

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

1.2.2.1 ISSUING AGENCY: Public Regulation Commission.
[1.2.2.1 NMAC - N, 9-1-08]

1.2.2.2 SCOPE: This rule applies to all utility division, transportation division, fire marshal division, and corporations bureau proceedings other than rulemakings conducted by the commission. Other rules governing specialized proceedings or matters shall govern in the event of a conflict with this rule.
[1.2.2.2 NMAC - N, 9-1-08]

1.2.2.3 STATUTORY AUTHORITY: Sections 8-8-4, 8-8-16, 53-18-1, 53-19-66, 59A-52-15, 59A-52-16, 60-2C-3, 62-8-3, 62-13-2, 62-14-9.1, 62-14-10, 63-7-23, 63-9-11, 63-9A-5.1, 63-9A-11, 63-9B-5, 63-9H-10, 65-2A-4, 65-2A-36, 65-6-4, and 70-3-13 NMSA 1978.
[1.2.2.3 NMAC - N, 9-1-08]

1.2.2.4 DURATION: Permanent.
[1.2.2.4 NMAC - N, 9-1-08]

1.2.2.5 EFFECTIVE DATE: September 1, 2008, unless a later date is cited at the end of a section.
[1.2.2.5 NMAC - N, 9-1-08]

1.2.2.6 OBJECTIVE: The purpose of this rule is to establish procedures for handling matters before the commission concerning its regulation of utilities, telecommunications providers, motor carriers, railroads, fire marshal-regulated entities, corporations, owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems subject to the jurisdiction of the commission in New Mexico.
[1.2.2.6 NMAC - N, 9-1-08]

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:

A. advisory staff means persons hired by the commission pursuant to Section 8-8-13 NMSA 1978, but who do not represent staff in proceedings before the commission;

B. applicant means any party on whose behalf an application is made for approval or authorization of the commission;

C. chief clerk means the person appointed by the chief of staff pursuant to Section 8-8-5 NMSA 1978 to serve as director of the administrative services division pursuant to Section 8-8-7 NMSA 1978;

D. chief of staff means the person appointed by the commission pursuant to Section 8-8-5 NMSA 1978;

E. commenter means a person who enters into the record of a proceeding before the commission or presiding officer a comment on the grounds of public or private interest, but who is not a party to the proceeding;

F. complainant means a person who complains of anything done or omitted to be done in violation of any law, rule, or order administered or promulgated by the commission;

G. corporations means domestic and foreign corporations, limited liability companies, cooperative associations, sanitary projects act associations, water users associations, waterworks corporations, and foreign business trusts as those terms are defined in Section 3-29-2 and Chapter 53, NMSA 1978, unless exempted by law from commission regulation;

H. document means, except as otherwise used in the provisions of this rule governing discovery, any submission in a formal proceeding which is not a pleading or which is required to be filed by commission rule or order outside a formal proceeding;

I. electronic means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities;

J. file, filed, or filing means delivery or transmittal to the chief clerk or the chief clerk's designee and acceptance by the chief clerk or the chief clerk's designee of an order, notice, pleading, or document to be kept on file in their official capacity;

K. 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;

L. formal proceedings means 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;

M. 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;

N. informal proceedings means any matters handled outside a formal proceeding by the commission or its staff, including informal complaints;

O. 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;

P. 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;

Q. 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;

R. petitioner means any party on whose behalf a petition is made for approval, determination, consent, certification, or authorization of the commission;

S. pleading means an application, petition, complaint, answer, motion, response to motion, exception, or other formal written statement filed in any formal proceeding;

T. presiding officer means a commissioner taking such actions as are permitted under 1.2.2.29 and 1.2.2.30 NMAC or the hearing examiner designated to preside over a proceeding;

U. proceeding means a formal proceeding;

V. 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;

W. regulated entity means a utility, telecommunications provider, motor carrier, fire marshal-regulated entity, 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;

X. 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;

Y. staff means all persons, other than hearing examiners and advisory staff, employed by the commission; and

Z. telecommunications provider shall have the meaning given in Paragraph (2) of Subsection A of 63-7-23 NMSA 1978.

[1.2.2.7 NMAC - Rp, 17 NMAC 1.2.7, 9-1-08]

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 Inspection of Public Records Act, Section 14-2-1 NMSA 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 record as of the day and time 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 Inspection 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.

B. Protective orders:

(1) Any person moving for an order to protect pleadings, documents or classes of documents from disclosure bears the burden of establishing their right, if any, to such protection. A motion for an order to protect documents or information from disclosure shall be supported by an affidavit. The affidavit shall:

(a) satisfy the claimant's burden of making a *prima facie* showing that protection is appropriate, and, if protection is sought for pleadings or documents that are to be filed, that protection is consistent with the Inspection of Public Records Act, including protectable trade secrets;

(b) be executed by the claimant or a person employed by the claimant who is sufficiently knowledgeable about the grounds on which protection is sought that they can defend such claim if it is challenged; and

(c) explain with particularity the injury which would result from disclosure of the information for which protection is sought.

(2) If the commission or presiding officer deems it necessary, or if any party files a motion to compel, the commission or presiding officer may require the party seeking the protective order to file the documents or information which are the subject of the motion in a properly identified sealed container. The container may be opened by the commission or presiding officer prior to ruling on the motion for a protective order only for purposes of making an *in camera* inspection.

(3) The commission or presiding officer may, in ruling on the motion, provide that the documents or information not be disclosed or that they be disclosed only in a designated manner or to designated persons. Any order granting a motion for a protective order in whole or in part shall include clear and specific instructions to the chief clerk or chief clerk's designee regarding the limitations placed on disclosure of the documents or information subject to the order and a reminder that sanctions may be imposed under applicable laws for its violation. The protective order shall set forth the conditions for protection and disclosure of information subject to protection under the Inspection of Public Records Act to parties to the proceeding. The order shall be included in the appropriate publicly available file in lieu of the documents or information which are the subject of the protective order.

(4) The period of time during which disclosure is limited shall be two years from the date of the final order in the case, provided that the movant may request that the protective order specify a different period of protection. The movant may, prior to expiration of the protective order, move for an order extending the period of protection of the documents or information.

(5) Nothing in this rule shall be construed as waiving or altering any requirement placed upon the commission for timely disclosure and copying of public records under the Inspection of Public Records Act.

C. Fees:

(1) All application fees or other charges required by law shall be paid to the commission at the time of filing or at the time the charge is incurred.

(2) 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.

(3) 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 state records center for similar types of copies.

(4) The fee for copies of papers, testimony, or records on electronic storage media shall be the same charge set by the state records center for paper copies of the same.

(5) The fee for cassette or CD-ROM copies of audio recordings of informal and formal proceedings, if available, is \$10 per cassette or CD-ROM.

(6) 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 a document search and preparation fee based on the hourly rate charged by the state records center for document preparation in 1.13.2 NMAC.

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 as to secure just and speedy determination of the issues.

F. Docket: The commission shall maintain a docket of all proceedings, and each new proceeding shall be assigned an appropriate docket number. The docket is open to public inspection.

G. Calendar of public hearings: The commission shall maintain a public hearing calendar. The public hearing calendar is open to public inspection.

H. Address of the commission: Persons shall submit filings in proceedings related to utilities and telecommunications providers to the records office located at the utility division's address. Persons shall submit filings in proceedings related to motor carriers, railroads, fire marshal-regulated entities, corporations, and owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems to the records office located at the transportation division's address.

(1) Utility division.

(a) Street address: Marian Hall, 224 E. Palace Avenue, Santa Fe, New Mexico 87501-2013.

(b) Mailing address: Public Regulation Commission, Utilities Division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) Transportation division:

(a) Street address. P.E.R.A. Building, 1120 Paseo de Peralta, Santa Fe, New Mexico, 87504.

(b) Mailing address. Public Regulation Commission, (indicate appropriate division or bureau), P.O. Box 1269, Santa Fe, NM 87504-1269.

I. Office days and hours: The offices of the commission are open from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m., Monday through Friday, legal holidays excepted.

J. 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.

K. Current information required: In all cases, persons shall keep the information required by Subsection J 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.

L. 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.

M. 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.

N. Classification of parties: Parties to proceedings before the commission shall be classified as applicants, petitioners, complainants, respondents, or intervenors.
[1.2.2.8 NMAC - Rp, 17 NMAC 1.2.8, 9-1-08]

1.2.2.9 PRACTICE BEFORE THE COMMISSION: (See 18.60.4.11 NMAC for matters involving owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems.)

A. An individual may appear as a party in person or by an attorney licensed to practice law in New Mexico at either informal or formal proceedings.

B. Entities other than an individual may appear as a party at informal proceedings by an officer or employee of the entity.

C. Commenters may appear in person or by an attorney at any proceeding.

D. Except as provided in this section, entities other than an individual must be represented by an attorney licensed to practice law in New Mexico at all formal proceedings.

E. An attorney licensed in a jurisdiction other than New Mexico may appear at public hearings before the commission or presiding officer provided such non-resident attorney files a motion *pro hac vice* and is associated with and accompanied by an attorney licensed in New Mexico.

F. The following entities may be represented at all formal proceedings as provided:

(1) if the party is the United States, it may be represented as provided in 40 U.S.C. Section 481(a)(4) and 486(d);

(2) if the party is an association of residential customers of an investor-owned public utility or an association of residential members of a rural electric cooperative, it may be represented by an officer or employee thereof who has been authorized to appear on behalf of the association;

(3) if the party is a class C or class D water utility as defined in General Provisions for Water Utilities, 17.12.1 NMAC, or is a sewer utility subject to the requirements of procedures for review of rates proposed by sewer utilities having annual operating revenues averaging less than \$500,000 over any consecutive three-year period, 17.13.970 NMAC, and:

(a) if such a water or sewer utility is a corporation whose voting shares are held by a single shareholder or closely knit group of shareholders all of whom are natural persons active in the conduct of the business, it may be represented by an officer or general manager who has been authorized to appear on behalf of the corporation, or;

(b) if such a water or sewer utility is a general partnership; and the partnership has fewer than ten partners, whether limited or general, except that a husband and wife are treated as one partner for this purpose; and all partners, whether limited or general, are natural persons; it may be represented by a general partner who has been authorized to appear on behalf of the general partnership;

(4) if the party is a water and sanitation district governed by the Water and Sanitation District Act, Section 73-21-1 NMSA 1978 *et seq.*, it may be represented by an officer or employee of the water and sanitation district who has been authorized by the water and sanitation district to appear on its behalf;

(5) if the party is a utility submitting an application relating to securities pursuant to Subsection B of Section 62-6-8 NMSA 1978, it may be represented by an officer or employee of the utility who has been authorized by the utility to appear on its behalf; however, upon a finding by the commission or the presiding officer that there is good cause to hold a public hearing on such an application, the applying utility shall be represented in that proceeding by an attorney licensed to practice law in New Mexico.

G. The commission or presiding officer may require any person claiming to represent any other person or entity as allowed by this rule to provide such verification or corroboration of their claimed representational authority as the commission or presiding officer may deem necessary.

H. Nothing in this rule shall be construed to prohibit a party from being represented in a formal proceeding by an attorney licensed to practice law in New Mexico when such representation is desired by a party or is required by law.

[1.2.2.9 NMAC - Rp, 17 NMAC 1.2.9, 9-1-08]

1.2.2.10 FILING AND SERVICE:

A. Filing: A pleading or document is considered filed on the date stamped by the commission. Any pleading or document received after regular business hours will be stamped and considered filed on the next regular business day.

B. 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, such papers will be returned with an indication of the deficiencies therein. 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 be entered on the commission's docket for decision.

C. Service Generally:

(1) Except as otherwise provided by rule or order, all pleadings, orders, notices, and documents filed in a proceeding shall be promptly served upon those persons described in Paragraph (4) of Subsection C of 1.2.2.10 NMAC by the person filing the orders, notices, pleadings, or documents. Service 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, by hand delivery, or by electronic transmission in accordance with other rules governing electronic service promulgated by the commission. The date of service shall be the date of deposit in the mail, delivery to a commercial courier service, hand delivery, or electronic transmission.

(2) A certificate of service listing, by name, each person served and describing the manner and date of service shall be filed with or 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.

(3) 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.

D. Electronic service: Electronic service shall be effectuated in accordance with other rules of the commission governing electronic filing and service.

E. 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.

[1.2.2.10 NMAC - Rp, 17 NMAC 1.2.28, 9-1-08]

1.2.2.11 PLEADINGS: Pleadings shall be in writing, shall state their object, and shall be signed by the party or staff representative seeking authorization or relief from the commission or by their attorney.

A. Contents: All pleadings shall be paginated and shall contain:

(1) a clear and concise statement of the authorization or other relief sought;

(2) in the case of initial pleadings, the exact legal name, mailing address, and telephone number of each party or the staff representative seeking the authorization or relief; the address or principal place of business of such party or staff; and the name, mailing address, and telephone number of the party's or staff's attorney, if any;

(3) a concise and explicit statement of the facts which said party or the staff is prepared to prove by competent evidence and upon which the commission is expected to rely in granting the authorization or other relief sought; and

(4) a table of contents, if more than ten pages.

B. Supporting exhibits: All pertinent and relevant data, exhibits, illustrations, and prepared testimony, if required by this or any other rule or order of the commission or presiding officer, must be filed along with the pleading.

(1) If supporting exhibits consist of tables or graphs, the specific formulae and equations used to derive the tables or graphs shall be attached as part of the supporting exhibit.

(2) Failure to submit all direct testimony and exhibits in support of a proposed tariff change, application, or petition at the time of filing, if required by rule or order of the commission or presiding officer, may result in a rejection of the pleading or document without prejudice.

(3) Likewise, failure to comply with an order of the presiding officer requiring the filing of testimony and exhibits may result in the rejection of the pleading or document without prejudice.

C. Form and size: All pleadings shall be typed or machine printed on paper eight and one-half (8-1/2) inches wide and eleven (11) inches long. The impression shall be on only one side of the paper and shall be double-spaced. Footnotes and quotations may be single-spaced. Pleadings shall be fastened only on the left side. Reproductions may be made by any process provided that all copies are clear and permanently legible.

D. Interrogatories: Written interrogatories and written answers to interrogatories, shall conform to the form and size requirements of this rule, except that they may be single-spaced unless the commission or presiding officer otherwise directs.

E. Electronic form: Any pleading or supporting document may additionally be presented in electronic form at the option of the party or staff making a filing, and shall be presented in electronic form if the commission or presiding officer so orders. All diskettes, CD-ROMs or other electronic storage media submitted pursuant to this rule shall be compatible with the commission's current computer capabilities. Diskettes, CD-ROMs and other electronic storage media shall contain the exact electronic image of the document or pleading being replicated. Unless otherwise ordered by the commission or presiding officer, the contents of all filed diskettes, CD-ROMs and other electronic storage media shall be physically or electronically protected from alteration or deletion. All diskettes, CD-ROMs or other electronic storage media filed shall have affixed thereto a label containing the appropriate caption and case number, the title of the pleading or document, the name of the party or staff making the filing, and space for date-stamping.

F. Title and docket number: All pleadings filed shall show the caption for the proceeding, the docket number, and the title of the pleading. Pleadings initiating new proceedings shall leave a space for the docket number.

G. Construction: All pleadings shall be liberally construed and errors or defects therein which do not mislead or affect the substantial rights of staff and the parties involved shall be disregarded.

H. Copies: The party or staff filing a pleading shall provide the commission with one (1) original plus five (5) conformed copies of the pleading unless the commission or presiding officer directs otherwise. The commission or presiding officer may require the filing of additional paper copies.

[1.2.2.11 NMAC - Rp, 17 NMAC 1.2.10, 9-1-08]

1.2.2.12 MOTIONS:

A. Motions generally:

(1) Motions may be made at any time during the course of a proceeding. Notwithstanding the foregoing, if the grounds for a motion are known to the movant prior to public hearing, the motion shall be made prior to public hearing except upon good cause shown. The commission discourages any delay in the filing of a motion once grounds for the motion are known to the movant.

(2) Any motion made prior to public hearing must be made in writing. Motions made orally during a public hearing must, if the commission or presiding officer requires, also be filed in writing.

(3) Motions must clearly state the relief sought, the grounds therefor, whether the motion is opposed, and if so, by whom.

(4) All motions not specifically acted upon shall be deemed disposed of consistent with the final order of the commission in the proceeding. Motions based on factual allegations that do not appear of record shall be supported by affidavit filed along with the motion.

B. Motions to dismiss: Staff or a party to a proceeding may at any time move to dismiss a portion or all of a proceeding for lack of jurisdiction, failure to meet the burden of proof, failure to comply with the rules of the commission, or for other good cause shown. The presiding officer may recommend dismissal or the commission may dismiss a proceeding on their own motion.

C. Responses to motions:

(1) Response times:

(a) On motions made thirteen (13) or more days prior to a public hearing, staff and parties wishing to respond must respond in writing within thirteen (13) days of service of the motion or before the public hearing commences, whichever occurs first.

(b) On motions made subsequent to a public hearing, unless the motion is a motion for rehearing filed pursuant to Subsection F of 1.2.2.37 NMAC, staff and parties wishing to respond must respond in writing within thirteen (13) days of service of the motion.

(c) On motions made within thirteen (13) days of or during a public hearing, responses shall be made within such time as directed by the commission or presiding officer.

(d) Replies to responses shall not be filed without leave of the commission or presiding officer. Replies to responses 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) Notwithstanding the foregoing, staff and parties wishing to respond to motions pertaining to discovery requests or the answers thereto, including but not limited to motions to compel, motions for sanctions and motions for protective orders, must respond to the motion within eight (8) days of service of the motion unless the commission or presiding officer directs otherwise.

(2) Failure to make a timely response shall be deemed a waiver of the right to respond.

(3) Written responses based on factual allegations that do not appear of record shall be supported by affidavit filed along with the response.

D. Briefs: Motions seeking extensions of time or continuances and like motions directed to the discretion of the commission or presiding officer in procedural matters need not be accompanied by briefs. Unless otherwise provided in this rule or waived by the commission or presiding officer, other motions must be accompanied by a brief, including points and authorities, addressed to the issues raised by the motion. Responses to a motion should similarly be accompanied by a brief, including points and authorities.

E. Opposed and unopposed motions:

(1) The movant shall make a good faith effort to determine whether a contemplated motion will be opposed.

(2) If a motion will not be opposed, the movant shall so state in the motion, shall accompany the motion with a proposed order, and need not file a brief in support of the motion. The proposed order must be signed by all parties and staff unless the motion seeks an extension of time or a continuance or is similarly directed to the discretion of the commission or presiding officer in procedural matters.

(3) Opposed motions shall state affirmatively that concurrence of other parties and staff has been requested but denied or shall state why no request for concurrence was made. Proposed orders need not be submitted with opposed motions unless the commission or presiding officer directs otherwise.

F. Oral argument:

(1) Motions will be decided without oral argument or public hearing unless the commission or presiding officer directs otherwise.

(2) Oral argument or public hearing may be conducted by telephone conference call at the discretion of the commission or presiding officer.

(3) Staff and parties waive the opportunity to request oral argument or an evidentiary public hearing on a motion unless the request is stated in the motion or response to the motion.

[1.2.2.12 NMAC - Rp, 17 NMAC 1.2.12, 9-1-08]

1.2.2.13 COMPLAINTS:

A. Complaints: The commission or staff shall not accept a complaint from a person until the person has made a good faith effort to resolve the complaint directly with the regulated entity, unless the complaint is health or safety related.

(1) For informal complaints, staff or any commissioner may waive this requirement.

(2) For formal complaints, the commission may waive this requirement for good cause.

B. In forma pauperis: Staff or the commission shall authorize the commencement, prosecution, defense, and investigation of any complaint filed by an individual without payment of fees and costs or security by the person if the individual makes an affidavit that they are unable to pay such costs or security, as may be provided by law.

C. Alternative dispute resolution: The commission may order the following mechanisms to resolve complaints or streamline matters before the commission:

(1) settlement conferences;

(2) mediation;

(3) arbitration;

(4) other dispute resolution means, including consent calendars; and

(5) the use of staff decisions.

[1.2.2.13 NMAC - Rp, 17 NMAC 1.2.16, 9-1-08]

1.2.2.14 INFORMAL COMPLAINTS: Informal complaints are ordinarily handled by the consumer relations division through the informal complaint process outlined in this section, but from time to time, any and all commission employees or commissioners may receive complaints and inquiries from consumers and constituents and provide assistance to them consistent with their job duties and management direction. Any commission employee who receives an informal complaint should notify the consumer relations division. Informal complaints against owners and operators of gas and hazardous liquid pipelines and underground facilities and one-call notification systems, or fire marshal-regulated entities shall be submitted directly, as appropriate, to the transportation division or fire marshal division.

A. Initiation:

(1) A person may initiate an informal complaint by letter, facsimile transmission, electronic mail, or other writing, via the commission's web site at www.nmprc.state.nm.us, by telephone, or in person at the offices of the consumer relations division of the commission.

(2) Staff shall assist persons making informal complaints by telephone or in person in creating a written record.

(3) The staff shall endeavor to resolve informal complaints by correspondence or conference with the persons affected.

(4) Informal complaints will not arrest the running of any limitations period.

B. Contents:

(1) A written informal complaint shall set forth:

- (a) the name, telephone number (if any), and address of the complainant;
- (b) the name and address of the person against whom such complaint is made;
- (c) the nature of the complaint in a clear and concise manner;
- (d) a brief statement of the facts forming the basis of such complaint; and
- (e) the relief requested.

(2) The complaint shall also state whether the complainant has pursued all remedies with the regulated entity.

(3) The written complaint need not be in affidavit form.

(4) If the informal complaint does not initially contain the information described in this paragraph, a member of the staff will contact the complainant to attempt to obtain the missing data.

C. Without prejudice: The filing of an informal complaint shall not preclude the complainant from filing a formal complaint at any time. The submission of an informal complaint is not a prerequisite to filing a formal complaint.

D. Commission investigation of complaint:

(1) Upon receipt of an informal complaint the commission shall, when appropriate, advise the regulated entity within a reasonable period of time that a complaint has been submitted against it. The commission shall provide the regulated entity with a copy of a written informal complaint prior to requiring a response from the regulated entity.

(2) The staff shall review and investigate the complaint and shall advise the complainant and the regulated entity of the results of the investigation within sixty (60) days. The commission may extend the time for good cause.

(3) If the complaint is against a motor carrier and is safety related, and the motor vehicle weighs 10,001 pounds or more, staff shall also refer the complaint to the motor transportation division.

E. Choice of procedure: If staff is unable to resolve an informal complaint to the satisfaction of the parties, either party may within five (5) days after receipt of the results of the investigation:

- (1) request mediation;
- (2) request arbitration; or
- (3) file a formal complaint.

[1.2.2.14 NMAC - Rp, 17 NMAC 1.2.17, 9-1-08]

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 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) 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.

(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, the 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.

[1.2.2.15 NMAC - Rp, 17 NMAC 1.2.18, 9-1-08]

1.2.2.16 SETTLEMENT CONFERENCES:

A. Purpose:

(1) The purposes of a settlement conference are to provide a forum for the parties and staff to work together to informally resolve complaints and other matters in dispute, expedite the public hearing process, and assist parties and staff in reaching a settlement at the earliest possible stage.

(2) Nothing in this rule shall be construed to limit or discourage voluntary settlement negotiations among staff and the parties to any proceeding. When deemed appropriate, the commission may order a settlement conference.

(3) The parties and staff may at any time move for an order designating a mediator to assist in the resolution of issues in controversy, or if the commission deems it appropriate, the commission may on its own motion designate a mediator. If the commission designates a mediator, the mediator shall meet the criteria of Subsection B of 12.2.17 NMAC and shall have the powers and duties described in Subsections B through D of 1.2.2.16 NMAC, as well as the power to pursue other alternative dispute resolution techniques consistent with the objective of facilitating a voluntary resolution among staff and the parties of all or some of the issues in controversy.

B. Notice of mediated settlement conference:

(1) If a mediator is appointed, the mediator shall notify the parties and staff of the time and place of the settlement conference.

(a) The notice will direct the parties and staff to send the mediator, but not other parties or staff, their settlement positions and other necessary information that could facilitate the settlement conference.

(b) In addition the mediator may require counsel to have their clients present at the settlement conference or accessible by telephone.

(c) Settlement conferences will be held at commission offices unless otherwise directed by the mediator.

(d) The settlement conference shall be held within twenty (20) days of the date of the notice unless good cause is shown for an extension.

(2) Nothing in this rule shall be construed to limit additional settlement conferences. The commission or presiding officer may suspend the procedural schedule in the case until the settlement conference is complete.

C. Result of settlement conference:

(1) If the parties and staff have agreed upon a settlement, then a stipulation shall be issued in accordance with the provisions of this rule governing stipulations. The stipulation shall be submitted to the assigned hearing examiner to be certified or to the commission in accordance with this rule.

(2) If the parties and staff are unable to reach an agreement through mediation, then the mediator shall issue a statement that the settlement conference was held and the case shall proceed.

D. Inadmissibility of settlement offers: Offers of settlement and statements made in furtherance of them made in the course of a settlement conference are privileged and, except by agreement among all parties and staff, shall not be admissible as evidence in any formal public hearing before the commission or presiding officer nor disclosed by the mediator voluntarily or through compulsory process.

E. Proceeding not automatically stayed: Conducting a settlement conference or conferences shall not stay a formal proceeding unless the commission or presiding officer issues an order holding the procedural schedule in abeyance.

[1.2.2.16 NMAC - Rp, 17 NMAC 1.2.19, 9-1-08]

1.2.2.17 MEDIATION:

A. Designation of mediator: If any of the parties or staff makes a request for mediation, or on its own motion, the commission may, in its discretion, designate a mediator consistent with Subsection B of 1.2.2.17 NMAC.

B. Requirements:

(1) The mediator may be a permanent or temporary employee of the commission or another state agency or any other individual who is qualified in the matter to be mediated and is acceptable to the parties and staff. If the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services.

(2) The mediator shall not be the hearing examiner who is assigned to the case.

(3) The mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and staff at the time the mediator is assigned by the commission and unless all parties agree that the mediator may serve.

(4) The mediator shall not subsequent to serving as a mediator participate in the proceeding as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding.

C. The mediator may be assigned by the commission at the same time as the commission assigns the case to a hearing examiner. The mediator shall not discuss the mediation conference with any commissioner or hearing examiner hearing the case.

D. The mediator shall notify the parties and staff by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator. The notice may direct the parties and staff to send the mediator, but not other parties or staff, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the complaint.

E. If the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution. If the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file a formal complaint.

[1.2.2.17 NMAC - Rp, 17 NMAC 1.2.20, 9-1-08]

1.2.2.18 ARBITRATION:

A. A complainant may request arbitration of any dispute. The complainant's request shall be in writing to the commission and shall include a concise statement of the grounds for the complaint, the remedy sought, and an acknowledgment that the complainant has read 1.2.2.19 NMAC and agrees to be bound by its terms.

B. A utility or telecommunications provider shall not discontinue service to a customer or issue a notice of discontinuance relating to the matter in dispute once the matter is in arbitration, 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. The commission or its authorized representative shall forward the request for arbitration to the respondent together with a copy of Subsection A of 1.2.2.13 NMAC and 1.2.2.15 NMAC and require that the respondent submit a written response within ten (10) days of the date of the commission's letter forwarding the request.

D. If the respondent agrees to arbitration of the dispute, the respondent shall include in the response to the complainant's request a concise statement of respondent's position with regard to the merits of the complaint and an acknowledgment that the respondent has read 1.2.2.19 NMAC and agrees to be bound by its terms. If the respondent will not agree to arbitration, the respondent shall so state in the response.

E. If the respondent either fails to respond to a request for arbitration or does not agree to arbitration, the complainant retains the right to proceed with a formal complaint.

F. Requirements: If both the complainant and the respondent agree to arbitration, the commission shall designate an arbitrator.

(1) The arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is qualified in the subject matter to be arbitrated and is acceptable to the parties to the complaint.

(2) The designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve.

(3) The parties shall be required to indicate their consent in writing to the designated arbitrator within ten (10) days of the date of the commission's letter of designation.

(4) If the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear the costs as their own pursuant to Section 8-8-4.

G. Any employee of the commission designated to arbitrate the matter under these provisions shall not participate in a subsequent proceeding on the complaint as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding.

H. The commission may assign docket numbers to arbitration proceedings for purposes of record management but the proceeding remains an informal proceeding under this rule.
[1.2.2.18 NMAC - Rp, 17 NMAC 1.2.21, 9-1-08]

1.2.2.19 ARBITRATION PROCEDURES:

A. Timeline for resolution:

(1) Once designated and approved by the parties, the arbitrator shall proceed to render a decision in the arbitration proceeding within a reasonable period of time, not to exceed ninety (90) days, unless otherwise ordered by the commission or presiding officer.

(2) If the arbitrator at any time determines that it is unlikely that the dispute can be resolved without substantially affecting the interests of other ratepayers or the public, the arbitrator may so inform the parties and staff and terminate the proceeding without prejudice to the complainant's right to file a formal complaint.

B. Arbitration procedures:

(1) A disinterested person qualified in the matter to be arbitrated may be appointed by the commission.

(2) The arbitrator shall fix a time and place for an informal public hearing and shall serve notice of the public hearing on both parties and on staff at least ten (10) days in advance of the public hearing.

(3) The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths.

(4) The parties and staff may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute.

(5) The arbitrator shall decide the relevancy and materiality of the evidence offered, and conformity to the New Mexico rules of evidence or to the rules of evidence contained in this rule is not necessary.

(6) No stenographic or electronic record will be made of the testimony at public hearing unless requested by a party, who shall bear the cost of the record, or by staff.

C. Discovery: Discovery will be permitted but only with leave of the arbitrator who shall not allow discovery which unduly complicates, burdens, or impedes the expeditious and informal nature of the proceeding.

D. Investigation: Whenever the arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, the arbitrator shall so advise the parties and staff, who may be present at the inspection or investigation. In the event that one or both of the parties or the staff are not present, the arbitrator shall make an oral or written report to the parties and staff and afford them an opportunity to comment.

E. Decision: At the close of or soon after the public hearing, the arbitrator will issue a brief written decision. Findings of fact and conclusions of law are not necessary. The arbitrator's decision will be binding on the parties and can be implemented by the commission to the extent such implementation is necessary. However, the decision will not be a decision of the commission and shall have no precedential effect.

F. Inadmissibility of settlement offers: Unless agreed to by all the parties and staff, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process. Nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing their conclusions and the bases for them.

G. Commission not bound: Nothing in this rule shall be construed to mean that the commission has waived its review of any decision or that the commission consents to be bound by arbitration. [1.2.2.19 NMAC - Rp, 17 NMAC 1.2.22, 9-1-08]

1.2.2.20 FORMAL STIPULATIONS: The commission recognizes that the parties to a proceeding and staff may reach compromises and settle some or all issues. Settlement stipulations shall be binding only if approved by the commission.

A. Uncontested stipulations:

(1) If the staff and all parties enter into a stipulation settling some or all of the issues in a proceeding, the stipulation shall be filed and a copy presented to the presiding officer. If the proceeding is before the commission *en banc*, the commission may in its discretion assign a hearing examiner to preside over any public hearing to be conducted on the stipulation.

(2) When filed and presented, the stipulation must be accompanied in rate cases by a reconciliation statement showing the dollar impact of the settlement and the resulting rates. This statement shall contain the information listed in Subsection F of 1.2.2.36 NMAC.

(3) Upon receipt of a stipulation which would settle substantive issues, the commission or presiding officer shall conduct a public hearing to determine whether the stipulation should be approved by the commission, provided that in extraordinary cases, for good cause shown, the commission or presiding officer may forego a public hearing. The proponents of the stipulation have the burden of supporting the stipulation with sufficient evidence and legal argument to allow the commission to approve it.

(4) In the event the parties and staff enter into a settlement of one or more issues but not of the entire case, the commission or presiding officer may in their discretion combine the public hearing on the settlement stipulation with the public hearing on the contested issues.

(5) In cases heard by a hearing examiner rather than the commission, the hearing examiner may:

(a) decide that the settlement stipulation should not be certified to the commission at all, in which event the hearing examiner may indicate to the parties and staff whether additional evidence or legal argument in support of the stipulation or amendments to the stipulation might meet the hearing examiner's reservations about the stipulation; or

(b) certify the settlement stipulation to the commission for its review; the certification shall include a recommended disposition of the stipulation, whether the recommendation be positive or negative or otherwise suggest a manner of disposition; exceptions to the certification may be filed within ten (10) days after the date the settlement stipulation is certified to the commission, unless the commission or presiding officer directs otherwise.

B. Contested stipulations:

(1) If some, but not all, of the parties to a proceeding, including staff, enter into a stipulation seeking to dispose of some or all of the issues in the proceeding, the stipulation shall be filed and copies presented to the presiding officer and served on the parties or staff opposing the stipulation. If the proceeding is before the commission *en banc*, the commission may in its discretion assign a hearing examiner to preside over any public hearing to be conducted on the stipulation. When filed and presented, the stipulation must be accompanied in rate cases by a reconciliation statement showing the dollar impact of the settlement and the resulting rates. This statement shall contain the information listed in Subsection F of 1.2.2.36 NMAC.

(2) Parties or staff opposing the stipulation shall file statements briefly setting forth the grounds upon which they oppose the stipulation in writing within five (5) days after the stipulation is served, or orally at the public hearing, whichever occurs first. Responses by staff or parties supporting the stipulation shall be made as directed by the commission or presiding officer.

(3) The commission or presiding officer shall schedule the stipulation for public hearing and review unless it is determined that the nature and extent of the opposition is such that hearing the stipulation will not materially conserve commission, staff, and party resources. In the event this determination is made, the commission or presiding officer may refuse to entertain the stipulation. The commission or presiding officer also has the discretion to combine a public hearing on a contested stipulation with the public hearing on the merits of any substantive issues not addressed by the stipulation.

(4) A public hearing shall be conducted to determine whether the stipulation shall be approved by the commission. The proponents of the stipulation have the burden of supporting the stipulation with sufficient evidence and legal argument to allow the commission to approve it. At the public hearing all parties and staff shall be allowed an opportunity to present evidence and cross-examine opposing witnesses on the stipulation.

(5) In cases heard by a hearing examiner rather than the commission the hearing examiner may:

- (a) decide that the settlement stipulation should not be certified to the commission at all, in which event the hearing examiner may indicate to the parties and staff whether additional evidence or legal argument in support of the stipulation or amendments to the stipulation might meet the hearing examiner's reservations about the stipulation; or
- (b) certify the settlement stipulation to the commission for its review; the certification shall include a recommended disposition of the stipulation, whether the recommendation be positive or negative or otherwise suggest a manner of disposition; exceptions to the certification may be filed within ten (10) days after the date the settlement stipulation is certified to the commission, unless the commission or presiding officer directs otherwise.

C. Inadmissibility of settlement offers and rejected settlements: Statements, admissions, or offers of settlement made during the course of negotiations of settlements are privileged. No such statements, admissions, or offers of settlement shall be admissible as evidence in any formal public hearing, nor disclosed by any mediator designated pursuant to this rule either voluntarily or through compulsory process, unless agreed to by all the parties and staff. If a stipulation is not approved by the commission, the terms of the proposed settlement are also inadmissible unless their admission is agreed to by all the parties and staff. Nothing in this subsection shall preclude proponents of a contested settlement stipulation from offering that stipulation into the record for purposes of its consideration by the commission or presiding officer.

D. Precedential effect: Unless the commission explicitly provides otherwise in the order approving the stipulation, approval of a stipulation does not constitute commission approval of or precedent regarding any principle or issue in the proceeding.

[1.2.2.20 NMAC - Rp, 17 NMAC 1.2.23, 9-1-08]

1.2.2.21 PETITIONS FOR DECLARATORY ORDERS:

A. Petition: Any person may petition the commission for a declaratory order to terminate a controversy or to remove an uncertainty with respect to the applicability to the petitioner of any statute or rule administered by the commission or any commission order. Petitions for declaratory orders shall comply with the requirements for pleadings set forth in this rule and shall further set forth:

- (1) the statute, rule, or order of which an interpretation is requested;
- (2) the nature of the controversy or uncertainty which is the subject of the petition;
- (3) the manner in which the controversy or uncertainty affects the petitioner;
- (4) a complete statement of the facts and grounds prompting the petition; and
- (5) the names and addresses of any other persons directly involved in the controversy or directly affected by the uncertainty.

B. Brief and affidavits:

- (1) A petition for a declaratory order shall be accompanied by a brief in which the petitioner sets forth their position and all facts and arguments known in support of and in opposition to that position.
- (2) The petition shall also be accompanied by affidavits attesting to the facts alleged in the petition or brief.
- (3) Failure to comply with these requirements will be grounds for summary dismissal of the petition.

C. Commission procedure:

(1) Upon the filing of a petition for a declaratory order, the commission shall decide whether it will, in its absolute discretion, entertain the petition in whole or in part. If the commission decides to entertain the petition in whole or in part, the commission or the presiding officer shall order the petitioner to give such notice of the proceeding as is deemed appropriate and will proceed to consider the matter with or without public hearing.

(2) The commission may at any time during the proceeding, in its absolute discretion, determine not to issue a declaratory order, in which case the commission shall so notify the parties and staff.

[1.2.2.21 NMAC - Rp, 17 NMAC 1.2.24, 9-1-08]

1.2.2.22 INVESTIGATIONS BY COMMISSION:

A. Investigations by the commission: The commission may at any time investigate any matter within its jurisdiction.

B. Proceedings filed by the commission of its own motion: Formal proceedings may be initiated by the commission to consider any matter within its jurisdiction against any person either by notice, order to show

cause, order to cease and desist, or other process. In such cases the notice, order to show cause, or other appropriate process shall contain:

- (1) specifications of all the matters to be considered and such specifications shall fairly indicate what the respondent is to meet;
- (2) a demand for such information and disclosures as the commission may deem necessary to the question under investigation;
- (3) notice of the time within which such information and disclosures must be filed;
- (4) the time and place set for public hearing; and
- (5) if the commission deems necessary, the manner of notice to the public or to ratepayers.

[1.2.2.22 NMAC - Rp, 17 NMAC 1.2.25, 9-1-08]

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

[1.2.2.23 NMAC - Rp, 17 NMAC 1.2.26, 9-1-08]

1.2.2.24 PROCEDURAL ORDERS:

A. Contents: In rate cases and in other proceedings as may be appropriate, the commission or presiding officer shall issue a procedural order or orders setting forth:

(1) any deadlines the commission or presiding officer may set for the completion of discovery;

(2) deadlines for the filing of staff and intervenor testimony;

(3) any requirements for the filing, service, or presentation of pleadings, discovery requests, discovery responses, testimony, exhibits, or other documents in electronic form; in all instances written or electronic submissions shall be filed in accordance with the requirements of this rule and other applicable commission rules, unless otherwise ordered by the commission or presiding officer;

(4) procedures for the prompt argument and disposition of procedural and discovery motions appropriate to the proceeding; these procedures may, notwithstanding the provisions of this rule governing motions, include a shortened time for written responses to motions, the use of oral argument in lieu of written responses, or other mechanisms to expedite the decision-making process;

(5) the date, time, and place of any pre-hearing conference;

(6) the date, time, and place of the public hearing on the merits; and

(7) any other relevant dates.

B. Modification of procedural orders: The commission or presiding officer may modify procedural orders on their own motion or on motion of staff or a party when necessary.

C. Notice of public hearing:

(1) Reasonable notice shall be given to all parties of the time and place of every public hearing scheduled by the commission or presiding officer.

(2) The commission or presiding officer may require that public notice also be given. When public notice is required, it shall be published in a newspaper having general circulation in the area affected by the filed pleadings at least twenty (20) days prior to the date of the public hearing, unless otherwise provided by rule, or if the commission or presiding officer finds that circumstances warrant shorter notice. The party who is required to publish notice shall cause to be filed, on or before the date of public hearing, an affidavit of publication of a responsible officer of the newspaper making such publication. The party required by the commission or presiding officer to publish the notice shall bear the cost of such publication.

[1.2.2.24 NMAC - Rp, 17 NMAC 1.2.27, 9-1-08]

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 hearing and avoidance of the use of cross-examination at public hearing 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. 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:

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 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 obtain 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.

[1.2.2.25 NMAC - Rp, 17 NMAC 1.2.28, 9-1-08]

1.2.2.26 PRE-HEARING CONFERENCES:

A. General:

(1) It is the policy of the commission to encourage the use of pre-hearing conferences as a means of making more effective use of hearing time and to otherwise aid in the disposition of the proceeding or the settlement thereof. Having the issues clearly delineated in advance of public hearing and the ground rules for the conduct of the public hearing well understood may be particularly beneficial in cases heard by the commission *en banc* and in such complex or multi-party proceedings as the rate cases of the major utilities, motor carriers, and telecommunications providers.

(2) The commission or presiding officer may, with reasonable written notice, require that all parties and staff attend one or more pre-hearing conferences for the purpose of formulating and simplifying the issues in the proceeding or addressing other matters that may expedite orderly conduct and disposition of the proceeding. Such matters may include but are not limited to:

- (a) details of the procedural schedule;
- (b) the necessity or desirability of amendments to the pleadings;
- (c) the possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;
- (d) limitations on the number of witnesses or time allocated to particular witnesses or issues at public hearing;
- (e) procedures at the public hearing;
- (f) the distribution of written testimony and exhibits to staff and the parties prior to the public hearing;
- (g) the consideration of any outstanding motions; or
- (h) the status of any settlement negotiations and, if appropriate, identification of any interest in and resources to support professional assistance therewith or other alternative means of dispute resolution.

B. Attendance:

(1) All parties and staff shall attend a pre-hearing conference fully prepared for a productive discussion of all matters noticed for the conference and motions outstanding at the time of the conference and fully authorized to make commitments with respect thereto or take positions thereon. Preparation should include advance study of all materials filed and materials obtained through formal and informal discovery and, if feasible, advance informal communication among the parties and staff to ascertain the extent to which the parties and staff will be able to agree on the matters which have been noticed for conference and on any pending motions.

(2) Failure of any party or staff to attend or be prepared for a pre-hearing conference without good cause shown shall constitute a waiver of any objection to any agreement reached or to any order or ruling made as a result of the conference.

(3) Offers of settlement and statements made in furtherance thereof, made in the course of a pre-hearing conference or at any other time, are privileged and, except by agreement among all the parties and staff, shall not be used against participating parties or staff before the commission.

C. Submission of proposed pre-hearing orders: The commission or presiding officer may, in the order convening a pre-hearing conference, direct that each party and the staff file and serve on all other parties and staff a proposed pre-hearing order which shall identify all issues the party or staff proposes to address at public hearing, whether in their case in chief or on cross-examination, set forth the party's or staff's position on each issue and identify the witnesses who will address each such issue. The commission or presiding officer may also require the parties and staff to address in their proposed pre-hearing orders any matters designated in the order convening the conference, such as:

- (1) all factual stipulations to which the parties and staff have agreed or which the party or staff submitting the statement proposes for consideration by the parties and staff;
 - (2) all procedural questions or problems the party or staff desires to raise at the pre-hearing conference and the resolution proposed;
 - (3) any proposal the party or staff wishes to make for the scheduling of testimony at public hearing;
- or
- (4) the amount of time the party or staff desires for the cross-examination of the different witnesses at public hearing.

D. Pre-hearing orders:

- (1) Subsequent to a pre-hearing conference the commission or presiding officer may issue a pre-hearing order reciting the action taken and agreements reached at the conference. The order may also identify the issues to be tried at public hearing.
- (2) The commission or presiding officer may direct one or more of the parties or staff to prepare the form of pre-hearing order. If so directed the preparer shall serve it on the remaining parties and staff at the time they file it. Objections to the proposed form of order shall be filed within thirteen (13) days of service of the form unless the commission or presiding officer directs otherwise.
- (3) The pre-hearing order shall control the subsequent course of the proceeding and may by its terms limit the issues to be heard to those designated therein, provided that the commission or presiding officer may enlarge or modify the issues or otherwise amend the pre-hearing order when the public interest or justice so requires.

E. Recessing public hearing for conference: In any proceeding, the commission or presiding officer may in their discretion call the parties and staff together for a conference prior to the taking of testimony or may recess the public hearing for such a conference. The results of the conference shall be stated on the record. [1.2.2.26 NMAC - Rp, 17 NMAC 1.2.29, 9-1-08]

1.2.2.27 INTERIM RELIEF: Requests for interim relief may be included in a complaint, petition, application, or other pleading filed by any party. The title of the pleading must clearly indicate that such relief is requested.

A. Contents: Except as provided in Sections 65-2A-11 and 70-3-16 NMSA 1978, in addition to the usual contents of a pleading, the pleading must allege such extraordinary facts of immediate and irreparable injury as would justify the commission's exercise of discretion by granting interim relief prior to a final decision.

B. Affidavits or testimony and exhibits: Any pleading requesting interim relief shall be accompanied by affidavit or testimony in support of the request. Any relevant exhibits in the possession of the party making the request should be appended to the affidavit or affidavits or testimony.

C. Notice: Copies of the pleading in which interim relief is requested and the testimony, affidavits, and exhibits filed in support thereof shall be served upon staff and upon all parties.

D. Public Hearing: Except as provided in Section 70-3-16 NMSA 1978, requests for interim relief other than interim rate relief may be acted upon with or without public hearing.

E. Bond: Interim relief may be granted subject to refund and conditioned upon a bond or other adequate protection.

[1.2.2.27 NMAC - Rp, 17 NMAC 1.2.30, 9-1-08]

1.2.2.28 SUBPOENAS:

A. Subpoena for witnesses and documents:

- (1) Any party or staff requiring the attendance of a witness from any place in the state to any designated place for the purpose of taking testimony of such witness at a deposition or public hearing in a proceeding before the commission shall make written application to the commission or presiding officer requesting that a subpoena be issued to compel attendance of such witness.

- (2) Likewise a written application requesting the issuance of a subpoena *duces tecum* to compel production of specific books, papers, accounts, or other documents must also be made to the commission or presiding officer if production at deposition or public hearing is desired.

- (3) Such written application must set forth reasons supporting the issuance of the subpoena for the production of specific books, papers, and other documents as the case may be.

- (4) All applications for the issuance of subpoenas shall be accompanied by the proposed subpoena, a form for which is available from the commission upon request.

B. Who may issue: Subpoenas shall be signed and issued by the presiding officer or by any commissioner, unless the issuance would be an abuse of process. A copy of the signed and issued subpoena shall be filed.

C. Service; fees:

(1) Subpoenas may be served by any person authorized to serve process under the New Mexico rules of civil procedure for the district courts. The return of service shall be filed promptly after service. The return shall be by certificate if service is made by a county sheriff or the county sheriff's deputy. Otherwise the return shall be by affidavit. The form for the return of service is included with the form of subpoena, available from the commission upon request.

(2) The witness being subpoenaed shall receive fees in the amount and in the manner as provided in civil cases in the district courts of this state.

(3) Whenever a subpoena is issued at the request of a party the cost of service thereof and the fee of the witness shall be borne by the requesting party.

D. Enforcement: The commission, any commissioner, staff, or any party may seek enforcement of the subpoena pursuant to Sections 62-10-9, 63-7-1.1, 63-9-19, 63-9A-20, 63-9B-14, 63-9H-14, 65-3A-34, and 70-3-19 NMSA 1978, or other applicable law.

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

[1.2.2.28 NMAC - Rp, 17 NMAC 1.2.31, 9-1-08]

1.2.2.29 PRESIDING OFFICER:

A. General: The functions of a presiding officer, as the term is used in this rule, may be performed by a hearing examiner, who may be a commissioner appointed by the commission to hear the case to the same extent as would a commission employee appointed as "hearing examiner," unless otherwise provided by statute or commission rule or order. Nothing contained in this rule shall be deemed a waiver of the commission's power of superintending control over the activities or decisions of the hearing examiner.

B. Designation of hearing examiner:

(1) In all proceedings, the commission may designate a hearing examiner, including a commissioner, to preside over the proceeding. The commission shall designate what cases and to what extent the hearing examiner shall preside over such cases, and such designation may be made by memorandum from the commission or as otherwise directed by the commission.

(2) If, after public hearing, the designated hearing examiner becomes unavailable to the commission, the commission will designate another qualified hearing examiner to report and recommend the decision or will otherwise proceed with the case as it may deem appropriate, giving notice to staff and the parties.

C. Powers of hearing examiners: Hearing examiners shall have the duty to conduct full, fair, and impartial public hearings and to take appropriate action to avoid unnecessary delay in the disposition of proceedings and to maintain order. They shall possess all powers necessary to that end, including the following:

(1) to administer oaths and affirmations;

(2) to order subpoenas issued and to provide for other methods of discovery;

(3) to issue orders to show cause regarding proceedings before the hearing examiner;

(4) to receive evidence and rule upon all objections and motions which do not involve final dispositions of proceedings, and to recommend to the commission rulings on objections and motions which do involve final dispositions of proceedings;

(5) within their discretion, or upon direction of the commission, to certify any question to the commission for its consideration and disposition, although the commission has the discretion to refuse to review a question so certified;

(6) to order parties and staff to hold appropriate conferences before or during the public hearing or investigation, provided that the presiding officer shall not take part in any settlement conference unless their participation is agreed to by all parties and by staff;

(7) to regulate the course of public hearings or investigations, including the scheduling, recessing, reconvening, and adjournment thereof, unless otherwise provided by the commission;

(8) to apply the procedures of this rule subject to waivers granted pursuant to this rule;

(9) to take such other action as may be necessary and appropriate to the discharge of their duties, consistent with the statutory authority or other authorities under which the commission functions and with the rules and policies of the commission.

D. Duties of hearing examiner: Hearing examiners shall have the following duties:

(1) to follow and apply the policies of the commission as enunciated in previous orders and rules, and to comply with the Public Utility Act, the Telephone and Telegraph Company Certification Act, the New Mexico Telecommunications Act, the Rural Telecommunications Act, the Public Regulation Commission Act, the Motor Carrier Act, the Pipeline Safety Act, Chapter 62, Article 14 NMSA 1978, the Motor Vehicle Act, the Ambulance Standards Act, the Cooperative Association Act, the Corporate Reports Act, the Professional Corporation Act, the Economic Development Corporation Act, the Nonprofit Corporation Act, the Business Corporation Act, the Limited Liability Company Act, the Foreign Business Trust Registration Act, Chapter 59A, Article 52, the Fireworks Licensing and Safety Act, the Conflict of Interest Act, and other applicable law;

(2) to disqualify themselves at any point where their impartiality might be or is reasonably questioned;

(3) in all rate cases, to render a recommended decision as soon as practicable before the termination of the suspension period;

(4) to submit final recommended decisions subject to commission review and treatment as provided in this rule; the hearing examiner shall file the final recommended decision and provide copies to all parties, staff, each commissioner, and the advisory staff;

(5) except as to *ex parte* matters authorized by law and commission rules, no hearing examiner shall, in any proceeding to which they have been assigned, consult with any party on any substantive issue unless notice is given and an opportunity afforded all parties and staff to participate and respond.

[1.2.2.29 NMAC - Rp, 17 NMAC 1.2.32, 9-1-08]

1.2.2.30 PROCEDURAL AUTHORITY OF A SINGLE COMMISSIONER:

A. The chairman of the commission or any other commissioner shall preside at public hearings conducted by more than one commissioner.

B. The chairman of the commission or any other commissioner may issue any procedural orders prior to, during, or after a public hearing, including but not limited to orders or notices:

(1) designating a hearing examiner to preside in a proceeding;

(2) scheduling public hearings;

(3) clarifying the issues to be considered during a proceeding;

(4) in the absence of a quorum of commissioners and when prompt action is necessary to avoid the effectiveness of rate increases for customers of utilities or telecommunications providers by operation of law, suspending the operation of a rate increase request, provided that such procedural order is consistent with law and does not involve the final determination of the proceeding; and

(5) issuing orders temporarily suspending operating authorities pursuant to 18.3.2.30 NMAC.

C. The delegation to one commissioner of procedural authority shall not narrow the authority of the hearing examiner pursuant to this rule or to other rules or orders of the commission, unless the order by the hearing examiner is inconsistent with and superseded by the procedural order of the one commissioner.

D. A party may appeal, pursuant to 1.2.2.31 NMAC, a procedural order of a single commissioner.
[1.2.2.30 NMAC - N, 9-1-08]

1.2.2.31 INTERLOCUTORY APPEALS FROM RULINGS OF THE PRESIDING OFFICER:

A. General:

(1) Rulings of the presiding officer during the course of a proceeding may only be appealed as provided in this rule.

(2) The commission does not favor interlocutory appeals from the rulings of a presiding officer and expects that appeals will be taken only in extraordinary circumstances. The movant in any such appeal bears the burden of establishing grounds for review and reversal of a ruling of the presiding officer made in the course of the proceeding.

B. Motion to presiding officer to permit appeal:

(1) Any party or the staff may, during a proceeding, move that the presiding officer permit appeal to the commission from a ruling of the presiding officer. The motion must demonstrate that:

(a) the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal to the commission from the ruling may materially advance the ultimate disposition of the proceeding; or

(b) circumstances exist which make prompt commission review of the contested ruling necessary to prevent irreparable harm to any person.

(2) The motion must be filed in writing within three (3) days of the date of an oral ruling or service of a written ruling.

(3) Upon receipt of a motion to permit appeal, the presiding officer shall determine according to the standards of Paragraph (1) of Subsection B of 1.2.2.31 NMAC whether to permit appeal of the ruling to the commission. The presiding officer need not consider any response to the motion.

(4) If the presiding officer permits appeal the presiding officer shall transmit to the commission copies of the ruling being appealed, if written, or a summary of the ruling being appealed, if oral, and any findings of fact, conclusions of law, or opinion relating thereto together with the moving party's motion under Paragraph (1) of Subsection B of 1.2.2.31 NMAC and any response permitted to the motion. The presiding officer may also, but is not required to, transmit to the commission a memorandum setting forth the relevant issues and an explanation of the rulings on the issues.

(5) If the presiding officer does not issue an order under Paragraph (3) of Subsection B of 1.2.2.31 NMAC within fifteen (15) days after the motion is filed, the motion is deemed denied. The movant may appeal denial to the commission within three (3) days of:

(a) the date the motion is deemed denied;

(b) the date the motion is denied by oral ruling; or

(c) the date a written order denying the motion is served, appeal the denial to the commission.

C. Commission action:

(1) Unless the commission acts upon an appeal permitted by a presiding officer under Paragraph (4) of Subsection B of 1.2.2.31 NMAC or upon an appeal taken from the presiding officer's denial of a motion to permit appeal under Paragraph (5) of Subsection B of 1.2.2.31 NMAC within fifteen (15) days after the date the appeal is permitted under Paragraph (4) of Subsection B of 1.2.2.31 NMAC or an appeal is taken under Paragraph (5) of Subsection B of 1.2.2.31 NMAC, the ruling of the presiding officer will be reviewed in the ordinary course of the proceeding as if an appeal had not been made.

(2) In the event the commission decides in its discretion to hear an appeal, it may also in its discretion:

(a) review the motions, briefs, and other documents which were before the presiding officer when the presiding officer issued the order being appealed;

(b) require that the presiding officer transmit to the commission a memorandum explaining the ruling being appealed;

(c) require submission of briefs by staff and the parties; or

(d) direct such other submissions as will assist in its consideration of the issues.

D. Appeal not to suspend proceeding: Any decision by a presiding officer to permit appeal or by the commission to hear an appeal under the provisions of this rule governing interlocutory appeals from rulings of the presiding officer will not suspend the proceeding unless otherwise ordered by the presiding officer or the commission.

[1.2.2.31 NMAC - Rp, 17 NMAC 1.2.33, 9-1-08]

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 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 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.

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.

[1.2.2.32 NMAC - Rp, 17 NMAC 1.2.34, 9-1-08]

1.2.2.33 ORDER OF PRESENTATION AND RECEIPT OF EVIDENCE: Evidence will ordinarily be received in the order prescribed in this section unless otherwise directed by the commission or presiding officer. In hearing several proceedings upon a consolidated record, the presiding officer shall designate the order of presentation.

A. Investigation on motion of the commission:

- (1) respondent;
- (2) intervenors;
- (3) staff; and
- (4) rebuttal by respondent.

B. Applications and petitions:

- (1) applicant or petitioner;
- (2) intervenors;
- (3) staff; and
- (4) rebuttal by applicant and petitioner.

C. Formal complaints:

- (1) complainant;
- (2) respondent;
- (3) intervenors;
- (4) staff; and
- (5) rebuttal by complainant.

D. Order to show cause:

- (1) staff;
- (2) intervenors;
- (3) respondent; and
- (4) rebuttal by staff;

E. Order to cease and desist.

- (1) staff,
- (2) respondent, and
- (3) rebuttal by staff.

F. In other public hearings, at the discretion of the presiding officer.

[1.2.2.33 NMAC - Rp, 17 NMAC 1.2.35, 9-1-08]

1.2.2.34 TRANSCRIPTS:

A. Record of proceedings and testimony: A full and complete record of all proceedings before the commission or presiding officer in any formal public hearing and all testimony shall be taken down by a reporter appointed by the commission.

B. Copies of transcripts: Transcripts may be requested by any party or by staff at the inception of the public hearing or their preparation otherwise directed by the commission or presiding officer. Any party other than the commission or its staff who requests and receives transcripts shall pay the specified costs to the preparer of

the transcript. If such receipt is earlier than the date on which the commission or staff would otherwise receive transcripts, the preparer shall deliver the commission's and staff's copies to the commission and staff on the earlier date.

C. Corrections: Suggested corrections to the transcript or record must be offered within thirteen (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 thirteen (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).
[1.2.2.34 NMAC - Rp, 17 NMAC 1.2.36, 9-1-08]

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.

(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.

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, the 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.

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 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 (1-1/2) 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 (2) inches from the edge;
- (e) the page number for each page shall be typed at the bottom center one (1) inch from the edge;
- (f) a square of approximately one and one-half (1-1/2) inches in the upper right-hand corner of each page shall be left clear for commission use; and
- (g) testimony shall contain line numbers on the left-hand side of the page.

(3) Prepared testimony shall be included in the record as an exhibit.

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.

(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 documents 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, 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 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:

(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 submitted in prepared form in accordance with this rule prior to its introduction.
[1.2.2.35 NMAC - Rp, 17 NMAC 1.2.37, 9-1-08]

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 order, 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 and must 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.

[1.2.2.36 NMAC - Rp, 17 NMAC 1.2.38, 9-1-08]

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.

(3) The commission may issue an order which makes reference to the recommended decision and indicate 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 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) **Motion 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 motion 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 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 shall be served on staff and all parties to the case.

(2) Requests for extensions of time to meet compliance provisions contained in final orders of the commission must be in writing and must explain why an extension of time is being requested. Requests shall be filed under the same case number as that of the final order. The chief of staff has the authority to grant such requests.

[1.2.2.37 NMAC - Rp, 17 NMAC 1.2.39, 9-1-08]

1.2.2.38 DISQUALIFICATION:

A. Disqualification of hearing examiner:

(1) A hearing examiner, other than a commissioner, designated by the commission to preside in a proceeding, may, upon his or her own motion under Paragraph (2) of Subsection E of 1.2.2.29 NMAC or upon written request and approval of the commission, disqualify himself or herself.

(2) Any party or staff may file a motion to disqualify and remove a hearing examiner other than a commissioner. Such motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. A copy of the motion and affidavit shall be served by the movant on the hearing examiner whose removal is sought and the hearing examiner shall respond within ten (10) days from such service. If the hearing examiner does not disqualify himself or herself or respond to the motion within ten (10) days, then the commission shall promptly determine the validity of the grounds alleged and take appropriate action.

(3) A hearing examiner, other than a commissioner, may be disqualified for violation of the code of conduct adopted by the commission.

B. Disqualification of commissioner:

(1) A commissioner may, upon their own motion or upon written request, disqualify themselves from participating in any proceeding.

(2) Any party or staff may file a motion to disqualify and remove a commissioner from participating in a proceeding.

(a) Such motion shall be supported by an affidavit setting forth the alleged grounds for disqualification.

(b) A copy of the motion and affidavit shall be served by the movant on the commissioner whose removal is sought and the commissioner shall respond within ten (10) days from such service.

(c) The response shall be considered a final order for purposes of appeal. Until otherwise provided by law, no commissioner shall rule on a motion to disqualify any other commissioner.

(3) A commissioner may be disqualified for violation of the code of conduct adopted by the commission.

[1.2.2.38 NMAC - Rp, 17 NMAC 1.2.40, 9-1-08]

1.2.2.39 COMMISSION CODE OF CONDUCT: The conduct of commissioners and all employees of the commission shall be governed by the code of conduct adopted by the commission pursuant to Section 10-16-11 NMSA 1978 of the Governmental Conduct Act unless inconsistent with Sections 8-8-17, 8-8-18 and 8-8-19 NMSA 1978.

[1.2.2.39 NMAC - Rp, 17 NMAC 1.2.41, 9-1-08]

1.2.2.40 VARIANCE:

A. An petitioner may request a variance from a requirement of any commission rule or order.

B. A petition for variance shall be supported by an affidavit signed by an officer of the applicant or person with authority to sign for the applicant.

C. Such petition may include a motion that the commission stay the affected portion of the rule or order for the transaction specified in the motion.

D. The commission may, at its discretion, require an informal conference or formal evidentiary public hearing prior to making its determination.

E. A petition for variance shall:

(1) identify the section of the rule or order from which the variance is requested;

(2) describe the situation that necessitates the variance;

(3) describe the effect of complying with the rule or order on the applicant if the variance is not granted;

(4) describe the result the variance will have if granted; and

(5) describe how the proposed alternative will achieve the purpose of the rule, and why it is in the

public interest.
[1.2.2.40 NMAC - Rp, 17 NMAC 1.2.39-Subsection I, 9-1-08]

HISTORY OF 1.2.2 NMAC:

Pre NMAC History:

NMPUC Rule 110, Rules of Practice and Procedure, filed 10/4/93 (by former Public Utility Commission);
SCC 78-2, Order (no number), Docket No. 857, In the Matter of the Adoption of Rules of Practice and Procedure for all Cases Before the N.M. SCC, filed 10/24/78;
SCC 85-11, Rules of Procedure of New Mexico State Corporation Commission, filed 10/15/85 (by former NM State Corporation Commission).

History of Repealed Material:

17 NMAC 1.2, Public Utilities and Utility Services, Utilities General Provisions, Utility Division Procedures (filed 12/14/98) repealed 9-1-08.
18.1.2 NMAC, Transportation and Highways, Transportation General Provisions, Transportation Division Procedures (filed 12/10/02) repealed 9-1-08.

Other History:

NMPUC Rule 110, Rules of Practice and Procedure (filed 10/4/93) and SCC 85-11, Rules of Procedure of New Mexico State Corporation Commission (filed 10/15/85) were renumbered, reformatted, amended and replaced by 17 NMAC 1.2, Public Utilities and Utility Services, Utilities General Provisions, Utility Division Procedures, effective 12/31/98.

That applicable portion of 17 NMAC 1.2, Public Utilities and Utility Services, Utilities General Provisions, Utility Division Procedures (filed 12/14/98) and 18.1.2 NMAC, Transportation and Highways, Transportation General Provisions, Transportation Division Procedures (filed 12/10/02) were renumbered, reformatted, amended and replaced by 1.2.2 NMAC, General Government Administration, Administrative Procedures, Public Regulation Commission Rules of Procedure, effective 9-1-08.