

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 11

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

AN ACT

RELATING TO PUBLIC REGULATION; REORGANIZING THE OPERATING
STRUCTURE OF THE PUBLIC REGULATION COMMISSION; CREATING THE
COMMISSION RESOURCES DIVISION WITHIN THE PUBLIC REGULATION
COMMISSION; CREATING THE OFFICE OF PUBLIC REGULATION COMMISSION
REGULATORY AFFAIRS AS AN AGENCY ADMINISTRATIVELY ATTACHED TO
THE REGULATION AND LICENSING DEPARTMENT; TRANSFERRING PERSONNEL
AND NON-REGULATORY DUTIES FROM THE PUBLIC REGULATION COMMISSION
TO THE OFFICE OF PUBLIC REGULATION COMMISSION REGULATORY
AFFAIRS; PROVIDING POWERS AND DUTIES; REQUIRING COMMISSIONERS
TO ACT IN THE PUBLIC INTEREST OF THE STATE; MAINTAINING THE
FIRE MARSHAL DIVISION AND PIPELINE SAFETY DUTIES WITHIN THE
PUBLIC REGULATION COMMISSION; AMENDING, REPEALING AND ENACTING
SECTIONS OF THE NMSA 1978; MAKING TECHNICAL AND CONFORMING
CHANGES; DECLARING AN EMERGENCY.

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underscored material = new
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1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

2 SECTION 1. A new section of the Public Regulation
3 Commission Act is enacted to read:

4 "[NEW MATERIAL] COMMISSION RESOURCES DIVISION--
5 ORGANIZATION--CHIEF OF STAFF--STAFF--DUTIES.--

6 A. The "commission resources division" is created
7 in the public regulation commission and shall consist of staff
8 necessary to carry out the duties and responsibilities of the
9 commission, including:

- 10 (1) commission resources staff;
- 11 (2) hearing examiners;
- 12 (3) administrative services staff; and
- 13 (4) pipeline safety bureau staff.

14 B. A chief of staff of the commission resources
15 division shall be appointed to serve a six-year term beginning
16 January 1; provided that the initial chief of staff shall serve
17 for a term ending December 31, 2023. If Article 11, Section 1
18 of the constitution of New Mexico provides for the election of
19 commissioners, the governor shall provide the commission with a
20 list of finalists for the position of chief of staff and,
21 within thirty days, the commission shall select a person from
22 the list to be appointed chief of staff; provided that if the
23 commission fails to select a chief of staff within thirty days,
24 the governor shall appoint the chief of staff. If Article 11,
25 Section 1 of the constitution of New Mexico provides for the

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1 appointment of commissioners, the commission shall appoint the
2 chief of staff. Appointment of the chief of staff by the
3 governor or commission shall be subject to senate confirmation.
4 The chief of staff may only be removed for cause by the
5 appointing authority, and a vacancy shall be filled for the
6 remainder of the unexpired term in the same manner as the
7 original appointment was made. If reappointed in accordance
8 with this subsection, a person may serve multiple terms as the
9 chief of staff.

10 C. The chief of staff shall:

11 (1) manage the operations of the commission
12 resources division;

13 (2) hire and direct the staff of the
14 commission resources division, including hearing examiners,
15 pipeline safety bureau staff, administrative services staff and
16 commission resources staff with expertise in regulatory law,
17 engineering, utility accounting, motor carrier regulation,
18 railroad safety, pipeline safety, ambulance standards,
19 telecommunications, economics and other professional or
20 technical disciplines to carry out the duties of the division.
21 The chief of staff may hire on a temporary, term or contract
22 basis other experts or staff as the commission requires for a
23 particular case. The staff shall be subject to the Personnel
24 Act, as applicable; and

25 (3) ensure that hearing examiners have

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1 decisional independence.

2 D. Commission resources staff shall:

3 (1) serve as staff to the commission in
4 carrying out its duties and responsibilities;

5 (2) provide advice and counsel to the
6 commission, including hearing examiners, on legal or technical
7 issues and to commissioners on policy issues;

8 (3) analyze case records;

9 (4) analyze recommended decisions;

10 (5) assist the commission in the development
11 of rules;

12 (6) assist the commission in writing final
13 orders;

14 (7) record and track post-order compliance by
15 regulated entities;

16 (8) conduct research; and

17 (9) perform other duties as required by the
18 chief of staff or the commission.

19 E. The administrative services staff shall perform
20 the following functions for the commission:

21 (1) case docketing;

22 (2) records management;

23 (3) budget and accounting;

24 (4) human resources;

25 (5) procurement; and

1 (6) information systems services.

2 F. The administrative services staff shall record
3 the rules, orders and other proceedings of the commission and
4 make a complete index to the rules, orders and other
5 proceedings; issue and attest all processes issuing from the
6 commission and affix the seal of the commission to them; and
7 preserve the seal and other property belonging to the
8 commission.

9 G. Upon request and consent of all parties to a
10 formal consumer complaint, the chief of staff, or a commission
11 resources staff member appointed by the chief of staff, may
12 arbitrate the complaint. The arbitration shall be completed
13 within a time period set by the chief of staff, and the
14 decision may be appealed to the commission. The commission
15 shall adopt rules for arbitration of formal complaints.

16 H. Informal consumer complaints received by the
17 commission resources division against a regulated entity shall
18 be referred to the office of public regulation commission
19 regulatory affairs."

20 SECTION 2. A new section of the Public Regulation
21 Commission Act is enacted to read:

22 "[NEW MATERIAL] OFFICE OF PUBLIC REGULATION COMMISSION
23 REGULATORY AFFAIRS--DIVISIONS--DIRECTOR--DUTIES.--

24 A. The "office of public regulation commission
25 regulatory affairs" is created and is administratively attached

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1 to the regulation and licensing department. The office of
2 public regulation commission regulatory affairs consists of:

- 3 (1) the legal division;
- 4 (2) the utility division;
- 5 (3) the transportation division;
- 6 (4) the administrative services division; and
- 7 (5) the consumer relations division.

8 B. The office of public regulation commission
9 regulatory affairs shall represent the public interest in
10 proceedings before the commission. In order to represent the
11 public interest, the office shall, as the office deems
12 necessary:

13 (1) present the commission with its
14 recommendations on how the commission should fulfill its
15 responsibility to the public interest and balance the interests
16 of consumers and investors;

17 (2) have the status of a party in any
18 proceeding before the commission, without being required to
19 file a motion to intervene, but shall not have a right to
20 appeal;

21 (3) be entitled to enter an appearance,
22 conduct discovery, file written testimony and exhibits,
23 introduce evidence, examine and cross-examine witnesses, make
24 arguments and generally participate in the conduct of a
25 proceeding before the commission;

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1 (4) be entitled to petition the commission and
2 file motions with the commission, including protests to
3 decisions of the commission and motions for the commission to
4 review rate proposals;

5 (5) perform economic, accounting and
6 engineering review and analysis of a commission-regulated
7 entity's operations, regulatory compliance and applications and
8 other filings before the commission;

9 (6) submit written recommendations to the
10 commission as to whether a commission-regulated entity's
11 applications or filings with the commission comply with the
12 procedures and objectives of the particular application or
13 filing; and

14 (7) do all other things necessary to carry out
15 its duties.

16 C. A director of the office of public regulation
17 commission regulatory affairs shall be appointed by the
18 governor and confirmed by the senate to serve a six-year term
19 beginning January 1; provided that, as soon as practical on or
20 after the effective date of this 2020 act, the governor shall
21 appoint an initial director, who shall be subject to senate
22 confirmation at the next legislative session, for a term ending
23 December 31, 2026. The director may only be removed for cause
24 by the governor, and the same individual, if reappointed and
25 confirmed, may serve multiple terms as the director.

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1 D. The director shall:

2 (1) manage the operations of the office of
3 public regulation commission regulatory affairs;

4 (2) direct the legal, utility and
5 transportation divisions in representing the public interest in
6 matters before the commission;

7 (3) direct the work of the consumer relations
8 division; and

9 (4) hire division directors and the
10 professional, technical and support staff necessary to carry
11 out the duties of the office. Division directors and staff
12 shall be subject to the Personnel Act.

13 E. The director may:

14 (1) apply for and receive, with the governor's
15 approval, in the name of the office any public or private
16 funds, including United States government funds, available to
17 the office to carry out its programs, duties or services;

18 (2) enter into contracts to carry out the
19 office's powers and duties; and

20 (3) adopt reasonable administrative,
21 regulatory and procedural rules as may be necessary or
22 appropriate to carry out the duties of the office.

23 F. The legal division shall serve as counsel to the
24 office of public regulation commission regulatory affairs and
25 represent the office in matters before the commission.

1 G. The utility division shall serve as subject
2 matter experts in the areas of electric, natural gas, renewable
3 energy sources, telecommunications and water and wastewater
4 systems regulation.

5 H. The transportation division shall serve as
6 subject matter experts and technical staff in the areas of
7 motor carrier regulation and enforcement, railroad safety
8 enforcement, pipeline safety and ambulance standards.

9 I. The administrative services division shall
10 provide administrative services to the office of public
11 regulation commission regulatory affairs, including:

12 (1) budget and accounting;

13 (2) human resources;

14 (3) procurement; and

15 (4) information systems services.

16 J. The consumer relations division shall:

17 (1) receive and investigate informal consumer
18 complaints and assist consumers in resolving, in a fair manner
19 and within sixty days unless extended by the director,
20 complaints against a person under the authority of the
21 commission, including mediation and other methods of
22 alternative dispute resolution; provided, however, that
23 assistance pursuant to this paragraph does not include legal
24 representation of a private complainant in an adjudicatory
25 proceeding;

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1 (2) record complaints received regarding
2 quality or quantity of service provided by a regulated entity
3 or its competitors to determine general concerns of consumers.
4 A report of consumer complaints and their status shall be
5 included in the commission's annual report;

6 (3) inform the commission of the necessity for
7 and progress of corrective action against a regulated entity
8 based on complaints received against a regulated entity;

9 (4) work with the consumer protection division
10 of the attorney general's office, the governor's constituent
11 services office and other state agencies as needed to ensure
12 fair and timely resolution of complaints; and

13 (5) identify, research and advise the
14 commission on consumer issues and assist the commission in the
15 development and implementation of consumer policies and
16 programs.

17 K. Office of public regulation commission
18 regulatory affairs staff shall not have ex parte communications
19 with commissioners or a hearing examiner assigned to a pending
20 matter before the commission, except as expressly permitted by
21 Section 8-8-17 NMSA 1978."

22 SECTION 3. Section 8-8-4 NMSA 1978 (being Laws 1998,
23 Chapter 108, Section 4) is amended to read:

24 "8-8-4. COMMISSION--GENERAL POWERS AND DUTIES.--

25 A. The commission shall administer and enforce the

1 laws with which it is charged and has every power conferred by
2 law.

3 B. In carrying out the duties of the commission,
4 commissioners shall act in the public interest of the state.

5 [~~B.~~] C. The commission may:

6 (1) [~~subject to legislative appropriation~~]
7 appoint and employ [~~such professional, technical and clerical~~
8 ~~assistance~~] administrative staff as it deems necessary and may
9 direct the chief of staff of the commission resources division
10 to hire, subject to the Personnel Act, professional and
11 technical staff, as needed, to assist it in performing its
12 powers and duties;

13 (2) delegate authority to subordinates as it
14 deems necessary and appropriate, clearly delineating such
15 delegated authority and any limitations;

16 (3) retain competent attorneys to handle the
17 legal matters of the commission and give advice and counsel in
18 regard to any matter connected with the duties of the
19 commission and, in the discretion of the commission, to
20 represent the commission in any legal proceeding;

21 (4) organize into organizational units as
22 necessary to enable it to function most efficiently, subject to
23 provisions of law requiring or establishing specific
24 organizational units;

25 (5) take administrative action by issuing

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1 orders not inconsistent with law to assure implementation of
2 and compliance with the provisions of law for which the
3 commission is responsible and to enforce those orders by
4 appropriate administrative action and court proceedings;

5 (6) conduct research and studies to improve
6 the commission's operations or the provision of services to the
7 citizens of New Mexico;

8 (7) conduct investigations as necessary to
9 carry out the commission's responsibilities;

10 (8) apply for and accept grants and donations
11 in the name of the state to carry out its powers and duties;

12 (9) enter into contracts to carry out its
13 powers and duties;

14 (10) adopt such reasonable administrative,
15 regulatory and procedural rules as may be necessary or
16 appropriate to carry out its powers and duties;

17 (11) cooperate with tribal and pueblo
18 governments on topics over which the commission and the other
19 governments have jurisdiction and conduct joint investigations,
20 hold joint hearings and issue joint or concurrent orders as
21 appropriate; and

22 (12) apply to the district court for
23 injunctions to prevent violations of any laws that it
24 administers or rules or orders adopted pursuant to those laws.

25 [~~G.~~] D. The commission shall:

1 (1) prepare an annual budget for submission to
2 the legislature;

3 [~~(2)~~] ~~provide for surety bond coverage for all~~
4 ~~employees of the commission as provided in the Surety Bond Act~~
5 ~~and pay the costs of such bonds;~~

6 ~~(3)]~~ (2) adopt rules to streamline the
7 resolution of cases before it when appropriate by:

- 8 (a) the use of hearing examiners;
9 (b) the taking of evidence with the
10 least delay practicable;
11 (c) limiting repetitious testimony; and
12 (d) adopting procedures for resolving
13 cases in ways other than by trial-type hearings when
14 appropriate, including consent calendars, conferences,
15 settlements, mediation, arbitration and other alternative
16 dispute resolution methods and the use of staff decisions; and

17 [~~(4)]~~ (3) provide a toll-free telephone number
18 and publish it and the commission's general telephone number in
19 local telephone directories.

20 [~~D.~~] E. A majority of the commission constitutes a
21 quorum for the transaction of business; provided, however, that
22 a majority vote of the commission is needed for a final
23 decision of the commission."

24 SECTION 4. Section 8-8-9.3 NMSA 1978 (being Laws 2007,
25 Chapter 161, Section 4) is amended to read:

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1 "8-8-9.3. FIRE MARSHAL DIVISION.--

2 A. The fire marshal division is created in the
3 commission and includes the following:

4 [~~A.~~] (1) the firefighter training academy
5 bureau;

6 [~~B.~~] (2) the fire service support bureau;

7 [~~C.~~] (3) the fire investigations bureau; and

8 [~~D.~~] (4) the fire code enforcement bureau.

9 B. The chief of staff of the commission resources
10 division shall oversee the operations of the fire marshal
11 division."

12 SECTION 5. Section 59A-52-3 NMSA 1978 (being Laws 1984,
13 Chapter 127, Section 949, as amended) is amended to read:

14 "59A-52-3. DEPUTY STATE FIRE MARSHAL AND OTHER
15 EMPLOYEES--QUALIFICATIONS OF DEPUTY.--The state fire marshal
16 may employ, with the consent of the chief of staff of the
17 commission resources division of the public regulation
18 commission, deputy state fire marshals and other employees to
19 assist in the execution of the marshal's duties."

20 SECTION 6. Section 62-6-17 NMSA 1978 (being Laws 1941,
21 Chapter 84, Section 29, as amended) is amended to read:

22 "62-6-17. OFFICE, BOOKS AND RECORDS--SANCTION--PENALTY.--

23 A. Every utility furnishing service within the
24 state shall maintain an office located in the state. The
25 commission by order may require any utility or any officer or

1 agent of any utility to produce within the state or provide
2 access to, at such reasonable time and place as the commission
3 may designate, any books, records, accounts or documents kept
4 in any office or place within or without the state, or
5 certified copies thereof, whenever the production thereof is
6 reasonably required and pertinent to any matter under
7 investigation before the commission.

8 B. Whenever the production of books, records,
9 accounts or documents is reasonably required by the commission
10 and pertinent to any matter under investigation before the
11 commission, the commission may require the utility or any
12 affiliated interest participating in a Class I or II
13 transaction to produce or provide access to, at such reasonable
14 time and place as the commission may designate, such books,
15 records, accounts or documents.

16 C. Any person whose interest may be adversely
17 affected by the production of any books, records, accounts or
18 documents may petition the commission for a protective order
19 for confidential or proprietary information. The commission
20 shall determine the materiality and relevancy of the books,
21 records, accounts or documents to any matter before the
22 commission and determine whether such books, records, accounts
23 or documents contain confidential or proprietary information.
24 If the commission determines such books, records, accounts or
25 documents contain confidential or proprietary information that

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1 is material and relevant to the proceeding, it shall determine
2 whether the public interest requires that such books, records,
3 accounts or documents be produced in any hearing or
4 investigation held under the Public Utility Act or that an
5 abstract of or the extraction of specific information from such
6 books, records, accounts or documents be produced for use in
7 any such hearing or investigation. Any books, records,
8 accounts or documents determined under this section to contain
9 confidential or proprietary information are not subject to the
10 Public Records Act.

11 D. For so long as such information determined by
12 the commission to contain confidential or proprietary
13 information retains its confidential or proprietary character,
14 any person who intentionally discloses such confidential or
15 proprietary information is guilty of a misdemeanor and upon
16 conviction shall be fined not less than five hundred dollars
17 (\$500) nor more than five thousand dollars (\$5,000).

18 E. To carry out its duties, the office of public
19 regulation commission regulatory affairs may seek an order from
20 the commission for the production of books, records, accounts
21 or documents in accordance with this section."

22 SECTION 7. Section 62-6-23 NMSA 1978 (being Laws 1941,
23 Chapter 84, Section 35) is amended to read:

24 "62-6-23. AUTHORITY TO ENTER PREMISES.--The commission
25 and its officers and employees [øf] or other persons authorized

1 by the commission may during all reasonable hours, after
 2 reasonable notice to the utility, enter upon any premises
 3 occupied by any utility for the purpose of making examinations
 4 and tests and exercising any power provided for in [~~this~~] the
 5 Public Utility Act and may set up and use on such premises any
 6 apparatus and appliances necessary therefor. [~~Such~~] The public
 7 utility shall have the right to be represented at the making of
 8 [~~such~~] the examination, tests and inspections and shall be
 9 given sufficient time before the making thereof to secure the
 10 presence of a representative of its selection."

11 **SECTION 8.** Section 62-8-7.1 NMSA 1978 (being Laws 1985,
 12 Chapter 221, Section 3, as amended) is amended to read:

13 "62-8-7.1. HEARING PROCEDURES FOR CHANGE OF RATES OF
 14 SMALL WATER AND SEWER UTILITIES.--

15 A. Whenever there is filed with the commission any
 16 schedule proposing any new rates pursuant to Section 62-8-7
 17 NMSA 1978 by any public utility as defined in Paragraph (3) or
 18 (5) of Subsection G of Section 62-3-3 NMSA 1978 with equal to
 19 or fewer than an aggregate of one thousand five hundred service
 20 connections in any utility operating district or division in
 21 New Mexico averaged over the previous three consecutive years,
 22 the rates shall become effective as proposed by the utility
 23 without a hearing; provided that the utility shall be required
 24 to give written notice of the proposed rates to the ratepayers
 25 receiving service from the utility at least sixty days prior to

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1 filing the proposed rate change with the commission; and
2 provided further that the commission shall enter upon a hearing
3 concerning the reasonableness of any proposed rates filed by
4 such a utility pursuant to Subsections C and D of Section
5 62-8-7 NMSA 1978 when a rate increase would have the effect of
6 increasing the rates fifty percent or more in a twelve-month
7 period or upon the filing with the commission of a protest
8 seeking review of the proposed rates signed by ten percent or
9 more of the ratepayers or twenty-five ratepayers, whichever is
10 more, receiving service from such a utility if the commission
11 determines there is just cause for reviewing the proposed
12 rates. For purposes of this section, a "service connection"
13 means a metered hookup to the utility's water system or a sewer
14 tap to the utility's wastewater system, and each person who
15 receives a separate bill equals one ratepayer and each person
16 who receives multiple bills equals one ratepayer. The petition
17 shall be signed by the person in whose name service is carried.
18 The petition shall be filed no later than twenty days after the
19 filing with the commission of the schedule proposing the new
20 rates. In all other respects, Section 62-8-7 NMSA 1978 shall
21 apply to such water utilities. If a utility provides both
22 water and sewer service, the service connection revenues
23 attributable to the provision of water service only shall
24 determine whether the procedures specified in this subsection
25 shall apply to a schedule proposing new rates for water

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1 service, and the service connection revenues attributable to
2 the provision of sewer service shall determine whether the
3 procedures specified in this subsection shall apply to a
4 schedule proposing new rates for sewer service. Nothing in
5 this subsection shall prevent a utility from filing for a rate
6 change pursuant to any other rule or procedure of the
7 commission.

8 B. Whenever there is filed with the commission a
9 schedule proposing new rates pursuant to Section 62-8-7 NMSA
10 1978 by a public utility as defined in Paragraph (3) or (5) of
11 Subsection G of Section 62-3-3 NMSA 1978, with more than an
12 aggregate of one thousand five hundred service connections and
13 fewer than an aggregate of five thousand service connections in
14 any utility operating district or division in New Mexico
15 averaged over the previous three consecutive years, the rates
16 shall become effective as proposed by the public utility
17 without a hearing; provided that the public utility shall be
18 required to give written notice of the proposed rates to the
19 ratepayers receiving service from the public utility at least
20 sixty days prior to filing the proposed rate change with the
21 commission; and provided further that the commission shall
22 enter upon a hearing concerning the reasonableness of proposed
23 rates filed by such a public utility pursuant to Subsections C
24 and D of Section 62-8-7 NMSA 1978 when a rate increase would
25 have the effect of increasing rates more than eight percent in

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1 a twelve-month period, or upon the ~~[commission staff's]~~ office
2 of public regulation commission regulatory affairs' motion or
3 upon the filing with the commission of a protest seeking review
4 of the proposed rates signed by ten percent or more of the
5 ratepayers receiving service from the public utility, if the
6 commission determines there is just cause for reviewing the
7 proposed rates. The petition shall be signed by the person in
8 whose name service is carried. The petition shall be filed no
9 later than twenty days after the filing with the commission of
10 the schedule proposing the new rates. In all other respects,
11 Section 62-8-7 NMSA 1978 shall apply to such water utilities.
12 If a public utility provides both water and sewer service, the
13 service connection revenues attributable to the provision of
14 water service only shall determine whether the procedure
15 specified in this subsection shall apply to a schedule
16 proposing new rates for water service, and the service
17 connection revenues attributable to the provision of sewer
18 service shall determine whether the procedures specified in
19 this subsection shall apply to a schedule proposing new rates
20 for sewer service. Nothing in this subsection shall prevent a
21 public utility from filing for a rate change pursuant to any
22 other rule or procedure of the commission.

23 C. Notwithstanding the provisions of Subsections A
24 and B of this section, a public utility, as defined in
25 Paragraph (3) or (5) of Subsection G of Section 62-3-3 NMSA

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1 1978, with fewer than an aggregate of five thousand service
2 connections in any utility operating district or division in
3 New Mexico averaged over the previous three consecutive years,
4 that is currently in good standing with all applicable
5 requirements of the commission, may adjust its charges for
6 commodity and service by up to two percent in any calendar year
7 without a hearing; provided that the public utility shall not
8 have changed its rates in the prior twelve-month period; and
9 provided further that the public utility shall be required to
10 give written notice of the proposed rate adjustments to the
11 ratepayers receiving service from the public utility prior to
12 its effective date. The increased rates shall not become
13 effective until at least thirty days after notice and filing
14 with the commission. If a public utility provides both water
15 and sewer service, the service connection revenues attributable
16 to the provision of water service only shall determine whether
17 the procedure specified in this subsection shall apply to any
18 schedule proposing any new rate or rates for water service, and
19 the service connection revenues attributable to the provision
20 of sewer service shall determine whether the procedures
21 specified in this subsection shall apply to any schedule
22 proposing any new rate or rates for sewer service. Nothing in
23 this subsection shall prevent a public utility from filing for
24 a rate change pursuant to any other rule or procedure of the
25 commission."

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1 SECTION 9. Section 63-9H-7 NMSA 1978 (being Laws 1999,
2 Chapter 295, Section 7, as amended) is amended to read:

3 "63-9H-7. REGULATION OF RETAIL RATES OF INCUMBENT RURAL
4 TELECOMMUNICATIONS CARRIER.--

5 A. Rates for retail rural public telecommunications
6 services provided by an incumbent rural telecommunications
7 carrier shall be subject to regulation by the commission only
8 in the manner and to the extent authorized by this section.

9 B. An incumbent rural telecommunications carrier
10 shall file tariffs for all retail public telecommunications
11 services that, other than residential local exchange service,
12 shall be effective after ten days' notice to its customers and
13 the commission. An incumbent rural telecommunications carrier
14 shall remain subject to complaint by an interested party
15 subject to Section 63-9H-10 NMSA 1978.

16 C. An incumbent rural telecommunications carrier
17 may increase its rates for residential local exchange service
18 in the manner provided in Subsection B of this section to
19 comply with requirements imposed by any federal or state law or
20 rule. The procedures of Subsections D, E and F of this section
21 shall not apply to increases under this subsection.

22 D. Except as provided in Subsection C of this
23 section, rates for residential local exchange service may be
24 increased by an incumbent rural telecommunications carrier only
25 after sixty days' notice to all affected subscribers. The

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1 notice of increase shall include:

- 2 (1) the reasons for the rate increase;
- 3 (2) a description of the affected service;
- 4 (3) an explanation of the right of the
- 5 subscriber to petition the commission for a public hearing on
- 6 the rate increase;
- 7 (4) a list of local exchange areas that are
- 8 affected by the proposed rate increase; and
- 9 (5) the dates, times and places for the public
- 10 informational meetings required by this section.

11 E. An incumbent rural telecommunications carrier

12 that proposes to increase its rates for residential local

13 exchange service pursuant to Subsection D of this section shall

14 hold at least one public informational meeting in each public

15 regulation commissioner's district as established by the Public

16 Regulation Commission Apportionment Act in which there is a

17 local exchange area affected by the rate change.

18 F. Residential local exchange service rates

19 increased by an incumbent rural telecommunications carrier

20 pursuant to Subsections D and E of this section shall be

21 reviewed by the commission only upon written protest signed by

22 two and one-half percent of all affected subscribers or upon

23 the [~~commission staff's own~~] office of public regulation

24 commission regulatory affairs' motion for good cause. The

25 protest shall specifically set forth the particular rate or

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1 charge as to which review is requested, the reasons for the
2 requested review and the relief that the persons protesting
3 desire. If a proper protest is presented to the commission
4 within sixty days from the date notice of the rate change was
5 sent to affected subscribers of an incumbent rural
6 telecommunications carrier, the commission may accept and file
7 the complaint and, upon proper notice, may suspend the rates at
8 issue during the pendency of the proceedings and reinstate the
9 rates previously in effect and shall hold and complete a
10 hearing thereon within ninety days after filing to determine if
11 the rates as proposed are fair, just and reasonable. The
12 commission may, within sixty days after close of the hearing,
13 enter an order adjusting the rates at issue, except that the
14 commission shall not set any rate below the intrastate cost of
15 providing the service, which shall include the cost methodology
16 and rate of return authorized by the federal communications
17 commission. In the order, the commission may order a refund of
18 amounts collected in excess of the rates and charges as
19 approved at the hearing, which may be paid as a credit against
20 billings for future services. If the complaint is denied, the
21 commission shall enter an order denying the complaint within
22 sixty days after the close of the hearing, and the rates shall
23 be deemed approved. For purposes of this section, cost shall
24 also include a reasonable amount of joint and common costs
25 incurred by the telecommunications carrier in its operations

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1 and may include other accounting adjustments authorized by the
2 commission.

3 G. An incumbent rural telecommunications carrier
4 may at any time elect to file an application with the
5 commission requesting the commission to prescribe fair, just
6 and reasonable rates for the carrier, based on [~~the carrier's~~
7 ~~revenue, expenses and investment in accordance with traditional~~
8 ~~rate-making principles~~] factors that may include the carrier's
9 revenues, expenses or investment, in accordance with
10 traditional rate-making principles, in a manner consistent with
11 the policy calling for relaxed regulation of incumbent rural
12 telecommunications carriers expressed in Section 63-9H-2 NMSA
13 1978 and Subsection C of Section 63-9H-4 NMSA 1978. The
14 commission shall decide cases filed under this subsection with
15 reasonable promptness but no later than nine months following
16 the filing of an application, unless the commission finds that
17 a longer time will be required, in which case the commission
18 may extend the period for an additional three months.

19 H. Rates for local exchange, vertical and long
20 distance service to retail end-user customers may be reduced to
21 a level equal to, but not below, the intrastate cost, which
22 shall include the cost methodology and rate of return
23 authorized by the federal communications commission. If an
24 incumbent rural telecommunications carrier loses its exemption
25 pursuant to Section 251 of the federal act, the rate for a

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1 service, excluding basic service, must cover the cost of the
2 service, including the imputed rate of wholesale service
3 elements as may be required by the commission. The cost of
4 long distance service must also include any interexchange
5 access rates charged to another telecommunications carrier for
6 the service.

7 I. An incumbent rural telecommunications carrier
8 operating pursuant to this section shall have the ability to
9 offer or discontinue offering special incentives, discounts,
10 packaged offerings, temporary rate waivers or other promotions,
11 or to offer individual contracts."

12 SECTION 10. Section 65-2A-4 NMSA 1978 (being Laws 2003,
13 Chapter 359, Section 4, as amended by Laws 2013, Chapter 73,
14 Section 3 and by Laws 2013, Chapter 77, Section 3) is amended
15 to read:

16 "65-2A-4. POWERS AND DUTIES OF THE COMMISSION.--

17 A. In accordance with the Motor Carrier Act, the
18 commission shall:

19 (1) issue operating authorities for a motor
20 carrier operating in New Mexico;

21 (2) establish minimum requirements for
22 financial responsibility for motor carriers; provided that the
23 financial responsibility standards required shall not be
24 inconsistent with applicable federal standards;

25 (3) establish safety requirements for

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1 intrastate motor carrier motor vehicles and drivers subject to
2 the jurisdiction of the commission; provided that the safety
3 requirements shall not be inconsistent with or more stringent
4 than applicable federal safety standards;

5 (4) establish reasonable requirements with
6 respect to continuous and adequate service to be provided under
7 an operating authority;

8 (5) regulate the rates of tariffed service
9 carriers to the extent provided in the Motor Carrier Act,
10 including rates and terms of service for storing household
11 goods and motor vehicles;

12 (6) determine matters of public interest and
13 other matters relating to authorities, rates, territories,
14 nature of service and other terms of service of motor carriers;

15 (7) have jurisdiction to determine any matter
16 under the Motor Carrier Act relating to any transportation
17 service carrier that has not obtained an appropriate operating
18 authority from the commission;

19 (8) subpoena witnesses and records, enforce
20 its subpoenas through a court and, through the court, seek a
21 remedy for contempt;

22 (9) hold a public hearing specific to a
23 protest or a request by the [~~transportation division of the~~
24 ~~commission~~] office of public regulation commission regulatory
25 affairs that has been filed within the notice period in

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1 opposition to or in consideration of an application;

2 (10) create a statewide tariff for household
3 goods service carriers establishing maximum rates that may be
4 charged by carriers; and

5 (11) adopt rules, issue orders and conduct
6 activities necessary to implement and enforce the Motor Carrier
7 Act.

8 B. The commission may:

9 (1) designate inspectors who may inspect the
10 records of a motor carrier subject to the Motor Carrier Act and
11 who shall have the powers of peace officers in the state's
12 political subdivisions with respect to a law or rule that the
13 commission is empowered to enforce pursuant to Section 65-1-6
14 NMSA 1978, excluding the enforcement authority granted to the
15 [~~motor transportation~~] New Mexico state police division of the
16 department of public safety;

17 (2) institute civil actions in the district
18 court of Santa Fe county in its own name to enforce the Motor
19 Carrier Act, its orders and rules, and in the name of the state
20 to recover assessments of administrative fines;

21 (3) from time to time, modify the type and
22 nature of service, territory and terms of service of operating
23 authorities previously issued, and change or rescind rates
24 previously approved;

25 (4) establish statewide tariffs as needed for

1 voluntary and optional use by tariffed service carriers; and

2 (5) adopt rules to implement these powers."

3 SECTION 11. Section 65-2A-5 NMSA 1978 (being Laws 2003,
4 Chapter 359, Section 5, as amended by Laws 2013, Chapter 73,
5 Section 4 and by Laws 2013, Chapter 77, Section 4) is amended
6 to read:

7 "65-2A-5. APPLICATIONS IN GENERAL--MINISTERIAL GRANTS OF
8 AUTHORITY--WHEN PUBLIC HEARINGS REQUIRED.--

9 A. A person shall file an application for any
10 matter for which commission approval is required. An
11 application shall be made in writing, verified and in a form
12 that contains information and is accompanied by proof of
13 service upon interested persons as required by the commission.

14 B. The commission shall simplify to the extent
15 possible the process for approving applications. The
16 commission may hold a public hearing on its own initiative or
17 specific to an objection that has been filed within the notice
18 period in opposition to or in consideration of an application.

19 C. The commission shall hold a public hearing on an
20 application whenever a protest is filed concerning the
21 application during the notice period or the [~~transportation~~
22 ~~division of the commission~~] office of public regulation
23 commission regulatory affairs requests a hearing during the
24 notice period.

25 D. The commission may approve or deny an

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1 application in whole or in part, or allow or require particular
2 terms of service as it may find reasonable and appropriate. If
3 no objection, protest or request for hearing by the
4 [~~transportation division of the commission~~] office of public
5 regulation commission regulatory affairs is filed during the
6 notice period, the commission may grant the application by
7 ministerial action, if the application complies with the
8 provisions of the Motor Carrier Act and the rules of the
9 commission regarding fitness, ability, financial responsibility
10 and safety."

11 SECTION 12. Section 65-2A-11 NMSA 1978 (being Laws 2003,
12 Chapter 359, Section 11, as amended by Laws 2013, Chapter 73,
13 Section 10 and by Laws 2013, Chapter 77, Section 10) is amended
14 to read:

15 "65-2A-11. TEMPORARY AUTHORITY.--

16 A. The commission may without notice grant
17 temporary authority to an applicant for a certificate or permit
18 or for amendment, lease or transfer of all or part of a
19 certificate or permit for a period not to exceed the duration
20 of the application process, if it finds that:

21 (1) the notice period for such application has
22 not yet expired, the application is one directly involving
23 public safety, a governmental program or a specific public
24 event, there is an urgent and immediate public need for such
25 service and the public may be harmed by waiting for the notice

1 period to expire;

2 (2) the applicant for temporary authority has
3 a complete application for a certificate or permit or for
4 amendment, lease or transfer of all or part of a certificate or
5 permit, pending before the commission;

6 (3) the applicant is fit to provide the
7 transportation service requested, is able to provide any
8 certificated service requested and is in compliance with the
9 safety and financial responsibility requirements of the Motor
10 Carrier Act and the rules of the commission; and

11 (4) satisfactory proof of urgent and immediate
12 need has been made by verified proof as the commission shall by
13 rule prescribe.

14 B. An applicant for temporary authority as a
15 tariffed service carrier shall file tariffs covering the
16 transportation services for which temporary authority is being
17 sought.

18 C. If a hearing is held before a hearing examiner
19 for any reason on an application for a certificate or permit or
20 for amendment, lease or transfer of all or part of a
21 certificate or permit or for a tariff rate increase, the
22 applicant may move in such proceeding for a grant of temporary
23 authority or rate approval for a period not to exceed the
24 duration of the application process, and any protesting carrier
25 or the ~~[transportation division of the commission]~~ office of

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1 public regulation commission regulatory affairs may move in
2 such proceeding for reconsideration or modification of any
3 grant of temporary authority previously granted by the
4 commission or the hearing examiner. The hearing examiner in
5 the proceeding shall hold an expedited preliminary public
6 hearing on the grant of temporary authority on the issues in
7 the proceeding and the testimony evidence presented in the
8 hearing on such procedural basis as the commission shall by
9 rule prescribe.

10 D. Motor carriers operating under temporary
11 authority shall comply with the requirements of the Motor
12 Carrier Act and the rules of the commission.

13 E. A grant of temporary authority shall not create
14 a presumption that permanent authority will be granted."

15 SECTION 13. Section 65-2A-13 NMSA 1978 (being Laws 2003,
16 Chapter 359, Section 13, as amended by Laws 2013, Chapter 73,
17 Section 12 and by Laws 2013, Chapter 77, Section 12) is amended
18 to read:

19 "65-2A-13. PROTESTS, OBJECTIONS AND HEARINGS.--

20 A. Any interested person or any member of the
21 public may provide information to the commission or express an
22 objection to any application for a certificate or permit, or
23 for amendment, lease or transfer of a certificate or permit,
24 during the notice period for the application by filing a
25 written objection in regard to the application. The commission

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1 shall consider any objections filed in regard to determining
2 whether to hold a hearing on the application. The commission
3 is not required to hold a hearing pursuant to any objection but
4 may, in its discretion or on its own motion for any reason,
5 hold a hearing on any application for a certificate or permit
6 or for an amendment, lease or transfer of a certificate or
7 permit.

8 B. The commission shall hold a hearing on an
9 application whenever a protest is filed within the notice
10 period or the [~~transportation division of the commission~~]
11 office of public regulation commission regulatory affairs files
12 a request for a hearing relative to an application within the
13 notice period. The commission shall allow a protesting carrier
14 to proceed as an intervenor in the application proceeding.

15 C. In any hearing held on an application:

16 (1) the applicant has the burden of proving
17 that the applicant meets the requirements of the Motor Carrier
18 Act and the rules of the commission for the application at
19 issue, the burden of demonstrating with reasonable specificity
20 the nature and scope of its proposed transportation service,
21 the burden of proving any particular factual matters that the
22 commission or the [~~transportation division of the commission~~]
23 office of public regulation commission regulatory affairs may
24 identify and require, the burden of proving any additional
25 allegations and matters of public interest that it may raise

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1 and, if the application pertains to ambulance service, the
2 burden of proving that the ambulance service that currently
3 exists in the territory sought in the application is inadequate
4 and that the proposed service is directly responsive to a
5 public need and demand for the service proposed;

6 (2) a protesting carrier has the burden of
7 proving all matters of fact pertaining to its full-service
8 operation within its certificated full-service territory, the
9 burden of proving the potential impairment or adverse impact on
10 its existing full-service operation by the transportation
11 service proposed by the applicant and the burden of proving all
12 other allegations and matters of public interest that it may
13 raise. The protesting carrier's proof should include, without
14 limitation, a demonstration with reasonable specificity of the
15 nature of the existing full service being provided, the volume
16 of passengers transported, economic analysis related to
17 expenses and revenues of the full-service operation and the
18 anticipated economic, business or functional effect of the
19 proposed service on the existing provision of, or rates for,
20 full-service transportation within the full-service territory;

21 (3) the commission may allow other interested
22 persons to intervene, either generally or on the basis of
23 specific facts or issues. A permissive intervenor has the
24 burden of proof for its position on all factual matters and
25 legal issues that it alleges and on which it is permitted to

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1 intervene; and

2 (4) all parties to a hearing may base their
3 demonstration and proof on business data, experienced persons
4 and mathematical calculations. Expert testimony shall not be
5 required of any party but may be provided at the option of a
6 party.

7 D. The commission shall not grant an application:

8 (1) for a certificate or permit for ambulance
9 service, or for amendment, lease or transfer of such a
10 certificate or permit, if it finds after hearing that the
11 existing ambulance service is provided on a reasonably
12 continuous and adequate basis in the territory in which the new
13 service is sought or that the holder of the certificate or
14 lessee providing the existing ambulance service in such
15 territory is willing and able to provide, and does subsequently
16 provide, reasonably continuous and adequate service within such
17 territory, as specified by commission order;

18 (2) for a new certificate for general taxicab
19 service within the full-service territory of a protesting
20 municipal taxicab service carrier; or

21 (3) for a certificate for any passenger
22 service other than those identified in Paragraphs (1) and (2)
23 of this subsection, or for a permit for passenger service other
24 than for an ambulance service pursuant to a public-charge
25 contract, or for amendment, lease or transfer of such a

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1 certificate or permit, within a protesting full-service
2 carrier's full-service territory, if it finds after hearing
3 that the grant of the application presents a reasonable
4 potential to impair, diminish or otherwise adversely affect the
5 existing provision of full-service passenger service to the
6 public in the full-service territory or if the application is
7 otherwise contrary to the public interest in the full-service
8 territory. In considering the potential effect on provision of
9 transportation services to the public in regard to such an
10 application, the commission shall consider all evidence
11 presented pertaining to such potential effect, including
12 evidence of the effect that diversion of revenue or traffic may
13 have on the provision of full-service passenger service to the
14 community. Diversion of revenue or traffic from an existing
15 motor carrier shall not, however, be sufficient grounds for
16 denying the application without a showing that the diversion
17 presents a reasonable potential to affect the provision of
18 full-service passenger service to the community."

19 **SECTION 14.** Section 65-2A-15 NMSA 1978 (being Laws 2003,
20 Chapter 359, Section 15, as amended by Laws 2013, Chapter 73,
21 Section 14 and by Laws 2013, Chapter 77, Section 14) is amended
22 to read:

23 "65-2A-15. MULTIPLE OPERATING AUTHORITIES AND BUSINESS
24 TRADE NAMES ALLOWED.--

25 A. A person may simultaneously hold certificates

1 for different kinds of certificated services, permits for
2 different contracts and warrants for different kinds of
3 warranted service within the same territory.

4 B. Any motor carrier that holds more than one
5 certificate for the same kind and nature of certificated
6 service in the same territory or more than one permit for the
7 same contract shall file an application with the commission to
8 consolidate such operating authorities.

9 C. The commission shall not grant any new operating
10 authority to a motor carrier that duplicates the operating
11 authority of the same kind and for the same territory already
12 held by that motor carrier.

13 D. Certificated service carriers holding both a
14 certificate and permit or warrant for related services may use
15 the same vehicles and may transport passengers and property, or
16 mixed loads of household goods and property, pursuant to those
17 authorities in the same vehicles and on the same trip.

18 E. Every certificated, permitted or warranted
19 service carrier shall file with [~~the transportation division~~
20 ~~of~~] the commission all business trade names under which the
21 carrier operates its service or services authorized and shall
22 provide [~~the transportation division of~~] the commission with
23 proof of financial responsibility for all business trade names
24 in addition to its legal name. The commission shall accept
25 business trade names as submitted by a carrier. Filing with

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1 [the transportation division of] the commission shall not, by
2 itself, establish or otherwise affect the ownership or right to
3 use a business trade name under the intellectual property laws
4 of the state of New Mexico."

5 SECTION 15. Section 65-2A-20 NMSA 1978 (being Laws 2003,
6 Chapter 359, Section 20, as amended by Laws 2013, Chapter 73,
7 Section 18 and by Laws 2013, Chapter 77, Section 18) is amended
8 to read:

9 "65-2A-20. TARIFFS.--

10 A. A tariffed service carrier shall not commence
11 operations or perform a new service under its operating
12 authority without having an approved tariff on file with the
13 commission.

14 B. A tariffed service carrier shall file with the
15 commission proposed tariffs showing the rates for
16 transportation and all related activities and containing a
17 description of the type and nature of the service, territory
18 and all terms of service for transportation and related
19 services. The rates shall be stated in terms of United States
20 currency. Tariffs for individual carriers shall also include
21 the carrier's legal name, all business trade names used by the
22 carrier, contact information, information for service of
23 process, the territory authorized for each transportation
24 service listed in the tariff and any terms of service contained
25 in the operating authorities for that particular carrier. Each

1 tariffed service carrier operating pursuant to a statewide
2 tariff shall file with the commission a tariff statement
3 referencing the statewide tariff being used and include the
4 carrier's legal name, all business trade names used by the
5 carrier, contact information, information for service of
6 process, the territory authorized for that carrier and any
7 terms of service contained in the operating authority for that
8 particular carrier.

9 C. A tariffed service carrier shall not charge, or
10 permit its agents, employees or contract drivers to charge, a
11 different or additional rate, or to use different or additional
12 practices or terms of service, for transportation or for a
13 service rendered to or for the user of the service other than
14 the rates and terms of service specified in approved tariffs in
15 effect at the time, except:

16 (1) for ambulance and household goods service
17 carriers, in accordance with rates and terms of service
18 established by federal or state law for federal or state
19 governmental programs or operations; and

20 (2) for tariffed passenger service carriers
21 other than ambulance service carriers, in accordance with the
22 rates and terms of service established by governmental programs
23 or operations in which they voluntarily participate.

24 D. A tariffed service carrier shall not pay or
25 refund, directly or indirectly to any person, a portion of the

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1 rate specified in its approved tariff, offer to a person
2 privileges or facilities, perform a service or remit anything
3 of value, except:

4 (1) in accordance with tariffs approved by the
5 commission;

6 (2) for ambulance and household goods service
7 carriers, in accordance with rates and terms of service
8 established by federal and state law for federal and state
9 governmental entities, programs or operations;

10 (3) for tariffed passenger service carriers
11 other than ambulance service carriers, in accordance with the
12 rates and terms of service established by governmental programs
13 or operations in which they voluntarily participate; or

14 (4) in settling or resolving a claim by a
15 customer.

16 E. The commission shall post on its internet [~~web~~
17 ~~site]~~ website electronic copies of all currently approved
18 individual and statewide tariffs, and all tariff statements
19 filed by carriers using statewide tariffs, in a manner to
20 facilitate public access, review and comparison of rates and
21 terms of service. A certificated passenger service carrier
22 other than an ambulance service carrier shall post its tariff
23 rates in each vehicle used in the provision of its
24 transportation service.

25 F. A tariffed service carrier shall file an

1 application with the commission for any change in the tariff,
2 accompanied by the proposed tariff, at least twenty days prior
3 to implementation of the amended rates and terms of service
4 contained in the tariff. Except as provided in this section,
5 an amended tariff shall be approved and become effective twenty
6 days after filing of the application for a change in the
7 tariff. The commission shall post notice of each application
8 for a change in a tariff along with a copy of the proposed
9 tariff on the commission [~~web site~~] website.

10 G. No changes in terms of service disapproved by
11 [~~the transportation division of~~] the commission as inconsistent
12 with the Motor Carrier Act, rule of the commission, the
13 individual operating authority of the carrier or otherwise in
14 violation of law shall become effective or be part of the
15 approved tariff. The following terms of service contained in a
16 tariff shall not be considered inconsistent with, or predatory
17 or discriminatory in nature under the Motor Carrier Act or
18 commission rule:

19 (1) a carrier may decline or terminate service
20 under circumstances that reasonably appear to present a
21 physical danger to the driver, to another employee of the
22 carrier or to passengers or, for carriers other than ambulance
23 service carriers, a danger to the condition of the motor
24 vehicle or cargo;

25 (2) a carrier is not responsible for

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1 cancellations or delays due to weather or road conditions when
2 reasonably required for safety or when due to road
3 construction, road closures, law enforcement stops or similar
4 matters beyond the control of the carrier;

5 (3) a passenger service carrier may require
6 that all firearms carried by any passenger other than an
7 authorized law enforcement officer be unloaded and placed in a
8 locked area of the vehicle during transport, along with all
9 ammunition and any other weapons; or

10 (4) a passenger service carrier other than an
11 ambulance service carrier may decline or terminate service when
12 the passenger cannot give an adequate description of, or
13 direction to, the destination or cannot transfer into or out of
14 the motor vehicle without requiring physical assistance from
15 the driver.

16 H. An application for amendment of tariff rates
17 that increases any tariff rate to a level greater than that
18 previously approved by the commission for a full-service
19 carrier or a towing service providing nonconsensual tows shall
20 not become effective until approved by the commission as
21 reasonable under Section 65-2A-21 NMSA 1978. The commission
22 shall hold a hearing appropriate to the type of transportation
23 service provided by the carrier for any such application, if
24 requested by the applicant or by the [~~transportation division~~
25 ~~of the commission~~] office of public regulation commission

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underscored material = new
~~[bracketed material] = delete~~

1 regulatory affairs, or if ordered in the discretion of the
 2 commission. The commission may provide for reasonable periodic
 3 rate increases for full-service carriers or towing services
 4 providing nonconsensual tows pursuant to a rate escalator or
 5 adjustment clause for any or all rates of a carrier on such
 6 basis as the commission finds reasonable.

7 I. A person may make a complaint in writing to the
 8 commission that a rate or term of service contained in a
 9 tariff, or a rate otherwise charged or practice otherwise
 10 effected, is inconsistent with or in violation of the Motor
 11 Carrier Act, commission rule or the operating authority or
 12 current tariff of the motor carrier. The commission may
 13 suspend the operation of a rate, term of service or practice
 14 for a period not to exceed sixty days to investigate its
 15 reasonableness. If the commission finds that a rate charged by
 16 a tariffed carrier, or a term of service or practice effected
 17 by a tariffed carrier, is unauthorized, predatory or
 18 discriminatory, the commission shall prescribe the rate or the
 19 maximum or minimum rate to be observed or the terms of service
 20 to be made effective."

21 **SECTION 16.** Section 65-7-19 NMSA 1978 (being Laws 2016,
 22 Chapter 80, Section 19) is amended to read:

23 "65-7-19. TRANSPORTATION [~~DIVISION~~] FUND CREATED--
 24 ASSESSMENT AND COLLECTION OF FEES.--

25 A. The "transportation [~~division~~] fund" is created

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1 in the state treasury for the purpose of ensuring the safety
2 and financial responsibility of transportation network
3 companies and transportation network company drivers. The fund
4 shall consist of fees collected pursuant to the Transportation
5 Network Company Services Act, administrative fines collected
6 under that act, appropriations, gifts, grants, donations and
7 earnings on investment of the fund. Balances in the fund shall
8 not revert to the general fund or any other fund at the end of
9 any fiscal year.

10 B. The transportation [~~division~~] fund shall be
11 administered by the public regulation commission. Money in the
12 fund is appropriated to the commission to carry out its duties
13 pursuant to the provisions of the Transportation Network
14 Company Services Act. Not more than five percent of the fees
15 collected pursuant to this section shall be used by the
16 commission for administrative purposes.

17 C. Payments from the transportation [~~division~~] fund
18 shall be made upon vouchers issued and signed by the [~~director~~
19 ~~of the administrative services division of~~] chief of staff of
20 the commission resources division of the public regulation
21 commission or the [~~director's~~] chief of staff's authorized
22 representative upon warrants drawn by the secretary of finance
23 and administration."

24 SECTION 17. Section 70-3-21 NMSA 1978 (being Laws 2004,
25 Chapter 80, Section 1) is amended to read:

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underscored material = new
[bracketed material] = delete

1 "70-3-21. PIPELINE SAFETY FUND--CREATED--ASSESSMENT AND
2 COLLECTION OF FEES.--

3 A. The "pipeline safety fund" is created in the
4 state treasury for the purpose of enhancing the staffing and
5 training of the commission staff for carrying out the pipeline
6 safety [~~bureau~~] duties of the commission with the goal of
7 assuming the function of inspection of interstate as well as
8 intrastate pipelines. The fund shall consist of fees collected
9 pursuant to Subsection D of this section, appropriations,
10 gifts, grants, donations and earnings from investment of the
11 fund. Balances in the fund shall not be transferred to the
12 general fund at the end of any fiscal year.

13 B. The pipeline safety fund shall be administered
14 by the commission. Money in the fund is appropriated to the
15 commission to carry out its duties pursuant to the provisions
16 of the Pipeline Safety Act and Chapter 62, Article 14 NMSA
17 1978. Not more than five percent of the fees collected
18 pursuant to Subsection D of this section shall be used by the
19 commission for administrative purposes.

20 C. Payments from the pipeline safety fund shall be
21 made upon vouchers issued and signed by the [~~director~~] chief of
22 staff of the [~~administrative services~~] commission resources
23 division of the commission or the [~~director's~~] chief of staff's
24 authorized representative upon warrants drawn by the secretary
25 of finance and administration.

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1 D. The commission shall collect annual pipeline
2 safety fees for the duties relating to inspection of intrastate
3 pipelines from persons subject to the Pipeline Safety Act in
4 accordance with and not to exceed the following amounts:

5 (1) for the transportation of gas:

6 (a) two dollars (\$2.00) per domestic
7 service line;

8 (b) thirty-five dollars (\$35.00) per
9 commercial service line;

10 (c) thirty-five dollars (\$35.00) per
11 mile of line for the transportation of gas subject to
12 inspection by the [~~pipeline safety bureau~~] commission, with a
13 minimum assessment of four hundred dollars (\$400); and

14 (d) one hundred dollars (\$100) per
15 master meter, direct sales lateral or liquified petroleum gas
16 system; and

17 (2) for the transportation of oil, thirty-five
18 dollars (\$35.00) per mile of transmission line subject to
19 inspection by the [~~pipeline safety bureau~~] commission, with a
20 minimum assessment of four hundred dollars (\$400). A fee shall
21 not be assessed on mileage under the jurisdiction of or
22 inspected by the federal department of transportation.

23 E. The commission shall annually conduct a public
24 review of the fees collected and payments made from the fund
25 and provide a summary to the legislative finance committee and

underscored material = new
[bracketed material] = delete

1 the department of finance and administration. Based upon its
 2 findings, the commission shall adjust the annual fee rates
 3 authorized by Subsection D of this section in order to collect
 4 only that amount estimated to be necessary to carry out the
 5 provisions of the Pipeline Safety Act and Chapter 62, Article
 6 14 NMSA 1978; provided that the fees shall not be greater than
 7 the amounts set forth in Subsection D of this section."

8 SECTION 18. TEMPORARY PROVISION--EXEMPT, CLASSIFIED AND
 9 PROBATIONARY PERSONNEL AND POSITIONS--APPOINTMENT--ADDITIONAL
 10 PERSONNEL.--On the effective date of this act:

11 A. all classified employees and probationary
 12 employees employed by the public regulation commission shall
 13 continue to hold their present position classifications
 14 according to the Personnel Act and shall be transferred to the
 15 newly created commission resources division of the public
 16 regulation commission or the newly created office of public
 17 regulation commission regulatory affairs as provided in this
 18 section;

19 B. all classified employees, classified positions,
 20 filled or not filled, and probationary employees of the legal
 21 division, transportation division, utility division and
 22 administrative services division of the public regulation
 23 commission, whose functions are being transferred to the office
 24 of public regulation commission regulatory affairs, shall be
 25 transferred to the office of public regulation commission

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1 regulatory affairs;

2 C. all classified employees, classified positions,
3 filled or not filled, and probationary employees of the
4 consumer relations division of the public regulation commission
5 shall be transferred to the office of public regulation
6 commission regulatory affairs;

7 D. all classified employees, classified positions,
8 filled or not filled, and probationary employees of the legal
9 division, transportation division, utility division or
10 administrative services division of the public regulation
11 commission, whose functions are not being transferred to the
12 office of public regulation commission regulatory affairs,
13 shall be transferred to the commission resources division of
14 the public regulation commission;

15 E. all classified employees, classified positions,
16 probationary employees and duties of the pipeline safety bureau
17 shall remain in the public regulation commission under the
18 direction of the chief of staff of the commission resources
19 division;

20 F. the governor shall provide the commission with a
21 list of finalists for appointment to the newly created position
22 of chief of staff of the commission resources division and
23 shall appoint the newly created position of director of the
24 office of public regulation commission regulatory affairs as
25 soon as practical;

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1 G. after appointment, the chief of staff of the
2 commission resources division may hire additional personnel in
3 accordance with the Personnel Act;

4 H. after appointment, the director of the office of
5 public regulation commission regulatory affairs may hire
6 division directors for the newly created divisions and
7 additional personnel in accordance with the Personnel Act;

8 I. subject to the Personnel Act, any qualified
9 person, including present or past employees of the public
10 regulation commission, may apply for any position in the
11 commission resources division or the office of public
12 regulation commission regulatory affairs; and

13 J. the executive assistants selected by each
14 commissioner shall remain exempt employees of the public
15 regulation commission.

16 **SECTION 19. TEMPORARY PROVISION--TRANSFER OF**
17 **APPROPRIATIONS, EQUIPMENT, SUPPLIES, RECORDS, MONEY AND**
18 **CONTRACTS TO THE OFFICE OF PUBLIC REGULATION COMMISSION**
19 **REGULATORY AFFAIRS.--On the effective date of this act:**

20 A. all money, appropriations made before or after
21 the effective date of this act, records, furniture, equipment,
22 supplies and other property of the legal division,
23 transportation division, utility division, administrative
24 services division and consumer relations division of the public
25 regulation commission related to duties transferred to the

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1 office of public regulation commission regulatory affairs, as
2 necessary, shall be transferred to the office of public
3 regulation commission regulatory affairs;

4 B. all existing contracts and agreements in effect
5 pertaining to the duties of the legal division, transportation
6 division, utility division, administrative services division
7 and consumer relations division of the public regulation
8 commission transferred to the office of public regulation
9 commission regulatory affairs shall be binding and effective on
10 the office of public regulation commission regulatory affairs;
11 and

12 C. the rules, orders and decisions of the legal
13 division, transportation division, utility division and
14 consumer relations division of the public regulation commission
15 shall remain in effect until repealed or amended.

16 SECTION 20. REPEAL.--Sections 8-8-5 through 8-8-8 and
17 8-8-10 through 8-8-13 NMSA 1978 (being Laws 1998, Chapter 108,
18 Sections 5 through 8 and 10 through 12; Laws 2000, Chapter 100,
19 Section 1 and Laws 2000, Chapter 102, Section 1; and Laws 1998,
20 Chapter 108, Section 13, as amended) are repealed.

21 SECTION 21. EMERGENCY.--It is necessary for the public
22 peace, health and safety that this act take effect immediately.