATE CHANGE WITHOUT HEARING:**

**A.** A small water utility may adjust its commodity charge and customer service charge by up to two percent (2%) in any calendar year without a hearing, provided that the utility:

- (1)** is in good standing with all applicable commission rules and orders;
- (2)** shall not have changed its rates in the prior twelve (12) month period;
- (3)** shall have given notice to its customers by a mailed bill insert, printed notice on a bill or separate mailing of its proposed rate adjustment at least thirty (30) days prior to the effective date of such rate adjustment, in accordance with 17.12.770.10 NMAC; and
- (4)** shall not make such rate adjustments effective until at least thirty (30) days after it has filed with the commission the required documents described in Subsection B below.

**B. Filing requirements.** The utility shall submit with its filing:

(1) an advice notice, including proposed rate schedules, notifying the commission of the utility's intent to implement the new rate or rates by a date certain, which may not be less than thirty (30) days after the filing of the advice notice; the advice notice shall conform to 17.1.210.9 NMAC;

(2) an affidavit describing how the notice required by 17.12.770.8 NMAC was given to the utility's ratepayers; and

(3) a copy of the notice, which shall be attached to the affidavit.

**C. Applicability of certain rules.** 17.12.770.10 NMAC applies to proposed two percent (2%) rate changes made pursuant to this section. 17.12.770.9 NMAC and 17.12.770.11 NMAC through 17.12.770.18 NMAC are not applicable to proposed two percent (2%) rate changes made pursuant to this section. The utility's filing under 17.12.770.8 NMAC shall be in accordance with 17.1.210 NMAC, except that Paragraph (2) of Subsection B of 17.1.210.11 NMAC relating to direct testimony and exhibits shall not apply, and Subsection C of 17.1.210.11 NMAC relating to additional information shall not apply.

[17.12.770.8 NMAC - Rp, NMPSC Rule 770.4, 7/31/2007]

#### **17.12.770.9 FILINGS BY SMALL WATER UTILITIES PROPOSING NEW RATES:**

**A.** This section applies to the filing and review of changes in rates proposed by small water utilities except small water utilities filing for a two percent (2%) rate change under 17.12.770.8 NMAC that have given proper notice according to 17.12.770.10 NMAC and small water utilities subject to the exceptions in 17.12.770.2 NMAC.

**B. Filing requirements.** The utility shall submit with its filing:

(1) an advice notice notifying the commission of the utility's intent to implement the new rate or rates by a date certain, which may not be less than thirty (30) days after the filing of the advice notice;

(2) an affidavit describing how the notice required by 17.12.770.10 NMAC has been given to the utility's ratepayers;

(3) a copy of the notice required by 17.12.770.10 NMAC attached to the affidavit of notice;

(4) a statement of the total number of ratepayers being served by the utility at the time of the filing;

(5) a brief statement explaining what has caused the need for the rate adjustment; and

(6) a statement that contains a rate and billing analysis.

**C. Required rate and billing analysis.** The rate and billing analysis shall describe the effect of any proposed rate increase on each class of customers and shall include: a description of any proposed changes in rate design; a comparison of each proposed rate with the existing rate for each customer class; a table that provides a billing analysis for residential customers and a table that provides a rate analysis for each customer class.

(1) The rate comparison shall state each proposed rate and each existing rate for each customer class, the percentage difference between each proposed rate and each existing rate and the number of customers within each customer class to which each change applies.

(2) The table that provides the billing analysis for residential customers shall state the present bill, the anticipated bill under the proposed rates and the percentage difference between the two bills for the following levels of consumption: 0 gallons, 1,000 gallons, 2,000 gallons, 3,000 gallons, 4,000 gallons, 5,000 gallons, 6,000 gallons, 7,000 gallons, 8,000 gallons, 9,000 gallons, 10,000 gallons, 15,000 gallons, 20,000 gallons, 25,000 gallons, 30,000 gallons, 35,000 gallons, 40,000 gallons, 45,000 gallons and 50,000 gallons.

(3) The table that provides the rate analysis for each customer class shall be based on each level of consumption listed in Paragraph (2) above. The table shall be based on the month of highest overall consumption in the twelve (12) months preceding the filing of the notice to ratepayers. The table shall show the number of customers and the present and proposed bill for each level of consumption, rounding gallons per month to the nearest one thousand (1,000) gallons. For example, for the six thousand (6,000) gallon level, the utility will show the number of customers with usage of five thousand five hundred and one (5,501) to six thousand five hundred (6,500) gallons. If consumption is measured in units other than thousands of gallons, the utility shall convert their billing units to thousands of gallons. If there were no customers at a particular level of consumption, the utility shall list a zero in the table for that level of consumption.

**D. Applicability of 17.1.210 NMAC.** The utility's filings under 17.12.770.9 NMAC shall be in accordance with 17.1.210 NMAC, except that Paragraph (2) of Subsection B of 17.1.210.11 NMAC relating to direct testimony and exhibits and Subsection C of 17.1.210.11 NMAC relating to additional information shall not be applicable. The utility may, but is not required to file with the advice notice, the direct testimony, exhibits, and statements which would be required by 17.12.770.15 NMAC in the event of a valid protest or motion to review by commission staff.

**E. Rejection.** Failure to abide by these requirements shall be deemed grounds for rejection of the filing.

**F. Effective date of rates.** The rate or rates proposed in accordance with the provisions of this section shall become effective on the date set forth in the advice notice unless a protest is filed under 17.12.770.12 NMAC, or a staff motion for review is filed under 17.12.770.11 NMAC and the commission determines the protest or motion establishes just cause for reviewing the proposed rates. If a valid protest or motion is filed and the commission determines that there is just cause for review of the proposed rates, the new rates may become effective only in accordance with Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC.

**G. Rates effective by operation of law.** Rates that become effective by operation of law, without hearing by the commission, shall not be construed to bear the approval of the commission and may be subject to inquiry by the commission at any time.

[17.12.770.9 NMAC - Rp, NMPSC Rule 770.4, 7/31/2007]

#### **17.12.770.10 NOTICE TO RATEPAYERS PRIOR TO FILING OF PROPOSED RATES:**

**A. Notice required.** At least sixty (60) days prior to filing with the commission a schedule proposing a change in rate or rates, a small water utility shall notify its ratepayers of the proposed rate or rates in writing. The utility may mail the notice to ratepayers either with their billings or independently.

**B. Required information.** The notice to ratepayers shall include the following information:

- (1) the amount of the increase requested in both total dollar amounts and total percentage increases;
- (2) the customer classifications to which the new rate or rates would apply;
- (3) a comparison of the present rate with proposed rates, consisting of
  - (a) the present rate,
  - (b) the proposed rate,
  - (c) the percentage difference between the present and proposed rate for each customer class and
  - (d) the number of customers in each class to which the proposed rates would apply;

(4) the date on which the utility intends to file with the commission the advice notice proposing the change in rate or rates;

(5) a statement that the utility will promptly notify a ratepayer of the date on which it actually files with the commission the advice notice proposing the change in rate or rates, if the ratepayer so requests;

(6) a statement in all capital letters that if a hearing is held by the public regulation commission, any costs incurred by the utility may be included in the utility's future rates, following the utility's next rate case;

(7) a statement that procedures for protesting rates are set forth in 17.12.770 NMAC, a copy of which can be obtained upon request from, or inspected at, the main office of the utility or the offices of the utility division of the commission in Santa Fe, and that forms for protests are available from either the utility or the commission, and indicating the telephone numbers and addresses of both the utility and the commission;

(8) a statement that the rate filing together with any exhibits and related papers may be examined at the main offices of the utility or at the commission in Santa Fe;

(9) a statement that further information may be obtained by contacting either the utility or the commission; and

(10) a statement that, for purposes of protests, "ratepayer" means a person in whose name service is carried. For purposes of protests, under Section 62-8-7.1 NMSA 1978, "each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer."

**C. Billing analysis for residential customer required.** The notice to ratepayers shall include a chart that provides a billing analysis for residential customers clearly showing the present rates, the proposed rates, and the percentage difference between the present bill and the anticipated bill for each of the following levels of consumption (if consumption is measured in units other than thousands of gallons the utility shall convert their billing units to thousands of gallons) - 0 gallons, 1,000 gallons, 2,000 gallons, 3,000 gallons, 4,000 gallons, 5,000 gallons, 6,000 gallons, 7,000 gallons, 8,000 gallons, 9,000 gallons, 10,000 gallons, 15,000 gallons, 20,000 gallons, 25,000 gallons, 30,000 gallons, 35,000 gallons, 40,000 gallons, 45,000 gallons and 50,000 gallons;

**D.** If the utility has one thousand five hundred (1,500) or fewer service connections in any operating district or division, averaged over the previous three (3) consecutive years, the notice to ratepayers shall include a statement that the new rate or rates will go into effect automatically and will not be subject to review and hearing by the commission unless ratepayers file a protest conforming to the requirements of 17.12.770.12 NMAC.

**E.** If the utility has more than one thousand five hundred (1,500), but less than five thousand (5,000) service connections in any operating district or division, averaged over the previous three (3) years, the notice to ratepayers shall include a statement that the new rate or rates will go into effect automatically and will not be subject to review and hearing by the commission unless commission staff files a motion for review or ratepayers file a protest conforming to the requirements of 17.12.770.12 NMAC.

**F. Prior approval of notice form.** The utility shall submit a copy of the form notice to the utility division staff for approval at least fifteen (15) days prior to giving notice to ratepayers. If the commission does not disapprove of the form of notice within five (5) business days of submission of the notice, the form will be deemed approved.

**G. Rejection.** Failure to comply with this section shall be deemed grounds for rejection of the filing proposing a change in rate or rates.

[17.12.770.10 NMAC - Rp, NMPSC Rule 770.5, 7/31/2007]

#### **17.12.770.11 STAFF MOTION FOR COMMISSION REVIEW OF RATE PROPOSALS:**

**A. Suspension of rates upon filing of staff motion.** Rates proposed under 17.12.770 NMAC by a utility with more than one thousand five hundred (1,500) but less than five thousand (5,000) service connections in any operating district or division, averaged over the previous three (3) consecutive years, shall be subject to suspension, review and hearing by the commission upon the timely filing with the commission of a staff motion for review.

**B. Timing of staff motion.** A staff motion for review shall be filed with the commission no later than twenty (20) days after the utility files with the commission the advice notice proposing the change in rate or rates.

**C. Full review upon staff motion.** Upon the timely filing of a staff motion and after a commission determination that just cause exists to review the proposed rates or rates, the commission will conduct a full review of the proposed rate or rates under Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC and under either 17.12.730 NMAC or 17.12.780 NMAC.

[17.12.770.11 NMAC - N, 7/31/2007]

#### **17.12.770.12 PROTESTS BY RATEPAYERS:**

**A. Suspension of rates upon filing of protest.** Rates proposed by a small water utility under 17.12.770 NMAC will be subject to suspension, review, and hearing by the commission upon the timely filing with the commission of a protest.

**B.** For a utility with one thousand five hundred (1,500) or fewer service connections in any operating district or division, averaged over the previous three (3) consecutive

years, a protest must be signed by ten (10) percent, or more, of the utility's ratepayers, or twenty-five (25) ratepayers, whichever is more, receiving service from the utility at the time the change in rate or rates is filed. For purposes of this rule, ratepayer is defined in 17.12.770.7 NMAC.

**C.** For a utility with more than one thousand five hundred (1,500) but less than five thousand (5,000) service connections in any operating district or division, averaged over the previous three (3) consecutive years, a protest must be signed by ten (10) percent or more of the ratepayers receiving service from the utility at the time the change in rate or rates is filed. For purposes of this rule, ratepayer is defined in 17.12.770.7 NMAC.

**D. Timing of protest.** Protests shall be filed with the commission no later than twenty (20) days after the utility files with the commission the advice notice proposing the change in rate or rates, and shall conform to the requirements of 17.12.770.13 NMAC.

**E. Full review upon protest.** Upon the filing of a protest under 17.12.770.12 NMAC and after a commission determination that just cause exists to review the proposed rate or rates, the commission will conduct a full review of the proposed rate or rates under Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC and under either 17.12.730 NMAC or 17.12.780 NMAC.

[17.12.770.12 NMAC - Rp, NMPSC Rule 770.6, 7/31/2007]

### **17.12.770.13 FORM AND FILING OF PROTEST:**

**A. Contents of protest.** Protest petitions to the commission shall be in writing, and signed by each of the ratepayers submitting the protest. All protests shall contain the following:

- (1) the name of the utility whose proposed rates are being protested and identification of the rate or rates being protested;
- (2) the name, mailing address, and phone number of each ratepayer protesting the proposed rates and the name, mailing address, and phone number of each ratepayer's attorney, if any; and
- (3) a caption of the proceeding, a space for the docket number, and the title "Protest."

**B. Format.** Whenever possible, protests shall be typed, double-spaced, and shall be on paper 8 1/2 inches wide and 11 inches long and fastened only to the left side.

**C. Use of commission form.** Protestants may use, but are not required to use, the commission's form for protests. The utility shall make copies of the commission's form available to its ratepayers upon request.

**D. Additional information permitted.** Protestants are strongly encouraged, but are not required, to file with the protest a statement or statements of their reasons for protesting the proposed rates as well as any data, exhibits, illustrations, prepared testimony, or written argument which may aid the commission in its determination of whether just cause exists to review the rates.

**E. Certificate of service.** The protestants shall serve copies of the protest and any accompanying documents on the utility whose proposed rates are being protested either by first class U.S. mail or by hand delivery. A certificate of service stating the date and manner of mailing or delivery shall be included in or attached to the protest at the time of filing with the commission.

**F. Number of copies required.** The protestants shall provide the commission with an original plus ten (10) copies of the protest and any accompanying documents at the time of filing unless the commission directs otherwise.

**G. Date of filing.** If a protest is submitted to the commission before the utility has filed the change in rate or rates, the protest shall be deemed filed as of the date of the utility's filing.

**H. Ratepayers' status.** Ratepayers who have submitted a protest under 17.12.770.13 NMAC will be deemed parties to any protest proceeding, but will not be deemed parties to a rate review proceeding.

[17.12.770.13 NMAC - Rp, NMPSC Rule 770.7, 7/31/2007]

#### **17.12.770.14 RESPONSE TO PROTEST:**

**A. Response with leave of commission.** No response to the substance of a protest filed with the commission is permitted except by leave of the commission or hearing examiner.

**B. Challenge to validity of protest petition.** The utility whose proposed rates are being protested may challenge the validity of the protest petition within ten (10) days of the filing of the petition.

(1) The challenge shall be made by motion conforming with the requirements of 17.1.2 NMAC and served upon each of the protestants.

(2) The motion shall be accompanied by affidavits and a brief in support of the motion, which shall also be served upon the protestants.

**C. Protestants to establish validity of protest petition.** If a protest is challenged by motion of the utility made in accordance with 17.12.770.14 NMAC, the commission or hearing examiner may direct the protestants to verify their status as ratepayers of the utility or otherwise establish the validity of the protest petition.



**D. Invalid protest petitions.** If the commission or hearing examiner determines that the protest petition is invalid, the commission or hearing examiner shall take such action as is deemed appropriate, including, but not limited to, dismissal of the protest.

**E. Ruling on protest.** The commission shall determine the validity of any challenged protest prior to a commission determination that just cause exists to review the proposed rate or rates.

[17.12.770.14 NMAC - Rp, NMPSC Rule 770.8, 7/31/2007]

#### **17.12.770.15 COMMISSION REVIEW OF RATES AFTER JUST CAUSE DETERMINATION:**

**A. Notice of hearing.** Once the commission determines that just cause exists to review the proposed rate or rates, the commission shall issue an order noticing the rate or rates for hearing. Either this order or a subsequent order shall prescribe:

- (1) the manner of any further notice to customers or the public, the cost of which shall be borne by the utility;
- (2) a deadline for the filing of motions to intervene under 17.1.2 NMAC and directions to any protestants that they that they will not be considered parties to the rate review proceeding unless they move for and are granted intervener status; and
- (3) directions to parties other than the utility and, to the extent the commission or hearing examiner may deem helpful, directions to the commission staff to file written testimony and exhibits.

**B. Service of notice:** The commission or hearing examiner shall mail copies of all orders issued under 17.12.770.15 NMAC to each protestant whether or not the protestant has sought or been granted intervener status.

[17.12.770.15 NMAC - Rp, NMPSC Rule 770.10, 7/31/2007]

#### **17.12.770.16 SUBMISSION OF WRITTEN TESTIMONY AND EXHIBITS BY UTILITY:**

**A. Information to be submitted upon commission determination of just cause.** After a commission determination of just cause for review of the proposed rate or rates, the utility shall file the following information and documents with the commission within thirty (30) days unless the commission or hearing examiner directs otherwise:

- (1) direct testimony and exhibits intended to be introduced into evidence in support of the proposed rate or rates, including any rate filing package required by commission rule or order and by 17.12.730 NMAC or 17.12.780 NMAC;

(2) a concise statement, supported by the direct testimony and exhibits, identifying:

(a) when the utility proposes to change the ratemaking treatment upon which the present rates are based, each proposed change, the reasons for the proposed change, and the impact in dollars of the proposed change on the rates being requested;

(b) the compound annual growth rate of each account of plant and expenditures since the test period used in the utility's last rate filing; and

(c) any extraordinary event or circumstance, known or projected, which materially alters the utility's operating or financial condition from the condition existing during the utility's test period in its last rate case; and

(3) a concise statement setting forth the utility's compliance or failure to comply with each part of the commission's final order in each of the utility's cases decided during the preceding five (5) years and its compliance or failure to comply with 17.6.450 NMAC and 17.1.2 NMAC through 17.12.780 NMAC.

**B. Copies.** The utility shall provide the commission with an original plus five (5) copies of all documents filed pursuant to subsection A, unless the commission or hearing examiner directs otherwise.

[17.12.770.16 NMAC - Rp, NMPSC Rule 770.9, 7/31/2007]

#### **17.12.770.17 STATUS OF PROTESTANTS DURING PROCEEDING:**

The protestants who file a protest will be deemed parties to any proceeding on a motion made by the utility under 17.12.770.14 NMAC but will not be deemed parties to the proceeding to review and hear the proposed rate or rates. Protestants may individually move to intervene under 17.1.2 NMAC and may or may not be granted intervenor status under that rule. The commission or hearing examiner may limit the number of interveners in the rate making proceeding to avoid unnecessary delay, duplication, or expense.

[17.12.770.11 NMAC - N, 7/31/2007]

#### **PART 771-779: [RESERVED]**

#### **PART 780: FILING REQUIREMENTS IN SUPPORT OF RATE SCHEDULES FOR CLASS C AND D WATER UTILITIES**

##### **17.12.780.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

**17.12.780.2 SCOPE:**

[Recompiled 12/30/01]

**17.12.780.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

**17.12.780.4 DURATION:**

[Recompiled 12/30/01]

**17.12.780.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.12.780.6 OBJECTIVE:**

The purpose of NMPSC Rule 780 [17.12.780 NMAC] is to define and specify the minimum data requirements to be filed by water utilities in support of a tendered new rate schedule or rate schedules which will supersede, supplement, or otherwise change the provision of a rate schedule required to be on file with the Commission.

[Recompiled 12/30/01]

**17.12.780.7 DEFINITIONS:**

[Recompiled 12/30/01]

**17.12.780.8 TABLE OF CONTENTS:**

- A. Purpose [17.12.780.6 NMAC]
- B. Minimum Data Requirements for Rate Filings [17.12.780.9 NMAC]
- C. Rate Filing Package Required of Class C Water Utilities [17.12.780.10 NMAC]
- D. Rate Filing Package Required of Class D Water Utilities [17.12.780.11 NMAC]
- E. Appendix Rate Application Forms - - Class C Water Utilities. Rate Application Forms - -Class D Water Utilities [17.12.780.13 NMAC]

[Recompiled 12/30/01]

#### **17.12.780.9 MINIMUM DATA REQUIREMENTS FOR RATE FILINGS:**

Provisions for rate filings are divided into the three (3) levels of operation set out in the classification of water utilities in NMPSC Rule 710.4 [17.12.1.7 NMAC]. NMPSC Rule 780 [17.12.780 NMAC] provides that water utilities shall file for rates in one of three formats. Class A and Class B water utilities as defined in NMPSC Rule 710.4 [17.12.1.7 NMAC] must file the most comprehensive package, set forth in the Appendix to NMPSC Rule 730 [17.12.730 NMAC]; Class C water utilities as defined in NMPSC Rule 710.4 [17.12.1.7 NMAC] may file a simpler package, set forth in the Appendix; Class D water utilities as defined in NMPSC Rule 710.4 [17.12.1.7 NMAC] may file the most abbreviated package, set forth in the Appendix.

[Recompiled 12/30/01]

#### **17.12.780.10 RATE FILING PACKAGE REQUIRED OF CLASS C WATER UTILITIES:**

A. To meet the Commission's minimum data filing requirements specified herein, the Class C water utility applicant must maintain adequate financial records fully separated from any commonly owned enterprise and requires that the applicant have on file with the Commission fully completed Annual Reports for the immediate past year and for at least the two (2) prior years if the applicant has been in existence that long.

B. The rate application form is based on the point in time concept represented by year-end operations for measuring rate base and the cost of service. This approach tends to close the time lag between the test period and the implementation of rates. In using this method, new plant added any time during the test period may be included in the year-end plant investment. If the added plant produces additional revenues, the added revenue and expense effect will be recognized in cost of service.

C. The test year used should be the most recent calendar year for which an Annual Report has been filed.

[Recompiled 12/30/01]

#### **17.12.780.11 RATE FILING PACKAGE REQUIRED OF CLASS D WATER UTILITIES:**

A. A Class D water utility may apply for rate adjustments by means of the formal procedure outlined in rules governing Class C water utilities or by following the procedure prescribed below which is intended to reduce filing requirements to shorten the time period between application and Commission Order. This procedure assumes that the applicant has maintained adequate financial records fully separated from any commonly owned enterprise and requires that the applicant has on file with the Commission fully completed Annual Reports for the immediate past year and for at least the two (2) prior years when the applicant has been in existence that long.

B. It is contemplated that in most cases Staff will be able to analyze the case and make its recommendation on the basis of written materials submitted by the Company.

C. Such materials will consist of the last three (3) Annual Reports, information contained in or supplied with the application form, and information furnished in response to requests made to the applicant by Commission Staff or intervenors.

[Recompiled 12/30/01]

**17.12.780.12 HISTORY:**

NMPUC Case No. 2086, order dated June 30, 1988, unless otherwise noted; amended by NMPUC Case No. 2561, Order dated April 4, 1994. Formerly part of General Order No. 42, superseded for purposes of rule reorganization and codification.

[Recompiled 12/30/01]

**17.12.780.13 APPENDIX:**

[See pdf file 17.12.780.13.pdf]

[Recompiled 12/30/01]

**PART 781-809: [RESERVED]**

**PART 810: PROCEDURES FOR REVIEW OF RATES PROPOSED BY WATER AND SANITATION DISTRICTS**

**17.12.810.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[6/30/88; 17.12.810.1 NMAC - Rn, NMPSC Rule 810 & A, 7-31-07]

**17.12.810.2 SCOPE:**

A. Except as provided in Subsection B of 17.12.810.2 NMAC, 17.12.810 NMAC governs the setting of new rates, tolls, and charges by water and sanitation districts organized under the Water and Sanitation District Act, hereinafter referred to sometimes as "districts." NMPSC Rules 110.39 through 110.41 [now 17.1.2 NMAC] relating to applications for new rates shall not be applicable.

B. The provisions of 17.12.810 NMAC are not applicable to water and sanitation districts which have elected to become subject to the terms and provisions of the Public Utility Act. Any such districts shall comply with NMPSC Rules 110.39 through 110.41

[now 17.1.2 NMAC] rather than 17.12.810 NMAC when proposing any rates, tolls, or charges.

C. When used in 17.12.810 NMAC the term "rates" shall refer to any and all rates, tolls, or charges to be filed with the public regulation commission under Section 73-21-55C NMSA 1978.

[6/30/88; 17.12.810.2 NMAC - Rn, NMPSC Rule 810.3 & A, 7-31-07]

### **17.12.810.3 STATUTORY AUTHORITY:**

17.12.810 NMAC is adopted under the authority vested in the commission by Section 73-21-55 NMSA 1978.

[6/30/88; 17.12.810.3 NMAC - Rn, NMPSC Rule 810.3, 7-31-07]

### **17.12.810.4 DURATION:**

Permanent.

[17.12.810.4 NMAC - N, 7/31/2007]

### **17.12.810.5 EFFECTIVE DATE:**

July 31, 2007, unless a later date is cited at the end of a section.

[6/30/88; 17.12.810.5 NMAC - Rn, NMPSC Rule 810.12 & A, 7-31-07]

### **17.12.810.6 OBJECTIVE:**

The purpose of 17.12.810 NMAC is to carry out the explicit legislative intent of Laws 1985, Chapter 166, which amended Sections 73-21-16 and 73-21-40 NMSA 1978, and which added Section 73-21-55 NMSA 1978, to limit governmental regulation of rate setting by water and sanitation districts, which are quasi-municipalities and are governed by an elected board, to the maximum extent possible.

[6/30/88; 17.12.810.6 NMAC - Rn, NMPSC Rule 810.1, 7-31-07]

### **17.12.810.7 DEFINITIONS:**

**[RESERVED]**

### **17.12.810.8 TABLE OF CONTENTS:**

A. Purpose 17.12.810.6 NMAC

- B. Authority 17.12.810.3 NMAC
- C. Applicability 17.12.810.2 NMAC
- D. Filings by water and sanitation districts proposing new rates 17.12.810.9 NMAC
- E. Notice to taxpayer-electors prior to filing of proposed rates 17.12.810.10 NMAC
- F. Protests by taxpayer-electors 17.12.810.11 NMAC
- G. Form and filing of protest 17.12.810.12 NMAC
- H. Response to protest 17.12.810.13 NMAC
- I. Submission of written testimony and exhibits by district 17.12.810.14 NMAC
- J. Commission review of rates 17.12.810.15 NMAC
- K. Status of protestants during proceeding 17.12.810.16 NMAC
- L. Effective date 17.12.810.5 NMAC

[6/30/88; 17.12.810.8 NMAC - Rn, NMPSC Rule 810.12 & A, 7-31-07]

**17.12.810.9 FILINGS BY WATER AND SANITATION DISTRICTS PROPOSING NEW RATES:**

A. A water and sanitation district shall propose new rates by filing the rates with the New Mexico public service commission [public regulation commission], accompanied by an advice notice notifying the commission of the district's intent to implement the new rates by a certain date, which may not be less than forty-five (45) days after the filing of the advice notice, and accompanied by an affidavit describing how the notice required by 17.12.810.10 NMAC has been given to the district's taxpayer-electors, to which affidavit is annexed a copy of the notice.

B. The district shall submit with its filing:

(1) a statement of the present rates, the proposed rates and the percentage difference between the present and proposed rates for each customer class and the number of customers to which the rates apply within each class;

(2) a copy of the resolution of the district's board of directors containing the board's decision to propose new rates; and

(3) a brief statement explaining what has caused the need for the rate adjustment unless contained in the board's resolution.

C. The filing shall be in accordance with NMPSC Rule 210 [now 17.1.210 NMAC] except that NMPSC Rule 210.13(b) [now Paragraph (2), Subsection B of 17.1.210.11 NMAC] relating to direct testimony and NMPSC Rule 210.14 [now Subsection C of 17.1.210.11 NMAC] relating to additional information requirements and NMPSC Rule 210.24 [now Subsection D of 17.1.210.12 NMAC] relating to filing fees thereof shall not be applicable. No fees shall be required of water and sanitation districts when proposing new rates in accordance with this 17.12.810.9 NMAC.

D. Failure to abide by the requirements set forth or incorporated by reference herein shall be deemed grounds for rejection of the filing.

E. The rates proposed in accordance with the provisions of Subsection A above shall become effective on the date set forth in the advice notice unless a protest is filed under 17.12.810.11 NMAC. In case of such protest the rates shall become effective when approved by the commission or under 17.12.810.13 NMAC below upon dismissal of the protest. Rates which become effective by operation of law without hearing by the commission shall not be construed to bear the approval of the commission.

[6/30/88; 10/21/91; 17.12.810.9 NMAC - Rn, NMPSC Rule 810.4, 7-31-07]

**17.12.810.10 NOTICE TO TAXPAYER-ELECTORS PRIOR TO FILING OF PROPOSED RATES:**

A. On or before the date a district files its proposed rates with the commission the district shall notify in writing its taxpayer-electors of the proposed rates. The notice may be mailed to the taxpayer-electors with their billings or independently.

B. The notice to taxpayer-electors shall include the following information:

(1) the amount of the increase requested in both dollar amounts and percentage increase;

(2) the customer classifications to which the new rates apply;

(3) the present rates, the proposed rates, the percentage difference between the present and proposed rates for each customer class, the number of customers in each class to which the proposed rates would apply, and, for residential customers, the present rates, the proposed rates and the percentage difference between the present bill and the anticipated bill for each of the following levels of consumption--0 gallons, 2,000 gallons, 3,000 gallons, 4,000 gallons, 5,000 gallons, 6,000 gallons, 7,000 gallons, 8,000 gallons, 9,000 gallons, 10,000 gallons, 15,000 gallons, 20,000 gallons, 25,000 gallons, and 30,000 gallons, and the highest level of consumption of any residential ratepayer using in excess of 30,000 gallons in any billing period in the twelve (12) months prior to preparation of this notice by the utility;



(4) the date on which the district is filing the schedule proposing the new rates;

(5) a statement that the new rates will be subject to review and approval by the New Mexico public regulation commission only if a protest is filed with the commission by twenty-five (25) of the district's taxpayer-electors or five percent (5%) of the district's taxpayer-electors, whichever is less, no later than thirty (30) days after the district has filed with the commission the schedule proposing the new rates, together with a statement of the total number of taxpayer-electors in the district and the number of those required to meet the requirements for a valid protest and a statement in all capital letters that if a hearing is held by the public regulation commission any costs incurred by the district may be included in the district's future rates, following the district's next rate case;

(6) a statement that procedures for protesting proposed rates are set forth in 17.12.810 NMAC, a copy of which can be obtained upon request from or inspected at the main office of the district or the offices of the commission in Santa Fe, and that forms for protests are available from either the district or the commission, and indicating the telephone numbers and addresses of both the district and the commission;

(7) a statement that any interested person may examine the rate filings, together with any exhibits and related papers that may be filed, at the main office of the district or at the offices of the commission in Santa Fe; and

(8) a statement that further information may be obtained by contacting either the district or the commission.

C. The district shall submit a copy of the form of notice to the commission for approval at least fifteen (15) days prior to giving notice to the taxpayer-electors pursuant to Subsection A above. If the commission does not disapprove the form of notice within five (5) working days of submission of the notice the form will be deemed approved.

D. Failure to comply with this section shall be deemed grounds for rejection of the filing under 17.12.810.9 NMAC proposing new rates.

[6/30/88; 10/21/91; 17.12.810.10 NMAC - Rn, NMPSC Rule 810.5 & A, 7-31-07]

#### **17.12.810.11 PROTESTS BY TAXPAYER-ELECTORS:**

A. Rates proposed by a district will be subject to commission review upon the filing with the commission of a protest signed by twenty-five (25) of the taxpayer-electors of the district or five percent (5%) of the taxpayer-electors of the district, whichever is less. Protest petitions shall conform to the requirements of 17.12.810.12 NMAC and must be filed with the commission no later than thirty (30) days after the district files with the commission the schedule proposing new rates. For the purposes of 17.12.810 NMAC all

protest petitions filed with the commission relating to the same district filing of proposed new rates shall be deemed a "protest."

B. NMPSC Rules 110.38 through 110.45 and NMPSC Rules 110.45 through 110.142 [now 17.1.2 NMAC] shall be applicable to proceedings commenced upon the filing of a protest under 17.12.810.11 NMAC except to the extent inconsistent with the provisions of 17.12.810 NMAC.

C. For purposes of 17.12.810 NMAC a taxpayer-electror is a person registered to vote in any precinct in the state, who:

- (1) is a resident of the district;
- (2) is a nonresident of the district who pays, or will be liable for paying, rates, tolls or charges set by the board of the district; or
- (3) is a non resident of the district who either has paid or incurred a general tax liability on real property within the district in the twelve months immediately preceding the district's filing of its proposed rates or who is purchasing real property within the district under a real estate contract where a property tax has been paid or incurred on the real property in the twelve months immediately preceding the district's filing of its proposed rates.

[6/30/88; 17.12.810.11 NMAC - Rn, NMPSC Rule 810.6 & A, 7-31-07]

#### **17.12.810.12 FORM AND FILING OF PROTEST:**

A. Contents of protest: Protests to the commission must be in writing and shall be signed by each of the taxpayer-electors submitting the protest. All protests shall contain the following:

- (1) the name of the water and sanitation district whose proposed rates are being protested and identification of the rates being protested; and
- (2) the name, mailing address and phone number of each taxpayer-electror protesting the proposed rates and the name, mailing address and phone number of each taxpayer-electror's attorney, if any.

B. All protests shall show a caption for the proceeding, shall include a space for the docket number and shall be titled "protest." Whenever possible protests shall be typed and double-spaced, shall be on paper 8 1/2 inches wide and 11 inches long, and fastened only on the left side.

C. Use of commission form: Protestants may, but are not required to, use the commission's form for protests. The district shall make copies of the commission's form available to its taxpayer-electors upon request.

D. Additional information permitted: Protestants are strongly encouraged, but are not required, to file with the protest a statement or statements of their reasons for protesting the proposed rates as well as any data, exhibits, illustrations, prepared testimony or written argument which is pertinent to the protest and which may aid the commission in its review and hearing of the proposed rates under 17.12.810.15 NMAC.

E. Certificate of service: The protestants shall serve copies of the protest and any accompanying documents on the district whose proposed rates are being protested either by first class U.S. mail or by hand delivery. A certificate of service stating the date and manner of mailing or delivery must be included in or attached to the protest at the time of filing with the commission.

F. Number of copies required: At the time of filing the protestants shall provide the commission with an original plus ten (10) copies of the protest and any accompanying documents unless the commission directs otherwise.

G. Date of filing: If a protest is submitted to the commission before the district has filed the new rates, the protest shall be deemed filed as of the date of the district's filing.

[6/30/88; 17.12.810.12 NMAC - Rn, NMPSC Rule 810.7, 7-31-07]

#### **17.12.810.13 RESPONSE TO PROTEST:**

A. No response to the substance of a protest filed with the commission is permitted except by leave of the commission or presiding officer.

B. The district whose proposed rates are being protested may challenge the validity of the protest petition within thirty (30) days of the filing of the petition. The challenge shall be made by motion conforming with the requirements of NMPSC Rule 110 [now 17.1.2 NMAC] and served upon each of the protestants. The motion shall be accompanied by affidavits and a brief in support of the motion which shall also be served upon the protestants.

C. If a protest is challenged by motion of the district made in accordance with Subsection B, the commission or presiding officer may direct the protestants to verify their status as taxpayer-electors of the district or otherwise establish the validity of the protest petition.

D. If the commission or presiding officer determines that the protest petition is invalid, such action will be taken as is deemed appropriate including, but not limited to, the dismissal of the protest.

E. If the commission dismisses, the protest the district's proposed rates may go into effect upon the dismissal, and the district will not be required to file the information and documents described in 17.12.810.14 NMAC.

[6/30/88; 17.12.810.13 NMAC - Rn, NMPSC Rule 810.8, 7-31-07]

**17.12.810.14 SUBMISSION OF WRITTEN TESTIMONY AND EXHIBITS BY DISTRICT:**

A. Except as provided in Subsection E of 17.12.810.13 NMAC, the district whose proposed rates are being protested shall file the following information and documents with the commission within thirty (30) days of the filing of the protest with the commission or, if a challenge to the protest petition is filed under 17.12.810.13 NMAC and denied, within thirty (30) days of the date the challenge is denied.

(1) Direct testimony and exhibits intended to be introduced into evidence in support of the proposed rates, including any rate filing package required by commission rule or order and including:

(a) a copy of the cumulative special district quarterly cash report filed with the department of finance and administration's local government division ("DFA") for the most recent fiscal year ending prior to the date the proposed rates are filed with the commission;

(b) an income statement and balance sheet for the most recent fiscal year ending prior to the date the proposed rates are filed with the commission, if not included in the report filed with DFA; and

(c) the budget upon which the district is basing its proposed rates.

(2) A concise statement supported by the direct testimony and exhibits identifying:

(a) whenever the district proposes to change the ratemaking treatment upon which the present rates are based, each proposed change, the reasons for the proposed change and the impact in dollars of the proposed change on the rates currently in effect;

(b) the compound annual growth rate of each account of plant and expenditures since the test period used in the district's last rate filing, and, briefly, the reasons for the growth; and

(c) any extraordinary event or circumstance, known or projected, which materially alters the district's operating or financial condition from the condition existing during the district's test period in its last rate filing.

B. The district's testimony and exhibits shall conform to the requirements of NMPSC Rule 110 [now 17.1.2 NMAC].

C. The district shall provide the commission with an original plus ten (10) copies of all documents filed in accordance with the provisions of Subsection A unless the commission or presiding officer directs otherwise.

[6/30/88; 17.12.810.14 NMAC - Rn, NMPSC Rule 810.9, 7-31-07]

#### **17.12.810.15 COMMISSION REVIEW OF RATES:**

A. If a protest is in substantial compliance with 17.12.810 NMAC and if no challenge to the protest petition is filed under 17.12.810.13 NMAC or a challenge is filed under 17.12.810.13 NMAC and denied, the commission or presiding officer shall issue an order noticing the proposed rates for hearing. Either this order or subsequent orders shall provide:

(1) for the manner of any further notice to taxpayer-electors, customers or the public, the cost of which shall be borne by the district;

(2) a deadline for the filing of motions to intervene under the requirements of NMPSC Rule 110 [now 17.1.2 NMAC] and directions to the protestants that they will not be considered parties to the proceeding unless they move for and are granted intervenor status, as provided in 17.12.810.16 NMAC;

(3) directions to parties other than the district and, to the extent the commission or presiding officer may deem helpful, to the commission staff to file written testimony and exhibits subsequent to the filing of testimony and exhibits by the district under 17.12.810.14 NMAC; and

(4) the time and place of the hearing.

B. Copies of all orders issued under this section shall be sent to each protestant whether or not that protestant has been granted intervenor status.

[6/30/88; 17.12.810.15 NMAC - Rn, NMPSC Rule 810.10, 7-31-07]

#### **17.12.810.16 STATUS OF PROTESTANTS DURING PROCEEDING:**

The protestants who file a protest will be deemed parties to any proceeding on a motion made by the district under 17.12.810.13 NMAC but will not be deemed parties to the proceeding to review and hear the proposed rates. Protestants who desire to participate in the proceeding must individually move to intervene pursuant to NMPSC Rule 110 [now 17.1.2 NMAC] and be granted intervenor status under that rule. The commission or presiding officer may limit the number of intervenors in the proceeding to avoid unnecessary delay, duplication, or expense.

[6/30/88; 17.12.810.16 NMAC - Rn, NMPSC Rule 810.11, 7-31-07]

# CHAPTER 13: SEWER SERVICES

## PART 1: GENERAL PROVISIONS FOR SEWER UTILITIES

### 17.13.1.1 ISSUING AGENCY:

New Mexico Public Service Commission. [Public Regulation Commission].

[Recompiled 12/30/01]

### 17.13.1.2 SCOPE:

[Recompiled 12/30/01]

### 17.13.1.3 STATUTORY AUTHORITY:

NMPSC Rules 910 through 980 [17.13.1 NMAC and 17.13.920 NMAC through 17.13.980 NMAC] governing the application for Certificates of Public Convenience and Necessity, the application for rate increases, and annual reporting by sewer utilities are issued pursuant to NMPSC Rule 120 [17.1.120 NMAC] and NMSA 1978, Sections 62-3-1, 62-3-3(G)(5), 62-3-4, 62-6-1, 62-6-4, 62-6-16, 62-6-18, 62-6-19, 62-6-20, 62-6-21, 62-6-22, 62-8-3, 62-8-7.1, 62-8-10, 62-9-1, and 62-9-2.1.

[Recompiled 12/30/01]

### 17.13.1.4 DURATION:

[Recompiled 12/30/01]

### 17.13.1.5 EFFECTIVE DATE:

[Recompiled 12/30/01]

### 17.13.1.6 OBJECTIVE:

[Recompiled 12/30/01]

### 17.13.1.7 DEFINITIONS:

When used in NMPSC Rules 910 through 980 [17.13.1 NMAC and 17.13.920 through 17.13.980 NMAC] unless otherwise specified the following definitions will apply.

A. "Accounting Method" means the uniform system of accounting prescribed by the Commission.

(1) "Functional Accounting" means the grouping of plant and expense accounts according to the specified function or purpose which the plant or expense performs in rendering the utility service, such as source of supply, pumping, sewer treatment, transmission, distribution, etc.

(2) "Primary Account" means the grouping of plant and expenses by balance sheet account number, such as accounts 101, 102, 103, etc.

(3) "Detailed Account" means the breakdown of plant and expenses into subaccounts, that is, utility plant accounts, such as accounts 301, 302, 303, etc.

B. "Accounting Period":

(1) Calendar Year - a consecutive twelve-month accounting period beginning with January 1 and ending with December 31; and

(2) Fiscal Year a - consecutive twelve-month accounting period.

C. "Adjustment" means a calculation made with reasonable accuracy to the book balance of accounts to reflect a known and measurable change or estimate based on projection for the full twelve-month period of the Test Year. "Pro Forma Adjustment" means a computation made to develop the effect of a known and measurable change on the financial statements presented for Test Year purposes in a rate case.

D. "Allocation" means the process by which the total cost of service is classified into the types of services provided such as demand, commodity, base, extra capacity, and customer, and assigned to the various classes of customers served within a regulatory jurisdiction or among regulatory jurisdictions.

E. "Annualization" means a computation made to reflect a full twelve-month effect of an item of income or expense which is recorded in the utility's financial statements for only a portion of a year.

F. "Base Period" means the applicant utility's twelve (12) consecutive months of actual experience as reflected on the book balance of accounts, the last day of which shall not be more than one hundred fifty (150) days prior to the date of tender for filing with a Future Test Year Period.

G. "Book Balance Accounts" means the amounts actually recorded by the applicant utility on its books of account. Whenever property and/or services are acquired for other than cash, the basis for valuation for book purposes shall be explained.

H. "Classification" means the separation of plant and expenses into the principal categories of the services rendered, such as demand related, commodity related, customer related, etc.

I. "Classification of Sewer Utilities." For purposes of applying the uniform system of accounts prescribed by NARUC, Sewer Utilities are divided into three classes as follows:

(1) Class A-Utilities having annual sewer operating revenues of \$750,000 or more;

(2) Class B-Utilities having annual sewer operating revenues of \$150,000 or more but less than \$750,000;

(3) Class C-Utilities having annual sewer operating revenues of less than \$150,000.

J. "Cost of Service" means the total annual cost of rendering the utility service expressed in monetary value, including a rate of return on invested capital.

K. "Department" or "Division" means a responsibility center within the corporate structure of a public utility enterprise where revenues and expenses are accumulated as a result of a commodity or service rendered by such Department or Division.

L. "Depreciated Original Cost" (Book Value of Property) means the cost of property on the books of the utility to the person first devoting it to the public service less the accrued depreciation reserve. Depreciated original cost shall not include the cost of reproduction as a going concern nor any other consideration of other than book value.

M. "Filing" means notification to the Commission by means of a tendered change in tariff sheets and payment of the required fees by a public utility regarding such change pursuant to the provisions of the Commission's Code of Rules and Regulations.

(1) The "Filing Date" shall occur on the date on which the tendered change in tariff sheets is received at the offices of the Commission.

(2) The "Effective Date" shall occur on the date that such tendered change in tariff sheets is permitted to become effective by the Commission-thirty (30) days after the filing date or on such other date as may be ordered by the Commission.

N. "Functionalization" means the separation of costs according to major function or purpose which the plant or expense performs in rendering the utility service; for example, source of supply, pumping, sewer treatment, transmission and distribution, etc.

O. "Lead-Lag Study" is a method sometimes employed in developing the amount of cash working capital to be included in a Rate Base determination for a utility company. The study seeks to measure and quantify the lag (delay) in receipt of revenues from customers from the time service is rendered offset by the lead, that is, the period the



utility company has from the time it incurs an expense until cash is actually disbursed in payment of the expense.

P. "Litigation" means all contested matters before regulatory commissions, administrative bodies, and state or federal courts. Litigation also includes arbitration proceedings and other similar dispute resolution proceedings. Uncontested regulatory filings, contract drafting, negotiation and management, routine legal advice and other similar legal matters which are not in dispute are not considered litigation for the purposes of this rule.

Q. "Rate Base" means the net investment value upon which the applicant utility shall be permitted to earn a specified return. Generally the Rate Base represents the value of utility property used and useful in rendering the public utility service and may contain elements of value reflecting the cost of the utility property to the person first devoting it to the public service and other items, such as cash working capital, materials, supplies, and prepayments. In accordance with New Mexico statutes the applicant's Rate Base may also reflect the cost of reproduction as a going concern and other elements of value.

R. "Rate Class" means a group of customers which exhibit similar use characteristics and which are grouped together for cost allocation, rate design, and billing purposes.

S. "Reproduction Cost" means the estimated cost to reproduce an item or property or other asset currently owned at current prevailing prices.

T. "Test Year Period." Nothing herein shall preclude an applicant utility from adopting either an Historical Test Year Period or a Future Test Year Period, each as defined below, as the basis of the determination by the Commission of the applicant utility's total revenue requirements.

(1) "Historical Test Year Period." The applicant utility's twelve (12) months of actual experience adjusted for known and measurable changes, annualizations, or other changes for which period the applicant utility's total revenue requirements shall be determined.

(2) "Future Test Year Period." The twelve (12) consecutive months immediately following the last day of the applicant utility's twelve (12) months of actual experience [otherwise the Base Period] adjusted for known and measurable changes or estimates based on projections for which period the applicant utility's total revenue requirements shall be determined.

(3) The Test Year Period prescribed in the individual data request schedules shall incorporate the necessary adjustments in conformance with the definition given above for the type of Test Year Period selected by the applicant utility.

U. "Sewer Utility" means every corporation, individual, partnership, company, builder, developer, or other person not otherwise engaged solely in interstate commerce which owns, operates, leases, or controls any plant, property, or facility for the supplying and furnishing to or for the public of sanitary sewers for transmission and disposal of sewage produced by manufacturing, municipal, domestic, or other uses. The definition excludes water and sanitation districts, which are governed under the provisions of NMSA 1978, Section ,73-2-1 et seq.

[Recompiled 12/30/01]

#### **17.13.1.8 TABLE OF CONTENTS:**

- A. Introduction [17.13.1.9 NMAC]
- B. Purpose [17.13.1.10 NMAC]
- C. Authority [17.13.1.3 NMAC]
- D. Definitions [17.13.1.7 NMAC]

[Recompiled 12/30/01]

#### **17.14.1.9 INTRODUCTION:**

NMPSC Rules 910 through 980 [17.13.1 NMAC and 17.13.920 through 17.13.980 NMAC] govern annual reporting; Certificates of Public Convenience and Necessity; system design, construction, and operation; customer services; rate filings; and utility accounting for sewer utilities operating under the Commission's jurisdiction.

A. Annual Report Forms are required to be filed for every calendar year by April 30 of the following year. NMPSC Rule 920 [17.13.920 NMAC] provides that sewer utilities shall file Annual Reports in the form provided by the Commission.

B. Under NMPSC Rule 920 [17.13.920 NMAC] regulated sewer utilities are required to maintain financial accounts. Sewer utilities shall keep their financial records according to the NARUC Uniform System of Accounts for its NARUC Classification as prescribed in NMPSC Rule 340 [17.3.340 NMAC]. Upon written request by a sewer utility, the Commission shall provide a copy of the NARUC Uniform System of Accounts.

C. Provision for rate filings is divided into two levels of operation. NMPSC Rules 930 and 980 [17.13.930 NMAC and 17.13.980 NMAC] provide that sewer utilities shall file for rates in one of two formats. Utilities having annual operating revenues averaging over \$500,000 for any consecutive three-year period must file the most comprehensive package. Utilities with average operating revenues below \$500,000 may file the most abbreviated package.

D. No sewer utility subject to the Commission's jurisdiction shall commence construction or operation without first obtaining a Certificate of Public Convenience and Necessity. NMPSC Rule 940 [17.13.940 NMAC] provides that every filing for a certificate from the Commission shall be made pursuant to NMPSC Rules 110.35 through 110.38 [17.1.2 NMAC] and must demonstrate proposed system and service compliance when operational.

E. The Minimum Standards for Design, Construction, and Operation set forth in NMPSC Rule 950 [17.13.950 NMAC] establish the measurements the Commission will require in connection with questions which pertain to expense, capital, Rate Base, prudence, adequacy, or convenience and necessity. These system standards may reasonably be exceeded in any particular application. The minimum standards apply to all new sewer utilities seeking initial certification after the effective date of NMSA 1978, Section 62-9-2.1, and to new expansion, construction, and repair of existing facilities of already certified utilities.

F. The Customer Service Rules and Regulations, NMPSC Rule 960 [17.13.960 NMAC], establish the responsibilities and rights of jurisdictional sewer utilities and their residential customers in their sewer service relationship. Nothing herein shall prevent any utility from adopting Service Rules and Regulations which do not conflict with but which are additional to those set forth herein to cover special circumstances. Any deviation from the selected customer rules and regulations must be requested from, and granted by the Commission.

[Recompiled 12/30/01]

#### **17.13.1.10 PURPOSE:**

A. The adoption by the New Mexico Public Service Commission [New Mexico Public Regulation Commission] of the minimum data requirements specified in NMPSC Rules 910 through 980 [17.13.1 NMAC and 17.13.920 NMAC through 17.13.980 NMAC] is for the purpose of defining and specifying the annual filing requirements for sewer utilities and minimum data requirements to be filed in support for a tendered new rate schedule or rate schedules which will supersede, supplement, or otherwise change the provision of a rate schedule required to be on file with the Commission and the minimum data requirements for Certificates of Public Convenience and Necessity.

B. The failure of the applicant to fulfill the minimum data requirements specified in NMPSC Rules 910 through 980 [17.13.1 NMAC and 17.13.920 NMAC through 17.13.980 NMAC] shall constitute sufficient cause for the commission to seek sanctions against a sewer utility or to reject an applicant's filing pursuant to NMPSC Rule 210 [17.1.210 NMAC].

(1) Pursuant to NMPSC Rules 110 and 210 [17.1.2 NMAC and 17.1.210 NMAC] an applicant utility unable to comply fully with any data requests contained herein due to good and sufficient cause should give notice in writing to the Commission

of the applicant utility's inability to comply with the provisions of such data request at least thirty (30) days prior to the filing of any report or action governed by NMPSC Rules 910 through 980 [17.13.1 NMAC and 17.13.920 NMAC through 17.13.980 NMAC].

(2) Upon receipt of such notification and after consideration by the Commission of the applicant utility's stated reasons for inability to comply fully with the provisions of NMPSC Rules 910 through 980 [17.13.1 NMAC and 17.13.920 NMAC through 17.13.980 NMAC], the Commission shall within fifteen (15) days notify the applicant utility in writing of its decision concerning the applicant utility's notice.

[Recompiled 12/30/01]

## **PART 2-919: [RESERVED]**

## **PART 920: UNIFORM SYSTEMS OF ACCOUNTS AND ANNUAL REPORT FORMS FOR SEWER UTILITIES**

### **17.13.920.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

### **17.13.920.2 SCOPE:**

[Recompiled 12/30/01]

### **17.13.920.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

### **17.13.920.4 DURATION:**

[Recompiled 12/30/01]

### **17.13.920.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

### **17.13.920.6 OBJECTIVE:**

[Recompiled 12/30/01]

### **17.13.920.7 DEFINITIONS:**

[Recompiled 12/30/01]

### **17.13.920.8 TABLE OF CONTENTS:**

- A. Uniform Systems of Accounts [17.13.920.9 NMAC]
- B. Annual Report Forms [17.13.920.10 NMAC]
- C. Appendix Annual Report Forms for Sewer Utilities [17.13.920.11 NMAC]

[Recompiled 12/30/01]

### **17.13.920.9 UNIFORM SYSTEMS OF ACCOUNTS:**

Under NMPSC Rule 920 [17.13.920 NMAC] regulated Class A, Class B and Class C sewer utilities as prescribed in NMPSC Rule No. 340 [17.3.340 NMAC] shall keep their financial records according to the NARUC, Uniform System of Accounts for its appropriate classification. Upon written request by a sewer utility, the Commission shall provide a copy of the NARUC Uniform System of Accounts.

[Recompiled 12/30/01]

### **17.13.920.10 ANNUAL REPORT FORMS:**

Sewer utilities are required to file Annual Reports for every calendar year by April 30 of the next year. NMPSC Rule 920 [17.13.920 NMAC] provides that sewer utilities shall file Annual Reports in either of two (2) formats. Class A and Class B sewer utilities as defined in NMPSC Rule 910 [17.13.1 NMAC] shall file Annual Reports in the form provided by the Commission for Class A and Class B Sewer Utilities and included in the Appendix A to NMPSC Rule 920 [17.13.920 NMAC]. Class C sewer utilities as defined in NMPSC Rule 910 [17.13.1 NMAC] may file either an abbreviated Annual Report form provided by the Commission, included in the Appendix B to NMPSC Rule 920 [17.13.920 NMAC], or the form provided for Class A and Class B Sewer Utilities.

[Recompiled 12/30/01]

### **17.13.920.11 APPENDIX:**

**Annual Report for Class A, Class B and Class C Sewer Utilities.**

[Recompiled 12/30/01]

### **PART 921-929: [RESERVED]**

**PART 930: FILING REQUIREMENTS IN SUPPORT OF RATE SCHEDULES FOR SEWER UTILITIES HAVING ANNUAL OPERATING REVENUES AVERAGING \$500,000 OR MORE**

**17.13.930.1 ISSUING AGENCY:**

New Mexico Public Service Commission. [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

**17.13.930.2 SCOPE:**

[Recompiled 12/30/01]

**17.13.930.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

**17.13.930.4 DURATION:**

[Recompiled 12/30/01]

**17.13.930.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.13.930.6 OBJECTIVE:**

The purpose of NMPSC Rule 930 [17.13.930 NMAC] is to define and specify the minimum data requirements to be filed by sewer utilities having annual operating revenues averaging \$500,000 or more in any consecutive three-year period. Minimum data requirements shall be filed in support of a tendered new rate schedule or rate schedules which will supersede, supplement, or otherwise change the provision of a rate schedule required to be on file with the Commission.

[Recompiled 12/30/01]

**17.13.930.7 DEFINITIONS:**

[Recompiled 12/30/01]

**17.13.930.8 TABLE OF CONTENTS:**

- A. Purpose: [17.13.930.6 NMAC]
- B. Minimum Data Requirements for Rate Filings: [17.13.930.9 NMAC]
- C. Letter of Transmittal to Accompany Rate Filing Package: [17.13.930.10 NMAC]
- D. Appendix: Minimum Data Standard Requirements: [17.13.930.11 NMAC]

[Recompiled 12/30/01]

**17.13.930.9 MINIMUM DATA REQUIREMENTS FOR RATE FILINGS:**

Provisions for rate filings are divided into two levels of operation. NMPSC Rule 930, [17.13.930 NMAC] provides that sewer utilities shall file for rates in one of two formats. Sewer utilities having annual operating revenues averaging \$500,000 or more over any consecutive three-year period must file the most comprehensive package, set forth in the Appendix to NMPSC Rule 930, [17.13.930 NMAC]. Sewer utilities having annual operating revenues averaging less than \$500,000 over any consecutive three-year period may file a simpler package, set forth in the Appendix to NMPSC Rule 980 [17.13.930 NMAC].

[Recompiled 12/30/01]

**17.13.930.10 LETTER OF TRANSMITTAL TO ACCOMPANY RATE FILING PACKAGE FOR SEWER UTILITIES HAVING ANNUAL OPERATING REVENUES AVERAGING \$500,000 OR MORE IN ANY CONSECUTIVE THREE-YEAR PERIOD:**

In the Letter of Transmittal the applicant shall:

- A. notify the New Mexico Public Utility Commission [New Mexico Public Regulation Commission] of the tendered rate schedules which will supersede, supplement, or otherwise change any provision of a separate schedule required to be on file with the Commission;
- B. include copies of each tendered rate schedule which will supersede, supplement, or otherwise change the provision of a rate schedule required to be on file with the Commission;
- C. state the date on which the applicant proposes to make the changes in service or rate, rule, or practice effective;
- D. state a brief description of the proposed changes in service and/or rate, the reason for the proposed change, and show that all the requisite agreements to the proposed change, including any contract embodied therein, have in fact been obtained;
- E. state that notice has been given or will be given as required by the Rules of the New Mexico Public Utility Commission [New Mexico Public Regulation Commission]; and
- F. list the documents submitted in support of the proposed changes.

[Recompiled 12/30/01]

**17.13.930.11 HISTORY:**

NMPUC Case No. 2277, Order dated December 29, 1989, unless otherwise noted; amended by NMPUC Case No. 2561, Order dated April 4, 1994.

[Recompiled 12/30/01]

**17.13.930.12 APPENDIX:**

**MINIMUM DATA STANDARD REQUIREMENTS FOR SEWER UTILITIES HAVING ANNUAL OPERATING REVENUES AVERAGING \$500,000 OR MORE IN ANY CONSECUTIVE THREE-YEAR PERIOD:**

A. Schedule A Series: Summaries of the proposed cost of service. Sch. A-1: Summary of the overall cost of service and the claimed revenue deficiency: Base Period; Test Year Period. Sch. A-2: Summary of the revenue increase or decrease at the proposed rates by rate classes: Test Year Period. Sch. A-3: Summary of the cost of service adjustments by functional classification and primary account: Test Year Period. Sch. A-4: Summary of Rate Base: Base Period; Test Year Period; Test Year Period RCND. Sch. A-5: Summary of total capitalization and the weighted average cost of capital: Base Period; Test Year Period; Test Year Period RCND: Schedule A Series: Summaries of the proposed cost of service: In this series of schedules the applicant shall show the cost of service in summary form for the Base Period and for the Test Year Period as appropriate and as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule A-1: Summary of the overall cost of service and the claimed revenue deficiency:

(a) [Base Period]: In this schedule the applicant shall show the cost of service for the Base Period on an unadjusted basis including, but not limited to revenues, operation and maintenance expenses, depreciation expense, taxes on other than income, taxes on income, and the resulting return.

(b) [Test Year Period]: In this schedule the applicant shall show each of the items included in the Base Period, all adjustments thereto, the sum of each of these items at the end of the Test Year Period, and the revenue deficiency.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(2) Schedule A-2: Summary of the revenue increase or decrease at the proposed rates by rate classification.

(a) [Base Period]: Not required.



(b) [Test Year Period]: In this schedule the applicant shall show by rate class the revenue for the Base Period, adjustments thereto, and as proposed for the Test Year Period, and the dollar amount of revenue increase or decrease and this amount expressed as a percent.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(3) Schedule A-3: Summary of the cost of service adjustments by functional classification.

(a) [Base Period]: Not required.

(b) [Test Year Period]: In this schedule the applicant shall show by functional classification the account balances for the Base Period and the adjustments made to the Base Period balances to reflect the applicant's cost of service for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(4) Schedule A-4: Summary of Rate Base.

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an original cost basis for the Base Period on an unadjusted basis.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components on an original cost basis for the Base Period, all adjustments made thereto, and the sum of these components for the Test Year Period.

(c) [Test Year Period -- Optional]: At the option of the applicant, the Rate Base components as adjusted for the Test Year Period may be adjusted further to reflect the cost of reproduction as a going concern and other elements of value.

(d) The information required in this schedule will be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support its proposed rate adjustment.

(e) A full explanation of each of the adjustments made to the component balances of Rate Base at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(5) Schedule A-5: Summary of total capitalization and the weighted average cost of capital.

(a) [Base Period]: In this schedule the applicant shall show the total claimed capitalization and the weighted average cost of capital for the Base Period on an unadjusted basis.

(b) [Test Year Period]: In this schedule the applicant shall show the total claimed capitalization and the weighted average cost of capital as of the end of the Base Period, the adjustments made thereto, and the total claimed capitalization and the weighted average cost of capital for the Test Year Period.

(c) [Test Year Period - Optional]: At the option of the applicant, the total claimed capitalization and weighted average cost of capital as adjusted for the Test Year Period may be adjusted further to reflect the cost of reproduction as a going concern and other elements of value.

(d) The information required in this schedule will be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support its proposed rate adjustment.

(e) A full explanation of each of the adjustments made to the claimed total capitalization and the weighted average cost of capital at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

B. Schedule B Series: Original cost of plant service. Sch. B-1: Original cost of plant in service by primary account: Base Period; Test Year Period. Sch. B-2: Original cost of plant in service by detail account: Base Period; Test Year Period. Sch. B-3: Construction work in progress: Base Period; Test Year Period. Sch. B-4: Allowance for funds used during construction generated and capitalized: Base Period; Test Year Period. Sch. B-5: Plant held for future use: Base Period; Test Year Period. Schedule B Series: Original cost of plant service: In this series of schedules the applicant shall show the amounts of utility plant under the various classifications for the Base Period and for the Test Year Period as appropriate and as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule B-1: Original cost of plant in service by primary account.

(a) [Base Period]: In this schedule the applicant shall show the utility plant book balances by primary account at the beginning of the Base Period and the book balances at the end of the Base Period including totals for the original cost of plant in service.

(b) [Test Year Period]: In this schedule the applicant shall show each of the utility plant accounts shown for the Base Period as of the end of the Base Period;

estimates or projections for additions, retirements, and transfers; and the balances at the end of the Test Year Period including totals for the original cost of plant as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(2) Schedule B-2: Original cost of plant in service by detail account.

(a) [Base Period]: In this schedule the applicant shall show by functional classification the book balances at the beginning of the Base Period; the book balances for additions, retirements, and transfers made thereto during the Base Period; and the book balances at the end of the Base Period including subtotals by functional classification and totals for the original cost of plant in service.

(b) [Test Year Period]: In this schedule the applicant shall show by functional classification the balances at the end of the Base Period; estimates or projections for additions, retirements, and transfers; and the balances at the end of the Test Year Period including subtotals by functional classification and totals for the original cost of plant in service.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(3) Schedule B-3: Construction work in progress.

(a) [Base Period]: In this schedule the applicant shall show the items included in construction work in progress for the Base Period by functional classification including a proper description of the project, work order number, estimated cost of the project, expenditures at the end of the Base Period, and the total book balance for construction work in progress at the end of the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the items included in construction work in progress for the Test Year Period by functional classification including a proper description of the project, work order number, estimated completion date, total estimated cost of the project, adjustments made thereto for the Test Year Period, expenditures at the end of the Test Year Period, and the total balance for construction work in progress at the end of the Test Year Period as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(4) Schedule B-4: Allowance for funds used during construction.

(a) [Base Period]: In this schedule the applicant shall show the amount of allowance for funds used during construction generated and transferred to plant in service during the Base Period and for the two (2) years prior thereto along with the corresponding capitalization rates used to calculate the amounts generated.

In addition, the applicant shall include a complete explanation of the methods, procedures, and calculations used in computing the amount of funds generated and transferred to plant in service.

(b) [Test Year Period]: In this schedule the applicant shall show the amount of allowance for funds used during construction as adjusted from the Base Period along with an explanation of the methods, procedures, and calculations used in computing the amount of funds generated and transferred to plant in service.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(5) Schedule B-5: Plant held for future use.

(a) [Base Period]: In this schedule the applicant shall show a list of plant held for future use as of the end of the Base Period including a proper description, date of purchase, anticipated use, anticipated date that property will be placed in service, and the book balance of each item of plant at the end of the Base Period including a total of these balances of plant held for future use.

(b) [Test Year Period]: In this schedule the applicant shall show a list of plant held for future use as of the end of the Test Year Period including a proper description, date of purchase, anticipated use, anticipated date that property will be placed in service, adjustments made to the Base Period balances for the Test Year Period, and the balance of each item of plant at the end of the Test Year Period including a total of these balances of plant held for future use as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

C. Schedule C-Series: Accumulated provision for depreciation and amortization. Sch. C-1: Accumulated provision for depreciation and amortization by functional classification and detailed plant account: Base Period; Test Year Period. Sch. C-2: Depreciation rate study: Base Period; Test Year Period. Schedule C Series: Accumulated provision for depreciation and amortization. In this series of schedules the applicant shall show information concerning the accumulated provision for depreciation and amortization for the Base Period and for the Test Year Period as appropriate and as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule C-1: Accumulated provision for depreciation and amortization by functional classification.

(a) [Base Period]: In this schedule the applicant shall include the book balance at the beginning of the Base Period for depreciation and amortization by functional classification and detailed plant account; the book balances for accruals, retirements, abandonments, and transfers entered on the books during the Base Period; and the book balances at the end of the Base Period including subtotals by functional classification and totals for the accumulated provision for depreciation and amortization.

(b) [Test Year Period]: In this schedule the applicant shall show by functional classification the balances for accumulated provision for depreciation and amortization at the end of the Base Period; estimates or projections for accruals, retirements, abandonments, and transfers; and the balances at the end of the Test Year Period including subtotals by functional classification and totals for the accumulated provision for depreciation and amortization as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(2) Schedule C-2: Depreciation rate study.

(a) [Base Period]: In this schedule the applicant shall include the book balance at the beginning of the Base Period for depreciation and amortization by functional classification and detailed plant account; the book balances for accruals, retirements, abandonments, and transfers entered on the books during the Base Period; and the book balances at the end of the Base Period including subtotals by functional classification and totals for the accumulated provision for depreciation and amortization.

(b) [Test Year Period]: In this schedule the applicant shall show by functional classification the balances for accumulated provision for depreciation and amortization at the end of the Base Period; estimates or projections for accruals, retirements, abandonments, and transfers; and the balances at the end of the Test Year Period including subtotals by functional classification and totals for the accumulated provision for depreciation and amortization as adjusted.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

D. Schedule D Series: Original cost of plant in service adjusted to the cost of reproduction as a going concern value - OPTIONAL: Sch. D-1: Original cost of plant in service adjusted to the cost of reproduction as a going concern value - OPTIONAL: Base Period; Test Year Period. Sch. D-2: Cost of reproduction as a going concern and other elements of value adjusted for age and condition - OPTIONAL: Base Period; Test

Year Period. Schedule D Series: Original cost of plant in service adjusted to the cost of reproduction as a going concern and other elements of value - Optional. In this series of schedules the applicant shall show the original cost of plant in service adjusted to the cost of reproduction as a going concern and other elements of value. The information required in this series shall be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support a rate increase adjustment.

(1) Schedule D-1: Original cost of plant in service adjusted to the cost of reproduction as a going concern and other elements of value - optional.

(a) [Base Period]: In this schedule the applicant shall show the original cost of plant in service by functional classification for the Base Period adjusted to the cost of reproduction as a going concern and other elements of value as of the end of the Base Period and shall include therein subtotals and the total for the adjusted value of the original cost of plant in service.

(b) In addition the applicant shall state herein the rationale, methods, formulae, and calculations used to adjust the original cost of plant in service.

(c) [Test Year Period]: In this schedule the applicant shall show the original cost of plant in service by functional classification for the Test Year Period adjusted to the cost of reproduction as a going concern and other elements of value and shall include therein subtotals and the total for the adjusted value of the original cost of plant in service.

(d) In addition, the applicant shall state herein the rationale, methods, formulae, and calculations used to adjust the original cost of plant in service.

(e) A full explanation of each of the estimates or projections made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(2) Schedule D-2: Cost of reproduction as a going concern value adjusted for age and condition - optional.

(a) [Base Period]: In this schedule the applicant shall show the adjustment for age and condition of the Base Period cost of reproduction as a going concern and other elements of value by functional classification and shall include therein the subtotal and the total for the cost of reproduction as a going concern value.

(b) In addition the applicant shall state the rationale, methods, formulae, and calculations used to arrive at the value for age and condition of the cost of reproduction as a going concern.

(c) [Test Year Period]: In this schedule the applicant shall show the adjustment for age and condition of the Test Year Period cost of reproduction as a going concern and other elements of value by functional classification and detail account and shall include therein the subtotal and the total for the cost of reproduction as a going concern value.

(d) In addition the applicant shall state therein the rationale, methods, formulae, and calculations used to arrive at the value for age and condition of the cost of reproduction as a going concern. A full explanation of each of the estimates or projections made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

E. Schedule E Series: Working capital allowance. Sch. E-1: Cash working capital allowance: Base Period; Test Year Period. Sch. E-2: Materials and supplies, prepayments, and deferred charges: Base Period; Test Year Period. Sch. E-3: Fuel stock inventories: Base Period; Test Year Period. Sch. E-4: Amounts of working capital items charged to operating and maintenance expense: Base Period; Test Year Period. Schedule E Series working capital allowance: In this series of schedules the applicant shall show the amounts claimed for working capital for the Base Period and for the Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule E-1: Cash working capital allowance.

(a) [Base Period]: In this schedule the applicant shall show the computation for the cash allowance of working capital for the Base Period on an unadjusted basis. At the applicant's option a lead-lag study may be supplied to satisfy the requirements of this schedule.

(b) [Test Year Period]: In this schedule the applicant shall show the computation for the cash allowance of working capital as of the end of the Base Period, the adjustments made thereto, and the total claimed cash allowance for the Test Year Period.

(c) At the applicant's option a lead-lag study may be supplied to satisfy the requirements of this schedule.

(d) A full explanation of each of the adjustments made to the balance for cash allowance as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(2) Schedule E-2: Materials and supplies, prepayments, and deferred charges.

(a) [Base Period]: In this schedule the applicant shall show for each month of the Base Period the beginning monthly book balances for materials and supplies, prepayments, and deferred charges on an unadjusted basis and shall include therein subtotals and totals for the period and the average balance for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show for each month of the Test Year Period the beginning monthly balance for materials and supplies, prepayments, and deferred charges; all adjustments thereto; and the subtotals and totals for the period and the average balances for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances for materials and supplies, prepayments, and deferred charges as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(3) Schedule E-3: Fuel stock inventories and fuel stock expenses.

(a) [Base Period]: In this schedule the applicant shall show for each month of the Base Period the beginning monthly book balances of fuel stock inventories and fuel stock expenses on an unadjusted basis and shall include therein subtotals and totals for the period and the average balance for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show for each month of the Test Year Period the beginning monthly book balances of fuel stock inventories and fuel stock expenses, all adjustments thereto, and the subtotals and totals for the period and the average balance for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances for fuel inventories and fuel stock expenses as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(4) Schedule E-4: Amounts of working capital items charged to operating and maintenance expenses.

(a) [Base Period]: In this schedule the applicant shall show for the Base Period the amounts of working capital items charged to operating and maintenance expense on an unadjusted basis and shall include therein subtotals and totals for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show for the Test Year Period the amounts of working capital items charged to operating and maintenance expense, all adjustments thereto, and the subtotals and totals for the Test Year Period.



(c) A full explanation of each of the adjustments made to the balances of working capital items charged to operating and maintenance expense as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

F. Schedule F Series: Other property and investments. Sch. F-1: Other property and investments: Base Period; Test Year Period. Schedule F Series: Other property and investments: In this series of schedules the applicant shall show the information requested on other property and investments for the Base Period and for the Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package. To the extent that the information required herein has been supplied and is currently on file with the New Mexico Public Service Commission [New Mexico Public Regulation Commission] pursuant to the provisions of NMPSC Rule 450 [17.6.450 NMAC], notice of such filing will fulfill the requirements for these series of schedules.

(1) Schedule F-1: Other property and investments.

(a) [Base Period]: In this schedule the applicant shall show its investments in other-than-utility property for the Base Period on an unadjusted basis including therein a description of the property or investment; the amounts invested; the types of securities owned, loaned, pledged, and/or advanced; the applicable cost rates; the equity in the undistributed earnings since date of acquisition; and the interest and/or dividend income received from such property or investment.

(b) In addition, if regulatory approval was required for any security acquired or advancement made in connection with such property or investment, the applicant shall state the name of the Commission, the date authorization was granted, and the case or docket number.

(c) [Test Year Period]: In this schedule the applicant shall show its investments in other-than-utility property as of the end of the Base Period; all adjustments made thereto for the Test Year Period; and the balance at the end of the Test Year Period including therein a description of the property or investment; the amounts invested; the types of securities owned, loaned, pledged, and/or advanced; the applicable cost rates; the equity in the undistributed earnings since date of acquisition; and the interest and/or dividend income received from such property or investment.

(d) In addition, if regulatory approval was required for any security acquired or advancement made in connection with such property or investment, the applicant shall state the name of the Commission, the date authorization was granted, and the case or docket number.

(e) A full explanation for each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

G. Schedule G Series: Capitalization, the cost of capital, and the overall rate of return. Sch. G-1: Capitalization, the cost of capital, and the overall rate of return in conformance with an original cost Rate Base; Base Period; Test Year Period. Sch. G-2: Capitalization, the cost of capital, and the overall rate of return in conformance with a cost of reproduction as a going concern value Rate Base - OPTIONAL: Base Period; Test Year Period. Sch. G-3: Embedded cost of borrowed capital with term of maturity in excess of one (1) year from date of issue: Base Period; Test Year Period. Sch. G-4: Cost of short-term borrowed capital including revolving credit agreements and other notes payable: Base Period; Test Year Period. Sch. G-5: Embedded cost of preferred stock capital: Base Period; Test Year Period. Sch. G-6: Common stock equity capital: Base Period; Test Year Period. Sch. G-7: Historical activity in common stock, paid-in capital, and retained earnings for five years prior to the base period. Base Period, Test Year Period. Schedule G Series: Capitalization, the cost of capital, and the overall rate of return. In this series of schedules the applicant shall show the total claimed capitalization by class of capital, the claimed capital structure, the embedded cost rates including the claimed rate of return on the common stock equity component, and the resulting weighted average cost of capital for the Base Period and for the Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule G-1: Capitalization, the cost of capital, and the overall rate of return in conformance with an original cost Rate Base.

(a) [Base Period]: In this schedule the applicant shall show the claimed capitalization, the cost of capital thereon, and the overall claimed rate of return for the Base Period on an actual basis; a description of the various classes of capital outstanding; the capital structure ratios; the effective embedded cost rates; and the weighted cost rate for each class of capital.

(b) [Test Year Period]: In this schedule the applicant shall show the claimed capitalization, the cost of capital thereon, and the overall claimed rate of return as of the end of the Base Period; all adjustments thereto; a description of the various classes of capital; the dollar amounts outstanding at the end of the Test Year Period; the capital structure ratios; the estimated or projected cost rates; and the weighted cost rate for each class of capital.

(c) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(2) Schedule G-2: Capitalization, the cost of capital, and the overall rate of return in conformance with a cost of reproduction as a going concern and other elements of value Rate Base - Optional.

(a) [Base Period]: In this schedule the applicant shall show the claimed capitalization, the cost of capital thereon, and the overall claimed rate of return as of the end of the Base Period on an actual basis; the adjustment thereto for the cost of reproduction as a going concern value; a description of the various classes of capital; the dollar amounts outstanding at the end of the Base Period as adjusted; the capital structure ratios; the effective embedded cost rates; and the weighted cost rate for each class of capital. The information required in this schedule will be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support its proposed rate adjustment.

(b) [Test Year Period]: In this schedule the applicant shall show the capitalization, the cost of capital, and the overall claimed rate of return as of the end of the Test Year Period as adjusted further to the cost of reproduction as a going concern value; a description of the various classes of capital; the dollar amounts outstanding at the end of the Test Year Period as adjusted; the capital structure ratios; the estimated cost rates; and the weighted cost rate for each class of capital. The information required in this schedule will be supplied when the applicant claims cost of reproduction as a going concern and other elements of value to support its proposed rate adjustment.

(c) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(3) Schedule G-3: Embedded cost of borrowed capital with term of maturity in excess of one year from date of issue.

(a) [Base Period]: In this schedule the applicant shall show the embedded cost of borrowed capital based on the actual principal amounts outstanding at the end of the Base Period. In addition the applicant shall show the following particulars for each class and series of borrowed capital outstanding:

- (i) description of issue;
- (ii) date of issuance;
- (iii) date of maturity;
- (iv) coupon or nominal interest rate;
- (v) principal amount of issue at offering;
- (vi) price at offering;
- (vii) gross proceeds;

(viii) underwriter's commission, discount, or premium;

(ix) expense of issue;

(x) net proceeds -- (1) amount, (2) per unit;

(xi) effective yield to maturity: [by reference to any generally acceptable table of bond yields or computer computation];

(xii) principal amount outstanding at end of Base Period;

(xiii) annual interest requirements;

(xiv) weighted effective cost rate;

(xv) if issue is owned by an affiliate, state name and relationship of owner to applicant; and

(xvi) if issue is convertible, state terms of conversion.

(b) [Test Year Period]: In this schedule the applicant shall show the cost of borrowed capital [particulars (a) through (p)] [particulars (i) through (xvi)] after all adjustments to the actual balances and cost rates at the end of the Base Period.

(c) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(4) Schedule G-4: Cost of short-term borrowed capital including revolving credit agreements

and other notes payable:

(a) [Base Period]: In this schedule the applicant shall show the cost of short-term borrowed capital based on the actual principal amounts outstanding at the end of the Base Period. In addition the applicant shall show the following particulars for each class and series of short-term borrowed capital outstanding:

(i) description of issue;

(ii) date of issuance;

(iii) date of maturity;

(iv) coupon or nominal interest rate;

- (v) principal amount of issue at offering;
- (vi) annual interest requirements;
- (vii) average principal balance outstanding monthly during the period;
- (viii) average weighted interest cost rate on average principal balance outstanding monthly during the period; and
- (xi) if issue is owned by an affiliate, state name and relationship of owner to applicant.

(b) [Test Year Period]: In this schedule the applicant shall show the cost of short-term borrowed capital [particulars (a) through (i)] [particulars (i) through (xi)] after all adjustments to the actual balances and cost rates at the end of the Base Period.

(c) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(5) Schedule G-5: Embedded cost of preferred stock capital:

(a) [Base Period]: In this schedule the applicant shall show the embedded cost of preferred stock capital based on the actual principal amounts outstanding at the end of the Base Period. In addition the applicant shall show the following particulars for each class and series of preferred stock outstanding:

- (i) description of issue [including number of shares offered];
- (ii) date of issuance;
- (iii) dividend rate;
- (iv) price at offering;
- (v) gross proceeds;
- (vi) underwriter's commission, discount, or premium;
- (vii) issuance expense;
- (viii) net proceeds -- (1) amount, (2) per unit;
- (ix) effective dividend cost rate;

- (x) principal amount outstanding at end of period;
- (xi) annual dividend requirements;
- (xii) weighted effective cost rate;
- (xiii) if issue is owned by an affiliate, state name and relationship; and
- (xiv) if issue is convertible, state terms of conversion; and
- (xv) if dividends are in arrears, state amount.

(b) [Test Year Period]: In this schedule the applicant shall show the cost of preferred stock capital [particulars (a) through (o)] [particulars (i) through (xv)] after all adjustments to the actual balances and cost rates at the end of the Base Period.

(c) A full explanation of each of the adjustments made to the balances and cost rates of capital shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(6) Schedule G-6: Common stock equity capital:

(a) [Base Period]: In this schedule the applicant shall show the common stock activity for the Base Period on an actual basis showing therein the following particulars:

- (i) year-end number of shares outstanding;
- (ii) year-end book value per share;
- (iii) annual earning per share;
- (iv) annual cash dividends per share;
- (v) annual stock dividends per share;
- (vi) dividends declared;
- (vii) stock splits and/or changes in par value;
- (viii) sales of common stock;
- (ix) date of sale;
- (x) number of shares sold;

- (xi) gross proceeds;
- (xii) underwriter's commission, discount, or premium;
- (xiii) issuance expense;
- (xiv) net proceeds per share; and
- (xv) type of offering.

(b) [Test Year Period]: In this schedule the applicant shall show the common stock activity as of the end of the Base Period, all adjustments made to the particulars as prescribed for the Base Period, and the results as of the end of the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(7) Schedule G-7: Historical activity in common stock, paid-in capital, and retained earnings.

(a) [Base Period]: In this schedule the applicant shall show the historical activity over the five (5) years prior to the Base Period in common stock, paid-in capital, and retained earnings as of the end of each year on an actual basis and shall include therein the beginning balance, additions, reductions, and the ending balance concluding with the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the actual balances for the Base Period; all adjustments to the Base Period balances as a result of estimates, projections, and anticipated changes thereto; and the ending balance for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown as of the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

H. Schedule H Series: Expenses of Operation: Sch. H-1: Operation and maintenance expenses: Base Period; Test Year Period. Sch. H-2: Fuel or power purchased for pumping: Base Period; Test Year Period. Sch. H-3: Payroll distribution and associated payroll taxes: Base Period; Test Year Period. Sch. H-4: Expenses associated with advertising, contributions, donations, lobbying and political activities, memberships, and outside services: Base Period; Test Year Period. Sch. H-5: Other administrative and general expenses: Base Period, Test Year Period. Sch. H-6: Depreciation and amortization expenses: Base Period; Test Year Period. Sch. H-7: Taxes other than on income: Base Period; Test Year Period. Sch. H-8: Federal and

state income taxes: Base Period; Test Year Period. Sch. H-9: Reconciliation of net income per books to net income for income tax purposes: Base Period; Test Year Period. Sch. H-10: Income tax effect as result of applicant joining in a consolidated federal income tax return: Base Period; Test Year Period. Sch. H-11: Accumulated tax deferrals: Base Period; Test Year Period. Sch. H-12: Investment tax credits: Base Period; Test Year Period. Sch. H-13: Expenses associated with affiliated interests: Base Period; Test Year Period. Sch. H-14: Expenses associated with non-utility services: Base Period; Test Year Period. Sch. H-15: Explanation of the adjustments to operation and maintenance expenses: Base Period; Test Year Period. Schedule H Series: Expenses of Operation: In this series of schedules the applicant shall show information concerning its expenses of operation by each account of the Uniform System of Accounts prescribed by the New Mexico Public Service Commission [New Mexico Public Regulation Commission] for the Base Period and for the Test Year Period as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule H-1: Operation and maintenance expenses.

(a) [Base Period]: In this schedule the applicant shall show operation and maintenance expenses by functional classification and detailed account on an unadjusted basis for the Base Period and shall include therein subtotals and totals by functional classification and detailed account. Amounts included in Accounts 701 and 703, Salaries and Wages; Accounts 731 through 735, Contractual Services; and 766 and 767, Regulatory Commission Expenses, shall further be separated to identify those amounts in each detailed account which are litigation expenses as defined by NMSA 1978, Section 62-13-3 and those amounts which are not litigation expenses. Amounts included in any other detailed account which are litigation expenses as defined by Section 62-13-3 shall also be separately identified.

(b) [Test Year Period]: In this schedule the applicant shall show operation and maintenance expenses by functional classification and detailed account as of the end of the Base Period, all adjustments thereto, and the corresponding adjusted balances as of the end of the Test Year Period and shall include therein subtotals and totals by functional classification and detailed account. Test year period litigation expenses should be handled in the same manner as described above for the base period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(2) Schedule H-2: Fuel or power purchased for pumping:

(a) [Base Period]: In this schedule the applicant shall show the fuel or power purchased for pumping by month on an unadjusted basis for the Base Period by type of fuel used.



(b) [Test Year Period]: In this schedule the applicant shall show the fuel or power purchased for pumping by month as of the end of the Base Period, all adjustments thereto, and the balances as of the end of the Test Year Period by type of fuel used.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(3) Schedule H-3: Payroll distribution and associated payroll taxes.

(a) [Base Period]: In this schedule the applicant shall show the payroll distribution and the associated payroll taxes included in operation and maintenance expenses on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the payroll distribution and the associated payroll taxes included in operation and maintenance expenses as of the end of the Base Period, all adjustments made thereto, and the balances as of the end of the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(4) Schedule H-4: Expenses associated with advertising, contributions, donations, lobbying and political activities, memberships, and outside services.

(a) [Base Period]: In this schedule the applicant shall show the expenses incurred as a result of advertising, contributions, donations, lobbying and political activities, memberships, and outside services on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the expenses associated with advertising, contributions, donations, lobbying and political activities, memberships, and outside services by month as of the end of the Base Period; all adjustments made thereto; and the balances for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(5) Schedule H-5: Other administrative and general expenses.

(a) [Base Period]: In this schedule the applicant shall show other administrative and general expenses such as transfer credits, regulatory commission

expenses, duplicate charges, and other miscellaneous general expenses not shown elsewhere separately, on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show other administrative and general expenses such as transfer credits, regulatory commission expenses, duplicate charges, and other miscellaneous general expenses not shown elsewhere separately, after adjustments thereto for the Test Year Period and the balances as of the end of the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(6) Schedule H-6: Depreciation and amortization expense.

(a) [Base Period]: In this schedule the applicant shall show the depreciation and amortization expense by functional classification on an unadjusted basis for the Base Period, the book depreciation rate, and the annual expense accrual as of the end of the Base Period and shall include therein subtotals and totals by functional classification.

(b) [Test Year Period]: In this schedule the applicant shall show the depreciation and amortization expense by functional classification as of the end of the Base Period, all adjustments thereto, and the annual expense accrual as of the end of the Test Year Period and shall include therein subtotals and totals by functional classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(7) Schedule H-7: Taxes other than on income.

(a) [Base Period]: In this schedule the applicant shall show the taxes, excluding federal and state income taxes, by type of tax accrued, prepaid, and charged on an actual basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the taxes, excluding federal and state income taxes, by type of tax for the Base Period, all adjustments made thereto for the Test Year Period, and the balances for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown for the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(8) Schedule H-8: Federal and state income taxes.

(a) [Base Period]: In this schedule the applicant shall show the computation for federal and state income taxes on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the computation for federal and state income taxes reflecting all adjustments made for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(9) Schedule H-9: Reconciliation of net income per books to net income for income tax purposes.

(a) [Base Period]: In this schedule the applicant shall show the reconciliation of the net income per books to the net income as reported to the Federal Internal Revenue Service for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the reconciliation of the net income as adjusted for the Test Year Period to the net income as would be reported to the Federal Internal Revenue Service for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(10) Schedule H-10: Income tax effect as a result of applicant joining in a consolidated federal income tax return.

(a) [Base Period]: In this schedule the applicant shall show a detailed analysis for the Base Period of the applicant's tax effect as a result of joining in the filing of a consolidated federal income tax return.

(b) [Test Year Period]: In this schedule the applicant shall show a detailed analysis for the Test Year Period of the applicant's tax effect at the proposed revenue as a result of joining in the filing of a consolidated federal income tax return.

(11) Schedule H-11: Accumulated tax deferrals.

(a) [Base Period]: In this schedule the applicant shall show the accumulated tax deferrals on an unadjusted basis for the Base Period and shall include therein the actual balances for additions and reductions and the balances as of the end of the Base Period. In addition the applicant shall show the item giving rise to the tax deferral

separately, such as accelerated amortization, liberalized depreciation, asset depreciation range, investment tax credit, job development credit, etc.

(b) [Test Year Period]: In this schedule the applicant shall show the accumulated tax deferrals as of the end of the Base Period, all adjustments thereto for the Test Year Period, and the balances at the end of the Test Year Period. In addition the applicant shall show the item giving rise to the tax deferral separately, such as accelerated amortization, liberalized depreciation, asset depreciation range, investment tax credit, job development credit, etc.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers, that shall constitute a part of the applicant's filing package.

(12) Schedule H-12: Investment tax credits:

(a) [Base Period]: In this schedule the applicant shall show an analysis of the investment tax credits earned, utilized, and amortized during the Base Period on an unadjusted basis. In addition the applicant shall show herein the particulars concerning any sale/leaseback transactions under the safe-harbor lease provisions of the Accelerated Cost Recovery System established by the Economic Recovery Tax Act of 1981 and amendments thereto, such as the investor/lessor, amount of property, cash payment, term of lease, discount, and the tax rate.

(b) [Test Year Period]: In this schedule the applicant shall show an analysis of the investment tax credit as of the end of the Base Period, all adjustments made thereto for the Test Year Period, and the balances at the end of the Test Year Period. In addition the applicant shall show herein the particulars concerning any sale/leaseback transactions under the safe-harbor lease provisions of the Accelerated Cost Recovery System established by the Economic Recovery Tax Act of 1981 and amendments thereto, such as the investor/lessor, amount of property, cash payment, term of lease, discount, and the tax rate.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(13) Schedule H-13: Expenses associated with affiliated interests:

(a) [Base Period]: In this schedule the applicant shall show the charges or credits on an unadjusted basis for the Base Period between applicant and any other affiliated or associated company, or for corporate organizations of applicant operating as departments or divisions, including therein the proper account classification; a description of the service performed; and the basis for the determination of the charge or credit. For reporting purposes herein items of \$10,000 or more shall be shown individually; items of \$10,000 or less may be aggregated.

(b) [Test Year Period]: In this schedule the applicant shall show the charges or credits for the Base Period, all adjustments made thereto, and the balances as of the end of the Test Year Period between applicant and any other affiliated or associated company, or for corporate organizations of applicant operating as departments or divisions, including therein the proper account classification; a description of the service performed; and the basis for the determination of the charge or credit. For reporting purposes herein items of \$10,000 or more shall be shown individually; items of \$10,000 or less may be aggregated.

(c) A full explanation of each of the adjustments made to the balances shown for the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(14) Schedule H-14: Expenses associated with non utility services:

(a) [Base Period]: In this schedule the applicant shall show the investments, revenues, and expenses pertaining to the applicant's non-utility services on an unadjusted basis for the Base Period. In addition the applicant shall provide a full explanation of the methods and procedures used in allocating costs and expenses between the applicant utility and non-utility services.

(b) [Test Year Period]: In this schedule the applicant shall show the investments, revenues, and expenses pertaining to the applicant's non-utility services as of the end of the Base Period; all adjustments made thereto; and the balances as of the end of the Test Year Period. In addition the applicant shall provide a full explanation of the methods and procedures used in allocating costs and expenses between the applicant utility and non-utility services.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(15) Schedule H-15: Explanation of the adjustments to expenses of operation. In this schedule the applicant shall state in a brief narrative explanation the nature of each adjustment made to the book balances of operation and maintenance expenses.

I. Schedule I Series: Construction program and sources of construction funds: Sch. I-1: Construction program: Base Year and Projected. Sch. I-2: Sources of construction funds: Base Year and Projected. Schedule I Series: Construction program and sources of construction funds. In this series of schedules the applicant shall show its proposed construction program and the sources of construction funds as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule I-1: Construction program: In this schedule the applicant shall show the capital requirements, including allowance for funds used during construction

anticipated to be generated, related to its construction underway during the Base Period and construction planned for the next two (2) succeeding years by functional classification. A full explanation of all assumptions and estimates used to arrive at the projections shown shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(2) Schedule I-2: Sources of construction funds:

(a) In this schedule the applicant shall show the planned sources of construction funds by years to conform with the planned construction program and shall include therein the amounts by class of capital and the anticipated cost rates on the proposed financing.

(b) A full explanation of all assumptions and estimates used to arrive at the projections shown shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

J. Schedule J Series: Fully allocated cost of service study. Sch. J-1: Allocation of Rate Base - jurisdictional classification: Base Period; Test Year Period. Sch. J-2: Allocation of Rate Base - functional classification: Base Period; Test Year Period. Sch. J-3: Allocation of Rate Base - demand, commodity, and customer: Base Period; Test Year Period. Sch. J-4: Allocation of Rate Base to rate classes: Base Period; Test Year Period. Sch. J-5: Allocation of total expenses - jurisdictional classification: Base Period; Test Year Period. Sch. J-6: Allocation of total expenses-functional classification: Base Period; Test Year Period. Sch. J-7: Allocation of total expenses - demand, commodity, and customer: Base Period; Test Year Period. Sch. J-8: Allocation of total expenses to rate classes: Base Period; Test Year Period. Schedule J Series: Fully allocated cost of service study. In this series of schedules the applicant shall show the total cost of service for the Base Period and the cost of service for the Test Year Period separated by jurisdiction and, where applicable, by corporate department or division; functional classification; the cost components classified to demand, commodity, and customer; and where applicable by rate classification as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule J-1: Allocation of Rate Base-jurisdictional classification:

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an unadjusted basis for the Base Period separated by jurisdiction and, where applicable, by corporate department or division.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components after adjustments to the Base Period balances separated by jurisdiction and, where applicable, by corporate department or division.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(2) Schedule J-2: Allocation of Rate Base functional classification:

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an unadjusted basis for the Base Period separated by functional classification.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components after adjustments to the Base Period balances separated by functional classification. A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(3) Schedule J-3: Allocation of Rate Base demand, commodity, and customer:

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an unadjusted basis for the Base Period separated as to demand, to commodity, and to customer.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components after adjustments to the Base Period balances separated by demand, commodity, and customer.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(4) Schedule J-4: Allocation of Rate Base to rate classes:

(a) [Base Period]: In this schedule the applicant shall show the Rate Base components on an unadjusted basis for the Base Period separated into rate classes.

(b) [Test Year Period]: In this schedule the applicant shall show the Rate Base components after adjustments to the Base Period balances separated into rate classes.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(5) Schedule J-5: Allocation of total expenses jurisdictional classification:

(a) [Base Period]: In this schedule the applicant shall show the total expenses on an unadjusted basis for the Base Period separated by jurisdiction and, where applicable, by corporate department or division.

(b) [Test Year Period]: In this schedule the applicant shall show the total expenses after adjustments to the Base Period balances separated by jurisdiction and, where applicable, by corporate department or division.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(6) Schedule J-6: Allocation of total expenses-functional classification:

(a) [Base Period]: In this schedule the applicant shall show the total expenses on an unadjusted basis for the Base Period separated by functional classification.

(b) [Test Year Period]: In this schedule the applicant shall show the total expenses after adjustments to the Base Period balances separated by functional classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(7) Schedule J-7: Allocation of total expenses - demand, commodity, and customer:

(a) [Base Period]: In this schedule the applicant shall show total expenses on an unadjusted basis for the Base Period classified as to demand, to commodity, and to customer.

(b) [Test Year Period]: In this schedule the applicant shall show total expenses after adjustments to the Base Period balances classified as to demand, to commodity, and to customer.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(8) Schedule J-8: Allocation of total expenses to rate classes.

(a) [Base Period]: In this schedule the applicant shall show total expenses on an unadjusted basis for the Base Period separated by rate classes.



(b) [Test Year Period]: In this schedule the applicant shall show total expenses after adjustments to the Base Period balances separated by rate classes.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

K. Schedule K Series: Allocated cost of service per billing unit of: demand, commodity, and customer by rate classification. Sch. K-1: Allocated cost per billing unit of demand: Base Period; Test Year Period. Sch. K-2: Allocated cost per billing unit of commodity: Base Period; Test Year Period. Sch. K-3: Allocated cost per customer unit: Base Period; Test Year Period. Schedule K Series: Allocated cost of service per billing unit of: demand, commodity, and customer by rate classification. In this series of schedules the applicant shall show the allocated cost of service by rate classification per billing unit of: demand, commodity, and customer as requested in each schedule and developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package. Whenever possible the applicant utility may combine the information requested in Schedules K 1, K 2 and K 3 into one schedule for ease of presentation.

(1) Schedule K-1: Allocated cost per billing unit of demand:

(a) [Base Period]: In this schedule the applicant shall show the total allocated cost of service and the total allocated cost of service per billing unit of demand on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the total allocated cost of service and the total allocated cost of service per billing unit of demand after adjustments to the Base Period balances.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpaper that shall constitute a part of the applicant's filing package.

(2) Schedule K-2: Allocated cost per billing unit of commodity:

(a) [Base Period]: In this schedule the applicant shall show the total allocated cost of service and the total allocated cost of service per billing unit of commodity on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the total allocated cost of service and the total allocated cost of service per billing unit of commodity after adjustments to the Base Period balances.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(3) Schedule K-3: Allocated cost per customer unit:

(a) [Base Period]: In this schedule the applicant shall show the total allocated cost of service and the total allocated cost of service per customer unit on an unadjusted basis for the Base Period.

(b) [Test Year Period]: In this schedule the applicant shall show the total allocated cost of service per customer unit after adjustments to the Base Period balances.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

L. Schedule L Series: Allocation and classification factors. Sch. L-1: Allocation factors used to assign items of plant and expenses to rate classes: Base Period; Test Year Period. Sch. L-2: Classification factors used to assign items of plant and expenses to demand, to commodity, and to customer: Base Period; Test Year Period. Schedule L Series: Allocation and classification factors. In this series of schedules the applicant shall provide a list of the allocation and classification factors used to assign items of plant and expenses to the various rate classes as well as a brief summary of the derivation of the allocation and classification factors used.

(1) Schedule L-1: Allocation factors used to assign items of plant and expenses to rate classes.

(a) [Base Period]: In this schedule the applicant shall provide a list of the allocation factors used to assign items of plant and expenses on an unadjusted basis to the Base Period existing rate schedules. In addition, the applicant shall provide a brief explanation of the derivation of the allocation factors used.

(b) [Test Year Period]: In this schedule the applicant shall provide a list of the allocation factors used to assign items of plant and expenses to the proposed rate schedules after adjustments to the Base Period balances. In addition, the applicant shall provide a brief explanation of the derivation of the allocation factors used.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(2) Schedule L-2: Classification factors used to assign items of plant and expenses to demand,

to commodity, and to customer.

(a) [Base Period]: In this schedule the applicant shall provide a tabulation of the classification factors used to assign items of plant and expenses to the appropriate demand, commodity, and customer on an unadjusted basis to the Base Period existing rate schedules, showing therein the account number, a description of the account, the classification, the allocation factor, and a brief rationale for the classification.

(b) [Test Year Period]: In this schedule the applicant shall provide a tabulation of the classification factors used to assign items of plant and expenses to the appropriate demand, commodity, and customer under the proposed rate schedules after adjustments of the Base Period balances, showing therein the account number, a description of the account, the classification, the allocation factor, and a brief rationale for the classification.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

M. Schedule M Series: Rate of return by rate classes. Sch. M-1: Rate of return by rate classes: Base Period; Test Year Period. Schedule M Series: Rate of return by rate classes. [Base Period]: In this schedule the applicant shall show the rate of return and the relative rate of return by rate classes as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule M-1: Rate of return by rate classes:

(a) [Base Period]: In this schedule the applicant shall show the rate of return and the relative rate of return by rate classes for the Base Period existing rate schedules.

(b) [Test Year Period]: In this schedule the applicant shall show the rate of return and the relative rate of return by rate classes under the proposed rate schedules for the Test Year Period.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(2) **[RESERVED]**

N. Schedule N Series: Rate design: Sch. N-1: Total revenue requirements by rate class: Base Period; Test Year Period. Sch. N-2: Proof of revenue: Test Year Period. Sch. N-3: Comparison of rates for service under the present and proposed schedules. Sch. N-4: Explanation of proposed rate schedule changes. Schedule N Series: Rate design. In this series of schedules the applicant shall show the total revenue

requirement by rate class as developed from the supporting schedules and workpapers included elsewhere in the applicant's filing package.

(1) Schedule N-1: Total revenue requirements by rate class:

(a) [Base Period]: Not required.

(b) [Test Year Period]: In this schedule the applicant shall show the total revenue requirements for the proposed rate classes and the total difference from the revenues to be derived from existing rates applied to the Test Year Period with this difference expressed as a percent.

(c) A full explanation of each of the adjustments made to the balances shown at the end of the Base Period shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(2) Schedule N-2: Proof of revenue:

(a) [Test Year Period]: To satisfy the requirements of this request the applicant shall include a proof of revenue for the proposed rate schedules.

(b) A full explanation of each of the adjustments made to the Base Period information shall be referenced to the appropriate supporting schedules or workpapers that shall constitute a part of the applicant's filing package.

(3) Schedule N-3: Comparison of rates for service under the present and proposed schedules. To satisfy the requirements of this request the applicant shall include herein a comparison of the rates for service under the present and proposed rate schedules.

(4) Schedule N-4: Explanation of proposed rate schedule changes. In this schedule the applicant shall provide a brief explanation for the proposed change to the Base Period existing rate schedules and shall include therein the justification and support for the proposed change.

O. Schedule O Series: Key operating statistics. Sch. 0-1: Monthly sewer treatment. Sch. 02: Monthly effluent water sales. Schedule O Series: Key operating statistics. In this series of schedules the applicant shall provide the statistical data as requested in the following series of schedules and shall include therein an explanation or reference to the appropriate supporting schedules or workpapers for any adjustments made to the historical data requested or to the data for the Base Period. In addition, detailed explanations of all estimates and assumptions used to arrive at future values of data shall be provided.

(1) Schedule 0-1: Monthly sewer treatment: In this schedule the applicant shall provide monthly water treatment data as requested:

- (a) for total system,
- (b) by service area or treatment facility (if applicable),
- (c) to designate the monthly peak day,
- (d) for two (2) years prior to the Base Period,
- (e) for twelve (12) months of the Base Period, and
- (f) as estimated for the Test Year Period.

(2) Schedule 0-2: Monthly effluent water sales: In this schedule the applicant shall provide monthly water sales data as requested:

- (a) for total system,
- (b) by service area (if applicable),
- (c) by rate classes,
- (d) for two (2) years prior to Base Period,
- (e) for twelve (12) months of the Base Year, and
- (f) as estimated for the Test Year Period.

P. Schedule P Series: Reports. Sch. P-1: Description of Company: Sch. P-2: Annual Report to the NMPSC: Sch. P-3: Auditor's report. Schedule P Series: Required reports. In this series of schedules the applicant shall submit the most current reports as requested herein.

(1) Schedule P-1: Description of company: To satisfy the requirements of this schedule the applicant shall submit a statement describing the company and its scope of operations by service areas and shall include an organizational chart.

(2) Schedule P-2: Annual Report to NMPSC. To satisfy the requirements of this schedule the applicant shall submit a copy of its latest Annual Report required to be on file at the New Mexico Public Service Commission [New Mexico Public Regulation Commission]. Where the applicant has duly filed such report with the New Mexico Public Service Commission [New Mexico Public Regulation Commission], notice herein of the fact will satisfy the requirements of this schedule.

(3) Schedule P-3: Auditor's report: To satisfy the requirements of this schedule the applicant shall submit a copy of the opinion of its independent certified public accountant stating that an independent examination of the book amounts and

accounting adjustments thereto of the applicant utility company's books and records has been made for the Base Period and the results thereof are in all material respects in compliance with the Uniform System of Accounts prescribed by the New Mexico Public Service Commission [New Mexico Public Regulation Commission]. Where an independent examination of the book amounts and accounting adjustments of the applicant utility's books and records has not been made by an independent certified public accountant, the certification required herein shall be made by a duly authorized officer of the applicant utility.

Q. Schedule Q Series: Testimony and exhibits: Schedule Q Series: Testimony and Exhibits: To the extent that testimony and exhibits are required in support of the materials submitted in compliance with the filing requirements herein, the applicant shall submit testimony and exhibits of such composition, scope, and format so as to serve as the applicant's case-in-chief in the event the matter is set for hearing. Further, any utility seeking recovery of litigation expenses as defined in Section 62-13-3 NMSA 1978 shall file sufficient testimony to enable the Commission to find those expenses were prudently incurred.

[Recompiled 12/30/01]

## **PART 931-939: [RESERVED]**

## **PART 940: CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR SEWER UTILITIES**

### **17.13.940.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

### **17.13.940.2 SCOPE:**

[Recompiled 12/30/01]

### **17.13.940.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

### **17.13.940.4 DURATION:**

[Recompiled 12/30/01]

### **17.13.940.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.13.940.6 OBJECTIVE:**

[Recompiled 12/30/01]

**17.13.940.7 DEFINITIONS:**

[Recompiled 12/30/01]

**17.13.940.8 TABLE OF CONTENTS:**

- A. Certificates of Public Convenience and Necessity Required [17.13.940.9 NMAC]
- B. Application [17.13.940.10 NMAC]
- C. Conformance with Minimum Standards of Design, Construction, and Operation [17.13.940.11 NMAC]
- D. Conformance with Provisional Customer Rules and Regulations [17.13.940.12 NMAC]
- E. Minimum Data Requirements [17.13.940.13 NMAC]
- F. Filing Fees [17.13.940.14 NMAC]
- G. Assistance of Commission Staff [17.13.940.15 NMAC]

[Recompiled 12/30/01]

**17.13.940.9 CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED:**

Every jurisdictional sewer utility shall obtain from the Public Service Commission [Public Regulation Commission] a certificate of public convenience and necessity prior to providing service to the public or when otherwise required.

[Recompiled 12/30/01]

**17.13.940.10 APPLICATION:**

Each applicant must file with the Commission an application for a certificate of public convenience and necessity as prescribed in NMPSC Rules 110.35 through 110.38, [17.1.2 NMAC].

[Recompiled 12/30/01]

**17.13.940.11 CONFORMANCE WITH MINIMUM STANDARDS OF DESIGN, CONSTRUCTION, AND OPERATION:**

Each applicant for a certificate of public convenience and necessity must meet certain minimum standards for design, construction, and operation as required by the Commission. If an applicant is unable to conform to any specific design, construction, or operation standard, the company should apply for a variance from such standard.

[Recompiled 12/30/01]

**17.13.940.12 CONFORMANCE WITH PROVISIONAL CUSTOMER RULES AND REGULATIONS:**

Each applicant for a certificate of public convenience and necessity shall have prescribed customer service rules and regulations substantially similar to the service rules and regulations required by the Commission. If an applicant is unable to conform to any recommended customer service rule or regulation, the company should apply for a variance from such rule or regulation.

[Recompiled 12/30/01]

**17.13.940.13 MINIMUM DATA REQUIREMENTS:**

The following exhibits must be attached to and made a part of a water utility's application for a certificate of public convenience and necessity:

A. Evidence of Ownership:

- (1) Corporation--certificate of incorporation and by-laws;
- (2) Partnership--articles of co-partnership;
- (3) Subsidiary affiliation;
- (4) Company officials;
- (5) Business address;
- (6) Actual location of plant facilities and business office(s).

B. Statement showing franchise rights of applicant to provide sewer services in the community in which service is proposed.

C. Evidence of economic feasibility:

- (1) Statement demonstrating Applicant's financial ability;



(2) Proposed Facilities:

(a) Cost of proposed facilities;

(b) Financing of proposed facilities; (Supply details of all present and proposed financing arrangements.)

(3) Revenue requirements:

(a) Source of funding for operation and maintenance;

(b) Revenues;

(c) Expenses;

(d) Depreciation;

(e) Taxes;

(f) Return (net income).

D. Evidence of compliance with the Water Quality Control Commission regulations.

E. One complete set of design plans and specifications as required by the New Mexico Health and Environment Department's publication titled "Guidelines for Wastewater Collection and Treatment Works in New Mexico". All plans and specifications shall be prepared under the direction and approved by a New Mexico registered professional engineer. Plans and specifications shall bear the seal of the professional engineer.

F. Easement and right-of-way policy.

G. Appropriate Permits:

(1) State Land Office;

(2) State Health and Environment Department;

(3) Environmental Protection Agency.

H. Evidence of system adequacy (present and 3 years projected).

(1) Proof of experience to provide adequate and efficient service;

(2) Design capacity of treatment and disposal plant;

- (3) Characteristics of sewage being treated;
- (4) Peak day flow rate;
- (5) Average daily flow rate;
- (6) Complete description of biological-treatment process and BOD loadings.

I. Original cost listing of plant items. If plant has already been constructed and is in operation, the utility shall:

(1) Provide a list of plant items and show the original cost of each plant item as prescribed in the NMPSC Annual Report;

(2) Submit a completed NMPSC Annual Report if the plant has been in operation for at least twelve (12) months.

(3) A complete set of as-built plans and specifications of the system constructed.

J. Copies of tariff schedules and operating rules and regulations:

(1) Rate schedules for each customer class;

(2) Copies of operating rules and regulations.

K. A rate study setting rates that would apply if the system were developed to 85% of its potential plant-in-service capacity. The study should include but not be limited to:

(1) Estimated cost of service and supporting documents;

(2) Potential number of equivalent residential connections based on treatment plant in service;

(3) Potential number of equivalent residential connections based on collection mains in service.

[Recompiled 12/30/01]

#### **17.13.940.14 FILING FEES:**

A filing fee of \$25.00 must accompany the application. In addition, there is a \$1.00 filing fee for each tariff number (excluding Table of Contents).

[Recompiled 12/30/01]

### **17.13.940.15 ASSISTANCE OF COMMISSION STAFF:**

The Commission Staff will be available to meet with an applicant and/or anyone representing the applicant's interests in the matter to answer any questions the applicant may have.

[Recompiled 12/30/01]

### **PART 941-949: [RESERVED]**

## **PART 950: MINIMUM STANDARDS FOR DESIGN, CONSTRUCTION, AND OPERATION OF SEWER UTILITIES**

### **17.13.950.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

### **17.13.950.2 SCOPE:**

NMPSC Rule 950 [17.13.950 NMAC] is applicable to all sewer utilities under the jurisdiction of the New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

### **17.13.950.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

### **17.13.950.4 DURATION:**

[Recompiled 12/30/01]

### **17.13.950.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

### **17.13.950.6 OBJECTIVE:**

The purpose of NMPSC Rule 950 [17.13.950 NMAC] is to promote good public utility practices, to encourage efficiency and economy, and to establish minimum standards to be observed in the design, construction, and operation of sewer facilities by sewer utilities operating under the jurisdiction of the Commission. The standards herein prescribed are intended as minimum standards.

[Recompiled 12/30/01]

**17.13.950.7 DEFINITIONS:**

[Recompiled 12/30/01]

**17.13.950.8 TABLE OF CONTENTS:**

A. General Provisions

- (1) Purpose [17.13.950.6 NMAC]
- (2) Applicability [17.13.950.2 NMAC]
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B. Records and Reports [17.13.950.10 NMAC]

- (1) System Plans and Specifications
- (2) Construction Dates
- (3) Meter Records
- (4) Other Records
- (5) Location of Records
- (6) Reports to the Commission

C. Safety [17.13.950.11 NMAC]

- (1) Safety Requirements
- (2) Accident Reporting
- (3) Maintenance and Operation of Facilities

D. Design and Construction [17.13.950.12 NMAC]

- (1) General Design and Construction
- (2) Standardizing
- (3) Service Connections

#### (4) Measuring Devices

[Recompiled 12/30/01]

##### **17.13.950.9 GENERAL PROVISIONS:**

Variances: In those cases where the application of any of the provisions of NMPSC Rule 950 [17.13.950 NMAC] results in undue hardship or expense to the utility, it may request specific relief from the Commission.

[Recompiled 12/30/01]

##### **17.13.950.10 RECORDS AND REPORTS:**

A. System Plans and Specifications: Each utility shall maintain on file system plans and specifications in accordance with the guidelines specified in the New Mexico Health and Environment Department's publication titled "Guidelines for Wastewater Collection and Treatment Works in New Mexico" as may be revised from time to time.

B. Construction Dates: Each utility shall maintain at its office the date of construction of all principle items of plant and extensions of mains.

C. Meter Records: Each utility shall maintain at its office the installation and meter test history on each meter.

D. Other Records: Monthly records should be maintained on energy usage, chemical usage, volume of influent treated, and volume of effluent and sludge discharged.

E. Location of Records: All records required by NMPSC Rule 950 [17.13.950 NMAC] shall be kept at the principal office of the utility or other suitable storage place located within the state and shall be made available to representatives, agents, or employees of the Commission upon reasonable notice and at all reasonable hours.

F. Reports to the Commission: The utility shall furnish the results of summaries of any tests required by NMPSC Rule 950 to the Commission at such times and in such form as the Commission may require. The utility shall also furnish the Commission with any information concerning the utility's facilities or operations which the Commission may request and need for determining rates or judging the practices of the utility.

[Recompiled 12/30/01]

##### **17.13.950.11 SAFETY:**

A. Safety Requirements: Each utility shall exercise reasonable care to reduce the hazards to which its employees, its customers, and the general public may be subjected

as a result of the utility's operations. The utility shall require employees to use suitable tools and equipment for performing their work safely, shall instruct employees in safe methods of performing their work, and shall maintain suitable first aid equipment for employees.

B. Accident Reporting: The utility shall promptly notify the Commission in the event of a fatal accident involving the utility, and it shall notify the Commission of any other accidents when prescribed by the Commission.

C. Maintenance and Operation of Facilities: Each utility shall maintain its facilities to insure safe and adequate service. The utility shall inspect the condition of the system periodically, at intervals of no less than once every three months, and maintain records of the inspections and their findings to aid in the maintenance of the plant.

[Recompiled 12/30/01]

#### **17.13.950.12 DESIGN AND CONSTRUCTION:**

A. General Design and Construction: General design and construction of wastewater collection and treatment facilities shall be in accordance with the guidelines specified in the New Mexico Health and Environment Department's publication titled "Guidelines for Wastewater Collection and Treatment Works in New Mexico" as may be revised from time to time.

B. Standardizing: To preclude costly duplication of stocked piping material the utility may properly require that a specific material shall be used throughout at the discretion of the utility.

C. Service Connections:

(1) The size, design, material, and installation of the service pipe shall conform to the reasonable requirements of the utility.

(2) Whenever feasible all service pipes shall be installed below the frost line to prevent freezing and at a depth adequate to protect the pipes from surface activity, gardening, etc.

D. Measuring Devices: Each utility shall install a suitable totalizing measuring device or otherwise determine inlet flows into a treatment facility and discharge flows from the treatment facility so that an accurate record may be maintained of the quantity of effluent treated by the utility on a monthly basis.

[Recompiled 12/30/01]

**PART 951-959: [RESERVED]**

## **PART 960: CUSTOMER SERVICE RULES AND REGULATIONS FOR SEWER UTILITIES**

### **17.13.960.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

### **17.13.960.2 SCOPE:**

[Recompiled 12/30/01]

### **17.13.960.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

### **17.13.960.4 DURATION:**

[Recompiled 12/30/01]

### **17.13.960.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

### **17.13.960.6 OBJECTIVE:**

[Recompiled 12/30/01]

### **17.13.960.7 DEFINITIONS:**

[Recompiled 12/30/01]

### **17.13.960.8 TABLE OF CONTENTS:**

- A. Customer Service Rules and Regulations
- B. Format for Customer Service Rules and Regulations

[Recompiled 12/30/01]

### **17.13.960.9 CUSTOMER SERVICE RULES AND REGULATIONS:**

The Customer Service Rules and Regulations set forth in NMPSC Rule 960 [17.13.960 NMAC] establish the responsibilities and rights of jurisdictional sewer utilities and their residential customers in their sewer service relationship. Nothing herein shall prevent

any utility from adopting Customer Service Rules and Regulations which do not conflict with but which are additional to those set forth herein to cover special circumstances. However, nothing in the preceding sentence shall be construed as relaxing the requirement that a utility choose only one of the Customer Rule 19 formats set forth herein. The election must be made. Any deviation from the selected customer rules and regulations must be requested from, and granted by the Commission.

[Recompiled 12/30/01]

#### **17.13.960.10 FORMAT FOR CUSTOMER SERVICE RULES AND REGULATIONS:**

For the convenience of the utilities the Customer Service Rules and Regulations herein are set forth in the appropriate format.

[See 17.13.960.10.pdf]

[Recompiled 12/30/01]

#### **PART 961-969: [RESERVED]**

#### **PART 970: SMALL SEWER UTILITIES**

##### **17.13.970.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[17.13.970.1 NMAC - Rp, NMPSC Rule 970, 7/31/2007]

##### **17.13.970.2 SCOPE:**

This part governs the filing and review of changes in rates proposed by small sewer utilities as defined by Section 62-8-7.1A NMSA 1978 (2005).

**A.** Exception for 50 percent or more rate increase proposal for small sewer utilities with 1,500 or fewer service connections. The provisions of 17.13.970.1 NMAC through 17.13.970.16 NMAC shall not apply to small sewer utilities, as defined by Section 62-8-7.1A NMSA 1978, if any of the criterion in Paragraphs (1), (2), (3) or (4) below apply. When any criterion listed below applies, Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC relating to the application for new rates shall apply to the filing and review of a proposed rate or rates by a small sewer utility.

**(1)** A proposed rate increase would increase the utility's revenue requirement fifty (50) percent or more over a twelve (12) month period.

**(2)** A proposed rate increase would increase any rate for any customer class for any given level of consumption fifty (50) percent or more over a twelve (12) month period.



(3) A utility proposes to increase a seasonally-adjusted rate and that increase would result in an increase in the rate of fifty (50) percent or more.

(4) A utility proposes to institute a rate where no rate had existed previously.

**B.** Exception for more than an 8 percent rate increase proposal for small sewer utilities with more than 1,500 but less than 5,000 service connections. The provisions of 17.13.970.1 NMAC through 17.13.970.16 NMAC shall not apply to small sewer utilities, as defined by Section 62-8-7.1A NMSA 1978, if any of the criterion in Paragraphs (1), (2), (3) or (4) below apply. When any criterion listed below applies, Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC relating to application for new rates shall apply to the filing and review of a proposed rate or rates by a small sewer utility.

(1) A proposed rate increase would increase the utility's revenue requirement by more than eight (8) percent over a twelve (12) month period.

(2) A proposed rate increase would increase any rate for any customer class for any given level of consumption by more than eight (8) percent over a twelve (12) month period.

(3) A utility proposes to increase a seasonally-adjusted rate and that increase would result in an increase in the rate of more than eight (8) percent over a twelve (12) month period.

(4) A utility proposes to institute a rate where no rate had existed previously.

**C.** A rate application by a small sewer utility shall comply with the provisions of 17.1.2.53 NMAC if any of the criteria listed in 17.13.970.2 NMAC applies.

[17.13.970.2 NMAC - Rp, NMPSC Rule 970, 7/31/2007]

**17.13.970.3 STATUTORY AUTHORITY:**

Sections 8-8-4, 62-3-1, 62-3-2.1, 62-3-4, 62-6-4, 62-8-3, 62-8-7 and 62-8-7.1 NMSA 1978.

[17.13.970.3 NMAC - Rp, NMPSC Rule 970.2, 7/31/2007]

**17.13.970.4 DURATION:**

Permanent.

[17.13.970.4 NMAC - N, 7/31/2007]

**17.13.970.5 EFFECTIVE DATE:**

July 31, 2007, unless a later date is cited at the end of a section.

[17.13.970.5 NMAC - Rp, NMPSC Rule 970, 7/31/2007]

#### **17.13.970.6 OBJECTIVE:**

The purpose of 17.13.970 NMAC is to carry out the explicit legislative intent of Sections 62-3-2.1 and 62-8-7.1 NMSA 1978, as amended, to limit governmental regulation of rate setting by small sewer utilities and to provide a degree of regulatory oversight of small sewer utilities that is proportionate to the need and benefit of such regulation.

[17.13.970.6 NMAC - Rp, NMPSC Rule 970.1, 7/31/2007]

#### **17.13.970.7 DEFINITIONS:**

In addition to the definitions in 17.12.1.7 NMAC, certain terms as used in this rule are defined as follows.

**A. Advice notice** means a listing by a sewer utility of proposed changes in tariff schedules and proposed effective dates that has been provided to the public and filed with the commission.

**B. Operating district or division** means any area of utility operations which is geographically distinct and distant from other utility operations, and which would otherwise be operated as a separate stand-alone utility but for its classification as a business unit within the single utility.

**C. Rate** shall have the meaning given in Section 62-3-3H NMSA 1978.

**D. Ratepayer** means a person in whose name service is carried. As stated in Section 62-8-7.1A NMSA 1978 "each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer."

**E. Small sewer utility** means a public utility as defined in Sections 62-3-3G53) NMSA 1978 with less than an aggregate of five thousand (5,000) service connections in any utility operating district or division in New Mexico averaged over the previous three (3) consecutive years.

[17.13.970.7 NMAC - Rp, NMPSC Rule 970.3, 7/31/2007]

#### **17.13.970.8 PROCEDURES FOR 2 PERCENT RATE CHANGE WITHOUT HEARING:**

**A.** A small sewer utility may adjust its commodity charge and customer service charge by up to two (2) percent in any calendar year without a hearing, provided that the utility:

- (1) is in good standing with all applicable commission rules and orders;
- (2) shall not have changed its rates in the prior twelve (12) month period;
- (3) shall have given notice to its customers by a mailed bill insert, printed notice on a bill or separate mailing of its proposed rate adjustment at least thirty (30) days prior to the effective date of such rate adjustment, in accordance with 17.13.970.10 NMAC; and
- (4) shall not make such rate adjustments effective until at least thirty (30) days after it has filed with the commission the required documents described in Subsection B below.

**B. Filing requirements.** The utility shall submit with its filing:

- (1) an advice notice, including proposed rate schedules, notifying the commission of the utility's intent to implement the new rate or rates by a date certain, which may not be less than thirty (30) days after the filing of the advice notice; the advice notice shall conform to 17.1.210.9 NMAC;
- (2) an affidavit describing how the notice required by 17.13.970.10 NMAC was given to the utility's ratepayers; and
- (3) a copy of the notice, which shall be attached to the affidavit.

**C. Applicability of certain rules.** 17.13.970.10 NMAC applies to proposed two (2) percent rate changes made pursuant to this section. 17.13.970.9 NMAC and 17.12.970.11 NMAC through 17.12.970.16 NMAC are not applicable to proposed two (2) percent rate changes made pursuant to this section. The utility's filing under 17.13.970.8 NMAC shall be in accordance with 17.1.210 NMAC, except that Paragraph 2 of Subsection B of 17.1.210.11 NMAC relating to direct testimony and exhibits shall not apply, and Subsection C of 17.1.210.11 NMAC relating to additional information shall not apply.

[17.13.970.8 NMAC - Rp, NMPSC Rule 970.4, 7/31/2007]

**17.13.970.9 FILINGS BY SMALL SEWER UTILITIES PROPOSING NEW RATES:**

**A.** This section applies to the filing and review of changes in rates proposed by small sewer utilities except small sewer utilities filing for a two (2) percent rate change under 17.13.970.8 NMAC that have given proper notice according to 17.13.970.10 NMAC and small sewer utilities subject to the exceptions in 17.13.970.2 NMAC.

**B. Filing requirements.** The utility shall submit with its filing:

(1) an advice notice notifying the commission of the utility's intent to implement the new rate or rates by a date certain, which may not be less than thirty (30) days after the filing of the advice notice;

(2) an affidavit describing how the notice required by 17.13.970.10 NMAC has been given to the utility's ratepayers;

(3) a copy of the notice required by 17.12.970.10 NMAC attached to the affidavit;

(4) a statement of the total number of ratepayers being served by the utility at the time of the filing;

(5) a brief statement explaining what has caused the need for the rate adjustment; and

(6) a statement that contains a rate and billing analysis.

**C. Required rate and billing analysis.** The rate and billing analysis shall describe the effect of any proposed rate increase on each class of customers and shall include: a description of any proposed changes in rate design; a comparison of each proposed rate with the existing rate for each customer class; a table that provides a billing analysis for residential customers and a table that provides a rate analysis for each customer class.

(1) The rate comparison shall state each proposed rate and each existing rate for each customer class, the percentage difference between each proposed rate and each existing rate and the number of customers within each customer class to which each change applies.

(2) The table that provides the billing analysis for residential customers shall state the present bill, the anticipated bill under the proposed rates and the percentage difference between the two bills for the following levels of consumption: 0 gallons, 1,000 gallons, 2,000 gallons, 3,000 gallons, 4,000 gallons, 5,000 gallons, 6,000 gallons, 7,000 gallons, 8,000 gallons, 9,000 gallons, 10,000 gallons, 15,000 gallons, 20,000 gallons, 25,000 gallons, 30,000 gallons, 35,000 gallons, 40,000 gallons, 45,000 gallons and 50,000 gallons.

(3) The table that provides the rate analysis for each customer class shall be based on each level of consumption listed in Paragraph (2) above. The table shall be based on the month of highest overall consumption in the twelve (12) months preceding the filing of the notice to ratepayers. The table shall show the number of customers and the present and proposed bill for each level of consumption, rounding gallons per month to the nearest one thousand (1,000) gallons. For example, for the six thousand (6,000) gallon level, the utility will show the number of customers with usage of five thousand five hundred and one (5,501) to six thousand five hundred (6,500) gallons. If

consumption is measured in units other than thousands of gallons, the utility shall convert their billing units to thousands of gallons. If there were no customers at a particular level of consumption, the utility shall list a zero in the table for that level of consumption.

**D. Applicability of 17.1.210 NMAC.** The utility's filings under 17.13.970.9 NMAC shall be in accordance with 17.1.210 NMAC, except that Paragraph 2 of Subsection B of 17.1.210.11 NMAC relating to direct testimony and exhibits and Subsection C of 17.1.210.11 NMAC relating to additional information shall not be applicable. The utility may, but is not required to file with the advice notice, the direct testimony, exhibits, and statements which would be required by 17.13.970.16 NMAC in the event of a commission determination of just cause for review of the proposed rates.

**E. Rejection.** Failure to abide by these requirements shall be deemed grounds for rejection of the filing.

**F. Effective date of rates.** The rate or rates proposed in accordance with the provisions of this section shall become effective on the date set forth in the advice notice unless a protest is filed under 17.13.970.12 NMAC, or a staff motion for review is filed under 17.13.970.11 NMAC and the commission determines the protest or motion establishes just cause for reviewing the proposed rates. If a valid protest or motion is filed and the commission determines that there is just cause for review of the proposed rates, the new rates may become effective only in accordance with Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC.

**G. Rates effective by operation of law.** Rates that become effective by operation of law, without hearing by the commission, shall not be construed to bear the approval of the commission and may be subject to inquiry by the commission at any time.

[17.13.970.9 NMAC - Rp, NMPSC Rule 970.4, 7/31/2007]

#### **17.13.970.10 NOTICE TO RATEPAYERS PRIOR TO FILING OF PROPOSED RATES:**

**A. Notice required.** At least sixty (60) days prior to filing with the commission a schedule proposing a change in rate or rates, a small sewer utility shall notify its ratepayers of the proposed rate or rates in writing. The utility may mail the notice to ratepayers either with their billings or independently.

**B. Required information.** The notice to ratepayers shall include the following information:

- (1) the amount of the increase requested in both total dollar amounts and total percentage increases;
- (2) the customer classifications to which the new rate or rates would apply;

- (3) a comparison of the present rate with proposed rates, consisting of
  - (a) the present rate,
  - (b) the proposed rate,
  - (c) the percentage difference between the present and proposed rate for each customer class and
  - (d) the number of customers in each class to which the proposed rates would apply;
- (4) the date on which the utility intends to file with the commission the advice notice proposing the change in rate or rates;
- (5) a statement that the utility will promptly notify a ratepayer of the date on which it actually files with the commission the advice notice proposing the change in rate or rates, if the ratepayer so requests;
- (6) a statement in all capital letters that if a hearing is held by the public regulation commission, any costs incurred by the utility may be included in the utility's future rates, following the utility's next rate case;
- (7) a statement that procedures for protesting rates are set forth in 17.13.970 NMAC, a copy of which can be obtained upon request from, or inspected at, the main office of the utility or the offices of the utility division of the commission in Santa Fe, and that forms for protests are available from either the utility or the commission, and indicating the telephone numbers and addresses of both the utility and the commission;
- (8) a statement that the rate filing together with any exhibits and related papers may be examined at the main offices of the utility or at the commission in Santa Fe;
- (9) a statement that further information may be obtained by contacting either the utility or the commission; and
- (10) a statement that, for purposes of protests, "ratepayer" means a person in whose name service is carried. For purposes of protests, under Section 62-8-7.1 NMSA 1978, "each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer."

**C. Billing analysis for residential customer required.** The notice to ratepayers shall include a chart that provides a billing analysis for residential customers clearly showing the present rates, the proposed rates, and the percentage difference between the present bill and the anticipated bill for each of the following levels of consumption (if consumption is measured in units other than thousands of gallons the utility shall

convert their billing units to thousands of gallons) - 0 gallons, 1,000 gallons, 2,000 gallons, 3,000 gallons, 4,000 gallons, 5,000 gallons, 6,000 gallons, 7,000 gallons, 8,000 gallons, 9,000 gallons, 10,000 gallons, 15,000 gallons, 20,000 gallons, 25,000 gallons, 30,000 gallons, 35,000 gallons, 40,000 gallons, 45,000 gallons and 50,000 gallons.

**D.** If the utility has one thousand five hundred (1,500) or fewer service connections in any operating district or division, averaged over the previous three (3) consecutive years, the notice to ratepayers shall include a statement that the new rate or rates will go into effect automatically and will not be subject to review and hearing by the commission unless ratepayers file a protest conforming to the requirements of 17.13.970.12 NMAC.

**E.** If the utility has more than one thousand five hundred (1,500), but less than five thousand (5,000) service connections in any operating district or division, averaged over the previous three (3) years, the notice to ratepayers shall include a statement that the new rate or rates will go into effect automatically and will not be subject to review and hearing by the commission unless commission staff files a motion for review or ratepayers file a protest conforming to the requirements of 17.13.970.12 NMAC.

**F. Prior approval of notice form.** The utility shall submit a copy of the form notice to the utility division staff for approval at least fifteen (15) days prior to giving notice to ratepayers. If the commission does not disapprove of the form of notice within five (5) business days of submission of the notice, the form will be deemed approved.

**G. Rejection.** Failure to comply with this section shall be deemed grounds for rejection of the filing proposing a change in rate or rates.

[17.13.970.10 NMAC - Rp, NMPSC Rule 970.5, 7/31/2007]

#### **17.13.970.11 STAFF MOTION FOR COMMISSION REVIEW OF RATE PROPOSALS:**

**A.** Suspension of rates upon filing of staff motion. Rates proposed under 17.13.970 NMAC by a utility with more than one thousand five hundred (1,500) but less than five thousand (5,000) service connections in any operating district or division, averaged over the previous three (3) consecutive years, shall be subject to suspension, review and hearing by the commission upon the timely filing with the commission of a staff motion for review.

**B. Timing of staff motion.** A staff motion for review shall be filed with the commission no later than twenty (20) days after the utility files with the commission the advice notice proposing the change in rate or rates.

**C. Full review upon staff motion.** Upon the timely filing of a staff motion and after a commission determination that just cause exists to review the proposed rates or rates, the commission will conduct a full review of the proposed rate or rates under Section

62-8-7 NMSA 1978 and 17.1.2.53 NMAC and under either 17.13.930 NMAC or 17.13.980 NMAC.

[17.13.970.13 NMAC - N, 7/31/2007]

#### **17.13.970.12 PROTESTS BY RATEPAYERS:**

**A. Suspension of rates upon filing of protest.** Rates proposed by a small sewer utility under 17.13.970 NMAC will be subject to suspension, review, and hearing by the commission upon the timely filing with the commission of a protest.

**B.** For a utility with one thousand five hundred (1,500) or fewer service connections in any operating district or division, averaged over the previous three (3) consecutive years, a protest must be signed by ten (10) percent or more of the utility's ratepayers, or twenty-five (25) ratepayers, whichever is more, receiving service from the utility at the time the change in rate or rates is filed. For purposes of this rule, ratepayer is defined in 17.13.970.7 NMAC.

**C.** For a utility with more than one thousand five hundred (1,500) but less than five thousand (5,000) service connections in any operating district or division, averaged over the previous three (3) consecutive years, a protest must be signed by ten (10) percent or more of the ratepayers receiving service from the utility at the time the change in rate or rates is filed. For purposes of this rule, ratepayer is defined in 17.13.970.7 NMAC.

**D. Timing of protest.** Protests shall be filed with the commission no later than twenty (20) days after the utility files with the commission the advice notice proposing the change in rate or rates and shall conform to the requirements of 17.13.970.13 NMAC.

**E. Full review upon protest.** Upon the filing of a protest under 17.13.970.12 NMAC and after a commission determination that just cause exists to review the proposed rate or rates, the commission will conduct a full review of the proposed rate or rates under Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC and under 17.13.930 NMAC or 17.13.980 NMAC.

[17.13.970.12 NMAC - Rp, NMPSC Rule 970.6, 7/31/2007]

#### **17.13.970.13 FORM AND FILING OF PROTEST:**

**A. Contents of protest.** Protest petitions to the commission shall be in writing, and signed by each of the ratepayers submitting the protest. All protests shall contain the following:

(1) the name of the utility whose proposed rates are being protested and identification of the rate or rates being protested;



(2) the name, mailing address, and phone number of each ratepayer protesting the proposed rates and the name, mailing address, and phone number of each ratepayer's attorney, if any; and

(3) a caption of the proceeding, a space for the docket number, and the title "Protest."

**B. Format.** Whenever possible, protests shall be typed, double-spaced, and shall be on paper 8 1/2 inches wide and 11 inches long and fastened only to the left side.

**C. Use of commission form.** Protestants may use, but are not required to use, the commission's form for protests. The utility shall make copies of the commission's form available to its ratepayers upon request.

**D. Additional information permitted.** Protestants are strongly encouraged, but are not required, to file with the protest a statement or statements of their reasons for protesting the proposed rates as well as any data, exhibits, illustrations, prepared testimony, or written argument which may aid the commission in its determination of whether just cause exists to review the rates.

**E. Certificate of service.** The protestants shall serve copies of the protest and any accompanying documents on the utility whose proposed rates are being protested either by first class U.S. mail or by hand delivery. A certificate of service stating the date and manner of mailing or delivery shall be included in or attached to the protest at the time of filing with the commission.

**F. Number of copies required.** The protestants shall provide the commission with an original plus ten (10) copies of the protest and any accompanying documents at the time of filing unless the commission directs otherwise.

**G. Date of filing.** If a protest is submitted to the commission before the utility has filed the change in rate or rates, the protest shall be deemed filed as of the date of the utility's filing.

**H. Ratepayers' status.** Ratepayers who have submitted a protest under 17.13.970.13 NMAC will be deemed parties to any protest proceeding, but will not be deemed parties to a rate review proceeding. Intervention in a ratemaking proceeding will be determined under 17.1.2. NMAC.

[17.13.970.13 NMAC - Rp, NMPSC Rule 970.7, 7/31/2007]

#### **17.13.970.14 RESPONSE TO PROTEST:**

**A. Response with leave of commission.** No response to the substance of a protest filed with the commission is permitted except by leave of the commission or hearing examiner.

**B. Challenge to validity of protest petition.** The utility whose proposed rates are being protested may challenge the validity of the protest petition within ten (10) days of the filing of the petition.

(1) The challenge shall be made by motion conforming with the requirements of 17.1.2 NMAC and served upon each of the protestants.

(2) The motion shall be accompanied by affidavits and a brief in support of the motion, which shall also be served upon the protestants.

**C. Protestants to establish validity of protest petition.** If a protest is challenged by motion of the utility made in accordance with 17.13.970.14 NMAC, the commission or hearing examiner may direct the protestants to verify their status as ratepayers of the utility or otherwise establish the validity of the protest petition.

**D. Invalid protest petitions.** If the commission or hearing examiner determines that the protest petition is invalid, the commission or hearing examiner shall take such action as is deemed appropriate, including, but not limited to, dismissal of the protest.

**E. Ruling on protest.** The commission shall determine the validity of any challenged protest prior to a commission determination that just cause exists to review the proposed rate or rates.

[17.13.970.14 NMAC - Rp, NMPSC Rule 970.8, 7/31/2007]

#### **17.13.970.15 COMMISSION REVIEW OF RATES AFTER JUST CAUSE DETERMINATION:**

**A. Notice of hearing.** Once the commission determines that just cause exists to review the proposed rate or rates, the commission shall issue an order noticing the rate or rates for hearing. Either this order or a subsequent order shall prescribe:

(1) the manner of any further notice to customers or the public, the cost of which shall be borne by the utility;

(2) a deadline for the filing of motions to intervene under 17.1.2 NMAC and directions to any protestants that they that they will not be considered parties to the rate review proceeding unless they move for and are granted intervener status; and

(3) directions to parties other than the utility and, to the extent the commission or hearing examiner may deem helpful, directions to the commission staff to file written testimony and exhibits.

**B. Service of notice:** The commission or hearing examiner shall mail copies of all orders issued under 17.13.970.15 NMAC to each protestant whether or not the protestant has sought or been granted intervener status.

[17.13.970.15 NMAC - Rp, NMPSC Rule 970.10, 7/31/2007]

**17.13.970.16 SUBMISSION OF WRITTEN TESTIMONY AND EXHIBITS BY UTILITY:**

**A.** Information to be submitted upon commission determination of just cause. After a commission determination of just cause for review of the proposed rate or rates, the utility shall file the following information and documents with the commission within thirty (30) days unless the commission or hearing examiner directs otherwise:

(1) direct testimony and exhibits intended to be introduced into evidence in support of the proposed rate or rates, including any rate filing package required by commission rule or order and by 17.13.930 NMAC or 17.13.980 NMAC;

(2) a concise statement, supported by the direct testimony and exhibits, identifying:

(a) when the utility proposes to change the ratemaking treatment upon which the present rates are based, each proposed change, the reasons for the proposed change and the impact in dollars of the proposed change on the rates being requested;

(b) the compound annual growth rate of each account of plant and expenditures since the test period used in the utility's last rate filing; and

(c) any extraordinary event or circumstance, known or projected, which materially alters the utility's operating or financial condition from the condition existing during the utility's test period in its last rate case; and

(3) a concise statement setting forth the utility's compliance or failure to comply with each part of the commission's final order in each of the utility's cases decided during the preceding five (5) years and its compliance or failure to comply with 17.6.450 NMAC and 17.1.2 NMAC through 17.13.980 NMAC.

**B. Copies.** The utility shall provide the commission with an original plus five (5) copies of all documents filed pursuant to Subsection A of 17.13.770.16 NMAC, unless the commission or hearing examiner directs otherwise.

[17.13.970.16 NMAC - Rp, NMPSC Rule 970.9, 7/31/2007]

**17.13.970.17 STATUS OF PROTESTANTS DURING PROCEEDING:**

The protestants who file a protest will be deemed parties to any proceeding on a motion made by the utility under 17.13.970.14 NMAC but will not be deemed parties to the proceeding to review and hear the proposed rate or rates. Protestants may individually move to intervene under 17.1.2 NMAC and may or may not be granted intervenor status. The commission or hearing examiner may limit the number of intervenors in the rate making proceeding to avoid unnecessary delay, duplication, or expense.

[17.13.970.17 NMAC - Rp, NMPSC Rule 970.11, 7/31/2007]

**PART 971-979: [RESERVED]**

**PART 980: FILING REQUIREMENTS IN SUPPORT OF RATE SCHEDULES FOR SEWER UTILITIES HAVING ANNUAL OPERATING REVENUES AVERAGING LESS THAN \$500,000 OVER ANY CONSECUTIVE THREE - YEAR PERIOD**

**17.13.980.1 ISSUING AGENCY:**

New Mexico Public Service Commission [New Mexico Public Regulation Commission].

[Recompiled 12/30/01]

**17.13.980.2 SCOPE:**

[Recompiled 12/30/01]

**17.13.980.3 STATUTORY AUTHORITY:**

[Recompiled 12/30/01]

**17.13.980.4 DURATION:**

[Recompiled 12/30/01]

**17.13.980.5 EFFECTIVE DATE:**

[Recompiled 12/30/01]

**17.13.980.6 OBJECTIVE:**

The purpose of NMPSC Rule 980 [17.13.980 NMAC] is to define and specify the minimum data requirements to be filed by sewer utilities having annual operating revenues averaging less than \$500,000 over any consecutive three-year period. Minimum data requirements shall be filed in support of a tendered new rate schedule or rate schedules which will supersede, supplement, or otherwise change the provision of a rate schedule required to be on file with the Commission.

[Recompiled 12/30/01]

**17.13.980.7 DEFINITIONS:**

[Recompiled 12/30/01]

### **17.13.980.8 TABLE OF CONTENTS:**

- A. Purpose [17.13.980.6 NMAC]
- B. Minimum Data Requirements for Rate Filings [17.13.980.9 NMAC]
- C. Required Rate Filing Package [17.13.980.10 NMAC]
- D. Appendix: Rate Application Forms [17.13.980.11 NMAC]

[Recompiled 12/30/01]

### **17.13.980.9 MINIMUM DATA REQUIREMENTS FOR RATE FILINGS:**

Provisions for rate filings are divided into two levels of operation. NMPSC Rule 980 [17.13.980 NMAC] provides that sewer utilities shall file for rates in one of two formats. Sewer utilities having annual operating revenues averaging \$500,000 or more over any consecutive three-year period must file the most comprehensive package, set forth in the Appendix to NMPSC Rule 930. Sewer utilities having annual operating revenues averaging less than \$500,000 over any consecutive three-year period may file a simpler package, set forth in the Appendix to this Rule.

[Recompiled 12/30/01]

### **17.13.980.10 RATE FILING PACKAGE REQUIRED OF SEWER UTILITIES HAVING ANNUAL OPERATING REVENUES AVERAGING LESS THAN \$500,000 OVER ANY CONSECUTIVE THREE-YEAR PERIOD:**

A. To meet the Commission's minimum data filing requirements specified herein, the sewer utility applicant must maintain adequate financial records fully separated from any commonly owned enterprise and requires that the applicant have on file with the Commission fully completed Annual Reports for the immediate past year and for at least the two (2) prior years if the applicant has been in existence that long.

B. The rate application form is based on the point in time concept represented by year-end operations for measuring rate base and the cost of service. This approach tends to close the time lag between the test period and the implementation of rates. In using this method, new plant added any time during the test period may be included in the year-end plant investment. If the added plant produces additional revenues, the added revenue and expense effect will be recognized in the cost of service.

C. The test year used should be the most recent calendar year for which an Annual Report has been filed.

[Recompiled 12/30/01]

**17.13.980.11 APPENDIX:**

**RATE APPLICATION FORMS:** [\[Forms\]](#)

[Recompiled 12/30/01]

**CHAPTER 14: WATER AND SANITATION DISTRICTS  
[RESERVED]**

**CHAPTER 15: GARBAGE AND REFUSE COLLECTION  
[RESERVED]**

**CHAPTER 16: RECYCLING**

**PART 1: GENERAL PROVISIONS [RESERVED]**

**PART 2: RUBBERIZED ASPHALT PROGRAM**

**17.16.2.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department, P.O. Box 1149, Santa Fe, NM 87504-1149, (505) 827-5191

[3-15-97; Recompiled 12/31/01]

**17.16.2.2 SCOPE:**

Municipalities and counties in the State of New Mexico.

[3-15-96; Recompiled 12/31/01]

**17.16.2.3 STATUTORY AUTHORITY:**

In 1994, the New Mexico State Legislature enacted the "Tire Recycling Act", NMSA 1978, Sections 74-11-1 to 17, (Repl. Pamp. 1993, & Cum. Supp. 1996), which provides for the recycling and disposal of scrap tires and the creation of the rubberized asphalt fund. This fund will pay for any additional expenses incurred by New Mexico municipalities and counties, when asphalt paving mixes utilizing scrap tires are used for road construction projects.

[3-15-97; Recompiled 12/31/01]

**17.16.2.4 DURATION:**

Permanent.

[3-15-97; Recompiled 12/31/01]

**17.16.2.5 EFFECTIVE DATE:**

March 15, 1997, unless a later date is cited at the end of a section or paragraph.

[3-15-97; Recompiled 12/31/01]

**17.16.2.6 OBJECTIVE:**

The limited demand for used tires has caused a storage disposal problem common to many states. With the move toward a healthy environment, the visually offensive storage sites have attracted attention and concern from the public, national and state legislators. These sites also create safety, health, and fire hazards, and continue to grow much faster than the demand for their potential use.

**A.** The Environmental Protection Agency estimates that the present size of the scrap tire problem is 2 to 3 billion discarded tires that have accumulated in stockpiles and uncontrolled tire dumps found in deserts, forests, grasslands, and empty lots throughout the United States. According to the New Mexico Tire Advisory Committee, New Mexico has over 1 million discarded scrap tires currently stockpiled or discarded in public and private properties throughout the state. This committee also estimates that an additional 1.2 to 1.5 million scrap tires either are discarded or recycled each year in New Mexico.

**B.** This rule defines administration of the Rubberized Asphalt Program by the New Mexico State Highway and Transportation Department and will establish procedures for disbursement of funds for municipalities and counties in the use of rubberized asphalt in paving mixtures.

[3-15-97; Recompiled 12/31/01]

**17.16.2.7 DEFINITIONS:**

**A.** Rubberized asphalt means any method that blends crumb rubber modifier with the asphalt cement incorporating the resulting binder in the asphalt paving mixture.

**B.** Crumb rubber is obtained by reprocessing (grinding) scrap motor vehicle tires.

**C.** Scrap tire means a tire that is no longer suitable for its originally intended purpose, which is to absorb shock and provide traction on a motor vehicle; or is not usable as a casing in a retread tire because of wear, damage or defect.

**D.** Department means the New Mexico State Highway and Transportation Department.

[3-15-97; Recompiled 12/31/01]

**17.16.2.8 PROJECT REQUIREMENTS:**

**A.** Scrap ground rubber from recycled tires must be used in the asphalt paving mix.

**B.** The rubberized asphalt paving mix must be in compliance with the Department specifications or as otherwise approved by the State Materials Lab Bureau.

**C.** The Department requires that at least 95% of all scrap tires used in these projects originate in the State of New Mexico, or that an equivalent weight (14 pounds of rubber for each 20 pound tire) of unprocessed scrap tires originating in New Mexico is shipped to another state.

**D.** The municipality or county shall specify where and when the tires will be shipped. Written verification that an equivalent weight of unprocessed scrap tires has been removed from the State will be required before reimbursement will be authorized.

**E.** Allow a representative of the Department to inspect the project to see that it is consistent with the terms, conditions, and specifications of the agreement or contract.

**F.** Each construction project will be reviewed as it is submitted to determine the total costs this fund will cover.

**G.** The Department will ensure that funds in the agreed-upon amount are spent in accordance with all applicable state and federal laws and regulations.

[3-15-97; Recompiled 12/31/01]

**17.16.2.9 REQUESTS FOR FUNDS:**

The Materials Lab of the Department will review all requests for funds and provide any technical assistance requested. The following information should be submitted:

**A.** A written request showing location, tons of hot mix, and the area of the project that will use rubberized asphalt. Projects can be new construction or reconstruction.

**B.** Provide a copy of the road construction plans and specifications as soon as they are available prior to advertisement of the project.

[3-15-97; Recompiled 12/31/01]

**17.16.2.10 FUNDS DISBURSEMENT PROCESS:**



**A.** Once the project is complete, submit invoices to: New Mexico State Highway And Transportation Dept., State Materials Bureau-Rubberized Asphalt Program, P.O. Box 1149, Santa Fe, NM 87504-1149

**B.** The municipality or county must certify that the amount requested is true and correct and shall have the public entity official sign off verifying the amount.

**C.** After the Department approves the reimbursement, a check will be forwarded to the municipality or county.

[3-15-97; Recompiled 12/31/01]