

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE PETITION OF)
THE UTILITY DIVISION STAFF OF THE)
PUBLIC REGULATION COMMISSION AND)
CERTAIN ELECTRIC AND GAS UTILITIES)
FOR A RULEMAKING TO AMEND NMPRC)
RULE 410, RESIDENTIAL CUSTOMER)
SERVICE BY GAS, ELECTRIC, AND RURAL)
ELECTRIC COOPERATIVE UTILITIES,)
AND TO RECODIFY THE RULE IN)
ACCORDANCE WITH THE NEW MEXICO)
ADMINISTRATIVE CODE,)

Utility Case No. 3519

UTILITY DIVISION STAFF OF THE)
PUBLIC REGULATION COMMISSION;)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO; SOUTHWESTERN PUBLIC)
SERVICE COMPANY; EL PASO ELECTRIC)
COMPANY; TEXAS-NEW MEXICO POWER)
COMPANY; CENTRAL VALLEY ELECTRIC)
COOPERATIVE, INC.; LEA COUNTY)
ELECTRIC COOPERATIVE, INC.;)
CONTINENTAL DIVIDE ELECTRIC)
COOPERATIVE, INC.; ROOSEVELT)
COUNTY ELECTRIC COOPERATIVE, INC.,)
SOCORRO ELECTRIC COOPERATIVE,)
INC.; SPRINGER ELECTRIC)
COOPERATIVE INC.; ZIA NATURAL GAS)
CO., a division of NATURAL GAS)
PROCESSING COMPANY; and RATON)
NATURAL GAS COMPANY,)

Petitioners.)

FINAL ORDER ADOPTING NMPRC RULE 410, 17.5.410

THIS MATTER comes before the New Mexico Public Regulation Commission
("Commission" or "NMPRC"), upon the record that developed in this case.

STATEMENT OF THE CASE

On November 2, 2000, a Petition for Rulemaking was filed by Commission Utility Division Staff (“Staff”), Public Service Company of New Mexico (“PNM”), Southwestern Public Service Company (“SPS”), El Paso Electric Company (“EPE”), Texas-New Mexico Power Company (“TNP”), Central Valley Electric Cooperative, Inc. (“Central Valley”), Continental Divide Electric Cooperative, Inc. (“CDEC”), Lea County Electric Cooperative, Inc. (“LCEC”), Socorro Electric Cooperative, Inc. (“Socorro”), Roosevelt County Electric Cooperative, Inc. (“RCEC”), Springer Electric Cooperative, Inc. (“Springer”), Zia Natural Gas Co., a division of Natural Gas Processing Company (“Zia”), and Raton Natural Gas Company (“Raton”) (collectively, the “Petitioners”). The Petitioners requested that the Commission commence a rulemaking proceeding and adopt certain amendments to NMPRC Rule 410.31(A) in order to bring the rule into conformance with NMSA 1978, § 62-8-10, as amended by Senate Bill 196 enacted by the New Mexico Legislature in 2000 (“Senate Bill 196”). The proposed changes involve the provision of the Rule relating to discontinuance of gas or electric utility service to residents where seriously or chronically ill persons reside and relating to the procedure for certification of the residents’ medical and financial condition.

On April 3, 2001, the Commission issued a Notice of Proposed Rulemaking establishing a procedural schedule to consider the proposed rulemaking filed by the Petitioners. The Notice of Proposed Rulemaking provided that persons wishing to comment on the proposal may do so by written comments no later than May 2, 2001 and that any person wishing to respond to the comments may do so by submitting written response comments no later than May 18, 2001. The Notice also set a public hearing to begin at 1:30 p.m. on June 5, 2001 at the offices of the Commission. The Notice further provided that a copy of the notice, including the proposed

rulemaking, would be mailed to persons who made a written request for advance notice and to all electric and gas utilities under the Commission's jurisdiction, including rural electric cooperatives. In addition, the Commission caused the Notice, without the proposed rulemaking, to be published in newspapers of general circulation in the State and in the New Mexico Register. On May 2, 2001, EPE filed comments and on the same date a group of the Petitioners including, Staff, PNM, CNMEC, LCEC, SPS, Central Valley, RCEC, Raton, TNP, Springer and Socorro also filed comments. On May 18, 2001, Staff responded to the comments of EPE.

On June 5, 2001, Lee Huffman, Associate General Counsel, presided over a public hearing and received oral comments on the proposed rulemaking. At the public comment hearing, the Commission received comments on the proposed rules from the following:

Staff
PNM
EPE
TNP

BACKGROUND

Since it was enacted in 1977, NMSA 1978, Section 62-8-10 has prohibited utilities from discontinuing service to any residence where a seriously ill person resides, if the person responsible for the utility service charges lacked the financial resources to pay those charges and a practitioner of the healing arts certified that discontinuance of utility service might endanger the seriously ill person's life. *See* 1977 N.M. Laws, ch. 175, § 1; 1993 N.M. Laws, ch. 282, § 34; 2000 N.M. Laws, ch. 88, § 2. Specifically, prior to Senate Bill 196 Section 62-8-10 provided:

Utility service shall not be discontinued to any residence where a seriously ill person is residing, if the person responsible for the utility service charges does not have the financial resources to pay the charges and if a practitioner of the healing arts...certifies that discontinuance of service might endanger that person's life and the certificate is delivered to a manager or officer of the utility providing the service at least two days prior to the due date of a billing for utility services....

As required by the Legislature, the Commission adopted rules, presently codified in NMPRC Rule 410.31, providing a procedure for notifying residential customers of this right, obtaining certificates from practitioners, and obtaining statements from residential customers regarding their financial inability to pay their utility charges. *See* NMPRC Rule 410.31(a)(5), (6), 410.31(b).

During the 2000 legislative session, the legislature of the State of New Mexico passed and the Governor of New Mexico signed Senate Bill 196, repealing NMSA 1978, Section 62-8-10 and enacting a new Section 62-8-10. The new statute explicitly extends protection from discontinuance of utility service to chronically ill persons and specifically limits the types of practitioners of the healing arts qualified to certify the resident's medical condition. It provides as follows:

Utility service shall not be discontinued to any residence where a seriously or chronically ill person is residing if the person responsible for the utility service charges does not have the financial resources to pay the charges and if a licensed physician, physician's assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner certifies that discontinuance of service might endanger that person's health or life and the certificate is delivered to a manager or officer of the provider of the utility service at least two days prior to the due date of a billing for service....

Senate Bill 196 expressly directs the Commission to adopt rules providing the procedure necessary to carry out the new legislation. In particular, Senate Bill 196 limited the types of practitioners of the healing arts who may certify the resident's medical condition and broadens the medical conditions subject to protection.

The Rule 410, reformatted in accordance with NMAC requirements, includes four significant revisions to the existing rule. First, like Senate Bill 196, the proposed amendment provides that medical conditions can be certified by "a licensed physician, physician's assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner" rather

than a “practitioner of the healing arts.” Second, the proposed amendment explicitly extends protection to residences in which a “chronically ill” person resides and permits medical certification in cases where the ill individual’s “health” as well as “life” is threatened by discontinuance of utility service. Third, the rule as proposed creates a new, uniform procedure by which residential customers seeking to invoke the protection of Section 62-8-10 must demonstrate their inability to pay their utility charges by one of two means of financial certification. The residential customer would have the option of either obtaining a certificate from the New Mexico Human Services Department or another organization providing charitable assistance stating that the customer qualifies for financial assistance under the Department’s or the organization’s standards or presenting to the utility a self-certification of financial need in the form of evidence of the customer’s current Medicaid eligibility ID card. Fourth, the amended rule would explicitly acknowledge the residential customer’s obligation to pay for utility services rendered and would explicitly require the residential customer to enter into a written agreement with the utility to extend or defer utility payments.

Following enactment of Senate Bill 196, the Petitioners commenced a collaborative effort among New Mexico utilities to develop revisions to Rule 410. Four electric investor-owned utilities, seventeen rural electric cooperatives, and three gas utilities under the Commission’s jurisdiction were invited to participate, as well as Staff, the Attorney General of the State of New Mexico (“Attorney General”), the New Mexico Human Services Department (which administers LIHEAP), the New Mexico Rural Electric Cooperative Association (“NMRECA”), and the National Rural Electric Cooperative Association (“NRECA”). Three meetings of the collaborative group were held, on May 18, 2000, July 26, 2000, and September 6, 2000. In

addition, committee meetings were held on June 28, 2000 and August 4, 2000, to discuss definitions and draft proposed rule language and forms.

During the collaborative process, the participants discussed the impact of Senate Bill 196 and the issues raised by their implementation of Section 62-8-10 under Rule 410.31 and the prior law. The participants decided that a complete overhaul of the medical certification procedure was neither required by Senate Bill 196 nor in the best interest of customers and utilities. They agreed that a more uniform approach was desirable, however, and developed proposed amendments to Rule 410.31(a)(5) and (6), as well as standardized forms for medical and financial certificates to be appended to the amended rule.

DISCUSSION

As stated above, the proposed Rule results from a collaborative process which involved most of the gas and electric utilities in the State as well as the Commission Staff and representatives from the Human Services Department of the State of New Mexico. The merits of the process is demonstrated by the lack of substantive comments from any parties. As stated above, the primary purpose of the changes to the Rule is to ensure that the Rule conforms with Senate Bill 196. Senate Bill 196 explicitly extended protection from discontinuance of utility service to chronically ill persons and specifically limits the types of practitioners of healing arts qualified to certify the resident's medical condition. Specifically, Senate Bill 196 provided for a certification from a licensed physician, physician assistant, osteopathic physician, osteopathic physician assistant or certified nurse practitioner that discontinuance of service might endanger the health or life of a person residing in the residence being served. In addition, the amendments to the Rule clarify the procedures for obtaining medical certificates and establish the procedure for a residential customer to demonstrate their inability to pay the utility charges. In addition, the

amended Rule explicitly acknowledges the residential customer's obligation to pay for the utility services rendered and requires the customer to enter into a written agreement with the utility to extend or defer utility payments.

The comments received deal mainly with the wording in Subsection A.6 of 17.5.410.31.

EPE recommended that the language proposed be changed to read as follows:

(6) a blank medical certification form in a form approved by the Commission (an acceptable form of which is included in 17.5.410.43 NMAC as Appendix A to this rule) and a blank financial certification form or forms (an acceptable form of which is included in 17.5.410.44 NMAC as Appendix B to this rule) which, in conjunction with the statement required by paragraph (5) above shall:

(a) in the case of a medical certification, require the medical professional to indicate the nature of the serious or chronic illness and to affirmatively state that discontinuance of service might endanger the life of the customer; ~~and, in the case of financial certification, indicate that the residential customer qualifies for financial assistance; and, in the case of financial certification, indicate that the residential customer qualifies for financial assistance;~~

(b) require the residential customer to certify that the customer is financially unable to pay the customer's utility bills;

(c) ~~require evidence of the residential customer's inability to pay the customer's utility bills by providing for the New Mexico Human Service Department or other organization providing charitable assistance to complete a certification form which~~ require evidence of the residential customer's inability to pay the customer's utility bills by providing for the New Mexico Human Service Department or other organization providing charitable assistance to complete a certification form which ~~in the case of a financial certification, require an entity described in paragraph 5(a)(ii) above to indicate~~ that the residential customer qualifies for financial assistance, or by providing for ~~the residential customer to demonstrate the customer's current eligibility for financial assistance from the medicaid program; and~~ and

(d) advise the residential customer that a certification relating to the medical status of the customer shall be valid for a period of thirty (30) days; and

(e dd) advise the residential customer that a certification relating to the financial status of the customer shall be valid for a period of ninety (90) days. (Changes shown in legislative format.)

Staff in its response agreed with EPE's suggested changes except for a small change in subparagraph (a). Specifically, Staff recommended that section be amended to read as follows:

(a) in the case of a medical certification, require the medical professional to indicate the nature of the serious or chronic illness and to affirmatively state that discontinuance of service might endanger the *health or* life of the customer; ~~and, in the case of financial certification, indicate that the residential customer qualifies for financial assistance; and, in the case of financial certification, indicate that the residential customer qualifies for financial assistance;~~ (Changes shown in bold.)

None of the parties objected to changes proposed by EPE and Staff. The Commission will adopt the changes suggested by EPE as modified by Staff.

At the hearing, Petitioners stated that they believed that implementation of the new rule should begin between the summer cooling season and the winter heating season. This would allow education of residential customers when their electric and gas utilities bills were relatively small. Further, in the Petitioners' comments, the Petitioners requested that the Commission order that the amended Rule become effective ninety days from the date of the Order. This, the Petitioners maintained, will allow time for the utilities, prior to the effective date of the Rule, to file the required advice notices with the Commission, provide appropriate notice to their customers and allow sufficient time to communicate with the Human Services Department and other charitable organizations that provide charitable assistance. In order to allow for the ninety day implementation period prior to the beginning of the winter heating season, Petitioners requested prompt adoption of the Order. The Commission believes that such a request is valid.

THE COMMISSION FINDS AND CONCLUDES :

1. The foregoing statements and discussions are hereby adopted as findings and conclusions of the Commission.
2. The Commission has jurisdiction over the parties and the subject matter in this case.

3. It is in the public interest for NMPRC Rule 410.17 NMAC 5.410 to be adopted as set forth in Exhibit A to this Order.

4. Due and proper notice of this matter has been given.

5. The Commission has jurisdiction and authority to issue this Order and adopt the Rule pursuant to its rulemaking authority. NMSA 1978 § 8-8-15.

IT IS THEREFORE ORDERED:

A. NMPRC Rule 410, 17 NMAC 5.410 is hereby adopted as provided in this Order.

B. NMPRC Rule 410, 17 NMAC 5.410 as adopted and approved by this Order is attached to this Order as Exhibit "A".

C. NMPRC Rule 410, 17 NMAC 5.410, shall be published in the next available New Mexico Register and shall be effective ninety days following the date of this Order.

D. This Order is effective immediately

E. A copy of this Order shall be served on all persons on the attached Certificate of Service.

F. This docket is closed.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 18th day of September, 2001.

NEW MEXICO PUBLIC REGULATION COMMISSION

TONY SCHAEFER, CHAIRMAN

HERB H. HUGHES, VICE CHAIRMAN

RORY McMINN, COMMISSIONER

JEROME D. BLOCK, COMMISSIONER

LYNDA M. LOVEJOY, COMMISSIONER