

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 8 PROPANE SERVICES
PART 1 CUSTOMER PROTECTION

17.8.1.1 ISSUING AGENCY: Public Regulation Commission.

17.8.1.2 SCOPE: This rule applies to dealers of propane services subject to the jurisdiction of the New Mexico Public Regulation Commission, including but not limited to out-of-state companies providing services to New Mexico residents.

17.8.1.3 STATUTORY AUTHORITY: NMSA 1978, Sections 8-8-4, 8-8-15.

17.8.1.4 DURATION: Permanent.

17.8.1.5 EFFECTIVE DATE: July 1, 2010, unless a later date is cited at the end of a section.

17.8.1.6 OBJECTIVE: The purpose of this rule is ensure that propane dealers provide safe and efficient service as well as transparent, accurate and timely information to residential delivery customers. The purpose of this rule is also to establish uniform standards to be followed by propane dealers in dealing with residential delivery customers, and to aid residential delivery customers in obtaining and maintaining essential propane services. The rule establishes a basis for determining the reasonableness of such demands as may be made upon propane dealers by residential delivery customers, specifies procedures relating to the resolution of complaints, and provides the commission with tools for monitoring propane dealers' compliance.

17.8.1.7 DEFINITIONS: Unless otherwise specified, as used in this rule:

A. administering authority means the Human Services Department or a tribal or pueblo entity that administers a tribe's or pueblo's low-income home energy assistance program under NMSA 1978, Section 27-6-18.1;

B. budget payment plan means an arrangement between a residential delivery customer and a propane dealer designed to levelize a residential customer's projected annual propane costs and to avoid the accumulation of a burdensome unpaid balance due to the cost of seasonally higher bills;

C. dealer means a provider of liquid propane and related goods, services and equipment;

D. delinquent means the status of a bill rendered to a residential delivery customer for propane service which remains unpaid after the due date of the bill;

E. discontinuance of service means an intentional cessation of service by a propane dealer not voluntarily requested by a residential customer;

F. estimated bill means a bill for propane service which is not based on an actual reading of the customer's meter or other measuring device for the period billed;

G. heating season means the period beginning November 15 and continuing through March 15 of the subsequent year;

H. HSD means the Human Services Department;

I. LIHEAP means the low-income home energy assistance program administered by HSD or a tribal or pueblo entity that administers a tribe's or pueblo's low-income home energy assistance program under NMSA 1978, Section 27-6-18.1;

J. low or minimal usage means annual propane purchase and use of an average of 800 gallons or below annually or 100 gallons or below monthly;

K. medical certificate means a certificate signed or issued by a medical professional regarding health of the residential delivery customer as pertains to maintaining propane service under the medical protection provision of this Rule. The content of the medical certificate shall be conclusive and may not be disputed by the propane dealer for purposes of a customer maintaining propane service and supply;

L. medical professional means a licensed physician, physician's assistant, osteopathic physician, osteopathic physician's assistant, or certified nurse practitioner;

M. MFA means the Mortgage Finance Authority;

N. New Mexico EnergySmart means the low-income weatherization assistance program administered by MFA;

O. payment agreement means an arrangement between a residential delivery customer and a propane dealer to make a series of payments scheduled over a period greater than forty-five (45) days intended to

rectify any past due balances related to prior propane consumption or use;

P. propane means a liquid fuel stored under pressure. Propane is also known as LPG, liquefied petroleum gas and LP gas;

Q. residential delivery customer means any person being supplied with and legally liable for the payment of residential propane purchases for goods, services and related equipment;

R. residential delivery customer rate base means any variation of prices charged by a propane dealer to a residential delivery customer;

S. residential service means the provision or use of propane for household or domestic purposes;

T. schedule of charges means the documentation provided by the dealer to the customer identifying and serving as notice of all relevant and related charges for the legal purchase and use of propane;

U. schedule of prices means the literal figures and dollar amounts used in the schedule of charges, reflective of the cost of relevant and related charges for the legal purchase and use of propane goods, services and equipment;

V. seriously or chronically ill means an illness or injury that results in a medical professional's determination that the loss of propane service would give rise to a substantial risk of death or would gravely impair health.

17.8.1.8 EXEMPTION AND VARIANCE:

A. Exemption. There shall be a presumption against the granting of an exemption. The presumption may be rebutted only by a showing, supported by clear and convincing evidence, that the propane dealer seeking the exemption will suffer permanent and irreparable financial harm or, solely as a direct result of the rule for which the dealer seeks exemption, the dealer will be forced to cease operations. The propane dealer shall bear the burden of proof.

B. Variances. There shall be a presumption against the granting of a variance. The presumption may be rebutted only by:

(1) a showing, supported by the preponderance of the evidence, that the propane dealer has good cause for seeking the variance; and

(2) the submission of an alternative proposal designed to achieve the purpose of the rule for which the dealer seeks a variance.

The propane dealer shall bear the burden of proof.

C. Stay pending application for exemption or variance. An application for an exemption or a variance shall stay the application of 17.8.1 NMAC to the propane dealer applying for the exemption or variance as it relates to the matter on which an exemption or a variance is sought for a period of twenty (20) days. Within that time frame the commission may for good cause shown extend the period of the stay.

D. Notice of application for exemption or variance. A propane dealer filing an application for an exemption or a variance with the commission shall contemporaneously with such filing mail copies of such application to the Attorney General.

E. Exemption or variance hearings. The commission must either schedule a hearing on any proposed exemption or variance or affirmatively seek comment on the proposed exemption or variance from the Attorney General, HSD or pueblo or tribal entities that administer LIHEAP, any other administering authority, and interested consumer advocates.

17.8.1.9 TANK RENTAL, OWNERSHIP AND REMOVAL:

A. Rental. A propane dealer shall disclose to any residential delivery customer upon initiation of service any and all annual tank rental fees, including fees for tank removal and/or propane pump-out.

B. Ownership. A residential delivery customer may use his/her own tank and regulator if suitable for continued service. Such ownership shall assume liability for all equipment, including tank and regulator, on the part of said customer, and shall not result in additional fees for transference of services from one company to another.

C. Removal. A residential delivery customer may change propane dealers for any reason. A propane dealer shall remove his/her rental tank from such property within thirty (30) days after receiving written notice of such a change and shall issue a refund within thirty (30) days for any unused propane and tank rental minus applicable fees and balances due under terms of tank rental agreement.

17.8.1.10 BUDGET PAYMENT PLANS: A propane dealer shall offer reasonable and effective budget payment plans to its residential delivery customers.

A. The budget payment plan shall provide the residential delivery customer with a method of leveling the bill for propane goods, services and equipment. Budget payment plans shall be designed to spread a residential delivery customer's projected annual propane cost over a 12-month period, lowering the cost of seasonally higher bills.

B. The budget payment plan shall be available to any residential delivery customer who is then either current in payments for propane service or who has entered into and is complying with a contract for propane services at any time during the year, without regard to the residential delivery customer's length of service with the propane dealer.

C. In determining one (1) year's budget payment plan the computation shall be specific to each residential customer. If the residential customer has been served by the dealer at the same location for the previous year, the budgeted payment should be based on the residential customer's actual use for the previous year and may be adjusted for known price changes, bill averages and normalized weather conditions. A propane dealer may estimate annual usage considering the size of a residential delivery customer's home, the number of people in the household, other heating sources in the household, and the normal temperature maintained in the household.

D. When considering budget payment plans for new customers, dealers may also render and apply a comparative analyses, based on aforementioned criteria, in addition to rendering and applying a comparative analysis of similar households' usages for which said dealer also provides similar goods, services and equipment.

E. In the case of a positive balance at the conclusion of a budget payment plan, customers may chose between credit or cash refunds.

F. Dealers shall notify residential delivery customers within 30 days of any and all rate changes that may impact payroll deduction plans or balances due during the life of a budget payment plan.

17.8.1.11 PAYMENT AGREEMENTS:

A. Dealers shall attempt to arrange a payment agreement for the payment of past due charges when a residential customer evidences an inability to pay the charges. Service may not be discontinued if, on or before the specific date for discontinuance, the residential customer enters into a payment agreement with the dealer. The dealer shall also maintain a list of organizations in the area that may provide assistance to residential customers in paying propane bills and shall notify residential customers that application forms for LIHEAP are available upon request and at its billing offices. Dealers are encouraged to refer low- and limited-income assistance inquiries to HSD.

B. Payment agreements shall provide that service will not be discontinued if the residential customer pays a reasonable portion of the bill when terms of the payment agreement are reached and agrees to pay the remaining outstanding balance in reasonable installments until the bill is paid. For purposes of determining reasonableness the parties shall weigh the following:

- (1) the size of the outstanding balance;
- (2) the residential customer's ability to pay;
- (3) the residential customer's payment history;
- (4) the time the balance has been outstanding;
- (5) the reasons why the balance has been outstanding;
- (6) whether the residential customer meets the qualifications of LIHEAP;
- (7) a six-month payment agreement for residential customers with significant outstanding

balances; and

- (8) any other relevant factors relating to the residential customer's service.

C. A payment agreement to pay an outstanding past due balance on a bill does not relieve the residential customer from the obligation to pay future bills on a current basis.

D. If the residential customer has entered into a payment agreement as provided by this rule, the residential customer shall receive a statement of:

- (1) the actual service charges incurred for the current billing period;
- (2) the amount of the payment agreement due; and
- (3) the total amount due (sum of (1) and (2)).

E. A residential customer may offer the utility a proposed payment agreement or a proposed change in the terms of an existing payment agreement. If the dealer and the residential customer do not reach an agreement, the dealer may refuse the offer orally and shall note in that residential customer's records the reason for refusal and what special consideration was given for residential customers who meet the qualifications of LIHEAP. Upon final refusal, the dealer also shall provide oral notice of the right of the residential customer to appeal the refusal to the commission.

F. A propane dealer may not discontinue service to a residential delivery customer who defaults on an initial payment agreement without contacting the customer, determining whether the initial payment agreement was unaffordable, and offering to modify the periodic payment to an amount that the customer can afford. Nothing shall prohibit a propane dealer from discontinuing service to a residential customer who defaults on the modified agreement.

17.8.1.12 CONTENTS OF BILLS AND/OR METERED FUEL TICKETS: Bills and/or metered fuel tickets for propane goods, services and equipment shall include:

- A. the number of gallons metered;
- B. the date the bill is due;
- C. the amount due for and explanation of special services and fees such as but not limited to HAZMAT and environmental fuel surcharges;
- D. the total amount due with any previous balance separately presented from the current charges;
- E. gross receipts taxes and any other taxes, if not a part of the base rate;
- F. pricing categories and criteria used to establish residential customer rate base;
- G. the address and phone number of the propane dealer designating where the residential customer may initiate an inquiry or complaint regarding the bill as rendered or the service provided;
- H. the toll-free number of the consumer relations division of the commission together with a statement advising residential customers that they may contact the commission if they are unable to resolve a billing dispute with the dealer; and
- I. a copy of the propane customer bill of rights, to be provided upon initiation of service for new residential customers, and bi-annually for existing customers.

17.8.1.13 PUBLIC NOTICE OF RESIDENTIAL CUSTOMER RIGHTS: A propane dealer shall provide in both English and Spanish information which in layman's terms summarizes the rights and responsibilities of the propane dealer and residential delivery customers in accordance with 17.8.1 NMAC. This information shall be displayed prominently by the propane dealer, shall be presented to the customer at the time initial service is offered and in any event by the time a contract for service is entered, shall be included in any bills and/or metered fuel tickets to existing residential customers on a bi-annual basis, and shall be available to the general public upon request. This "customer bill of rights" shall contain information concerning, but not limited to:

- A. billing procedures, schedule of charges, budget billing plans and payment agreements;
 - B. meeting the qualifications of LIHEAP, including the phone number of the administering authority;
- and
- C. procedures for filing a complaint with the commission, including the phone number of the commission's consumer relations division.

17.8.1.14 NOTICE, AVAILABILITY AND PUBLIC ACCESS TO SCHEDULE OF CHARGES: A propane dealer shall keep on file and provide public access to its current charges for residential service. This information shall be displayed prominently by the propane dealer, and shall be available to the general public upon request. The propane dealer shall make such information available to new residential delivery customers upon commencement of propane service and to existing residential delivery customers with the next propane delivery after the effective date of this rule.

17.8.1.15 NOTICE, AVAILABILITY AND PUBLIC ACCESS TO SCHEDULE OF PRICES: A propane dealer shall provide to the general public upon request the current price for propane, including all additional charges and discounts that may apply to a requested delivery.

17.8.1.16 REPORTS TO THE COMMISSION: Propane dealers shall report information required by sections 17.8.1.13 and 17.8.1.14 NMAC annually no later than June 25 of any given year, and within ten (10) business days upon commission request.

17.8.1.17 QUOTED PRICES AND CHARGES: A propane dealer shall deliver propane and services to a residential delivery customer at the price and charges quoted by the propane dealer for the requested delivery.

17.8.1.18 LOW OR MINIMAL USE CHARGES: Residential delivery customers shall not be penalized for low or minimal usage.

17.8.1.19 ASSISTANCE TO CUSTOMERS:

A. A propane dealer shall assist a residential delivery customer or prospective residential delivery customer in selecting an appropriate payment plan and furnish such additional information concerning that payment plan as the residential delivery customer may reasonably request.

B. A propane dealer shall maintain residential delivery customer records which contain details of all bills and correspondence sent to or received from the residential delivery customer and evidence of all payments, service requests, maintenance and repairs by propane dealer, deposits, guarantees, or other monies received from the customer.

C. A propane dealer shall furnish to the residential delivery customer upon request copies of the customer's records.

D. A propane dealer shall furnish copies of a residential delivery customer's records relevant to a matter in dispute to any person authorized in writing by the customer to receive such records.

E. The propane dealer shall correct any non-disputed mistakes in a residential delivery customer's payment history that are brought to its attention.

F. A propane dealer shall maintain records which contain the number of:

- (1) disputes that require further action by the propane dealer beyond the initial contact related to billing and services;
- (2) settlement agreements made by the propane dealer;
- (3) security deposits collected, number credited or refunded, number of guarantees received and number terminated;

- (4) residential customers with contracts for delivery;

- (5) residential customers with payment plans.

G. The above-enumerated records shall be kept for the period of at least three (3) years and shall be made available to the commission within ten (10) business days upon request.

H. Propane dealer employees and/or agents providing services on proprietary residential delivery customer equipment and private property must be licensed by the appropriate federal, state and local agencies.

17.8.1.20 PARTICIPATION IN LIHEAP AND CRITERIA FOR PARTICIPATION: All propane dealers shall accept payments from LIHEAP and/or administering authorities and shall make available to any residential delivery customer who meets the qualifications for LIHEAP, as determined by the administering authority, fifty-(50) gallon fills and lowest available pricing during the heating season.

17.8.1.21 NOTICE OF ENERGY ASSISTANCE: All propane dealers shall make available to the general public upon request and in all billing packets and metered fuel tickets information regarding:

A. LIHEAP application forms, qualification requirements, application procedures, and locations at which residential customers may submit LIHEAP applications; and

B. New Mexico EnergySmart application forms, qualification requirements, application procedures, and locations at which residential customers may submit EnergySmart applications.

17.8.1.22 DELIVERY AND NOTICE OF EMERGENCY SERVICES:

A. For residential delivery customers who meet the qualifications of LIHEAP, a propane dealer shall provide, without additional fees and charges:

- (1) an emergency minimum fill of no less than 50 gallons;

- (2) the lowest available price quoted.

B. In a "state of emergency" a propane dealer shall provide goods, services and delivery for customers of competing dealerships who may not be able to provide said goods, services and delivery. Propane dealers providing said emergency services cannot charge penalties or service fees which exceed the price agreed to per competitor's existing customer contract. In such cases, propane dealers shall not be held liable for conditions that pre-exist such fills.

17.8.1.23 DISCONTINUANCE AND RESTORATION OF SERVICE:

A. No propane dealer shall discontinue propane service without the consent of the residential delivery customer unless there is a delinquency and notice of discontinuance of service has been provided to the residential delivery customer at least twelve (12) days, but not more than twenty (20) days prior to discontinuance unless:

(1) the immediate health and safety of the residential delivery customer and/or general public is at risk;

(2) residential delivery customer has tampered with, damaged or deliberately destroyed equipment furnished and owned by the propane dealer.

B. A propane dealer shall not discontinue service for:

(1) the failure of a residential delivery customer to pay for special services;

(2) nonpayment of the disputed amount of a bill;

(3) delinquency in payment for service to a previous occupant of the same premises unless a court has found the new residential customer legally liable for the debt of the previous occupant or the previous occupant continues to reside at the premises;

(4) failure of a residential delivery customer to pay the bill of another residential delivery customer as guarantor thereof;

(5) failure of a residential delivery customer to pay for service if the propane dealer has received a signed medical certification form and a financial certification form as provided by this rule;

(6) failure of a residential delivery customer to pay for service rendered during the heating season if the residential delivery customer meets the qualifications for LIHEAP as notified by administering agency and LIHEAP payment is pending.

C. Upon a residential delivery customer's request, a propane dealer shall restore service promptly when the cause for discontinuance of service has been eliminated, satisfactory payment arrangements have been made and, if required, applicable restoration charges have been paid. At all times a reasonable effort shall be made to restore service on the day restoration is requested, and in any event restoration shall be made no later than the next working day following the day on which the cause for discontinuance of service has been eliminated. Provided further that in the event a medical certification and a financial certification is received, service shall be reestablished within twelve (12) hours of receipt.

17.8.1.24 COMPLAINTS AND APPEALS:

A. A propane dealer shall fully and promptly investigate and respond to all oral and written complaints made directly to the carrier by residential delivery customers or prospective residential delivery customers. The propane dealer shall make a good faith attempt to resolve the complaint and shall notify the residential delivery customer promptly of its proposed disposition of the complaint within thirty (30) business days of filing of said complaint. The propane dealer shall send written confirmation of its proposed disposition of the complaint to the residential delivery customer.

B. If a propane dealer cannot resolve a complaint to a residential delivery customer's satisfaction, the propane dealer shall provide the complainant with the name, address and current local or toll-free telephone number of the consumer relations division of the commission.

C. Upon receipt of an oral or written complaint from the commission on behalf of a residential delivery customer or prospective residential delivery customer, a propane dealer shall make a suitable investigation. A propane dealer shall provide an initial oral or written response to the commission within ten (10) business days after the propane dealer receives the complaint. Upon resolution of the complaint, a propane dealer shall provide a written response to the commission detailing the propane dealer's disposition of the complaint.