

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 12 WATER SERVICES
PART 810 PROCEDURES FOR REVIEW OF RATES PROPOSED BY WATER AND SANITATION DISTRICTS

17.12.810.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[6/30/88; 17.12.810.1 NMAC - Rn, NMPSC Rule 810 & A, 7-31-07]

17.12.810.2 SCOPE:

A. Except as provided in Subsection B of 17.12.810.2 NMAC, 17.12.810 NMAC governs the setting of new rates, tolls, and charges by water and sanitation districts organized under the Water and Sanitation District Act, hereinafter referred to sometimes as "districts." NMPSC Rules 110.39 through 110.41 [now 17.1.2 NMAC] relating to applications for new rates shall not be applicable.

B. The provisions of 17.12.810 NMAC are not applicable to water and sanitation districts which have elected to become subject to the terms and provisions of the Public Utility Act. Any such districts shall comply with NMPSC Rules 110.39 through 110.41 [now 17.1.2 NMAC] rather than 17.12.810 NMAC when proposing any rates, tolls, or charges.

C. When used in 17.12.810 NMAC the term "rates" shall refer to any and all rates, tolls, or charges to be filed with the public regulation commission under Section 73-21-55C NMSA 1978.
[6/30/88; 17.12.810.2 NMAC - Rn, NMPSC Rule 810.3 & A, 7-31-07]

17.12.810.3 STATUTORY AUTHORITY: 17.12.810 NMAC is adopted under the authority vested in the commission by Section 73-21-55 NMSA 1978.
[6/30/88; 17.12.810.3 NMAC - Rn, NMPSC Rule 810.3, 7-31-07]

17.12.810.4 DURATION: Permanent.
[17.12.810.4 NMAC - N, 7/31/2007]

17.12.810.5 EFFECTIVE DATE: July 31, 2007, unless a later date is cited at the end of a section.
[6/30/88; 17.12.810.5 NMAC - Rn, NMPSC Rule 810.12 & A, 7-31-07]

17.12.810.6 OBJECTIVE: The purpose of 17.12.810 NMAC is to carry out the explicit legislative intent of Laws 1985, Chapter 166, which amended Sections 73-21-16 and 73-21-40 NMSA 1978, and which added Section 73-21-55 NMSA 1978, to limit governmental regulation of rate setting by water and sanitation districts, which are quasi-municipalities and are governed by an elected board, to the maximum extent possible.
[6/30/88; 17.12.810.6 NMAC - Rn, NMPSC Rule 810.1, 7-31-07]

17.12.810.7 DEFINITIONS: [RESERVED]

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[6/30/88; 17.12.810.8 NMAC - Rn, NMPSC Rule 810.12 & A, 7-31-07]

17.12.810.9 FILINGS BY WATER AND SANITATION DISTRICTS PROPOSING NEW RATES:

A. A water and sanitation district shall propose new rates by filing the rates with the New Mexico public service commission [public regulation commission], accompanied by an advice notice notifying the commission of the district's intent to implement the new rates by a certain date, which may not be less than forty-five (45) days after the filing of the advice notice, and accompanied by an affidavit describing how the notice required by 17.12.810.10 NMAC has been given to the district's taxpayer-electors, to which affidavit is annexed a copy of the notice.

B. The district shall submit with its filing:

(1) a statement of the present rates, the proposed rates and the percentage difference between the present and proposed rates for each customer class and the number of customers to which the rates apply within each class;

(2) a copy of the resolution of the district's board of directors containing the board's decision to propose new rates; and

(3) a brief statement explaining what has caused the need for the rate adjustment unless contained in the board's resolution.

C. The filing shall be in accordance with NMPSC Rule 210 [now 17.1.210 NMAC] except that NMPSC Rule 210.13(b) [now Paragraph (2), Subsection B of 17.1.210.11 NMAC] relating to direct testimony and NMPSC Rule 210.14 [now Subsection C of 17.1.210.11 NMAC] relating to additional information requirements and NMPSC Rule 210.24 [now Subsection D of 17.1.210.12 NMAC] relating to filing fees thereof shall not be applicable. No fees shall be required of water and sanitation districts when proposing new rates in accordance with this 17.12.810.9 NMAC.

D. Failure to abide by the requirements set forth or incorporated by reference herein shall be deemed grounds for rejection of the filing.

E. The rates proposed in accordance with the provisions of Subsection A above shall become effective on the date set forth in the advice notice unless a protest is filed under 17.12.810.11 NMAC. In case of such protest the rates shall become effective when approved by the commission or under 17.12.810.13 NMAC below upon dismissal of the protest. Rates which become effective by operation of law without hearing by the commission shall not be construed to bear the approval of the commission.

[6/30/88; 10/21/91; 17.12.810.9 NMAC - Rn, NMPSC Rule 810.4, 7-31-07]

17.12.810.10 NOTICE TO TAXPAYER-ELECTORS PRIOR TO FILING OF PROPOSED RATES:

A. On or before the date a district files its proposed rates with the commission the district shall notify in writing its taxpayer-electors of the proposed rates. The notice may be mailed to the taxpayer-electors with their billings or independently.

B. The notice to taxpayer-electors shall include the following information:

(1) the amount of the increase requested in both dollar amounts and percentage increase;

(2) the customer classifications to which the new rates apply;

(3) the present rates, the proposed rates, the percentage difference between the present and proposed rates for each customer class, the number of customers in each class to which the proposed rates would apply, and, for residential customers, 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--0 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, and 30,000 gallons, and the highest level of consumption of any residential ratepayer using in excess of 30,000 gallons in any billing period in the twelve (12) months prior to preparation of this notice by the utility;

(4) the date on which the district is filing the schedule proposing the new rates;

(5) a statement that the new rates will be subject to review and approval by the New Mexico public regulation commission only if a protest is filed with the commission by twenty-five (25) of the district's taxpayer-electors or five percent (5%) of the district's taxpayer-electors, whichever is less, no later than thirty (30) days after the district has filed with the commission the schedule proposing the new rates, together with a statement of the total number of taxpayer-electors in the district and the number of those required to meet the requirements for a valid protest and a statement in all capital letters that if a hearing is held by the public regulation commission any costs incurred by the district may be included in the district's future rates, following the district's next rate case;

(6) a statement that procedures for protesting proposed rates are set forth in 17.12.810 NMAC, a copy of which can be obtained upon request from or inspected at the main office of the district or the offices of the commission in Santa Fe, and that forms for protests are available from either the district or the commission, and

indicating the telephone numbers and addresses of both the district and the commission;

(7) a statement that any interested person may examine the rate filings, together with any exhibits and related papers that may be filed, at the main office of the district or at the offices of the commission in Santa Fe; and

(8) a statement that further information may be obtained by contacting either the district or the commission.

C. The district shall submit a copy of the form of notice to the commission for approval at least fifteen (15) days prior to giving notice to the taxpayer-electors pursuant to Subsection A above. If the commission does not disapprove the form of notice within five (5) working days of submission of the notice the form will be deemed approved.

D. Failure to comply with this section shall be deemed grounds for rejection of the filing under 17.12.810.9 NMAC proposing new rates.

[6/30/88; 10/21/91; 17.12.810.10 NMAC - Rn, NMPSC Rule 810.5 & A, 7-31-07]

17.12.810.11 PROTESTS BY TAXPAYER-ELECTORS:

A. Rates proposed by a district will be subject to commission review upon the filing with the commission of a protest signed by twenty-five (25) of the taxpayer-electors of the district or five percent (5%) of the taxpayer-electors of the district, whichever is less. Protest petitions shall conform to the requirements of 17.12.810.12 NMAC and must be filed with the commission no later than thirty (30) days after the district files with the commission the schedule proposing new rates. For the purposes of 17.12.810 NMAC all protest petitions filed with the commission relating to the same district filing of proposed new rates shall be deemed a "protest."

B. NMPSC Rules 110.38 through 110.45 and NMPSC Rules 110.45 through 110.142 [now 17.1.2 NMAC] shall be applicable to proceedings commenced upon the filing of a protest under 17.12.810.11 NMAC except to the extent inconsistent with the provisions of 17.12.810 NMAC.

C. For purposes of 17.12.810 NMAC a taxpayer-elector is a person registered to vote in any precinct in the state, who:

(1) is a resident of the district;

(2) is a nonresident of the district who pays, or will be liable for paying, rates, tolls or charges set by the board of the district; or

(3) is a non resident of the district who either has paid or incurred a general tax liability on real property within the district in the twelve months immediately preceding the district's filing of its proposed rates or who is purchasing real property within the district under a real estate contract where a property tax has been paid or incurred on the real property in the twelve months immediately preceding the district's filing of its proposed rates. [6/30/88; 17.12.810.11 NMAC - Rn, NMPSC Rule 810.6 & A, 7-31-07]

17.12.810.12 FORM AND FILING OF PROTEST:

A. Contents of protest: Protests to the commission must be in writing and shall be signed by each of the taxpayer-electors submitting the protest. All protests shall contain the following:

(1) the name of the water and sanitation district whose proposed rates are being protested and identification of the rates being protested; and

(2) the name, mailing address and phone number of each taxpayer-elector protesting the proposed rates and the name, mailing address and phone number of each taxpayer-elector's attorney, if any.

B. All protests shall show a caption for the proceeding, shall include a space for the docket number and shall be titled "protest." Whenever possible protests shall be typed and double-spaced, shall be on paper 8 1/2 inches wide and 11 inches long, and fastened only on the left side.

C. Use of commission form: Protestants may, but are not required to, use the commission's form for protests. The district shall make copies of the commission's form available to its taxpayer-electors 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 is pertinent to the protest and which may aid the commission in its review and hearing of the proposed rates under 17.12.810.15 NMAC.

E. Certificate of service: The protestants shall serve copies of the protest and any accompanying documents on the district 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 must be included in or attached to the protest at the time of filing with the commission.

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

G. Date of filing: If a protest is submitted to the commission before the district has filed the new rates, the protest shall be deemed filed as of the date of the district's filing.
[6/30/88; 17.12.810.12 NMAC - Rn, NMPSC Rule 810.7, 7-31-07]

17.12.810.13 RESPONSE TO PROTEST:

A. No response to the substance of a protest filed with the commission is permitted except by leave of the commission or presiding officer.

B. The district whose proposed rates are being protested may challenge the validity of the protest petition within thirty (30) days of the filing of the petition. The challenge shall be made by motion conforming with the requirements of NMPSC Rule 110 [now 17.1.2 NMAC] and served upon each of the protestants. The motion shall be accompanied by affidavits and a brief in support of the motion which shall also be served upon the protestants.

C. If a protest is challenged by motion of the district made in accordance with Subsection B, the commission or presiding officer may direct the protestants to verify their status as taxpayer-electors of the district or otherwise establish the validity of the protest petition.

D. If the commission or presiding officer determines that the protest petition is invalid, such action will be taken as is deemed appropriate including, but not limited to, the dismissal of the protest.

E. If the commission dismisses, the protest the district's proposed rates may go into effect upon the dismissal, and the district will not be required to file the information and documents described in 17.12.810.14 NMAC.

[6/30/88; 17.12.810.13 NMAC - Rn, NMPSC Rule 810.8, 7-31-07]

17.12.810.14 SUBMISSION OF WRITTEN TESTIMONY AND EXHIBITS BY DISTRICT:

A. Except as provided in Subsection E of 17.12.810.13 NMAC, the district whose proposed rates are being protested shall file the following information and documents with the commission within thirty (30) days of the filing of the protest with the commission or, if a challenge to the protest petition is filed under 17.12.810.13 NMAC and denied, within thirty (30) days of the date the challenge is denied.

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

(a) a copy of the cumulative special district quarterly cash report filed with the department of finance and administration's local government division ("DFA") for the most recent fiscal year ending prior to the date the proposed rates are filed with the commission;

(b) an income statement and balance sheet for the most recent fiscal year ending prior to the date the proposed rates are filed with the commission, if not included in the report filed with DFA; and

(c) the budget upon which the district is basing its proposed rates.

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

(a) whenever the district 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 currently in effect;

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

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

B. The district's testimony and exhibits shall conform to the requirements of NMPSC Rule 110 [now 17.1.2 NMAC].

C. The district shall provide the commission with an original plus ten (10) copies of all documents filed in accordance with the provisions of Subsection A unless the commission or presiding officer directs otherwise.

[6/30/88; 17.12.810.14 NMAC - Rn, NMPSC Rule 810.9, 7-31-07]

17.12.810.15 COMMISSION REVIEW OF RATES:

A. If a protest is in substantial compliance with 17.12.810 NMAC and if no challenge to the protest petition is filed under 17.12.810.13 NMAC or a challenge is filed under 17.12.810.13 NMAC and denied, the commission or presiding officer shall issue an order noticing the proposed rates for hearing. Either this order or subsequent orders shall provide:

(1) for the manner of any further notice to taxpayer-electors, customers or the public, the cost of which shall be borne by the district;

(2) a deadline for the filing of motions to intervene under the requirements of NMPSC Rule 110 [now 17.1.2 NMAC] and directions to the protestants that they will not be considered parties to the proceeding unless they move for and are granted intervenor status, as provided in 17.12.810.16 NMAC;

(3) directions to parties other than the district and, to the extent the commission or presiding officer may deem helpful, to the commission staff to file written testimony and exhibits subsequent to the filing of testimony and exhibits by the district under 17.12.810.14 NMAC; and

(4) the time and place of the hearing.

B. Copies of all orders issued under this section shall be sent to each protestant whether or not that protestant has been granted intervenor status.

[6/30/88; 17.12.810.15 NMAC - Rn, NMPSC Rule 810.10, 7-31-07]

17.12.810.16 STATUS OF PROTESTANTS DURING PROCEEDING: The protestants who file a protest will be deemed parties to any proceeding on a motion made by the district under 17.12.810.13 NMAC but will not be deemed parties to the proceeding to review and hear the proposed rates. Protestants who desire to participate in the proceeding must individually move to intervene pursuant to NMPSC Rule 110 [now 17.1.2 NMAC] and be granted intervenor status under that rule. The commission or presiding officer may limit the number of intervenors in the proceeding to avoid unnecessary delay, duplication, or expense.

[6/30/88; 17.12.810.16 NMAC - Rn, NMPSC Rule 810.11, 7-31-07]

HISTORY OF 17.12.810 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.47 (Interim), Procedures for Review of Rates Proposed by Water and Sanitation Districts, filed 9/13/85.

G.O. No. 47, Procedures for Review of Rates Proposed by Water and Sanitation District's Attachment "1", filed 2/12/86.

NMPSC Rule 810, Procedures for Review of Rates Proposed by Water and Sanitation Districts, filed 6/30/88.

History of Repealed Material. [RESERVED]

Other History.

NMPSC Rule 810, Procedures for Review of Rates Proposed by Water and Sanitation Districts (filed 6/30/88) was renumbered, reformatted, amended and replaced by 17.12.810 NMAC, Procedures for Review of Rates Proposed by Water and Sanitation Districts, effective 7/31/2007.