

This rule was filed as NMPSC 350.

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 3 UTILITIES FINANCIAL ACCOUNTING AND REPORTING - GENERAL PROVISIONS
PART 350 TREATMENT OF PUBLIC UTILITY ADVERTISING EXPENSES, CONTRIBUTIONS, DONATIONS, DUES, SUBSCRIPTIONS AND MEMBERSHIP FEES, AND LOBBYING EXPENSES IN RATE CASES

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

17.3.350.2 SCOPE: NMPSC Rule 350 [17.3.350 NMAC] shall apply to all rate case proceedings including any pertinent applications for periodic rate adjustment filed in the Commission's offices.
[Recompiled 12/30/01]

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

17.3.350.4 DURATION:
[Recompiled 12/30/01]

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

17.3.350.6 OBJECTIVE: The purpose of NMPSC Rule 350 [17.3.350 NMAC] is to establish rules and regulations governing the treatment of certain operating expense items in setting rates as well as to address the federal standard on utility and advertising as set out in Section 113(b)(5) of the Public Utility Regulatory Policy Act of 1978, P.L. 95-617, 16 USC Section 2623.
[Recompiled 12/30/01]

17.3.350.7 DEFINITIONS:
[Recompiled 12/30/01]

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[Recompiled 12/30/01]

17.3.350.9 ADVERTISING EXPENSES:

- A. Definition: "Advertising Expenses" shall mean all expenses made for the development, publication, and/or dissemination of information to a utility's ratepayers, the public at large, or to utility stockholders including, but not limited to, publications in newspapers, magazines, information for use by the electronic media, bill enclosures, or other mailings to ratepayers, stockholders, or the public at large; salaries for in-house personnel engaged in advertising activities; live presentations other than before regulatory or legislative bodies.
- B. Allowable Expenditures: Except as provided in (c) [C] below, advertising expenses which may be properly included in the cost of service shall be that advertising which is reasonable in amount and which:
 - (1) Advises the ratepayers of matters of public safety, health or emergency situations;
 - (2) Advocates to rate payers through factual data and advice their conservation of energy resources and reduction of peak demand;

- (3) Explains utility billing practices, services, and rates to ratepayers;
- (4) Must be filed with governmental agencies or financial institutions (including Annual Reports and stock prospectuses) other than advertisements filed pursuant to (6) below;
- (5) Advises customers of employment opportunities with the utility company;
- (6) Provides information required to be made available to customers or stockholders under state or federal law and regulation; or
- (7) Otherwise results in a measurable reduction of operating costs and more efficient utility service to ratepayers except as excluded by (c) [C] below.

C. Unallowable Expenditures: Advertising expenses which shall be properly excluded from cost of service are those which in whole or in any part:

- (1) Promote increases in the usage of energy or utility services;
- (2) Except as required by state or federal law or regulations promote the sale of any goods or services from any specific company including, but not limited to, the utility company or any subsidiary or affiliated company;
- (3) Seek to establish a favorable public image of the company other than by identifying it as the source of an allowable advertising expenditure as defined in subsection (b) [B];
- (4) Advocate a position rather than providing factual information in any advertisement allowable under subsection (b) [B];
- (5) Justify a request for higher rates, or the need for plant expansion, or for any particular addition to plant or service costs.

D. Burden of Proof: A utility seeking to include any advertising expenditures in determining its cost of service must affirmatively show through the presentation of clear and convincing evidence that each expenditure is allowable under the criteria established in (b) [B] below and that it is not excluded by any provision of (c) [C] above.

E. Advertisement Records: Every utility seeking to include advertising expenditures in its cost of service shall maintain a record of each advertisement including the complete text and an exact copy and the costs associated with its production and dissemination to the public. Such records shall be open to inspection by the Commission staff and shall be submitted as part of the company's rate case filing.
[Recompiled 12/30/01]

17.3.350.10 CONTRIBUTIONS, DONATIONS, DUES, SUBSCRIPTIONS, AND MEMBERSHIP FEES:

A. Contributions or donations to any political candidate, any political party, any religious cause, or any social, recreational, or fraternal organization shall not be allowed as a cost of service.

B. Dues in professional or trade associations and subscriptions to publications shall be allowed as a cost of service by a utility provided these dues contribute to the professional education and standing of the company's employees for whom the dues shall be paid.

C. Contributions, donations, dues, subscriptions, and membership fees other than those included in (a) [A] and (b) [B] above will not be included in the determination of cost of service unless a utility affirmatively demonstrates that such expenditures are reasonable. Maintenance of full and adequate accounting for each expense shall be a prerequisite to allowance of any expenditure in rates under this part. Maintenance of corporate good will or good corporate citizenship is an insufficient reason for inclusion of these expenditures in determining a utility's cost of service.

[Recompiled 12/30/01]

17.3.350.11 LOBBYING EXPENSES: Expenses which directly or indirectly support utility or utility-related lobbying efforts on a local, state, regional, or national level shall not be allowable in determining a utility's cost of service. The utility company shall maintain complete records of all expenditures, including portions of payments made for dues or other expenses, in support of utility or other lobbying efforts.

[Recompiled 12/30/01]

17.3.350.12 VARIANCES: Any rural electric cooperative, municipal utility or association may file a variance under NMPSC Rule 350 [17.3.350 NMAC]. Upon a showing of good cause, the Commission may grant said variance.

[Recompiled 12/30/01]

17.3.350.13 [HISTORY: NMPSC Case No.2086, order dated June 30, 1988, unless otherwise noted. Formerly

NMPSC General Order No 31, superseded for purposes of rule reorganization and codification.]
[Recompiled 12/30/01]

HISTORY OF 17.3.350 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 31, (General Order No. 31), New Mexico Public Service Commission General Order No. 31, 9/6/79.

NMPSC Rule 350, Treatment Of Public Utility Advertising Expenses, Contributions, Donations, Dues, Subscriptions And Membership Fees, And Lobbying Expenses In Rates Case, 6/30/88.

History of Repealed Material: [RESERVED]