

This rule was filed as NMPSC Rule 120.

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 1 UTILITIES GENERAL PROVISIONS
PART 120 RULEMAKING PROCEDURES

17.1.120.1 ISSUING AGENCY: New Mexico Public Service Commission [New Mexico Public Regulation Commission].
[Recompiled 12/30/01]

17.1.120.2 SCOPE: NMPSC Rule 120 [17.1.120 NMAC] shall apply to all rulemaking proceedings pursuant to the Public Utility Act.
[Recompiled 12/30/01]

17.1.120.3 STATUTORY AUTHORITY:
[Recompiled 12/30/01]

17.1.120.4 DURATION:
[Recompiled 12/30/01]

17.1.120.5 EFFECTIVE DATE:
[Recompiled 12/30/01]

17.1.120.6 OBJECTIVE: The purpose of NMPSC Rule 120 [17.1.120 NMAC] is to establish a rulemaking procedure which will enable the New Mexico Public Service Commission [New Mexico Public Regulation Commission] to secure the views and statements of all interested persons concerning rules and regulations adopted pursuant to the Public Utility Act, NMSA 1978, Section 62-6-1.
[Recompiled 12/30/01]

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

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

[Recompiled 12/30/01]

17.1.120.8 [TABLE OF CONTENTS]

- A. Preamble [17.1.120.6 NMAC]
- B. Applicability [17.1.120.2 NMAC]
- C. Definitions [17.1.120.7 NMAC]
- D. Rulemaking Prerequisites [17.1.120.9 NMAC]
- E. Rulemaking Hearings [17.1.120.10 NMAC]
- F. Hearing Examiner [17.1.120.11 NMAC]
- G. Record of the Rulemaking Hearing [17.1.120.12 NMAC]
- H. Additional Comments [17.1.120.13 NMAC]
- I. Order of Advance Notice of Rulemaking [17.1.120.14 NMAC]
- J. Filing of Rules [17.1.120.15 NMAC]

[Recompiled 12/30/01]

17.1.120.9 RULEMAKING PREREQUISITES:

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

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

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

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

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

(2) Describe the substance of the proposed action;

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

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

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

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

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

[Recompiled 12/30/01]

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

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

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

(1) Comments of Commission staff,

(2) Comments of each proponent,

(3) Comments of each opponent, and

(4) Comments of other interested persons.

[Recompiled 12/30/01]

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

[Recompiled 12/30/01]

17.1.120.12 RECORD OF THE RULEMAKING HEARING:

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

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

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

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

[Recompiled 12/30/01]

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

[Recompiled 12/30/01]

17.1.120.14 ORDER OF ADVANCE NOTICE OF RULEMAKING: For purposes of developing proposed rules and regulations under NMPSC Rule 120 [17.1.120 NMAC], the Commission may order utilities under its jurisdiction to submit specific information reasonably required and pertinent to the rulemaking, may request attendance at informal meetings or workshops, and may invite participation in generic hearings. At least thirty (30) days' notice of the time, place, and date of such meetings, workshops, or generic hearings shall be given to each affected utility and other interested parties requesting such information.

[Recompiled 12/30/01]

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

[Recompiled 12/30/01]

17.1.120.16 [HISTORY: Codified by NMPSC Case No. 2086, order dated June 30, 1988, unless otherwise noted. Formerly NMPSC General Order No. 29, superseded for purposes of rule reorganization and codification; Amended by NMPSC Case No. 2311, order dated April 16, 1990.]

[Recompiled 12/30/01]

[Compiler's Note: The final section of General Order No. 29 provided that "[t]his Order shall be effective upon filing with the State Record's Center." This provision is omitted from NMPSC Rule 120 [17.1.120 NMAC] because it refers specifically to the status of General Order No. 29, which is now superseded for purposes of codification.]

HISTORY OF 17.1.120 NMAC:

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

PSC-GO 29, (Case No. 1350) In The Matter Of The Adoption Of Proposed Rulemaking Rules And Regulations under the Public Utility Act. Section 68-5-1 N.M.S.A. Volume 10, Part 1; (PSC/G.O. 29) Rulemaking Regulations Under The New Mexico Public Utility Act, 6/9/77.

NMPSC Rule 120, Rulemaking Procedures, 6/30/88.

History of Repealed Material: [RESERVED]