

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 1 UTILITIES GENERAL PROVISIONS
PART 2 UTILITY APPLICATIONS

17.1.2.1 ISSUING AGENCY: Public Regulation Commission.
[17.1.2.1 NMAC - Rp, 17 NMAC 1.2.1, 9/1/2008]

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, 9/1/2008]

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, 9/1/2008]

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, 9/1/2008]

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, 9/1/2008]

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, 9/1/2008]

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 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 12 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 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; and

(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 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 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 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 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, 9/1/2008]

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 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, 9/1/2008]

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]

HISTORY OF 17.1.2 NMAC:

Pre NMAC History: This rule was previously filed with the state records center as:

PSC-GO 1 (Case No. 1373), In the Matter of the Adoption of Proposed General Order 30 & Proposed 2nd Revised General Order 1; Order Adopting 2nd Revised General Order No. 1; 2nd Revised General Order Number 1, Rules of Practice and Procedure of NMPSC, filed 8/14/1978

G.O. 1, Third Revised General Order Number 1 - Rules of Practice and Procedure, filed 12/17/1986;

NMPSC Rule 110, Rules of Practice and Procedure, filed 6/20/1988;

NMPUC Rule 110, Rules of Practice and Procedure, filed 10/4/1993

SCC 78-2, Order (no number), Docket No. 857, In the Matter of the Adoption of Rules of Practice and Procedure for all Cases Before the N.M. SCC, filed 10/24/1978;

SCC 85-11, Rules of Procedure of New Mexico State Corporation Commission, filed 10/15/1985.

History of Repealed Material: 17 NMAC 1.2, Public Utilities and Utility Services, Utilities General Provisions, Utility Division Procedures (filed 12/14/1998) repealed 9/1/2008.

Other History:

NMPUC Rule 110, Rules of Practice and Procedure (filed 10/4/1993) and SCC 85-11, Rules of Procedure of New Mexico State Corporation Commission (filed 10/15/1985) were renumbered, reformatted, amended and replaced by 17 NMAC 1.2, Public Utilities and Utility Services, Utilities General Provisions, Utility Division Procedures, effective 12/31/1998.

That applicable portion of 17 NMAC 1.2, Public Utilities and Utility Services, Utilities General Provisions, Utility Division Procedures (filed 12/14/1998) was renumbered, reformatted, amended and replaced by 17.1.2 NMAC, Public Utilities and Utility Services, Utilities General Provisions, Utility Applications, effective 9/1/2008.