

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES**  
**CHAPTER 5 UTILITY INTERCONNECTIVITY AND COOPERATIVE AGREEMENTS**  
**PART 440 EXTENSIONS, SYSTEM IMPROVEMENTS, REPAIRS OR REPLACEMENTS,**  
**ADDITIONS, AND COOPERATIVE AGREEMENTS BETWEEN OR AMONG UTILITIES**

**17.5.440.1 ISSUING AGENCY:** New Mexico public regulation commission.  
[17.5.440.1 NMAC - Rp, 17.5.440.1 NMAC, 12/27/2022]

**17.5.440.2 SCOPE:** This rule applies to investor-owned electric, gas, water, and sewer utilities subject to the jurisdiction of the New Mexico public regulation commission, however, Subparagraph (a) of Paragraph (1) of Subsection A of 17.5.440.8 NMAC and Paragraph (3) of Subsection C of 17.5.440.8 NMAC shall apply to all electric utilities, and Subparagraph (a) of Paragraph (1) of Subsection A of 17.5.440.9 NMAC and Paragraph (2) of Subsection D of 17.5.440.9 NMAC shall apply to all gas, water, and sewer utilities, subject to the jurisdiction of the New Mexico public regulation commission.  
[17.5.440.2 NMAC - Rp, 17.5.440.2 NMAC, 12/27/2022]

**17.5.440.3 STATUTORY AUTHORITY:** Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978 and Section 8-8-15 NMSA 1978.  
[17.5.440.3 NMAC - Rp, 17.5.440.3 NMAC, 12/27/2022]

**17.5.440.4 DURATION:** Permanent.  
[17.5.440.4 NMAC - Rp, 17.5.440.4 NMAC, 12/27/2022]

**17.5.440.5 EFFECTIVE DATE:** December 27, 2022, unless a later date is cited at the end of a section.  
[17.5.440. NMAC - Rp, 17.5.440.5 NMAC, 12/27/2022]

**17.5.440.6 OBJECTIVE:** This rule is intended to provide reporting and filing requirements and guidance for public utilities and utility division staff.  
[17.5.440.6 NMAC - Rp, 17.5.440.6 NMAC, 12/27/2022]

**17.5.440.7 DEFINITIONS:** As used in this rule:

**A. “repairs or replacements”** means any public utility activity, that is also a capital expenditure, that repairs, or replaces with the same or substantially similar, equipment or property that has either failed, is in the process of failing, or deteriorated, or that is at the end of its useful life, or that is otherwise necessary to repair or replace; and

**B. “undertaking”** means the extension, system improvement, repair or replacement, or addition for which the public utility is required to report to the Commission pursuant to 17.5.440.8 NMAC and 17.5.440.9 NMAC.

[17.5.440.7 NMAC - Rp, 17.5.440.7 NMAC, 12/27/2022]

**17.5.440.8 ELECTRIC UTILITIES:**

**A.** Report requirements for extensions, system improvements, repairs or replacements, or additions:  
**(1)** A public utility shall, prior to making any of the following described extensions, system improvements, repairs or replacements, or additions as set forth in Subparagraphs (a) through (e) of 17.5.440.8 NMAC below, file a report with the commission setting forth the character of the undertaking, the purpose sought thereby to be accomplished, the means by which that purpose is intended to be realized, the estimated costs involved in the employment of those means, the data upon which the engineering and economic feasibility of the undertaking is based, any reasonable alternatives to the proposed undertaking that have been considered, any system upgrades that may be needed due to the undertaking, and, if Subparagraph (a) of 17.5.440.8 NMAC below is applicable, the name or names of the utility or utilities toward which the proposed extension is to be made.

**(a)** Any extension, of any electric facility outside the limits of a municipality to a point within one-half mile of the facilities of any other utility or utilities rendering electric service.

**(b)** Any extension, system improvement, repairs or replacements, or addition to any transmission or distribution line, plant, facility, or system, exclusive of generating facilities, which will have an estimated cost to the utility under the uniform system of accounts of \$1,000,000 or more on a total company basis

and for which the utility intends to seek rate recovery from its New Mexico customers, regardless of the location of the line, plant, facility, or system.

(i) In calculating the estimated cost, the utility shall include the cost of any system upgrades that are directly related to, or required as a result of, such addition, repair or replacement, or system improvement.

(ii) The estimated cost shall be reasonable and proposed in good faith.

(c) Any addition to, or repair or replacement of, or improvement of, any electric generating facility which will have an estimated cost to the utility under the uniform system of accounts of \$2,000,000 or more on a total company basis and for which the utility intends to seek rate recovery from its New Mexico customers, regardless of the location of the electric generating facility.

(i) In calculating the estimated cost, the utility shall include the cost of any system upgrades that are directly related to, or required as a result of, such addition, repair or replacement, or system improvement.

(ii) The estimated cost shall be reasonable and proposed in good faith.

(d) Substantial system characteristic improvements involving a change in operating voltage of electric lines. Substantial system characteristic improvements involving reconductoring, rephasing (addition or deletion of phases) of electric lines resulting in a length of two miles or more. System improvements of an overall or system wide nature shall be submitted to the commission as an overall plan.

(e) Any extensions, system improvements, repairs or replacements, or additions for which the public utility claims or intends to claim safe harbor under 17.9.592.15 NMAC that have an estimated cost to the utility under the uniform system of accounts of \$1,000,000 or more on a total company basis and for which the utility intends to seek rate recovery from its New Mexico customers, regardless of the location of the undertaking.

(i) In calculating the estimated cost, the utility shall include the cost of any system upgrades that are directly related to, or required as a result of, such extension, system improvement, repair or replacement, or addition.

(ii) The estimated cost shall be reasonable and proposed in good faith.

(2) The report is for informational purposes and shall not constitute nor be deemed to constitute an application by the utility for authority to engage in the reported undertaking.

(3) Reports shall include sufficient information to enable the commission to appropriately relate the proposed extension, system improvement, repair or replacement, or addition to maps of existing facilities.

(4) The utility shall file reports on forms to be furnished by the commission and shall be numbered serially.

**B.** The commission shall not be precluded from requiring the filing of further information by the reporting utility with respect to its proposed undertaking.

**C.** Filing and service procedures:

(1) The utility shall file a report at least 30 days prior to the commencement of construction of the extension, system improvement, repair or replacement, or addition, except in the event of unplanned emergency undertakings, in which case the report shall be filed not more than 30 days after the onset of the emergency.

(2) Upon the utility's filing of a report, commission utility division staff shall review the report and notify by email the utility, office of general counsel, and the individual commissioners of statutory, regulatory, or feasibility issues, if any, within a reasonable time prior to the commencement of construction, or within a reasonable time following the filing of a report on an unplanned emergency undertaking.

(3) Where a utility is required to file a report with the commission pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 17.5.440.8 NMAC, the utility shall, at the time of filing its report with the commission, serve a copy of the filed report on the utility or utilities toward whose facilities the extension is proposed to be made.

(a) Proof of service of such copy shall be made and filed with the commission under the certificate of the person making the service.

(b) If the service is made by mail, it shall be made by certified mail with return receipt requested, it shall include the corresponding 440 filing number, and the return receipt shall be filed with the commission with the proof of service.

(c) Thereafter, no complaint by a utility in opposition to the proposed extension will be entertained by the commission unless filed with the commission by the opposing utility within 20 days of its receipt of the served copy of the report.

(d) The provisions of this section will be waived whenever the commission is furnished proof in writing that the utility toward whose facilities the extension is proposed to be made has no complaints.

(4) A public utility shall notify each individual commissioner by email when it files a report or amended report with estimated or actual costs of \$8,000,000 or more on a total company basis.

D. Duty to amend report:

(1) Prior to any request for rate recovery for the undertaking, the utility shall amend a report to update the undertaking's estimated costs, if the estimates increased or decreased by greater than twenty percent, and to reflect the utility's actual costs incurred for that undertaking.

(a) In its amended report, the utility shall provide explanations for why its initial estimated costs were inaccurate and why its actual costs fell below or exceeded its estimated costs.

(b) The amended report shall be included with the utility's request for rate recovery.

(2) The utility shall amend a report to accurately reflect the undertaking's materially altered character or purpose, or if the utility pursues a reported alternative, pursuant to Paragraph (1) of Subsection A of 17.5.440.8 NMAC, at least 30 days prior to the commencement of construction of the extension, system improvement, repair or replacement, or addition. If a utility files an amended report pursuant to this Paragraph, commission utility division staff shall follow the procedures of Paragraph (2) of Subsection C of 17.5.440.8 NMAC above.

[17.5.440.8 NMAC -Rp, 17.5.440.9 NMAC, 12/27/2022]

#### **17.5.440.9 GAS, WATER, AND SEWER UTILITIES:**

A. Report requirements for extensions, system improvements, and additions:

(1) Each public utility shall, prior to making any of the following described extensions, system improvements, or additions as set forth in Subparagraphs (a) through (e) of 17.5.440.9 NMAC below, file a report with the commission setting forth the character of the undertaking, the purpose sought thereby to be accomplished, the means by which that purpose is intended to be realized, the estimated costs involved in the employment of those means, the data upon which the engineering and economic feasibility of the undertaking is based, any reasonable alternatives to the proposed undertaking, and, if Subparagraph (a) of 17.5.440.9 NMAC below is applicable, the name or names of the utility or utilities toward which the proposed extension is to be made.

(a) Any extension of or any change in the routing of any distribution or transmission line which will extend to within one-half mile of the facilities of any other utility or utilities rendering the same kind of service.

(b) Any extension, system improvement, or addition to any transmission or distribution line, plant, facility, or system which will have an estimated cost under the uniform system of accounts of \$200,000 or more on a total company basis and for which the utility intends to seek rate recovery from its New Mexico customers, regardless of the location of the line, plant, facility, or system.

(c) Any extension or system improvement one-half mile or more in length of any transmission or distribution line outside of any municipality which involves any changes in routing, pipe size, pipe material, or design pressure for gas or water lines.

(d) Any extension of one-half mile or more in length within the limits of a municipality where the pressure is in excess of 400 p.s.i.

(2) The report is for informational purposes and shall not constitute an application by the utility for authority to engage in the reported undertaking.

(3) Reports shall include sufficient information to enable the commission to appropriately relate the proposed extension, system improvement, or addition to maps of existing facilities.

(4) The utility shall file reports on forms to be furnished by the commission and shall be numbered serially.

B. The commission shall not be precluded from taking any action which it deems appropriate with respect to reports filed pursuant to this rule and the undertaking.

C. The commission shall not be precluded from requiring the filing of further information by the reporting utility with respect to its proposed undertaking.

D. Service procedure and policy:

(1) Upon the utility's filing of a report, commission utility division staff shall review the report and notify the Commission of statutory, regulatory, or feasibility issues, if any, and shall recommend appropriate actions to be taken, if any, pursuant to Subsections B and C of 17.5.440.9 NMAC above, as determined by staff.

(2) Where a utility is required to file a report with the commission pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 17.5.440.9 NMAC, the utility shall at the time of filing its report with the commission serve a copy of the filed report on the utility or utilities toward whose facilities the extension is proposed to be made.

(a) Proof of service of such copy shall be made and filed with the commission under the certificate of the person making the service.

(b) If the service is made by mail, it shall be made by certified mail with return receipt requested, it shall include the corresponding 440 filing number, and the return receipt shall be filed with the commission with the proof of service.

(c) Thereafter, no complaint by a utility in opposition to the proposed extension will be entertained by the commission unless filed with the commission by the opposing utility within 20 days of its receipt of the served copy of the report.

(d) The provisions of this section will be waived whenever the commission is furnished proof in writing that the utility toward whose facilities the extension is proposed to be made has no complaints.

[17.5.440.9 NMAC - Rp, 17.5.440.10 NMAC, 12/27/2022]

### **17.5.440.10 ANNUAL REPORT:**

**A.** Each public utility shall, by March 31 of each calendar year, file a report with the commission summarizing:

(1) each of the utility's filings pursuant to 17.5.440.8 NMAC or 17.5.440.9 NMAC for the prior calendar year, as described in Subsection B of 17.5.440.10 NMAC below;

(2) each of the utility's planned filings pursuant to 17.5.440.8 NMAC or 17.5.440.9 NMAC for the following 365-day period, as described in Subsection C of 17.5.440.10 NMAC below; and

(3) the utility's projects from the prior calendar year that were not deemed undertakings pursuant to Subparagraphs (b) and (c) of Paragraph (1) of Subsection A of 17.5.440.8 NMAC, and Subparagraph (b) of Paragraph (1) of Subsection A of 17.5.440.9 NMAC, as described in Subsection D of 17.5.440.10 NMAC below.

**B.** Annual reports shall contain the following information for each filing pursuant to 17.5.440.8 NMAC or 17.5.440.9 NMAC of the prior calendar year:

(1) filing and construction commencement dates;

(2) category of report pursuant to Paragraph (1) of Subsection A of 17.5.440.8 NMAC or Paragraph (1) of Subsection A of 17.5.440.9 NMAC;

(3) estimated and actual costs, as may be amended, associated with each of the reported extensions, system improvements, repairs or replacements, or additions;

(4) general locations of the extensions, system improvements, repairs or replacements, or additions; and

(5) a short description, including a project status update, of the reported extensions, system improvements, repairs or replacements, or additions.

**C.** Annual reports shall contain the following information for every planned filing pursuant to 17.5.440.8 NMAC or 17.5.440.9 NMAC to be made during the following 365-day period:

(1) planned filing and construction commencement dates or timeframe;

(2) category of report pursuant to Paragraph (1) of Subsection A of 17.5.440.8 NMAC or Paragraph (1) of Subsection A of 17.5.440.9 NMAC;

(3) estimated costs associated with each of the extensions, system improvements, repairs or replacements, or additions;

(4) planned location of the extensions, system improvements, repairs or replacements, or additions;

(5) a short description of the extensions, system improvements, repairs or replacements, or additions, including the adjacent infrastructure to which the extensions, system improvements, repairs or replacements, or additions are expected to interconnect, and the third parties with whom the utility expects to engage with contractually; and

(6) any reasonable alternatives to the planned extensions, system improvements, repairs or replacements, or additions.

**D.** Annual reports shall include, for the prior calendar year, the aggregated total actual costs (not individual project costs) of all extensions, system improvements, repairs or replacements, and additions that are not required to be reported pursuant to Subparagraphs (b) and (c) of Paragraph (1) of Subsection A of 17.5.440.8

NMAC due to falling below the cost thresholds. Annual reports shall include the same information as estimated for the following 365-day period.

**E.** Annual reports shall include the aggregated total estimated and actual costs for all reports, and for each individual category of report pursuant to Paragraph (1) of Subsection A of 17.5.440.8 NMAC or Paragraph (1) of Subsection A of 17.5.440.9 NMAC, for extensions, system improvements, repairs or replacements, or additions made during the prior calendar year.

**F.** Annual reports shall include the aggregated total estimated costs for all of the utility's planned filings pursuant to 17.5.440.8 NMAC or 17.5.440.9 NMAC for the following 365-day period. The estimated total cost shall be reasonable and proposed in good faith.

**G.** Commission staff shall notify the commission of a public utility's noncompliance with 17.5.440.10 NMAC within 60 days of the filing of the annual report.  
[17.5.440.10 NMAC - N, 12/27/2022]

**HISTORY:** Codified by NMPSC Case No. 2086, order dated June 30, 1988; Amended by NMPSC Case No. 2232, order dated December 19, 1988; Amended by NMPSC Case No. 2277, order dated December 29, 1989. Formerly NMPSC Second Revised General Order No. 10, superseded for purposes of rule reorganization and codification.

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives.

PSC 68-1, Statutes, General Orders, filed 1/16/1968.

PSC 70-1, Statutes and General Orders, filed 7/9/1970.

NMPSC Rule 440, Extensions, Improvements, Additions, and Cooperative Agreements Between or Among Utilities, filed 6/30/1988.

**History of Repealed Material:**

NMPSC Rule 440, Extensions, Improvements, Additions, and Cooperative Agreements Between or Among Utilities, filed 6/30/88 - Repealed effective 5/15/2013.

17.5.440 NMAC, Extensions, Improvements, Additions, and Cooperative Agreements Between or Among Utilities filed 5/1/2013, Repealed effective 12/27/2022.

**Other:** 17.5.440 NMAC, Extensions, Improvements, Additions, and Cooperative Agreements Between or Among Utilities filed 5/1/2013, Replaced by Extensions, System Improvements, Repairs or Replacements, Additions, And Cooperative Agreements Between or Among Utilities effective 12/27/2022.