

This rule was filed as NMPSC Rule 580.

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 3 UTILITIES FINANCIAL ACCOUNTING AND REPORTING-GENERAL PROVISIONS
PART 580 COST OVERRUN RULE

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

17.3.580.2 SCOPE:

A. The provisions of NMPSC Rule 580 [17.3.580 NMAC] shall apply as indicated below to all electric public utilities other than rural electric cooperatives within the jurisdiction of the Commission and shall not apply to generation and transmission cooperatives whose rates are subject to the Commission's regulation under NMSA 1978, Section 62-6-4.

B. NMPSC Rule 580 [17.3.580 NMAC] shall be applicable whenever a utility has obtained or acquires a certificate of public convenience and necessity ("CCN") from the Commission to construct or operate an electric generating plant and has sought, is seeking, or anticipates seeking at any time to include the costs of construction as defined in NMPSC Rule 580.5 [17.3.580.7 NMAC] in its New Mexico jurisdictional rates. NMPSC Rule 580 [17.3.580 NMAC] applies in those instances where:

(1) The construction costs had not been included in rates as of the date the Commission proposed General Order No. 49 (codified by this NMPSC Rule 580) [17.3.580 NMAC] and where the utility subsequently filed a rate application seeking to include these costs in rates and;

(2) The costs of construction had been included in rates as of the date General Order No. 49 was proposed but where the prudence of those costs had been explicitly identified as an unresolved issue in the order including those costs in rates or in any document, such as a stipulation or recommended decision, incorporated therein.

C. NMPSC Rule 580 [17.3.580 NMAC] applies whether the utility retains an ownership interest in the plant or has sold that interest and retained a leasehold interest in or is otherwise subject to the Commission's jurisdiction with respect to the management or operation of the plant or the power generated or made available thereby.

[Recompiled 12/30/01]

17.3.580.3 STATUTORY AUTHORITY: NMPSC Rule 580 [17.3.580 NMAC] is adopted under the authority vested in the New Mexico Public Service Commission [New Mexico Public Regulation Commission] pursuant to the New Mexico Public Utility Act, NMSA 1978, Sections 62-3-1 et. seq., and in particular NMSA 1978, Sections 62-3-1, 62-3-2, 62-6-1, 62-6-4, 62-6-14, 62-6-17, 62-6-18, 62-8-1, 62-8-2, 62-8-7, 62-9-1 through 62-9-6, 62-10-1, and 62-10-2.
[Recompiled 12/30/01]

17.3.580.4 DURATION:

[Recompiled 12/30/01]

17.3.580.5 EFFECTIVE DATE:

[Recompiled 12/30/01]

17.3.580.6 OBJECTIVE:

A. The purpose of NMPSC Rule 580 [17.3.580 NMAC] is:

(1) To clarify and implement the Public Utility Act and applicable law by providing that no cost overruns incurred in construction of new electric generating plant will be included in rates unless the Commission determines whether they were prudently incurred;

(2) To give all electric utilities notice of this requirement; and

(3) To ensure that all data that may be material to adjudication of the prudence of construction costs is available and maintained by a utility.

B. The intent of the Commission in promulgating NMPSC Rule 580 [17.3.580 NMAC] is to assure that New Mexico ratepayers receive adequate, efficient, and reasonable service at just and reasonable rates and to avoid unnecessary duplication and economic waste in plant construction and planning.
[Recompiled 12/30/01]

17.3.580.7 DEFINITIONS: When used in NMPSC Rule 580 [17.3.580 NMAC] unless otherwise specified the following definitions will apply:

A. "Certificated Estimated Cost" means the total cost of construction of electric generating plant for the utility, including Allowances for Funds Used During Construction ("AFUDC"), as estimated by the utility at the time of issuance by the Commission of the CCN for the plant and reflected in the order issuing the CCN.

B. "Commission" means the New Mexico Public Service Commission [New Mexico Public Regulation Commission].

C. "Construction Costs" or "Costs of Construction" means those costs to the utility, including AFUDC, incurred in the planning, management, design, design procurement, engineering, construction, start-up, and other activities required to complete an electric generating plant including costs reflected in lease payments or other financing arrangement.

D. "Construction Cost Overrun" or "Cost Overrun" in instances where an allowance for contingencies was included by the utility in the certificated estimated cost means that portion of the costs of construction which exceeds the certificated estimated cost by any amount, and in instances where no allowance for contingencies was included in the certificated estimated cost, means that portion of the costs of construction which exceeds the certificated estimated cost by ten percent (10%) or more.

E. "Plant" or "Electric Generating Plant" means an electric generating plant for which a certificate of public convenience and necessity has been obtained or is acquired from the Commission under NMSA 1978, Sections 62-9-1 through 62-9-6 or their predecessors, NMSA 1953, Sections 68-7-1 through 68-7-4. For multi-unit generating stations the term "Plant" refers either to fewer than all of the station's units or to the entire station depending on whether the utility seeks rate recovery for the entire station or fewer than all of the station's units.

F. "Utility" or "Utilities" means an electric public utility or utilities under the jurisdiction of the Commission other than rural electric cooperatives or generation and transmission cooperatives subject to Commission regulation under NMSA 1978, Section 62-6-4.

[Recompiled 12/30/01]

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[Recompiled 12/30/01]

17.3.580.9 TITLE: NMPSC Rule 580 [17.3.580 NMAC] shall be known as the "Cost Overrun Rule."

[Recompiled 12/30/01]

17.3.580.10 PRESERVATION OF RECORDS: Any utility to whom NMPSC Rule 580 [17.3.580 NMAC] is applicable shall preserve all data, books, records, memoranda, correspondence, notes of oral communications, other documents, and computer records under the utility's possession, custody, or control and pertaining to the planning, management, design, procurement, engineering, construction, start-up, and other activities required to complete a plant for which a CCN will be or has been obtained. The utility shall also keep records identifying by name, business

address, and position all contractors, subcontractors, and persons functioning in a managerial capacity in the construction project and describing the nature of their involvement. Such records and information shall be preserved until such time as the Commission has issued a final order concerning prudence of construction costs which is nonappealable or from which all appeals have been exhausted and which is enforceable, unless NMPSC Rule 310 [17.3.310 NMAC] and the regulations incorporated therein prescribe a longer period, in which case that longer period shall govern, or unless otherwise ordered by the Commission.

[Recompiled 12/30/01]

17.3.580.11 PRUDENCE DETERMINATION: No utility shall obtain rate recovery of any cost overrun in the construction of electric generating plant until the Commission determines, upon notice and hearing, whether those costs have been incurred prudently.

[Recompiled 12/30/01]

17.3.580.12 WAIVER: In any proceeding in which prudence of any cost overrun may be determined by the Commission, the parties and Commission Staff may stipulate that the provisions of NMPSC Rule 580 [17.3.580 NMAC] should be waived. NMPSC Rule 580 [17.3.580 NMAC] will be waived upon such stipulation if the Commission determines, upon notice and hearing, that waiver is in the public interest and is otherwise in accordance with the Public Utility Act.

[Recompiled 12/30/01]

17.3.580.13 POWERS OF COMMISSION NOT LIMITED: Nothing contained herein shall be construed to limit the Commission in its powers, duties, or authority under the Public Utility Act other than requiring specific determinations regarding the prudence of cost overruns pursuant to NMPSC Rules 580.7 and 580.8 [17.3.580.11 and 12 NMAC] as a condition precedent to rate recovery of such cost overruns. In particular nothing contained herein shall be construed to bind the Commission to any particular ratemaking methodology or to diminish the Commission's authority to review the prudence of all costs incurred by a utility, including the certificated estimated cost of plant. All material provisions of the Public Utility Act shall apply to implementation of NMPSC Rule 580 [17.3.580 NMAC].

[Recompiled 12/30/01]

17.3.580.14 OTHER DUTIES OF UTILITY NOT AFFECTED: Nothing contained herein shall be construed to relieve a utility of any of its duties under the laws of the state.

[Recompiled 12/30/01]

17.3.580.15 RELATIONSHIP TO OTHER COMMISSION RULES: NMPSC Rule 580 [17.3.580 NMAC] does not supersede any other rule of the Commission but is to be construed as a supplement to such rules, including, but not limited to, NMPSC Rules 110, 210, 310, and 530 [17.1.2 NMAC, 17.1.210 NMAC, 17.3.310 NMAC and 17.9.530 NMAC].

[Recompiled 12/30/01]

17.3.580.16 SEVERABILITY: If any part or application of NMPSC Rule 580 [17.3.580 NMAC] is held invalid, the remainder of its application shall not be affected.

[Recompiled 12/30/01]

17.3.580.17 [HISTORY: NMPSC Case No. 2086, order dated June 30, 1988, unless otherwise noted. Formerly NMPSC General Order No. 49, superseded for purposes of rule reorganization and codification.]

[Recompiled 12/30/01]

HISTORY OF 17.3.580 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.

G.O. 49, General Order No. 49, Cost Overrun Rule, 1/2/87.

NMPSC Rule 580, Cost Overrun Rule, 6/30/88.

History of Repealed Material: [RESERVED]

