

This is an amendment to 17.9.592 NMAC, Sections 2, 3, 6, 7, 9, 10, 11, 12, 14, 15, effective 12/27/2022.

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 [a] 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: [~~NMSA 1978 Sections 8-8-4 and 62-9-3~~] 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]

17.9.592.6 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 [~~NMSA 1978~~] 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 [~~NMSA 1978~~] 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 [~~three hundred thousand (300) kilowatts~~] 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]

17.9.592.9 CONTENTS OF APPLICATION FOR LOCATION APPROVAL OF LARGE CAPACITY PLANT: A person seeking to construct a large capacity plant [~~must~~] 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 constructions of the large capacity plant;~~
~~[E.]~~ **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;
~~[F.]~~ **E.** the expected date that the large capacity plant will be online;
~~[G.]~~ **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
~~[H.]~~ **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 ~~[must]~~ 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 of the transmission line;~~
- ~~———G.]~~ 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;
- [H.] G.** testimony demonstrating that the transmission line will not unduly impair important environmental values; important environmental values include, but are not limited to: ~~[preservation of air and water quality, land uses, soils, flora and fauna, and water, mineral, socioeconomic, cultural, historic, religious, visual, geologic and geographic resources;]~~
- (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.
- ~~[I.] H.~~ the expected date that the transmission line will be online;
- ~~[J.] 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
- ~~[K.] 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 ~~[thirteen (13)]~~ 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 ~~[must]~~ 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 ~~[thirty (30)]~~ 30 days of its receipt. The commission ~~[will]~~ shall commence its review of an application, and the statutory deadline in ~~[NMSA 1978]~~ Section 62-9-3

NMSA 1978 shall ~~[begin to be computed,]~~ 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]

17.9.592.14 VARIANCE:

- A. An applicant may request a variance from any of the requirements of this rule.
- B. A petition for variance ~~[must]~~ 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 ~~[NMSA 1978]~~ 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 ~~[Section 62-9-3(D) NMSA 1978,]~~ 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]~~ 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]~~ Addition of circuits or placement of additional structures; for transmission lines these shall be entirely within the existing right-of-way or entirely within ~~[twelve hundred (1200)]~~ 1,200 feet of the existing right-of-way not adjacent to a developed residential, commercial, or industrial area.
 - (3) ~~[voltage]~~ 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]~~ 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 ~~[twelve hundred feet (1200)]~~ 1,200 feet of the existing right-of-way not adjacent to a developed residential, commercial, or industrial area.
 - (5) ~~[construction]~~ Construction of a tap line to a new terminus, both of which are entirely within the existing right-of-way or entirely within ~~[twelve hundred feet (1200)]~~ 1,200 feet of the existing right-of-way not adjacent to a developed residential, commercial, or industrial area.
 - (6) ~~[replacements]~~ Replacements to transmission-related electrical stations located entirely within the existing right-of-way or entirely within ~~[twelve hundred feet (1200)]~~ 1,200 feet of such electrical stations not adjacent to a developed residential, commercial, or industrial area.
 - (7) ~~[erection]~~ Erection of temporary facilities for ~~[twelve (12)]~~ 12 months or less entirely within the existing right-of-way or entirely within ~~[twelve hundred feet (1200)]~~ 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 ~~[(4)]~~ mile in length for a transmission line, ~~[with a voltage of two hundred thirty (230) kilovolts or greater]~~ 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 ~~[Indian]~~ 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 ~~[one hundred twenty (120)]~~ 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.

~~[E.]~~ F. Commission staff shall, and any interested party who files a motion to intervene may, file a response to the petition within ~~[forty five (45)]~~ 45 days of its filing with the commission. If the commission does not act on the petition within ~~[one hundred (100)]~~ 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, [Section 62-9-3(D) NMSA 1978;] for which location approval shall not be required ~~[under Section 62-9-3 NMSA 1978]~~. The commission's lack of action on a petition within the ~~[one hundred (100)]~~ 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]