



NEW MEXICO
**PUBLIC REGULATION
COMMISSION**

PRCe360

INTERIM WORKING RULES

January 26, 2026

AS STATED in the New Mexico Public Regulation Commission's ("Commission") Administrative Order Regarding PRCE360 in Docket 26-00007-UT, the implementation of the Commission's new electronic filings system, PRCE360, renders several processes and procedures outdated and obsolete.¹ The Commission found it necessary to draft and make available to parties, stakeholders, and any other filers interim working rules and procedures for PRCE360. Parties, stakeholders, and any other filers before the Commission have been ordered to adhere to these rules and procedures.

These working rules apply to all regulated entities, stakeholders, parties, public commenters, and all other participants in Commission dockets. These interim working rules shall take effect on January 26, 2026, and shall remain in effect until the Commission adopts rules that incorporate the necessary changes through a formal rulemaking proceeding.² These rules and procedures are subject to change based on ongoing user testing and stakeholder feedback. Filers should monitor the Commission's website and Docket No. 26-00007-UT for notice regarding changes to these rules and procedures.

For purposes of clarity and transparency, the Commission summarizes how the interim rule differs from each section of the Commission's Rules of Procedure and provides an explanation for each change. For readers who prefer a visual representation of those differences, a redline and clean draft reflecting those changes as compared to the Commission's existing Rules of Procedure are attached to this document.

¹ Docket 26-00007-UT, Administrative Order Regarding PRCE360 (Jan. 21, 2026).

² See Docket 23-00119-UT captioned In the Matter of a Commission Rulemaking To Amend Rule 1.2.2 NMAC Entitled – Public Regulation Commission Rules of Procedure.

SUMMARY OF CHANGES

1.2.2.7 DEFINITIONS:

Date and Time of Filing: means the date and time that the filers submit the electronic filing to PRCe360 for filing, notwithstanding rejection of the attempted filing by the chief clerk or chief clerk designee. For in-person filing and for filing request received in the mail, the date and time the document is scanned and submitted for filing on PRCe360.

Explanation of Changes:

- The system was designed to mimic the New Mexico district court system, which allows filers to submit filings without requiring approval from a court clerk. PRCe360 will have the same capabilities.
- On the rare occasion that the Commission receives an in-person filing request or a filing by mail, the document must still be processed through PRCe360, and the date and time of filing will mirror those of electronic filings. Records staff will not have the capability to edit the date and time a document is submitted to PRCe360. Accordingly, the filing date and time will be the same as if the document had been submitted electronically by the filer.

Docket: means a distinct file containing documents pertaining to the same or related matter.

Explanation of Changes:

- Every filing within PRCe360 will be attached to a docket number. Accordingly, it became necessary to define “docket”

Formal Proceeding: means structured legal processes initiated by an application, formal complaint, petition, motion, or order of the commission excluding rulemaking proceedings prior to the issuance of a notice of proposed rulemaking, and as otherwise clarified by commission order.

Explanation of Changes:

- As every filing within PRCe360 will be assigned a docket number, which has been used synonymously with case number, “formal proceedings” needed a new definition to that is not linked to whether a matter is assigned to a docket number.

Observer: means a person or entity who is not a party to a formal proceeding, commission staff, or otherwise connected to a docket, but who has signed up to receive notice of filings in a given docket.

Explanation of Changes:

- PRCe360 will allow persons or entities who are not parties to a proceeding to follow a docket by receiving notice when a filing is submitted. PRCe360 designates these interested persons or entities as “observers” or “watchers.” This change is intended to define a role assigned within PRCe360.

PRCe360: means the commission’s electronic file management system.

Explanation of Changes:

- Defining PRCe360 provides clarity for the purpose of the rule

“Service Notification” tab means a tab within each docket that lists all contacts that will receive automatic filing notifications once a filing request is accepted into the docket. The list is

automatically generated based on the information provided when the docket is created and the contact information that entities upload to PRCe360. The list will later be updated as individuals and entities are granted party status, Commission staff are assigned to the docket, and observers opt in to receive notifications of filing submissions for that docket.

Explanation of Changes:

- Service will be made automatically through PRCe360, and the system provides service to those parties, entities, and individuals listed in the “service notification” tab. To assist filers in understanding who will receive notice of a filing, it was necessary to direct filers to this tab in the interim rules.

Watcher- see “observer.”

Explanation of Changes:

- Watcher and observer are used interchangeably and accordingly need clarification

1.2.2.8 GENERAL PROVISIONS:

A. Public records: The commission’s policy is to allow full and complete access to public records in accordance with the Inspections of Public Records Act, Section 14-2-1 NMAC 1978 et seq. Except when the commission or presiding officer directs otherwise, all pleadings, orders, communications, exhibits, or other documents shall become matters of public records as of the day and time the chief clerk or chief clerk designee accepts the document for filing.

Explanation of Changes:

- Documents will not be accessible until the chief clerk or designee accepts the filing. This change in the system is reflected in this revision.

C.(1) Filing fees for specific document are: Applications, petitions, formal complaints, and all other filings requiring payment of a fee must pay a fee of \$25.00 and this fee is required at the time of filing;

Explanation of Changes:

- Because every filing in PRCe360 will be assigned a docket number, clarification was needed to explain that a filing fee will not be required for every filing that requires a new docket number, but only for those filings for which a fee is required by statute or rule.

C(2)(b), (c): (b) the entity electronically filing documents shall promptly physically mail the check or money order to NMPRC, (attn: Records Bureau, P.O. Box 1269, Santa Fe, NM 87504-1269) along with a copy of the cover page for the document that the fee is associated with and the docket number given to that document at the time of filing to assist the chief clerk or designee with making sure the filing fee is properly applied;

(c) after receipt of the electronically submitted document and the attached scan or photograph of the filing fee, the records chief clerk or designee will approve the request for filing in PRCe360 and PRCe360 will issue a docket number.

Explanation of Changes:

- Docket numbers will be issued by PRCe360 at the time chief clerk or designee approves a docket creation request. This change is reflected in this rule

C(4) No pleading or document will be accepted without payment of required fees the filing party, unless the commission or presiding officer directs otherwise.

Explanation of Changes:

- Copies will no longer be required to be filed in PRCe360.

F. Dockets The commission shall maintain a docket of all proceedings and all publicly filed documents. Each new proceeding shall be assigned an appropriate docket number. Each publicly filed document shall be placed in either its own docket or in a docket with similar documents, as appropriate.

(1) Dockets are open to public inspection, unless the commission otherwise orders.

(2) Pending and closed dockets:

(a) PRCe360 shall list whether a docket is active or closed.

(b) The commission shall close each pending docket at the conclusion of the proceeding or upon determining that no further commission action is necessary in the docket.

(c) The only filings permitted to be filed into a closed docket will be compliance filings in accordance with commission order and Rule 1.2.2.37(I) NMAC.

(d) New filings, other than compliance filings, shall not be filed into a closed docket. To file into a closed docket, a motion to reopen the docket must be submitted into a new docket, and the movant must wait for a decision from the commission.

Explanation of Changes:

- Because every filing in PRCe360 will be assigned a docket number, clarification regarding permissible uses of a docket is necessary.
- As the number of dockets will increase, a process for closing inactive dockets was necessary.
- PRCe360 will not allow filing submissions, other than compliance filings, to be submitted into a closed docket. An explanation of that limitation was necessary.
- A process was also needed to establish what is to be done when a filer wishes to submit a filing other than a compliance filing into a closed docket.

G. Compliance Dockets and filings: Each year, regulated entities subject to rule, annual reporting, fee submission, or other recurring compliance requirements shall open a docket for the purpose of submitting such filings. Compliance dockets shall be used to submit rule compliance filings, annual reporting requirements, and fee submissions. Compliance filings arising from a commission order issued in a specific docket, shall be filed within those specific dockets pursuant to 1.2.2.37(I)NMAC.

(1) Compliance Dockets: When opening a docket to accommodate a company's compliance filings other than those compliance filings associated with an order of the Commission, the docket captions shall read "IN THE MATTER OF [COMPANY NAME] COMPLIANCE FILINGS FOR [YEAR]."

(2) Document Name Conventions: Each document shall clearly identify in its title the citation to the rule number that the report satisfies (for example, "Rule 440"). If the document is an "Annual Report," that is an acceptable title.

Explanation of Changes:

- Since every document filed must be linked to a docket and docket number, it became necessary to establish a location for regularly filed documents that have not previously been attached to a docket.

- These filing and naming conventions are designed to make it easier to locate specific documents.

J. Current information required: Every party, stakeholder, regulated entity, and individual or entity wishing to participate in or receive notice of Commission dockets shall maintain a valid, working, and regularly checked email address on PRCe360. The commission is not responsible for unread emails sent from or unread notifications within PRCe360. The language was revised to require submission of this information through PRCe360.

Explanation of Changes:

- The language was revised to require submission of this information through PRCe360.

L. Classification of parties: Parties to proceedings before the commission shall be classified as applicants, petitioners, complainants, respondents, or intervenors. Observers are not parties to proceedings.

Explanation of Changes:

- Added clarification regarding the newly created role.

M. Technical difficulties: If PRCe360 is not operating through no fault of the filer, the Commission may apply leniency when determining the appropriate responsive action.

Explanation of Changes:

- Added language to provide comfort to filers.

1.2.2.10 FILING AND SERVICE

A. Service and contact emails: All parties, stakeholders, regulated entities, and docket participants other than commenters, must register with PRCe360 and maintain a valid, working, and regularly checked email address on PRCe360. The commission shall not be responsible for inoperable email addresses or unread emails sent from PRCe360 or notifications sent within PRCe360.

Explanation of Changes:

- Clarifies that service will be done via PRCe360 and ensures that all parties, stakeholders, regulated entities, and docket participants provide the information necessary to effectuate service.

B(2) Except as otherwise provided by this rule or order of the commission or presiding officer, service shall be made by electronic transmission via PRCe360.

Explanation of Changes:

- Further clarification.

B(4),(5) (4) Upon submitting a document for electronic filing in a new docket, the filer shall confirm that all parties or entities required to receive service of the filing are included as parties to the docket.

(5) Upon submitting a document for electronic filing in an existing docket, the filer shall confirm that all other parties in the proceeding, persons who have pending motions to intervene, staff, and as otherwise required by commission rule or order required to receive service of the filing are included in the “Service Notification” tab of the docket. Service of

pleadings, orders, notices, and documents shall be made upon all persons included on the “Service Notification” tab.

Explanation of Changes:

- Since service will be accomplished through PRCe360, it is necessary to explain filers' responsibilities under these procedures.
- Because the persons and entities provided service depends on what is submitted by the filer, it is necessary to explain how PRCe360 determines who should receive service.
- Because service will be done through PRCe360, certificates of service are no longer necessary and reference to certificates of service are no longer necessary.

C. Date stamps on filed documents and pleadings:

(1) **Electronic filings:** The date and time a filing is submitted to PRCe360, notwithstanding a rejection from the chief clerk or chief clerk designee of the attempted filing, shall serve as the date and time of filing.

(2) **Filing by mail:** The date and time a filing is scanned and submitted to PRCe360 for filing, notwithstanding a rejection from the chief clerk or chief clerk designee of the attempted filing, shall serve as the date and time of filing.

(3) **Filing in person:** For filings made in person, the date and time of filing shall be the date the chief clerk or chief clerk designee scans and uploads the document to PRCe360.

Explanation of Changes:

- Since filings will be done through PRCe360, explanations of how to file through the Commission's previous system have been removed.
- Date stamp and filed document rules mimic Rule 1.2.2.7 differences discussed above.

D. Filings: (1) Any complete, correctly submitted document, order, notice, or pleading will be accepted by the chief clerk or designee for filing.

Explanation of Changes:

- Clarification that the chief clerk or designee *accepts* filings and is no longer performing the filings.

D. Filings: (2) All filed documents shall be made available, upon reasonable demand, for inspection by the chief clerk or designee, the public, other parties, or the commission.

(3) The filing party has the responsibility to make sure that the filed document or pleading is complete and accurate.

(4) The filer is responsible for ensuring the filing is correctly designated as confidential or non-confidential.

(5) For documents and pleadings designated non-confidential at the time of filing, the filer is responsible for ensuring that all filed documents and pleadings do not contain, or have properly redacted, any confidential information or “protected personal identifier information” as defined by 1-079 NMRA and Section 14-2-6 NMSA 1978.

(6) The filing party shall ensure that all filed documents and pleadings designated as non-confidential at the time of filing do not contain, or have properly redacted, any protected information that is prohibited from disclosure by any state or federal law or regulation.

(7) For a document that contains redacted confidential information or personal protective identifier information, the filer shall also upload an unredacted confidential version to PRCe360. That confidential version shall be properly designated as confidential at the time of filing.

(8) A filing party who improperly designates a document or pleading as non-confidential and that document or pleading contains protected personal identifier information or information prohibited from disclosure by state or federal law or regulation, shall be solely liable for any damages that result from filing such information with the commission.

Explanation of Changes:

- With the implementation of PRCe360, the agency is shifting to fully digital storage of documents and will no longer maintain most, if any, physical copies. Accordingly, it became necessary to revise the Commission's procedures for handling confidential documents.
- PRCe360 will have the capability to restrict access to confidential documents from persons or entities that have not entered into a confidentiality agreement
- These rules establish filers' responsibilities for filing confidential or non-confidential documents.

E. Electronic filing:

(1) Electronic filing required:

- (a) all regulated entities are required to make electronic filings via PRCe360;
- (b) all persons should make electronic filings via PRCe360, if they have the ability to do so; and
- (c) only persons who lack the ability to make electronic filings are permitted to make physical filings;

(2) Documents shall be submitted to PRCe360 for electronic filing.

(6) PRCe360 supports files up to 5,000 MB in size. Any filing that exceeds this maximum file size shall be divided into multiple documents.

Explanation of Changes:

- These changes reestablish that PRCe360 is the agency's case management system.
- Any description as to how to file under the commission's previous case management system has been removed.
- The Commission's filing size capabilities have been updated.

E. Electronic filing:

(13) Confidential materials are not an exception to the electronic filing requirement. Confidential materials are subject to the terms of any applicable protective order. Confidential materials shall be designated as confidential at the time of submitting the confidential material for filing in PRCe360.

Explanation of Changes:

- With the implementation of PRCe360, the agency is shifting to fully digital storage of documents and will no longer maintain most, if any, physical copies. Accordingly, all documents, even those that are confidential will be stored in PRCe360.

F. Rejection: (2) If rejected, a notification of rejection identifying the deficiencies will be sent via PRCe360. However, a copy of the rejected documents shall be retained within PRCe360 as a public record. Acceptance of a pleading or document for filing is not a determination that the pleading or document complies with all requirements of the commission or presiding officer and is not a waiver of such requirements.

Explanation of Changes:

- Updated to explain that a rejection notification and explanation will be sent via PRCe360.

1.2.2.15 FORMAL COMPLAINTS

Formal complaints shall conform to the requirements of this rule governing pleadings, except that the requirements of this rule shall be liberally construed with respect to *pro se* parties. A formal complaint shall be accompanied by the \$25.00 filing fee required in Subsection B of Section 62-13-2 NMSA 1978. Pursuant to Section 62-13-2.1 NMSA 1978, the commission may order that the filing fee be refunded if the commission dismisses the complaint for lack of probable cause and determines that the complainant filed the complaint in good faith.

The filing of a formal complaint shall commence a formal proceeding.

A formal complaint shall allege that a regulated entity has violated a law, rule, order, tariff, certificate of public convenience and necessity, or operating authority promulgated or enforced by the commission.

A formal complaint may be filed via PRCe360.

A. Contents: A formal complaint shall contain:

- (1) a clear and concise statement of the relief sought;
- (2) a concise and explicit statement of the facts which the complainant alleges show a violation;
- (3) a statement of any laws, rules, orders, tariffs, certificates of public convenience and necessity, or operating authorities alleged to have been violated;
- (4) the exact legal and “doing business as” name, mailing address, and telephone number of the complainant and his or her attorney, if any;
- (5) the exact legal name, mailing address, and telephone number of the respondent, if known; and
- (6) confirmation of the following statement signed by the complainant: “The factual allegations in the complaint are true and correct to the best of my knowledge and belief.”

Explanation of Changes:

- Updated to express that formal complaints must be submitted via PRCe360
- Updated to indicate that the affirmations must be made via the form in PRCe360.

1.2.2.23 INTERVENORS AND COMMENTERS:

F. Commenters: Commenters shall be entitled to make an oral statement or submit a written statement for the record, but such statement shall not be considered by the commission as evidence. All interested persons are afforded the opportunity to have input into cases dockets which affect them. The commission encourages ratepayer input and the purpose of this rule is to facilitate participation. However, commenters are not parties and shall not have the right to introduce evidence, to examine or cross-examine witnesses, to receive copies of confidential

pleadings and documents, to appeal from any decisions or orders, or to otherwise participate in the proceeding other than making their comments.

Explanation of Changes:

- As confidential documents will now be uploaded to PRCe360 and notice of docket filings has become easier to receive, it is necessary to clarify the restrictions governing access to confidential documents
- Clarifies the role of commenters within PRCe360 and assists commenters in deciding whether they wish to become intervenors rather than participate solely as commenters.

1.2.2.25 DISCOVERY:

B. Discovery procedures: Techniques of pre-hearing discovery permitted in state civil actions, such as interrogatories, requests for admissions, depositions, and requests for production of documents may be employed by staff or by any party. The parties are not required to file certificates of service for discovery requests and responses. If difficulties arise in obtaining discovery, staff or any party may seek relief from the commission or the presiding officer by filing a proper motion. Upon experiencing any difficulties in obtaining discovery, staff and the parties may seek relief from the commission or presiding officer by filing a proper motion. Nothing in this rule shall preclude the commission or the presiding officer from obtaining information by order or preclude staff from obtaining information in any lawful manner.

Explanation of Changes:

- Within each docket, PRCe360 will have a single tab for pleadings. To keep the pleadings tab organized, and as certificates of service will no longer be a regular component within PRCe360, certificates of service confirming that discovery has been completed are unnecessary.

J. Motions to compel or for sanctions:

(1) Staff or a party may move for an order compelling discovery or for sanctions for failure to comply with an order directing that discovery be had as provided in the New Mexico rules of civil procedure for the district courts. In addition to the sanctions provided in those rules, the commission may impose the penalties set forth in applicable law for failure to comply with an order of the commission or presiding officer.

(2) Any motion for an order compelling discovery shall include copies or complete restatements of the discovery requests or notices to which the movant seeks compelled responses or related relief, along with copies of any responses or objections to the subject discovery requests or notices, and any other pertinent materials.

Explanation of Changes:

- Given the shift to fully electronic filing and service, language requiring the provision of copies has been removed.

1.2.2.32 PUBLIC HEARINGS:

A. Rights of staff, parties, and commenters:

(2) commenters shall be entitled to make an oral or written statement for the record, but such statement shall not be considered by the commission as evidence. Commenters are not parties and shall not have the right to introduce evidence or examine or cross-examine witnesses or to otherwise participate in the proceeding other than by making their comments.

Explanation of Changes:

- Given that non-parties can now more easily receive notice of filings, language prohibiting access to filings has been removed.

E. Service of notice: Following the entry of appearances at the public hearing, all notices, pleadings, and orders thereafter served shall be served upon such attorneys or parties of record as defined in this rule entering an appearance, and such service shall be considered valid service for all purposes upon the party represented. Persons who have not appeared as parties may add their contact information to the “Service Notification” tab of any docket to receive notice of filings made into that docket.

Explanation of Changes:

- Explained how an observer may sign up to receive notice of filing in a docket.

1.2.2.34 TRANSCRIPTS:

B. Copies of transcripts: The commission shall file in PRCe360 a .pdf version of any transcript it receives on the date the transcript is created or the date it is filed with the commission or the presiding officer.

Explanation of Changes:

- Updated to reflect the name of the new case management system

1.2.2.35 EVIDENCE:

J. Exhibits:

(7) Copies of exhibits:

(a) When exhibits not attached to pleadings, as required by this rule, are offered in evidence, a copy of the original shall be furnished to the reporter.

Explanation of Changes:

- Given the shift to fully electronic filing, language referencing original documents has been removed.

1.2.2.36 PROPOSED FINDINGS AND CONCLUSIONS; AND BRIEF

D. Filing and service of proposed orders and briefs: All proposed orders and briefs shall be filed.

Explanation of Changes:

- Given the shift to fully electronic filing, language referencing original and copies of documents has been removed.
- Removed language requiring a certificate of service.

1.2.2.37 COMMISSION ORDERS; EXCEPTIONS; AND REHEARINGS:

A. Commission orders:

(1) The commission will issue its order in writing in every proceeding. The order shall contain separately stated findings of fact and, in the commission’s discretion, conclusions of law, or combined findings and conclusions. The commission may, in its discretion, issue an oral decision prior to the issuance of its written order. The timeliness of applications for rehearing and notices of appeal shall be calculated from the date the commission issues its written order. The date a written order is issued is the date when the written order, signed under the seal of the commission, has been filed.

Explanation of Changes:

- Within PRCe360 the Commission will be able to file orders without requesting acceptance from the chief clerk or designees.
- Any language requiring copies has been removed.

I. Docketing of submissions in compliance with, and motions for variances from, final orders:

(1) Submissions in compliance with, and motions for variances from, commission final orders shall be filed under the same case number as that of the final order. Motions for variances or requests for extension of times to meet compliance provisions contained in final orders of the commission shall be filed in a new docket and shall be served on staff and all parties to the underlying case.

Explanation of Changes:

- PRCe360 will not allow filing submissions, other than compliance filings, to be submitted into a closed docket. An explanation of that limitation was necessary.
- A process was needed to establish what is to be done when a filer wishes to submit a filing other than a compliance filing into a closed docket.

ATTACHMENT 1- PRCe360 WORKING RULES IN CONTEXT OF COMMISSION RULES
OF PROCEDURE
(REDLINE)

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 2 ADMINISTRATIVE PROCEDURES
PART 2 PUBLIC REGULATION COMMISSION RULES OF PROCEDURE

1.2.2.7 DEFINITIONS: In addition to the definitions contained in Sections 3-29-2, 8-8-2, 53-4-1, 53-6-3, 53-8-2, 53-11-2, 53-19-2, 53-20-2, 60-2C-2, 62-3-3, 62-14-2, 63-9-2, 63-9A-3, 63-9H-3, 65-2A-3, 65-6-2, and 70-3-12 NMSA 1978, as used in this rule:

D. Definitions beginning with “D”:

(1) **date and time of filing** means, for an electronic filing, the date and time that the filers submits the electronic filing to PRCe360 for filing, notwithstanding rejection of the attempted filing by the chief clerk or chief clerk designee. For in-person filing and for filing requests received in the mail, the date and time the document is scanned and submitted for filing on PRCe360, on the filing transmittal email delivered to the records bureau email address; electronic filings may be deemed filed at a later date and time than the time on the filing transmittal email in accordance with the procedures set forth in Paragraph (1) of Subsection C of 1.2.2.10 NMAC; for a hard copy filing, the date and time of filing is the date of the date stamp affixed by the records bureau in accordance with Paragraph (2) of Subsection C 1.2.2.10 NMAC;

(2) **docket** means a distinct file containing documents pertaining to the same or related matter.

(23) **document** means, except as otherwise used in the provisions of this rule governing discovery, any submission in a formal proceeding, including pleadings, or which is required to be filed by commission rule or order outside a formal proceeding.

E. Definitions beginning with “E”:

(1) **electronic** means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic, or similar capabilities;

(2) **electronic signature** means a full, printed name of the person responsible for the electronic version of the document by scanned or other electronic reproduction of the signature or by typing in the signature line the notation “/s/” followed by the name of the person signing the original document and including the email address of the person signing;

(3) **electronic filing** means the filing procedures for set forth in 1.2.2.10 NMAC.

F. Definitions beginning with “F”:

(1) **file, filed, or filing** means filing by electronic mail to the records bureau, email address, unless otherwise permitted by Subsections C and D of 1.2.2.10 NMAC, and acceptance by the chief clerk or the clerk’s designee;

(2) **fire marshal-regulated entities** means persons whose activities are regulated by the provisions of Sections 59A-52-1 through 59A-52-25 NMSA 1978, or the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978; this Paragraph shall be effective until June 30, 2021 at which time it shall be deleted;

(3) **formal proceedings** means structured legal processes initiated by an application, formal complaint, petition, motion, or order of the commission excluding rulemaking proceedings prior to the issuance of a notice of proposed rulemaking, and as otherwise clarified by commission order. all matters other than rulemakings to which case numbers are assigned and which are entered on the commission’s docket for decision by the commission.

G. Definitions beginning with “G”: [RESERVED]

H. Definitions beginning with “H”: hearing examiner means a person employed by the commission as a hearing examiner, or a commissioner or advisory staff member designated by the commission as the hearing examiner, to conduct any hearing or investigation which the commission is authorized to conduct.

I. Definitions beginning with “I”:

(1) **informal proceedings** means any matters handled outside a formal proceeding by the commission or its staff, including informal complaints

(2) **intervenor** means a person permitted by the commission or presiding officer to participate as a party in a proceeding pursuant to 1.2.2.23 NMAC.

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”: [RESERVED]

ATTACHMENT 1- PRCe360 WORKING RULES IN CONTEXT OF COMMISSION RULES
OF PROCEDURE
(REDLINE)

M. Definitions beginning with “M”: **mediator** means a person assigned by the commission to facilitate resolution of disputes pending informally or formally before the commission by assisting parties in their communications and meetings, identification and exploration of issues, and development of bases for agreements.

N. Definitions beginning with “N”: [RESERVED]

O. Definitions beginning with “O”: **observer** means a person or entity who is not a party to a formal proceeding, commission staff, or otherwise connected to a docket, but who has signed up to receive notice of filings in a given docket
[RESERVED]

P. Definitions beginning with “P”:

(1) **party** means a person who initiates a commission proceeding by filing an application, petition, or complaint, or whom the commission or presiding officer names as a respondent, or whom the commission or presiding officer grants leave to intervene;
unless the context indicates otherwise, the term party may also refer to counsel of record for a party;
staff shall have the status of a party without being required to file a motion to intervene but shall not have a right to appeal;

(2) **petitioner** means any party on whose behalf a petition is made for approval, determination, consent, certification, or authorization of the commission;

(3) **pleading** means an application, petition, complaint, answer, motion, response to motion, exception, or other formal written statement filed in any formal proceeding;

(4) **PRCe360** means the commission’s electronic file management system.

(4) **presiding officer** means a commissioner taking such actions as are permitted under 1.2.2.29 NMAC and 1.2.2.30 NMAC or the hearing examiner designated to preside over a proceeding

(5) **proceeding** means a formal proceeding

(6) **public hearing** means a portion of a proceeding, open to the public and conducted by the commission or presiding officer, that affords an opportunity to present such evidence, argument, or other appropriate matters as the commission or presiding officer deems relevant or material to the issues.

Q. Definitions beginning with “Q.”: [RESERVED]

R. Definitions beginning with “R”:

(1) **records bureau email address** means prc.records@state.nm.us or another records bureau email address, as set out on the commission’s webpage;

(2) **regular business hours** means 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m., prevailing mountain time, Monday through Friday, excluding State holidays;

(3) **regulated entity** means a utility, telecommunications provider, motor carrier fire marshal-regulated entity (to be deleted on June 30, 2021), railroad, or owner or operator of gas and hazardous liquid pipelines and underground facilities or one-call notification system subject to the jurisdiction of the commission;

(4) **respondent** means any party against whom any complaint is filed or any party subject to the jurisdiction of the commission to whom the commission issues notice instituting a proceeding, investigation, or inquiry of the commission.

S. Definitions beginning with “S”:

(1) **staff** means all persons, other than hearing examiners and advisory staff, employed by the commission; ~~and~~

(2) **“Service Notification” tab** means a tab within each docket that lists all contacts that will receive automatic filing notifications once a filing request is accepted into the docket. The list is automatically generated based on the information provided when the docket is created and the contact information that entities upload to PRCe360. The list will later be updated as individuals and entities are granted party status. Commission staff are assigned to the docket, and observers opt in to receive notifications of filing submissions for that docket.

T. Definitions beginning with “T”: **telecommunications provider** shall have the meaning given in Paragraph (2) of Subsection A of Section 63-7-23 NMSA 1978.

U. Definitions beginning with “U”: **unsworn affirmation** means an unsworn affirmation in lieu of a notarization pursuant to Paragraph (3) of Subsection A of 1.2.2.35 NMAC.

V. Definitions beginning with “V”: [RESERVED]

W. Definitions beginning with “W”: **watcher-** see “observer.” [RESERVED]

X. Definitions beginning with “X”: [RESERVED]

Y. Definitions beginning with “Y”: [RESERVED]

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Z. Definitions beginning with “Z”: [RESERVED]

~~[1.2.2.9 NMAC – Rp, 1.2.2.7 NMAC, XX/XX/2025]~~

1.2.2.8 GENERAL PROVISIONS:

A. Public records: The commission’s policy is to allow full and complete access to public records in accordance with the Inspections of Public Records Act, Section 14-2-1 NMAC 1978 *et seq.* Except when the commission or presiding officer directs otherwise, all pleadings, orders, communications, exhibits, or other documents shall become matters of public records as of the day and time ~~the chief clerk or chief clerk designee accepts the document for filing of their filing.~~ The commission shall permit any person to examine any such public record, unless subject to a protective order, or otherwise protectable under the Inspections of Public Records Act. Under no circumstances will any person be allowed to take original commission records from commission premises. Arrangements to examine records or to obtain copies of records must be made through the chief clerk or the chief clerk’s designee.

C. Filing fees:

(1) Filing fees for specific documents are:

(a) Applications, petitions, formal complaints, and all other filings requiring ~~payment of a fee must pay a new Case No.; a fee of \$25.00 each applies, and this fee is required at the time of filings;~~

(b) Advice Notices: a fee of \$1.00 per each proposed rate, rule, or form applies, and is required at time of filing.

(2) Electronically filed documents that are required by law to be submitted with a filing fee:

(a) the entity electronically filing documents that require a filing fee shall include as an attachment to the filing transmittal email a scan (PDF) or photograph (JPEG) of the filing fee (check or money order made payable to the commission) to show proof of payment at time of filing. The scan or photograph of the check or money order shall be a separate electronic document from the document to be filed;

(b) the entity electronically filing documents shall promptly physically mail the check or money order to NMPRC, (attn: Records Bureau, P.O. Box 1269, Santa Fe, NM 87504-1269) along with a copy of the cover page for the document that the fee is associated with ~~and the docket number given to that document at the time of filing~~ to assist the chief clerk or designee with making sure the filing fee is properly applied;

(c) after receipt of the electronically ~~submitted-filed~~ document and the attached scan or photograph of the filing fee, the records chief clerk or designee will ~~approve the request for filing in PRCe360 and PRCe360 will issue a easedocket numbere -(if applicable) and will post the document into e-docket.~~

(3) All application fees or other charges required by law to be paid along with the filing of a document shall be paid to the commission by check or money order at the time of filing a hard copy by regular mail or in-person at the commission offices.

(4) No pleading or document will be accepted without payment of required fees ~~and submission of the required number of copies by~~ the filing party, unless the commission or presiding officer directs otherwise.

(5) Except as otherwise provided by Sections 53-2-1, 53-8-87 and 65-2A-36 NMSA 1978, and 12.3.1 NMAC, the fee for paper copies of papers, testimony, or records, shall be the charge set by the commission’s inspection of public records policy posted on the commission’s website.

(6) The fee for copies of papers, testimony, or records on electronic storage media shall be the charge set by the commission’s inspection of public records policy posted on the commission’s website.

(7) The fee for cassette or CD-ROM copies of audio recordings of informal and formal proceedings, if available, shall be the charge set by the commission’s inspection of public records policy posted on the commission’s website.

(8) For paper copies of pleadings or documents that are not retrievable on electronic storage media maintained by the commission, the chief clerk or chief clerk’s designee may charge in accordance with the commission’s inspection of public records policy posted on the commission’s website.

D. Waiver of rules: Upon the commission’s or presiding officer’s own motion, or by motion of the staff or any party showing good cause and such notice as the commission or presiding officer may deem proper, the commission or presiding officer may waive the application of any procedural provision of this rule, except when precluded by law.

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E. Construction and amendment: These rules, and any rules incorporated by reference, shall be so construed so as to secure just and speedy determination of the issues.

F. Dockets:

The commission shall maintain a docket of all proceedings and all publicly filed documents, and e Each new proceeding shall be assigned an appropriate docket number. Each publicly filed document shall be placed in either its own docket or in a docket with similar documents, as appropriate.

~~(1)~~

(1) ~~The d~~Dockets are is open to public inspection, unless the commission otherwise orders.

(2) ~~Pending and closed dockets:~~

(a) PRCe360 shall list whether a docket is active or closed.

(b) The commission shall close each pending docket at the conclusion of the proceeding or upon determining that no further commission action is necessary in the docket.

(c) The only filings permitted to be filed into a closed docket will be compliance filings in accordance with commission order and Rule 1.2.2.37(I) NMAC.

(d) New filings, other than compliance filings, shall not be filed into a closed docket. To file into a closed docket, a motion to reopen the docket must be submitted into a new docket, and the movant must wait for a decision from the commission.

G. Compliance Dockets and filings: Each year, regulated entities subject to rule, annual reporting, fee submission, or other recurring compliance requirements shall open a docket for the purpose of submitting such filings. Compliance dockets shall be used to submit rule compliance filings, annual reporting requirements, and fee submissions. Compliance filings arising from a commission order issued in a specific docket, shall be filed within those specific dockets pursuant to 1.2.2.37(I)NMAC.

(1) **Compliance Dockets:** When opening a docket to accommodate a company's compliance filings other than those compliance filings associated with an order of the Commission, the docket captions shall read "IN THE MATTER OF [COMPANY NAME] COMPLIANCE FILINGS FOR [YEAR]."

(2) **Document Name Conventions:** Each document shall clearly identify in its title the citation to the rule number that the report satisfies (for example, "Rule 440"). If the document is an "Annual Report," that is an acceptable title.

~~G.H.~~ **Calendar of public hearings:**

The commission shall maintain a public hearing calendar.

The public hearing calendar is open to public inspection.

H.I. Identification of communications: Communications shall contain the name, address, e-mail address if available, and telephone number of the communicator and an appropriate reference to any commission cases pertaining to the subject of the communication.

J. Current information required: Every party, stakeholder, regulated entity, and individual or entity wishing to participate in or receive notice of Commission dockets shall maintain a valid, working, and regularly checked email address on PRCe360. The commission is not responsible for unread emails sent from or unread notifications within PRCe360. In all cases, persons shall keep the information required by Subsection H of this section current, and when updating the information, shall indicate the case numbers of all docketed cases in which the person is a party or otherwise included on the certificate of service.

J. Computation of time: The time within which an act is to be done as provided in any rule or order promulgated by the commission, or order issued by the presiding officer, when expressed in days, shall be computed by excluding the day of the act or event from which the time begins to run and including the last, except that if the last day be Saturday, Sunday, or a legal holiday, the act may be done in the next succeeding business day.

K. Extensions of time:

Except as otherwise provided by law, the time by which any person is required or allowed to act under any statute, rule or order may be extended by the commission or presiding officer for good cause, upon a motion made before the expiration of the period prescribed or previously extended.

The filing of the motion does not toll the running of the time period prescribed.

L. Classification of parties: Parties to proceedings before the commission shall be classified as applicants, petitioners, complainants, respondents, or intervenors. Observers are not parties to proceedings.

M. Technical difficulties: If PRCe360 is not operating through no fault of the filer, the Commission may apply leniency when determining the appropriate responsive action.
~~[1.2.2.9 NMAC — Rp, 1.2.2.8 NMAC, XX/XX/2025]~~

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1.2.2.10 FILING AND SERVICE:

A. Service and contact emails:

All parties, stakeholders, regulated entities, and docket participants other than commenters, must register with PRCe360 and maintain a valid, working, and regularly checked email address on PRCe360. The commission shall not be responsible for inoperable email addresses or unread emails sent from PRCe360 or notifications sent within PRCe360.

~~All regulated entities shall, at all times, keep a current email on file with the commission's chief clerk or designee at which they can receive service of pleadings, process, and other communication from the commission.~~

~~All participants in open dockets shall provide a current email to the commission's chief clerk or designee at which they can receive service of pleadings, process, and other communication from the commission, unless they do not have access to email.~~

B. Service generally:

(1) Except as otherwise provided by this rule or order of the commission or presiding officer, all pleadings, orders, notices, and documents filed in a proceeding shall be promptly served upon those persons described in Paragraph (4) of Subsection B of 1.2.2.10 NMAC by the person filing the orders, notices, pleadings, or documents.

(2) Except as otherwise provided by this rule or order of the commission or presiding officer, service shall be made by electronic filings shall be made by electronic transmission via PRCe360.

~~(3)---~~

If a person does not have the ability to serve and be served electronically, service on and by that person shall be made by:

depositing the pleading, order, notice, or document in the U.S. mail (postage prepaid) using first class or express mail;

by delivering the pleading, order, notice, or document to a commercial courier service for delivery; hand delivery.

The date of service shall be the date of deposit in the mail, delivery to a commercial courier service, hand delivery, or electronic transmission.

(24) Upon submitting a document for electronic filing in a new docket, the filer shall confirm that all parties or entities required to receive service of the filing are included as parties to the docket.

(5) Upon submitting a document for electronic filing in an existing docket, the filer shall confirm that all other parties in the proceeding, persons who have pending motions to intervene, staff, and as otherwise required by commission rule or order required to receive service of the filing are included in the "Service Notification" tab of the docket. Service of pleadings, orders, notices, and documents shall be made upon all persons included on the "Service Notification" tab.

~~A certificate of service listing, by name, each person served and describing the manner and date of service shall be attached to the pleading, order, notice, or document being filed and all copies served or filed, unless otherwise directed by the commission or presiding officer.~~

(36) Service of pleadings, orders, notices, and documents on the staff's or a party's named attorney is valid service upon staff or the party for all purposes in the proceeding unless the commission or presiding officer directs otherwise.

~~(4) Service of pleadings, orders, notices, and documents shall be made upon all persons included on the official service list. The official service list is the most recent service list issued by the commission or presiding officer in the proceeding.~~

~~(a) A service list shall include parties and staff, or their counsel of record, and shall be issued by the commission or presiding officer in all proceedings after the deadline for intervention has passed in the proceeding, and may be revised from time to time.~~

~~(b) The commission or presiding officer shall serve all service lists upon staff and the parties to the proceeding promptly upon issuance of the list.~~

~~(c) Prior to the issuance of an official service list, all pleadings, orders, notices, and documents filed in a proceeding shall be served by the person filing the orders, notices, pleadings, or documents upon all other parties in the proceeding, persons who have pending motions to intervene, staff, and as otherwise required by commission rule or order.~~

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~~(57)~~ Orders or documents issued by the commission or presiding officer are effective on the date they are filed unless otherwise stated in the order or document;

~~(6)~~ ~~When serving documents electronically each document shall be identified in the following four segment format: case “[number] [filing date] [party name] [pleading identifier].” Each name segment shall be separated by a hyphen.~~

~~case number shall be in the form: xx xxxxx suffix (UT or TR)~~

~~Filing date shall be in the form: “[four digit year] [two digit month] [two digit day of month].”~~

~~Party name shall utilize a single word or abbreviated form, e.g., party initials, acronym, or other identifier.~~

~~The pleading identifier shall identify the nature of the pleading by concise description, e.g. petition, application, complaint, answer, motion, seeking xxxxxxx, brief, response, reply, et cetera.~~

~~C.~~ **Date stamps on filed documents and pleadings:**

~~(1) **Electronic filings:** The date and time a filing is submitted to PRCe360, notwithstanding a rejection from the chief clerk or chief clerk designee of the attempted filing, shall serve as the date and time of filing.~~

~~(a) The filing transmittal email for each filing, as received by the records bureau, shall be converted to a PDF and appended to every filed document or pleading before uploading to e docket.~~

~~(b) The date and time on the filing transmittal email shall serve as the date stamp for the filed document or pleading.~~

~~(c) If the date and time on the filing transmittal email from a party, or other person reflects a date or time that is outside of regular business hours, the filed document or pleading will be deemed to be filed the following business hour.~~

~~(d) If the date and time on the filing transmittal email from the commission or a presiding officer reflects a date or time that is outside of regular business hours, the filed document or order will be deemed to be filed as of the date and time on the filing transmittal email.~~

~~(e) Filing transmittal emails shall be substantially in the format of the sample transmittal email attached as exhibit one to this rule.~~

~~(f) The filing transmittal email should be addressed to the records bureau email address only and should be a separate email from any service email.~~

~~(2) For a filing **Filing by mail by:** The date and time a filing is scanned and submitted to PRCe360 for filing, notwithstanding a rejection from the chief clerk or chief clerk designee of the attempted filing, shall serve as the date and time of filing.~~

~~(3) **Filing in person:** For filings made in person, the date and time of filing shall be the date the chief clerk or chief clerk designee scans and uploads the document to PRCe360.~~

~~mail or in person, the records bureau shall date stamp the original document or pleading with the date it is deemed filed, in accordance with the definition of date and time of filing provided in Paragraph (1) of Subsection D of 1.2.2.7 NMAC, before scanning and uploading to e docket.~~

~~The filer may request, and provide to the records bureau, any number of conformed copies of the filed document or pleading for the records bureau to stamp and return to them.~~

~~If the filing is made by mail, the filer must provide a self-addressed stamped envelope for the return of the conformed copies.~~

~~D.~~ **Filings:**

~~(1) Any complete, correctly submitted filed document, order, notice, or pleading will be accepted by the chief clerk or designee for filing, and will be uploaded in the .pdf format submitted in the appropriate identified case number location in e docket, on a regular basis for the purpose of inspection of records.~~

~~(2) All filed documents shall be made available, upon reasonable demand, for inspection by the chief clerk or designee, the public, other parties, or the commission.~~

~~(3) The filing party has the responsibility to make sure that the filed document or pleading is complete and accurate.~~

~~(4) The filer is responsible for ensuring the filing is correctly designated as confidential or non-confidential.~~

~~(5) For documents and pleadings designated non-confidential at the time of filing, the filer is responsible for ensuring that The filing party shall ensure that all filed documents and pleadings do not contain, or have properly redacted, any confidential information or “protected personal identifier information” as defined by 1-079 NMRA and Section 14-2-6 NMSA 1978.~~

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(6) The filing party shall ensure that all filed documents and pleadings designated as non-confidential at the time of filing do ~~do not contain,~~ or have properly redacted, any protected information that is prohibited from disclosure by any state or federal law or regulation.

(76) ~~For a~~ When a party files a document that contains redacted confidential information or personal protective identifier information, the filer shall also upload an unredacted confidential version to PRCe360. That confidential version shall be properly designated as confidential at the time of filing. they shall deliver a non-redacted version to the records bureau in accordance with Paragraph (12) of Subsection E of 1.2.2.10 NMAC.

(78) A filing party who improperly designates a document or pleading as non-confidential ~~files any documents and that document~~ or pleadings ~~that~~ contains protected personal identifier information or information prohibited from disclosure by state or federal law or regulation, shall be solely liable for any damages that result from filing such information with the commission.

(8) Except as provided in Paragraph (2) of Subsection C of 1.2.2.10 NMAC, persons exempted from the electronic filing requirement may physically file documents or pleadings by:

(a) sending one original of the document or pleading to be filed via regular postal mail to: NMPRC Records Bureau, PO Box 1269, Santa Fe, NM 87504; or

(b) if the records bureau has a physical location that is open to the public, by delivery of one original of the document or pleading to the commission's chief clerk or designee during posted office hours.

E. Electronic filing:

(1) Electronic filing required:

(a) all regulated entities are required to make electronic filings via PRCe360;

(b) all persons should make electronic filings via PRCe360, if they have the ability

to do so; and

(c) only persons who lack the ability to make electronic filings are permitted to

make physical filings;

(2) ~~Electronically filed documents~~ Documents shall be submitted to PRCe360 for electronic filing emailed to the records bureau email address as .pdf documents.

(3) Electronically filed documents shall be scanned with a regular signature or be electronically signed.

(4) Electronically filed documents shall include the email address of the person signing the document in the signature block, and if filing on behalf of a regulated entity, the email address of the regulated entity.

~~(5) Electronically filed documents shall be combined into one complete document, shall include accompanying consecutively numbered attachments, if any, except in cases where the .pdf exceeds size limit restrictions, and if so, the document shall comply with Paragraph (8) of Subsection E of 1.2.2.10 NMAC herein.~~

~~(6) Electronically filed documents shall include a certificate of service evidencing service upon which individuals or entities were served and by what manner of service.~~

~~(57)~~ **Confidentiality agreements and non-disclosure agreements:** when filing nondisclosure agreements or confidentially agreements, each confidentiality agreement or non-disclosure agreement shall be filed as a separate document.

~~(86)~~ PRCe360 supports files up to 5,000 MB in size. Any filing that exceeds this maximum file size shall be divided into multiple documents.

~~When emailing electronically filed documents to the records bureau email address there are size limit restrictions to the .pdf attachments of approx. 20MB, but this may change as the commission's servers change. If a filer receives an "undeliverable" email due to attachment size limits, the filer shall re-send the .pdf as a single document using a download link that allows for it to be downloaded from a cloud service, such as Dropbox, One Drive, et cetera. If it is impossible to re-send an oversized .pdf via a download link it is permissible to split the .pdf into multiple smaller sized files and email in batches with identifying numbers showing how the document should be combined (i.e. batch one of three, batch two of three, et cetera) so that the records chief clerk or designee may properly assemble for filing in e docket.~~

~~(9) The filing date for an electronically filed document shall be the date the filing email is sent if emailed during regular business hours for the commission; if emailed outside of regular business hours the document will be considered received and filed on the next regular business day.~~

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~~(107)~~ No physical hard copies of electronically filed documents or multiple copies of physically filed documents are required to be submitted unless the commission or presiding officer directs the filer to do so. At the direction of the commission or presiding officer, a designated number of copies of any filed document shall be mailed, by regular postal service mail, to the commission at any number of designated addresses.

(11) The commission or presiding officer may direct any filer to submit documents or pleadings to them in a native document format in addition to the PDF version filed ~~with the records bureau~~ with PRCe360 if a native format exists.

(12) If for any reason physical electronic storage media must be presented to the commission, unless otherwise directed by the commission or presiding officer, the electronic storage media shall be a USB flash drive. All electronic storage media submitted pursuant to this rule shall be compatible with the commission's current computer capabilities. All physical electronic storage media filed shall have affixed thereto a label containing the appropriate case number, the title of the pleading or document, the name of the party or staff making the filing.

(13) Confidential materials are not an exception to the electronic filing requirement. Confidential materials are subject to the terms of any applicable protective order. Confidential materials shall be designated as confidential at the time of submitting the confidential material for filing in PRCe360.

~~Confidential materials are an exception to the electronic filing requirement and shall be filed as follows:~~

~~(a) subject to the terms of any applicable protective order, confidential materials shall be filed by mailing hard copies to the "NMPPRC Records Bureau" PO Box 1269, Santa Fe, NM 87504, or by in person delivery of hard copies to the commission's chief clerk or designee;~~

~~(b) when filing confidential materials, they shall be submitted to the records bureau in a sealed envelope that is separate from any mailing envelope;~~

~~(c) the sealed envelope containing confidential materials shall list the case number, case caption, document name, name of filer, and other non-confidential identifying information on the outside of the envelope.~~

(14) Parties are responsible for the timely filing of electronic documents to the same extent as with the filing of non-electronic documents. with the same consequences for missed deadlines.

F. Rejection:

(1) Pleadings and documents which are not in substantial compliance with these or other commission rules, orders of the commission or presiding officer, or applicable statutes may be rejected within thirty (30) days after filing.

(2) If rejected, a notification of rejection identifying the deficiencies will be sent via PRCe360. However, a copy of the rejected documents shall be retained within PRCe360 as a public record. Acceptance of a pleading or document for filing is not a determination that the pleading or document complies with all requirements of the commission or presiding officer and is not a waiver of such requirements. ~~If rejected, such papers will be returned with an indication of the deficiencies, therein. However, a copy of the rejected papers shall be retained by the chief clerk or designee as a public record. Acceptance of a pleading or document for filing is not a determination that the pleading or document complies with all requirements of the commission or presiding officer and is not a waiver of such requirements.~~

(3) The chief of staff of the commission, is authorized to reject pleadings and documents under this rule and to sub-delegate such authority.

(4) pleadings or documents that have been rejected shall not become part of the record proper. used as a basis for the commission's decision.

G. Amendments and withdrawal of pleadings and supporting documents:

(1) Except in the case of formal complaints, pleadings may be amended or withdrawn only with leave of the commission or presiding officer and upon such conditions as the commission or presiding officer may deem appropriate.

(2) Formal complaints may be amended without leave at any time prior to the issuance of the probable cause determination. required by this rule.

(3) Amendments to any pleading shall not broaden the scope of the issues originally filed unless the commission or presiding officer exercises the discretion to allow such an amendment.

(4) Upon any amendment or withdrawal of a pleading, allowed, the commission or presiding officer may require a supplementary public notice.

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(5) Direct testimony and exhibits filed may be amended or withdrawn only with leave of the commission or presiding officer, who may take into consideration, among other things, any delay or prejudice to the commission, its staff, or the parties which would result from the granting of the motion. The commission or presiding officer may grant or deny the motion or grant the motion only upon such conditions as are deemed appropriate.

Upon any amendment or withdrawal, allowed, the commission or presiding officer may require a supplementary public notice.

(6) A copy of any withdrawn filing shall be retained by the chief clerk or designee as a public record.

1.2.2.15 FORMAL COMPLAINTS:

Formal complaints shall conform to the requirements of this rule governing pleadings, except that the requirements of this rule shall be liberally construed with respect to *pro se* parties. A formal complaint shall be accompanied by the \$25.00 filing fee required in Subsection B of Section 62-13-2 NMSA 1978. Pursuant to Section 62-13-2.1 NMSA 1978, the commission may order that the filing fee be refunded if the commission dismisses the complaint for lack of probable cause and determines that the complainant filed the complaint in good faith.

The filing of a formal complaint shall commence a formal proceeding.

A formal complaint shall allege that a regulated entity has violated a law, rule, order, tariff, certificate of public convenience and necessity, or operating authority promulgated or enforced by the commission.

A formal complaint may be filed via PRCe360~~by e-mail or facsimile transmission pursuant to other rules of the commission governing electronic filing and service.~~

A. Contents: A formal complaint shall contain:

- (1) a clear and concise statement of the relief sought;
 - (2) a concise and explicit statement of the facts which the complainant alleges show a violation;
 - (3) a statement of any laws, rules, orders, tariffs, certificates of public convenience and necessity, or operating authorities alleged to have been violated;
 - (4) the exact legal and "doing business as" name, mailing address, and telephone number of the complainant and his or her attorney if any;
 - (5) the exact legal name, mailing address, and telephone number of the respondent, if known;
- and

(6) confirmation of the following statement signed by the complainant: "The factual allegations in the complaint are true and correct to the best of my knowledge and belief.," ~~or an affidavit sworn by the complainant.~~

B. Discontinuance of service prohibited: A utility or telecommunications provider shall not discontinue service to a customer or issue a notice of discontinuance of service relative to the matter in dispute once a formal complaint has been filed, except as otherwise authorized by law or commission rule. Charges which are not in dispute must continue to be paid on time and in full by the complainant or be subject to other applicable commission rules regarding disconnection or discontinuance of service.

C. Service of complaints; answer:

(1) Upon receipt of a formal complaint that is in substantial compliance with this rule, within a reasonable period of time the commission shall cause a copy of the complaint to be served on the respondent accompanied by a notice from the commission calling upon the respondent to answer the complaint in writing within twenty (20) days of service of the complaint. For good cause, the commission or presiding officer may order the answer to be filed in a shorter or longer time. The notice shall also state that the commission may impose administrative fines or other sanctions if the commission finds merit to the complaint.

The answer may contain an offer to satisfy the complaint as provided in Subsection D of 1.2.2.15 NMAC.

The commission or presiding officer shall further serve the respondent with notice of any amendments to the complaint.

(2) Motions for an extension of time to answer a complaint shall comply with the requirements of this rule.

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(3) If an amendment to a complaint is filed before the answer is filed, the respondent's time within which to answer shall be ten (10) days from the date of service of the amendment or the period set forth in the notice, whichever period is longer.

D. Satisfaction of complaint:

If the respondent desires to satisfy the complaint, they shall submit to the commission in the answer a statement of the relief which they are willing to give, a copy of which shall be contemporaneously served upon the complainant. Upon acceptance of this offer by the complainant and notice to the commission, the complaint may be dismissed.

If there is a partial settlement of the case, with dismissal in part, the complainant may proceed with the remaining issues.

If the commission dismisses a complaint in whole or in part because the complaint has been satisfied, the commission may continue or initiate further proceedings if the issues raised in the complaint involve a general matter of public interest.

E. Contents of answers:

The answer shall state in short and plain terms a respondent's defenses to each claim asserted and shall admit or deny the averments upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, the answer shall so state and this shall have the effect of a denial.

Respondent may challenge jurisdiction and address whether probable cause exists. in the answer.

F. Disposition of complaint. Upon the filing of an answer, commission shall evaluate jurisdiction and probable cause, and may, as appropriate:

- (1) grant the relief requested in whole, or in part,
- (2) dismiss the complaint in whole or in part;
- (3) set further proceedings on the complaint or on the remaining issues in the complaint; or
- (4) designate a hearing examiner to preside over the complaint or over the remaining issues

in the complaint.

G. Notice of public hearing:

When a public hearing is required by law or commission rule, at least twenty (20) days prior to an initial public hearing on the merits of any complaint, a notice of such initial public hearing shall be mailed to the respondent and the complainant by the commission or presiding officer. No public hearing shall be held until after the commission has determined that probable cause exists for the complaint. If it is determined that the subject matter of the complaint involves a matter of general public interest, the commission or presiding officer may require that a notice of the public hearing:

- (1) be published at least twenty (20) days prior to the public hearing in a newspaper of general circulation available in the county where the complaint originated, or
- (2) be given in such other manner as the commission or presiding officer may deem proper under the circumstances; costs of publication shall be borne by the respondent.

H. Participation of staff: The commission or presiding officer may require that staff participate at any stage in the proceeding.

I. Dismissal at any time: The commission shall dismiss a complaint upon a finding of no jurisdiction or probable cause.

1.2.2.23 INTERVENORS AND COMMENTERS:

A. Intervention:

Any person, other than staff and the original parties to a proceeding, who desires to become a party to the proceeding may move in writing for leave to intervene in the proceeding.

- (1) The motion for leave to intervene shall indicate the nature of the movant's interest in the proceeding;
- (2) The motion shall also comply with the provisions of this rule governing pleadings except that the motion shall indicate the facts relied upon as grounds for intervention.
- (3) Motions for leave to intervene shall be served on all existing parties and other proposed intervenors of record.

B. Deadline for filing motions to intervene:

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In proceedings concerning applications relating to securities, unless the commission or presiding officer orders otherwise, the motion must be filed before the commencement of the public hearing. In all other proceedings motions to intervene must be filed as directed by the commission or presiding officer in the proceeding.

C. Objections to intervention: Objections to motions for leave to intervene must be in writing and filed within thirteen (13) days after the service of the motion or at the time of public hearing, whichever is earlier.

D. Disposition of motions to intervene:

(1) Unless the commission or presiding officer, on their own motion, denies a motion for leave to intervene, all timely motions for leave to intervene not objected to by any party or by staff within thirteen (13) days of service of the motion for leave to intervene shall be deemed allowed, provided that the commission or presiding officer, on their own motion after notice and public hearing, may thereafter terminate the party status of any intervenor.

(2) Where a timely motion for leave to intervene is contested, the commission or presiding officer may grant the intervention if it appears after consideration that the motion discloses that:

(a) the movant possesses a substantial interest in the subject matter of the public hearing;

(b) participation of the movant is substantially in the public interest; or

(c) the intervention presents no undue prejudice to the other parties.

(3) Whenever a motion to intervene is permitted to be filed out of time, the commission or presiding officer may deny the motion or grant the motion with limitations on grounds including, but not limited to:

(a) failure to set forth sufficient grounds for intervention;

(b) disruption of the proceeding resulting from the intervention;

(c) prejudice or hardship to existing parties or staff; or

(d) undue broadening of the issues.

(4) Except as otherwise ordered, a grant of an untimely motion to intervene must not be a basis for delaying or deferring any procedural schedule established prior to the grant of the motion.

(5) Intervenors who are granted party status are bound by the agreements reached and orders entered in the proceeding prior to their intervention. The commission and the presiding officer will not allow the broadening of issues unless the public interest requires it or no undue prejudice or hardship will result to other parties to the proceeding or to staff.

(6) Notwithstanding the provisions of Paragraphs (1) through (3) of Subsection D of 1.2.2.23 NMAC, where there are two (2) or more intervenors or proposed intervenors having substantially like interests and positions, the commission or presiding officer may, to avoid unnecessary delay or duplication of effort and expense, limit the number of intervenors in the proceeding.

(7) A proposed intervenor shall become party to the proceeding once the motion to intervene is deemed allowed or otherwise granted under this rule. Intervenors shall have the same rights as other parties to the proceeding.

E. Withdrawal of intervenors: An intervenor can withdraw by filing notice and must serve the withdrawal on all parties, and staff.

F. Commenters: Commenters shall be entitled to make an oral statement or submit a written statement for the record, but such statement shall not be considered by the commission as evidence. All interested persons are afforded the opportunity to have input into cases dockets which affect them. The commission encourages ratepayer input and the purpose of this rule is to facilitate participation. However, commenters are not parties and shall not have the right to introduce evidence, to examine or cross-examine witnesses, to receive copies of confidential pleadings and documents, to appeal from any decisions or orders, or to otherwise participate in the proceeding other than making their comments.

1.2.2.25 DISCOVERY:

A. Commission policy:

The commission favors prompt and complete disclosure and exchange of information and encourages informal arrangements among the parties and staff for this exchange.

It is further the commission's policy to encourage the timely use of discovery as a means toward effective presentations at public hearings and avoidance of the use of cross-examination at public hearings for discovery purposes.

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B. Discovery procedures:

Techniques of pre-hearing discovery permitted in state civil actions, such as interrogatories, requests for admissions, depositions, and requests for production of documents may be employed by staff or by any party. The parties are not required to file certificates of service for discovery requests and responses. If difficulties arise in obtaining discovery, staff or any party may seek relief from the commission or the presiding officer by filing a proper motion. Upon experiencing any difficulties in obtaining discovery, staff and the parties may seek relief from the commission or presiding officer by filing a proper motion.

Nothing in this rule shall preclude the commission or the presiding officer from obtaining information by order or preclude staff from obtaining information in any lawful manner.

C. Applicability of rules of civil procedure:

Discovery in commission proceedings shall be governed by the New Mexico rules of civil procedure for the district courts applicable to discovery, except where such rules are inconsistent with this rule.

Any references to the “court” in those rules shall be deemed to mean the “commission or presiding officer” for purposes of commission proceedings.

D. Depositions:

(1) The commission, the presiding officer, staff, and parties shall have the right to take the testimony of any witnesses by deposition, and compel through the commission’s subpoena powers the attendance of witnesses and the production of books, documents, papers, and accounts.

(2) Depositions may be taken and on-site inspections may be performed upon commencement of the proceeding and without prior approval of the commission or presiding officer.

(3) Notices or requests for depositions or on-site inspections shall be served on staff and on all parties unless the commission or presiding officer directs otherwise.

(4) All parties and staff may participate in any depositions, or in any on-site inspections requested by a party or staff under Subsection F of 1.2.2.25 NMAC, unless the commission or presiding officer directs otherwise.

E. Interrogatories:

The staff and parties may serve upon staff or any party written interrogatories to be answered by staff or the party served, or if the party served is a public or private corporation, by any officer or agent who shall furnish such information as is available to the party.

(1) Interrogatories may be served after commencement of any proceeding and without leave of the commission or presiding officer.

(2) The interrogatories shall be answered separately and fully in writing under oath, and each answer shall be signed by the person or persons making it unless otherwise ordered by the commission or presiding officer.

(3) Unless objected to, answers to interrogatories shall be served in the manner provided in Subsection H of 1.2.2.25 NMAC within fifteen (15) days after the service of the interrogatories unless the commission or presiding officer enlarges or shortens the time, or unless the party or staff submitting the interrogatories and the party or staff to which the interrogatories are directed agree to a different period of time, notice of which agreement shall be filed and served on staff and all other parties. Any such agreements shall not affect the authority of the commission or presiding officer to govern commission proceedings as provided by law.

(4) Within fifteen (15) days after service of interrogatories, staff or a party may make written objections, duly served as provided in Subsection H of 1.2.2.25 NMAC. Written objections shall:

(a) identify the interrogatory or subject matter objected to and stating with particularity, the reasons for the objections; and

(b) include copies or complete restatements of the interrogatory or interrogatories objected to, and a description of the facts and circumstances and the legal authority purporting to justify the objection.

(5) The service of objections shall not excuse the answering party or staff from answering remaining interrogatories or subparts of interrogatories to which no objection is stated.

(6) Answers to interrogatories to which objection is made shall be deferred until a determination has been made on such objections.

F. Production of documents and things and entry upon land for inspection and other purposes:

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The commission, the presiding officer, staff, and parties may serve upon any party or upon staff requests for the production or inspection of documents or things within staff's or that party's possession, custody, or control, either consolidated with interrogatories or alone.

The commission, presiding officer, staff, and parties may serve on any other party a request to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, either consolidated with the interrogatories or alone.

(1) A request may be served upon commencement of the proceeding and without leave of the commission or presiding officer.

(2) The request shall specify a reasonable time, place, and manner of making the inspection and performing related acts, or of copying the documents, or specify that copies of the designated documents be sent to the requesting party or staff in lieu of an inspection.

(3) The request shall set forth the property or items to be inspected, either by individual item or by category, and shall describe each item and category with reasonable particularity.

(4) The requestor shall specify a date for the production or inspection, which date shall be not less than fifteen (15) days after the date the request is served unless the commission or presiding officer enlarges or shortens the time, or unless the party or staff submitting the request for production of documents and the party or staff to which the request is directed agree to a different period of time, notice of which agreement shall be filed and served on staff and all other parties.

Any such agreements shall not affect the authority of the commission or presiding officer to govern commission proceedings as provided by law.

If no time is specified, production shall be due fifteen (15) days after service of the request.

(5) Within fifteen (15) days after service of a request for production, staff or a party may serve written objections in the form and manner provided in Subsections E and H of 1.2.2.25 NMAC. The objector shall produce, as requested, all documents or things which are not the subject of an objection.

G. Requests for admissions:

The commission, presiding officer, staff, or parties may serve upon any party or upon staff requests for the admission of facts or the genuineness of documents.

Copies of documents shall be served with the request.

(1) Requests may be served upon commencement of the proceeding and without leave of the commission or presiding officer.

(2) Answers to requests for admissions shall be served within fifteen (15) days after service of the request unless the commission or presiding officer enlarges or shortens the time, or unless the party or staff submitting the request for admissions and the party or staff to which the request is directed agree to a different period of time, notice of which agreement shall be filed and served on staff and all other parties. Any such agreements shall not affect the authority of the commission or presiding officer to govern commission proceedings as provided by law.

(3) Written objections to a request prepared in the form and manner provided in Subsection E of 1.2.2.25 NMAC shall be filed and served as provided in Subsection H of 1.2.2.25 NMAC within fifteen (15) days of service of the requests. The filing and service of objections shall not excuse the answering party or staff from answering the remaining requests to which no objection is stated.

H. Filing and service:

Interrogatories, requests for production or inspection of documents and things, or entry upon lands for inspection and other purposes, and requests for admissions and other written discovery requests shall be served upon the party or staff to which such discovery is directed.

Written answers, responses, or objections to discovery requests shall be served on the party or staff making such requests.

(1) Discovery requests and responses, or objections thereto, and deposition transcripts, shall not be routinely filed. ~~However, the party or staff making a discovery request shall file a certificate indicating the date of service.~~

(2) Unless the commission or presiding officer directs otherwise, interrogatories, requests for production or inspection of documents and things or entry upon lands for inspection and other purposes, requests for admissions and other written discovery requests or notices, as well as written responses or objections thereto, shall

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be served on any other party or staff, which requests copies of such discovery requests, notices, responses or objections.

(3) Parties or staff desiring copies of the written discovery materials of other parties or of staff, may request copies either in one blanket request for all discovery materials throughout the proceeding, or by request specific to the discovery activity in question.

(4) At the option of the party or staff making a discovery request or response, any such request or response including objections may additionally be presented in electronic form. Discovery requests or responses, including objections, shall be presented in electronic form in addition to or in lieu of other applicable service or filing requirements of this rule if the commission or presiding officer so orders pursuant to Subsection A of 1.2.2.24 NMAC, or pursuant to other commission rules governing electronic filing and service.

The commission or presiding officer shall not require electronic filing or service by any party who does not have such capability.

I. Supplementation of responses to discovery requests: A party or staff who has responded to a request for discovery is under a duty reasonably and promptly to amend or supplement their previous response if they obtains information which they would have been required to provide in such response if the information had been available to them at the time they served the response.

J. Motions to compel or for sanctions:

(1) Staff or a party may move for an order compelling discovery or for sanctions for failure to comply with an order directing that discovery be had as provided in the New Mexico rules of civil procedure for the district courts. In addition to the sanctions provided in those rules, the commission may impose the penalties set forth in applicable law for failure to comply with an order of the commission or presiding officer.

(2) Any motion for an order compelling discovery shall include copies or complete restatements of the discovery requests or notices to which the movant seeks compelled responses or related relief, along with copies of any responses or objections to the subject discovery requests or notices, and any other pertinent materials.

~~An original and four (4) copies of motions to compel shall be filed and copies shall be served on staff and all other parties to the proceeding.~~

(3) No motion to compel, or any other motion regarding any discovery dispute, shall be considered unless accompanied by a statement that the participants made a good faith effort to resolve the dispute and were unable to do so.

K. Order for protection of staff, parties, or witnesses: The commission or presiding officer may issue such orders for the protection of staff, parties or witnesses from annoyances, embarrassment, or oppression as may be just and proper under the circumstances.

1.2.2.32 PUBLIC HEARINGS:

A. Rights of staff, parties, and commenters:

(1) At any public hearing, all parties and staff shall be entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding.

(2) commenters shall be entitled to make an oral or written statement for the record, but such statement shall not be considered by the commission as evidence. Commenters are not parties and shall not have the right to introduce evidence or examine or cross-examine witnesses, ~~to receive copies of pleadings and documents, to appeal from any decisions or orders,~~ or to otherwise participate in the proceeding other than by making their comments.

B. Duty to participate: Except as otherwise provided in this rule or directed by the commission or presiding officer, parties or staff who fail to attend meetings, conferences, or public hearings scheduled or who otherwise fail to participate in the proceeding are deemed to have notice of, and waive their right to object to, all matters addressed, resolved, or determined in their absence.

C. Continuance:

(1) Staff or any party who desires a continuance shall move for a continuance immediately upon receipt of notice of public hearing, or as soon thereafter as facts requiring such continuance come to their

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knowledge, stating in detail the reasons why a continuance is necessary and describing when the need for a continuance came to their knowledge.

(2) The commission or presiding officer, in passing upon a motion for a continuance, shall consider whether such motion was promptly made.

(3) The commission or presiding officer may grant such a continuance and may, at any time, order a continuance upon their own motion.

D. Appearances:

(1) **General:** Staff, parties, and commenters shall enter their appearances at the beginning of the public hearing by giving their names and addresses in writing to the reporter who will include the same in the record of public hearing. The presiding officer conducting the public hearing may in addition require appearances to be stated orally so that the identity and interest of all parties staff, and others present will be known to those at the public hearing.

(2) **Termination of party status:** Notwithstanding any other provision of this rule pertaining to party status, the party status of any person failing to enter a written appearance, and if requested by the presiding officer, an oral appearance, terminates at the close of the period for taking such appearances at the public hearing unless otherwise ordered by the commission or presiding officer. After entering an appearance, neither staff nor a party shall be unrepresented at the public hearing unless excused by the presiding officer. The commission or presiding officer may impose appropriate sanctions for violation of this provision up to and including termination of party status.

E. Service of notice: Following the entry of appearances at the public hearing, all notices, pleadings, and orders thereafter served shall be served upon such attorneys or parties of record as defined in this rule entering an appearance and such service shall be considered valid service for all purposes upon the party represented. Persons who have not appeared as parties may add their contact information to the "Service Notification" tab of any docket to receive notice of filings made into that docket. ~~request to the commission to be mailed a copy of any final order at their own expense in any proceeding contemplated by this rule at which these persons have appeared as witnesses or commenters or have given written notification to the commission of their interest in the proceedings.~~

F. Failure to appear:

(1) At the time and place set for public hearing, if an applicant, petitioner, or complainant fails to appear without having obtained a continuance in the manner specified in Subsection C of 1.2.2.32 NMAC, the commission or presiding officer may dismiss or recommend dismissal of the petition, application, or complaint with or without prejudice, or may upon good cause shown recess such public hearing for a further period to be set by the commission or presiding officer to enable said applicant, petitioner, or complainant to attend.

(2) At the time and place set for public hearing, if a respondent fails to appear without having obtained a continuance in the manner specified Subsection C of 1.2.2.32 NMAC, the commission or presiding officer may proceed with the public hearing as scheduled and enter such orders disposing of the case as may be proper according to the evidence adduced, and the respondent failing to appear will be presumed to have waived the right to refute or rebut such evidence and otherwise present further evidence. The commission or presiding officer may upon good cause shown recess such public hearing for a further period to be set by the commission or presiding officer to enable said respondent to attend.

G. Conduct at public hearings:

(1) All parties, staff, counsel, commenters, and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind at public hearings shall not be permitted. Any disregard by parties, staff, attorneys, or other persons of the rulings of the commission or presiding officer on matters of order and procedure may be noted on the record and treated as provided in Sections 59A-52-24, 62-10-9, 62-12-4, 63-7-23, 63-9-19, 63-9A-20, 63-9B-14, 65-2A-32, 65-2A-34, 63-9H-14, or 70-3-19 NMSA 1978, or as provided in the New Mexico rules of civil procedure for the district courts.

(2) The commission or presiding officer may, at their discretion, adjourn, recess, or continue any public hearing in case the conduct of witnesses, spectators, or other persons interferes with the proper and orderly holding of such public hearing, and for any other cause or circumstance which may prevent the proper conduct of such public hearing.

(3) The commission or presiding officer may, at their discretion, limit the time for providing direct testimony or cross-examination at any public hearing if necessary to promote the proper and orderly management of such public hearing.

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H. Consolidated public hearings: The commission, upon its own motion or upon motion of staff or a party, may order two or more proceedings involving a similar question of law or fact to be consolidated for public hearing where rights of staff, the parties or the public interest will not be prejudiced by such procedure and where such consolidation will not confuse the issues.

I. Joint public hearings:
To the extent authorized by law, the commission may participate jointly in any hearing with any federal, state, or other regulatory agency.

In joint formal proceedings, the participating agencies shall agree upon the rules of procedure to be followed.

Any person entitled to appear in a representative capacity before either agency involved in the joint public hearing may appear in a joint public hearing.

J. Telephonic public hearings. Public hearings may be conducted by telephone or video conference at the discretion of the commission or presiding officer.

1.2.2.34 TRANSCRIPTS:

A. Record of proceedings and testimony:

(1) A full and complete record of all proceedings before the commission or presiding officer in any formal public hearing and all testimony shall be made by either audio recording by a commission employee or shall be taken down and transcribed by a certified court reporter at the discretion of the presiding officer.

(2) If the commission or presiding officer intends to have a transcript made by audio recording, they will state this in the notice or order of hearing or proceeding.

(3) Upon receiving notice that the commission or presiding officer intends to have a transcript made by audio recording, any party can file a request to have the hearing or proceeding transcribed by a certified court reporter and the commission will arrange a court reporter.

A party requesting a court reporter for a hearing or proceeding that would otherwise be made by audio recording shall be responsible for the full cost of the court reporter's fees.

A request by any party to have a hearing or proceeding transcribed by a certified court reporter shall be filed as soon as practicable before the hearing or proceeding.

If a request by any party to have a hearing or proceeding transcribed by a certified court reporter is not made at least seven days prior to the hearing, the commission may be unable to accommodate the request.

B. Copies of transcripts: The commission shall file in ~~e-docket~~PRCe360 a .pdf version of any transcript it receives on the date the transcript is created or the date it is filed with the commission or the presiding officer.

C. Corrections:

Suggested corrections to the transcript or record must be offered within 13 days after the transcript is filed in the proceeding except for good cause shown, and such suggestion shall be in writing and served upon each party, staff, the official reporter, and the presiding officer.

Failure to timely file suggested corrections without good cause shown constitutes a waiver of objections to the transcript.

(1) Objections to the suggested corrections shall be made in writing within 13 days from the filing of the suggestions.

The commission or presiding officer shall, with or without public hearing, determine what changes, if any, shall be made in the record.

(2) If no objection is made to the suggested corrections, the presiding officer may, in their discretion, direct that the corrections be made and the manner of making them.

D. Citation form: When referring to the record in briefs and other documents, staff and the parties shall cite to the transcript using the reporter's pagination, *e.g.*, Tr. (transcript page number). If a transcript is made by audio recording, staff and the parties shall cite to the transcript using time markers.

1.2.2.35 RULES OF EVIDENCE:

A. General:

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(1) Subject to the other provisions of this rule, all relevant evidence is admissible which, in the opinion of the presiding officer, is the best evidence most reasonably obtainable, having due regard to its necessity, competence, availability, and trustworthiness.

(2) In passing upon the admissibility of evidence, the presiding officer shall give consideration to, but shall not be bound by, the New Mexico rules of evidence which govern proceedings in the courts of this State. The presiding officer shall also give consideration to the legal requirement that any final decision on the merits be supported by competent evidence.

(3) Unless otherwise directed by the commission or the presiding officer, documents that require sworn verification by notarization under commission rules may be supported by unsworn affirmation in compliance with rule of civil procedure 1-011(B) NMRA.

B. Testimony under oath: All testimony to be considered by the commission or presiding officer in formal public hearings, except matters officially noticed or entered by stipulation, shall be made under oath.

C. Stipulation as to facts:

(1) The parties and staff in any proceeding before the commission or presiding officer, may, by stipulation in writing, filed or entered in the record, agree upon the facts or any portion thereof involved in the controversy.

which stipulation shall be binding upon the parties and staff entering into the stipulation and may be regarded and used by the commission or presiding officer as evidence at the public hearing. It is desirable that the facts be thus agreed upon wherever practical.

The commission or presiding officer may, however, require proof or evidence of the facts stipulated to, notwithstanding the stipulation of the parties. and staff.

(2) In the event the parties and staff stipulate to certain facts as part of a proposed settlement of the case, and the settlement is rejected, stipulations of fact entered for purposes of the settlement will not be binding upon the parties or used as evidence in any subsequent public hearing on the merits unless all signatories thereto agree to refile the stipulations of fact.

D. Administrative notice:

(1) The commission or presiding officer may take administrative notice of the following matters if otherwise admissible under Subsection A of 1.2.2.35 NMAC:

- (a) rules, regulations, administrative rulings, published reports, licenses, and orders of the commission and other governmental agencies;
- (b) contents of certificates, permits, and licenses issued by the commission;
- (c) tariffs, classifications, schedules, and periodic reports regularly established by or filed as required or authorized by law or order of the commission;
- (d) decisions, records, and transcripts in other commission proceedings;
- (e) state and federal statutes;
- (f) decisions of state and federal courts;
- (g) generally recognized technical and scientific facts; and
- (h) matters of which the courts of this state may take judicial notice.

(2) In addition the commission or presiding officer may take administrative notice of the results of their own inspection of any physical location or condition involved in the proceeding, and may take administrative notice on the record of the results of the commission's previous experience in similar situations and general information concerning a subject within the commission's expert knowledge.

(3) Parties and staff requesting that administrative notice be taken of documents or portions of documents or of the contents thereof must submit those documents or portions of documents to the commission or presiding officer in the form of exhibits except as may otherwise be provided in this rule.

(4) The commission or presiding officer may take administrative notice, whether requested or not, subject to appropriate objection under Subsection L of 1.2.2.35 NMAC. If staff or a party requests that administrative notice be taken, the commission or presiding officer must be provided the necessary information.

(5) Matters noticed are admitted into evidence to the same extent as other relevant evidence.

E. Resolutions:

Resolutions, properly authenticated, of the governing bodies of cities, towns, counties and other municipal corporations, and of chambers of commerce, commercial or mercantile boards of trade, agricultural or manufacturing societies, and other civic organizations will be received in evidence if relevant.

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Such resolution shall be received subject to rebuttal by adversely affected staff or parties as to the authenticity of the resolution.

Recitals of fact contained in resolutions shall not be deemed proof of those facts.

F. Official records:

An official rule, report, order, record, or other document prepared and issued by any governmental authority may be introduced into evidence.

In cases where such official records, otherwise admissible, are contained in official publications or publications by nationally recognized reporting services and are in general circulation and readily accessible to all parties and staff, they may be introduced by reference unless the presiding officer directs otherwise, provided that proper and definite reference to the record in question is made by the party or staff offering the same.

G. Commission files:

Papers and documents on file relevant to the proceeding may be introduced into evidence by reference to number, or date, or by any other method of identification satisfactory to the presiding officer unless the presiding officer directs that the paper or document or a summary thereof be presented for the record in the form of an exhibit.

If only a portion of any such paper or document is offered in evidence, the part so offered shall be presented for the record in the form of an exhibit.

H. Records in other proceedings: In case any portion of the record in any other proceeding before the commission or presiding officer is admissible for any purpose and is offered in evidence, a true copy of such portion may be presented for the record in the form of an exhibit.

I. Prepared testimony:

(1) Prepared written testimony shall be received in evidence as exhibits with the same force and effect as though it were stated orally by the witness.

All witnesses must be present at the public hearing and shall adopt, under oath, their prepared written testimony, subject to cross-examination and motions to strike unless the witness's presence at public hearing is waived by the commissioner or presiding officer upon notice to, and without objection from, staff and the parties.

(2) Unless the commission or presiding officer directs otherwise, testimony in written form shall be prepared in accordance with the following guidelines:

- (a) the cover page shall contain the case caption and number and the name of the witness;
- (b) all pages are to be typed or machine printed and double-spaced;
- (c) the top, bottom, and left-hand margins shall be at least one and one-half inches;
- (d) the name of the witness and the case number, if then known, shall be typed at the top center of each page two inches from the edge;
- (e) the page number for each page shall be typed at the bottom center one inch from the edge;
- (f) a square of approximately one and one-half inches in the upper right-hand corner of each page shall be left clear for commission use;
- (g) testimony shall contain line numbers on the left-hand side of the page; and
- (h) testimony shall be filed in question and answer format and be supported by affidavit;

(3) Unless the commission or presiding officer directs otherwise, no documents other than pre-filed testimony shall be admitted into evidence on direct examination of a witness.

J. Exhibits:

(1) Use of data in exhibits:

(a) When supporting exhibits consist of tables of data or graphs, all formulae, equations, or other methodology used to derive the data shall be included as part of the supporting exhibit.

(b) If data used in supporting exhibits are derived from, or supported by, complex computerized analyses, working copies of the computer models may be included on a diskette compatible with the commission's current computer capabilities, in lieu of printed material.

(2) **Size of exhibits:** Except by special permission of the presiding officer, no specially prepared exhibits offered as evidence shall be of greater size, when folded, than eight and one-half (8-1/2) inches by eleven (11) inches.

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(3) **Marking of exhibits:** All exhibits shall be marked numerically in the order of introduction by the moving party. or staff. To the extent practicable, all exhibits, including those to be introduced on cross-examination, shall be marked before the start of public hearings on the day the witness will be examined. thereon.

(4) **Designation of part of document as evidence:**

(a) When relevant and material matter offered in evidence by any party or staff is embraced in a book, paper, or document containing other matter not material or relevant, the party or staff offering the same must plainly designate the matter so offered.

(b) If other matter is in such volume as would unnecessarily encumber the record, such book, paper, or document will not be received in evidence but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the presiding officer so directs, a true copy of such matter in proper form shall be received as an exhibit and like copies delivered by the party or staff offering the same to all other parties and staff appearing at the public hearing.

(c) All parties and staff shall be afforded an opportunity to examine the book, paper, or document, and to offer in evidence in like manner other portions thereof if found to be material and relevant.

(5) **Abstracts of documents:** When documents are numerous, and it is desired to offer in evidence more than a limited number of such documents, as typical of the others, an abstract shall be prepared and offered as an exhibit giving other parties to and staff in the proceeding reasonable opportunity to examine the abstract and the documents.

(6) **Summaries of documents:** Where a document being offered into evidence is voluminous, the presiding officer may direct that a summary be prepared and offered as an exhibit giving other parties to and staff in the proceeding reasonable opportunity to examine the summary and the document. The presiding officer may require that the summary be offered as an exhibit in addition to the summarized document or in lieu thereof.

(7) **Copies of exhibits:**

(a) When exhibits not attached to pleadings, as required by this rule, are offered in evidence, ~~a copy the original~~ shall be furnished to the reporter.

(b) The party or staff offering exhibits shall also furnish a copy to each commissioner, or hearing examiner, sitting, advisory staff, if in attendance, each party and the staff, unless such copies have previously been furnished or the presiding officer directs otherwise.

(c) The proponent shall, to the extent practicable, furnish the required copies to the reporter, the commissioners, or hearing examiner, advisory staff, parties and staff before the start of the public hearings on the day said proponent intends to offer the exhibits into evidence.

K. Additional evidence:

At any stage of the proceeding, the commission or presiding officer may require the production of further evidence upon any issue.

Such evidence may, at the discretion of the commission or presiding officer, be in writing or presented orally.

All parties and the staff will be given an opportunity to reply to such evidence submitted and cross-examine the witness under oath.

L. Objections:

(1) Any evidence offered in whatever form shall be subject to appropriate and timely objection. When objection is made to the admissibility of evidence, such evidence may be received subject to later ruling by the commission or presiding officer.

(2) The commission or presiding office, their discretion either with or without objection, may exclude inadmissible, incompetent, cumulative, or irrelevant evidence, or order the presentation of such evidence discontinued.

(3) Parties or staff objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered.

(4) The evidence to be admitted at public hearing shall be material and relevant to the issue. Formal exceptions to rulings are not necessary and need not be taken.

M. Offers of proof:

An offer of proof for the record may be made and shall consist of a statement of the substance of the evidence to which objection has been sustained.

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The commission or presiding officer may require offers of proof to be submitted in writing in question and answer form.

N. Rebuttal evidence:

(1) Rebuttal evidence is evidence which tends to explain, counteract, repel, or disprove evidence submitted by another party or by staff. Evidence which is merely cumulative or could have been more properly offered in the case in chief is not proper rebuttal evidence.

(2) Staff or a party wishing to offer rebuttal testimony shall, at the close of their opponent's direct case, move the commission or presiding officer to allow introduction of rebuttal testimony. The movant shall indicate the nature of the evidence sought to be adduced and demonstrate why it is proper rebuttal testimony.

(3) The commission or presiding officer may permit or require rebuttal evidence to be

1.2.2.36 PROPOSED FINDINGS AND CONCLUSIONS; AND BRIEFS:

A. Proposed findings and conclusions:

(1) Notice:

The presiding officer may require all parties of record and the staff to file proposed forms of orders, including proposed findings and conclusions. at the close of testimony in the proceeding.

The presiding officer shall immediately fix the time in which the proposed order shall be filed.

(2) Contents:

(a) The party or staff submitting a proposed order shall clearly identify themselves on the first page of the order.

(b) Each proposed finding of fact and conclusion of law shall be clearly and concisely stated and numbered.

(c) Each proposed finding of fact shall show, specifically, by appropriate transcript reference, the evidence which supports the proposed finding unless otherwise permitted by the presiding officer.

(d) Proposed findings and conclusions should be kept to the minimum needed, and may reflect the party's or staff's position, but shall not be used to argue that position.

(3) **Failure to file; Dismissal:** The commission may dismiss, with or without prejudice, any proceeding where the staff or the party who initiated such proceeding fails to comply with this rule.

B. Briefs and oral argument; right to file or argue:

(1) The presiding officer may require the filing of briefs or the presentation of oral argument, or both, by staff and the parties. Requests for filing of briefs or oral argument shall be made before or at the close of the public hearing, and may be made in writing or orally on the record.

(2) The parties and staff shall be given an opportunity to make argument, upon request, but the manner of presentation, whether written, oral, or both, shall be at the discretion of the presiding officer.

(3) Presiding officers may also, at their discretion set page limits for briefs, limit the time allocated to each party and to staff for oral argument, or conduct an oral argument by telephone conference call.

(4) Any issues raised in a contested public hearing that are not argued in a post-hearing brief will not be considered unless consideration ~~will~~ not prejudice the due process rights of other parties and the commission or presiding officer in their discretion decides to consider such issues.

C. Time of filing:

(1) Proposed orders and briefs:

(a) Unless otherwise ordered by the presiding officer, parties and the staff shall have twenty (20) days after the date the complete transcript of the public hearing is filed with the commission to file whatever proposed orders and briefs are required by the presiding officer.

(b) Response briefs may be filed thirteen (13) days after service of the opening briefs unless otherwise ordered by the presiding officer.

(c) Replies to response briefs shall not be filed without leave of the commission or presiding officer. Replies to response briefs shall be filed within thirteen (13) days of service of the response, or such other time period as the commission or presiding officer may prescribe.

(2) **Enlargement:** A motion for enlargement of time to file a proposed order or brief must be filed no later than three (3) days prior to that time as set out in Paragraph (1) of Subsection C of 1.2.2.36 NMAC, except for good cause shown.

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D. Filing and service of proposed orders and briefs: All proposed orders and briefs shall be filed, ~~and shall be accompanied by a certificate of service. The original and five (5) copies shall be filed unless otherwise ordered by the commission or presiding officer.~~

E. Briefs' contents generally:

(1) Briefs shall be concise and shall include transcript citations for each statement of fact or transcript reference in the form required by Subsection D of 1.2.2.34 NMAC.

(2) Briefs shall contain a table of contents with page references and a list of authorities cited.

(3) Argument regarding an issue shall include a brief statement of the position of each party and of staff regarding that issue.

F. Reconciliation statements:

(1) Unless the commission or presiding officer directs otherwise, each brief filed in a rate case shall contain a reconciliation statement setting forth, in dollars, the final position of ~~the staff or~~ party filing the brief. The reconciliation statement shall be in a simple and concise form and, to the extent necessary for the type of rate regulation applicable, shall set forth:

(a) the claimed rate base for the regulated entity showing test year figures per book, adjustments, and adjusted test year figures (if rate base items are at issue the statement shall set forth on a separate sheet the contested items and their dollar effect on rate base);

(b) an income statement showing operating revenues and expenses with test year figures per book, adjustments, and adjusted test year figures (if any expense items are at issue the statement shall set forth on a separate sheet the contested expense or revenue items in detail and the dollar effect on total company expenses or revenues of their allowance);

(c) the capital structure of the company (if there is no actual capital structure, any proposed imputed capital structure, the ratio of each type of capital to total capital, and the cost and weighted cost of each shall be shown; this schedule shall show the dollar effects of the requested return upon revenue requirements);

(d) a computation of projected state and federal taxes on adjusted figures based on statutory rates or other applicable rates; and

(e) a computation of the claimed revenue deficiency.

(2) If the information required by Paragraph (1) of Subsection F of 1.2.2.36 NMAC is clearly set forth in schedules in evidence, such schedules may be appended to the brief in lieu of a separate reconciliation statement. If staff or a party adopts the position of another party, or of staff, the party or staff may state whose position is adopted rather than file a separate duplicative reconciliation statement.

(3) The company must provide a proof of revenue statement.

(4) The parties or staff may, on sheets separate from those needed for the reconciliation statement required by Paragraph (1) of Subsection F of 1.2.2.36 NMAC, show details of adjustments by account numbers, give short explanations or reasons for the adjustments, and show where these adjustments require adjustments elsewhere. The parties and staff may also give citations to the transcript to show where the requested adjustment is supported by the record.

1.2.2.37 COMMISSION ORDERS; EXCEPTIONS; AND REHEARINGS:

A. Commission orders:

(1) The commission will issue its order in writing in every proceeding. The order shall contain separately stated findings of fact and, in the commission's discretion, conclusions of law, or combined findings and conclusions. The commission may, in its discretion, issue an oral decision prior to the issuance of its written order. The timeliness of applications for rehearing and notices of appeal shall be calculated from the date the commission issues its written order. The date a written order is issued is the date when the written order, signed under the seal of the commission, has been filed, ~~with the chief clerk or the chief clerk's designee.~~

(2) The commission may adopt a hearing examiner's recommended decision. If a recommended decision is adopted in its entirety, the commission's order shall so state. Where the only changes between the commission order and the hearing examiner's decision are those to correct grammatical or typographical errors, the commission's order shall so state.

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(3) The commission may issue an order which makes reference to the recommended decision and indicates disagreements with the hearing examiner, and the commission may make further or modified findings and conclusions based on the record.

B. Issuance of Recommended decisions:

A hearing examiner shall issue a recommended decision.

The recommended decision shall be served on all parties to and the staff in the proceeding and shall contain separately stated findings of fact and conclusions of law.

C. Exceptions to recommended decisions:

(1) Filing requirements:

(a) Unless otherwise ordered by the commission or presiding officer, exceptions may be filed by staff or by any party within thirteen (13) days after the recommended decision is issued.

(b) Except by prior written approval of the commission or presiding officer, exceptions shall be no longer than forty (40) pages. A summary of argument, identifying with particularity, and numbering the points excepted to, of no more than five (5) pages, shall be included with the exceptions and does not count toward the forty (40) page limit.

(c) Unless otherwise ordered by the commission or presiding officer, responses to exceptions may be filed within eight (8) days after the exceptions have been filed.

Except by prior written approval of the commission or presiding officer, responses to exceptions shall be no longer than thirty-five (35) pages. A summary of argument of no more than three (3) pages shall be included with a response and does not count toward the thirty-five (35) page limit.

(d) Replies to responses to exceptions shall not be filed without leave of the commission or presiding officer.

Except by prior written approval of the commission or presiding officer, replies to responses shall be no longer than fifteen (15) pages. A summary of argument of no more than two (2) pages shall be included with a reply and does not count toward the fifteen (15) page limit. Replies to responses to exceptions shall be filed within thirteen (13) days of service of the response, or such other time period as the commission or presiding officer may prescribe.

(e) Any exception, response, or reply ten (10) pages long or longer shall include a table of contents listing the points made and authorities relied on. A table of contents shall not count toward any page limitation.

(2) Contents:

Responses shall not raise, for the first time, matters which were not raised in the exceptions of a party, or the staff. Exceptions and any responses must specifically set forth:

(a) the precise portions of the proposed decision to which the exception is taken or response to exception is made;

(b) the reason for the exception or response;

(c) authorities on which the party or staff relies, and specific citations to the record in the form required by Subsection D of 1.2.2.34 NMAC;

(d) in rate cases, reconciliation statements containing the information listed in Subsection F of 1.2.2.36 NMAC.

~~—————(3) Copies: Exceptions and responses shall be filed and be accompanied by a certificate of service. The original and five (5) copies shall be filed unless otherwise ordered by the commission or presiding officer.~~

D. Oral argument to commission after recommended decision:

Any party or staff may petition the commission for oral argument after the issuance of a recommended decision. Such request may be included in a brief on exceptions or a response, but must be filed no later than the last day to file responses.

The commission in its discretion may allow oral argument. If it allows oral argument, it may in its discretion conduct the argument by telephone conference call.

E. Reopening proceedings:

(1) **Motion to reopen:** Before the issuance of a commission order, or after the issuance of a recommended decision, staff or a party to a proceeding may file a motion to reopen the proceeding for the taking of additional evidence.

(2) **Allegations:** Such motion shall specify those facts claimed to constitute grounds in justification thereof, including material changes of fact or law alleged to have occurred since the conclusion of the

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public hearing, and shall contain a brief statement of proposed additional evidence and an explanation as to why such evidence was not previously produced.

(3) **Responses:** Within thirteen (13) days following the service of any motion to reopen, staff or any other party may file responses thereto.

(4) **Commission may reopen:** The commission on its own motion may, at any time, reopen any proceeding when it has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of such proceeding.

F. Rehearing:

(1) **Motions for rehearing:**

(a) Except as otherwise provided in Sections 62-10-16 and 62-11-1 NMSA 1978, after an order has been issued by the commission in a proceeding staff or any party to the proceeding may within ten (10) days after the issuance of the order move for rehearing of the order with respect to any matter determined in the proceeding.

(b) The motion shall specify the matters upon which the movant requests rehearing and the ground or grounds on which the movant considers the order to be unlawful, unjust, or unreasonable with regard to each such matter.

(2) **Responses:** Any party or staff may file a response in writing within five (5) days, or within thirteen (13) days if Sections 62-10-16 and 62-11-1 NMSA 1978 apply, which opposes or supports the motion for rehearing. Replies to responses shall not be permitted without leave of the commission or presiding officer.

(3) **New evidence:**

A motion for rehearing may seek modification of the order without introduction of additional evidence.

If the movant or any party or staff who opposes or supports the motion seeks to introduce additional evidence on any matter, the new evidence must be specified and must be supported by affidavit and a statement of the reasons why the new evidence was not previously introduced.

Any new evidence furnished in support of the motion or response shall be considered by the commission only for purposes of the commission's decision on the motion and shall not be considered as evidence pertaining to the order that the commission previously had issued.

(4) **Effect of filing motion:** The filing of a motion for rehearing shall not excuse staff or a party from complying with or obeying any order or any requirement of an order of the commission, nor shall it operate in any manner to stay or postpone the enforcement thereof, except as the commission may by order direct, as provided by law.

(5) **Oral argument:** If the commission in its discretion grants oral argument on a motion for rehearing, of the commission's order, said order shall not thereby be vacated.

(6) **Disposition of motions: for rehearing:**

(a) Except as otherwise provided in Section 62-10-16 NMSA 1978, the commission may grant or deny the motion at any time within twenty (20) days after the final order has been issued and prior to the expiration of the period prescribed for filing of responses.

If the commission does not act on a motion for rehearing within twenty (20) days after the final order has been issued, the motion shall be deemed denied.

(b) The commission may limit the rehearing to some or all of the matters raised in the motion or may expand the rehearing to include other matters determined in the proceeding.

(c) On rehearing the commission, in its discretion, may receive some or all of the new evidence specified in the motions or responses subject to cross-examination, may expand the rehearing to include additional evidence, or may restrict the rehearing to modification of its order without introduction of new evidence.

(d) If the rehearing is limited to modification of the order without introduction of new evidence, all parties and staff will have an opportunity to oppose or support the proposed modification, but the rehearing will be decided without oral argument or public hearing unless the commission directs otherwise.

(e) If the commission grants the motion for rehearing in whole or in part, the order being reheard shall be deemed vacated and no order or decision at that time shall exist in the proceeding.

(7) **New order:** After any rehearing the commission shall enter a new order which may incorporate by reference any portion of the previously issued order which the commission had vacated.

G. Errata notice:

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(1) The commission, the commission chairman, or, in the absence of the chairman, any other commissioner, may correct typographical errors, omissions, or other non-substantial errors in commission orders through the issuance of errata notices. A presiding officer may also correct typographical errors, omissions, or other non-substantial errors in their orders through the issuance of errata notices. The issuance of an errata notice shall not affect the finality of the decision or order corrected,

(2) A party to a formal proceeding or staff may correct typographical errors, omissions, or other non-substantial errors in its pleadings or documents through the filing of an errata notice, which shall conform to the rule governing pleadings.

H. Notice of appeal:

Notices of appeal of commission decisions shall be filed pursuant to applicable statutes, including but not limited to Section 53-13-2 NMSA 1978, Section 59A-52-22 NMSA 1978, Section 62-11-1 NMSA 1978, Section 63-9-16 NMSA 1978, Section 63-9A-14 NMSA 1978, Section 63-9B- 9 NMSA 1978, Section 63-9H-12 NMSA 1978, Section 70-3-15 NMSA 1978, Section 65-2A-35 NMSA 1978, and Section 63-7-1.1 NMSA 1978.

I. Docketing of submissions in compliance with, and motions for variances from, final orders:

(1) Submissions in compliance with, and motions for variances from, commission final orders shall be filed under the same case number as that of the final order. ~~A certificate of filing and service stating that the compliance submission has been filed shall be filed and served on staff and all other parties to that case.~~ Motions for variances or requests for extension of times to meet compliance provisions contained in final orders of the commission shall be filed in a new docket and shall be served on staff and all parties to the underlying case.

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TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 2 ADMINISTRATIVE PROCEDURES
PART 2 PUBLIC REGULATION COMMISSION RULES OF PROCEDURE

1.2.2.7 DEFINITIONS: In addition to the definitions contained in Sections 3-29-2, 8-8-2, 53-4-1, 53-6-3, 53-8-2, 53-11-2, 53-19-2, 53-20-2, 60-2C-2, 62-3-3, 62-14-2, 63-9-2, 63-9A-3, 63-9H-3, 65-2A-3, 65-6-2, and 70-3-12 NMSA 1978, as used in this rule:

D. Definitions beginning with “D”:

(1) **date and time of filing** means, for an electronic filing, the date and time that the filer submits the electronic filing to PRCe360 for filing, notwithstanding rejection of the attempted filing by the chief clerk or chief clerk designee. For in-person filing and for filing requests received in the mail, the date and time the document is scanned and submitted for filing on PRCe360.

(2) **docket** means a distinct file containing documents pertaining to the same or related matter.

(3) **document** means, except as otherwise used in the provisions of this rule governing discovery, any submission in a formal proceeding, including pleadings, or which is required to be filed by commission rule or order outside a formal proceeding.

E. Definitions beginning with “E”:

(1) **electronic** means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic, or similar capabilities;

(2) **electronic signature** means a full, printed name of the person responsible for the electronic version of the document by scanned or other electronic reproduction of the signature or by typing in the signature line the notation “/s/” followed by the name of the person signing the original document and including the email address of the person signing;

(3) **electronic filing** means the filing procedures for set forth in 1.2.2.10 NMAC.

F. Definitions beginning with “F”:

(1) **file, filed, or filing** means filing by electronic mail to the records bureau, email address, unless otherwise permitted by Subsections C and D of 1.2.2.10 NMAC, and acceptance by the chief clerk or the clerk’s designee;

(2) **fire marshal-regulated entities** means persons whose activities are regulated by the provisions of Sections 59A-52-1 through 59A-52-25 NMSA 1978, or the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978; this Paragraph shall be effective until June 30, 2021 at which time it shall be deleted;

(3) **formal proceedings** means structured legal processes initiated by an application, formal complaint, petition, motion, or order of the commission excluding rulemaking proceedings prior to the issuance of a notice of proposed rulemaking, and as otherwise clarified by commission order.

G. Definitions beginning with “G”: [RESERVED]

H. Definitions beginning with “H”: hearing examiner means a person employed by the commission as a hearing examiner, or a commissioner or advisory staff member designated by the commission as the hearing examiner, to conduct any hearing or investigation which the commission is authorized to conduct.

I. Definitions beginning with “I”:

(1) **informal proceedings** means any matters handled outside a formal proceeding by the commission or its staff, including informal complaints

(2) **intervenor** means a person permitted by the commission or presiding officer to participate as a party in a proceeding pursuant to 1.2.2.23 NMAC.

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”: [RESERVED]

M. Definitions beginning with “M”: mediator means a person assigned by the commission to facilitate resolution of disputes pending informally or formally before the commission by assisting parties in their communications and meetings, identification and exploration of issues, and development of bases for agreements.

N. Definitions beginning with “N”: [RESERVED]

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O. Definitions beginning with “O”: **observer** means a person or entity who is not a party to a formal proceeding, commission staff, or otherwise connected to a docket, but who has signed up to receive notice of filings in a given docket

P. Definitions beginning with “P”:

(1) **party** means a person who initiates a commission proceeding by filing an application, petition, or complaint, or whom the commission or presiding officer names as a respondent, or whom the commission or presiding officer grants leave to intervene:
unless the context indicates otherwise, the term party may also refer to counsel of record for a party;
staff shall have the status of a party without being required to file a motion to intervene but shall not have a right to appeal;

(2) **petitioner** means any party on whose behalf a petition is made for approval, determination, consent, certification, or authorization of the commission;

(3) **pleading** means an application, petition, complaint, answer, motion, response to motion, exception, or other formal written statement filed in any formal proceeding;

(4) **PRCe360** means the commission’s electronic file management system.

(4) **presiding officer** means a commissioner taking such actions as are permitted under 1.2.2.29 NMAC and 1.2.2.30 NMAC or the hearing examiner designated to preside over a proceeding

(5) **proceeding** means a formal proceeding

(6) **public hearing** means a portion of a proceeding, open to the public and conducted by the commission or presiding officer, that affords an opportunity to present such evidence, argument, or other appropriate matters as the commission or presiding officer deems relevant or material to the issues.

Q. Definitions beginning with “Q.”: [RESERVED]

R. Definitions beginning with “R”:

(1) **records bureau email address** means prc.records@state.nm.us or another records bureau email address, as set out on the commission’s webpage;

(2) **regular business hours** means 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m., prevailing mountain time, Monday through Friday, excluding State holidays;

(3) **regulated entity** means a utility, telecommunications provider, motor carrier fire marshal-regulated entity (to be deleted on June 30, 2021), railroad, or owner or operator of gas and hazardous liquid pipelines and underground facilities or one-call notification system subject to the jurisdiction of the commission;

(4) **respondent** means any party against whom any complaint is filed or any party subject to the jurisdiction of the commission to whom the commission issues notice instituting a proceeding, investigation, or inquiry of the commission.

S. Definitions beginning with “S”:

(1) **staff** means all persons, other than hearing examiners and advisory staff, employed by the commission:

(2) **“Service Notification” tab** means a tab within each docket that lists all contacts that will receive automatic filing notifications once a filing request is accepted into the docket. The list is automatically generated based on the information provided when the docket is created and the contact information that entities upload to PRCe360. The list will later be updated as individuals and entities are granted party status, Commission staff are assigned to the docket, and observers opt in to receive notifications of filing submissions for that docket.

T. Definitions beginning with “T”: **telecommunications provider** shall have the meaning given in Paragraph (2) of Subsection A of Section 63-7-23 NMSA 1978.

U. Definitions beginning with “U”: **unsworn affirmation** means an unsworn affirmation in lieu of a notarization pursuant to Paragraph (3) of Subsection A of 1.2.2.35 NMAC.

V. Definitions beginning with “V”: [RESERVED]

W. Definitions beginning with “W”: **watcher**- see “observer.”

X. Definitions beginning with “X”: [RESERVED]

Y. Definitions beginning with “Y”: [RESERVED]

Z. Definitions beginning with “Z”: [RESERVED]

1.2.2.8 GENERAL PROVISIONS:

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A. Public records: The commission's policy is to allow full and complete access to public records in accordance with the Inspections of Public Records Act, Section 14-2-1 NMAC 1978 *et seq.* Except when the commission or presiding officer directs otherwise, all pleadings, orders, communications, exhibits, or other documents shall become matters of public records as of the day and time the chief clerk or chief clerk designee accepts the document for filing. The commission shall permit any person to examine any such public record, unless subject to a protective order, or otherwise protectable under the Inspections of Public Records Act. Under no circumstances will any person be allowed to take original commission records from commission premises. Arrangements to examine records or to obtain copies of records must be made through the chief clerk or the chief clerk's designee.

C. Filing fees:

(1) Filing fees for specific documents are:

(a) Applications, petitions, formal complaints, and all other filings requiring payment of a fee must pay \$25.00 and this fee is required at the time of filing;

(b) Advice Notices: a fee of \$1.00 per each proposed rate, rule, or form applies, and is required at time of filing.

(2) Electronically filed documents that are required by law to be submitted with a filing fee:

(a) the entity electronically filing documents that require a filing fee shall include as an attachment to the filing transmittal email a scan (PDF) or photograph (JPEG) of the filing fee (check or money order made payable to the commission) to show proof of payment at time of filing. The scan or photograph of the check or money order shall be a separate electronic document from the document to be filed;

(b) the entity electronically filing documents shall promptly physically mail the check or money order to NMPRC, (attn: Records Bureau, P.O. Box 1269, Santa Fe, NM 87504-1269) along with a copy of the cover page for the document that the fee is associated with and the docket number given to that document at the time of filing to assist the chief clerk or designee with making sure the filing fee is properly applied;

(c) after receipt of the electronically submitted document and the attached scan or photograph of the filing fee, the records chief clerk or designee will approve the request for filing in PRCe360 and PRCe360 will issue a docket number.

(3) All application fees or other charges required by law to be paid along with the filing of a document shall be paid to the commission by check or money order at the time of filing a hard copy by regular mail or in-person at the commission offices.

(4) No pleading or document will be accepted without payment of required fees the filing party, unless the commission or presiding officer directs otherwise.

(5) Except as otherwise provided by Sections 53-2-1, 53-8-87 and 65-2A-36 NMSA 1978, and 12.3.1 NMAC, the fee for paper copies of papers, testimony, or records, shall be the charge set by the commission's inspection of public records policy posted on the commission's website.

(6) The fee for copies of papers, testimony, or records on electronic storage media shall be the charge set by the commission's inspection of public records policy posted on the commission's website.

(7) The fee for cassette or CD-ROM copies of audio recordings of informal and formal proceedings, if available, shall be the charge set by the commission's inspection of public records policy posted on the commission's website.

(8) For paper copies of pleadings or documents that are not retrievable on electronic storage media maintained by the commission, the chief clerk or chief clerk's designee may charge in accordance with the commission's inspection of public records policy posted on the commission's website.

D. Waiver of rules: Upon the commission's or presiding officer's own motion, or by motion of the staff or any party showing good cause and such notice as the commission or presiding officer may deem proper, the commission or presiding officer may waive the application of any procedural provision of this rule, except when precluded by law.

E. Construction and amendment: These rules, and any rules incorporated by reference, shall be so construed so as to secure just and speedy determination of the issues.

F. Dockets:

The commission shall maintain a docket of all proceedings and all publicly filed documents. Each new proceeding shall be assigned an appropriate docket number. Each publicly filed document shall be placed in either its own docket or in a docket with similar documents, as appropriate.

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(1) Dockets are open to public inspection, unless the commission otherwise orders.

(2) **Pending and closed dockets:**

(a) PRCe360 shall list whether a docket is active or closed.

(b) The commission shall close each pending docket at the conclusion of the proceeding or upon determining that no further commission action is necessary in the docket.

(c) The only filings permitted to be filed into a closed docket will be compliance filings in accordance with commission order and Rule 1.2.2.37(I) NMAC.

(d) New filings, other than compliance filings, shall not be filed into a closed docket. To file into a closed docket, a motion to reopen the docket must be submitted into a new docket, and the movant must wait for a decision from the commission.

G. Compliance Dockets and filings: Each year, regulated entities subject to rule, annual reporting, fee submission, or other recurring compliance requirements shall open a docket for the purpose of submitting such filings. Compliance dockets shall be used to submit rule compliance filings, annual reporting requirements, and fee submissions. Compliance filings arising from a commission order issued in a specific docket, shall be filed within those specific dockets pursuant to 1.2.2.37(I)NMAC.

(1) **Compliance Dockets:** When opening a docket to accommodate a company's compliance filings other than those compliance filings associated with an order of the Commission, the docket captions shall read "IN THE MATTER OF [COMPANY NAME] COMPLIANCE FILINGS FOR [YEAR]."

(2) **Document Name Conventions:** Each document shall clearly identify in its title the citation to the rule number that the report satisfies (for example, "Rule 440"). If the document is an "Annual Report," that is an acceptable title.

H. Calendar of public hearings:

The commission shall maintain a public hearing calendar.

The public hearing calendar is open to public inspection.

I. Identification of communications: Communications shall contain the name, address, e-mail address if available, and telephone number of the communicator and an appropriate reference to any commission cases pertaining to the subject of the communication.

J. Current information required: : Every party, stakeholder, regulated entity, and individual or entity wishing to participate in or receive notice of Commission dockets shall maintain a valid, working, and regularly checked email address on PRCe360. The commission is not responsible for unread emails sent from or unread notifications within PRCe360.

J. Computation of time: The time within which an act is to be done as provided in any rule or order promulgated by the commission, or order issued by the presiding officer, when expressed in days, shall be computed by excluding the day of the act or event from which the time begins to run and including the last, except that if the last day be Saturday, Sunday, or a legal holiday, the act may be done in the next succeeding business day.

K. Extensions of time:

Except as otherwise provided by law, the time by which any person is required or allowed to act under any statute, rule or order may be extended by the commission or presiding officer for good cause, upon a motion made before the expiration of the period prescribed or previously extended.

The filing of the motion does not toll the running of the time period prescribed.

L. Classification of parties: Parties to proceedings before the commission shall be classified as applicants, petitioners, complainants, respondents, or intervenors. Observers are not parties to proceedings.

M. Technical difficulties: If PRCe360 is not operating through no fault of the filer, the Commission may apply leniency when determining the appropriate responsive action.

1.2.2.10 FILING AND SERVICE:

A. Service and contact emails: All parties, stakeholders, regulated entities, and docket participants other than commenters, must register with PRCe360 and maintain a valid, working, and regularly checked email address on PRCe360. The commission shall not be responsible for inoperable email addresses or unread emails sent from PRCe360 or notifications sent within PRCe360.

B. Service generally:

(1) Except as otherwise provided by this rule or order of the commission or presiding officer, all pleadings, orders, notices, and documents filed in a proceeding shall be promptly served upon those persons

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described in Paragraph (4) of Subsection B of 1.2.2.10 NMAC by the person filing the orders, notices, pleadings, or documents.

(2) Except as otherwise provided by this rule or order of the commission or presiding officer, service shall be made by electronic transmission via PRCe360.

(3) If a person does not have the ability to serve and be served electronically, service on and by that person shall be made by: depositing the pleading, order, notice, or document in the U.S. mail (postage prepaid) using first class or express mail; by delivering the pleading, order, notice, or document to a commercial courier service for delivery; hand delivery. The date of service shall be the date of deposit in the mail, delivery to a commercial courier service, hand delivery, or electronic transmission.

(4) Upon submitting a document for electronic filing in a new docket, the filer shall confirm that all parties or entities required to receive service of the filing are included as parties to the docket.

(5) Upon submitting a document for electronic filing in an existing docket, the filer shall confirm that all other parties in the proceeding, persons who have pending motions to intervene, staff, and as otherwise required by commission rule or order required to receive service of the filing are included in the "Service Notification" tab of the docket. Service of pleadings, orders, notices, and documents shall be made upon all persons included on the "Service Notification" tab.

(6) Service of pleadings, orders, notices, and documents on the staff's or a party's named attorney is valid service upon staff or the party for all purposes in the proceeding unless the commission or presiding officer directs otherwise.

(7) Orders or documents issued by the commission or presiding officer are effective on the date they are filed unless otherwise stated in the order or document;

C. Date stamps on filed documents and pleadings:

(1) **Electronic filings:** The date and time a filing is submitted to PRCe360, notwithstanding a rejection from the chief clerk or chief clerk designee of the attempted filing, shall serve as the date and time of filing.

(2) **Filing by mail:** The date and time a filing is scanned and submitted to PRCe360 for filing, notwithstanding a rejection from the chief clerk or chief clerk designee of the attempted filing, shall serve as the date and time of filing.

(3) **Filing in person:** For filings made in person, the date and time of filing shall be the date the chief clerk or chief clerk designee scans and uploads the document to PRCe360.

D. Filings:

(1) Any complete, correctly submitted document, order, notice, or pleading will be accepted by the chief clerk or designee for filing.

(2) All filed documents shall be made available, upon reasonable demand, for inspection by the chief clerk or designee, the public, other parties, or the commission.

(3) The filing party has the responsibility to make sure that the filed document or pleading is complete and accurate.

(4) The filer is responsible for ensuring the filing is correctly designated as confidential or non-confidential.

(5) For documents and pleadings designated non-confidential at the time of filing, the filer is responsible for ensuring that all filed documents and pleadings do not contain, or have properly redacted, any confidential information or "protected personal identifier information" as defined by 1-079 NMRA and Section 14-2-6 NMSA 1978.

(6) The filing party shall ensure that all filed documents and pleadings designated as non-confidential at the time of filing do not contain, or have properly redacted, any protected information that is prohibited from disclosure by any state or federal law or regulation.

(7) For a document that contains redacted confidential information or personal protective identifier information, the filer shall also upload an unredacted confidential version to PRCe360. That confidential version shall be properly designated as confidential at the time of filing.

(8) A filing party who improperly designates a document or pleading as non-confidential and that document or pleading contains protected personal identifier information or information prohibited from disclosure by state or federal law or regulation, shall be solely liable for any damages that result from filing such information with the commission.

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(8) Except as provided in Paragraph (2) of Subsection C of 1.2.2.10 NMAC, persons exempted from the electronic filing requirement may physically file documents or pleadings by:

(a) sending one original of the document or pleading to be filed via regular postal mail to: NMPRC Records Bureau, PO Box 1269, Santa Fe, NM 87504; or

(b) if the records bureau has a physical location that is open to the public, by delivery of one original of the document or pleading to the commission's chief clerk or designee during posted office hours.

E. Electronic filing:

(1) Electronic filing required:

(a) all regulated entities are required to make electronic filings via PRCe360;

(b) all persons should make electronic filings via PRCe360, if they have the ability to do so; and

(c) only persons who lack the ability to make electronic filings are permitted to make physical filings;

(2) Documents shall be submitted to PRCe360 for electronic filing.

(3) Electronically filed documents shall be scanned with a regular signature or be electronically signed.

(4) Electronically filed documents shall include the email address of the person signing the document in the signature block, and if filing on behalf of a regulated entity, the email address of the regulated entity.

(5) **Confidentiality agreements and non-disclosure agreements:** when filing nondisclosure agreements or confidentiality agreements, each confidentiality agreement or non-disclosure agreement shall be filed as a separate document.

(6) PRCe360 supports files up to 5,000 MB in size. Any filing that exceeds this maximum file size shall be divided into multiple documents.

(7) No physical hard copies of electronically filed documents or multiple copies of physically filed documents are required to be submitted unless the commission or presiding officer directs the filer to do so. At the direction of the commission or presiding officer, a designated number of copies of any filed document shall be mailed, by regular postal service mail, to the commission at any number of designated addresses.

(11) The commission or presiding officer may direct any filer to submit documents or pleadings to them in a native document format in addition to the PDF version filed with PRCe360 if a native format exists.

(12) If for any reason physical electronic storage media must be presented to the commission, unless otherwise directed by the commission or presiding officer, the electronic storage media shall be a USB flash drive. All electronic storage media submitted pursuant to this rule shall be compatible with the commission's current computer capabilities. All physical electronic storage media filed shall have affixed thereto a label containing the appropriate case number, the title of the pleading or document, the name of the party or staff making the filing.

(13) Confidential materials are not an exception to the electronic filing requirement. Confidential materials are subject to the terms of any applicable protective order. Confidential materials shall be designated as confidential at the time of submitting the confidential material for filing in PRCe360.

(14) Parties are responsible for the timely filing of electronic documents to the same extent as with the filing of non-electronic documents. with the same consequences for missed deadlines.

F. Rejection:

(1) Pleadings and documents which are not in substantial compliance with these or other commission rules, orders of the commission or presiding officer, or applicable statutes may be rejected within thirty (30) days after filing.

(2) If rejected, a notification of rejection identifying the deficiencies will be sent via PRCe360. However, a copy of the rejected documents shall be retained within PRCe360 as a public record. Acceptance of a pleading or document for filing is not a determination that the pleading or document complies with all requirements of the commission or presiding officer and is not a waiver of such requirements.

(3) The chief of staff of the commission, is authorized to reject pleadings and documents under this rule and to sub-delegate such authority.

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(4) pleadings or documents that have been rejected shall not become part of the record proper. used as a basis for the commission's decision.

G. Amendments and withdrawal of pleadings and supporting documents:

(1) Except in the case of formal complaints, pleadings may be amended or withdrawn only with leave of the commission or presiding officer and upon such conditions as the commission or presiding officer may deem appropriate.

(2) Formal complaints may be amended without leave at any time prior to the issuance of the probable cause determination. required by this rule.

(3) Amendments to any pleading shall not broaden the scope of the issues originally filed unless the commission or presiding officer exercises the discretion to allow such an amendment.

(4) Upon any amendment or withdrawal of a pleading, allowed, the commission or presiding officer may require a supplementary public notice.

(5) Direct testimony and exhibits filed may be amended or withdrawn only with leave of the commission or presiding officer, who may take into consideration, among other things, any delay or prejudice to the commission, its staff, or the parties which would result from the granting of the motion. The commission or presiding officer may grant or deny the motion or grant the motion only upon such conditions as are deemed appropriate.

Upon any amendment or withdrawal, allowed, the commission or presiding officer may require a supplementary public notice.

(6) A copy of any withdrawn filing shall be retained by the chief clerk or designee as a public record.

1.2.2.15 FORMAL COMPLAINTS:

Formal complaints shall conform to the requirements of this rule governing pleadings, except that the requirements of this rule shall be liberally construed with respect to *pro se* parties. A formal complaint shall be accompanied by the \$25.00 filing fee required in Subsection B of Section 62-13-2 NMSA 1978. Pursuant to Section 62-13-2.1 NMSA 1978, the commission may order that the filing fee be refunded if the commission dismisses the complaint for lack of probable cause and determines that the complainant filed the complaint in good faith.

The filing of a formal complaint shall commence a formal proceeding.

A formal complaint shall allege that a regulated entity has violated a law, rule, order, tariff, certificate of public convenience and necessity, or operating authority promulgated or enforced by the commission.

A formal complaint may be filed via PRCe360.

A. Contents: A formal complaint shall contain:

- (1) a clear and concise statement of the relief sought;
- (2) a concise and explicit statement of the facts which the complainant alleges show a violation;
- (3) a statement of any laws, rules, orders, tariffs, certificates of public convenience and necessity, or operating authorities alleged to have been violated;
- (4) the exact legal and "doing business as" name, mailing address, and telephone number of the complainant and his or her attorney if any;
- (5) the exact legal name, mailing address, and telephone number of the respondent, if known; and
- (6) confirmation of the following statement signed by the complainant: "The factual allegations in the complaint are true and correct to the best of my knowledge and belief."

B. Discontinuance of service prohibited: A utility or telecommunications provider shall not discontinue service to a customer or issue a notice of discontinuance of service relative to the matter in dispute once a formal complaint has been filed, except as otherwise authorized by law or commission rule. Charges which are not in dispute must continue to be paid on time and in full by the complainant or be subject to other applicable commission rules regarding disconnection or discontinuance of service.

C. Service of complaints; answer:

(1) Upon receipt of a formal complaint that is in substantial compliance with this rule, within a reasonable period of time the commission shall cause a copy of the complaint to be served on the respondent accompanied by a notice from the commission calling upon the respondent to answer the complaint in writing within

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twenty (20) days of service of the complaint. For good cause, the commission or presiding officer may order the answer to be filed in a shorter or longer time. The notice shall also state that the commission may impose administrative fines or other sanctions if the commission finds merit to the complaint.

The answer may contain an offer to satisfy the complaint as provided in Subsection D of 1.2.2.15 NMAC.

The commission or presiding officer shall further serve the respondent with notice of any amendments to the complaint.

(2) Motions for an extension of time to answer a complaint shall comply with the requirements of this rule.

(3) If an amendment to a complaint is filed before the answer is filed, the respondent's time within which to answer shall be ten (10) days from the date of service of the amendment or the period set forth in the notice, whichever period is longer.

D. Satisfaction of complaint:

If the respondent desires to satisfy the complaint, they shall submit to the commission in the answer a statement of the relief which they are willing to give, a copy of which shall be contemporaneously served upon the complainant. Upon acceptance of this offer by the complainant and notice to the commission, the complaint may be dismissed.

If there is a partial settlement of the case, with dismissal in part, the complainant may proceed with the remaining issues. If the commission dismisses a complaint in whole or in part because the complaint has been satisfied, the commission may continue or initiate further proceedings if the issues raised in the complaint involve a general matter of public interest.

E. Contents of answers:

The answer shall state in short and plain terms a respondent's defenses to each claim asserted and shall admit or deny the averments upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, the answer shall so state and this shall have the effect of a denial.

Respondent may challenge jurisdiction and address whether probable cause exists. in the answer.

F. Disposition of complaint. Upon the filing of an answer, commission shall evaluate jurisdiction and probable cause, and may, as appropriate:

- (1) grant the relief requested in whole, or in part,
- (2) dismiss the complaint in whole or in part;
- (3) set further proceedings on the complaint or on the remaining issues in the complaint; or
- (4) designate a hearing examiner to preside over the complaint or over the remaining issues

in the complaint.

G. Notice of public hearing:

When a public hearing is required by law or commission rule, at least twenty (20) days prior to an initial public hearing on the merits of any complaint, a notice of such initial public hearing shall be mailed to the respondent and the complainant by the commission or presiding officer. No public hearing shall be held until after the commission has determined that probable cause exists for the complaint. If it is determined that the subject matter of the complaint involves a matter of general public interest, the commission or presiding officer may require that a notice of the public hearing:

- (1) be published at least twenty (20) days prior to the public hearing in a newspaper of general circulation available in the county where the complaint originated, or
- (2) be given in such other manner as the commission or presiding officer may deem proper under the circumstances; costs of publication shall be borne by the respondent.

H. Participation of staff: The commission or presiding officer may require that staff participate at any stage in the proceeding.

I. Dismissal at any time: The commission shall dismiss a complaint upon a finding of no jurisdiction or probable cause.

1.2.2.23 INTERVENORS AND COMMENTERS:

A. Intervention:

Any person, other than staff and the original parties to a proceeding, who desires to become a party to the proceeding may move in writing for leave to intervene in the proceeding.

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- (1) The motion for leave to intervene shall indicate the nature of the movant's interest in the proceeding;
- (2) The motion shall also comply with the provisions of this rule governing pleadings except that the motion shall indicate the facts relied upon as grounds for intervention.
- (3) Motions for leave to intervene shall be served on all existing parties and other proposed intervenors of record.

B. Deadline for filing motions to intervene:

In proceedings concerning applications relating to securities, unless the commission or presiding officer orders otherwise, the motion must be filed before the commencement of the public hearing. In all other proceedings motions to intervene must be filed as directed by the commission or presiding officer in the proceeding.

C. Objections to intervention: Objections to motions for leave to intervene must be in writing and filed within thirteen (13) days after the service of the motion or at the time of public hearing, whichever is earlier.

D. Disposition of motions to intervene:

(1) Unless the commission or presiding officer, on their own motion, denies a motion for leave to intervene, all timely motions for leave to intervene not objected to by any party or by staff within thirteen (13) days of service of the motion for leave to intervene shall be deemed allowed, provided that the commission or presiding officer, on their own motion after notice and public hearing, may thereafter terminate the party status of any intervenor.

(2) Where a timely motion for leave to intervene is contested, the commission or presiding officer may grant the intervention if it appears after consideration that the motion discloses that:

(a) the movant possesses a substantial interest in the subject matter of the public hearing;

(b) participation of the movant is substantially in the public interest; or

(c) the intervention presents no undue prejudice to the other parties.

(3) Whenever a motion to intervene is permitted to be filed out of time, the commission or presiding officer may deny the motion or grant the motion with limitations on grounds including, but not limited to:

(a) failure to set forth sufficient grounds for intervention;

(b) disruption of the proceeding resulting from the intervention;

(c) prejudice or hardship to existing parties or staff; or

(d) undue broadening of the issues.

(4) Except as otherwise ordered, a grant of an untimely motion to intervene must not be a basis for delaying or deferring any procedural schedule established prior to the grant of the motion.

(5) Intervenors who are granted party status are bound by the agreements reached and orders entered in the proceeding prior to their intervention. The commission and the presiding officer will not allow the broadening of issues unless the public interest requires it or no undue prejudice or hardship will result to other parties to the proceeding or to staff.

(6) Notwithstanding the provisions of Paragraphs (1) through (3) of Subsection D of 1.2.2.23 NMAC, where there are two (2) or more intervenors or proposed intervenors having substantially like interests and positions, the commission or presiding officer may, to avoid unnecessary delay or duplication of effort and expense, limit the number of intervenors in the proceeding.

(7) A proposed intervenor shall become party to the proceeding once the motion to intervene is deemed allowed or otherwise granted under this rule. Intervenors shall have the same rights as other parties to the proceeding.

E. Withdrawal of intervenors: An intervenor can withdraw by filing notice and must serve the withdrawal on all parties, and staff.

F. Commenters: Commenters shall be entitled to make an oral statement or submit a written statement for the record, but such statement shall not be considered by the commission as evidence. All interested persons are afforded the opportunity to have input into cases dockets which affect them. The commission encourages ratepayer input and the purpose of this rule is to facilitate participation. However, commenters are not parties and shall not have the right to introduce evidence, to examine or cross-examine witnesses, to receive copies of confidential pleadings and documents, to appeal from any decisions or orders, or to otherwise participate in the proceeding other than making their comments.

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1.2.2.25 DISCOVERY:

A. Commission policy:

The commission favors prompt and complete disclosure and exchange of information and encourages informal arrangements among the parties and staff for this exchange.

It is further the commission's policy to encourage the timely use of discovery as a means toward effective presentations at public hearings and avoidance of the use of cross-examination at public hearings for discovery purposes.

B. Discovery procedures:

Techniques of pre-hearing discovery permitted in state civil actions, such as interrogatories, requests for admissions, depositions, and requests for production of documents may be employed by staff or by any party. The parties are not required to file certificates of service for discovery requests and responses. If difficulties arise in obtaining discovery, staff or any party may seek relief from the commission or the presiding officer by filing a proper motion. Upon experiencing any difficulties in obtaining discovery, staff and the parties may seek relief from the commission or presiding officer by filing a proper motion.

Nothing in this rule shall preclude the commission or the presiding officer from obtaining information by order or preclude staff from obtaining information in any lawful manner.

C. Applicability of rules of civil procedure:

Discovery in commission proceedings shall be governed by the New Mexico rules of civil procedure for the district courts applicable to discovery, except where such rules are inconsistent with this rule.

Any references to the "court" in those rules shall be deemed to mean the "commission or presiding officer" for purposes of commission proceedings.

D. Depositions:

(1) The commission, the presiding officer, staff, and parties shall have the right to take the testimony of any witnesses by deposition, and compel through the commission's subpoena powers the attendance of witnesses and the production of books, documents, papers, and accounts.

(2) Depositions may be taken and on-site inspections may be performed upon commencement of the proceeding and without prior approval of the commission or presiding officer.

(3) Notices or requests for depositions or on-site inspections shall be served on staff and on all parties unless the commission or presiding officer directs otherwise.

(4) All parties and staff may participate in any depositions, or in any on-site inspections requested by a party or staff under Subsection F of 1.2.2.25 NMAC, unless the commission or presiding officer directs otherwise.

E. Interrogatories:

The staff and parties may serve upon staff or any party written interrogatories to be answered by staff or the party served, or if the party served is a public or private corporation, by any officer or agent who shall furnish such information as is available to the party.

(1) Interrogatories may be served after commencement of any proceeding and without leave of the commission or presiding officer.

(2) The interrogatories shall be answered separately and fully in writing under oath, and each answer shall be signed by the person or persons making it unless otherwise ordered by the commission or presiding officer.

(3) Unless objected to, answers to interrogatories shall be served in the manner provided in Subsection H of 1.2.2.25 NMAC within fifteen (15) days after the service of the interrogatories unless the commission or presiding officer enlarges or shortens the time, or unless the party or staff submitting the interrogatories and the party or staff to which the interrogatories are directed agree to a different period of time, notice of which agreement shall be filed and served on staff and all other parties. Any such agreements shall not affect the authority of the commission or presiding officer to govern commission proceedings as provided by law.

(4) Within fifteen (15) days after service of interrogatories, staff or a party may make written objections, duly served as provided in Subsection H of 1.2.2.25 NMAC. Written objections shall:

(a) identify the interrogatory or subject matter objected to and stating with particularity, the reasons for the objections; and

(b) include copies or complete restatements of the interrogatory or interrogatories objected to, and a description of the facts and circumstances and the legal authority purporting to justify the objection.

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(5) The service of objections shall not excuse the answering party or staff from answering remaining interrogatories or subparts of interrogatories to which no objection is stated.

(6) Answers to interrogatories to which objection is made shall be deferred until a determination has been made on such objections.

F. Production of documents and things and entry upon land for inspection and other purposes:

The commission, the presiding officer, staff, and parties may serve upon any party or upon staff requests for the production or inspection of documents or things within staff's or that party's possession, custody, or control, either consolidated with interrogatories or alone.

The commission, presiding officer, staff, and parties may serve on any other party a request to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, either consolidated with the interrogatories or alone.

(1) A request may be served upon commencement of the proceeding and without leave of the commission or presiding officer.

(2) The request shall specify a reasonable time, place, and manner of making the inspection and performing related acts, or of copying the documents, or specify that copies of the designated documents be sent to the requesting party or staff in lieu of an inspection.

(3) The request shall set forth the property or items to be inspected, either by individual item or by category, and shall describe each item and category with reasonable particularity.

(4) The requestor shall specify a date for the production or inspection, which date shall be not less than fifteen (15) days after the date the request is served unless the commission or presiding officer enlarges or shortens the time, or unless the party or staff submitting the request for production of documents and the party or staff to which the request is directed agree to a different period of time, notice of which agreement shall be filed and served on staff and all other parties.

Any such agreements shall not affect the authority of the commission or presiding officer to govern commission proceedings as provided by law.

If no time is specified, production shall be due fifteen (15) days after service of the request.

(5) Within fifteen (15) days after service of a request for production, staff or a party may serve written objections in the form and manner provided in Subsections E and H of 1.2.2.25 NMAC. The objector shall produce, as requested, all documents or things which are not the subject of an objection.

G. Requests for admissions:

The commission, presiding officer, staff, or parties may serve upon any party or upon staff requests for the admission of facts or the genuineness of documents.

Copies of documents shall be served with the request.

(1) Requests may be served upon commencement of the proceeding and without leave of the commission or presiding officer.

(2) Answers to requests for admissions shall be served within fifteen (15) days after service of the request unless the commission or presiding officer enlarges or shortens the time, or unless the party or staff submitting the request for admissions and the party or staff to which the request is directed agree to a different period of time, notice of which agreement shall be filed and served on staff and all other parties. Any such agreements shall not affect the authority of the commission or presiding officer to govern commission proceedings as provided by law.

(3) Written objections to a request prepared in the form and manner provided in Subsection E of 1.2.2.25 NMAC shall be filed and served as provided in Subsection H of 1.2.2.25 NMAC within fifteen (15) days of service of the requests. The filing and service of objections shall not excuse the answering party or staff from answering the remaining requests to which no objection is stated.

H. Filing and service:

Interrogatories, requests for production or inspection of documents and things, or entry upon lands for inspection and other purposes, and requests for admissions and other written discovery requests shall be served upon the party or staff to which such discovery is directed.

Written answers, responses, or objections to discovery requests shall be served on the party or staff making such requests.

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(1) Discovery requests and responses, or objections thereto, and deposition transcripts, shall not be routinely filed.

(2) Unless the commission or presiding officer directs otherwise, interrogatories, requests for production or inspection of documents and things or entry upon lands for inspection and other purposes, requests for admissions and other written discovery requests or notices, as well as written responses or objections thereto, shall be served on any other party or staff, which requests copies of such discovery requests, notices, responses or objections.

(3) Parties or staff desiring copies of the written discovery materials of other parties or of staff, may request copies either in one blanket request for all discovery materials throughout the proceeding, or by request specific to the discovery activity in question.

(4) At the option of the party or staff making a discovery request or response, any such request or response including objections may additionally be presented in electronic form. Discovery requests or responses, including objections, shall be presented in electronic form in addition to or in lieu of other applicable service or filing requirements of this rule if the commission or presiding officer so orders pursuant to Subsection A of 1.2.2.24 NMAC, or pursuant to other commission rules governing electronic filing and service.

The commission or presiding officer shall not require electronic filing or service by any party who does not have such capability.

I. Supplementation of responses to discovery requests: A party or staff who has responded to a request for discovery is under a duty reasonably and promptly to amend or supplement their previous response if they obtains information which they would have been required to provide in such response if the information had been available to them at the time they served the response.

J. Motions to compel or for sanctions:

(1) Staff or a party may move for an order compelling discovery or for sanctions for failure to comply with an order directing that discovery be had as provided in the New Mexico rules of civil procedure for the district courts. In addition to the sanctions provided in those rules, the commission may impose the penalties set forth in applicable law for failure to comply with an order of the commission or presiding officer.

(2) Any motion for an order compelling discovery shall include copies or complete restatements of the discovery requests or notices to which the movant seeks compelled responses or related relief, along with copies of any responses or objections to the subject discovery requests or notices, and any other pertinent materials.

(3) No motion to compel, or any other motion regarding any discovery dispute, shall be considered unless accompanied by a statement that the participants made a good faith effort to resolve the dispute and were unable to do so.

K. Order for protection of staff, parties, or witnesses: The commission or presiding officer may issue such orders for the protection of staff, parties or witnesses from annoyances, embarrassment, or oppression as may be just and proper under the circumstances.

1.2.2.32 PUBLIC HEARINGS:

A. Rights of staff, parties, and commenters:

(1) At any public hearing, all parties and staff shall be entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding.

(2) commenters shall be entitled to make an oral or written statement for the record, but such statement shall not be considered by the commission as evidence. Commenters are not parties and shall not have the right to introduce evidence or examine or cross-examine witnesses, or to otherwise participate in the proceeding other than by making their comments.

B. Duty to participate: Except as otherwise provided in this rule or directed by the commission or presiding officer, parties or staff who fail to attend meetings, conferences, or public hearings scheduled or who otherwise fail to participate in the proceeding are deemed to have notice of, and waive their right to object to, all matters addressed, resolved, or determined in their absence.

C. Continuance:

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(1) Staff or any party who desires a continuance shall move for a continuance immediately upon receipt of notice of public hearing, or as soon thereafter as facts requiring such continuance come to their knowledge, stating in detail the reasons why a continuance is necessary and describing when the need for a continuance came to their knowledge.

(2) The commission or presiding officer, in passing upon a motion for a continuance, shall consider whether such motion was promptly made.

(3) The commission or presiding officer may grant such a continuance and may, at any time, order a continuance upon their own motion.

D. Appearances:

(1) **General:** Staff, parties, and commenters shall enter their appearances at the beginning of the public hearing by giving their names and addresses in writing to the reporter who will include the same in the record of public hearing. The presiding officer conducting the public hearing may in addition require appearances to be stated orally so that the identity and interest of all parties staff, and others present will be known to those at the public hearing.

(2) **Termination of party status:** Notwithstanding any other provision of this rule pertaining to party status, the party status of any person failing to enter a written appearance, and if requested by the presiding officer, an oral appearance, terminates at the close of the period for taking such appearances at the public hearing unless otherwise ordered by the commission or presiding officer. After entering an appearance, neither staff nor a party shall be unrepresented at the public hearing unless excused by the presiding officer. The commission or presiding officer may impose appropriate sanctions for violation of this provision up to and including termination of party status.

E. Service of notice: Following the entry of appearances at the public hearing, all notices, pleadings, and orders thereafter served shall be served upon such attorneys or parties of record as defined in this rule entering an appearance and such service shall be considered valid service for all purposes upon the party represented. Persons who have not appeared as parties may add their contact information to the "Service Notification" tab of any docket to receive notice of filings made into that docket.

F. Failure to appear:

(1) At the time and place set for public hearing, if an applicant, petitioner, or complainant fails to appear without having obtained a continuance in the manner specified in Subsection C of 1.2.2.32 NMAC, the commission or presiding officer may dismiss or recommend dismissal of the petition, application, or complaint with or without prejudice, or may upon good cause shown recess such public hearing for a further period to be set by the commission or presiding officer to enable said applicant, petitioner, or complainant to attend.

(2) At the time and place set for public hearing, if a respondent fails to appear without having obtained a continuance in the manner specified Subsection C of 1.2.2.32 NMAC, the commission or presiding officer may proceed with the public hearing as scheduled and enter such orders disposing of the case as may be proper according to the evidence adduced, and the respondent failing to appear will be presumed to have waived the right to refute or rebut such evidence and otherwise present further evidence. The commission or presiding officer may upon good cause shown recess such public hearing for a further period to be set by the commission or presiding officer to enable said respondent to attend.

G. Conduct at public hearings:

(1) All parties, staff, counsel, commenters, and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind at public hearings shall not be permitted. Any disregard by parties, staff, attorneys, or other persons of the rulings of the commission or presiding officer on matters of order and procedure may be noted on the record and treated as provided in Sections 59A-52-24, 62-10-9, 62-12-4, 63-7-23, 63-9-19, 63-9A-20, 63-9B-14, 65-2A-32, 65-2A-34, 63-9H-14, or 70-3-19 NMSA 1978, or as provided in the New Mexico rules of civil procedure for the district courts.

(2) The commission or presiding officer may, at their discretion, adjourn, recess, or continue any public hearing in case the conduct of witnesses, spectators, or other persons interferes with the proper and orderly holding of such public hearing, and for any other cause or circumstance which may prevent the proper conduct of such public hearing.

(3) The commission or presiding officer may, at their discretion, limit the time for providing direct testimony or cross-examination at any public hearing if necessary to promote the proper and orderly management of such public hearing.

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H. Consolidated public hearings: The commission, upon its own motion or upon motion of staff or a party, may order two or more proceedings involving a similar question of law or fact to be consolidated for public hearing where rights of staff, the parties or the public interest will not be prejudiced by such procedure and where such consolidation will not confuse the issues.

I. Joint public hearings:
To the extent authorized by law, the commission may participate jointly in any hearing with any federal, state, or other regulatory agency.

In joint formal proceedings, the participating agencies shall agree upon the rules of procedure to be followed. Any person entitled to appear in a representative capacity before either agency involved in the joint public hearing may appear in a joint public hearing.

J. Telephonic public hearings. Public hearings may be conducted by telephone or video conference at the discretion of the commission or presiding officer.

1.2.2.34 TRANSCRIPTS:

A. Record of proceedings and testimony:

(1) A full and complete record of all proceedings before the commission or presiding officer in any formal public hearing and all testimony shall be made by either audio recording by a commission employee or shall be taken down and transcribed by a certified court reporter at the discretion of the presiding officer.

(2) If the commission or presiding officer intends to have a transcript made by audio recording, they will state this in the notice or order of hearing or proceeding.

(3) Upon receiving notice that the commission or presiding officer intends to have a transcript made by audio recording, any party can file a request to have the hearing or proceeding transcribed by a certified court reporter and the commission will arrange a court reporter.

A party requesting a court reporter for a hearing or proceeding that would otherwise be made by audio recording shall be responsible for the full cost of the court reporter's fees.

A request by any party to have a hearing or proceeding transcribed by a certified court reporter shall be filed as soon as practicable before the hearing or proceeding.

If a request by any party to have a hearing or proceeding transcribed by a certified court reporter is not made at least seven days prior to the hearing, the commission may be unable to accommodate the request.

B. Copies of transcripts: The commission shall file in PRCe360 a .pdf version of any transcript it receives on the date the transcript is created or the date it is filed with the commission or the presiding officer.

C. Corrections:

Suggested corrections to the transcript or record must be offered within 13 days after the transcript is filed in the proceeding except for good cause shown, and such suggestion shall be in writing and served upon each party, staff, the official reporter, and the presiding officer.

Failure to timely file suggested corrections without good cause shown constitutes a waiver of objections to the transcript.

(1) Objections to the suggested corrections shall be made in writing within 13 days from the filing of the suggestions.

The commission or presiding officer shall, with or without public hearing, determine what changes, if any, shall be made in the record.

(2) If no objection is made to the suggested corrections, the presiding officer may, in their discretion, direct that the corrections be made and the manner of making them.

D. Citation form: When referring to the record in briefs and other documents, staff and the parties shall cite to the transcript using the reporter's pagination, *e.g.*, Tr. (transcript page number). If a transcript is made by audio recording, staff and the parties shall cite to the transcript using time markers.

1.2.2.35 RULES OF EVIDENCE:

A. General:

(1) Subject to the other provisions of this rule, all relevant evidence is admissible which, in the opinion of the presiding officer, is the best evidence most reasonably obtainable, having due regard to its necessity, competence, availability, and trustworthiness.

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(2) In passing upon the admissibility of evidence, the presiding officer shall give consideration to, but shall not be bound by, the New Mexico rules of evidence which govern proceedings in the courts of this State. The presiding officer shall also give consideration to the legal requirement that any final decision on the merits be supported by competent evidence.

(3) Unless otherwise directed by the commission or the presiding officer, documents that require sworn verification by notarization under commission rules may be supported by unsworn affirmation in compliance with rule of civil procedure 1-011(B) NMRA.

B. Testimony under oath: All testimony to be considered by the commission or presiding officer in formal public hearings, except matters officially noticed or entered by stipulation, shall be made under oath.

C. Stipulation as to facts:

(1) The parties and staff in any proceeding before the commission or presiding officer, may, by stipulation in writing, filed or entered in the record, agree upon the facts or any portion thereof involved in the controversy.

which stipulation shall be binding upon the parties and staff entering into the stipulation and may be regarded and used by the commission or presiding officer as evidence at the public hearing. It is desirable that the facts be thus agreed upon wherever practical.

The commission or presiding officer may, however, require proof or evidence of the facts stipulated to, notwithstanding the stipulation of the parties. and staff.

(2) In the event the parties and staff stipulate to certain facts as part of a proposed settlement of the case, and the settlement is rejected, stipulations of fact entered for purposes of the settlement will not be binding upon the parties or used as evidence in any subsequent public hearing on the merits unless all signatories thereto agree to refile the stipulations of fact.

D. Administrative notice:

(1) The commission or presiding officer may take administrative notice of the following matters if otherwise admissible under Subsection A of 1.2.2.35 NMAC:

- (a) rules, regulations, administrative rulings, published reports, licenses, and orders of the commission and other governmental agencies;
- (b) contents of certificates, permits, and licenses issued by the commission;
- (c) tariffs, classifications, schedules, and periodic reports regularly established by or filed as required or authorized by law or order of the commission;
- (d) decisions, records, and transcripts in other commission proceedings;
- (e) state and federal statutes;
- (f) decisions of state and federal courts;
- (g) generally recognized technical and scientific facts; and
- (h) matters of which the courts of this state may take judicial notice.

(2) In addition the commission or presiding officer may take administrative notice of the results of their own inspection of any physical location or condition involved in the proceeding, and may take administrative notice on the record of the results of the commission's previous experience in similar situations and general information concerning a subject within the commission's expert knowledge.

(3) Parties and staff requesting that administrative notice be taken of documents or portions of documents or of the contents thereof must submit those documents or portions of documents to the commission or presiding officer in the form of exhibits except as may otherwise be provided in this rule.

(4) The commission or presiding officer may take administrative notice, whether requested or not, subject to appropriate objection under Subsection L of 1.2.2.35 NMAC. If staff or a party requests that administrative notice be taken, the commission or presiding officer must be provided the necessary information.

(5) Matters noticed are admitted into evidence to the same extent as other relevant evidence.

E. Resolutions:

Resolutions, properly authenticated, of the governing bodies of cities, towns, counties and other municipal corporations, and of chambers of commerce, commercial or mercantile boards of trade, agricultural or manufacturing societies, and other civic organizations will be received in evidence if relevant. Such resolution shall be received subject to rebuttal by adversely affected staff or parties as to the authenticity of the resolution.

Recitals of fact contained in resolutions shall not be deemed proof of those facts.

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F. Official records:

An official rule, report, order, record, or other document prepared and issued by any governmental authority may be introduced into evidence.

In cases where such official records, otherwise admissible, are contained in official publications or publications by nationally recognized reporting services and are in general circulation and readily accessible to all parties and staff, they may be introduced by reference unless the presiding officer directs otherwise, provided that proper and definite reference to the record in question is made by the party or staff offering the same.

G. Commission files:

Papers and documents on file relevant to the proceeding may be introduced into evidence by reference to number, or date, or by any other method of identification satisfactory to the presiding officer unless the presiding officer directs that the paper or document or a summary thereof be presented for the record in the form of an exhibit.

If only a portion of any such paper or document is offered in evidence, the part so offered shall be presented for the record in the form of an exhibit.

H. Records in other proceedings: In case any portion of the record in any other proceeding before the commission or presiding officer is admissible for any purpose and is offered in evidence, a true copy of such portion may be presented for the record in the form of an exhibit.

I. Prepared testimony:

(1) Prepared written testimony shall be received in evidence as exhibits with the same force and effect as though it were stated orally by the witness.

All witnesses must be present at the public hearing and shall adopt, under oath, their prepared written testimony, subject to cross-examination and motions to strike unless the witness's presence at public hearing is waived by the commissioner or presiding officer upon notice to, and without objection from, staff and the parties.

(2) Unless the commission or presiding officer directs otherwise, testimony in written form shall be prepared in accordance with the following guidelines:

- (a) the cover page shall contain the case caption and number and the name of the witness;
- (b) all pages are to be typed or machine printed and double-spaced;
- (c) the top, bottom, and left-hand margins shall be at least one and one-half inches;
- (d) the name of the witness and the case number, if then known, shall be typed at the top center of each page two inches from the edge;
- (e) the page number for each page shall be typed at the bottom center one inch from the edge;
- (f) a square of approximately one and one-half inches in the upper right-hand corner of each page shall be left clear for commission use;
- (g) testimony shall contain line numbers on the left-hand side of the page; and
- (h) testimony shall be filed in question and answer format and be supported by affidavit;

(3) Unless the commission or presiding officer directs otherwise, no documents other than pre-filed testimony shall be admitted into evidence on direct examination of a witness.

J. Exhibits:

(1) Use of data in exhibits:

(a) When supporting exhibits consist of tables of data or graphs, all formulae, equations, or other methodology used to derive the data shall be included as part of the supporting exhibit.

(b) If data used in supporting exhibits are derived from, or supported by, complex computerized analyses, working copies of the computer models may be included on a diskette compatible with the commission's current computer capabilities, in lieu of printed material.

(2) **Size of exhibits:** Except by special permission of the presiding officer, no specially prepared exhibits offered as evidence shall be of greater size, when folded, than eight and one-half (8-1/2) inches by eleven (11) inches.

(3) **Marking of exhibits:** All exhibits shall be marked numerically in the order of introduction by the moving party or staff. To the extent practicable, all exhibits, including those to be introduced on cross-examination, shall be marked before the start of public hearings on the day the witness will be examined thereon.

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(4) Designation of part of document as evidence:

(a) When relevant and material matter offered in evidence by any party or staff is embraced in a book, paper, or document containing other matter not material or relevant, the party or staff offering the same must plainly designate the matter so offered.

(b) If other matter is in such volume as would unnecessarily encumber the record, such book, paper, or document will not be received in evidence but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the presiding officer so directs, a true copy of such matter in proper form shall be received as an exhibit and like copies delivered by the party or staff offering the same to all other parties and staff appearing at the public hearing.

(c) All parties and staff shall be afforded an opportunity to examine the book, paper, or document, and to offer in evidence in like manner other portions thereof if found to be material and relevant.

(5) Abstracts of documents: When documents are numerous, and it is desired to offer in evidence more than a limited number of such documents, as typical of the others, an abstract shall be prepared and offered as an exhibit giving other parties to and staff in the proceeding reasonable opportunity to examine the abstract and the documents.

(6) Summaries of documents: Where a document being offered into evidence is voluminous, the presiding officer may direct that a summary be prepared and offered as an exhibit giving other parties to and staff in the proceeding reasonable opportunity to examine the summary and the document. The presiding officer may require that the summary be offered as an exhibit in addition to the summarized document or in lieu thereof.

(7) Copies of exhibits:

(a) When exhibits not attached to pleadings, as required by this rule, are offered in evidence, a copy shall be furnished to the reporter.

(b) The party or staff offering exhibits shall also furnish a copy to each commissioner, or hearing examiner, sitting, advisory staff, if in attendance, each party and the staff, unless such copies have previously been furnished or the presiding officer directs otherwise.

(c) The proponent shall, to the extent practicable, furnish the required copies to the reporter, the commissioners, or hearing examiner, advisory staff, parties and staff before the start of the public hearings on the day said proponent intends to offer the exhibits into evidence.

K. Additional evidence:

At any stage of the proceeding, the commission or presiding officer may require the production of further evidence upon any issue.

Such evidence may, at the discretion of the commission or presiding officer, be in writing or presented orally.

All parties and the staff will be given an opportunity to reply to such evidence submitted and cross-examine the witness under oath.

L. Objections:

(1) Any evidence offered in whatever form shall be subject to appropriate and timely objection. When objection is made to the admissibility of evidence, such evidence may be received subject to later ruling by the commission or presiding officer.

(2) The commission or presiding officer, their discretion either with or without objection, may exclude inadmissible, incompetent, cumulative, or irrelevant evidence, or order the presentation of such evidence discontinued.

(3) Parties or staff objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered.

(4) The evidence to be admitted at public hearing shall be material and relevant to the issue. Formal exceptions to rulings are not necessary and need not be taken.

M. Offers of proof:

An offer of proof for the record may be made and shall consist of a statement of the substance of the evidence to which objection has been sustained.

The commission or presiding officer may require offers of proof to be submitted in writing in question and answer form.

N. Rebuttal evidence:

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(1) Rebuttal evidence is evidence which tends to explain, counteract, repel, or disprove evidence submitted by another party or by staff. Evidence which is merely cumulative or could have been more properly offered in the case in chief is not proper rebuttal evidence.

(2) Staff or a party wishing to offer rebuttal testimony shall, at the close of their opponent's direct case, move the commission or presiding officer to allow introduction of rebuttal testimony. The movant shall indicate the nature of the evidence sought to be adduced and demonstrate why it is proper rebuttal testimony.

(3) The commission or presiding officer may permit or require rebuttal evidence to be

1.2.2.36 PROPOSED FINDINGS AND CONCLUSIONS; AND BRIEFS:

A. Proposed findings and conclusions:

(1) Notice:

The presiding officer may require all parties of record and the staff to file proposed forms of orders, including proposed findings and conclusions, at the close of testimony in the proceeding.

The presiding officer shall immediately fix the time in which the proposed order shall be filed.

(2) Contents:

(a) The party or staff submitting a proposed order shall clearly identify themselves on the first page of the order.

(b) Each proposed finding of fact and conclusion of law shall be clearly and concisely stated and numbered.

(c) Each proposed finding of fact shall show, specifically, by appropriate transcript reference, the evidence which supports the proposed finding unless otherwise permitted by the presiding officer.

(d) Proposed findings and conclusions should be kept to the minimum needed, and may reflect the party's or staff's position, but shall not be used to argue that position.

(3) **Failure to file; Dismissal:** The commission may dismiss, with or without prejudice, any proceeding where the staff or the party who initiated such proceeding fails to comply with this rule.

B. Briefs and oral argument; right to file or argue:

(1) The presiding officer may require the filing of briefs or the presentation of oral argument, or both, by staff and the parties. Requests for filing of briefs or oral argument shall be made before or at the close of the public hearing, and may be made in writing or orally on the record.

(2) The parties and staff shall be given an opportunity to make argument, upon request, but the manner of presentation, whether written, oral, or both, shall be at the discretion of the presiding officer.

(3) Presiding officers may also, at their discretion set page limits for briefs, limit the time allocated to each party and to staff for oral argument, or conduct an oral argument by telephone conference call.

(4) Any issues raised in a contested public hearing that are not argued in a post-hearing brief will not be considered unless consideration will not prejudice the due process rights of other parties and the commission or presiding officer in their discretion decides to consider such issues.

C. Time of filing:

(1) Proposed orders and briefs:

(a) Unless otherwise ordered by the presiding officer, parties and the staff shall have twenty (20) days after the date the complete transcript of the public hearing is filed with the commission to file whatever proposed orders and briefs are required by the presiding officer.

(b) Response briefs may be filed thirteen (13) days after service of the opening briefs unless otherwise ordered by the presiding officer.

(c) Replies to response briefs shall not be filed without leave of the commission or presiding officer. Replies to response briefs shall be filed within thirteen (13) days of service of the response, or such other time period as the commission or presiding officer may prescribe.

(2) **Enlargement:** A motion for enlargement of time to file a proposed order or brief must be filed no later than three (3) days prior to that time as set out in Paragraph (1) of Subsection C of 1.2.2.36 NMAC, except for good cause shown.

D. Filing and service of proposed orders and briefs: All proposed orders and briefs shall be filed.

E. Briefs' contents generally:

(1) Briefs shall be concise and shall include transcript citations for each statement of fact or transcript reference in the form required by Subsection D of 1.2.2.34 NMAC.

(2) Briefs shall contain a table of contents with page references and a list of authorities cited.

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(3) Argument regarding an issue shall include a brief statement of the position of each party and of staff regarding that issue.

F. Reconciliation statements:

(1) Unless the commission or presiding officer directs otherwise, each brief filed in a rate case shall contain a reconciliation statement setting forth, in dollars, the final position of ~~the staff or~~ party filing the brief. The reconciliation statement shall be in a simple and concise form and, to the extent necessary for the type of rate regulation applicable, shall set forth:

(a) the claimed rate base for the regulated entity showing test year figures per book, adjustments, and adjusted test year figures (if rate base items are at issue the statement shall set forth on a separate sheet the contested items and their dollar effect on rate base);

(b) an income statement showing operating revenues and expenses with test year figures per book, adjustments, and adjusted test year figures (if any expense items are at issue the statement shall set forth on a separate sheet the contested expense or revenue items in detail and the dollar effect on total company expenses or revenues of their allowance);

(c) the capital structure of the company (if there is no actual capital structure, any proposed imputed capital structure, the ratio of each type of capital to total capital, and the cost and weighted cost of each shall be shown; this schedule shall show the dollar effects of the requested return upon revenue requirements);

(d) a computation of projected state and federal taxes on adjusted figures based on statutory rates or other applicable rates; and

(e) a computation of the claimed revenue deficiency.

(2) If the information required by Paragraph (1) of Subsection F of 1.2.2.36 NMAC is clearly set forth in schedules in evidence, such schedules may be appended to the brief in lieu of a separate reconciliation statement. If staff or a party adopts the position of another party, or of staff, the party or staff may state whose position is adopted rather than file a separate duplicative reconciliation statement.

(3) The company must provide a proof of revenue statement.

(4) The parties or staff may, on sheets separate from those needed for the reconciliation statement required by Paragraph (1) of Subsection F of 1.2.2.36 NMAC, show details of adjustments by account numbers, give short explanations or reasons for the adjustments, and show where these adjustments require adjustments elsewhere. The parties and staff may also give citations to the transcript to show where the requested adjustment is supported by the record.

1.2.2.37 COMMISSION ORDERS; EXCEPTIONS; AND REHEARINGS:

A. Commission orders:

(1) The commission will issue its order in writing in every proceeding. The order shall contain separately stated findings of fact and, in the commission's discretion, conclusions of law, or combined findings and conclusions. The commission may, in its discretion, issue an oral decision prior to the issuance of its written order. The timeliness of applications for rehearing and notices of appeal shall be calculated from the date the commission issues its written order. The date a written order is issued is the date when the written order, signed under the seal of the commission, has been filed.

(2) The commission may adopt a hearing examiner's recommended decision. If a recommended decision is adopted in its entirety, the commission's order shall so state. Where the only changes between the commission order and the hearing examiner's decision are those to correct grammatical or typographical errors, the commission's order shall so state.

(3) The commission may issue an order which makes reference to the recommended decision and indicates disagreements with the hearing examiner, and the commission may make further or modified findings and conclusions based on the record.

B. Issuance of Recommended decisions:

A hearing examiner shall issue a recommended decision. The recommended decision shall be served on all parties to and the staff in the proceeding and shall contain separately stated findings of fact and conclusions of law.

C. Exceptions to recommended decisions:

(1) Filing requirements:

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(a) Unless otherwise ordered by the commission or presiding officer, exceptions may be filed by staff or by any party within thirteen (13) days after the recommended decision is issued.

(b) Except by prior written approval of the commission or presiding officer, exceptions shall be no longer than forty (40) pages. A summary of argument, identifying with particularity, and numbering the points excepted to, of no more than five (5) pages, shall be included with the exceptions and does not count toward the forty (40) page limit.

(c) Unless otherwise ordered by the commission or presiding officer, responses to exceptions may be filed within eight (8) days after the exceptions have been filed. Except by prior written approval of the commission or presiding officer, responses to exceptions shall be no longer than thirty-five (35) pages. A summary of argument of no more than three (3) pages shall be included with a response and does not count toward the thirty-five (35) page limit.

(d) Replies to responses to exceptions shall not be filed without leave of the commission or presiding officer. Except by prior written approval of the commission or presiding officer, replies to responses shall be no longer than fifteen (15) pages. A summary of argument of no more than two (2) pages shall be included with a reply and does not count toward the fifteen (15) page limit. Replies to responses to exceptions shall be filed within thirteen (13) days of service of the response, or such other time period as the commission or presiding officer may prescribe.

(e) Any exception, response, or reply ten (10) pages long or longer shall include a table of contents listing the points made and authorities relied on. A table of contents shall not count toward any page limitation.

(2) Contents:

Responses shall not raise, for the first time, matters which were not raised in the exceptions of a party, or the staff. Exceptions and any responses must specifically set forth:

(a) the precise portions of the proposed decision to which the exception is taken or response to exception is made;

(b) the reason for the exception or response;

(c) authorities on which the party or staff relies, and specific citations to the record in the form required by Subsection D of 1.2.2.34 NMAC;

(d) in rate cases, reconciliation statements containing the information listed in Subsection F of 1.2.2.36 NMAC.

D. Oral argument to commission after recommended decision:

Any party or staff may petition the commission for oral argument after the issuance of a recommended decision. Such request may be included in a brief on exceptions or a response, but must be filed no later than the last day to file responses.

The commission in its discretion may allow oral argument. If it allows oral argument, it may in its discretion conduct the argument by telephone conference call.

E. Reopening proceedings:

(1) **Motion to reopen:** Before the issuance of a commission order, or after the issuance of a recommended decision, staff or a party to a proceeding may file a motion to reopen the proceeding for the taking of additional evidence.

(2) **Allegations:** Such motion shall specify those facts claimed to constitute grounds in justification thereof, including material changes of fact or law alleged to have occurred since the conclusion of the public hearing, and shall contain a brief statement of proposed additional evidence and an explanation as to why such evidence was not previously produced.

(3) **Responses:** Within thirteen (13) days following the service of any motion to reopen, staff or any other party may file responses thereto.

(4) **Commission may reopen:** The commission on its own motion may, at any time, reopen any proceeding when it has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of such proceeding.

F. Rehearing:

(1) Motions for rehearing:

(a) Except as otherwise provided in Sections 62-10-16 and 62-11-1 NMSA 1978, after an order has been issued by the commission in a proceeding staff or any party to the proceeding may within ten

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(10) days after the issuance of the order move for rehearing of the order with respect to any matter determined in the proceeding.

(b) The motion shall specify the matters upon which the movant requests rehearing and the ground or grounds on which the movant considers the order to be unlawful, unjust, or unreasonable with regard to each such matter.

(2) Responses: Any party or staff may file a response in writing within five (5) days, or within thirteen (13) days if Sections 62-10-16 and 62-11-1 NMSA 1978 apply, which opposes or supports the motion for rehearing. Replies to responses shall not be permitted without leave of the commission or presiding officer.

(3) New evidence:
A motion for rehearing may seek modification of the order without introduction of additional evidence. If the movant or any party or staff who opposes or supports the motion seeks to introduce additional evidence on any matter, the new evidence must be specified and must be supported by affidavit and a statement of the reasons why the new evidence was not previously introduced.

Any new evidence furnished in support of the motion or response shall be considered by the commission only for purposes of the commission's decision on the motion and shall not be considered as evidence pertaining to the order that the commission previously had issued.

(4) Effect of filing motion: The filing of a motion for rehearing shall not excuse staff or a party from complying with or obeying any order or any requirement of an order of the commission, nor shall it operate in any manner to stay or postpone the enforcement thereof, except as the commission may by order direct, as provided by law.

(5) Oral argument: If the commission in its discretion grants oral argument on a motion for rehearing, of the commission's order, said order shall not thereby be vacated.

(6) Disposition of motions: for rehearing:
(a) Except as otherwise provided in Section 62-10-16 NMSA 1978, the commission may grant or deny the motion at any time within twenty (20) days after the final order has been issued and prior to the expiration of the period prescribed for filing of responses. If the commission does not act on a motion for rehearing within twenty (20) days after the final order has been issued, the motion shall be deemed denied.

(b) The commission may limit the rehearing to some or all of the matters raised in the motion or may expand the rehearing to include other matters determined in the proceeding.

(c) On rehearing the commission, in its discretion, may receive some or all of the new evidence specified in the motions or responses subject to cross-examination, may expand the rehearing to include additional evidence, or may restrict the rehearing to modification of its order without introduction of new evidence,.

(d) If the rehearing is limited to modification of the order without introduction of new evidence, all parties and staff will have an opportunity to oppose or support the proposed modification, but the rehearing will be decided without oral argument or public hearing unless the commission directs otherwise.

(e) If the commission grants the motion for rehearing in whole or in part, the order being reheard shall be deemed vacated and no order or decision at that time shall exist in the proceeding.

(7) New order: After any rehearing the commission shall enter a new order which may incorporate by reference any portion of the previously issued order which the commission had vacated.

G. Errata notice:

(1) The commission, the commission chairman, or, in the absence of the chairman, any other commissioner, may correct typographical errors, omissions, or other non-substantial errors in commission orders through the issuance of errata notices. A presiding officer may also correct typographical errors, omissions, or other non-substantial errors in their orders through the issuance of errata notices. The issuance of an errata notice shall not affect the finality of the decision or order corrected,

(2) A party to a formal proceeding or staff may correct typographical errors, omissions, or other non-substantial errors in its pleadings or documents through the filing of an errata notice, which shall conform to the rule governing pleadings.

H. Notice of appeal:

Notices of appeal of commission decisions shall be filed pursuant to applicable statutes, including but not limited to Section 53-13-2 NMSA 1978, Section 59A-52-22 NMSA 1978, Section 62-11-1 NMSA 1978, Section 63-9-16

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NMSA 1978, Section 63-9A-14 NMSA 1978, Section 63-9B- 9 NMSA 1978, Section 63-9H-12 NMSA 1978, Section 70-3-15 NMSA 1978, Section 65-2A-35 NMSA 1978, and Section 63-7-1.1 NMSA 1978.

I. Docketing of submissions in compliance with, and motions for variances from, final orders:

(1) Submissions in compliance with, and motions for variances from, commission final orders shall be filed under the same case number as that of the final order. Motions for variances or requests for extension of times to meet compliance provisions contained in final orders of the commission shall be filed in a new docket and shall be served on staff and all parties to the underlying case.