

This is an emergency amendment to 17.9.560 NMAC, Section 12, effective 3/23/2020.

**17.9.560.12 CUSTOMER RELATIONS:**

**A. Customer information.** Each utility shall:

- (1) maintain up-to-date maps, plans, or records of its entire transmission and distribution systems with such other information as may be necessary to enable the utility to advise prospective customers and others entitled to the information as to the facilities for serving any locality;
- (2) assist the customer or prospective customer in selecting the most economical rate schedule appropriate for his class of service;
- (3) notify customers affected by a change in rates or schedule classification;
- (4) post a notice in a conspicuous place in each office of the utility where applications for service are received informing the public that copies of the rate schedules and rules relating to the service of the utility as filed with the commission are available for inspection;
- (5) upon request inform its customers as to the method of reading meters; and
- (6) furnish such additional information as the customer may reasonably request.

**B. Customer deposits.** Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service.

- (1) A utility may not require a security deposit or other guarantee of payment as a condition of new or continued service to a customer except in the case of service:
  - (a) to a customer that has not previously had utility service with the utility and that has not established an acceptable credit rating;
  - (b) to a customer that has on three or more occasions, within a 12-month period, received a final notice;
  - (c) as a condition for reconnection of service following discontinuance of service by the utility; or
  - (d) to a customer that in an unauthorized manner has interfered with or diverted the service of the utility situated on or about or delivered to the customer's premises.
- (2) In determining whether a customer that has not previously had utility service with the utility has an acceptable credit rating, a utility shall consider the following:
  - (a) documentation that the customer has an adequate credit reference from a utility where the customer had prior utility service;
  - (b) documentation obtained by the utility from a commercial credit source; or
  - (c) any other reasonable documentation.
- (3) A utility may give special consideration to a prospective or existing customer in determining if payment by an installment agreement is appropriate.
- (4) If a utility requires a deposit, it shall have on file with the commission an approved rule setting forth the minimum and maximum deposit that may reasonably be required by the utility in cases involving all types of service. That rule shall conform to the following provisions:
  - (a) a deposit for a customer shall not exceed an amount equivalent to one sixth (1/6) of that non-residential customer's estimated annual billings; a utility shall base its deposit criteria upon the most recent available prior 12-month corresponding period at the same service location; or, if there is not a comparable period of service at the same service location, the deposit shall be based upon consumption of similar units in the same area;
  - (b) simple interest on deposits at a rate not less than the rate required by Section 62-13-13 NMSA 1978, shall accrue annually to the customer's credit for the time the deposit is held by the utility; by January 15 of each year the commission shall post on its website the minimum rate to be paid on any deposits required of a customer by any public utility; the deposit shall cease to draw interest on the date it is returned, on the date service is terminated, or on the date the refund is sent to the non-residential customer's last known address.
- (5) Each customer that posts a security deposit shall receive in writing at the time of tender of deposit or with the first bill a receipt as evidence thereof. A utility shall provide the means whereby a depositor may establish its claim if its receipt is lost. The receipt shall contain the following minimum information:
  - (a) name of customer;
  - (b) date of payment;

- (c) amount of payment; and
- (d) statement of the terms and conditions governing the payment, retention, interest,

and return of deposits.

(6) Refunds. Any non-residential customer that has not received a final notice for the 12-month period from the date of deposit or guarantee shall promptly receive a credit or refund in the amount of the deposit together with accrued interest due or shall be permitted to terminate any guarantee. If the amount of the deposit exceeds the amount of the current bill, the customer may request a refund in the amount of the excess if such excess exceeds twenty-five dollars (\$25.00). If the customer fails to qualify for a refund of the deposit on the one year anniversary date of the deposit, that account shall be reviewed at least annually, and the amount of the deposit shall be credited if the customer has not received a final notice during the preceding 12 months. A customer may request a refund at any time after 12 months payment history, which refund shall promptly be paid if the customer has not received a final notice during the prior 12-month period or a utility may pay such refund in the absence of a request within a reasonable period of time.

- (7) Each utility shall keep records to show:
- (a) the name and address of each depositor;
  - (b) the amount and the date of the deposit; and
  - (c) each transaction concerning the deposit.

(8) A record of each unclaimed deposit shall be maintained for at least three years during which time the utility shall mail a check or a letter to the customer at his last known address in an effort to return the deposit.

(9) Unclaimed deposits together with accrued interest shall be credited to the appropriate account and shall be handled as required by the uniform disposition of unclaimed property act of the state of New Mexico.

**C. Customer bill forms.**

(1) The utility shall bill each customer as promptly as possible following the reading of his meter. The bill shall show:

- (a) the reading of the meter at the end of the period for which the bill is rendered;
- (b) the nominal date on which the meter was read;
- (c) the number and kind of units metered;
- (d) the applicable rate schedule or identification of the applicable rate schedules;
- (e) the gross or net amount of the bill;
- (f) the date by which the customer must pay the bill in order to benefit from any

discount or to avoid any penalty;

- (g) a distinct marking to identify an estimated bill;
- (h) any conversions from meter reading units to billing units or any calculations to determine billing units from recording or other devices or any other factors, such as fuel clause adjustments, power factor adjustments, applicable primary discounts for customer-owned transformer, or billing units additions for secondary metering of primary services used in determining the bill; and

(i) a multiplier constant when used to determine billing will be shown on the bill whenever applicable.

(2) In lieu of information required under (c), (g), and (h) above, the utility may incorporate on the bill form a statement advising the customer that any additional information desired relative to the application of the rate schedule can be obtained by contacting one of the utility's offices.

**D. Customer records.** The utility shall retain records as may be necessary to effect compliance with 17.3.310 NMAC and with Subsection E of 17.9.560.12 NMAC and Subsection E of 17.9.560.14 NMAC, and shall show where applicable the following:

- (1) KWH meter reading;
- (2) KWH consumption;
- (3) KW or KVA readings;
- (4) KW or KVA measured demand;
- (5) KW or KVA billing demand;
- (6) primary discounts; and
- (7) total amount of bill.

**E. Adjustments of bills.**

(1) General. An adjustment of bills for service shall be made for the following reasons, and may be made for reasons not listed below in order to achieve a reasonable, fair and just result:

(a) meter creep;  
(b) kilowatt-hour registration in excess of 2% average error determined by meter test;  
(c) demand registration in excess of 1% error in addition to errors allowed under accuracy of demand meters, Subsection H of 17.9.560.14 NMAC;  
(d) failure of meter or equipment including automatic meter reading technology if such failure was not the result of a customer tampering with, damaging, replacing or deliberately destroying the equipment furnished and owned by the utility;  
(e) improper installation, testing, or inspection of equipment;  
(f) improper application of rate schedule;  
(g) improper multiplier;  
(h) improper application of a tax;  
(i) failure of utility to bill a customer for services at the time the customer received the services; or

(j) failure of a customer to provide safe and reasonable access to utility equipment.  
(2) The amount of the adjustment shall be calculated on the basis that the metering equipment should be 100 percent (100%) accurate with respect to the testing equipment used to make the test. For watt-hour meters the average accuracy shall be the arithmetic average of the percent registration at light load and at heavy load, giving the light load registration a weight of one (1) and the heavy load registration a weight of four (4).

(3) Determination of adjustments. Unless otherwise specified, the time periods established in Paragraph (8) of Subsection E of 17.560.12 NMAC shall apply to adjustments made under Paragraph (3) of Subsection E of 17.560.12 NMAC.

(a) Meter creep. The error in registration due to creep shall be calculated by timing the rate of creeping and assuming that this creeping affected the registration of the meter for twenty-five percent (25%) of the time since the meter was installed or since the last previous test, whichever is later.

(b) Meter with inaccuracy in excess of specified limits. If the date when the error in registration began can be determined, such date shall be the starting point for determination of the amount of adjustment. If the date when the error in registration began cannot be determined, it shall be assumed that the error has existed for a period equal to one half (1/2) the time elapsed since the meter was installed or one half (1/2) the time elapsed since the last previous test, whichever is later.

(c) Failure of meter or equipment. When the error in registration is caused by failure of part or all of the metering installation, it shall be permissible to use the registration of check metering installations, if any, or to estimate the kilowatt-hour consumption, demand, and other data required for billing based upon a period of similar operating conditions as agreed to between the customer and the utility.

(d) Improper installation, testing, or inspection of meter or equipment. When the error in registration is caused by improper installation, testing, or inspection of meter or equipment, the date of installation, date of test, or date of inspection shall be the starting point for determination of the amount of the adjustment.

(4) Refunds.

(a) If the recalculated bills indicate that a refund is due an existing customer or a person no longer a customer of the utility, the full amount of the calculated difference between the amount paid and the true amount shall be refunded in the applicable time period established in Paragraph (8) of Subsection E of 17.560.12 NMAC.

(b) The refund to an existing customer may be in cash or as credit on a bill. In the case of a previous customer who is no longer a customer of the utility, a notice of the amount due shall be mailed to such previous customer at his last known address and the utility shall, upon demand within three (3) months thereafter, refund the amount due.

(5) Back-billing.

(a) If the recalculation of billing indicates that an amount is due the utility and such amount is in excess of any refund due the customer, the utility may bill the customer the true amount due in the applicable time period established in Paragraph (8) of Subsection E of 17.560.12 NMAC.

(b) Each utility may establish a minimum amount below which the utility will not back-bill the customer. When the amount of the back-billing is greater than the established minimum amount, the customer will be billed the true amount due the utility in the applicable time period established in Paragraph (8) of Subsection E of 17.560.12 NMAC.

(c) The customer shall be permitted to pay the amount of the back-billing in reasonable installments. A back-bill shall be accompanied by an offer of an installment agreement.

(d) The utility shall not charge the customer interest for any amount back-billed.

(6) A utility and its special contract customer may make their own agreements respecting adjustments for errors in measurement.

(7) The utility will assist the customer in selecting the rate schedule under which he/she is eligible to be billed. However, the utility will not be held responsible for refunding any overcharge caused by the customer's failure to select the appropriate rate schedule or by the customer's failure to notify the utility of a change in customer's operations. If the utility improperly applies the rate schedule selected by the customer, any billing in excess of the true amount will be refunded to the customer and any billing less than the true amount when greater than the established minimum amount will be billed to the customer in the applicable time period established in Paragraph (8) of Subsection E of 17.560.12 NMAC.

(8) Time periods for adjustment of bills.

(a) Residential customer class (metered usage): Refunding of an overbilling is limited to 12 months. Back-billing of an underbilling is limited to six months. Customers responsible for the back-billed underbill shall be given, at a minimum, the same time period to pay the underbilling as the length of time period of the underbilling.

(b) Residential customer class (zero usage or no bill): Back-billing is limited to six months. Customers responsible for the back-billed underbill shall be given, at a minimum, the same time period to pay the underbilling as the length of time period of the underbilling.

(c) Non-residential small commercial customer class, defined by tariff: Refunding of an overbilling is limited to six months. Back-billing of an underbilling is limited to six months. Customers responsible for the back-billed underbill shall be given, at a minimum, the same time period to pay the underbilling as the length of time period of the underbilling.

(d) All other non-residential customer class, such as medium, large or industrial as defined by tariff: Refunding of an overbilling is limited to 12 months. Back-billing is limited to 12 months. Customers responsible for the back-billed underbill shall be given, at a minimum, the same time period to pay the underbilling as the length of time period of the underbilling.

(e) Back-billing customers is limited to 72 months for underbilling that was caused by tampering or fraud by the customer.

(f) Notwithstanding the above time limits, the commission may determine a different time limit for back-billing or refunding in order to achieve a reasonable, fair, and just result.

**F. Reasons for denying or discontinuing service.** Service may be denied or discontinued for any of the reasons listed below unless prohibited under Paragraph (3) of Subsection G of 17.9.560.12 NMAC. Unless otherwise stated the customer shall be allowed a reasonable time in which to comply with the rule before service is discontinued except as provided in Paragraphs (1), (2), (3) and (4) below:

(1) without notice in the event of a condition determined by the utility to be hazardous;

(2) without notice in the event of customer use of equipment in such manner as to adversely affect the utility's equipment or the utility's service to others;

(3) without notice in the event that a customer tampers with, damages, or deliberately destroys the equipment furnished and owned by the utility;

(4) without notice in the event of unauthorized use;

(5) for violation of or noncompliance with the utility's rules on file with and approved by the commission;

(6) for failure of the customer to fulfill his/her contractual obligations for service or facilities subject to the regulations of the commission;

(7) for failure of the customer to permit the utility reasonable access to its equipment;

(8) for nonpayment of bill provided the utility has given the customer final notice;

(9) for failure of the customer to provide the utility with a deposit as authorized by Subsection B of 17.9.560.12 NMAC except that a utility may not discontinue service to an existing customer solely for failure to pay deposit;

(10) for failure of the customer to furnish such service equipment, permits, certificates, or rights-of-way as shall have been specified by the utility as a condition for obtaining service or in the event such equipment or permissions are withdrawn or terminated; and

(11) for failure of the customer to pay for service of the same class at a previous metering point or points.

**G. Reasons insufficient for denying or discontinuing service.**

(1) The following shall not constitute sufficient cause for discontinuing service to a present customer:

- (a) for failure to pay for merchandise purchased from the utility;
- (b) for failure to pay for a different type or class of public utility service;
- (c) for failure to pay the bill of another customer as guarantor thereof; or
- (d) for failure to pay for concurrent service of whatever class at a different metering point.

(2) The following shall not constitute sufficient cause for denying service to a prospective customer:

- (a) for delinquency in payment for service by a previous occupant unless the previous occupant still resides at the premises;
- (b) for failure to pay for merchandise purchased from the utility; or
- (c) for failure to pay the bill of another customer as guarantor thereof.

(3) The following additional temporary emergency rules regarding disconnection of residential utility service shall be effective for the duration of time that governor's executive orders 2020-004 through 2020-0010 ("emergency executive orders") remain in effect:

(a) all utilities are prohibited from discontinuing residential utility service for non-payment during the time period the emergency executive orders are in effect;

(b) disconnections of residential utility service for non-payment issued on or after March 11, 2020 (the effective date of the emergency executive orders) are suspended for the duration of the effectiveness of the emergency executive orders;

(c) any late fees on residential accounts that would be incurred during the time period of the effectiveness of the emergency executive orders shall be waived;

(d) utilities are permitted to temporarily and immediately close in-person bill payment locations as long as they provide notice to residential customers regarding the same and notice how to pay electronically or by mail. In the event of closure of in-person bill payment locations, utilities shall be permitted to continue to collect credit card or bank fees in accordance with their own commission approved and filed tariffs;

(e) medical certificates set to expire shall not expire for the duration of the effectiveness of the emergency executive orders and shall automatically be extended for 90 days from the end of the emergency executive orders.

**H. Estimated demand.** Upon request of the customer and provided the customer's demand is estimated for billing purposes, the utility shall measure the demand during the customer's normal operations and use the measured demand for billing.

**I. Servicing utilization control equipment.** Each utility shall service and maintain any equipment it owns and used on the customer's premises and shall correctly set and keep in proper adjustment any thermostats, clocks, relays, time switches, or other devices which control the customer's service in accordance with the provisions of the utility's rate schedules.

**J. Customer complaints.** Bona fide complaints concerning the charges, practices, or service of the utility shall be investigated promptly and thoroughly. The utility shall keep such records of customer complaints as will enable the utility to review and analyze its procedures and actions.

**K. Temporary service.** When the utility renders temporary service to a customer it may require that the customer bear all the cost of installation and removal of the service facilities in excess of any salvage realized.

**L. Extension plan.** Each utility shall develop a plan acceptable to the commission for the extension of facilities where they are in excess of those included in the regular rates for service and for which the customer shall be required to pay all or part of the cost.

[6/30/1988; 17.9.560.12 NMAC - Rn, NMPSC 560.18-560.29 & A, 6/15/2005; A, 3/29/2013; A/E 3/23/2020]