

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES**  
**CHAPTER 12 WATER SERVICES**  
**PART 770 SMALL WATER UTILITIES**

**17.12.770.1 ISSUING AGENCY:** New Mexico Public Regulation Commission.  
[17.12.770.1 NMAC - Rp, NMPSC Rule 770, 7/31/2007]

**17.12.770.2 SCOPE:** This part governs the filing and review of changes in rates proposed by small water utilities as defined by Section 62-8-7.1A NMSA 1978 (2005).

**A. Exception for 50 percent or more rate increase proposal for small water utilities with 1,500 or fewer service connections.** The provisions of 17.12.770.1 NMAC through 17.12.770.16 NMAC shall not apply to small water utilities, as defined by Section 62-8-7.1(B) NMSA 1978, if any of the criterion in Paragraphs (1), (2), (3) or (4) below apply. When any criterion listed below applies, Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC relating to the application for new rates shall apply to the filing and review of a proposed rate or rates by a small water utility.

(1) A proposed rate increase would increase the utility's revenue requirement fifty (50) percent or more over a twelve (12) month period.

(2) A proposed rate increase would increase any rate for any customer class for any given level of consumption fifty (50) percent or more over a twelve (12) month period.

(3) A utility proposes to increase a seasonally-adjusted rate and that increase would result in an increase in the rate of fifty (50) percent or more.

(4) A utility proposes to institute a rate where no rate had existed previously.

**B. Exception for more than an 8 percent rate increase proposal for small water utilities with more than 1,500 but less than 5,000 service connections.** The provisions of 17.12.770.1 NMAC through 17.12.770.16 NMAC shall not apply to small water utilities, as defined by Section 62-8-7.1A NMSA 1978, if any of the criterion in Paragraphs (1), (2), (3) or (4) below apply. When any criterion listed below applies, Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC relating to application for new rates shall apply to the filing and review of a proposed rate or rates by a small water utility.

(1) A proposed rate increase would increase the utility's revenue requirement by more than eight percent (8%) over a twelve (12) month period.

(2) A proposed rate increase would increase any rate for any customer class for any given level of consumption by more than eight (8) percent over a twelve (12) month period.

(3) A utility proposes to increase a seasonally-adjusted rate and that increase would result in an increase in the rate of more than eight (8) percent over a twelve (12) month period.

(4) A utility proposes to institute a rate where no rate had existed previously.

**C.** A rate application by a small water utility shall comply with the provisions of 17.1.2.53 NMAC if any of the criteria listed in 17.12.770.2 NMAC applies.

[17.12.770.2 NMAC - Rp, NMPSC Rule 770.3, 7/31/2007]

**17.12.770.3 STATUTORY AUTHORITY:** Sections 8-8-4, 62-3-1, 62-3-2.1, 62-3-4, 62-6-4, 62-8-3, 62-8-7 and 62-8-7.1 NMSA 1978.

[17.12.770.3 NMAC - Rp, NMPSC Rule 770.3, 7/31/2007]

**17.12.770.4 DURATION:** Permanent.

[17.12.770.4 NMAC - N, 7/31/2007]

**17.12.770.5 EFFECTIVE DATE:** July 31, 2007, unless a later date is cited at the end of a section.

[17.12.770.5 NMAC - Rp, NMPSC Rule 770, 7/31/2007]

**17.12.770.6 OBJECTIVE:** The purpose of 17.12.770 NMAC is to carry out the explicit legislative intent of Sections 62-3-2.1 and 62-8-7.1 NMSA 1978, as amended, to limit governmental regulation of rate setting by small water utilities and to provide a degree of regulatory oversight of small water utilities that is proportionate to the need and benefit of such regulation.

[17.12.770.6 NMAC - Rp, NMPSC Rule 770.1, 7/31/2007]

**17.12.770.7 DEFINITIONS:** In addition to the definitions in 17.12.1.7 NMAC, certain terms as used in this rule are defined as follows.

**A. Advice notice** means a listing by a water utility of proposed changes in tariff schedules and proposed effective dates that has been provided to the public and filed with the commission.

**B. Operating district or division** means any area of utility operations which is geographically distinct and distant from other utility operations, and which would otherwise be operated as a separate stand-alone utility but for its classification as a business unit within the single utility.

**C. Rate** shall have the meaning given in Section 62-3-3H NMSA 1978.

**D. Ratepayer** means a person in whose name service is carried. As stated in Section 62-8-7.1A NMSA 1978 "each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer."

**E. Small water utility** means a public utility as defined in Sections 62-3-3G(3) NMSA 1978 with less than an aggregate of five thousand (5,000) service connections in any utility operating district or division in New Mexico averaged over the previous three (3) consecutive years.

[17.12.770.7 NMAC - N, 7/31/2007]

**17.12.770.8 PROCEDURES FOR 2% RATE CHANGE WITHOUT HEARING:**

**A.** A small water utility may adjust its commodity charge and customer service charge by up to two percent (2%) in any calendar year without a hearing, provided that the utility:

(1) is in good standing with all applicable commission rules and orders;

(2) shall not have changed its rates in the prior twelve (12) month period;

(3) shall have given notice to its customers by a mailed bill insert, printed notice on a bill or separate mailing of its proposed rate adjustment at least thirty (30) days prior to the effective date of such rate adjustment, in accordance with 17.12.770.10 NMAC; and

(4) shall not make such rate adjustments effective until at least thirty (30) days after it has filed with the commission the required documents described in Subsection B below.

**B. Filing requirements.** The utility shall submit with its filing:

(1) an advice notice, including proposed rate schedules, notifying the commission of the utility's intent to implement the new rate or rates by a date certain, which may not be less than thirty (30) days after the filing of the advice notice; the advice notice shall conform to 17.1.210.9 NMAC;

(2) an affidavit describing how the notice required by 17.12.770.8 NMAC was given to the utility's ratepayers; and

(3) a copy of the notice, which shall be attached to the affidavit.

**C. Applicability of certain rules.** 17.12.770.10 NMAC applies to proposed two percent (2%) rate changes made pursuant to this section. 17.12.770.9 NMAC and 17.12.770.11 NMAC through 17.12.770.18 NMAC are not applicable to proposed two percent (2%) rate changes made pursuant to this section. The utility's filing under 17.12.770.8 NMAC shall be in accordance with 17.1.210 NMAC, except that Paragraph (2) of Subsection B of 17.1.210.11 NMAC relating to direct testimony and exhibits shall not apply, and Subsection C of 17.1.210.11 NMAC relating to additional information shall not apply.

[17.12.770.8 NMAC - Rp, NMPSC Rule 770.4, 7/31/2007]

**17.12.770.9 FILINGS BY SMALL WATER UTILITIES PROPOSING NEW RATES:**

**A.** This section applies to the filing and review of changes in rates proposed by small water utilities except small water utilities filing for a two percent (2%) rate change under 17.12.770.8 NMAC that have given proper notice according to 17.12.770.10 NMAC and small water utilities subject to the exceptions in 17.12.770.2 NMAC.

**B. Filing requirements.** The utility shall submit with its filing:

(1) an advice notice notifying the commission of the utility's intent to implement the new rate or rates by a date certain, which may not be less than thirty (30) days after the filing of the advice notice;

(2) an affidavit describing how the notice required by 17.12.770.10 NMAC has been given to the utility's ratepayers;

(3) a copy of the notice required by 17.12.770.10 NMAC attached to the affidavit of notice;

(4) a statement of the total number of ratepayers being served by the utility at the time of the filing;

(5) a brief statement explaining what has caused the need for the rate adjustment; and

(6) a statement that contains a rate and billing analysis.

**C. Required rate and billing analysis.** The rate and billing analysis shall describe the effect of any proposed rate increase on each class of customers and shall include: a description of any proposed changes in rate design; a comparison of each proposed rate with the existing rate for each customer class; a table that provides a billing analysis for residential customers and a table that provides a rate analysis for each customer class.

(1) The rate comparison shall state each proposed rate and each existing rate for each customer class, the percentage difference between each proposed rate and each existing rate and the number of customers within each customer class to which each change applies.

(2) The table that provides the billing analysis for residential customers shall state the present bill, the anticipated bill under the proposed rates and the percentage difference between the two bills for the following levels of consumption: 0 gallons, 1,000 gallons, 2,000 gallons, 3,000 gallons, 4,000 gallons, 5,000 gallons, 6,000 gallons, 7,000 gallons, 8,000 gallons, 9,000 gallons, 10,000 gallons, 15,000 gallons, 20,000 gallons, 25,000 gallons, 30,000 gallons, 35,000 gallons, 40,000 gallons, 45,000 gallons and 50,000 gallons.

(3) The table that provides the rate analysis for each customer class shall be based on each level of consumption listed in Paragraph (2) above. The table shall be based on the month of highest overall consumption in the twelve (12) months preceding the filing of the notice to ratepayers. The table shall show the number of customers and the present and proposed bill for each level of consumption, rounding gallons per month to the nearest one thousand (1,000) gallons. For example, for the six thousand (6,000) gallon level, the utility will show the number of customers with usage of five thousand five hundred and one (5,501) to six thousand five hundred (6,500) gallons. If consumption is measured in units other than thousands of gallons, the utility shall convert their billing units to thousands of gallons. If there were no customers at a particular level of consumption, the utility shall list a zero in the table for that level of consumption.

**D. Applicability of 17.1.210 NMAC.** The utility's filings under 17.12.770.9 NMAC shall be in accordance with 17.1.210 NMAC, except that Paragraph (2) of Subsection B of 17.1.210.11 NMAC relating to direct testimony and exhibits and Subsection C of 17.1.210.11 NMAC relating to additional information shall not be applicable. The utility may, but is not required to file with the advice notice, the direct testimony, exhibits, and statements which would be required by 17.12.770.15 NMAC in the event of a valid protest or motion to review by commission staff.

**E. Rejection.** Failure to abide by these requirements shall be deemed grounds for rejection of the filing.

**F. Effective date of rates.** The rate or rates proposed in accordance with the provisions of this section shall become effective on the date set forth in the advice notice unless a protest is filed under 17.12.770.12 NMAC, or a staff motion for review is filed under 17.12.770.11 NMAC and the commission determines the protest or motion establishes just cause for reviewing the proposed rates. If a valid protest or motion is filed and the commission determines that there is just cause for review of the proposed rates, the new rates may become effective only in accordance with Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC.

**G. Rates effective by operation of law.** Rates that become effective by operation of law, without hearing by the commission, shall not be construed to bear the approval of the commission and may be subject to inquiry by the commission at any time.

[17.12.770.9 NMAC - Rp, NMPSC Rule 770.4, 7/31/2007]

#### **17.12.770.10 NOTICE TO RATEPAYERS PRIOR TO FILING OF PROPOSED RATES:**

**A. Notice required.** At least sixty (60) days prior to filing with the commission a schedule proposing a change in rate or rates, a small water utility shall notify its ratepayers of the proposed rate or rates in writing. The utility may mail the notice to ratepayers either with their billings or independently.

**B. Required information.** The notice to ratepayers shall include the following information:

- (1) the amount of the increase requested in both total dollar amounts and total percentage increases;
- (2) the customer classifications to which the new rate or rates would apply;
- (3) a comparison of the present rate with proposed rates, consisting of
  - (a) the present rate,
  - (b) the proposed rate,
  - (c) the percentage difference between the present and proposed rate for each customer class

and

- (d) the number of customers in each class to which the proposed rates would apply;
- (4) the date on which the utility intends to file with the commission the advice notice proposing the change in rate or rates;

(5) a statement that the utility will promptly notify a ratepayer of the date on which it actually files with the commission the advice notice proposing the change in rate or rates, if the ratepayer so requests;

(6) a statement in all capital letters that if a hearing is held by the public regulation commission, any costs incurred by the utility may be included in the utility's future rates, following the utility's next rate case;

(7) a statement that procedures for protesting rates are set forth in 17.12.770 NMAC, a copy of which can be obtained upon request from, or inspected at, the main office of the utility or the offices of the utility division of the commission in Santa Fe, and that forms for protests are available from either the utility or the commission, and indicating the telephone numbers and addresses of both the utility and the commission;

(8) a statement that the rate filing together with any exhibits and related papers may be examined at the main offices of the utility or at the commission in Santa Fe;

(9) a statement that further information may be obtained by contacting either the utility or the commission; and

(10) a statement that, for purposes of protests, "ratepayer" means a person in whose name service is carried. For purposes of protests, under Section 62-8-7.1 NMSA 1978, "each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer."

**C. Billing analysis for residential customer required.** The notice to ratepayers shall include a chart that provides a billing analysis for residential customers clearly showing the present rates, the proposed rates, and the percentage difference between the present bill and the anticipated bill for each of the following levels of consumption (if consumption is measured in units other than thousands of gallons the utility shall convert their billing units to thousands of gallons) - 0 gallons, 1,000 gallons, 2,000 gallons, 3,000 gallons, 4,000 gallons, 5,000 gallons, 6,000 gallons, 7,000 gallons, 8,000 gallons, 9,000 gallons, 10,000 gallons, 15,000 gallons, 20,000 gallons, 25,000 gallons, 30,000 gallons, 35,000 gallons, 40,000 gallons, 45,000 gallons and 50,000 gallons;

**D.** If the utility has one thousand five hundred (1,500) or fewer service connections in any operating district or division, averaged over the previous three (3) consecutive years, the notice to ratepayers shall include a statement that the new rate or rates will go into effect automatically and will not be subject to review and hearing by the commission unless ratepayers file a protest conforming to the requirements of 17.12.770.12 NMAC.

**E.** If the utility has more than one thousand five hundred (1,500), but less than five thousand (5,000) service connections in any operating district or division, averaged over the previous three (3) years, the notice to ratepayers shall include a statement that the new rate or rates will go into effect automatically and will not be subject to review and hearing by the commission unless commission staff files a motion for review or ratepayers file a protest conforming to the requirements of 17.12.770.12 NMAC.

**F. Prior approval of notice form.** The utility shall submit a copy of the form notice to the utility division staff for approval at least fifteen (15) days prior to giving notice to ratepayers. If the commission does not disapprove of the form of notice within five (5) business days of submission of the notice, the form will be deemed approved.

**G. Rejection.** Failure to comply with this section shall be deemed grounds for rejection of the filing proposing a change in rate or rates.

[17.12.770.10 NMAC - Rp, NMPSC Rule 770.5, 7/31/2007]

#### **17.12.770.11 STAFF MOTION FOR COMMISSION REVIEW OF RATE PROPOSALS:**

**A. Suspension of rates upon filing of staff motion.** Rates proposed under 17.12.770 NMAC by a utility with more than one thousand five hundred (1,500) but less than five thousand (5,000) service connections in any operating district or division, averaged over the previous three (3) consecutive years, shall be subject to suspension, review and hearing by the commission upon the timely filing with the commission of a staff motion for review.

**B. Timing of staff motion.** A staff motion for review shall be filed with the commission no later than twenty (20) days after the utility files with the commission the advice notice proposing the change in rate or rates.

**C. Full review upon staff motion.** Upon the timely filing of a staff motion and after a commission determination that just cause exists to review the proposed rates or rates, the commission will conduct a full review of the proposed rate or rates under Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC and under either 17.12.730 NMAC or 17.12.780 NMAC.

[17.12.770.11 NMAC - N, 7/31/2007]

#### **17.12.770.12 PROTESTS BY RATEPAYERS:**

**A. Suspension of rates upon filing of protest.** Rates proposed by a small water utility under 17.12.770 NMAC will be subject to suspension, review, and hearing by the commission upon the timely filing with the commission of a protest.

**B.** For a utility with one thousand five hundred (1,500) or fewer service connections in any operating district or division, averaged over the previous three (3) consecutive years, a protest must be signed by ten (10) percent, or more, of the utility's ratepayers, or twenty-five (25) ratepayers, whichever is more, receiving service from the utility at the time the change in rate or rates is filed. For purposes of this rule, ratepayer is defined in 17.12.770.7 NMAC.

**C.** For a utility with more than one thousand five hundred (1,500) but less than five thousand (5,000) service connections in any operating district or division, averaged over the previous three (3) consecutive years, a protest must be signed by ten (10) percent or more of the ratepayers receiving service from the utility at the time the change in rate or rates is filed. For purposes of this rule, ratepayer is defined in 17.12.770.7 NMAC.

**D. Timing of protest.** Protests shall be filed with the commission no later than twenty (20) days after the utility files with the commission the advice notice proposing the change in rate or rates, and shall conform to the requirements of 17.12.770.13 NMAC.

**E. Full review upon protest.** Upon the filing of a protest under 17.12.770.12 NMAC and after a commission determination that just cause exists to review the proposed rate or rates, the commission will conduct a full review of the proposed rate or rates under Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC and under either 17.12.730 NMAC or 17.12.780 NMAC.

[17.12.770.12 NMAC - Rp, NMPSC Rule 770.6, 7/31/2007]

#### **17.12.770.13 FORM AND FILING OF PROTEST:**

**A. Contents of protest.** Protest petitions to the commission shall be in writing, and signed by each of the ratepayers submitting the protest. All protests shall contain the following:

(1) the name of the utility whose proposed rates are being protested and identification of the rate or rates being protested;

(2) the name, mailing address, and phone number of each ratepayer protesting the proposed rates and the name, mailing address, and phone number of each ratepayer's attorney, if any; and

(3) a caption of the proceeding, a space for the docket number, and the title "Protest."

**B. Format.** Whenever possible, protests shall be typed, double-spaced, and shall be on paper 8 1/2 inches wide and 11 inches long and fastened only to the left side.

**C. Use of commission form.** Protestants may use, but are not required to use, the commission's form for protests. The utility shall make copies of the commission's form available to its ratepayers upon request.

**D. Additional information permitted.** Protestants are strongly encouraged, but are not required, to file with the protest a statement or statements of their reasons for protesting the proposed rates as well as any data, exhibits, illustrations, prepared testimony, or written argument which may aid the commission in its determination of whether just cause exists to review the rates.

**E. Certificate of service.** The protestants shall serve copies of the protest and any accompanying documents on the utility whose proposed rates are being protested either by first class U.S. mail or by hand delivery. A certificate of service stating the date and manner of mailing or delivery shall be included in or attached to the protest at the time of filing with the commission.

**F. Number of copies required.** The protestants shall provide the commission with an original plus ten (10) copies of the protest and any accompanying documents at the time of filing unless the commission directs otherwise.

**G. Date of filing.** If a protest is submitted to the commission before the utility has filed the change in rate or rates, the protest shall be deemed filed as of the date of the utility's filing.

**H. Ratepayers' status.** Ratepayers who have submitted a protest under 17.12.770.13 NMAC will be deemed parties to any protest proceeding, but will not be deemed parties to a rate review proceeding.

[17.12.770.13 NMAC - Rp, NMPSC Rule 770.7, 7/31/2007]

#### **17.12.770.14 RESPONSE TO PROTEST:**

**A. Response with leave of commission.** No response to the substance of a protest filed with the commission is permitted except by leave of the commission or hearing examiner.

**B. Challenge to validity of protest petition.** The utility whose proposed rates are being protested may challenge the validity of the protest petition within ten (10) days of the filing of the petition.

(1) The challenge shall be made by motion conforming with the requirements of 17.1.2 NMAC and served upon each of the protestants.

(2) The motion shall be accompanied by affidavits and a brief in support of the motion, which shall also be served upon the protestants.

**C. Protestants to establish validity of protest petition.** If a protest is challenged by motion of the utility made in accordance with 17.12.770.14 NMAC, the commission or hearing examiner may direct the protestants to verify their status as ratepayers of the utility or otherwise establish the validity of the protest petition.

**D. Invalid protest petitions.** If the commission or hearing examiner determines that the protest petition is invalid, the commission or hearing examiner shall take such action as is deemed appropriate, including, but not limited to, dismissal of the protest.

**E. Ruling on protest.** The commission shall determine the validity of any challenged protest prior to a commission determination that just cause exists to review the proposed rate or rates.

[17.12.770.14 NMAC - Rp, NMPSC Rule 770.8, 7/31/2007]

#### **17.12.770.15 COMMISSION REVIEW OF RATES AFTER JUST CAUSE DETERMINATION:**

**A. Notice of hearing.** Once the commission determines that just cause exists to review the proposed rate or rates, the commission shall issue an order noticing the rate or rates for hearing. Either this order or a subsequent order shall prescribe:

(1) the manner of any further notice to customers or the public, the cost of which shall be borne by the utility;

(2) a deadline for the filing of motions to intervene under 17.1.2 NMAC and directions to any protestants that they that they will not be considered parties to the rate review proceeding unless they move for and are granted intervener status; and

(3) directions to parties other than the utility and, to the extent the commission or hearing examiner may deem helpful, directions to the commission staff to file written testimony and exhibits.

**B. Service of notice:** The commission or hearing examiner shall mail copies of all orders issued under 17.12.770.15 NMAC to each protestant whether or not the protestant has sought or been granted intervener status.

[17.12.770.15 NMAC - Rp, NMPSC Rule 770.10, 7/31/2007]

#### **17.12.770.16 SUBMISSION OF WRITTEN TESTIMONY AND EXHIBITS BY UTILITY:**

**A. Information to be submitted upon commission determination of just cause.** After a commission determination of just cause for review of the proposed rate or rates, the utility shall file the following information and documents with the commission within thirty (30) days unless the commission or hearing examiner directs otherwise:

(1) direct testimony and exhibits intended to be introduced into evidence in support of the proposed rate or rates, including any rate filing package required by commission rule or order and by 17.12.730 NMAC or 17.12.780 NMAC;

(2) a concise statement, supported by the direct testimony and exhibits, identifying:

(a) when the utility proposes to change the ratemaking treatment upon which the present rates are based, each proposed change, the reasons for the proposed change, and the impact in dollars of the proposed change on the rates being requested;

(b) the compound annual growth rate of each account of plant and expenditures since the test period used in the utility's last rate filing; and

(c) any extraordinary event or circumstance, known or projected, which materially alters the utility's operating or financial condition from the condition existing during the utility's test period in its last rate case; and

(3) a concise statement setting forth the utility's compliance or failure to comply with each part of the commission's final order in each of the utility's cases decided during the preceding five (5) years and its compliance or failure to comply with 17.6.450 NMAC and 17.1.2 NMAC through 17.12.780 NMAC.

**B. Copies.** The utility shall provide the commission with an original plus five (5) copies of all documents filed pursuant to subsection A, unless the commission or hearing examiner directs otherwise.

[17.12.770.16 NMAC - Rp, NMPSC Rule 770.9, 7/31/2007]

**17.12.770.17 STATUS OF PROTESTANTS DURING PROCEEDING:** The protestants who file a protest will be deemed parties to any proceeding on a motion made by the utility under 17.12.770.14 NMAC but will not be

deemed parties to the proceeding to review and hear the proposed rate or rates. Protestants may individually move to intervene under 17.1.2 NMAC and may or may not be granted intervener status under that rule. The commission or hearing examiner may limit the number of interveners in the rate making proceeding to avoid unnecessary delay, duplication, or expense.

[17.12.770.11 NMAC - N, 7/31/2007]

**HISTORY OF 17.12.770 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.

GO 48, Order Adopting Interim Rule, Interim General Order No. 48 Procedures for Review of Rates Proposed by Small Water Utilities Exhibit A, filed 1/8/1986.

GO 48, Procedures for Review of Rates Proposed by Small Water Utilities, filed 3/6/1986.

GO 48, Procedures for Review of Rates Proposed by Small Water Utilities, filed 10/19/1987.

NMPSC Rule 770, Procedures for Review of Rates Proposed by Small Water Utilities, filed 6/30/1988.

**History of Repealed Material.**

NMPSC Rule 770, Procedures for Review of Rates Proposed by Small Water Utilities (filed 6/30/1988) repealed 7/31/2007.

**Other History.**

NMPSC Rule 770, Procedures for Review of Rates Proposed by Small Water Utilities (filed 6/30/1988) replaced by 17.12.77 NMAC, Small Water Utilities, effective 7/31/2007.