

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF A COMMISSION RULEMAKING)
TO PROMULGATE AMENDMENTS TO NMPRC RULES)
OF PROCEDURE 1.2.2.7, 1.2.2.8, 1.2.2.9, 1.2.2.10, 1.2.2.11,)
1.2.2.34 AND 1.2.2.35 NMAC TO PROVIDE FOR) Case No. 20-00190-PRC
ELECTRONIC FILING AND AMEND RULES)
REGARDING TRANSCRIPTS, PREPARED TESTIMONY)
AND OTHER AMENDMENTS IF NECESSARY)**

**ORDER INITIATING RULEMAKING AND ISSUING NOTICE OF PROPOSED
RULEMAKING AND CHANGING CAPTION**

THIS MATTER comes before the New Mexico Public Regulation Commission (the "Commission") upon its own Motion to issue an Order initiating rulemaking and issuing notice of proposed rulemaking to promulgate amendments to Commission Rules of Procedure 1.2.2.7, 1.2.2.8, 1.2.2.9, 1.2.2.10, 1.2.2.11, 1.2.2.34 and 1.2.2.35 NMAC to provide for electronic filing, amend transcripts, prepared testimony and other amendments if necessary (hereinafter referred to as the "Proposed Amendments"¹). **NOTICE** is hereby given that the Commission is commencing a rulemaking proceeding adopt the Proposed Amendments to the Commission Rules of Procedure 1.2.2.7, 1.2.2.8, 1.2.2.9, 1.2.2.10, 1.2.2.11, 1.2.2.34 and 1.2.2.35 NMAC to provide for electronic filing, amend rules regarding transcripts, prepared testimony and other amendments if necessary. A copy of the Proposed Amendments Commission Rules of Procedure 1.2.2 NMAC to provide for electronic filing and other amendments are attached hereto as Exhibit A. Being duly informed in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. On October 7, 2020, the Commission issued an Order adopting an Emergency Rule

¹ The term "Proposed Amendments" includes repealing and replacing 1.2.2 NMAC in its entirety if the New Mexico State Records determines that 1.2.2 NMAC must be repealed and replaced.

pursuant to Section 14-4-5.6 NMSA 1978, finding that it was in the interest of public health, safety and welfare to adopt emergency amendments to 1.2.2.7 and 1.2.2.8 NMAC to provide for electronic filing of documents to allow for the orderly and safe filing of documents during the time period the Governor's Emergency Orders² in place due to the COVID-19 pandemic are in effect combined with the lack of office space for the Commission and its employees which started on October 1, 2020.

2. The Commission now finds that the electronic filing procedures continue to be necessary for the public health, safety or welfare as well as correcting and amending other sections of the Rule of Procedure that logically follow from the change to electronic filing sections and other sections that have come to the attention of Commission employees as being obsolete or outdated, including the hearing examiners suggestions to change rules of procedure to comport with current practice.

3. For all these reasons, the Commission finds that it is in the public interest to initiate this rulemaking to promulgate permanent Proposed Amendments to Commission Rules of Procedure 1.2.2.7, 1.2.2.8, 1.2.2.9, 1.2.2.10, 1.2.2.11, 1.2.2.34 and 1.2.2.35 NMAC to provide for and amend certain sections of: a) definitions and procedures related to electronic filing of documents, b) transcripts, c) prepared testimony, and d) other amendments if necessary. The Proposed Amendments are attached hereto as Exhibit A.

4. Further, the Commission finds that the caption of Case No. 20-00190-PRC, which

² On March 11, 2020, and on March 15, 2020, Michelle Lujan Grisham, the Governor of the State of New Mexico, declared in Executive Orders 2020-004 and numerous subsequent related Executive Orders (hereinafter referred to collectively as the "Executive Orders") declaring a public health emergency and ordering: a) social distancing; b) the closing of government buildings; c) teleworking by state employees; and d) further instructions from the Department of Health due to COVID-19.

was opened for the purpose of the Commission adopting by the October 7th Order an emergency rule to provide for electronic filing, should be changed to read as follows:

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF A COMMISSION RULEMAKING)
TO PROMULGATE AMENDMENTS TO NMPRC RULES)
OF PROCEDURE 1.2.2.7, 1.2.2.8, 1.2.2.9, 1.2.2.10, 1.2.2.11,)
1.2.2.34 AND 1.2.2.35 NMAC TO PROVIDE FOR) Case No. 20-00190-PRC
ELECTRONIC FILING AND AMEND RULES)
REGARDING TRANSCRIPTS, PREPARED TESTIMONY)
AND OTHER AMENDMENTS IF NECESSARY)**

5. Interested persons should contact the Commission to confirm the date, time and place of any public meeting or hearing, because meetings and hearings are occasionally rescheduled. Meeting/hearing announcements are posted on the Commission's website at www.nmprc.state.nm.us.

6. The Commission will accept written comments on the Proposed Amendments contained in Exhibit A and proposed in this Notice of Proposed Rulemaking from any interested person. Interested persons shall file their written initial comments on the Proposed Amendments no later than **January 12, 2021** and shall file their written response comments on the Proposed Amendments no later than **January 26, 2021**. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be in legislative format. All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and Docket Number contained at the top of this Notice. Written initial and response comments, containing the Docket Number in this matter, shall be sent to: Melanie Sandoval, New Mexico Public Regulation

Commission, Attention: Case No. 20-00190-PRC, P.O. Box 1269, Santa Fe, NM 87504 or can be electronically filed by email to PRC.Records@state.nm.us in accordance with the current emergency rules.

7. Copies of the proposed rules may be downloaded from the Commission's web site, www.nmprc.state.nm.us.

8. The Commission will review all timely submitted written comments and will hold a public comment hearing on **February 9, 2021 at 1:00 p.m.** which shall be accomplished through zoom, see the NMPRC home webpage for instructions to connect, <http://www.nmprc.state.nm.us>.

9. Interested persons should contact the Commission to confirm the date, time and place of any public hearing because hearings are occasionally rescheduled.

10. Any person with a disability requiring special assistance in order to participate in a hearing should contact Mr. Isaac Sullivan-Leshin at 827-4501 at least 48 hours prior to the commencement of the hearing.

11. Commission Rule 1.2.3.7(B) ("Ex Parte Communications") draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications." In order to assure compliance with 1.2.3.7(B) NMAC, the Commission sets February 16, 2021 as the date of record closure.

12. Copies of this Notice should be sent to all persons on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. The Proposed Amendments to Commission Rules of Procedure 1.2.2.7, 1.2.2.8,

1.2.2.9, 1.2.2.10, 1.2.2.11, 1.2.2.34 and 1.2.2.35 NMAC to provide for and amend certain sections of: a) definitions and procedures related to electronic filing of documents, b) transcripts, c) prepared testimony, and d) other amendments if necessary, are attached to this Notice of Proposed Rulemaking as Exhibit A, are proposed for adoption as provided by this Notice.

B. The Notice of Proposed Rulemaking, attached hereto as Exhibit B, constitutes due and lawful notice to all potentially interested persons.

C. Any person wishing to comment on the Proposed Amendments to Commission Rules of Procedure 1.2.2.7, 1.2.2.8, 1.2.2.9, 1.2.2.10, 1.2.2.11, 1.2.2.34 and 1.2.2.35 NMAC to provide for and amend certain sections of: a) definitions and procedures related to electronic filing of documents, b) transcripts, c) prepared testimony, and d) other amendments if necessary, may do so by submitting written initial comments no later than **January 12, 2021** and written response comments no later than **January 26, 2021**. Comments suggesting changes to the Proposed Rule Amendments shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the Proposed Amendments shall be provided in a form consistent with that of the Proposed Amendments. Commenters' deletions shall be indicated by striking through the language to be deleted, and commenters' additions shall be underlined. **The Staff of the Commission's Utility Division shall file comments as provided in this paragraph.**

D. All pleadings, including comments, shall bear the above caption and case number of this matter and shall be filed with the Commission's Records Division by mail at the address set forth below: NMPRC Records Management Bureau, P.O. Box 1269, Santa Fe, New Mexico 87504-1269 or by email to PRC.Records@state.nm.us in accordance with the current emergency

electronic filing rules.

E. A public hearing on the Proposed Amendments to Commission Rules of Procedure 1.2.2.7, 1.2.2.8, 1.2.2.9, 1.2.2.10, 1.2.2.11, 1.2.2.34 and 1.2.2.35 NMAC to provide to provide for and amend certain sections of: a) definitions and procedures related to electronic filing of documents, b) transcripts, c) prepared testimony, and d) other amendments if necessary, to be presided over by the Commission or its designee, to be appointed by subsequent single signature order of the Commission, shall be held beginning at **1:00 p.m. on February 9, 2021**, which shall be accomplished through Zoom, see the NMPRC home webpage for instructions to connect <http://www.nmprc.state.nm.us>.

F. Commenters are afforded the opportunity to submit written comments and written responses to the Commission, nevertheless, any individual who wants to provide oral comments shall be limited to three (3) minutes to express those comments, subject to the Commission's discretion. The Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.

G. Commission Rule 1.2.3.7(B) NMAC (Ex Parte Communications) draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications." In order to ensure compliance with Rule 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed.

H. The Commission finds that the record shall close on **February 16, 2021**.

I. Interested persons should contact the Commission to confirm the date, time, and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the hearing should contact Mr. Isaac Sullivan-Leshin at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

J. At least thirty (30) days prior to the hearing date this Order shall be mailed to all persons who have made a written request for advance notice.

K. The Notice of Proposed Rulemaking, Exhibit B, shall be published in at least two newspapers of general circulation in New Mexico and in the NEW MEXICO REGISTER. Affidavits attesting to the publication of the Notice of Proposed Rulemaking as described above shall be filed in this docket. In accordance with the State Rules Act 14-4-1 etseq. NMSA 1978, the Commission shall to provide notice to the public in the manner as set forth in the State Rules Act. Section 14-4-2 (E) NMSA 1978.

L. Copies of this Order shall be e-mailed to all persons listed on the attached Certificate of Service if their e-mail addresses are known, and if not known, mailed to such persons via regular mail.

M. Copies of any forthcoming final order adopting a new rule shall be mailed or emailed, along with copies of the new rule, to all persons and entities appearing on the Certificate of Service as it exists at the time of issuance of the final order in this docket, to all commenters in this case, and to all individuals requesting such copies.

N. This Notice and Order is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 4th day of
November, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Cynthia B. Hall, electronically signed

CYNTHIA B. HALL, COMMISSIONER DISTRICT 1

/s/ Jefferson Byrd, electronically signed

JEFFERSON L. BYRD, COMMISSIONER DISTRICT 2

/s/ Valerie Espinoza, electronically signed

VALERIE ESPINOZA, COMMISSIONER DISTRICT 3

/s/ Theresa Becenti-Aguilar, electronically signed

THERESA BECENTI-AGUILAR, COMMISSIONER DISTRICT 4

/s/ Stephen Fischmann, electronically signed

STEPHEN FISCHMANN, COMMISSIONER DISTRICT 5



This is a proposed amendment to 1.2.2 NMAC, Section 7, 8, 9, 10, 11, 34 & 35:

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;

EXHIBIT A

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.]

A. Definitions beginning with "A":

(1) **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;

(2) **applicant** means any party on whose behalf an application is made for approval or authorization of the commission;

B. Definitions beginning with "B": [RESERVED]

C. Definitions beginning with "C":

(1) **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;

(2) **chief of staff** means the person appointed by the commission pursuant to Section 8-8-5 NMSA 1978;

(3) **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;

(4) **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;

(5) **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;

D. Definitions beginning with "D":

(1) **date and time of filing** means, when filing by regular postal service mail, the date of receipt by the records bureau; when filing by in-person delivery of hard copies to the records bureau office, the time and date a complete, correctly filed document is hand-delivered and received within regular business hours (8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. mountain standard time); and when filing by electronic mail to the records bureau's email address as of the time and date of the electronic mail. Filings by electronic mail that are sent after regular business hours, will be considered as being filed the next business day. If documents are submitted close to or at 5:00 p.m., they may not be posted until the following business day, but they will reflect the correct date of filing;

(2) **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;

E. Definitions beginning with "E":

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

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

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

F. Definitions beginning with "F":

(1) **file, filed, or filing** means filing by electronic mail to the records bureau email address, by regular postal service mail of hard copies, or by in-person delivery of hard copies to the chief clerk or the chief

clerk's designee and acceptance by the chief clerk or the chief clerk's designee of any document that is either required to be kept on file or to be filed in the commission's e-docket in their official capacity. Any complete, correctly filed document, order, notice or pleading will be accepted by the chief clerk or designee and will be uploaded in the .pdf format submitted in the appropriate identified case numbers locations in e-docket on a regular basis for the purpose of inspection of records. All filed documents shall be made available, upon reasonable demand, for inspection by the chief clerk or designee public, other parties or the commission;

(2) fire marshal-regulated entities means persons whose activities are regulated by the provisions of Sections 59A-52-1 through 59A-52-25 NMSA 1978, or the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978;

(3) 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;

G. Definitions beginning with "G": [RESERVED]

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

I. Definitions beginning with "I":

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

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

J. Definitions beginning with "J": [RESERVED]

K. Definitions beginning with "K": [RESERVED]

L. Definitions beginning with "L": [RESERVED]

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

N. Definitions beginning with "N": [RESERVED]

O. Definitions beginning with "O": [RESERVED]

P. Definitions beginning with "P":

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

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

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

(4) 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;

(5) proceeding means a formal proceeding;

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

Q. Definitions beginning with "Q": [RESERVED]

R. Definitions beginning with "R":

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

(2) 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;

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

S. Definitions beginning with "S": staff means all persons, other than hearing examiners and advisory staff, employed by the commission; and

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

U. Definitions beginning with “U”: unsworn affirmation means an unsworn affirmation in lieu of a notarization pursuant to 1.2.2.35.A.3 NMAC;

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

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

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

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

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

[1.2.2.9 NMAC - Rp, 17 NMAC 1.2.9, 9/1/2008; _____]

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.]~~

C. Filing Fees:

(1) Filing fees for specific documents are:

(a) Applications, Petitions, Formal Complaints, and all other filings requiring a new Case No.: a fee of \$25.00 each applies, and is required at time of filings;

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

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

(a) the entity electronically filing documents shall simultaneous with the electronic filing email an attached scan (pdf) or photograph (jpeg) of the filing fee (check or money order) with confidential information blocked or redacted which shall be made payable to the commission to show proof of payment at time of filing;

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

(c) after receipt of the electronically filed document and the attached scan or photograph of the filing fee, the records chief clerk or designee will issue a case no. (if applicable) and will post the document into e-docket.

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

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

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

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

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

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

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

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.]~~

~~**H. 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.~~

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

~~**J. Current information required:** 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.~~

~~**K. 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.~~

~~**L. 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.~~

~~**M. Classification of parties:** Parties to proceedings before the commission shall be classified as applicants, petitioners, complainants, respondents, or intervenors.~~

~~[1.2.2.9 NMAC - Rp, 17 NMAC 1.2.9, 9/1/2008, _____]~~

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;~~

(a) if such a water or sewer utility is a corporation or LLC 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, 9/1/2008, _____]

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.]

A. Service and contact emails: all regulated entities shall at all times keep a current email on file with the commission's chief clerk or designee at which they can receive service of pleadings, process and other communication from the commission. All participants in open dockets shall provide a current email to the commission's chief clerk or designee at which they can receive service of pleadings, process and other communication from the commission, unless they make a showing that they do not have access to email.

B. Service Generally:

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

(5) When serving documents electronically each document shall be identified in the following four segment format: case number-filing date-party name-pleading identifier. Each name segment shall be separated by a hyphen. Case number shall be in the form: xx-xxxxx-suffix (UT or TR). Filing date shall be in the form: four digit year-two digit month-two digit day of month. Party name shall utilize a single word or abbreviated form, e.g. party initials, acronym or other identifier. The pleading identifier shall identify the nature of the pleading by concise description, e.g. petition, application, complaint, answer, motion seeking _____, brief, response, reply, etcetera.

C. Electronic service: Electronic service shall be effectuated in accordance with these rules.

D. Filing date for non-electronic filings: a pleading or document is considered filed on the date stamped or the business day in which it was received by the commission. Any pleading or document received after regular business hours will be considered received and filed on the next regular business day.

E. Electronic filings:

(1) electronically filed documents shall be emailed to the records bureau email address as .pdf documents;

(2) electronically filed documents shall scanned with a regular signature or be electronically signed;

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

(4) electronically filed documents shall be combined into one complete document, shall include accompanying consecutively numbered attachments, if any, except in cases where the.pdf exceeds size limit restrictions, and if so the document shall comply with 1.2.2.10.E.6 NMAC herein;

(5) electronically filed documents shall include a certificate of service evidencing service upon which individuals or entities were served and by what manner of service;

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

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

D. 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. However, a copy of the rejected papers shall be retained by the chief clerk or designee as a public record.

Acceptance of a pleading or document for filing is not a determination that the pleading or document complies with all requirements of the commission or presiding officer and is not a waiver of such requirements.

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

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

G. Amendments and withdrawal of pleadings and supporting documents:

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

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

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

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

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

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

[1.2.2.10 NMAC - Rp, 17 NMAC 1.2.28, 9/1/2008, _____]

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.]~~

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. Unless otherwise directed by the commission or presiding officer, all documents presented in electronic form will be on a USB flash drive. All electronic storage media submitted pursuant to this rule shall be compatible with the commission's current computer capabilities. Electronic storage media shall contain the exact electronic image of the document or pleading being replicated. All electronic storage media filed shall have affixed thereto a label containing the appropriate case number, the title of the pleading or document, the name of the party or staff making the filing.

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.]~~

H. **Copies:** The party or staff filing a pleading shall provide the commission with one original plus five conformed copies of the pleading when filing hard copies in person or through mail. No copies of electronically filed documents are required to be submitted at the time of filing but the commission or presiding officer may require that five paper copies of any document electronically filed also be mailed, by regular postal service mail to the commission at P.O. box 1269, Santa Fe, New Mexico, 87504-1269, to the attention of staff members assigned to the case (i.e. hearing examiner, general counsel, legal division attorney, and utility division staff).

[1.2.2.11 NMAC - Rp, 17 NMAC 1.2.10, 9/1/2008, _____]

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.]~~

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 made by either audio recording by a commission employee or shall be taken down and transcribed by a certified court reporter at the discretion of the presiding officer.

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. The commission shall file in e-docket a pdf version of the hard copy of any transcript it receives on the date the hard copy is filed with the commission or the presiding officer.

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, 9/1/2008, _____]

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.

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

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

C. Stipulation as to facts:

(1) The parties and staff in any proceeding before the commission or presiding officer may, by stipulation in writing filed or entered in the record, agree upon the facts or any portion thereof involved in the controversy, which stipulation shall be binding upon the parties and staff entering into the stipulation and may be regarded and used by the commission or presiding officer as evidence at the public hearing. It is desirable that the facts be thus agreed upon wherever practical. The commission or presiding officer may, however, require proof or evidence of the facts stipulated to, notwithstanding the stipulation of the parties and staff.

(2) In the event the parties and staff stipulate to certain facts as part of a proposed settlement of the case, and the settlement is rejected, 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.]~~

(1) Prepared written testimony shall be received in evidence as exhibits with the same force and effect as though it were stated orally by the witness. All witnesses must be present at the public hearing and shall adopt, under oath, their prepared written testimony, subject to cross-examination and motions to strike unless the witness's presence at public hearing is waived by the commissioner or presiding officer upon notice to and without objection from staff and the parties.

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

(a) the cover page shall contain the case caption and number and the name of the witness;

- (b) all pages are to be typed or machine printed and double-spaced;
 - (c) the top, bottom, and left-hand margins shall be at least one and one-half inches;
 - (d) the name of the witness and the case number, if then known, shall be typed at the top center of each page two inches from the edge;
 - (e) the page number for each page shall be typed at the bottom center one inch from the edge;
 - (f) a square of approximately one and one-half inches in the upper right-hand corner of each page shall be left clear for commission use;
 - (g) testimony shall contain line numbers on the left-hand side of the page; and
 - (h) testimony shall be filed in question and answer format and be supported by affidavit.
- (3) Unless the commission or presiding officer directs otherwise no documents other than pre-filed testimony shall be admitted into evidence on direct examination of a witness.

J. Exhibits:

(1) Use of data in exhibits:

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

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

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

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

(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, 9/1/2008, _____]

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 9/1/2008.

18.1.2 NMAC, Transportation and Highways, Transportation General Provisions, Transportation Division Procedures (filed 12/10/02) repealed 9/1/2008.

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 9/1/2008.

NOTICE OF PROPOSED RULEMAKING
CASE NO. 20-00190-PRC

The New Mexico Public Regulation Commission (NMPRC or Commission) gives notice of its proposed adoption of rulemaking to promulgate permanent amendments to the Commission's procedural rules 1.2.2 NMAC, including 1.2.2.7, 1.2.2.8, 1.2.2.9, 1.2.2.10, 1.2.2.11, 1.2.2.34 and 1.2.2.35 NMAC to provide for electronic filing, amend the rule on transcripts, prepared testimony and other amendments if necessary. The rules which may be adopted as the final rules in this proceeding may include all, part, or none of the language in the proposed rules issued by the commission. The commission may also consider alternative proposals for amending or replacing the current rules.

Concise statement of proposed rules: The proposed amendments to 1.2.2.7 NMAC: 1) amend the definition of the term file, filed, or filing to mean filing by electronic mail, by regular postal service mail of hard copies, or by in-person delivery; 2) amend the definition of date and time of filing to address electronic filings; and 3) add a definition of electronic signature. The proposed amendments to 1.2.2.8 NMAC modify the rules for filing fees to add a procedure for payment of fees for electronically filed documents. The proposed amendments to 1.2.2.9 NMAC permit water and sewer regulated utilities to be represented by a general manager if an LLC. The proposed amendments to 1.2.2.10 NMAC would require that all regulated entities and participants in open dockets keep a current email on file with the commission where they can receive service of process and communications from the commission and delineate the procedures for electronic filing and electronic service of documents filed with the commission. The proposed amendments to 1.2.2.34 NMAC modify the rule on transcripts to allow for hearings to be audio recorded instead of transcribed by a certified court reporter at the discretion of the commission or the presiding officer and clarifies that hard copies of transcripts received by the commission shall be filed in e-docket. The proposed amendments to 1.2.2.35 NMAC change the rules on prefilled testimony to require that it be supported by an affidavit, provides for unsworn testimony as allowed by New Mexico rule of civil procedure, 1-011(B) NMRA and addresses what evidence can be admitted into evidence on direct testimony. Other changes to 1.2.2.7, 1.2.2.8, 1.2.2.9, 1.2.2.10, 1.2.2.11, 1.2.2.34 and 1.2.2.35 NMAC, other logical outgrowth changes to other subsections of 1.2.2 NMAC, and a full repeal/replace of 1.2.2 NMAC to bring into NMAC2 formatting standards will also be considered as needed.

Constitutional and statutory authority: New Mexico Constitution, Article XI, Section 2; the New Mexico Public Utility Act, Sections 62-3-1 et seq., NMSA 1978; and the Public Regulation Commission Act, Section 8-8-1 through 8-8-21 NMSA 1978, Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978.

A copy of the full text of the proposed rules may be obtained from the Rulemaking Proceedings section of the Commission's website at <http://www.nmprc.state.nm.us> under Case No. 20-00190-PRC or by calling Isaac Sullivan-Leshin in the Office of General Counsel at (505) 670-4830.

Written initial comments and written response comments shall be filed by the deadlines below. Written comments shall be filed with the Commission's Records Management Bureau my may to P.O. Box 1269, Santa Fe, NM 87504-1269 or electronically by email to PRC.Records@state.nm.us in accordance with the commission's emergency rules on electronic filing. For more information as to how to file please contact Melanie Sandoval, the commission's records bureau chief at melanie.sandoval@state.nm.us or (505) 827-6968. Written initial comments shall be filed no later than **January 12, 2021** and written response comments shall be filed no later than **January 26, 2021**. Comments shall refer to Case No. 20-00190-PRC. All written comments will be posted on the commission's website within three days of their receipt by the records bureau.

A public hearing will be held on **February 9, 2021 at 1:00 p.m.** which shall be accomplished through Zoom. Instructions on how to connect will be posted on the NMPRC home webpage at <http://www.nmprc.state.nm.us> prior to the hearing. The purpose of the hearing is to receive oral comments. Because commenters are afforded the opportunity to submit written comments to the Commission, any individual who wants to provide oral comments shall be limited to five minutes to express those comments, subject to the Commission's discretion. The Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.

The record of this case will close on **February 16, 2021**.

EXHIBIT B

Interested persons should contact the Commission to confirm the date, time, and place of this public hearing because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the hearing should contact Mr. Bradford Borman at (505) 827-4048 at least 48 hours prior to the commencement of the hearing.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF A COMMISSION RULEMAKING)
TO PROMULGATE AMENDMENTS TO NMPRC RULES)
OF PROCEDURE 1.2.2.7, 1.2.2.8, 1.2.2.9, 1.2.2.10, 1.2.2.11,)
1.2.2.34 AND 1.2.2.35 NMAC TO PROVIDE FOR) Case No. 20-00190-PRC
ELECTRONIC FILING AND AMEND RULES)
REGARDING TRANSCRIPTS, PREPARED TESTIMONY)
AND OTHER AMENDMENTS IF NECESSARY)**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order Initiating Rulemaking and Issuing Notice of Proposed Rulemaking and Changing Caption** issued by the New Mexico Public Regulation Commission on November 4th, 2020 was sent via email to the parties indicated below:

Jason Montoya	JasonN.Montoya@state.nm.us;
Danielle Jimenez	Danielle.Jimenez@state.nm.us;
Russell Fisk	Russell.Fisk@state.nm.us;
Carl Muller	Hans.Muller@state.nm.us;
Michael Smith	MichaelC.Smith@state.nm.us;
Isaac Sullivan-Leshin	Issac.Sullivan-Leshin@state.nm.us;
Judith Amer	Judith.Amer@state.nm.us;
Carolyn Glick	Carolyn.Glick@state.nm.us;
Ana Kippenbrock	Ana.Kippenbrock@state.nm.us;
Elizabeth Catherine Hurst	Elizabeth.Hurst@state.nm.us;
Robert Lennon	Robert.Lennon@state.nm.us;
Ashley Schannauer	Ashley.Schannauer@state.nm.us;
Christopher Ryan	Christopher.Ryan@state.nm.us;
Anthony Medeiros	Anthony.Medeiros@state.nm.us;
Henry Trujillo	Henry.Trujillo@state.nm.us;
Ryan Jimenez	ryan.jimenez@state.nm.us;
David Martinez	David.Martinez3@state.nm.us;
Bradford Borman	Bradford.Borman@state.nm.us;
Peggy Martinez-Rael	Peggy.Martinez-Rael@state.nm.us;
Joan Ellis	Joan.Ellis@state.nm.us;
John Bogatko	John.Bogatko@state.nm.us;
Elizabeth Ramirez	Elizabeth.Ramirez@state.nm.us;
Melchior Savarese	Melchior.Savarese@state.nm.us;
Mahlon Wigton	Mahlon.Wigton@state.nm.us;
David Black	David.Black@state.nm.us;
Kacy Dunn	Kacy.Dunn@state.nm.us;
Crystal Boies	Crystal.Boies@state.nm.us;
Kevan Bay-Bojorquez	Kevan.Bay-Bojorquez@state.nm.us;
Christopher Gutierrez	Christopher.Gutierrez@state.nm.us;
Annissa Ortiz	AnnissaM.Ortiz@state.nm.us;
Vince Crespin	Vince.Crespin@state.nm.us;
Manuel Anaya	Manuel.Anaya@state.nm.us;

Clarence Montoya
Moises Pena
Fidel Archuleta
Yvette Hetzer-Benshimon
James Martinez
John Reynolds
Beverly Eschberger
David Ault
Gabriella Dasheno
Elisha Leyba-Tercero
Milo Chavez
Marc Tupler
Jack Sidler
Dhiraj Solomon
Timothy Martinez
Eugene Evans
Michael Ripperger
Tim Kelley
Georgette Ramie
Mark Cessarich
Gilbert Fuentes
Georgia McGovern
Derrick Rodriguez
Esquipula Tenorio
Austin Meuli
Eloy Prada
Gabriel Garcia
Randy Varela
Aaron Garcia
Regina Padilla
Dwayne Jackson
Jimmy Vigil
Thomas Ontiveros
Carlos Martinez
John Carabillo
Shane Woodward
Lawrence Montoya
Randy Ferguson
Paul Prentice
Angel Vialpando
Bruce Dile
Candice Sena
Alexander McReynolds
John Kondratick
Raymond Torres
Lee Ortiz
Brad Brunson
Sharlynn Montoya
Barbara Romero
Joey Anaya
Jason Benavidez
Carl Lukesh
Bruce Creg
Joshua Baca
Ross Johnson
Manuela Ochoa

Jesse.Montoya@state.nm.us;
Moises.Pena@state.nm.us;
Fidel.Archuleta@state.nm.us;
Yvette.Hetzer@state.nm.us;
JamesT.Martinez@state.nm.us;
John.Reynolds@state.nm.us;
Beverly.Eschberger@state.nm.us;
David.Ault@state.nm.us;
Gabriella.Dasheno@state.nm.us;
Elisha.Leyba-Tercero@state.nm.us;
Milo.Chavez@state.nm.us;
Marc.Tupler@state.nm.us;
Jack.Sidler@state.nm.us;
Dhiraj.Solomon@state.nm.us;
Timothy.Martinez@state.nm.us;
Eugene.Evans@state.nm.us;
Mike.Ripperger@state.nm.us;
Tim.Kelley@state.nm.us;
Georgette.Ramie@state.nm.us;
Mark.Cessarich@state.nm.us;
GilbertT.Fuentes@state.nm.us;
Georgia.McGovern@state.nm.us;
Derrick.Rodriguez@state.nm.us;
Esquipula.Tenorio@state.nm.us;
Austin.Meuli@state.nm.us;
Eloy.Prada@state.nm.us;
Gabriel.Garcia@state.nm.us;
Randy.Varela@state.nm.us;
AaronM.Garcia@state.nm.us;
regina.padilla@state.nm.us;
Dwayne.Jackson@state.nm.us;
Jimmy.Vigil@state.nm.us;
Thomas.Ontiveros@state.nm.us;
CarlosR.Martinez@state.nm.us;
John.Carabillo@state.nm.us;
Shane.Woodward@state.nm.us;
Lawrence.Montoya@state.nm.us;
Randy.Ferguson@state.nm.us;
Paul.Prentice@state.nm.us;
Angel.Vialpando@state.nm.us;
Bruce.Dile@state.nm.us;
CandiceM.Sena@state.nm.us;
Alex.McReynolds2@state.nm.us;
John.Kondratick@state.nm.us;
Raymond.Torres@state.nm.us;
Lee.Ortiz@state.nm.us;
Brad.Brunson@state.nm.us;
Sharlynn.Montoya@state.nm.us;
barbara.romero2@state.nm.us;
Joey.Anaya@state.nm.us;
Jason.Benavidez@state.nm.us;
Carl.Lukesh@state.nm.us;
Bruce.Creg@state.nm.us;
Joshua.Baca@state.nm.us;
Ross.Johnson@state.nm.us;
Manuela.Ochoa@state.nm.us;

Eldon Offutt
Jason Montoya
Tina Cigliano-Sisneros
Sefie Anaya
Nicole Fairchild
Sarah Pena
Melanie Sandoval
Margaret Martinez
Ryan Jerman
Stacey Goodwin
Ryan Anderson
Carey Salaz
Sayuri Yamada
Matthew Jaramillo
Adam Alvarez
Carlos Lucero
Brian Buffington
Mark Fenton
Matthew Loftus
Dana S. Hardy
William A. Grant
Mario A. Contreras
Ruth Sakya
Phillip Oldham
Melissa Trevino
Jeffrey Pollock
Katherine Coleman
Michael P. Gorman
Amanda Alderson
TKLaw office
Will DuBois
Jeffrey L. Fornaciari
Linda Hudgins
Amy Shelhamer
Sonya Mares
Bernarr Treat
Damon Withrow
Brad Baldridge
Zoe E. Lees
Mike D'Antonio
Casey Settles
Mark Walker
Nancy Burns
Patricia Griego
Curtis Hutcheson
Linda pleasant
Laura Rodriguez
James Schichtl
Jennifer Ortiz
Linda Barker
Wayne Soza
Alejandra Chavira
Patrick Reinhart
Ricardo Gonzales
Carol Clifford
Keven Groenewold

Eldon.Offutt@state.nm.us;
JasonN.Montoya@state.nm.us;
Tina.Cigliano-Sisne@state.nm.us;
Sefie.Anaya@state.nm.us;
Nicole.Fairchild@state.nm.us;
Sarah.Pena1@state.nm.us;
melanie.sandoval@state.nm.us;
Margaret.Martinez@state.nm.us;
Ryan.Jerman@pnmresources.com;
Stacey.Goodwin@pnmresources.com;
Ryan.Anderson@pnm.com;
Carey.Salaz@pnm.com;
sayuri.yamada@pnmresources.com;
Matthew.Jaramillo@pnmresources.com;
Adam.Alvarez@pnm.com;
carlos.lucero@pnm.com;
brian.buffington@pnm.com;
Mark.Fenton@pnm.com;
matthew.p.loftus@xcelenergy.com;
dhardy@hinklelawfirm.com;
william.a.grant@xcelenergy.com;
Mario.a.contreras@xcelenergy.com;
Ruth.sakya@xcelenergy.com;
phillip.oldham@tklaw.com;
Melissa_Trevino@oxy.com;
jcp@pollockinc.com;
katie.coleman@tklaw.com;
mgorman@consultbai.com;
aalderson@consultbai.com;
tk.eservice@tklaw.com;
Will.w.dubois@xcelenergy.com;
jfornaciari@hinklelawfirm.com;
linda.l.hudgins@xcelenergy.com;
ashelhamer@courtneylawfirm.com;
smares@hinklelawfirm.com;
Bernarr.R.Treat@xcelenergy.com;
damon.withrow@xcelenergy.com;
brad.baldridge@xcelenergy.com;
zoe.e.lees@xcelenergy.com;
michael.a.d'antonio@xcelenergy.com;
casey.settles@xcelenergy.com;
Mark.a.walker@xcelenergy.com;
Nancy.burns@epelectric.com;
Patricia.griego@epelectric.com;
Curtis.hutcheson@epelectric.com;
Linda.pleasant@epelectric.com;
laura.rodriguez@epelectric.com;
James.Schichtl@epelectric.com;
Jennifer.Ortiz@epelectric.com;
linda.barker@epelectric.com;
wayne.soza@epelectric.com;
Alejandra.Chavira@epelectric.com;
patrick.reinhart@epelectric.com;
rico.gonzales@epelectric.com;
carol@thejonesfirm.com;
kgroenewold@nmelectric.coop;

Ed Rougemont
Daniel Najjar
Central New Mexico Electric
Matthew Collins
Central Valley Electric
Charles T. Pinson
Wade Nelson
Columbus Electric
Chris Martinez
Randy Massey
Continental Divide Electric
Robert Castillo
Corina Sandoval
Farmers' Electric Cooperative, Inc.
Lance Adkins
Kit Carson Electric
Luis Reyes
Andrew Gonzales
Jose Lovato
M. Poche
Nadine Varela
Lea County Electric
Bobby Ferris
Mora-San Miguel Electric
Les Montoya
Robert Quintana
Northern Rio Arriba Electric
Benjamin Leyba
Otero County Electric
Mario Romero
Charles Mulcock
Roosevelt County Electric
Antonio Sanchez
Sierra Electric
Denise Barrera
Socorro Electric
Joseph Herrera
Anne Dorough
Ernesto Gonzales
Southwestern Electric
Travis Sullivan
Springer Electric
David Spradlin
Tri-State Generation and Transmission
Mike McInnes
Western Farmers Electric
Gary Roulet
Duncan Valley Electric
Steven Lunt
Navopache Electric
Chuck Moore
Jemez Mountain Electric
Nathan Duran
Vincent Martinez
Daniel Najjar
Carla Najjar

erougemont@nmelectric.coop;
dnajjar@virtuelaw.com;
cnmecboard@cnmec.org;
matthew.collins@cnmec.org;
ajolsen@h2olawyers.com;
cpinson@cvecoop.org;
WNelson@cvecoop.org;
general@col-coop.com;
chrism@col.coop.com;
masseyfarm@vte.net;
bob@rf-lawfirm.com;
rcastillo@cdec.coop;
csandoval@cdec.coop;
fec@fecnm.org;
lance@fecnm.org;
hrpr@kitcarson.com;
lreyes@kitcarson.com;
agonzales@kitcarson.com;
jlovato@kitcarson.com;
mpoche@kitcarson.com;
nvarela@kitcarson.com;
mnewell@newellawnm.com;
bferris@lcecnet.com;
lwiggin@wwwlaw.us;
lmontoya@morasanmiguel.coop;
quintanafarms@msn.com;
nora@noriaelectric.org;
bleyba@noriaelectric.org;
s.t.overstreet.law@gmail.com;
marior@ote-coop.com;
charliem@ote-coop.com;
rcec@rcec.coop;
sancheza@rcec.coop;
sierra@secpower.com;
deniseb@secpower.com;
service@socorroelectric.com;
jherrera@socorroelectric.com;
district5@socorroelectric.com;
egonzales@jemezcoop.org;
gary@alsuplawoffice.com;
tsullivan@swec-coop.org;
dsmith9346@zialink.com;
spradlin@springercoop.com;
kreif@tristategt.org;
mmcinnnes@tristategt.org;
matt.caves@wfec.com;
g_roulet@wfec.com;
kimberly@dvec.org;
stevell@dvec.org;
ggouker@navopache.org;
cmoore@navopache.org;
ajchavez@jemezcoop.org;
nduran@jemezcoop.org;
vmartinez@tristategt.org;
vnajjar@aol.com;
csnajjar@virtuelaw.com;

Joan Drake
Perry Robinson
Dena M. Bennett
John Bogatko
Dhiraj Solomon
Mark Tupler
Milo Chavez
John Reynolds
Jason Montoya
Peggy Martinez-Rael
Elizabeth Ramirez
Gilbert Fuentes
John Reynolds
Jack Sidler
Timothy Martinez
Russell Fisk
Judith Amer
Michael C. Smith
Alicia Armijo
Elisha Leyba-Tercero
Gabriella Dasheno
Nicholas Koluncich
Jeremy Lewis
Cholla Khoury
Gideon Elliot
A. Minard
Robert Lundin
Elaine Heltman
Michaelene Kyrala
Rikki-Lee Chavez
Amy Nerison
Greg Ridgley
Kyle J. Smith
Maj. Andrew J. Unsicker
Mr. Thomas Jernigan
Capt. Lanny Zieman
Capt. Natalie Cepak
Ms. Ebony Payton
TSgt Arnold Braxton
Maj Scott Kirk
Capt Robert L. Friedman
TSgt Ryan Moore
Rishi Garg
WRA - Steve Michel
WRA-Glenda Murphy
CCAIE- Charles Noble
CCAIE-Megan O'Reilly
Prosperity Works- Ona Porter
Dahl Harris
Jim Dittmer
AARP – Eugene Varela
NMIEC- Peter Gould
Kelly Gould
NMIEC-Richard C. Mertz
NMIEC- James Dauphinais
Greg R. Meyer

jdrake@modrall.com;
Perry.Robinson@urenc.com;
dmb@modrall.com;
John.bogatko@state.nm.us;
Dhiraj.solomon@state.nm.us;
Marc.Tupler@state.nm.us;
milo.chavez@state.nm.us;
john.reynolds@state.nm.us;
JasonN.Montoya@state.nm.us;
Peggy.Martinez-Rael@state.nm.us;
Elizabeth.Ramirez@state.nm.us;
GilbertT.Fuentes@state.nm.us;
John.Reynolds@state.nm.us;
Jack.Sidler@state.nm.us;
Timothy.Martinez@state.nm.us;
Russell.fisk@state.nm.us;
Judith.Amer@state.nm.us;
michaelc.smith@state.nm.us;
Aarmijo@nmag.gov;
Elisha.Leyba-Tercero@state.nm.us;
Gabriella.Dasheno@state.nm.us;
nkoluncich@slo.state.nm.us;
jlewis@slo.state.nm.us;
ckhoury@nmag.gov;
gelliot@nmag.gov;
aminard@nmag.gov;
rlundin@nmag.gov;
Eheltman@nmag.gov;
Michaelene.Kyrala@state.nm.us;
rikkilee@theemissarygroup.net;
amy@theemissarygroup.net;
Greg.Ridgley@state.nm.us;
Kyle.j.smith124.civ@mail.mil;
Andrew.Unsicker@us.af.mil;
Thomas.Jernigan.3@us.af.mil;
Lanny.Zieman.1@us.af.mil;
Natalie.Cepak.2@us.af.mil;
Ebony.Payton.ctr@us.af.mil;
Arnold.Braxton@us.af.mil;
scott.kirk.2@us.af.mil;
Robert.Friedman.5@us.af.mil;
Ryan.Moore.5@us.af.mil;
rishi.garg@hq.doe.gov;
smichel@westernresources.org;
gmurphy@westernresources.org;
noble.ccae@gmail.com;
Oreilly.ccae@gmail.com;
Ona@Prosperityworks.net;
dahlharris@hotmail.com;
jimdittmer@utilitech.net;
evarela@aarp.org;
pgouldlaw@gmail.com;
Kellydarshan@gmail.com;
rcmertz7@outlook.com;
jdauphinais@consultbai.com;
gmeyer@consultbai.com;

CFRECLEANENERGY
SierraClub- Travis Richie
SierraClub- Zach Pierce
SierraClub – Ramona Blaber
EJ-Sara Gersen
EJ-Charles Carter Hall
Charles F. Noble
Stephanie Dzur
Ramona Blaber
Don Hancock
Julia Broggi
Katelyn Hart
Kitty Turner
Austin Rueschhoff
Jeff Wernert
Steve Seelye
Matthew Dunne
Maureen Reno
Thorvald A. Nelson
Nikolas Stoffel
Adele Lee
Holland Hart
B. Hart
Richard Alvidrez
Robert Clark
Jeffrey H. Albright
Amanda Edwards
Larry Blank
Matthew Miller
Andrea Crane
EJ-Jill Tauber
Rick Gilliam
Bruce Throne
April Elliott
Pat O'Connell
Mariel Nanasi
Rick Gilliam
Joe Herz
Andrew Harriger
Chris Dizon
Lisa Tormoen Hickey
Jason Marks
Vote Solar
NMSU General Counsel
Alton Looney
Tim Dobson
Mayane Barudin
Charles Garcia
Marta Tomic
Cydney Beadles
Art Terreasa
NMSU- Doug Gegax
Jane L. Yee
Danyel Mayer
Michael I. Garcia
Tony A. Gurule

cfrecleanenergy@yahoo.com;
Travis.ritchie@sierraclub.org;
Zach.pierce@sierraclub.org;
Ramona.blaber@sierraclub.org;
sgersen@earthjustice.org;
Chall@earthjustice.org;
noble.ccae@gmail.com;
Stephanie@Dzur-Law.com;
Ramona.blaber@sierraclub.org;
Sricdon@earthlink.net;
jbroggi@hollandhart.com;
katelyn.hart@gknet.com;
KAT@jpollockinc.com;
darueschhoff@hollandhart.com;
jwernert@theprimegrouppllc.com;
sseelye@theprimegrouppllc.com;
Mdunne337@gmail.com
mreno@reno-energy.com;
tnelson@hollandhart.com;
nsstoffel@hollandhart.com;
aclee@hollandhart.com;
glgarganoamari@hollandhart.com;
Joshua.smith@sierraclub.org;
ralvidrez@mstlaw.com;
rclark@mstlaw.com;
JA@JalbLaw.com;
AE@JalbLaw.com;
lb@tahoeconomics.com;
Matthew.miller@sierraclub.org;
ctcolumbia@aol.com;
jtauber@earthjustice.org;
Rick@votesolar.org;
bthronatty@newmexico.com;
april.elliott@westernresources.org;
pat.oconnell@westernresources.org;
Mariel@seedsbeneaththesnow.com;
rick@votesolar.org;
jaherz@sawvel.com;
akharriger@sawvel.com;
Chris.dizon@endlessenergy.solar;
[lisahickey@newLawgroup.com](mailto:lisahickey@newlawgroup.com);
lawoffice@jasonmarks.com;
lawoffice@jasonmarks.com;
gencounsel@nmsu.edu;
alooney@ad.nmsu.edu;
tdobson@ad.nmsu.edu;
mayane@votesolar.org;
cgarcia@cuddymccarthy.com;
marta@votesolar.org;
cydney.beadles@westernresources.org;
art@votesolar.org;
dgegax@nmsu.edu;
jyee@cabq.gov;
dmayer@cabq.gov;
MikGarcia@bernco.gov;
Tgurule@cabq.gov;

Saif Isamil
Kelsey Rader
Saul J. Ramos
Nann M. Winter
Keith Herrmann
Tom Figart
Nelson Goodin
Tim Glasco
Daniel A. Najjar
Anastasia S. Stevens
Nelson Goodin
Fred Kennon
Stuart C. Ed
Jorge A. Garcia
Jose F. Provencio
Jennifer Vega-Brown
William Templeman
Michael J. Moffett
Mayor Trujillo
Joshua L. Smith
Marcia B. Driggers
Merrie Lee Soules
NMGC-Clyde F. Worthen
Steven Cordova
NMGC-Brian Haverly
Julianna Hopper
NMGC-Thomas Domme
NMGC-Rebecca Carter
NMGC-Nicole Strauser
ZNG-Joan E. Drake
ZNG-Leslie A. Graham
ZNG-Janeen Capshaw
ZNG-Tomas J. Sullivan
ZNG-Greg Macias
David Link
LaVanda Jones
Peter Gould
ZNG-Anne G. Wheatcroft
ZNG-K. Marit Coburn
Peter Auh
Nann M. Winter
Ralph Phelps
Cecil Phelps
Keith W. Herrmann
EPCORE Water
Jeffrey Wechsler
Cynthia Apodaca
Marco E. Gonzales
Mitchell F. Brecher
John Badal
Patricia Salazar Ives
Timothy Shaffery
Jeffrey Albright
Britney Lloyd
Rohan Ranaraja
Amanda Edwards

sismail@cabq.gov;
Krader@cabq.gov;
sramos@doeal.gov;
nwinter@stelznerlaw.com;
kherrmann@stelznerlaw.com;
tomf@donaanacounty.org;
nelsong@donaanacounty.org;
Ta.glasco@lacnm.us;
dnajjar@virtuelaw.com;
astevens.law@gmail.com;
nelxong@donaanacounty.org;
fredk@donaanacounty.org;
sed@las-cruces.org;
JAG@las-cruces.org;
Joprovencio@las-cruces.org;
Jvega-brown@las-cruces.org;
wtempleman@cmtisantafe.com;
mmoffett@cmtisantafe.com;
mayortrujillo@cityofanthonynm.org;
Jsmith.watsonlawlc@gmail.com;
marcyd@las-cruces.org;
mlsoules@hotmail.com;
cfw@keleher-law.com;
steven.cordova@nmgco.com;
bjh@keleher-law.com;
jth@keleher-law.com;
thomas.domme@nmgco.com;
Rebecca.carter@nmgco.com;
Nicole.strauser@nmgco.com;
jdrake@modrall.com;
lgraham@zngc.com;
jcapshaw@naturalgaspro.com;
tsullivan@nucllc.com;
MaciasGE@bv.com;
david@rngcompany.com;
LaVanda.Jones@nmgco.com;
PGOULDRAW@GMAIL.COM;
agabel@naturalgaspro.com;
mcoburn@zngc.com;
Pauh@abcwua.org;
nwinter@stelznerlaw.com;
gloriabailey1953@yahoo.com;
cecilphelps@gmail.com;
kherrmann@stelznerlaw.com;
mywater@epcor.com;
jweschler@montand.com;
capodaca@newmexicowater.com;
MEG@modrall.com;
brecherm@gtlaw.com;
jbadal@sacredwindnm.com;
pives@cuddymccarthy.com;
tshaffery@cellularoneaz.com;
JA@JalbLaw.com;
Blloyd@atni.com;
Rranaraja@atni.com;
AE@JalbLaw.com;

Michael Tamburino
Jean Snopkowski
Alan P. Morel
Anthony Smith
Cecile Archibeque
Dale Laman
Lourdes Vifias
Matthew Hoover
Michael Leyba
Lynn E. Mostoller
Sharma Purcell
Linda Dallaero
Mary Hope
Carol Valdez
Herve Andrieu
Jerry Nussbaum
William Cabral
Darneshia Smith
Marsha Pokorny
Annabelle Pacheco
Danny Gray
Teri Ohta
Gene DeJordy
George Clark
Godfrey Enjady
Jace Colbert
Jack Pestaner
Jane Yee
Jeremy Smuckler
Jessica Matushek
John Clark
Kelley Wells
Kevin Bartley
Nick Kyriakides
RalphDichy
Jerome Block
Luther Eakins
Leon Nall
Scott Klopack
Sharon Thomas
Jane Hill
Zianet
Jessica Renneker
Dan Wheeler
Alan Herman
David Robinson
Steve Gatto
Courtney Spears
Gil Arviso
Kelly Faul
Amy Gross
Tom Olson
Shawn Hanson
Scott Klopack
Brian Gilbert
Tim Keefer

mtamburino@solixinc.com;
jsnopko@solixinc.com;
apmpa@valornet.com;
anthony@zianet.com;
cecile@yuccatelecom.com;
dalel@pvt.com;
lvinas@twncorp.com;
mhoover@kitcarson.net;
mjleyba@lajicarita.com;
lem@sutinfirm.com;
sharma.purcell@vtc.net;
Ldellaero@matrixbt.com;
regulatory@matrixbt.com;
cvaldez@montand.com;
taxes@telna.com;
preferred@aol.com;
bcs@los-amos.net;
dsmith@acninc.com;
m.pokomy@ildmail.com;
apacheco@lajicarita.com;
dgray@lajicarita.com;
Teri.Ohta@t-mobile.com;
gene@dakelyn.com;
george.clarke@state.nm.us;
genjady@matinetworks.net;
accounts@cybermesa.com;
accounts@cybermesa.com;
jyee@CABQ.gov;
jsmuckle@acninc.com;
jessica.matushek@ftr.com;
jclark@GMSSR.com;
kelley.wells@ptci.net;
kbartley@pvt.com;
nick@nettalk.com;
rdichy@mettel.net;
jeromedblock@msn.com;
luther@yucca.net;
leonn@yuccatelecom.com;
sklopack@matrixbt.com;
sthomas@tminc.com;
jhill@cybermesa.com;
anthony@zianet.com;
jrenneker@nos.com;
danw@ntscom.com;
alanh@plateautel.com;
davidr@plateautel.com;
sgatto@gvnw.com;
cspears@gvnw.com;
gil_arviso@yahoo.com;
kelly.faul@xo.com;
agross@tminc.com;
tolson@montand.com;
shawn.hanson@ptci.net;
sklopack@matrixbt.com;
bgilbert@cellularoneaz.com;
admin@vcimail.com;

Alicia Armijo
KLehrman
JR Carter
Sharon Saenz
Alan P. Morel
Adriana Badal
Tim Shaffery
Kim Legant
Susan Bitter Smith
Access Point, Inc.
ACN Corns. Services, Inc.
Affinity Network, Inc.
Airespring, Inc.
Alltell Corns., LLC
AmeriVision Comms. Inc.
Verizon Long Distance
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Value-Added Comms. Inc.
Verizon Select Services, Inc.
Voicecom Telecom., LLC
WDT World Discount Telecom.
Westel, Inc.
Wholesale Carrier Services
Leaco Rural Telephone Coop(Wireless)

aarmijo@nmag.gov;
klehrman@entouchwireless.com;
Jrcarter@readywireless.com;
ssaenz@matinetworks.net;
apmpa@apmpa.com;
adrianazbadal@gmail.com;
tshaffery@cellularoneaz.com;
kim.legant@gmail.com;
susan@swcable.org;
mark@csilongwood.com;
tking@tminc.com;
jrenneker@nos.com;
cat@airespring.com;
steve.delgado@verizon.com;
maskew@affinity4.com;
verizonlongdistance@vz-ld.com;
mark@csilongwood.com;
jhornkohl@bullseyetelecom.com;
atreder@bossys.com;
cbad.regulatorycompliance@cinbell.com;
atreder@bossys.com;
L.Esposito@Profitecinc.com;
FutureSalesTax@future.ca;
bperna@customteleconnect.com;
ruben@dellcity.com;
bstewart@eastontelecom.com;
sydney.olderbak@integratelecom.com;
mark@csilongwood.com;
cmoore2@securustechnologies.com;
jriley@telecompliance.net;
regulatory@opexld.com;
tracey.l.giles@windstream.com;
elena.thomasson@birch.com;
jbrown@vcmsolutions.com;
donnie.aultman@centurylink.com;
regdbg@dominionbusinessgroup.com;
regdbg@dominionbusinessgroup.com;
sperrotte@800response.com;
kimbvt@bacavalley.com;
TM5886@att.com;
al.b.clark@sprint.com;
donnie.aultman@centurylink.com;
mark@csilongwood.com;
usaregulatory@telmex.com;
michael.geoffroy@telrite.com;
jbeug@tbtc.net;
kimm.partridge@incontact.com;
rmadley@incomm.com;
ceckroat@usad.com;
robert.mutzenback@verizon.com;
Lisa.Affolter@Intelliverse.com;
beth@gsaudits.com;
thelma.harkrider@westel.net;
mark@csilongwood.com;
dsnider@leaco.org;
jessica.matushek@ftr.com;

Navajo Comms. Co., Inc.
Roosevelt County Rural Telephone Coop.
Valley Telephone Cooperative
Western New Mexico Tel.Co.
Valor Telecom. of Texas, LP
Spok, Inc.
Frontier Comms. Of America
DeltaCom, LLC
BCN Telecom Inc
Dallas MTA LP
Broadband Dynamics, LLC
Plateau Telecom- NM RSA2
Plateau Telecom., Inc.
Plateau Telecom., RSA 4
Plateau Telecom. Long Distance
Yucca Telecom. Systems (CLEC)
Cyber Mesa Computer Systems Inc
Valu Tel Corns., Inc.
Preferred Long Distance
Windstream Corns.
TW Telecom of New Mexico
Conectado, Inc.
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S-Net Communications, Inc.
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IDS Metrocom LLC
Metro Optical Solutions, Inc.
Stream Corns., LLC
Magna5 fka X5 OPCO LLC
MegaPath Cloud Co., LLC
Peerless Network, Inc.
Integrated Services, Inc
West Safety Corns., Inc. (Intrado)
Airus, Inc.

luther@yucca.net;
sharmapurcell@vtc.net;
bstroman@wnmt.com;
tracey.l.giles@windstream.com;
matt.ford@spok.com;
jessica.matushek@ftr.com;
mark@csilongwood.com;
tracey.l.giles@windstream.com;
steve.delgado@verizon.com;
grodham@broadbanddynamics.com;
alanh@plateautel.com;
alanh@plateautel.com;
alanh@plateautel.com;
alanh@plateautel.com;
luther@yucca.net;
lane@cybermesa.com;
tim@vcimail.com;
preferred@aol.com;
tracey.l.giles@windstream.com;
Tim.Goodwin@CenturyLink.com;
atreder@bossys.com;
atreder@bossys.com;
Linda.parks@americanmessaging.net;
ALB.Clark@sprint.com;
taxes@ccicom.com;
jriley@telecompliance.net;
lffreeman@bandwidth.com;
jriley@telecompliance.net;
trenton.labore@zayo.com;
jfp@transtelco.net;
tsmith@paytel.com;
johnc@citycommunications.com;
Rranaraja@atni.com;
cmeyering@tucows.com;
skokotan@readywireless.com;
brian.adams@tanagertel.com;
ggrinham@ultra.me;
probertson@metropcs.com;
ng4692@att.com;
bduffey@digium.com;
sturley@conterra.com;
msharp@getjive.com;
cneeld@tminc.com;
mark@csilongwood.com;
jswanson@pulsar360.com;
sharma.purcell@vtc.net;
michael.ebaugh@tdstelecom.com;
jasonh@metrooptical.com;
renee.hornbaker@streamenergy.net;
regulatory@magna5global.com;
Harout.yenikomshian@megapatch.com;
jbarnicle@peerlessnetwork.com;
atreder@bossys.com;
regulatory@intrado.com;
tracey.l.giles@windstream.com;
mark@csilongwood.com;

DSI-ITI, LLC
TracFone Wireless, Inc.
WiMacTel, Inc.
Vonage America, Inc
Netwolves Network Services LLC
TeleQuality Coms., Inc.
Crexendo Business Solutions
Flat Wireless, LLC
Greenfly Networks Inc dba Clearfly
Communications MFG Services, Inc.
Residential Long Distance, Inc
West IP Communications
Phone.com, Inc.
Cintex Wireless Talton Communications, Inc.
Ionex Comms. North, Inc.
COMM-CORE, LLC
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Patriot Mobile, LLC
M5 Networks, LLC
Vodafone US Inc.
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SagenetLLC
Comcast OTRI, LLC
Netcom US
Cable One Netcom Systems Group, LLC
Encartele, Inc.
Onvoy, LLC
Covoda Comms., Inc.
OneStream Networks, LLC
ISC, Inc.Nenture Tech.
Tello, LLC
XCastLabs
iTalk Global Comms., Inc.
ROK Mobile, Inc.
Cheryl C. Powers
Gary Rodham
Patrick D. Crocker
Curtis Hopfinger
David Bailey
Peggy Briesh
Leo Baca
Danielle Frappier
Susan Cockerham
John Jennings
Keith Nussbaum
Jenna Brown
Jennifer Keen
Ting
Karen Kilgore
Cholla Khoury
Gideon Elliot

CDillon@TracFone.com;
jmackenzie@viiz.com;
brendan.kasper@vonage.com;
christopher.denny@netwolves.com;
jeff@telequality.com;
scockerham@fastekteam.com;
djiron@flatwireless.com;
tim.dodge@clearfly.net;
jmlowell@zianet.com;
atreder@bossys.com;
lboone@smoothstone.com;
taxes@phone.com;
mlubin@tminc.com;
robin@talton.com;
Stephen.Spohrer@birch.com;
mark@csilongwood.com;
beth@gsaudits.com;
jerry@selectconferencing.com;
lffreeman@bandwidth.com;
andyliao@google.com;
cfiola@tminc.com;
matt@tpo.com;
glenn@eoscell.com;
salestax@shoretel.com;
bryan.ganno@vodafoneone.com;
mstrubel@dentalsolutionsllc.com;
Andrew.RuizdeGamboa@SageNet.com;
Gregory.Josuweit@comcast.com;
tyler@netcom-us.com;
vickie.bailey@cableone.biz;
don.peeler@encartele.net;
Mary.Buley@inteliquent.com;
mark.suto@tolydigital.net;
ahart@onestreamnetworks.com;
Leonard.Lane@ventech.com;
jsm@commllawgroup.com;
esears@xcastlabs.com;
bburge@italkglobal.com;
agucich@nationwideregulatorycompliance.com;
verizonlongdistance@verizon.com;
grodham@diversifiedconsulting.net;
contact@nationwideregulatorycompliance.com;
chopfinger@securustechologies.com;
dbailey@bullseyetelecom.com;
peggybvtonly@bacavalley.com;
Leo.baca@centurylink.com;
DanielleFrappier@dwt.com;
scockerham@fastekteam.com;
jjennings@bigrivertelephone.com;
keith@preferredlongdistance.com;
jbrown@vcomsolutions.com;
contact@nationwideregulatorycompliance.com;
bfausett@tu cows.com;
kkilgore@cuddymccarthy.com;
ckhoury@nmag.gov;
gelliot@nmag.gov;

Robert Lundin
N. Burslem
Michelle Austin
Kasey C. Chow
Gayle Gouker
Warren Fischer
Scott Lundquist
Russell Sarazen
Kenneth Schifman
Brian Gilbert
Kyle J. Smith
Tim Goodwin
Edwin Reese
Bill Templeman
David Ziegler
Judith A. Riley
Catherine Hannan
Eddie Mishan
D. James
G. Cookman
George Thomson
Brian Gilbert
Catherine Nicolaou
Richard Monto
Troy Judd
Victoria Williams
Janice Badal
Virgil Barnard
John Francis
Jean Parker
Matthew Ford
Leo Garza
Launa Waller
James Boyd Evans
Janice Ono
Juan Saenz
Mark Lammert
Charles Ferrell
Wayne Gibson
Allison Bloom
Dale Snider
Javier Rodriguez
Steven D. Metts
Joan Ellis-PRC
Eugene Evans-PRC
Russell Fisk-PRC
Mark Cessarich-PRC
Mike Ripperger-PRC
Richard Matzke
Brad Ellsworth
Michael Ruziska
Kyle J. Smith
Global Connection Inc. of America
Total Holdings, Inc./GTC Comm.
iLOKA, Inc./New Cloud Ntwrks
Inmate Calling Solutions, LLC

rlundin@nmag.gov;
ninaburslem@imagitel.com;
maustin@cellularoneaz.com;
kchow@telecomcounsel.com;
ggouker@cellularoneaz.com;
wfischer@qsiconsulting.com;
Slundquist@qsiconsulting.com;
russell.sarazen@t-mobile.com;
Kenneth.Schifman@sprint.com;
brian@youngturksconsulting.com;
Kyle.J.Srnith124.civ@mail.mil;
tim.goodwin@centurylink.com;
edwin.reese@verizonbusiness.com;
wtempleman@cmtisantafe.com;
david.l.ziegler@Centurylink.com;
jriley@telecompliance.net;
mail@CommLawGroup.com;
eddie.mishan@emsonusa.com;
djames4485@cybermesa.com;
gcookman@granitenet.com;
george.thomson@ftr.com;
bgilbert@cellularoneaz.com;
cnicolaou@sacredwindnm.com;
rmonto@neutraltandem.com;
troy.judd@teammvg.net;
vwilliams@iwirelesshome.com;
jcbadal@sacredwindnm.com;
virgil.bamard@vtc.net;
jfrancis@wnmt.com;
jparker@credomobile.com;
matt.ford@spok.com;
nmaarp@aarp.org;
LaunaW@plateautel.com;
jboyde@yuccatelecom.com;
janice.ono@att.com;
info@losalamosnetwork.com;
mark@csilongwood.com;
Charlieferrrell90@gmail.com;
wgibson@atni.com;
abloom@ldxx.com;
dsnider@leaco.org;
jr1515@att.com;
steven.metts@vtc.net;
Joan.ellis@state.nm.us;
Eugene.Evans@state.nm.us;
Russell.fisk@state.nm.us;
Mark.Cessarich@state.nm.us;
Mike.ripperger@state.nm.us;
rmatzke@gallup.com;
bellsworth@bloomfieldnm.com;
regulatory@entelegent.com;
kyle.smith124.civ@mail.mil;
abriggs@gcioa.com;
legal@mygtc.com;
sdonner@microtech-tel.com;
kdawson@icsolutions.com;

Intellicall Operator Services, Inc.
Western Interactive Networks
International Telcom. Ltd.
Mite! NetSolutions, Inc
West Telecom Services, LLC
LCR Telecom. LLC
Legacy Long Distance Intl' Inc.
Mescalero Apache Telecom. Long Distance
Matrix Telecom, LLC
McGraw Communications, Inc.
McLeod USA Telecomm. Svcs.
Metropolitan Telecoms. of NM
National Access Long Distance
National Directory Assistance
Network Billing Systems, LLC
Network Comms. Int'l Corp.
Network Service Billing, Inc.
NetworkIP, LLC
EarthLink Business, LLC
NobelTel, LLC
NOS Communications, Inc.
NOSY A Limited Partnership
NTS Communications, Inc.
Working Assets Funding Service
XO Coms. Services, Inc.
X2Comm, Inc.
Yucca Coms. Systems L D
ANPI Business, LLC
Alltel Comms. of the SW
Holdings, Inc.
Smith Bagley/Cellular One NE AZ
PVT Wireless Limited Partnership Northern New
T-Mobile West LLC
CommNet Cellular Inc.
New Mexico RSA No. 5 LP
New Mexico RSA 6-1 Partnership
Verizon Wireless (VA W) LLC
Sprint Spectrum LP (Sprint PCS)
Qwest Corporation
Tularosa Basin Telephone Co.
Penasco Valley Telephone Coop.
New Cingular Wireless PCS
Dell Telephone Cooperative, Inc.
PVT Networks, Inc
LaJicarita Rural Telephone Coop.
Mescalero Apache Telcom, Inc
Baca Valley Telephone Company
Centurytel of the Southwest- NM
Big River Telephone Company
ENMR Telephone Coop., Inc
Leaco Rural Telephone (CLEC)
AT&T Corp.
Spectrotel, Inc.
Telmate, LLC
Q Link Wireless
iCore Networks, Inc.

m.pokomy@ildmail.com;
ifrancis@gilanet.com;
mark@csilongwood.com;
paul.ciaramitaro@mitel.com;
jdietzel@rbm.com;
atreder@bossys.com;
rquinto@legacyinmate.com;
mporeilly@matinetworks.net;
ldellaero@matrixbt.com;
smendez@mcgrawcom.net;
tracey.l.giles@windstream.com;
rdichy@mettel.net;
atreder@bossys.com;
barbarahoard@nationalda.com;
KBelhumer@fusionconnect.com;
Stephanie.Jackson@ncic.com;
atreder@bossys.com;
regulatory@networkip.net;
tracey.l.giles@windstream.com;
colleen.guffey@nobelbiz.com;
jrenneker@nos.com;
jrenneker@nos.com;
jessica.salazar@ntsc.com;
rsemyono@wafs.com;
Kelly.Faul@xo.com;
tina@x2comm.com;
luther@yucca.net;
mary.buley@inteliquent.com;
steve.delgado@verizon.com;
maustin@cellularoneaz.com;
dgarcia@PVT.com;
steve.delgado@verizon.com;
Amy.Ray@T-Mobile.com;
steve.delgado@verizon.com;
steve.delgado@verizon.com;
steve.delgado@verizon.com;
steve.delgado@verizon.com;
ALB.Clark@sprint.com;
donniedaultman@centurylink.com;
jbeug@tbtc.net;
dgarcia@pvt.com;
ng4692@att.com;
ruben@dellcity.com;
dgarcia@pvt.com;
dgray@lajicarita.com;
skoreny@matinetworks.net;
kimbvt@bacavalley.com;
donniedaultman@CenturyLink.com;
mdiebold@bigrivertelephone.com;
alanh@plateautel.com;
dsnider@leaco.org;
rc2167@att.com;
mark@csilongwood.com;
compliance@telmate.com;
reg@qlinkwireless.com;
Brian.Spencer@vonage.com;

nexVortex, Inc.
VoIP Street, Inc. N oIP Innovations
Intermedia Voice Services, Inc.
Truphone, Inc.
Velocity, Greatest Phone Co.
Axia Technology Partners, LLC
CTC Communications Corp
Callcatchers Inc/Freedom Voice
Apptix, Inc.
Puretalk Holdings, LLC
IDT America Corp
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Voice Runner. Inc.
GC Pivotal, LLC
365 Wireless, LLC
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EnTelegent Solutions, Inc.
Cebridge Acquisition LP
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Go Solo Tech. of Florida One
YMax Communications
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Sacred Wind Comms., Inc
Multiline Long Distance, Inc
Consumer Cellular Inc
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New Horizons Comms. Corp.
Leaco Rural Telephone Coop ILEC Division
Comcast Phone of New Mexico
Cause Based Commerce, Inc
Granite Telecommunications
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i-wireless, LLC
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First Choice Technology, Inc
Transworld Network, Corp.
Kajeet, Inc
Network Innovations, Inc.
dishNET Wireline L.L.C.
Alliance Global Networks LLC
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PanTerra Networks, Inc.
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iCommerce Services, Inc. db Gymphone
Distributed Computing, Inc. dba Ten4pbx.com
Star2Star Comms., LLC
Blue Ocean Technologies
Local Access, LLC
SimpleVoIP, LLC
2Talk, LLC

Fred@nexvortex.com;
mark@csilongwood.com;
runderwood@intermedia.net;
james.wild@truphone.com;
jrabig@fastekteam.com;
jason@axiatp.com;
tracey.l.giles@windstream.com;
Compliance@freedomvoice.com;
dhutchins@fusionconnect.com;
kelly.jesel@telrite.com;
carl.billek@corp.idt.net;
hdevaney@chitchatusa.com;
carol.owen@voicerunner.com;
mark@csilongwood.com;
jrabig@fastekteam.com;
tking@tminc.com;
kmh@ComplianceGroup.com;
kseefus@rtcteam.net;
Dennis.Moffit@alticeusa.com;
chad@firstcontactvoip.com;
mark@csilongwood.com;
cfiola@tminc.com;
erwin.wilson@globalstar.com;
ap@sacredwindnm.com;
atreder@bossys.com;
jill@consumercellular.com;
dant@salestaxassociates.com;
gnelson@nhcgrp.com;
dsnider@leaco.org;
amee_hartman@cable.comcast.com;
mark@csilongwood.com;
taxdept@granitenet.com;
OnStar_Tax@gm.com;
vwilliams@iwirelesshome.com;
mark@csilongwood.com;
shaun@norstartelecom.com;
showsare@firstchoicetele.com;
compliance@epowerc.com;
patrick@crockerlawfirm.com;
jriley@telecompliance.net;
tina.sylvester@dish.com;
mok@alliancegrp.com;
taxcompliance@interfacesys.com;
steve@dialpad.com;
lara.nelson@momentumtelecom.com;
mark@csilongwood.com;
communicationonlinefiling@avalara.com;
gregs@bdc-llc.com;
RichardPelly@plintronamericas.com;
david@icommerceservices.com;
bmuser@distcomp.com;
Tax@Star2Star.com;
bill@blueotech.net;
brussell@dmv.com;
jrobs@simplevoip.us;
wayne@2talk.com;

Affiliated Technology Solutions
Alliant Technologies, LLC
Sangoma U.S., Inc.
STSMedia, Inc. dba
FreedomPop
Excellus Comms., LLC
MagicJack SMB, Inc.
TelAgility Corp
Andrew David Balholm
Broadsmart Global, Inc.
Republic Wireless, Inc.
Secured Retail Networks, Inc.
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Locus Telecomms., LLC
Access Technologies, Inc.
Lobo Internet Services, Ltd BA Telecom
ITC Global Networks, LLC
Lunar Labs, Inc.
Zang Inc.
DP Access, LLC
Carol Clifford
Jenica L. Jacobi
Robert Lundin
Kyle J. Smith
Alicia Wade-King
Kelly Hebbard
Melanie O'Reilly
Judi Ushio
Sunny J. Nixon
Walter Haase
Keven Groenewold
Daniel Najjar
Matthew Collins
Central Valley Electric
Charles T. Pinson
Wade Nelson
Columbus Electric
Randy Massey
Continental Divide Electric
Robert Castillo
Corina Sandoval
Farmers' Electric Cooperative, Inc.
Lance Adkins
Luis Reyes
Andrew Gonzales
Lea County Electric
Bobby Ferris
Mora-San Miguel Electric
Les Montoya
Robert Quintana
Northern Rio Arriba Electric
Otero County Electric
Mario Romero
Charles Mulcock
Roosevelt County Electric

twelsh@affiliatedinc.net;
gfinkel@allianttech.com;
rdube@sangoma.com;
mauricio@freedompop.com;
jim.tate@seniortechllc.com;
tina.tecce@magicjack.com;
tiffaney@telagility.biz;
andy@balholm.com;
jeffrey.ginsburg@hughes.com;
dmunise@republicwireless.com;
mcarter@securedretail.com;
Roberta.Kraus@lycamobile.com;
jmoon@Go2tech.com;
njgomez@locus.net;
tax@cytracom.com;
carl@lobo.net;
ggrinham@ultra.me;
pitter@ironton.com;
michael@joinlunar.com;
jmctiernan@avaya.com;
tom.buckle@dpaccess.com;
carol@thejonesfirm.com;
jjacobi@CABQ.gov;
rlundin@nmag.gov;
kyle.j.smith124.civ@mail.mil;
alicia_Wade@cable.comcast.com;
khebbard@fasttrackcomm.net;
mporeilly@matinetworks.net;
jushio@gvnw.com;
snixon@rodey.com;
walterh@ntua.com;
kgroenewold@nmelectric.coop;
dnajjar@virtuelaw.com;
matthew.collins@cnmec.org;
ajolsen@h2olawyers.com;
cpinson@cvecoop.org;
WNelson@cvecoop.org;
general@col-coop.com;
masseyfarm@vtc.net;
bob@rf-lawfirm.com;
rcastillo@cdec.coop;
fec@fecnm.org;
lance@fecnm.org;
lreyes@kitcarson.com;
agonzales@kitcarson.com;
mnewell@newellawnm.com;
bferris@lcecnet.com;
lwiggin@wwwlaw.us;
lmontoya@morasanmiguel.coop;
quintanafarms@msn.com;
nora@noraelectric.org;
s.t.overstreet.law@gmail.com;
marior@ote-coop.com;
charliem@ote-coop.com;
rcec@rcec.coop;

Antonio Sanchez
Sierra Electric
Denise Barrera
Socorro Electric
Joseph Herrera
Anne Dorough
Southwestern Electric
Travis Sullivan
Springer Electric
David Spradlin
Tri-State Generation and Transmission Association
Mike McInnes
Gary Roulet
Duncan Valley Electric
Steven Lunt
Navopache Electric
Chuck Moore
Jemez Mountain Electric
Nathan Duran
Daniel Najjar
Carla Najar
Matejka Santillanes
Daniel Meszler
Sam Ray
Paul Briesch
Peggy Martinez-Rael
Elizabeth Ramirez
Jose Lovato
M. Poche
Nadine Varela
Peter Gould
Leo Baca
Chris Barron
Gilbert Fuentes
Jay Santillanes
Nicole Nicolaou
Jason Marks
Carl Erhart
Daniel Davis
Brandon Porter
Jeri Wolf
Julia Broggi
Thorvald Nelson
Adele Lee
Gina Gargano-Amari
Mark Cessarich-PRC
Resound Networks
Hans Muller
Jordan Pruett
Ian Brumana
Doug Kitch
Mahlon Wigton
Melchior Savares
Bradford Borman
Fidel Archuleta
Kacy Dunn

sancheza@rcec.coop;
sierra@secpower.com;
deniseb@secpower.com;
service@socorroelectric.com;
jherrera@socorroelectric.com;
district5@socorroelectric.com;
gary@alsuplawoffice.com;
tsullivan@swec-coop.org;
dsmith9346@zialink.com;
spradlin@springercoop.com;
kreif@tristategt.org;
mmcinnnes@tristategt.org;
g_roulet@wfec.com;
kimberly@dvec.org;
stevel@dvec.org;
ggouker@navopache.org;
cmoore@navopache.org;
ajchavez@jemezcoop.org;
nduran@jemezcoop.org;
vnajjar@aol.com;
csnajjar@virtuelaw.com;
matejkaray@yahoo.com;
dmeszler@wnmt.com;
yeiya@bacavalley.com;
paulbvt@bacavalley.net;
Peggy.Martinez-Rael@state.nm.us;
Elizabeth.Ramirez@state.nm.us;
jlovato@kitcarson.com;
mpoche@kitcarson.com;
nvarela@kitcarson.com;
pgouldlaw@gmail.com;
Leo.Baca@CenturyLink.com;
cbarron@alexicon.net;
GilbertT.Fuentes@state.nm.us;
jaysantillanes@yahoo.com;
nnicolaou@sacredwindnm.com;
lawoffice@jasonmarks.com;
CE6043@FTR.com;
dan.davis@arcadianinfra.com;
brandon.porter@arcadianinfra.com;
jeri.wolf@arcadianinfra.com;
jbroggi@hollandhart.com;
tnelson@hollandhart.com;
aclee@hollandhart.com;
glgarganoamari@hollandhart.com;
Mark.Cessarich@state.nm.us;
regulatory@resoundnetworks.com;
Hans.Muller@state.nm.us;
jordan.pruett@resoundnetworks.com;
ibrumana@pvt.com;
dkitch@alexicon.net;
Mahlon.Wigton@state.nm.us;
Melchiore.Savarese@state.nm.us;
Bradford.Borman@state.nm.us;
Fidel.Archuleta@state.nm.us;
Kacy.Dunn@state.nm.us;

Jason Montoya
Judith Amer
Ashley Schannauer
Ray A. Padilla
George Smith
Running Bear Rescue
Joseph Van R. Clarke
Rocky Mountain EMS
d/b/a Rocky Mountain EMS
Edward Little
A. Chris
Acoma Pueblo
Albuquerque ambulance
Albuquerque ambulance
Albuquerque ambulance
Albuquerque ambulance
Albuquerque Ambulance Service
Albuquerque Fire Department - Frank Soto Jr.
Albuquerque Fire Rescue
American Medical Response
American Medical Response
American Medical Response
AMGH
Angel Fire, NM
Angel Fire, NM
Artesia Fire Department
Artesia Fire Department
Artisa, NM
Artisa, NM
Bernalillo County
Bob's Yard
Bosque Farms, NM
Braun Northwest, Inc.
Butt Thornton & Baehr PC
Caaregivers Transportation Inc.
Carlsbad Fire Department
Carlsbad, NM
Catron County
Causey Ambulance Service
Causey Fire Department
Centurion
Cibola County
Cimarron EMS
City Clerk
City of Carlsbad
CITY OF CLOVIS /CURRY COUNTY
City of Eunice
City of Eunice
City of Gallup
City of Jal
City of Jal
City of Portales
City of Roswell
City of Santa Fe Fire Department
City of Socorro Fire Dept

JasonN.Montoya@state.nm.us;
Judith.Amer@state.nm.us;
Ashley.Schannauer@state.nm.us;
rayapadilla1@gmail.com;
Glsmith.rmems@gmail.com;
runningbearrescue@aol.com;
joevan33@yahoo.com;
rmems.office@gmail.com;
info@rockymountainemsambulance.com;
coachedlittle@aol.com;
achris7427@aol.com;
ltrujillo@villageofquesta.org;
dmartinez12@phs.org;
ismith@phs.org;
kkrumperm@phs.org;
dchapek@phs.org;
psanchez2@phs.org;
vsmith@phs.org;
fsoto@cabq.gov;
[cgortiz@cabq.gov](mailto:cgartiz@cabq.gov);
joaquin.graham@amr.net;
glenn.kasprzyk@amr.net;
mtfeeney@yahoo.com;
melissa.smith@med-trans.net;
tcordova@angelfirenm.gov;
newkirk@angelfirenm.gov;
jdhummingbird@artesianm.gov;
mnason@artesianm.gov;
ahobson@artesianm.gov;
khope@artesianm.gov;
eamartinez@bernco.gov;
bob@bobsyard.com;
treasurer@bosquefarmsnm.gov;
jerryallen@braunnw.com;
rlschlagel@btblaw.com;
tj@caretransnm.com;
cfd.ems@cityofcarlsbadnm.com;
cfd.ems@cityofcarlsbadnm.com;
kate.fletcher@catroncountynm.gov;
causeyfd@outlook.com;
causeyfd@yucca.net;
crhuggins@centene.com;
gchavez@co.cibola.nm.us;
nate.lay@scouting.org;
cityclerk@yucca.net;
svmccutcheon@cityofcarlsbadnm.com;
mnolen@cityofclovis.org;
jdavis@cityofeunice.org;
manager@cityofeunice.org;
mhoffman@gallupnm.gov;
j.edwards@cityofjal.us;
l.segovia@cityofjal.us;
sjohnson@portalesnm.gov;
d.fuller@roswell-nm.gov;
gbcliburn@santafemnm.gov;
sfd@socorronm.gov;

City of Tucumcari	manager@cityoftucumcari.com ;
Clovis Fire Dept.	cchenault@cityofclovis.org ;
Cochiti Lake	clerk@cochitilake.org ;
Cochiti Lake	fire@cochitilake.org ;
County of Los Alamos	benjamin.stone@lacnm.us ;
County of Mora	bcasados@countyofmora.com ;
County of Mora	dcasados@countyofmora.com ;
Cress Insurance	ccress@cressinsurance.com ;
Cuba Ambulance/PMS checkerboard area	myra.sande@pmsnm.org ;
D. Leggit	emtdleggitt@yahoo.com ;
Deming Fire Department	rmercado@cityofdeming.org ;
Dep. Chief Powell	dep_chiefpowell@plateautel.net ;
Dmoines EMS	desmoinesems@bacavalley.com ;
Dmoines Village	dmoinesvillage@bacavalley.com ;
Dona Ana County	nelsong@donaanacounty.org ;
Dora Fire Department	dora_fd@yucca.net ;
Eagle Nest	administrator@eaglenest.org ;
Elite Medical Transport, LLC.	r.campion@elitemedical.org ;
Eloy Medina, Gila Regional	emedina@grmc.org ;
EMS Billing Services	lisa@emsbillingservices.com ;
EMS Billing Services	diane@emsbillingservices.com ;
EMS Billing Services	Michaela@emsbillingservices.com ;
EMS Billing Services	michele@emsbillingservices.com ;
EMS Billing Services	pam@emsbillingservices.com ;
EMS Bureau	CHARLES.BECVARIK@STATE.NM.US ;
EMS Region 1	admin@emsregion1.org ;
EMS2620	ems2620@hotmail.com ;
Enchanted Medical Transport	lizzi.mike@yahoo.com ;
Fin Harding	hardingfin@plateautel.net ;
FireF1801	firef1801@gmail.com ;
Floyd Village	floyd-village@yucca.net ;
Fred Mowrer	fmmowrer@smdlegal.com ;
FS City Hall	fscityhalljw@plateautel.net ;
FS EMS	fsems@plateautel.net ;
Grant County	cwebb@grantcountynm.com ;
Grants, NM	thomas@habigers.com ;
Haeyalyn Muniz	haeyalyn.muniz@gmail.com ;
Hatch Ambulance Service	gcorrales@bahcnm.org ;
Hatch Area Medical Center Foundation	gcorrales@bahcnm.org ;
Hobbs, NM	byoung@hobbsnm.org ;
Hobbs, NM	tspears@hobbsnm.org ;
J. Drummer	jdrummer77@gmail.com ;
J. Wood	jwoodmedic@gmail.com ;
Jalblaw	JA@Jalblaw.com ;
Jemez Pueblo	dryan@jemezpueblo.us ;
JJ Hask	haskij@gmail.com ;
Joshua Martinez	joshsmtz@gmail.com ;
K.T. Jacobs	k_tjacobs@yahoo.com ;
Karen Burns, Clovis Fire Dept	kburns@cityofclovis.org ;
Ken Criley	kencriley@hotmail.com ;
Kewa EMS	jschraeder@kewaems.org ;
Kylel Thornton	kylel.thornton@state.nm.us ;
Las Cruces Fire Department	smouchette@las-cruces.org ;
Lea County	hagerman_dps@leaco.net ;
Leybadn	leybadn@yahoo.com ;
Lincoln County EMS	lincolnlawyer575@gmail.com ;

Living Cross Ambulance
Logan Ambulance Service
Logan Village
Lovington, NM
Lovington, NM
Lrsiow
Magdalena Volunteer Fire Dept
Manuel Barriga
Mary Lcyv
MCKINLEY COUNTY
Med Star Ambulance
Mescalero Apache Fire Rescue
Mescalero Apache Fire Rescue
Moriarty, NM
Mountainair Fire & Rescue
Mountainair Volunteer Fire & Rescue
Mt. Taylor Ambulance
Nate Lay
NMPRC
Otero County
P. Dodson
Peggy Gallegos
Phillip Skinner
PHS - Albuquerque Ambulance
PHS - Albuquerque Ambulance
Pine Hill Emergency Medical Services
Portales Fire and Ambulance
Portales, NM
Portales, NM
Presbyterian Medical Services
Presbyterian Espanola Hospital (Espanola Valley EMS)
Presbyterian Espanola Hospital-EMS
Randy Bartell
Region 2 EMS
Region 3 EMS
Rhino's Med Trans, llc
Rio Rancho Dept of Fire & Rescue
Rocky Mountain Emergency Medical Services
Ronnie856
Roosevelt County
Running Bear Rescue, Inc. dba Rocky Mountain EMS
Running Bear Rescue, Inc. dba Rocky Mountain EMS
S. Black
San Juan County
Sandoval County
Sandoval County
Sandoval County
Santa Fe County
Santa Fe County
Santo Domingo EMS
Schmiedeskamp Law
Secure Transportation
Sierra Vista Hospital
Sierra Vista Hospital
Sierra Vista Hospital
Socorro, NM

wamaggiore@btblaw.com;
volems@plateautel.net;
loganvillage@plateautel.net;
jwilliams@lovington.org;
lvoyles@lovington.org;
lrsiow@outlook.com;
magdalenafirechief@gmail.com;
manuelbarriga2@msn.com;
marylcyv@live.com;
jlcfm24@yahoo.com;
emtdleggitt@yahoo.com;
jacob.earl.herring@gmail.com;
mafremms@yahoo.com;
clerk@moriartynm.gov;
sblacksh@msn.com;
caroleglade@gmail.com;
candiesfire@aol.com;
nate.lay@scouting.org;
Peggy.Martinez-Rael@state.nm.us;
pheltner@co.otero.nm.us;
pdodson502@gmail.com;
peggygallegos@hotmail.com;
philipskinner47@gmail.com;
tnorris4@phs.org;
chockstra@phs.org;
gregory.zunie@ihs.gov;
firechief@portalesnm.gov;
firechief@portalesnm.gov;
jterry@portalesnm.gov;
tom_montoya@pmsnet.org;
thawman@phs.org;
jsmith23@phs.org;
rbartell@montand.com;
doug@region2ems.com;
droberts@emsregion3.org;
aoriho@gmail.com;
msandoval@rrnm.gov;
rgsanchez@smdlegal.com;
ronnie856@aol.com;
ahamilton@rooseveltcountry.com;
runningbearrescu@aol.com;
coachedlittle@aol.com;
sblacksh@msn.com;
kcarpenter@sjcounty.net;
apredika@sandovalcountynm.gov;
cherrera@sandovalcountynm.gov;
Emasterson@sandovalcountynm.gov;
dsperling@santafecounty.org;
gbcliburn@santafenm.gov;
jschraeder@kewa-nsn.us;
janaya@srnm.org;
shurtado@securetransportation.com;
javier.marco@svhnm.org;
john.mccarty@svhnm.org;
paula.west@svhnm.org;
mgonzales@socorronm.gov;

Socorro, NM
Springer, NM EMS
Stelzner, Winter, Warburton, Flores, Sanchez & Dawes
Stelzner, Winter, Warburton, Flores, Sanchez & Dawes
Superior
Superior Ambulance
Superior Ambulance Inc.
Superior Medical
SVH
Tac Med Inc
Taos County
Tatum VEMS
Texico Volunteer Fire & Rescue
Thoreau Ambulance
Torrance County Ambulance Service
Town of Dexter
Town of Elida
Town of Red River
Town of Red River
Town of Tatum
Town of Tatum
Town of Vaughn
TS Fire
V. Shriver
Village of Cloudcroft
Village of Columbus
Village of Questa
Village of San Jon
Wcometsevah
Wilderness Medics Inc
Yellow Cab, Superior Ambulance, Others
Yeoman
James T. Martinez
Carolyn Glick
Jason Gellman

sfd@socorronm.gov;
springernmems@gmail.com;
kherrmann@stelznerlaw.com;
nwinter@stelznerlaw.com;
carchuleta@superior-nm.com;
warriorgolfr11@msn.com;
kcarnivele@superior-nm.com;
scott.wilson@superior-nm.com;
m.west@lp-fd-ems.com;
tacmedlubbock@gmail.com;
joaquin.gonzales@taoscounty.org;
manuelbarriga2@msn.com;
lisa@emsbillingservices.com;
icarlisle@co.mckinley.nm.us;
lgary@tcnm.us;
townofdexter@dfn.com;
townofelida@yucca.net;
dburnham@redriver.org;
grael@redriver.org;
townoftatum@leaco.net;
townoftatum@gmail.com;
townofvaughn@plateautel.net;
tsfire05@yahoo.com;
v.shriver@yahoo.com;
villageofcloudcroft@tularosa.net;
cvfd@vtc.net;
mark@villageofquesta.org;
villageofsanjon@plateautel.net;
wcometsevah@q.com;
webadmin@wildernessmedics.com;
isaac@smdlegal.com;
yeoman@pvtm.net;
JamesT.Martinez@state.nm.us
Carolyn.Glick@state.nm.us;
JGellman@epcor.com;

DATED this 4th day of November, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed

Isaac Sullivan-Leshin, Paralegal

Isaac.sullivan-leshin@state.nm.us

Sullivan-Leshin, Isaac, PRC

From: Sullivan-Leshin, Isaac, PRC
Sent: Wednesday, November 4, 2020 4:06 PM
To: Records, PRC, PRC
Subject: 20-00190-PRC; Filing Submission
Attachments: 20-00190-PRC, Order Initiating Rulemaking and Issuing Notice of Proposed Rulemaking and Changing Caption.pdf

IN THE MATTER OF A COMMISSION RULEMAKING TO)
PROMULGATE AMENDMENTS TO NMPRC RULES OF PROCEDURE)
1.2.2.7, 1.2.2.8, 1.2.2.9, 1.2.2.10, 1.2.2.11, 1.2.2.34 AND 1.2.2.35)
NMAC TO PROVIDE FOR ELECTRONIC FILING AND AMEND RULES) Case No. 20-00190-PRC
REGARDING TRANSCRIPTS, PREPARED TESTIMONY AND OTHER)
AMENDMENTS IF NECESSARY)
_____)

Please file the attached ORDER INITIATING RULEMAKING AND ISSUING NOTICE OF PROPOSED RULEMAKING AND CHANGING CAPTION into the above captioned case.

Thank you.