

This is an amendment to 1.2.2 NMAC, Sections 7, 8, 9, 10, 11, 34 & 35 effective 4/6/2021. This amendment is a permanent replacement of the emergency amendment to 1.2.2 NMAC, Sections 7 and 8 effective 10/15/2020.

**1.2.2.7 DEFINITIONS:** In addition to the definitions contained in Sections 3-29-2, 8-8-2, 53-4-1, 53-6-3, 53-8-2, 53-11-2, 53-19-2, 53-20-2, 60-2C-2, 62-3-3, 62-14-2, 63-9-2, 63-9A-3, 63-9H-3, 65-2A-3, 65-6-2, and 70-3-12 NMSA 1978, as used in this rule:

- ~~\_\_\_\_\_~~ **A. advisory staff** means persons hired by the commission pursuant to Section 8-8-13 NMSA 1978, but who do not represent staff in proceedings before the commission;
- ~~\_\_\_\_\_~~ **B. applicant** means any party on whose behalf an application is made for approval or authorization of the commission;
- ~~\_\_\_\_\_~~ **C. chief clerk** means the person appointed by the chief of staff pursuant to Section 8-8-5 NMSA 1978 to serve as director of the administrative services division pursuant to Section 8-8-7 NMSA 1978;
- ~~\_\_\_\_\_~~ **D. chief of staff** means the person appointed by the commission pursuant to Section 8-8-5 NMSA 1978;
- ~~\_\_\_\_\_~~ **E. commenter** means a person who enters into the record of a proceeding before the commission or presiding officer a comment on the grounds of public or private interest, but who is not a party to the proceeding;
- ~~\_\_\_\_\_~~ **F. complainant** means a person who complains of anything done or omitted to be done in violation of any law, rule, or order administered or promulgated by the commission;
- ~~\_\_\_\_\_~~ **G. corporations** means domestic and foreign corporations, limited liability companies, cooperative associations, sanitary projects act associations, water users associations, waterworks corporations, and foreign business trusts as those terms are defined in Section 3-29-2 and Chapter 53, NMSA 1978, unless exempted by law from commission regulation;
- ~~\_\_\_\_\_~~ **H. document** means, except as otherwise used in the provisions of this rule governing discovery, any submission in a formal proceeding which is not a pleading or which is required to be filed by commission rule or order outside a formal proceeding;
- ~~\_\_\_\_\_~~ **I. electronic** means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities;
- ~~\_\_\_\_\_~~ **J. file, filed, or filing** means delivery or transmittal to the chief clerk or the chief clerk's designee and acceptance by the chief clerk or the chief clerk's designee of an order, notice, pleading, or document to be kept on file in their official capacity;
- ~~\_\_\_\_\_~~ **K. fire marshal-regulated entities** means persons whose activities are regulated by the provisions of Sections 59A-52-1 through 59A-52-25 NMSA 1978, or the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978;
- ~~\_\_\_\_\_~~ **L. formal proceedings** means all matters other than rulemakings to which case numbers are assigned and which are entered on the commission's docket for decision by the commission;
- ~~\_\_\_\_\_~~ **M. hearing examiner** means a person employed by the commission as a hearing examiner, or a commissioner or advisory staff member designated by the commission as the hearing examiner to conduct any hearing or investigation which the commission is authorized to conduct;
- ~~\_\_\_\_\_~~ **N. informal proceedings** means any matters handled outside a formal proceeding by the commission or its staff, including informal complaints;
- ~~\_\_\_\_\_~~ **O. intervenor** means a person permitted by the commission or presiding officer to participate as a party in a proceeding pursuant to 1.2.2.23 NMAC;
- ~~\_\_\_\_\_~~ **P. mediator** means a person assigned by the commission to facilitate resolution of disputes pending informally or formally before the commission by assisting parties in their communications and meetings, identification and exploration of issues, and development of bases for agreements;
- ~~\_\_\_\_\_~~ **Q. party** means a person who initiates a commission proceeding by filing an application, petition or complaint, or whom the commission or presiding officer names as a respondent, or whom the commission or presiding officer grants leave to intervene; unless the context indicates otherwise, the term "party" may also refer to counsel of record for a party; staff shall have the status of a party, without being required to file a motion to intervene, but shall not have a right to appeal;
- ~~\_\_\_\_\_~~ **R. petitioner** means any party on whose behalf a petition is made for approval, determination, consent, certification, or authorization of the commission;

~~\_\_\_\_\_ S. **pleading** means an application, petition, complaint, answer, motion, response to motion, exception, or other formal written statement filed in any formal proceeding;~~  
~~\_\_\_\_\_ T. **presiding officer** means a commissioner taking such actions as are permitted under 1.2.2.29 and 1.2.2.30 NMAC or the hearing examiner designated to preside over a proceeding;~~  
~~\_\_\_\_\_ U. **proceeding** means a formal proceeding;~~  
~~\_\_\_\_\_ V. **public hearing** means a portion of a proceeding, open to the public and conducted by the commission or presiding officer, that affords an opportunity to present such evidence, argument, or other appropriate matters as the commission or presiding officer deems relevant or material to the issues;~~  
~~\_\_\_\_\_ W. **regulated entity** means a utility, telecommunications provider, motor carrier, fire marshal-regulated entity, railroad, or owner or operator of gas and hazardous liquid pipelines and underground facilities or one-call notification system subject to the jurisdiction of the commission;~~  
~~\_\_\_\_\_ X. **respondent** means any party against whom any complaint is filed or any party subject to the jurisdiction of the commission to whom the commission issues notice instituting a proceeding, investigation, or inquiry of the commission;~~  
~~\_\_\_\_\_ Y. **staff** means all persons, other than hearing examiners and advisory staff, employed by the commission; and~~  
~~\_\_\_\_\_ Z. **telecommunications provider** shall have the meaning given in Paragraph (2) of Subsection A of 63-7-23 NMSA 1978.]~~

**A. Definitions beginning with “A”:**

(1) **advisory staff** means persons hired by the commission pursuant to Section 8-8-13 NMSA 1978, but who do not represent staff in proceedings before the commission;

(2) **applicant** means any party on whose behalf an application is made for approval or authorization of the commission.

**B. Definitions beginning with “B”: [RESERVED]**

**C. Definitions beginning with “C”:**

(1) **chief clerk** means the person appointed by the chief of staff pursuant to Section 8-8-5 NMSA 1978 to serve as director of the administrative services division pursuant to Section 8-8-7 NMSA 1978 or the director of the administrative services division’s designee;

(2) **chief of staff** means the person appointed by the commission pursuant to Section 8-8-5 NMSA 1978;

(3) **commenter** means a person who enters into the record of a proceeding before the commission or presiding officer a comment on the grounds of public or private interest, but who is not a party to the proceeding;

(4) **complainant** means a person who complains of anything done or omitted to be done in violation of any law, rule, or order administered or promulgated by the commission;

(5) **corporations** means domestic and foreign corporations, limited liability companies, cooperative associations, sanitary projects act associations, water users associations, waterworks corporations, and foreign business trusts as those terms are defined in Section 3-29-2 and Chapter 53, NMSA 1978, unless exempted by law from commission regulation.

**D. Definitions beginning with “D”:**

(1) **date and time of filing** means, for an electronic filing, the date and time on the filing transmittal email delivered to the records bureau email address; electronic filings may be deemed filed at later date and time than the time on the filing transmittal email in accordance with the procedures set forth in Paragraph (1) of Subsection C of 1.2.2.10 NMAC. For a hard copy filing, the date and time of filing is the date of the date stamp affixed by the records bureau in accordance with Paragraph (2) of Subsection C 1.2.2.10 NMAC.

(2) **document** means, except as otherwise used in the provisions of this rule governing discovery, any submission in a formal proceeding, including pleadings, or which is required to be filed by commission rule or order outside a formal proceeding.

**E. Definitions beginning with “E”:**

(1) **electronic** means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities;

(2) **electronic signature** means a full, printed name of the person responsible for the electronic version of the document by scanned or other electronic reproduction of the signature or by typing in the signature line the notation “/s/” followed by the name of the person signing the original document and including the email address of the person signing;

(3) **electronic filing** means the filing procedures for set forth in 1.2.2.10 NMAC.

- F. Definitions beginning with “F”:**
- (1) **file, filed, or filing** means filing by electronic mail to the records bureau email address, unless otherwise permitted by Subsections C and D of 1.2.2.10 NMAC, and acceptance by the chief clerk or the clerk’s designee;
- (2) **fire marshal-regulated entities** means persons whose activities are regulated by the provisions of Sections 59A-52-1 through 59A-52-25 NMSA 1978, or the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978; this Paragraph shall be effective until June 30, 2021 at which time it shall be deleted;
- (3) **formal proceedings** means all matters other than rulemakings to which case numbers are assigned and which are entered on the commission’s docket for decision by the commission.
- G. Definitions beginning with “G”:** [RESERVED]
- H. Definitions beginning with “H”:** **hearing examiner** means a person employed by the commission as a hearing examiner, or a commissioner or advisory staff member designated by the commission as the hearing examiner to conduct any hearing or investigation which the commission is authorized to conduct;
- I. Definitions beginning with “I”:**
- (1) **informal proceedings** means any matters handled outside a formal proceeding by the commission or its staff, including informal complaints;
- (2) **intervenor** means a person permitted by the commission or presiding officer to participate as a party in a proceeding pursuant to 1.2.2.23 NMAC.
- J. Definitions beginning with “J”:** [RESERVED]
- K. Definitions beginning with “K”:** [RESERVED]
- L. Definitions beginning with “L”:** [RESERVED]
- M. Definitions beginning with “M”:** **mediator** means a person assigned by the commission to facilitate resolution of disputes pending informally or formally before the commission by assisting parties in their communications and meetings, identification and exploration of issues, and development of bases for agreements.
- N. Definitions beginning with “N”:** [RESERVED]
- O. Definitions beginning with “O”:** [RESERVED]
- P. Definitions beginning with “P”:**
- (1) **party** means a person who initiates a commission proceeding by filing an application, petition or complaint, or whom the commission or presiding officer names as a respondent, or whom the commission or presiding officer grants leave to intervene; unless the context indicates otherwise, the term “party” may also refer to counsel of record for a party; staff shall have the status of a party, without being required to file a motion to intervene, but shall not have a right to appeal;
- (2) **petitioner** means any party on whose behalf a petition is made for approval, determination, consent, certification, or authorization of the commission;
- (3) **pleading** means an application, petition, complaint, answer, motion, response to motion, exception, or other formal written statement filed in any formal proceeding;
- (4) **presiding officer** means a commissioner taking such actions as are permitted under 1.2.2.29 NMAC and 1.2.2.30 NMAC or the hearing examiner designated to preside over a proceeding;
- (5) **proceeding** means a formal proceeding;
- (6) **public hearing** means a portion of a proceeding, open to the public and conducted by the commission or presiding officer, that affords an opportunity to present such evidence, argument, or other appropriate matters as the commission or presiding officer deems relevant or material to the issues.
- Q. Definitions beginning with “Q.”:** [RESERVED]
- R. Definitions beginning with “R”:**
- (1) **records bureau email address** means prc.records@state.nm.us or another records bureau email address, as set out on the commission’s webpage;
- (2) **regular business hours** means 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. prevailing mountain time Monday through Friday, excluding state holidays;
- (3) **regulated entity** means a utility, telecommunications provider, motor carrier, fire marshal-regulated entity (to be deleted on June 30, 2021), railroad, or owner or operator of gas and hazardous liquid pipelines and underground facilities or one-call notification system subject to the jurisdiction of the commission;
- (4) **respondent** means any party against whom any complaint is filed or any party subject to the jurisdiction of the commission to whom the commission issues notice instituting a proceeding, investigation, or inquiry of the commission;

**S. Definitions beginning with “S”:** staff means all persons, other than hearing examiners and advisory staff, employed by the commission; and

**T. Definitions beginning with “T”:** telecommunications provider shall have the meaning given in Paragraph (2) of Subsection A of Section 63-7-23 NMSA 1978.

**U. Definitions beginning with “U”:** unsworn affirmation means an unsworn affirmation in lieu of a notarization pursuant to Paragraph (3) of Subsection A of 1.2.2.35 NMAC.

**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]

[1.2.2.9 NMAC - Rp, 17 NMAC 1.2.9, 9/1/2008; A, 4/6/2021]

#### **1.2.2.8 GENERAL PROVISIONS:**

**A. Public records:** The commission’s policy is to allow full and complete access to public records in accordance with the Inspection of Public Records Act, Section 14-2-1 NMSA 1978 *et seq.* Except when the commission or presiding officer directs otherwise, all pleadings, orders, communications, exhibits, or other documents shall become matters of public record as of the day and time of their filing. The commission shall permit any person to examine any such public record, unless subject to a protective order, or otherwise protectable under the Inspection of Public Records Act. Under no circumstances will any person be allowed to take original commission records from commission premises. Arrangements to examine records or to obtain copies of records must be made through the chief clerk or the chief clerk’s designee.

**B. Protective orders:**

(1) Any person moving for an order to protect pleadings, documents or classes of documents from disclosure bears the burden of establishing their right, if any, to such protection. A motion for an order to protect documents or information from disclosure shall be supported by an affidavit. The affidavit shall:

(a) satisfy the claimant’s burden of making a *prima facie* showing that protection is appropriate, and, if protection is sought for pleadings or documents that are to be filed, that protection is consistent with the Inspection of Public Records Act, including protectable trade secrets;

(b) be executed by the claimant or a person employed by the claimant who is sufficiently knowledgeable about the grounds on which protection is sought that they can defend such claim if it is challenged; and

(c) explain with particularity the injury which would result from disclosure of the information for which protection is sought.

(2) If the commission or presiding officer deems it necessary, or if any party files a motion to compel, the commission or presiding officer may require the party seeking the protective order to file the documents or information which are the subject of the motion in a properly identified sealed container. The container may be opened by the commission or presiding officer prior to ruling on the motion for a protective order only for purposes of making an *in camera* inspection.

(3) The commission or presiding officer may, in ruling on the motion, provide that the documents or information not be disclosed or that they be disclosed only in a designated manner or to designated persons. Any order granting a motion for a protective order in whole or in part shall include clear and specific instructions to the chief clerk or chief clerk’s designee regarding the limitations placed on disclosure of the documents or information subject to the order and a reminder that sanctions may be imposed under applicable laws for its violation. The protective order shall set forth the conditions for protection and disclosure of information subject to protection under the Inspection of Public Records Act to parties to the proceeding. The order shall be included in the appropriate publicly available file in lieu of the documents or information which are the subject of the protective order.

(4) The period of time during which disclosure is limited shall be two years from the date of the final order in the case, provided that the movant may request that the protective order specify a different period of protection. The movant may, prior to expiration of the protective order, move for an order extending the period of protection of the documents or information.

(5) Nothing in this rule shall be construed as waiving or altering any requirement placed upon the commission for timely disclosure and copying of public records under the Inspection of Public Records Act.

(6) In the event of a conflict between the terms of a protective order and the rules set forth in 1.2.2 NMAC the protective order controls;

~~[~~ **C. Fees:**

~~(1) All application fees or other charges required by law shall be paid to the commission at the time of filing or at the time the charge is incurred.~~

~~(2) No pleading or document will be accepted without payment of required fees and submission of the required number of copies by the filing party, unless the commission or presiding officer directs otherwise.~~

~~(3) Except as otherwise provided by Sections 53-2-1, 53-8-87 and 65-2A-36 NMSA 1978, and 12.3.1 NMAC, the fee for paper copies of papers, testimony, or records, shall be the charge set by the state records center for similar types of copies.~~

~~(4) The fee for copies of papers, testimony, or records on electronic storage media shall be the same charge set by the state records center for paper copies of the same.~~

~~(5) The fee for cassette or CD-ROM copies of audio recordings of informal and formal proceedings, if available, is \$10 per cassette or CD-ROM.~~

~~(6) For paper copies of pleadings or documents that are not retrievable on electronic storage media maintained by the commission, the chief clerk or chief clerk's designee may charge a document search and preparation fee based on the hourly rate charged by the state records center for document preparation in 1.13.2 NMAC.]~~

**C. Filing Fees:**

**(1) Filing fees for specific documents are:**

(a) Applications, petitions, formal complaints, and all other filings requiring a new Case No.; a fee of \$25.00 each applies, and is required at time of filings;

(b) Advice Notices: a fee of \$1.00 per each proposed rate, rule, or form applies, and is required at time of filing.

**(2) Electronically filed documents that are required by law to be submitted with a filing fee:**

(a) the entity electronically filing documents that require a filing fee shall include as an attachment to the filing transmittal email a scan (pdf) or photograph (jpeg) of the filing fee (check or money order made payable to the commission) to show proof of payment at time of filing. The scan or photograph of the check or money order shall be a separate electronic document from the document to be filed;

(b) the entity electronically filing documents shall promptly physically mail the check or money order to NMPRC, Attn: Records Bureau, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a copy of the cover page for the document that the fee is associated with to assist the chief clerk or designee with making sure the filing fee is properly applied;

(c) after receipt of the electronically filed document and the attached scan or photograph of the filing fee, the records chief clerk or designee will issue a case no. (if applicable) and will post the document into e-docket.

(3) All application fees or other charges required by law to be paid along with the filing of a document shall be paid to the commission by check or money order at the time of filing a hard copy by regular mail or in-person at the commission offices.

(4) No pleading or document will be accepted without payment of required fees and submission of the required number of copies by the filing party, unless the commission or presiding officer directs otherwise.

(5) Except as otherwise provided by Sections 53-2-1, 53-8-87 and 65-2A-36 NMSA 1978, and 12.3.1 NMAC, the fee for paper copies of papers, testimony, or records, shall be the charge set by the commission's inspection of public records policy posted on the commission's website.

(6) The fee for copies of papers, testimony, or records on electronic storage media shall be the charge set by the commission's inspection of public records policy posted on the commission's website.

(7) The fee for cassette or CD-ROM copies of audio recordings of informal and formal proceedings, if available, shall be the charge set by the commission's inspection of public records policy posted on the commission's website.

(8) For paper copies of pleadings or documents that are not retrievable on electronic storage media maintained by the commission, the chief clerk or chief clerk's designee may charge in accordance with the commission's inspection of public records policy posted on the commission's website.

**D. Waiver of rules:** Upon the commission's or presiding officer's own motion or by motion of the staff or any party showing good cause and such notice as the commission or presiding officer may deem proper, the

commission or presiding officer may waive the application of any procedural provision of this rule, except when precluded by law.

**E. Construction and amendment:** These rules, and any rules incorporated by reference, shall be so construed as to secure just and speedy determination of the issues.

**F. Docket:** The commission shall maintain a docket of all proceedings, and each new proceeding shall be assigned an appropriate docket number. The docket is open to public inspection.

**G. Calendar of public hearings:** The commission shall maintain a public hearing calendar. The public hearing calendar is open to public inspection.

**H. ~~Address of the commission:~~** ~~Persons shall submit filings in proceedings related to utilities and telecommunications providers to the records office located at the utility division's address. Persons shall submit filings in proceedings related to motor carriers, railroads, fire marshal-regulated entities, corporations, and owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems to the records office located at the transportation division's address.~~

~~(1) Utility division:~~

~~(a) Street address:~~ Marian Hall, 224 E. Palace Avenue, Santa Fe, New Mexico 87501 2013.

~~(b) Mailing address:~~ Public Regulation Commission, Utilities Division, P.O. Box 1269, Santa Fe, New Mexico 87504 1269.

~~(2) Transportation division:~~

~~(a) Street address:~~ P.E.R.A. Building, 1120 Paseo de Peralta, Santa Fe, New Mexico, 87504.

~~(b) Mailing address:~~ Public Regulation Commission, (indicate appropriate division or bureau), P.O. Box 1269, Santa Fe, NM 87504 1269.

~~I. Office days and hours:~~ The offices of the commission are open from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m., Monday through Friday, legal holidays excepted.

**J Identification of communications:** Communications shall contain the name, address, e-mail address, if available, and telephone number of the communicator and an appropriate reference to any commission cases pertaining to the subject of the communication.

~~K. Current information required:~~ In all cases, persons shall keep the information required by Subsection J of this section current, and when updating the information, shall indicate the case numbers of all docketed cases in which the person is a party or otherwise included on the certificate of service.]

**I. Current information required:** In all cases, persons shall keep the information required by Subsection H of this section current, and when updating the information, shall indicate the case numbers of all docketed cases in which the person is a party or otherwise included on the certificate of service.

~~[E]~~ **J. Computation of time:** The time within which an act is to be done as provided in any rule or order promulgated by the commission or order issued by the presiding officer, when expressed in days, shall be computed by excluding the day of the act or event from which the time begins to run and including the last, except that if the last day be Saturday, Sunday, or a legal holiday, the act may be done in the next succeeding business day.

~~[M]~~ **K. Extensions of time:** Except as otherwise provided by law, the time by which any person is required or allowed to act under any statute, rule, or order may be extended by the commission or presiding officer for good cause, upon a motion made before the expiration of the period prescribed or previously extended. The filing of the motion does not toll the running of the time period prescribed.

~~[N]~~ **L. Classification of parties:** Parties to proceedings before the commission shall be classified as applicants, petitioners, complainants, respondents, or intervenors.  
[1.2.2.9 NMAC - Rp, 17 NMAC 1.2.9, 9/1/2008; A, 4/6/2021]

**1.2.2.9 PRACTICE BEFORE THE COMMISSION:** (See 18.60.4.11 NMAC for matters involving owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems.)

**A.** An individual may appear as a party in person or by an attorney licensed to practice law in New Mexico at either informal or formal proceedings.

**B.** Entities other than an individual may appear as a party at informal proceedings by an officer or employee of the entity.

**C.** Commenters may appear in person or by an attorney at any proceeding.

**D.** Except as provided in this section, entities other than an individual must be represented by an attorney licensed to practice law in New Mexico at all formal proceedings.

**E.** An attorney licensed in a jurisdiction other than New Mexico may appear at public hearings before the commission or presiding officer provided such non-resident attorney files a motion *pro hac vice* and is associated with and accompanied by an attorney licensed in New Mexico.

**F.** The following entities may be represented at all formal proceedings as provided:

(1) if the party is the United States, it may be represented as provided in 40 U.S.C. Section 481(a)(4) and 486(d);

(2) if the party is an association of residential customers of an investor-owned public utility or an association of residential members of a rural electric cooperative, it may be represented by an officer or employee thereof who has been authorized to appear on behalf of the association;

(3) if the party is a class C or class D water utility as defined in General Provisions for Water Utilities, 17.12.1 NMAC, or is a sewer utility subject to the requirements of procedures for review of rates proposed by sewer utilities having annual operating revenues averaging less than \$500,000 over any consecutive three-year period, 17.13.970 NMAC, and:

(a) ~~[if such a water or sewer utility is a corporation whose voting shares are held by a single shareholder or closely knit group of shareholders all of whom are natural persons active in the conduct of the business, it may be represented by an officer or general manager who has been authorized to appear on behalf of the corporation, or;]~~ if such a water or sewer utility is a corporation or LLC whose voting shares are held by a single shareholder or closely knit group of shareholders all of whom are natural persons active in the conduct of the business, it may be represented by an officer or general manager who has been authorized to appear on behalf of the corporation, or;

(b) if such a water or sewer utility is a general partnership; and the partnership has fewer than ten partners, whether limited or general, except that a husband and wife are treated as one partner for this purpose; and all partners, whether limited or general, are natural persons; it may be represented by a general partner who has been authorized to appear on behalf of the general partnership;

(4) if the party is a water and sanitation district governed by the Water and Sanitation District Act, Section 73-21-1 NMSA 1978 *et seq.*, it may be represented by an officer or employee of the water and sanitation district who has been authorized by the water and sanitation district to appear on its behalf;

(5) if the party is a utility submitting an application relating to securities pursuant to Subsection B of Section 62-6-8 NMSA 1978, it may be represented by an officer or employee of the utility who has been authorized by the utility to appear on its behalf; however, upon a finding by the commission or the presiding officer that there is good cause to hold a public hearing on such an application, the applying utility shall be represented in that proceeding by an attorney licensed to practice law in New Mexico.

**G.** The commission or presiding officer may require any person claiming to represent any other person or entity as allowed by this rule to provide such verification or corroboration of their claimed representational authority as the commission or presiding officer may deem necessary.

**H.** Nothing in this rule shall be construed to prohibit a party from being represented in a formal proceeding by an attorney licensed to practice law in New Mexico when such representation is desired by a party or is required by law.

[1.2.2.9 NMAC - Rp, 17 NMAC 1.2.9, 9/1/2008; A, 4/6/2021]

#### **1.2.2.10 FILING AND SERVICE:**

~~[**A. Filing:** A pleading or document is considered filed on the date stamped by the commission. Any pleading or document received after regular business hours will be stamped and considered filed on the next regular business day.]~~

#### ~~**B. Rejection:**~~

~~(1) Pleadings and documents which are not in substantial compliance with these or other commission rules, orders of the commission or presiding officer, or applicable statutes may be rejected within thirty (30) days after filing.~~

~~(2) If rejected, such papers will be returned with an indication of the deficiencies therein. Acceptance of a pleading or document for filing is not a determination that the pleading or document complies with all requirements of the commission or presiding officer and is not a waiver of such requirements.~~

~~(3) The chief of staff of the commission is authorized to reject pleadings and documents under this rule and to sub-delegate such authority.~~

~~(4) Pleadings or documents that have been rejected shall not be entered on the commission's docket for decision.~~

#### ~~**C. Service Generally:**~~

~~(1) Except as otherwise provided by rule or order, all pleadings, orders, notices, and documents filed in a proceeding shall be promptly served upon those persons described in Paragraph (4) of Subsection C of 1.2.2.10 NMAC by the person filing the orders, notices, pleadings, or documents. Service shall be made by depositing the pleading, order, notice, or document in the U.S. mail, postage prepaid, using first class or express mail, by delivering the pleading, order, notice, or document to a commercial courier service for delivery, by hand delivery, or by electronic transmission in accordance with other rules governing electronic service promulgated by the commission. The date of service shall be the date of deposit in the mail, delivery to a commercial courier service, hand delivery, or electronic transmission.~~

~~(2) A certificate of service listing, by name, each person served and describing the manner and date of service shall be filed with or attached to the pleading, order, notice, or document being filed and all copies served or filed, unless otherwise directed by the commission or presiding officer.~~

~~(3) Service of pleadings, orders, notices, and documents on the staff's or a party's named attorney is valid service upon staff or the party for all purposes in the proceeding unless the commission or presiding officer directs otherwise.~~

~~(4) Service of pleadings, orders, notices, and documents shall be made upon all persons included on the official service list. The official service list is the most recent service list issued by the commission or presiding officer in the proceeding.~~

~~(a) A service list shall include parties and staff or their counsel of record and shall be issued by the commission or presiding officer in all proceedings after the deadline for intervention has passed in the proceeding, and may be revised from time to time.~~

~~(b) The commission or presiding officer shall serve all service lists upon staff and the parties to the proceeding promptly upon issuance of the list.~~

~~(c) Prior to the issuance of an official service list, all pleadings, orders, notices, and documents filed in a proceeding shall be served by the person filing the orders, notices, pleadings, or documents upon all other parties in the proceeding, persons who have pending motions to intervene, staff, and as otherwise required by commission rule or order.~~

~~**D. Electronic service:** Electronic service shall be effectuated in accordance with other rules of the commission governing electronic filing and service.~~

~~**E. Amendments and withdrawal of pleadings and supporting documents:**~~

~~(1) Except in the case of formal complaints, pleadings may be amended or withdrawn only with leave of the commission or presiding officer and upon such conditions as the commission or presiding officer may deem appropriate.~~

~~(2) Formal complaints may be amended without leave at any time prior to the issuance of the probable cause determination required by this rule.~~

~~(3) Amendments to any pleading shall not broaden the scope of the issues originally filed unless the commission or presiding officer exercises the discretion to allow such an amendment.~~

~~(4) Upon any amendment or withdrawal of a pleading allowed, the commission or presiding officer may require a supplementary public notice.~~

~~(5) Direct testimony and exhibits filed may be amended or withdrawn only with leave of the commission or presiding officer, who may take into consideration, among other things, any delay or prejudice to the commission, its staff, or the parties which would result from the granting of the motion. The commission or presiding officer may grant or deny the motion or grant the motion only upon such conditions as are deemed appropriate. Upon any amendment or withdrawal allowed, the commission or presiding officer may require a supplementary public notice.]~~

**A. Service and contact emails:** all regulated entities shall at all times keep a current email on file with the commission's chief clerk or designee at which they can receive service of pleadings, process and other communication from the commission. All participants in open dockets shall provide a current email to the commission's chief clerk or designee at which they can receive service of pleadings, process and other communication from the commission, unless they do not have access to email.

**B. Service generally:**

(1) Except as otherwise provided by this rule or order of the commission or presiding officer, all pleadings, orders, notices, and documents filed in a proceeding shall be promptly served upon those persons described in Paragraph (4) of Subsection B of 1.2.2.10 NMAC by the person filing the orders, notices, pleadings, or documents. Service of electronic filings shall be made by electronic transmission. If a person does not have the ability to serve and be served electronically service on and by that person shall be made by depositing the pleading, order, notice, or document in the U.S. mail, postage prepaid, using first class or express mail, by delivering the



pleading, order, notice, or document to a commercial courier service for delivery, by hand delivery. The date of service shall be the date of deposit in the mail, delivery to a commercial courier service, hand delivery, or electronic transmission.

(2) A certificate of service listing, by name, each person served and describing the manner and date of service shall be attached to the pleading, order, notice, or document being filed and all copies served or filed, unless otherwise directed by the commission or presiding officer.

(3) Service of pleadings, orders, notices, and documents on the staff's or a party's named attorney is valid service upon staff or the party for all purposes in the proceeding unless the commission or presiding officer directs otherwise.

(4) Service of pleadings, orders, notices, and documents shall be made upon all persons included on the official service list. The official service list is the most recent service list issued by the commission or presiding officer in the proceeding.

(a) A service list shall include parties and staff or their counsel of record and shall be issued by the commission or presiding officer in all proceedings after the deadline for intervention has passed in the proceeding, and may be revised from time to time.

(b) The commission or presiding officer shall serve all service lists upon staff and the parties to the proceeding promptly upon issuance of the list.

(c) Prior to the issuance of an official service list, all pleadings, orders, notices, and documents filed in a proceeding shall be served by the person filing the orders, notices, pleadings, or documents upon all other parties in the proceeding, persons who have pending motions to intervene, staff, and as otherwise required by commission rule or order.

(5) Orders or documents issued by the commission or presiding officer are effective on the date they are filed unless otherwise stated in the order or document;

(6) When serving documents electronically each document shall be identified in the following four segment format: case number-filing date-party name-pleading identifier. Each name segment shall be separated by a hyphen. Case number shall be in the form: xx-xxxxx-suffix (UT or TR). Filing date shall be in the form: four digit year-two digit month-two digit day of month. Party name shall utilize a single word or abbreviated form, e.g. party initials, acronym or other identifier. The pleading identifier shall identify the nature of the pleading by concise description, e.g. petition, application, complaint, answer, motion seeking xxxxxxx, brief, response, reply, etcetera.

**C. Date stamps on filed documents and pleadings:**

**(1) Electronic filings:**

(a) the filing transmittal email for each filing, as received by the records bureau, shall be converted to a PDF and appended to every filed document or pleading before uploading to e-docket;

(b) the date and time on the filing transmittal email shall serve as the date stamp for the filed document or pleading;

(c) if the date and time on the filing transmittal email from a party or other person reflects a date or time that is outside of regular business hours, the filed document or pleading will be deemed to be filed the following business hour;

(d) if the date and time on the filing transmittal email from the commission or a presiding officer reflects a date or time that is outside of regular business hours, the filed document or order will be deemed to be filed as of the date and time on the filing transmittal email;

(e) filing transmittal emails shall be substantially in the format of the sample transmittal email attached as exhibit one to this rule;

(f) the filing transmittal email should be addressed to the records bureau email address only and should be a separate email from any service email;

(2) For a filings by mail or in person, the records bureau shall date stamp the original document or pleading with the date it is deemed filed, in accordance with the definition of date and time of filing provided in Paragraph (1) of Subsection D of 1.2.2.7 NMAC, before scanning and uploading to e-docket. The filer may request and provide to the records bureau any number of conformed copies of the filed document or pleading for the records bureau to stamp and return to them. If the filing is made by mail, the filer must provide a self-addressed stamped envelope for the return of the conformed copies.

**D. Filings:**

(1) Any complete, correctly filed document, order, notice or pleading will be accepted by the chief clerk or designee and will be uploaded in the .pdf format submitted in the appropriate identified case numbers locations in e-docket on a regular basis for the purpose of inspection of records.

(2) All filed documents shall be made available, upon reasonable demand, for inspection by the chief clerk or designee public, other parties or the commission.

(3) The filing party has the responsibility to make sure that the filed document or pleading is complete and accurate.

(4) The filing party shall ensure that all filed documents and pleadings do not contain or have properly redacted any confidential information or “protected personal identifier information” as defined by 1-079 NMRA and Section 14-2-6 NMSA 1978.

(5) The filing party shall ensure that all filed documents and pleadings do not contain or have properly redacted any protected information that is prohibited from disclosure by any state or federal law or regulation.

(6) When a party files a document that contains redacted confidential information or personal protective identifier information they shall deliver a non-redacted version to the records bureau in accordance with Paragraph (12) of Subsection E of 1.2.2.10 NMAC.

(7) A filing party who files any documents or pleadings that contain protected personal identifier information or information prohibited from disclosure by state or federal law or regulation shall be solely liable for any damages that result from filing such information with the commission.

(8) Except as provided in Paragraph (2) of Subsection C of 1.2.2.10 NMAC, persons exempted from the electronic filing requirement may physically file documents or pleadings by:

(a) sending one original of the document or pleading to be filed via regular postal mail to: NMPRC Records Bureau, PO Box 1269, Santa Fe, NM 87504; or

(b) if the records bureau has a physical location that is open to the public, by delivery of one original of the document or pleading to the commission’s chief clerk or designee during posted office hours.

**E. Electronic filing:**

**(1) Electronic filing required:**

(a) all regulated entities are required to make electronic filings;

(b) all persons should make electronic filings if they have the ability to do so;

(c) only persons who lack the ability to make electronic filings are permitted to make physical filings;

(2) electronically filed documents shall be emailed to the records bureau email address as .pdf documents;

(3) electronically filed documents shall be scanned with a regular signature or be electronically signed;

(4) electronically filed documents shall include the email address of the person signing the document in the signature block, and if filing on behalf of a regulated entity, the email address of the regulated entity;

(5) electronically filed documents shall be combined into one complete document, shall include accompanying consecutively numbered attachments, if any, except in cases where the .pdf exceeds size limit restrictions, and if so the document shall comply with Paragraph (8) of Subsection E of 1.2.2.10 NMAC herein;

(6) electronically filed documents shall include a certificate of service evidencing service upon which individuals or entities were served and by what manner of service;

(7) Confidentiality agreements and non-disclosure agreements: when filing nondisclosure agreements or confidentiality agreements, each confidentiality agreement or non-disclosure agreement shall be filed as a separate document;

(8) when emailing electronically filed documents to the records bureau email address there are size limit restrictions to the .pdf attachments of approx. 20MB but this may change as the commission’s servers change. If a filer receives an “undeliverable” email due to attachment size limits, the filer shall re-send the .pdf as a single document using a download link that allows for it to be downloaded from a cloud service such as Dropbox, One Drive, etcetera. If it is impossible to re-send an oversized .pdf via a download link it is permissible to split the .pdf into multiple smaller sized files and email in batches with identifying numbers showing how the document should be combined (i.e. batch one of three, batch two of three, etcetera) so that the records chief clerk or designee may properly assemble for filing in e-docket;

(9) the filing date for an electronically filed document shall be the date the filing email is sent if emailed during regular business hours for the commission; if emailed outside of regular business hours the document will be considered received and filed on the next regular business day;

(10) no physical hard copies of electronically filed documents or multiple copies of physically filed documents are required to be submitted unless the commission or presiding officer directs the filer to do so. At the direction of the commission or presiding officer a designated number of copies of any filed document shall be mailed, by regular postal service mail, to the commission at any number of designated addresses.

(11) The commission or presiding officer may direct any filer to submit documents or pleadings to them in a native document format in addition to the PDF version filed with the records bureau if a native format exists;

(12) If for any reason physical electronic storage media must be presented to the commission, unless otherwise directed by the commission or presiding officer, the electronic storage media shall be a USB flash drive. All electronic storage media submitted pursuant to this rule shall be compatible with the commission's current computer capabilities. All physical electronic storage media filed shall have affixed thereto a label containing the appropriate case number, the title of the pleading or document, the name of the party or staff making the filing;

(13) **Confidential materials** are an exception to the electronic filing requirement and shall be filed as follows:

(a) subject to the terms of any applicable protective order, confidential materials shall be filed by mailing hard copies to the NMPRC Records Bureau, PO Box 1269, Santa Fe, NM 87504 or by in-person delivery of hard copies to the commission's chief clerk or designee;

(b) when filing confidential materials they shall submitted to the records bureau in a sealed envelope that is separate from any mailing envelope;

(c) the sealed envelope containing confidential materials shall list the case number, case caption, document name, name of filer and other non-confidential identifying information on the outside of the envelope;

(14) Parties are responsible for the timely filing of electronic documents to the same extent as with the filing of non-electronic documents, with the same consequences for missed deadlines;

**F. Rejection:**

(1) Pleadings and documents which are not in substantial compliance with these or other commission rules, orders of the commission or presiding officer, or applicable statutes may be rejected within thirty (30) days after filing.

(2) If rejected, such papers will be returned with an indication of the deficiencies therein. However, a copy of the rejected papers shall be retained by the chief clerk or designee as a public record. Acceptance of a pleading or document for filing is not a determination that the pleading or document complies with all requirements of the commission or presiding officer and is not a waiver of such requirements.

(3) The chief of staff of the commission is authorized to reject pleadings and documents under this rule and to sub-delegate such authority.

(4) Pleadings or documents that have been rejected shall not become part of the record proper used as a basis for the commission's decision.

**G. Amendments and withdrawal of pleadings and supporting documents:**

(1) Except in the case of formal complaints, pleadings may be amended or withdrawn only with leave of the commission or presiding officer and upon such conditions as the commission or presiding officer may deem appropriate.

(2) Formal complaints may be amended without leave at any time prior to the issuance of the probable cause determination required by this rule.

(3) Amendments to any pleading shall not broaden the scope of the issues originally filed unless the commission or presiding officer exercises the discretion to allow such an amendment.

(4) Upon any amendment or withdrawal of a pleading allowed, the commission or presiding officer may require a supplementary public notice.

(5) Direct testimony and exhibits filed may be amended or withdrawn only with leave of the commission or presiding officer, who may take into consideration, among other things, any delay or prejudice to the commission, its staff, or the parties which would result from the granting of the motion. The commission or presiding officer may grant or deny the motion or grant the motion only upon such conditions as are deemed appropriate. Upon any amendment or withdrawal allowed, the commission or presiding officer may require a supplementary public notice.

(6) A copy of any withdrawn filing shall be retained by the chief clerk or designee as a public record.

[1.2.2.10 NMAC - Rp, 17 NMAC 1.2.28, 9/1/2008; A, 4/6/2021]

**1.2.2.11 PLEADINGS:** Pleadings shall be in writing, shall state their object, and shall be signed by the party or staff representative seeking authorization or relief from the commission or by their attorney.

**A. Contents:** All pleadings shall be paginated and shall contain:

- (1) a clear and concise statement of the authorization or other relief sought;
- (2) in the case of initial pleadings, the exact legal name, mailing address, and telephone number of each party or the staff representative seeking the authorization or relief; the address or principal place of business of such party or staff; and the name, mailing address, email address, and telephone number of the party's or staff's attorney, if any;
- (3) a concise and explicit statement of the facts which said party or the staff is prepared to prove by competent evidence and upon which the commission is expected to rely in granting the authorization or other relief sought; and
- (4) a table of contents, if more than ten pages.

**B. Supporting exhibits:** All pertinent and relevant data, exhibits, illustrations, and prepared testimony, if required by this or any other rule or order of the commission or presiding officer, must be filed along with the pleading.

(1) If supporting exhibits consist of tables or graphs, the specific formulae and equations used to derive the tables or graphs shall be attached as part of the supporting exhibit.

(2) Failure to submit all direct testimony and exhibits in support of a proposed tariff change, application, or petition at the time of filing, if required by rule or order of the commission or presiding officer, may result in a rejection of the pleading or document without prejudice.

(3) Likewise, failure to comply with an order of the presiding officer requiring the filing of testimony and exhibits may result in the rejection of the pleading or document without prejudice.

**C. Form and size:** All pleadings shall be typed or machine printed on paper eight and one-half (8-1/2) inches wide and eleven (11) inches long. The impression shall be on only one side of the paper and shall be double-spaced. Footnotes and quotations may be single-spaced. Pleadings shall be fastened only on the left side. Reproductions may be made by any process provided that all copies are clear and permanently legible.

**D. Interrogatories:** Written interrogatories and written answers to interrogatories, shall conform to the form and size requirements of this rule, except that they may be single-spaced unless the commission or presiding officer otherwise directs.

~~[**E. Electronic form:** Any pleading or supporting document may additionally be presented in electronic form at the option of the party or staff making a filing, and shall be presented in electronic form if the commission or presiding officer so orders. All diskettes, CD-ROMs or other electronic storage media submitted pursuant to this rule shall be compatible with the commission's current computer capabilities. Diskettes, CD-ROMs and other electronic storage media shall contain the exact electronic image of the document or pleading being replicated. Unless otherwise ordered by the commission or presiding officer, the contents of all filed diskettes, CD-ROMs and other electronic storage media shall be physically or electronically protected from alteration or deletion. All diskettes, CD-ROMs or other electronic storage media filed shall have affixed thereto a label containing the appropriate caption and case number, the title of the pleading or document, the name of the party or staff making the filing, and space for date stamping.]~~

**[F] E. Title and docket number:** All pleadings filed shall show the caption for the proceeding, the docket number, and the title of the pleading. Pleadings initiating new proceedings shall leave a space for the docket number.

**[G] F. Construction:** All pleadings shall be liberally construed and errors or defects therein which do not mislead or affect the substantial rights of staff and the parties involved shall be disregarded.

~~[**H. Copies:** The party or staff filing a pleading shall provide the commission with one (1) original plus five (5) conformed copies of the pleading unless the commission or presiding officer directs otherwise. The commission or presiding officer may require the filing of additional paper copies.]~~

[1.2.2.11 NMAC - Rp, 17 NMAC 1.2.10, 9/1/2008; A, 4/6/2021]

#### **1.2.2.34 TRANSCRIPTS:**

~~[**A. Record of proceedings and testimony:** A full and complete record of all proceedings before the commission or presiding officer in any formal public hearing and all testimony shall be taken down by a reporter appointed by the commission.]~~

~~[**B. Copies of transcripts:** Transcripts may be requested by any party or by staff at the inception of the public hearing or their preparation otherwise directed by the commission or presiding officer. Any party other than the commission or its staff who requests and receives transcripts shall pay the specified costs to the preparer of~~

~~the transcript. If such receipt is earlier than the date on which the commission or staff would otherwise receive transcripts, the preparer shall deliver the commission's and staff's copies to the commission and staff on the earlier date.]~~

**A. Record of proceedings and testimony:**

(1) A full and complete record of all proceedings before the commission or presiding officer in any formal public hearing and all testimony shall be made by either audio recording by a commission employee or shall be taken down and transcribed by a certified court reporter at the discretion of the presiding officer.

(2) If the commission or presiding officer intends to have a transcript made by audio recording they will state this in the notice or order of hearing or proceeding.

(3) Upon receiving notice that the commission or presiding officer intends to have a transcript made by audio recording, any party can file a request to have the hearing or proceeding transcribed by a certified court reporter and the commission will arrange a court reporter. A party requesting a court reporter for a hearing or proceeding that would otherwise be made by audio recording shall be responsible for the full cost of the court reporter's fees. A request by any party to have a hearing or proceeding transcribed by a certified court reporter shall be filed as soon as practicable before the hearing or proceeding. If a request by any party to have a hearing or proceeding transcribed by a certified court reporter is not made at least seven days prior to the hearing the commission may be unable to accommodate the request.

**B. Copies of transcripts:** The commission shall file in e-docket a pdf version of any transcript it receives on the date the transcript is created or the date it is filed with the commission or the presiding officer.

**C. Corrections:** Suggested corrections to the transcript or record must be offered within 13 days after the transcript is filed in the proceeding except for good cause shown, and such suggestion shall be in writing and served upon each party, staff, the official reporter, and the presiding officer. Failure to timely file suggested corrections without good cause shown constitutes a waiver of objections to the transcript.

(1) Objections to the suggested corrections shall be made in writing within 13 days from the filing of the suggestions. The commission or presiding officer shall, with or without public hearing, determine what changes, if any, shall be made in the record.

(2) If no objection is made to the suggested corrections, the presiding officer may in their discretion direct that the corrections be made and the manner of making them.

**D. Citation form:** When referring to the record in briefs and other documents, staff and the parties shall cite to the transcript using the reporter's pagination, e.g., Tr. (transcript page number). If a transcript is made by audio recording staff and the parties shall cite to the transcript using time markers.

[1.2.2.34 NMAC - Rp, 17 NMAC 1.2.36, 9/1/2008; A, 4/6/2021]

**1.2.2.35 RULES OF EVIDENCE:**

**A. General:**

(1) Subject to the other provisions of this rule, all relevant evidence is admissible which, in the opinion of the presiding officer, is the best evidence most reasonably obtainable, having due regard to its necessity, competence, availability, and trustworthiness.

(2) In passing upon the admissibility of evidence the presiding officer shall give consideration to, but shall not be bound by, the New Mexico rules of evidence which govern proceedings in the courts of this state. The presiding officer shall also give consideration to the legal requirement that any final decision on the merits be supported by competent evidence.

(3) Unless otherwise directed by the commission or the presiding officer, documents that require sworn verification by notarization under commission rules may be supported by unsworn affirmation in compliance with rule of civil procedure 1-011(B) NMRA.

**B. Testimony under oath:** All testimony to be considered by the commission or presiding officer in formal public hearings except matters officially noticed or entered by stipulation shall be made under oath.

**C. Stipulation as to facts:**

(1) The parties and staff in any proceeding before the commission or presiding officer may, by stipulation in writing filed or entered in the record, agree upon the facts or any portion thereof involved in the controversy, which stipulation shall be binding upon the parties and staff entering into the stipulation and may be regarded and used by the commission or presiding officer as evidence at the public hearing. It is desirable that the facts be thus agreed upon wherever practical. The commission or presiding officer may, however, require proof or evidence of the facts stipulated to, notwithstanding the stipulation of the parties and staff.

(2) In the event the parties and staff stipulate to certain facts as part of a proposed settlement of the case, and the settlement is rejected, the stipulations of fact entered for purposes of the settlement will not be

binding upon the parties or used as evidence in any subsequent public hearing on the merits unless all signatories thereto agree to refile the stipulations of fact.

**D. Administrative notice:**

(1) The commission or presiding officer may take administrative notice of the following matters if otherwise admissible under Subsection A of 1.2.2.35 NMAC:

- (a) rules, regulations, administrative rulings, published reports, licenses, and orders of the commission and other governmental agencies;
- (b) contents of certificates, permits, and licenses issued by the commission;
- (c) tariffs, classifications, schedules, and periodic reports regularly established by or filed as required or authorized by law or order of the commission;
- (d) decisions, records, and transcripts in other commission proceedings;
- (e) state and federal statutes;
- (f) decisions of state and federal courts;
- (g) generally recognized technical and scientific facts; and
- (h) matters of which the courts of this state may take judicial notice.

(2) In addition the commission or presiding officer may take administrative notice of the results of their own inspection of any physical location or condition involved in the proceeding, and may take administrative notice on the record of the results of the commission's previous experience in similar situations and general information concerning a subject within the commission's expert knowledge.

(3) Parties and staff requesting that administrative notice be taken of documents or portions of documents or of the contents thereof must submit those documents or portions of documents to the commission or presiding officer in the form of exhibits except as may otherwise be provided in this rule.

(4) The commission or presiding officer may take administrative notice whether requested or not subject to appropriate objection under Subsection L of 1.2.2.35 NMAC. If staff or a party requests that administrative notice be taken, the commission or presiding officer must be provided the necessary information.

(5) Matters noticed are admitted into evidence to the same extent as other relevant evidence.

**E. Resolutions:** Resolutions, properly authenticated, of the governing bodies of cities, towns, counties and other municipal corporations, and of chambers of commerce, commercial or mercantile boards of trade, agricultural or manufacturing societies, and other civic organizations will be received in evidence if relevant. Such resolution shall be received subject to rebuttal by adversely affected staff or parties as to the authenticity of the resolution. Recitals of fact contained in resolutions shall not be deemed proof of those facts.

**F. Official records:** An official rule, report, order, record, or other document prepared and issued by any governmental authority may be introduced into evidence. In cases where such official records, otherwise admissible, are contained in official publications or publications by nationally recognized reporting services and are in general circulation and readily accessible to all parties and staff, they may be introduced by reference unless the presiding officer directs otherwise, provided that proper and definite reference to the record in question is made by the party or staff offering the same.

**G. Commission files:** Papers and documents on file relevant to the proceeding may be introduced into evidence by reference to number or date or by any other method of identification satisfactory to the presiding officer unless the presiding officer directs that the paper or document or a summary thereof be presented for the record in the form of an exhibit. If only a portion of any such paper or document is offered in evidence, the part so offered shall be presented for the record in the form of an exhibit.

**H. Records in other proceedings:** In case any portion of the record in any other proceeding before the commission or presiding officer is admissible for any purpose and is offered in evidence, a true copy of such portion may be presented for the record in the form of an exhibit.

**I. Prepared testimony:**

~~[(1) Prepared written testimony shall be received in evidence with the same force and effect as though it were stated orally by the witness. All witnesses must be present at the public hearing and shall adopt, under oath, their prepared written testimony, subject to cross examination and motions to strike unless the witness's presence at public hearing is waived by the commissioner or presiding officer upon notice to and without objection from staff and the parties.~~

~~(2) Unless the commission or presiding officer directs otherwise, testimony in written form shall be prepared in accordance with the following guidelines:~~

- ~~(a) the cover page shall contain the case caption and number and the name of the witness;~~
- ~~(b) all pages are to be typed or machine printed and double spaced;~~

- ~~(e) the top, bottom, and left hand margins shall be at least one and one half (1 1/2) inches;~~
- ~~(d) the name of the witness and the case number, if then known, shall be typed at the top center of each page two (2) inches from the edge;~~
- ~~(e) the page number for each page shall be typed at the bottom center one (1) inch from the edge;~~
- ~~(f) a square of approximately one and one half (1 1/2) inches in the upper right-hand corner of each page shall be left clear for commission use; and~~
- ~~(g) testimony shall contain line numbers on the left hand side of the page.~~
- ~~(3) Prepared testimony shall be included in the record as an exhibit.]~~
- (1) Prepared written testimony shall be received in evidence as exhibits with the same force and effect as though it were stated orally by the witness. All witnesses must be present at the public hearing and shall adopt, under oath, their prepared written testimony, subject to cross-examination and motions to strike unless the witness's presence at public hearing is waived by the commissioner or presiding officer upon notice to and without objection from staff and the parties.
- (2) Unless the commission or presiding officer directs otherwise, testimony in written form shall be prepared in accordance with the following guidelines:
- (a) the cover page shall contain the case caption and number and the name of the witness;
- (b) all pages are to be typed or machine printed and double-spaced;
- (c) the top, bottom, and left-hand margins shall be at least one and one-half inches;
- (d) the name of the witness and the case number, if then known, shall be typed at the top center of each page two inches from the edge;
- (e) the page number for each page shall be typed at the bottom center one inch from the edge;
- (f) a square of approximately one and one-half inches in the upper right-hand corner of each page shall be left clear for commission use;
- (g) testimony shall contain line numbers on the left-hand side of the page; and
- (h) testimony shall be filed in question and answer format and be supported by affidavit.
- (3) Unless the commission or presiding officer directs otherwise no documents other than pre-filed testimony shall be admitted into evidence on direct examination of a witness.

**J. Exhibits:**

**(1) Use of data in exhibits:**

(a) When supporting exhibits consist of tables of data or graphs, all formulae, equations, or other methodology used to derive the data shall be included as part of the supporting exhibit.

(b) If data used in supporting exhibits are derived from or supported by complex computerized analyses, working copies of the computer models may be included on a diskette compatible with the commission's current computer capabilities, in lieu of printed material.

(2) **Size of exhibits:** Except by special permission of the presiding officer, no specially prepared exhibits offered as evidence shall be of greater size, when folded, than eight and one-half (8-1/2) inches by eleven (11) inches.

(3) **Marking of exhibits:** All exhibits shall be marked numerically in the order of introduction by the moving party or staff. To the extent practicable all exhibits, including those to be introduced on cross-examination, shall be marked before the start of public hearings on the day the witness will be examined thereon.

**(4) Designation of part of document as evidence:**

(a) When relevant and material matter offered in evidence by any party or staff is embraced in a book, paper, or document containing other matter not material or relevant, the party or staff offering the same must plainly designate the matter so offered.

(b) If other matter is in such volume as would unnecessarily encumber the record, such book, paper, or document will not be received in evidence but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the presiding officer so directs, a true copy of such matter in proper form shall be received as an exhibit and like copies delivered by the party or staff offering the same to all other parties and staff appearing at the public hearing.

(c) All parties and staff shall be afforded an opportunity to examine the book, paper, or documents and to offer in evidence in like manner other portions thereof if found to be material and relevant.

(5) **Abstracts of documents:** When documents are numerous and it is desired to offer in evidence more than a limited number of such documents as typical of the others, an abstract shall be prepared and offered as an exhibit giving other parties to and staff in the proceeding reasonable opportunity to examine the abstract and the documents.

(6) **Summaries of documents:** Where a document being offered into evidence is voluminous, the presiding officer may direct that a summary be prepared and offered as an exhibit giving other parties to and staff in the proceeding reasonable opportunity to examine the summary and the document. The presiding officer may require that the summary be offered as an exhibit in addition to the summarized document or in lieu thereof.

(7) **Copies of exhibits:**

(a) When exhibits not attached to pleadings as required by this rule are offered in evidence, the original shall be furnished to the reporter.

(b) The party or staff offering exhibits shall also furnish a copy to each commissioner or hearing examiner sitting, advisory staff if in attendance, each party, and the staff unless such copies have previously been furnished or the presiding officer directs otherwise.

(c) The proponent shall, to the extent practicable, furnish the required copies to the reporter, the commissioners or hearing examiner, advisory staff, parties, and staff before the start of the public hearings on the day said proponent intends to offer the exhibits into evidence.

**K. Additional evidence:** At any stage of the proceeding the commission or presiding officer may require the production of further evidence upon any issue. Such evidence may, at the discretion of the commission or presiding officer, be in writing or presented orally. All parties and the staff will be given an opportunity to reply to such evidence submitted and cross-examine the witness under oath.

**L. Objections:**

(1) Any evidence offered in whatever form shall be subject to appropriate and timely objection. When objection is made to the admissibility of evidence, such evidence may be received subject to later ruling by the commission or presiding officer.

(2) The commission or presiding officer their discretion either with or without objection may exclude inadmissible, incompetent, cumulative, or irrelevant evidence or order the presentation of such evidence discontinued.

(3) Parties or staff objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered.

(4) The evidence to be admitted at public hearing shall be material and relevant to the issue. Formal exceptions to rulings are not necessary and need not be taken.

**M. Offers of proof:** An offer of proof for the record may be made and shall consist of a statement of the substance of the evidence to which objection has been sustained. The commission or presiding officer may require offers of proof to be submitted in writing in question and answer form.

**N. Rebuttal evidence:**

(1) Rebuttal evidence is evidence which tends to explain, counteract, repel, or disprove evidence submitted by another party or by staff. Evidence which is merely cumulative or could have been more properly offered in the case in chief is not proper rebuttal evidence.

(2) Staff or a party wishing to offer rebuttal testimony shall at the close of their opponent's direct case move the commission or presiding officer to allow introduction of rebuttal testimony. The movant shall indicate the nature of the evidence sought to be adduced and demonstrate why it is proper rebuttal testimony.

(3) The commission or presiding officer may permit or require rebuttal evidence to be submitted in prepared form in accordance with this rule prior to its introduction.

[1.2.2.35 NMAC - Rp, 17 NMAC 1.2.37, 9/1/2008; A, 4/6/2021]