

62-8-7 Change in rate

A. At any hearing involving an increase in rates or charges sought by a public utility, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.

B. Unless the commission otherwise orders, no public utility shall make any change in any rate that has been duly established except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force and the time when the changed rates will go into effect and other information as the commission by rule requires. The utility shall also give notice of the proposed changes to other interested persons as the commission may direct. All proposed changes shall be shown by filing new schedules that shall be kept open to public inspection. The commission for good cause shown may allow changes in rates without requiring the thirty days' notice, under conditions that it may prescribe.

C. Whenever there is filed with the commission by any public utility a complete application as prescribed by commission rule proposing new rates, the commission may, upon complaint or upon its own initiative, except as otherwise provided by law, upon reasonable notice, enter upon a hearing concerning the reasonableness of the proposed rates. If the commission determines a hearing is necessary, it shall suspend the operation of the proposed rates before they become effective but not for a longer initial period than nine months beyond the time when the rates would otherwise go into effect, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months. The commission shall hear and decide cases with reasonable promptness. The commission shall adopt rules identifying criteria for various rate and tariff filings to be eligible for suspension periods shorter than what is allowed by this subsection and to be eligible for summary approval without hearing.

D. If after a hearing the commission finds the proposed rates to be unjust, unreasonable or in any way in violation of law, the commission shall determine the just and reasonable rates to be charged or applied by the utility for the service in question and shall fix the rates by order to be served upon the utility or the commission by its order shall direct the utility to file new rates respecting such service that are designed to produce annual revenues no greater than those determined by the commission in its order to be just and reasonable. Those rates shall thereafter be observed until changed, as provided by the Public Utility Act.

E. Except as otherwise provided by law, any increase in rates or charges for the utility commodity based upon cost factors other than taxes or cost of fuel, gas or purchased power, filed for after April 4, 1991, shall be permitted only after notice and hearing as provided by this section. The commission shall enact rules governing the use of tax, fuel, gas or purchased power adjustment clauses by utilities that enable the commission to consider periodically at least the following:

- (1) whether the existence of a particular adjustment clause is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable rates to all customer classes;
- (2) the specific adjustment mechanism to recover tax, gas, fuel or purchased power costs;

(3) which costs should be included in an adjustment clause, procedures to avoid the inclusion of costs in an adjustment clause that should not be included and methods by which the propriety of costs that are included may be determined by the commission in a timely manner, including what informational filings are required to enable the commission to make such a determination; and

(4) the proper adjustment period to be employed.

F. The commission may eliminate or condition a particular adjustment clause if it finds such elimination or condition is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable rates to all customer classes; provided, however, that no such elimination or condition shall be ordered unless such elimination or condition will not place the affected utility at a competitive disadvantage. The commission rules shall also provide for variances and may provide for separate examination of a utility's adjustment clause based upon that utility's particular operating characteristics.

G. Whenever there is filed with the commission a schedule proposing new rates by a rural electric cooperative organized under the Rural Electric Cooperative Act [[62-15-1](#) NMSA 1978] or by a foreign distribution cooperative, the rates shall become effective as proposed by the rural electric cooperative or the foreign distribution cooperative without a hearing, except as provided in this subsection. The rural electric cooperative or the foreign distribution cooperative shall give written notice of the proposed rates to its affected patrons in New Mexico at least thirty days prior to the filing with the commission. Upon the filing with the commission of a protest setting forth grounds for review of the proposed rates signed by the lesser of one percent of or twenty-five members of a customer rate class of the rural electric cooperative or foreign distribution cooperative and if the commission determines that there is just cause for reviewing the proposed rates on one or more of the grounds of the protest, the commission shall suspend the rates and conduct a hearing concerning the reasonableness of any proposed rates filed by a rural electric cooperative or a foreign distribution cooperative pursuant to Subsections C and D of this section. The protest shall be filed no later than twenty days after the filing with the commission of the schedule proposing the new rates. The hearing and review shall be limited to the issues set forth in the protest and for which the commission may find just cause for the review, which issues shall be contained in the notice of hearing. The provisions of this subsection shall not be construed to affect commission authority or procedure to regulate the sale, furnishing or delivery by wholesale suppliers of electricity to rural electric cooperatives or foreign distribution cooperatives pursuant to Section [62-6-4](#) NMSA 1978. In addition to the adjustments permitted by Subsections E and F of this section, the commission may authorize rate schedules of rural electric cooperatives and foreign distribution cooperatives to recover, without notice and hearing, changes in the cost of debt capital incurred pursuant to securities that are lawfully issued. This subsection shall not apply to any foreign distribution cooperative that proposes rates for any of its customer rate classes in the state that are higher than the rates it charges to the same or substantially similar customer rate class in the state under the laws of which the foreign distribution cooperative is organized. For the purposes of this subsection:

(1) "foreign distribution cooperative" means a rural electric distribution cooperative corporation serving its members at retail and transacting business in New Mexico pursuant to the authority granted under Section [62-15-26](#) NMSA 1978;

(2) "member of a foreign distribution cooperative" means a retail customer in New Mexico serviced by a foreign distribution cooperative; and

(3) "member of a rural electric cooperative" means a member as defined by the Rural Electric Cooperative Act.

This rule was filed as NMPSC Rule 540.

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES**  
**CHAPTER 9 ELECTRIC SERVICES**  
**PART 540 PROCEDURES FOR REVIEW OF RATES PROPOSED BY RURAL ELECTRIC COOPERATIVES**

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

**17.9.540.2 SCOPE:**

A. Except as provided in Subsection B all rural electric cooperatives organized under the Rural Electric Cooperative Act, hereinafter referred to sometimes as "coops," shall comply with the provisions of NMPSC Rule 540 [17.9.540 NMAC] when proposing a new rate or rates. NMPSC Rules 110.39 through 110.41 [17.1.2.53 NMAC] relating to applications for change of rates shall not be applicable.

B. The provisions of NMPSC Rules 540.1 through 540.10 [17.9.540.1 through 17.9.540.15 NMAC] shall not affect the Commission's regulation of the sale, furnishing, or delivery by wholesale suppliers of electricity to coops under NMSA 1978, Section 62-6-4B et seq. NMPSC Rule 540.11 [17.9.540.16 NMAC] shall apply to each rural electric cooperative regardless of the law under which it is organized or whether or not it is a wholesale supplier of electricity.

C. The provisions of NMPSC Rule 540 [17.9.540 NMAC] do not apply to new coop rules as the term "rules" is used in NMPSC Rule 210 [17.1.210 NMAC].  
[Recompiled 12/30/01]

**17.9.540.3 STATUTORY AUTHORITY:** NMPSC Rule 540 [17.9.540 NMAC] is adopted under the authority vested in this Commission by the Public Utility Act, NMSA 1978, Section 62-3-1 et. seq.  
[Recompiled 12/30/01]

**17.9.540.4 DURATION:**  
[Recompiled 12/30/01]

**17.9.540.5 EFFECTIVE DATE:**  
[Recompiled 12/30/01]

**17.9.540.6 OBJECTIVE:** The purpose of NMPSC Rule 540 [17.9.540 NMAC] is to carry out the explicit legislative intent of Laws 1985, Chapter 176, which amended NMSA 1978, Section 62-3-2 and Section 62-8-7, to limit governmental regulation of rate setting by rural electric cooperatives (whose members have direct control over rates through an elected board) to the maximum extent consistent with retaining oversight by the Commission.  
[Recompiled 12/30/01]

**17.9.540.7 DEFINITIONS:**  
[Recompiled 12/30/01]

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[Recompiled 12/30/01]

**17.9.540.9 FILINGS BY COOPS PROPOSING A NEW RATE OF RATES:**

A. A coop which has complied with NMPSC Rule 540.8 [17.9.540.13 NMAC] below shall file with the Commission a schedule proposing a new rate or rates together with an affidavit describing how the notice required by NMPSC Rule 540.8 [17.9.540.13 NMAC] has been made, to which affidavit is annexed a copy of the notice. The filing shall be in accordance with NMPSC Rule 210 [17.1.210 NMAC] except that NMPSC Rule 210.14 [Subsection C of 17.9.210.10 NMAC] (entitled "Additional Information as to Effect of Proposed Rates") and NMPSC Rule 210.13(b) [Paragraph 2 of Subsection B of 17.9.210.10 NMAC] (relating to filing of testimony) thereof shall not be applicable. The filing shall become effective:

- (1) on the date set forth in the Advice Notice, that date being no less than thirty (30) days after such filing;
- (2) on any date the coop subsequently agrees to;
- (3) on the day following the entry of an order by the Commission determining that just cause does not exist for reviewing the proposed rate or rates pursuant to NMPSC Rule 540.7(c) [Subsection C of 17.9.540.12 NMAC]; or
- (4) if the Commission determines there is just cause for review pursuant to NMPSC Rule 540.7 [17.9.540.12 NMAC], in accordance with subsections C and D of NMSA 1978, Section 62-8-7.

B. A coop shall submit with its filing:

- (1) the coop's most recent REA Form 7;
- (2) a proof of revenue statement for each class of customers to which the new rate or rates apply;
- (3) a statement comparing the new rate or rates with the present rate or rates, which statement shall contain the information required in NMPSC Rule 540.8(b)(3) [Paragraph 3 of Subsection B of 17.9.540.13 NMAC]; and
- (4) a brief statement explaining what has caused the need for the rate adjustment.

C. A coop may, but is not required to, include in its filing any data, exhibits, illustrations, prepared testimony, or written argument which is pertinent to the schedule proposing a new rate or rates. Whether or not a coop includes such matters in its filing does not affect its duty to furnish prepared testimony and exhibits if ordered under NMPSC Rule 540.7(d) [Subsection D of 17.9.540.12 NMAC]. Any testimony and exhibits included in the coop's filing shall conform to the requirements of NMPSC Rule 110 [17.1.2 NMAC].

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

E. Rates which have been filed and which by operation of law have become effective without hearing by the Commission shall not be construed to bear the approval of the Commission but may be subject to inquiry by the Commission at any time.

[Recompiled 12/30/01]

**17.9.540.10 PROTESTS BY COOP MEMBERS:**

A. Any member of the coop may protest the proposed rate or rates by filing a protest in accordance with the requirements of NMPSC Rule 540.6 [17.9.540.11 NMAC] upon the filing of the schedule proposing the new rate or rates. Protests must be filed no later than twenty (20) days after the coop files the schedule. The term "member" herein shall mean each incorporator of a coop and each person admitted to and retaining membership therein and shall include a husband and wife admitted to a joint membership.

B. In order to determine whether just cause may exist for review pursuant to NMPSC Rule 540.7 [17.9.540.12 NMAC], the Commission will ordinarily consider among other matters whether a protestant has exhausted remedies within the coop or the coop has unreasonably rejected the protestant's objections to the new rate or rates. Therefore, a member should present his objections to the coop in writing and allow the coop a reasonable period to attempt a resolution of or otherwise respond to those objections. A period of seven (7) days after receipt of written objections will be deemed reasonable for the coop to provide a written response to the member, but a written response is not required if such time period extends beyond the date specified in Subsection A. above. The Commission expects the coop and its member to make a good faith effort to resolve the member's objections to the proposed rate or rates during that period of time.

[Recompiled 12/30/01]

**17.9.540.11 FORM AND FILING OF PROTEST:**

A. Contents of Protest: Protests to the Commission must be in writing and shall be signed by the member or members submitting the protest or by their attorney. All protests shall contain the following:

(1) the name, mailing address, and phone number of each member protesting the proposed rate or rates, and the name, mailing address, and phone number of each member's attorney, if any;

(2) the name of the coop proposing the rate or rates and identification of the proposed rate or rates being protested;

(3) a clear and concise statement of the effect of the proposed rate or rates on the protestant;

(4) a clear and concise statement of the specific grounds upon which the protestant believes the proposed rate or rates are unjust, unreasonable, or otherwise unlawful;

(5) a brief description of the member's efforts to resolve his objections directly with the coop; and

(6) a clear and concise statement of the relief the protestant seeks from the Commission.

(7) All protests shall show the caption of the proceeding and the docket number and shall be titled "Protest." Whenever possible, protests shall be typed and double-spaced, shall be on paper 8 1/2 inches wide and 11 inches long, and fastened only on the left side.

B. Use of Commission Form: A protestant may, but is not required to, use the Commission's form for protests. The coop shall make copies of the Commission's form available to its members upon request.

C. Attachments Required: The protestant must attach to the protest copies of any written objections the protestant presented to the coop and any response made by the coop under NMPSC Rule 540.5(b) [Subsection B of 17.9.540.10 NMAC]. If the protestant did not present his objections to the coop before filing the protest or if the coop did not respond to objections presented to it, the protestant shall so state in the protest.

D. Additional Information Permitted: The protestant may, but is not required to, file with the protest any data, exhibits, illustrations, prepared testimony, or written argument which is pertinent to the grounds of the protest and which may aid the Commission in its consideration of the protest under NMPSC Rule 540.7 [17.9.540.12 NMAC].

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

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

G. Date of Filing: If a protest is submitted to the Commission before the coop has filed its proposed rate or rates, the protest shall be deemed filed as of the date of the coop's filing.

H. Response Not Permitted: No response to a protest filed with the Commission is permitted except by leave of the Commission or presiding officer. Notwithstanding the foregoing, if the protestant has not presented an objection to the coop in accordance with NMPSC Rule 540.5(b) [Subsection B of 17.9.540.10 NMAC] the coop may, and is encouraged to, initiate communications with the protestants to determine if there is a negotiated basis for withdrawal of the protest and may, with notice to the protestant, disclose such an effort and its results to the Commission or presiding officer.

[Recompiled 12/30/01]

#### **17.9.540.12 COMMISSION PROCEDURE UPON RECEIPT OF A PROTEST:**

A. Upon receipt of a protest which is in substantial compliance with these procedural rules the Commission shall determine whether or not there is just cause for reviewing the proposed rate or rates on one or more of the grounds of the protest.

B. The Commission or the presiding officer in the cause may notice a pre-hearing conference in order to obtain further information from either the protestant or the coop in aid of the just cause determination.

C. If the Commission determines that just cause does not exist for reviewing the proposed rate or rates or that all protests have been withdrawn by the protestants, the Commission shall enter an order so stating and providing the basis for such determination. The Commission shall serve the order on the protestants and to the coop.

D. If a determination is made that there is just cause for review the Commission or presiding officer shall issue an order noticing the proposed rate or rates for hearing and stating the issue or issues to be heard. Either this order or subsequent orders shall prescribe:

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

(2) a deadline for the filing of motions to intervene under the intervention provisions of NMPSC Rule 110 [17.1.2 NMAC];

(3) directions to the parties and, to the extent the Commission or presiding officer may deem helpful, to the Commission Staff to file written testimony and exhibits; and

(4) the time and place of the hearing.

[Recompiled 12/30/01]

**17.9.540.13 NOTICE TO CUSTOMERS PRIOR TO FILING OF PROPOSED RATES:**

A. At least thirty (30) days prior to filing a schedule proposing a new rate or rates a coop shall give, by mailing with billings or independently or by publication in the enchantment (in the case of coops subscribing thereto), written notice to affected customers. For this purpose all customers of the coop shall be considered to be affected customers unless the Commission, upon motion made by the coop, directs otherwise.

B. The notice shall include the following information:

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

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

(3) the present rates and the proposed rates for each customer class and the number of customers in each customer class to which those proposed rates would apply and, for residential customers without demand meters, the present rates, the proposed rates, and the percentage difference between the present bill and the anticipated bill for each of the following levels of consumption-0 kwh, 250 kwh, 500 kwh, 750 kwh, 1,000 kwh and 2,000 kwh;

(4) the date on which the coop intends to file with the Commission the schedule proposing the new rate or rates;

(5) a statement that the coop will promptly notify a member of the date on which it actually files the schedule proposing the new rate or rates if the member so requests;

(6) a statement that the new rate or rates will go into effect automatically and without hearing by the Commission unless one or more members of the coop file a protest with the Commission no later than twenty (20) days after the coop has filed the schedule proposing the new rate or rates and the Commission determines there is just cause for reviewing the proposed rate or rates on one or more of the grounds of the protest AND A STATEMENT IN ALL CAPITAL LETTERS THAT IF A HEARING IS HELD BY THE PUBLIC SERVICE COMMISSION [PUBLIC REGULATION COMMISSION] ANY COSTS INCURRED BY THE UTILITY MAY BE INCLUDED IN THE UTILITY'S FUTURE RATES, FOLLOWING THE UTILITY'S NEXT RATE CASE;

(7) a statement that the procedures for protesting a proposed rate or rates are set forth in NMPSC Rule 540 [17.9.540 NMAC], a copy of which can be obtained upon request from or inspected at either the main office of the coop or the offices of the Commission in Santa Fe, that forms for protests are available from either the coop or the Commission, and indicating the telephone numbers and addresses of both the coop and the Commission;

(8) a statement that before filing a protest a coop member should attempt to resolve any grievance within the coop by presenting his objections to the coop in writing and allowing the coop at least seven (7) days in which to attempt a resolution or otherwise respond;

(9) a statement that any interested person may examine the rate filings together with any exhibits and related papers that may be filed at any time at the main office of the coop or on or after the date of filing at the offices of the Commission in Santa Fe; and

(10) a statement that further information may be obtained by contacting the coop or the Commission.

C. The coop shall submit a copy of the form of notice to the Commission for approval at least fifteen (15) days prior to giving notice to customers. If the Commission does not disapprove the form of notice within five (5) working days of submission of the notice the form will be deemed approved.

D. Failure to comply with this section shall be deemed grounds for rejection of the filing proposing a new rate or rates.

[Recompiled 12/30/01]

**17.9.540.14 REVIEW AND HEARING OF PROPOSED RATES:** Any proceeding to review a coop's proposed rate or rates under NMPSC Rule 540.7(d) [Subsection D of 17.9.540.12 NMAC] shall be conducted in accordance with the Public Utility Act and NMPSC Rules 110.1 through 110.29 and NMPSC Rules 110.56 through 110.142 [17.1.2.7 NMAC through 17.1.2.12 NMAC and 17.1.2.26 NMAC through 17.1.2.40 NMAC].

[Recompiled 12/30/01]

**17.9.540.15 STATUS OF PROTESTANT DURING PROCEEDING:**

A. Unless the Commission or presiding officer directs otherwise the protestant or protestants who filed the protest shall be deemed parties to any proceeding to review the proposed rate or rates protested. Said protestants shall have the same status as intervenors and any reference to intervenors during the proceeding shall be deemed to include such protestants unless otherwise noted. These protestants need not file motions to intervene otherwise required by NMPSC Rule 110 [17.1.2 NMAC].

B. If more than one member filed the protest the Commission or the presiding officer may, to expedite the proceeding and avoid duplication, give intervenor status to fewer than all of the protestants and grant other intervenor status only upon a showing that their intervention will not be duplicative and will not unduly delay the proceeding.

[Recompiled 12/30/01]

**17.9.540.16 DEBT COST ADJUSTMENT CLAUSE:**

A. A coop's schedule of rates proposed pursuant to NMPSC Rule 540 [17.9.540 NMAC] may provide for the flow-through to customers of increases and decreases in the cost of debt capital incurred pursuant to securities, the issuance of which has been approved by the Commission, above or below debt cost utilized to establish the rates.

B. Unless the coop obtains the approval of the Commission or presiding officer for a different methodology, the clause in a rate containing such an adjustment shall provide at a minimum for the following:

(1) the Base Cost shall be the cost of Commission authorized debt capital as of the end of the test period upon which the rates were established, as annualized;

(2) the applicable debt cost expense shall be determined every calendar quarter by adding the actual changes in the Base Cost to or, as the case may be, subtracting these changes from the actual cost of new debt under securities approved by the Commission and incurred after the end of the period used to determine the Base Cost;

(3) a demand allocation factor shall be determined for each class of customers (the demand allocation factor shall be that upon which the cooperative's current rates were established but may be adjusted by the cooperative with prior approval of the Commission Executive Director on the basis of a more recent cost of service study or known and measurable changes); and

(4) the Debt Cost Adjustment amount to be allocated to each class of customers for the next succeeding calendar quarter shall be the result of multiplying items (2) and (3) above. The distribution of the Debt Cost Adjustment amount among the customers within each class may be on the basis of projected kilowatt demand or projected kilowatt-hour sales, as the coop elects to designate in its schedule of rates.

C. The coop shall file with the Commission the data and calculations called for by Paragraphs (1), (2), (3) and (4) of Subsection B of this Section above a minimum of ten (10) days before an adjustment factor is to be applied to billings.

D. The coop shall establish a Balancing Account to compensate for under-collections and over-collections of revenue by increasing or decreasing the adjustment factor for the next following calendar quarter and shall file with the Commission one (1) year from the date of the first Debt Cost Adjustment filing and annually thereafter a reconciliation of Debt Cost Adjustment revenues and expenses and the operation of the Balancing Account. The Commission will examine this filing to insure that only the appropriate revenues are being recovered.

E. The adjustment factor expressed in either cents per kilowatt-hour or cents per kilowatt and the resultant billing period charge shall be shown on each bill as Debt Cost Adjustment.

F. Notwithstanding NMPSC Rule 540.11 [17.9.540.16 NMAC], an effective schedule of rates, or the filing of information with the Commission, the Commission reserves the authority to entertain complaints and undertake investigations of Debt Cost Adjustments as provided in the Public Utility Act and NMPSC Rule 110 [17.1.2 NMAC].

[Recompiled 12/30/01]

**17.9.540.17 EFFECTIVE DATE:** NMPSC Rule 540 [17.9.540 NMAC] shall be effective for all filings made after the date of adoption of former General Order No. 46 and compliance thereof with the State Rules Act, NMSA 1978, Section 14-4-1 et seq. For all previous filings Interim General Order No. 46, adopted July 15, 1985, shall remain in effect.

[Recompiled 12/30/01]

**17.9.540.18 [HISTORY:** NMPSC Case No. 2086, order dated June 30, 1988, unless otherwise noted. Formerly NMPSC General Order No. 46, superseded for purposes of rule reorganization and codification.]

[Recompiled 12/30/01]



**HISTORY OF 17.9.540 NMAC:**

The material in this part was derived from that previously filed with the Commission of Public Records-State Records Center and Archives.

General Order No. 46, In The Matter Of A General Order No. 46 Regarding Procedures For Review Of Rates Proposed By Rural Electric Cooperatives. 8/15/85

G.O. 46, Procedures For Review Of Rates Proposed By Rural Electric Cooperatives; 2/26/86

NMPSC Rule 540, Procedures For Review Of Rates Proposed By Rural Electric Cooperatives; 6/30/88.

History of Repealed Material: [RESERVED]