

This rule was filed as NMPUC Rule 660.

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 10 GAS SERVICES
PART 660 NATURAL GAS TRANSPORTATION RULE

17.10.660.1 ISSUING AGENCY: New Mexico Public Utility Commission [New Mexico Public Regulation Commission]
[Recompiled 12/30/01]

17.10.660.2 SCOPE: The provisions of the Natural Gas Transportation Rule shall apply to the rates, terms, and conditions of the Transportation of natural gas by a Public Utility for a Seller or Purchaser of natural gas. This Rule also applies to the release, sale, or other assignment by a utility of natural gas or natural gas purchase rights to the extent permitted by the Public Utility Act, NMSA 1978, Section 62-1-1 et seq.
[Recompiled 12/30/01]

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

17.10.660.4 DURATION:
[Recompiled 12/30/01]

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

17.10.660.6 OBJECTIVE:

A. The purposes of the Natural Gas Transportation Rule are to implement the Commission's authority pursuant to NMSA 1978, Section 62-6-4.1 to authorize and require the nondiscriminatory and nonpreferential Transportation of natural gas by any person subject to the Commission's jurisdiction for a Seller or Purchaser of natural gas and to implement the related Commission authority pursuant to NMSA 1978, Section 62-8-2 to assure the adequacy of gas supply to New Mexico utilities' Sales Customers and to Transportation Customers paying for standby service.

B. The intent of NMPUC Rule 660 [17.10.660 NMAC] is to encourage lower costs of natural gas for New Mexico consumers by providing competition in natural gas markets through open-access Transportation. Lower fuel costs are an integral part of New Mexico's economic development efforts because they preserve existing jobs, facilitate expansion of the State's businesses, and provide incentives for new industry to locate in New Mexico.

C. The Commission by NMPUC Rule 660 [17.10.660 NMAC] authorizes and requires the nondiscriminatory and nonpreferential Transportation of natural gas by any person subject to the jurisdiction of the Commission for a Transportation Customer of natural gas to the extent of Available Capacity, subject to Capacity Allocation as described in the utility's Commission-authorized rules and tariffs and subject to (d) [D] below.

D. The terms and conditions imposed by NMPUC Rule 660 [17.10.660 NMAC] on the Transportation of natural gas are necessary to safeguard deliverability and operational efficiency, to prevent undue hardship, and to prevent anticompetitive conduct by a Public Utility.

E. The rates and charges for the Transportation of natural gas under NMPUC Rule 660 [17.10.660 NMAC] shall be just, reasonable, and nondiscriminatory.
[Recompiled 12/30/01]

17.10.660.7 DEFINITIONS: When used in the Natural Gas Transportation Rule unless otherwise specified the following definitions will apply.

A. "Affiliate," unless otherwise defined in NMSA 1978, Section 62-3-3 (A) , or a successor statute means: a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a public utility. Control includes instances where a person is an officer, director, partner, trustee or person of similar status or function, or who owns directly or indirectly, or has a beneficial interest in, ten percent or more of any class of securities of a person.

- B. "Available Capacity" means the ability of the utility to provide Transportation of natural gas through its existing pipeline and facilities in excess of that required to serve its Current Sales and Transportation Customers. This shall be determined pursuant to NMPUC Rule 660.6 [Subsection B of 17.10.660.10 NMAC].
- C. "Broker" means any person engaged in brokering.
- D. "Brokering" means the activity of arranging for the purchase and/or sale of natural gas without taking title for delivery within the State of New Mexico under the Public Utility Act as a commodity separate from Transportation which Transportation is subject to the Natural Gas Transportation Rule.
- E. "Capacity" means the total maximum volume of natural gas that can flow through a facility over a given period of time.
- F. "Capacity Allocation" means the process of assigning Capacity among Transportation Customers and the utility as described in the utility's Commission-authorized rules and tariffs.
- G. "Commission" means the New Mexico Public Utility Commission [New Mexico Public Regulation Commission].
- H. "Current ... Customer" of a utility means a person who at the specified point in time is a customer or had paid a fee to the utility in preparation for becoming a customer.
- I. "Curtailement" means the failure of natural gas to reach the end-user at the burner tip due to a shortage of gas supply. An allocation of Capacity that limits a Transportation Customer's throughput is not a Curtailement.
- J. "End-user" means any person that consumes natural gas in New Mexico who uses the Transporting Utility's facilities to obtain the gas for consumption and who, at its current location, is, was, or could become a Sales Customer of the utility.
- K. "Firm Transportation Service" means service offered to customers (regardless of class of service) under schedules or contracts which anticipate no Interruptions except as provided in Section 660.9(a) [Paragraph 1 of Subsection E of 17.10.660.10 NMAC].
- L. "Interruptionless Transportation Service" means low priority service offered to customers under schedules or contracts which anticipate and permit reduction or cessation of service on short notice, by reason of the claim of firm Transportation Customers and higher priority end-users.
- M. "Interruption" means the failure of natural gas to reach the end-user at the burner tip due to conditions with the utility's transmission, processing, distribution, storage, or gathering system when such conditions are not caused by failure of gas supply. An allocation of Capacity that limits a Transportation Customer's throughput is not an Interruption.
- N. "Marketer" means any person engaged in Marketing.
- O. "Marketing" means the activity of buying or selling natural gas for delivery within the State of New Mexico under the Public Utility Act as a commodity separate from Transportation which Transportation is subject to the Natural Gas Transportation Rule. This does not include a utility conducting its own local distribution company sales functions.
- P. "Off-peak Period" means all days other than the Peak Period.
- Q. "Peak Period," for purposes of determining Available Capacity, means the twenty-four (24) hour period during the past twelve (12) months of greatest total gas throughput. For ratemaking purposes the peak period shall be determined on a utility-by-utility basis.
- R. "Pipeline Quality" means natural gas which conforms with industry standards and otherwise meets any other reasonable quality standard filed with the Commission under NMPUC Rule 660.6(f) [Paragraph 5 of Subsection B of 17.10.660.10 NMAC] by the Transporting Utility for the system in which the Transportation is being provided.
- S. "Processing" means the removal of any undesired impurities or natural gas liquids at a natural gas processing facility in order to produce Pipeline Quality gas.
- T. "Public Utility" or "Utility" means every person subject to the Commission's jurisdiction under NMSA 1978, Section 62-3-3 (G)(2) or a successor statute.
- U. "Purchaser" means any person, as defined in NMSA 1978 Section 62-3-3(E), or a successor statute, or a municipality who has taken title to natural gas (or otherwise has legal authority to purchase the natural gas from a Seller) which natural gas is destined for ultimate end-use in New Mexico or is produced in New Mexico.
- V. "Released Gas" means a quantity of gas that has been released from its purchase contract obligations either temporarily or permanently.

W. "Sales Customer" means a New Mexico customer of a utility who purchases both natural gas and Transportation as a bundled service from the utility.

X. "Seller" means any person, as defined in NMSA 1978 Section 62-3-3(E), or a successor statute, or a municipality which conveys title to natural gas (or otherwise has the legal authority to sell the natural gas to a Purchaser) which natural gas is destined for ultimate end-use in New Mexico or is produced in New Mexico.

Y. "System Emergency" means an unplanned situation in which a utility's system or a segment of its system is in imminent danger of failure and implementation of normal curtailment or interruption procedures would not rectify the condition.

Z. "Transportation" is the provision of contract carriage apart from the procurement of natural gas and includes exchange, fronthaul, backhaul, displacement or any other means of transporting natural gas including gathering, processing or storage.

AA. "Transportation Customer" means a Seller or Purchaser of natural gas, or a broker or marketer for such Seller or Purchaser who contracts for Transportation services for that natural gas from a utility.

BB. "Transporting Utility" means the utility which provides, or is being asked to provide, Transportation of natural gas for a Transportation Customer.

CC. "Variable Cost" means the cost that varies in the short run with the amount of natural gas transported through the Transportation facilities.

[Recompiled 12/30/01]

17.10.660.8 [TABLE OF CONTENTS:]

A. General Provisions:

- (1) Short Title [17.10.660.9 NMAC]
- (2) Purposes [17.10.660.6 NMAC]
- (3) Applicability: [17.10.660.2 NMAC]
- (4) Definitions: [17.10.660.7 NMAC]

B. Requests, Capacity Allocations and Rates: [17.10.660.10 NMAC]

- (1) Natural Gas Transportation
- (2) Transportation Requests, Contracting for Transportation and Determination of Available Capacity
- (3) Capacity Allocation
- (4) Contributed Capacity
- (5) Interruptions and Curtailments of Gas Services and System Emergencies
- (6) Rates, Terms and Conditions for Services
- (7) Delivery to or by the Utility
- (8) Prohibition of Marketing and Brokering, Anticompetitive Conduct, Discriminatory Behavior, and

Preferential Treatment by a Utility Under NMSA 1978, Section 62-6-4.1; Complaints and Investigations

C. Contracts: [17.10.660.11 NMAC]

- (1) Modification of Transportation Contracts
- (2) Additional Reporting Requirements
- (3) Current Sales Customers
- (4) Gas Under Contract
- (5) Gas Releases
- (6) Quality of Gas
- (7) Status of Investments

D. Jurisdiction and Procedure: [17.10.660.12 NMAC]

- (1) Federal Jurisdiction
- (2) Amendment
- (3) Exemption or Variance
- (4) Motion for Stay Pending Exemption or Variance
- (5) Severability

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17.10.660.9 GENERAL PROVISIONS: Short Title: NMPUC Rule 660 [17.10.660 NMAC] may be referred to as the "Natural Gas Transportation Rule."

[Recompiled 12/30/01]

17.10.660.10 REQUESTS, CAPACITY ALLOCATIONS AND RATES:

A. Natural Gas Transportation: A utility shall transport natural gas on behalf of a Transportation Customer upon request:

(1) subject to its Available Capacity pursuant to NMPUC Rule 660.6 [Subsection B of 17.10.660.10 NMAC] and its Capacity Allocation procedures as described in the utility's Commission-authorized rules and tariffs; and

(2) subject to the rates specified in NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC] and the other terms and conditions specified in the Natural Gas Transportation Rule.

B. Transportation Requests, Contracting for Transportation and Determination of Available Capacity.

(1) A Purchaser or Seller shall furnish to the utility for which it desires to be a Transportation Customer a written Transportation request that provides information set forth in the utility's Commission-authorized tariff such as: the requested volumes applicable to each receipt and delivery point, the time period for the requested Transportation, the quality of the gas, whether the service desired is firm or interruptible, and whether any other available services are requested from the utility. The written request also shall include information concerning the end use of the natural gas which is sufficient to enable the utility to make a determination pursuant to NMPUC Rule 660.9 [Subsection E of 17.10.660.10 NMAC] of the priority that the end-user would be entitled to if it were a Sales Customer of the utility in the event of an Interruption or Curtailment.

(a) In determining whether sufficient Available Capacity exists to provide the requested Transportation the utility shall consider all conventional methods of delivering natural gas that are available to the utility and consistent with its commission-authorized rules and tariffs. Such consideration shall include, but not be limited to, fronthaul, compression, exchange, flow reversal, backhaul, storage, and displacement, and shall take into account processing facilities and gathering capability, when appropriate. The utility may, at its sole discretion perform exchanges or displacements between segments of its system which are not physically connected by utility-owned facilities. If consistent with the utility's Commission-authorized Capacity Allocation rule, the utility shall separately determine the availability of Capacity during both Peak and Off-peak periods and the availability of both Firm and Interruptible Transportation Service, upon the written request of the Purchaser or Seller. The utility shall take into account a reasonable, maximum and minimum allowable operating pressure to be utilized on any segment of its pipeline system in determining whether Available Capacity exists.

(b) In determining the extent of Available Capacity the utility shall determine the total demand on its Capacity (during Peak and Off-peak periods) over the preceding twelve (12) months or calendar year, weather normalize such demand, adjust for known and measurable additions and/or losses of customers, add a reasonable Capacity margin, and take into consideration other reasonable factors including actual peak demand. The utility shall include all existing demands from Current Sales and Transportation Customers in its determination of Available Capacity.

(c) The utility's determination of Available Capacity shall be consistent with its Commission-authorized rules and tariffs.

(2) In the event that the Available Capacity of the utility is inadequate to provide the requested Transportation but Capacity can be sufficiently enhanced to provide the requested Transportation upon the addition of facilities for added compression, looping, interconnections, gathering lines, or similar facilities, this shall be done pursuant to NMPUC Rule 660.8 [Subsection D of 17.10.660.10 NMAC].

(3) Unless the Transportation Customer agrees in writing to a longer response time, a utility shall, as soon as possible and within thirty (30) days after receiving a written request from a Transportation Customer, notify the Transportation Customer in writing indicating the following:

(a) On what rates, terms, and conditions consistent with NMPUC Rules 660.7 through 660.10 [Subsections C through F of 17.10.660.10 NMAC] it will furnish Transportation. The utility shall also transmit to the Transportation Customer a proposed Transportation agreement.

(b) If the utility declines to provide the requested Transportation the utility shall indicate the reasons why it so declines (making reference to the Natural Gas Transportation Rule). This notice shall include, but not be limited to, the maximum or minimum allowable operating pressure assumed, any factor other than those specifically identified in NMPUC Rule 660.6(b) [Paragraph (1) of Subsection A of 17.10.660.10 NMAC] which it took into consideration, all other details of its determination of Capacity and demands on Capacity (Peak and Off-peak, respectively), and all options considered for each segment of its system for which it determined it has inadequate Capacity to meet the Transportation request. The information provided in this notice shall be sufficient to

demonstrate that its determinations are in compliance with the requirements of the Natural Gas Transportation Rule. The utility shall also send to the Commission a copy of this notice declining to provide Transportation at the same time it provides notice to the person requesting Transportation.

(4) After receiving the written notice from the utility specified in NMPUC Rule 660.6(d) [Paragraph (3) of Subsection B of 17.10.660.10 NMAC] and if the Transportation Customer accepts the utility's proposed rates, terms, and conditions the Transportation Customer shall execute a Transportation agreement with the utility for Transportation consistent with the Natural Gas Transportation Rule, and (unless waived by the utility) within forty-five (45) working days thereafter the Transportation Customer shall commence substantial performance under the agreement. The utility shall retain a copy of all executed Transportation agreements. If requested by the Commission, a copy of the executed Transportation agreement shall be provided to the Commission within ten (10) working days. The Transportation Customer may require the use of the standard transportation agreement filed by the utility pursuant to NMPUC Rule 660.10(d) [Paragraph (4) of Subsection F of 17.10.660.10 NMAC] if a mutually acceptable Transportation agreement cannot be negotiated between the parties.

(5) The utility must file with the Commission a current description of Pipeline Quality standards and of overall system and design characteristics to which delivery arrangements must conform, including specific limitations on major receipt and delivery points, and Capacity limitations on major segments of its transmission system and specific contributed Capacity rights specified in 660.8(b) [Paragraph (2) of Subsection D of 17.10.660.10 NMAC].

C. Capacity Allocation: Except as set forth in NMPUC Rule 660.8 [Subsection D of 17.10.660.10 NMAC] for contributed Capacity, Capacity Allocation shall be performed as described in the utility's commission-authorized rules and tariffs.

D. Contributed Capacity:

(1) In the event that a Transportation Customer seeks Transportation that would require additional facilities or seeks assured Capacity through a utility facility, hereinafter referred to as "incremental Capacity", without being subject to Capacity Allocation under NMPUC Rule 660.7 [Subsection C of 17.10.660.10 NMAC], the customer may contribute incremental Capacity under the conditions set forth here. However, incremental Capacity is assured only at the point that it is added and not at any upstream or downstream point. If Available Capacity of the utility is inadequate to provide the requested Transportation but incremental Capacity can be added by construction of facilities for compression, looping, interconnections, gathering lines, storage, or similar facilities, the utility shall provide the necessary additional facilities upon:

(a) the prepayment or arrangement of a timely payment plan by the Transportation Customer of the costs or reasonable estimated cost involved in providing the facilities;

(b) an amortization of a portion of the costs acceptable to the utility, or

(c) the utility's acceptance of a bond or security guaranteeing the payment of such costs.

(d) The cost recovery method shall be negotiated in good faith between the utility and the transportation customer and shall take into account that certain government entities may be precluded from paying in advance for services provided. Notwithstanding any provision to the contrary in this Natural Gas Transportation Rule, the utility shall not be required to provide such additional facilities unless such addition would reasonably conform to the overall system and design of the utility's existing and planned facilities.

(2) The Transportation Customer who contracted for the incremental Capacity shall have the first right to transport through the contributed incremental Capacity and such incremental Capacity shall not be subject to Capacity Allocation under the utility's Commission-authorized rules and tariffs. The Transportation Customer's right to the incremental Capacity shall be set out in a separate agreement between the utility and the Transportation Customer. Said right may be granted to any Transportation Customer contributing incremental Capacity and shall not necessarily relate to any specific end-use customer. Said right shall continue for a period of time that is limited, reasonable and based on some objective criteria such as the cost of the contributed facility, all as specified by the terms of the separate agreement between the utility and the Transportation Customer.

E. Interruptions and Curtailments of Gas Services and System Emergencies:

(1) Interruption of services provided by a utility to its Sales and Transportation Customers shall be in accordance with the same system of class-by-class priorities for Curtailments of gas supply service to its Sales Customers established by rules and practices of the utility filed with the Commission; provided, however, that within each class a Customer shall be subject to Interruption of service as determined by the utility to best maintain the integrity of the utility's natural gas delivery system or avoid a system failure. If an End-user receiving Transportation service was or at its current location could become a Sales Customer of the utility, that End-user shall be deemed to be in the same priority class as similarly situated Sales Customers of the utility for purposes of Interruption of

service. In the event of an interruption of service, the utility and affected Transportation Customers shall cooperate in identifying measures which will restore service as soon as possible and minimize unnecessary reliance on system gas supply.

(2) Curtailment of deliveries shall occur according to the type of utility service provided as follows:

(a) Curtailment of deliveries resulting from gas supply shortages from sources supplying gas to Sales Customers shall be in accordance with the system of class-by-class priorities for Curtailments established by rules and practices of the utility filed with the Commission and this shortage shall not be made up using Transportation Customer's supplies unless agreed to by the Transportation Customer. Within each class, Sales Customers shall be subject to Curtailment as determined by the utility to best maintain the integrity of the system or avoid a system failure.

(b) Curtailment of deliveries resulting from gas supply shortages from sources supplying gas to Transportation Customers who have contracted for standby service from the utility shall be in accordance with the same system of class-by-class priorities for Curtailments of gas supply service to its Sales Customers established by rules and practices of the utility filed with the Commission. This shortage shall not be made up using Transportation Customer's supplies unless agreed to by the Transportation Customer. End-users covered by standby contracts shall be deemed to be in the same priority class as similarly situated system Sales Customers for purposes of Curtailment of deliveries.

(c) Curtailment of deliveries resulting from a gas supply shortage from a source supplying gas to a Transportation Customer who does not have a contract for standby service from the utility shall be in accordance with the priorities identified by the Transportation Customer through the utility's nominating procedure. This shortage shall not be made up using the utility's Sales Customer's supplies unless agreed to by the utility.

(3) Notwithstanding paragraphs (a) and (b) [(1) and (2)] above, in case of a System Emergency, Sales and Transportation Customers' gas supply shall be subject to diversion and service interrupted or deliveries curtailed as determined by the utility to best maintain the integrity of the utility's natural gas delivery system or to avoid a partial or complete system failure and in order to maintain service to as many high priority sales and transportation End-users as possible. In the event of such System Emergency, Transportation Customers whose supply is diverted shall be compensated for diverted gas supply at the utility's emergency gas service rate. In the event a Transportation Customer without utility standby service actually uses system supply gas during a System Emergency while unable to deliver supply to the utility, the Transportation Customer will pay for gas actually delivered at the utility's emergency gas service rate.

(4) Former end-users who have opted for other suppliers of Transportation and gas services and Transportation Customers who have not purchased standby service from the utility and are experiencing gas supply shortages shall receive emergency gas services at the discretion of the utility. Such customers may obtain standby service from sources other than the utility.

(5) Where possible, the utility shall provide Transportation and Sales Customers with advance notice of Interruptions, and system emergencies. The following information shall be provided:

- (a) estimates of the volumes and time periods of the Interruptions or system emergencies, and
- (b) the reasons for such Interruptions and system emergencies.

(6) The utility also shall provide to the Commission within sixty (60) days of the end of an Interruption, Curtailment or System Emergency the following information:

- (a) the actual volumes and time periods of the Interruptions, Curtailments or system emergencies of each Transportation Customer, and
- (b) the reasons for the Interruptions, Curtailments or system emergencies.

F. Rates, Terms, and Conditions for Services:

(1) The rates charged by a utility to a Transportation Customer for services described in NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC] shall be consistent with NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC] as well as just, reasonable, and nondiscriminatory.

(2) Each utility is required to file with the Commission proposed maximum rates and rules for the services described in NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC] which it provides to its Transportation Customers. These rates and service regulations shall be refiled as necessary to comply with any revisions to this Rule. It shall also file a Capacity Allocation Procedure and standard transportation agreement which is subject to disapproval by the Commission. This filing shall be made pursuant to NMSA 1978, Section 62-8-7, and in accordance with the requirements of NMPUC Rules 210.12, 210.13 and 210.14 [17.1.210 NMAC].

(3) Rates and charges which utilities may be allowed to charge for services performed in conjunction with transportation include, but are not limited to, the following:

- (a) a transmission rate;
- (b) a distribution rate;
- (c) an application charge for each Transportation and standby agreement requested;
- (d) a monthly administration service charge including, but not limited to, a base charge plus a charge for each additional meter;
- (e) a standby charge;
- (f) a storage rate;
- (g) a Processing rate;
- (h) a gathering rate;
- (i) a treating rate;
- (j) a dehydration rate;
- (k) an emergency gas service rate;
- (l) a charge for customer-requested operation and maintenance of any customer-owned equipment or facilities;
- (m) payment for any customer contribution of incremental Capacity pursuant to NMPUC Rule 660.8 [Subsection D of 17.10.660.10 NMAC] and for utility operation and maintenance of contributed facilities;
- (n) payment for any balancing adjustments required.

(4) The rates and charges filed with the Commission pursuant to NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC] shall be the only rates and charges which a utility may be allowed to charge a Transportation Customer for services required.

(5) The rates and rules specified in NMPUC Rule 660.10(b) [Paragraph 2 of Subsection F of 17.10.660.10 NMAC] shall also specify reasonable and nondiscriminatory terms and conditions for the provision of Transportation services. Such terms and conditions shall be consistent with the provisions of NMPUC Rule 660 [17.10.660 NMAC] and shall include:

- (a) the payment terms and conditions for the rates and charges in NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC];
- (b) the amount of advance notice, if any, that a Sales Customer must provide a utility of its intent to switch to and from Transportation Customer status pursuant to NMPUC Rule 660.15 [Subsection C of 17.10.660.11 NMAC];
- (c) the conditions, if any, under which the Transportation Customer would forfeit its Capacity entitlements pursuant to the utility's Commission-authorized rule on Capacity Allocation and the notice thereof that the utility shall give to its Transportation Customer and the Commission;
- (d) any cancellation provisions to protect against nonperformance by the Transportation Customer such as liquidated damages but such provisions shall not include minimum bills for Transportation services; nothing in this provision shall be construed to prohibit minimum bills for Sales Customers;
- (e) any balancing terms and conditions for the utility's system or any segment of its system;
- (f) any nomination procedures;
- (g) any Capacity Allocation procedures;
- (h) any other reasonable terms, conditions, or factors.

(6) The filing by the utility pursuant to NMPUC Rule 660.10(b) [Paragraph 2 of Subsection F of 17.10.660.10 NMAC] shall be made in accordance with NMPUC Rules 210.12, 210.13 and 210.14 [17.1.210 NMAC]. The rates and rules filed shall become effective thirty (30) days from the date of filing unless within thirty (30) days from the date of filing the Commission suspends the rates in accordance with NMSA 1978, Section 62-8-7, and other applicable provisions of the Public Utility Act. Rates and rules which have become effective by operation of law and without hearing by the Commission shall not be construed to bear the approval of the Commission but may be subject to inquiry by the Commission at any time.

(7) The rates and charges filed by the utility pursuant to NMPUC Rule 660.10(b) [Paragraph 2 of Subsection F of 17.10.660.10 NMAC] are the maximum rates and charges the utility is allowed to charge.

(8) The utility may offer discount rates lower than the rates filed under NMPUC Rule 660.10(b) [Paragraph 2 of Subsection F of 17.10.660.10 NMAC] to Transportation Customers on a non-discriminatory basis in order to compete for their business. These discount rates must be above the Variable Cost of the service provided. To implement such rates the utility must file the rate schedule negotiated with each Transportation Customer within

five (5) days after the execution of each Transportation agreement. The new rate becomes effective as of the initial Transportation service date. The new rate shall be deemed authorized by the Commission and shall not be subject to NMPUC Rules 210.13 and 210.14 [17.1.210 NMAC]. The utility and the Transportation Customer may also negotiate terms and conditions different from those included in its standard Transportation agreement filed with the Commission if not otherwise inconsistent with this Rule.

(9) Any rates negotiated for end-users which are lower than the rates filed in NMPUC Rule 660.10(b) [Paragraph 2 of Subsection F of 17.10.660.10 NMAC] shall be available to all Transportation Customers or Sellers supplying gas to that End-user.

(10) If the Transportation Customer requests, the utility shall transport gas for the Transportation Customer as soon as possible but no later than ten (10) days after executing the Transportation agreement and any rate schedule negotiated with a Transportation Customer or end-user pursuant to NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC] or completion of any facilities construction necessary to perform Transportation.

(11) Within thirty (30) days after the Commission issues a final order on rates which substantially and materially adversely affects the Transportation Customer, the Transportation Customer, after giving notice to the utility and the Commission, may prospectively rescind the acceptance that it gave, under NMPUC Rule 660.6 [Subsection B of 17.10.660.10 NMAC], of the Transportation agreement and two (2) days after said notice (or any later date given in that notice) shall not be obligated to pay any costs of Transportation of any additional volumes of gas, notwithstanding any cancellation provisions in its contract under NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC].

G. Delivery to or by the Utility: It shall be the responsibility of the Transportation Customer requesting Transportation service to make arrangements (except as otherwise provided in NMPUC Rule 660.6(c)) [Paragraph 2 of Subsection B of 17.10.660.10 NMAC] for delivery of the natural gas to the utility and receipt of the natural gas by the Transportation Customer in those cases where:

(1) the utility does not have the necessary facilities to commence the Transportation service at the point of production of the natural gas; or

(2) to complete delivery of natural gas to the point of end use in those cases where the utility does not have the facilities necessary to complete such delivery.

H. Prohibition of Marketing and Brokering, Anti-competitive Conduct, Discriminatory Behavior, and Preferential Treatment by a Utility Under NMSA 1978, Section 62-6-4.1; Complaints and Investigations.

(1) Pursuant to NMSA 1978, Section 62-6-1 as amended, a utility is prohibited from the Marketing and Brokering of natural gas for delivery within New Mexico under the Natural Gas Transportation Rule. This prohibition shall not exclude a utility from transporting natural gas for an Affiliate. This does not prohibit a utility from conducting its own local distribution company sales functions. Any contract to transport natural gas for a Marketing or Brokering Affiliate shall be an arm's-length agreement containing no terms which are unavailable to other End-users, gas Brokers, or Marketers. A utility is prohibited from anticompetitive conduct, discriminatory behavior, and preferential treatment in transporting natural gas.

(2) For purposes of violations of NMSA 1978, Section 62-6-4.1, anticompetitive conduct, discriminatory behavior, and/or preferential treatment by a Public Utility transporting natural gas includes but is not limited to:

(a) a disclosure to a Marketing or Brokering Affiliate of confidential information provided by nonaffiliated Transportation Customers;

(b) a disclosure by a utility of its own confidential information to any Transportation Customer unless it is communicated to all Transportation Customers on the same terms and conditions;

(c) disclosure of information filed with Transportation requests to any Transportation Customer unless it is communicated to all Transportation Customers on the same terms and conditions;

(d) providing any false or misleading information or failure to provide information regarding the availability of capacity for Transportation service;

(e) requiring as a condition of an agreement to release gas, an agreement by the Transportation Customer to obtain services from the Marketing or Brokering Affiliate of the utility or an offer by the utility to provide or expedite Transportation service to its Affiliate for the Released Gas;

(f) providing any false or misleading information about gas releases;

(g) allowing Marketing or Brokering Affiliates preferential access to Released Gas; all Affiliate Brokers and Marketers and all registered Transportation Customers must be notified of gas releases at the same time in the same manner;

- (h) lending a Marketing or Brokering Affiliate gas to meet balancing requirements except under terms available to other Transportation Customers;
- (i) directing potential customers to the utility's own Marketing or Brokering Affiliate; the utility may provide a list of all registered gas Marketers and Brokers, including their Affiliates;
- (j) charging lower rates to a Transportation Customer conditioned on the purchase of gas from the utility's Marketing or Brokering Affiliate;
- (k) conditioning the availability of Transportation service upon the use of the utility's Marketing or Brokering Affiliate;
- (l) providing exchange or displacement services to one Transportation Customer without making them available to others on the same terms and conditions.

(3) By the authority of NMSA 1978, Section 62-6-4.1 as amended, in order to promote arm's-length transactions between the utility and its Marketing or Brokering Affiliate, the Marketing or Brokering Affiliate shall be housed in separate offices, shall have separate personnel including but not limited to independent contractors for professional services, and shall not have access to the utility's data bases which concern natural gas Transportation, except for such data bases that are available with contemporaneous access to the utility's other Transportation Customers and on reasonably equivalent terms and conditions.

(4) The procedures set forth in NMSA 1978, Section 62-10-1, and NMPUC Rules 110.42 through 110.53 [17.1.2 NMAC] shall be available to resolve any complaints and investigations arising out of the implementation of the Natural Gas Transportation Rule, including but not limited to:

- (a) the utility's improper refusal or failure to promptly transport natural gas;
- (b) the rates, terms, and conditions proposed by a utility for the services described in NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC];
- (c) Interruptions of services pursuant to NMPUC Rule 660.9 [Subsection E of 17.10.660.10 NMAC]; and
- (d) the forfeiture by a Transportation Customer of its priority pursuant to NMPUC Rule 660.9 [Subsection E of 17.10.660.10 NMAC].

(5) By the authority of NMSA 1978, Section 62-6-4.1, as amended, alleged violations of the rules stated in NMPUC Rules 660.12(a) and 660.12(b) [Paragraphs 1 and 2 of Subsection H of 17.10.660.10 NMAC] may be brought before the commission, upon a showing of probable cause, under the complaint procedure contained in NMPUC Rules 110.42 through 110.53 [17.1.2 NMAC]. The burden of proof concerning the alleged violations in NMPUC Rules 660.12(a) and 660.12(b) [Paragraphs 1 and 2 of Subsection H of 17.10.660.10 NMAC] is on the complainant. The Commission upon a finding that a Public Utility is in violation of NMPUC Rules 660.12(a) and 660.12(b) [Paragraphs 1 and 2 of Subsection H of 17.10.660.10 NMAC] may impose upon the utility a civil penalty not to exceed an amount three (3) times the damages established by the complainant in the Commission proceeding and issue such orders including, but not limited to, a cease and desist order to assure the nondiscriminatory and nonpreferential Transportation of natural gas. The standards for determining the monetary damages will be established by the Commission on a case-by-case basis and any monetary damages assessed for violations of NMPUC Rules 660.12(a) and 660.12(b) [Paragraphs 1 and 2 of Subsection H of 17.10.660.10 NMAC] will be paid to the State of New Mexico.

[Recompiled 12/30/01]

17.10.660.11 CONTRACTS:

A. Modification of Transportation Contracts: A utility shall not enter into any contract for the Transportation of natural gas for a Transportation Customer which does not contain the following provision: This contract, and all its terms and provisions, shall at all times be subject to modification by order of the New Mexico Public Utility Commission [New Mexico Public Regulation Commission] upon notice and hearing and a finding of good cause therefor. In the event that any party to this contract requests the Commission to take any action which could cause a modification in the provisions of this contract, that party shall provide written notice to the other parties at the time of filing the request with the Commission.

B. Additional Reporting Requirements:

(1) In addition to the reporting requirements recited in NMPUC Rules 660.6(d), 660.6(e), 660.6(f), 660.10(b), 660.14(b), and 660.17(b) [Paragraphs 3, 4, and 5 of Subsection B of 17.10.660.10 NMAC, Paragraph 2 of Subsection F of 17.10.660.10 NMAC, Paragraph 2 of Subsection B of 17.10.660.11 NMAC and Paragraph 2 of

Subsection E of 17.10.660.11 NMAC], a utility must provide the Commission, within thirty (30) days of the end of each year, the total quantities of natural gas transported by month for each Transportation Customer.

(2) Utilities must maintain logs showing all requests for Transportation and their disposition. Such a log shall be kept current and shall be made available to members of the public upon request during business hours at the utility's place of business or by photocopy by mail at a reasonable cost. The log will also be filed with the Commission and updated monthly. Such log should include information regarding the date of all Transportation requests; the identity of the Transportation Customer making the request; whether the service requested is interruptible or firm; the identity of the ultimate end-user or delivery point of the gas; the Transportation rates requested and received for such service; the disposition of the request by the utility; the date and an explanation for the disposition of the request; any complaints by the Transportation Customer or End-user concerning the requested or furnished service; and such other information as is required by the utility's commission-authorized rules and tariffs.

C. Current Sales Customers:

(1) Any current Sales Customer of a utility may obtain Transportation from that utility, pursuant to the terms and conditions of the Natural Gas Transportation Rule, for gas supplies which that customer obtains from a Seller supplemental to the customer's existing obligations to purchase gas supplies from that utility.

(2) Subject to waiver by the utility, any current Sales Customer must provide sixty (60) days' notice of intention to partially or fully become a Transportation Customer of the utility or of its intention to cease receiving service from the utility for alternative sources of gas supply and Transportation.

(3) Any current Sales Customer of a utility may elect to purchase natural gas from a Seller and to seek Transportation of those supplies by the same utility as a partial or complete substitute for its purchases of gas supplies from the utility and it may also seek Transportation from parties other than the utility. In either case a reduction in gas purchases by a current Sales Customer reduces the utility's obligation to serve (i.e., to provide gas supplies) by the same amount and proportionately reduces the utility's obligation to serve the customer's gas sales requirements under system peak demand conditions. If the Sales Customer completely leaves the system, the customer must reapply for gas service and the utility may charge said customer fees equivalent to those charged a new customer. The utility has no gas supply obligation to Transportation Customers or former End-users who have opted for other suppliers of Transportation and gas services, who are solely responsible for their own gas procurement.

(4) The utility will not refuse to provide natural gas service to any Transportation Customer who requests to reenter or increase its purchases from the utility's system gas supply and who has provided sixty (60) days' notice to the utility of its intention to reenter or increase purchases. The utility may waive or reduce the notice period at its option. Any Transportation Customer providing sixty (60) days' notice to the utility before reentry to or increased purchases from system supply, or for whom the notice period has been waived or reduced, will receive service from the utility as a Sales Customer and be billed under the applicable rate schedule according to its customer classification.

(5) The utility shall provide natural gas to a Transportation Customer who fails to give the utility at least sixty (60) days' notice of reentry or increased purchases if, as, and when such supply is available and the utility is able to provide such supply without curtailing any existing customers, unless the utility has waived or reduced the notice period. The gas shall be supplied at the greater of:

(a) the utility's rate schedule applicable to Sales Customers according to the classification otherwise applicable to the Transportation Customer, or

(b) the utility's actual price of the gas including any Transportation charges and any other related charges incurred by the utility in order to provide the gas.

(6) The utility shall use reasonable efforts to obtain the lowest cost gas which is reasonably available taking into consideration the volume of gas needed for the reentry or increased purchase, the amount of notice given to the utility, the reliability of the supply and the length of time such gas is needed. At the expiration of no more than sixty (60) days from the date of the Transportation Customer's request, it will receive gas service from the utility as a Sales Customer and be billed under the applicable rate schedule according to its customer classification.

D. Gas Under Contract: There shall be no assignment of gas purchase contracts or other gas purchase rights from a utility to its Marketing or Brokering Affiliate without the prior approval of the Commission.

E. Gas Releases:

(1) The utility shall be able to release gas without regard to the contract price of such gas and without any prior notice to the Commission. The utility shall not as a condition of release require a producer subsequently to

sell the Released Gas to any Affiliate of the utility or in any other manner provide its Affiliate preferential treatment in the resale of said natural gas during the release period.

(2) The utility shall file a report with the commission within sixty (60) days of any release of natural gas and such report shall contain the following information:

- (a) name of producer and/or Seller,
- (b) period of release,
- (c) volumes released,
- (d) price of the gas,
- (e) actual purchases under released contract for the twelve (12) months prior to release,
- (f) brief explanation of the reason for the release, and
- (g) impact on the PGAC and on the utility's ability to meet its peak day requirements during the

period of the release.

(3) The utility shall publicly post on the first day of each month a listing of all gas released during the previous month.

(4) The utility shall make a copy of the release agreement available for inspection by Commission staff upon request.

F. Quality of Gas:

(1) A utility may require a Transportation Customer to render the gas transported to be of Pipeline Quality.

(2) If a utility has facilities available to render gas to be of Pipeline Quality, it shall upon request by a Transportation Customer make those facilities available to the Transportation Customer if Capacity is available at the appropriate time.

(3) Such utility may impose just and reasonable rates to render the gas of Pipeline Quality in accordance with NMPUC Rule 660.10 [Subsection F of 17.10.660.10 NMAC].

(4) If the utility does not have such facilities available, it shall be the obligation of the Transportation Customer to make the arrangements to deliver gas of Pipeline Quality to the utility.

G. Status of Investments: Any capital investment fully paid for by a Transportation Customer pursuant to NMPUC Rule 660.8 [Subsection D of 17.10.660.10 NMAC] to expand the Capacity of a utility to serve that customer, or pursuant to NMPUC Rule 660.11 [Subsection G of 17.10.660.10 NMAC] to deliver the gas to the utility and/or to complete delivery of gas to the point of end use, shall be treated as a contribution-in-aid of construction or as an advance-in-aid of construction depending on the utility's line extension policy. Refunds for advances-in-aid of construction shall conform to the refund policy for the utility's line extension rules.

[Recompiled 12/30/01]

17.10.660.12 JURISDICTION AND PROCEDURE:

A. Federal Jurisdiction: Nothing contained in the Natural Gas Transportation Rule shall be construed to require a utility to enter into an arrangement for the Transportation of natural gas which would result in the utility becoming subject to the jurisdiction of the Federal Energy Regulatory Commission or any successor agency, nor to confer on the Commission authority over transactions which are exclusively within the authority of such federal agency.

B. Amendment: The adoption of the Natural Gas Transportation Rule shall in no way preclude the Commission, after notice and hearing, from altering or amending any provision hereof or from making any modification with respect to its application deemed necessary.

C. Exemption or Variance:

(1) An application for an exemption or a variance from any requirement set forth in NMPUC Rules 660.5 through 660.19 [17.10.660.10 NMAC through 17.10.660.11 NMAC], except NMPUC Rule 660.12 [Subsection H of 17.10.660.10 NMAC], shall:

- (a) identify the portion(s) of the Natural Gas Transportation Rule for which the variance or exemption is requested,
- (b) describe the situation which necessitates the exemption or variance,
- (c) set out the effect of complying with the Natural Gas Transportation Rule on the utility and its customers if the exemption or variance is not granted,
- (d) define the result which the request will have if granted,

(e) state how the exemption or variance will promote the purposes of the Natural Gas Transportation Rule, and
(f) state why the exemption or variance is a more reasonable alternative than the application of the Natural Gas Transportation Rule.

(2) The Commission may consider the application for the exemption or variance with or without a hearing.

(3) If it finds good cause, the Commission may order a hearing on such application and shall promptly provide sufficient advance notice of any such hearing.

D. Motion for Stay Pending a Decision on Exemption or Variance: An application for an exemption or variance may include a motion that the commission stay the application of the affected portion of the Natural Gas Transportation Rule for that Transportation specified in the motion. The Commission may consider such a motion with or without a hearing.

E. Severability: If any part or application of the Natural Gas Transportation Rule is held invalid, the remainder or its application to other situations or persons shall not be affected.

[Recompiled 12/30/01]

17.10.660.13 [HISTORY: Codified by NMPUC Case No. 2086, Order dated June 30, 1988; amended by NMPUC Case No. 2472, Order dated February 7, 1994. Formerly NMPUC First Revised General Order No. 44, superseded for purposes of rule reorganization and codification.]

[Recompiled 12/30/01]

HISTORY OF 17.10.660 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.

General Order No. 44, Rules Regarding the Transportation of Natural Gas By Public Utilities For Buyers and Sellers of Natural Gas ("Contract Carriage Rule"), 7/16/84

General Order No. 44, Rules Regarding the Transportation of Natural Gas By Public Utilities For Buyers and Sellers of Natural Gas ("Contract Carriage Rule"), 1/3/85.

General Order No. 44, Rules Regarding the Transportation of Natural Gas By Public Utilities For Buyers and Sellers of Natural Gas Transportation Rule, 11/13/87.

General Order No. 44, Rules Regarding the Transportation of Natural Gas By Public Utilities For Buyers and Sellers of Natural Gas Transportation Rule, 12/30/87.

NMPUC Rule 660, Natural Gas Transportation Rule , 6/30/88

NMPUC Rule 660, Natural Gas Transportation Rule, 2/8/94.

History of Repealed Material: [RESERVED]