

PUBLIC SERVICE COMPANY OF NEW MEXICO'S COMMENTS ON PROPOSED RULE 11.7.3 NMAC - HEAT ILLNESS AND INJURY RULE

Public Service Company of New Mexico (PNM) provides these comments on the Heat Illness and Injury Rule (Proposed Rule) proposed by the New Mexico Environment Department Occupational Health and Safety Bureau (NMED). PNM, a vertically integrated electric utility, is the state's largest energy provider, powering more than 550,000 residential and business customers across New Mexico every single day.

Safety is a core value at PNM because many employees, including linemen, work daily in hazardous environments to serve customers and maintain power. PNM's Safety Management System (SMS) is built on four pillars: Policies & Procedures; Assurance & Compliance; Hazard Identification & Risk Management; and Communication & Training as framework to keep our employees safe.

Safety Policies & Procedures

This pillar assigns corporate leadership the responsibility to ensure safety rules are followed at all levels. It establishes procedures and risk controls to evaluate and enforce safety compliance, delegates authority to designated personnel, and allocates resources to monitor and improve safety practices.

Safety Assurance & Compliance

This pillar uses audits, analysis, and reviews to maintain effective risk control over time and adapt to changing conditions. It focuses on continuous improvement, performance feedback, and developing and monitoring preventive or corrective actions.

Safety Hazard Identification & Risk Management

This pillar involves identifying, analyzing, and evaluating risks to develop preventive controls. It examines interactions among people, facilities, technology, and the environment to implement risk controls such as equipment changes, training, or procedural updates to enhance safety.

Safety Communication & Training

This pillar emphasizes management's role in fostering a safe workplace culture through clear communication and behavior modeling. It ensures employees are informed about current safety practices and reporting mechanisms, promoting openness so management can address safety hazards effectively.

PNM Comment 1 – Expanded Exemption for Certain Employers:

PNM is well aware of the dangers associated with exposure to heat, and already addresses the hazards associated with such exposure. PNM safety measures regarding working in hot conditions are incorporated in our Heat Stress Illness Prevention Plan (PNM Plan), which includes roles and responsibilities for the employer, employees, company leadership and management, and plan administrator. It explains risk factors about working in heat, and includes the most common heat illnesses, along with their associated symptoms and initial first aid steps.

The PNM Plan utilizes the NIOSH Heat Index and also notes protective measures, while including the link to the NIOSH-OSHA Heat Safety Tool, for proper job planning.¹ It includes training and a compliance checklist as its compliance and controls. Training is completed by new employees upon hiring, and existing employees annually, with its delivery housed and monitored on PNM's electronic learning tool via company intranet. The PNM Plan notes necessary definitions and includes an Appendix, consisting of the NIOSH Heat Index; Examples of best practices; and a compliance checklist (heat assessment).

The PNM Plan is also supported with access to "Heat-Related Injury & Illness" resources, as well as access to "Summer Heat Watch Toolbox" resources, as hosted on the PNM Safety Department internal "iConnectSafety" webpage. PNM frontline employees receive approximately 30 hours of risk mitigation training on relative hazards they may face, which includes heat awareness training. As an operational example of PNM Plan implementation, on days where the temperature exceeds or is forecasted to exceed 80 degrees Fahrenheit, as part of its daily safety briefing or tail boarding (heat assessment) prior to the deployment of employees to outdoor work assignments, PNM provides each employee with sun protection gear and fluids appropriate to each employee's worksite that day. Thus, the PNM Plan is formally supported by the PNM job briefing / tailboard procedure.

Other operational examples of the PNM Plan include, but are not limited to:

- Modified work schedules: Adjusting start and end times to avoid the hottest parts of the day;
- Portable air conditioners: Utilizing mobile cooling units to provide relief in hotter work areas;
- Frequent breaks: Increasing the frequency of breaks to allow employees to rest and recover;
- Hydration and cooling: Providing ice, cold water, and drinks with electrolytes to keep everyone hydrated and cool;
- EZ COOL: Each employee is given an EZ COOL towel that is used around the neck; and
- Lightweight flame-retardant clothing: Provide option for lightweight and breathable flame retardant clothing.

Additionally, the PNM Plan goes above and beyond Proposed Rule by requiring that the designated Plan Administrator shall be a Certified Industrial Hygienist (CIH) and / or Certified Safety Professional (CSP). Such requirement illustrates that PNM deeply understands the significance of heat-related illness and injury prevention. It is also important to note that PNM employees had no reported or recordable heat-related illnesses or injuries since 2021, when heat illness and injury awareness was implemented.

¹ See <https://www.cdc.gov/niosh/heat-stress/communication-resources/app.html>.

Therefore, due to its extensive existing safety program, specifically its written Heat Stress Illness Prevention Plan, PNM proposes that it, and perhaps other similarly situated employers, be fully exempt from the requirements of the Proposed Rule.

PNM proposes a new paragraph 11.5.7.2(A)(3)² be added to the Proposed Rule, with existing paragraphs (3) and (4) renamed (4) and (5) respectively:

11.5.7.2 SCOPE: All employment and places of employment, including indoor and outdoor places of employment covered by the standards for General Industry, Construction Industry, Agriculture, and Convenience Stores, subject to the provisions of the Occupational Health and Safety Act.

A. The following situations are exempt from the requirements of this standard.

1. Incidental heat exposures of fifteen minutes or less that require employee exposure to environments with a heat index exceeding 80 degrees Fahrenheit (27 degrees Celsius) and up to 90 degrees Fahrenheit within a one-hour period; and

2. All emergency response operations that are directly involved in the protection of life or property, or the restoration of essential services, such as evacuation, rescue, medical, structural firefighting, law enforcement, public utilities, and communications when employees are engaged in those operations; and

3. Any public utility which has implemented a written safety plan which includes, at a minimum:

(a) How employers will conduct a heat assessment to identify required control measures;

(b) The procedures for implementing required control measures;

(c) The procedures for implementing control measures in high heat conditions;

(d) Acclimatization methods and schedules;

(e) The procedures for implementing indoor heat requirements, where applicable;

(f) Emergency medical care identification and procedures; and

(g) The methods and procedures for training supervisors and employees.

34. Telework (i.e., work done from home or another remote location of the employee's choosing); and

45. Buildings, structures, motor vehicles, and motorized equipment that have a mechanical ventilation system that keeps the heat index below 80 degrees Fahrenheit for all working areas.

In addition to the language providing an exemption, PNM also proposes adding a definition of "public utility" to Section 11.5.7.7 as follows:

11.5.7.7 DEFINITIONS: General: Unless otherwise specified, the following definitions, in addition to those contained in 11.5.1.7 NMAC and the state act, are applicable to this part.

[...]

I. "Public Utility" has the meaning provided in Subsection G of Section 62-3-3 NMSA 1978.

PNM notes that this term is already used in the Proposed Rule, therefore a definition is warranted.

PNM also notes that its employees working outdoors are already exempt from the provisions of the Proposed Rule in many cases via the "restoration of essential services" clause in paragraph 11.5.7.2(A)(2), above. In other words, electricity is an essential service, PNM's

² The Proposed Rule downloaded from the NMED website on April 22 incorrectly labels what should be subsection (A) of Section 11.5.7.2 using the number 1. PNM's proposed language in these comments corrects that to use the proper NMAC format. See <https://www.srca.nm.gov/nmac-home/explanation-of-the-new-mexico-administrative-code/>.

employees are often in the process of restoring service after an outage, and PNM would therefore be exempt. With the proposed revisions in these comments, PNM proposes to extend that exemption to other types of outdoor work that PNM employees regularly perform. PNM believes this exemption is warranted due to the extensive safety program it already has in place as described above.

Although the exemption covers PNM employees when engaged in the restoration of essential services (i.e., power outages, storm restoration, and mutual aid assistance, etc.), it focuses on after-the-fact, reactionary services performed by its employees. As electricity is an essential service, PNM employees are continually performing services that help to maintain the consistent flow of electricity. Such services are not exclusive to power restoration, as PNM employees continually engage in the performance of other services regarding grid modernization, construction, and safety consultations (businesses and customers), which note a few examples of its proactive services. In other words, PNM and its employees are *always* engaged in providing essential services, not just restoring them. Essential service providers across New Mexico would all benefit from an expanded, non-restrictive exemption such as PNM has proposed.

While PNM proposes an exemption for itself from the Proposed Rule, we also offer the remaining comments, below, in the interest of NMED drafting the best rule possible.

PNM Comment 2 - Contributing Personal Risk Factors:

PNM agrees with NMED that personal risk factors should be considered as contributing causes to heat illness and injury. PNM, however, suggests the definition of “Personal risk factors for heat illness” in Subsection 11.5.7.10(G) of the Proposed Rule include more factors than it currently does, such as metabolic rate, individual health issues, pigmentation and skin disorders, workplace climate preferences, and use of non-prescription medications or drugs, to name a few.

At the very least, PNM suggests including language characterizing such factors as “including, but not limited to” in order to not inadvertently limit the personal risk factors which can contribute to heat illness and injury.

PNM Comment 3 – Potential Vagueness, Inaccuracy or Confusion:

PNM is concerned that certain of the provisions of the Proposed Rule may be overly vague or confusing. For example, in Subsection 11.5.7.10(B) is the requirement that “[e]mployers must provide *sufficient pauses* in continuous work to allow workers to drink fluids” (emphasis added). Although the Proposed Rule provides reference tables, it does not address situations wherein some employees are refreshed within minutes of rest, water and shade pauses (breaks), while others may require longer pauses, due to personal risk factors typically associated with one’s health.

The Proposed Rule could also create ambiguity and confusion when overlaid upon employers' existing proactive heat illness and injury practices, programs, policies and procedures that have been successful in prevention of heat-related injury or illness.

Likewise, Section 11.5.7.9 requires that “[e]mployers shall conduct a heat exposure assessment when a heat index threshold of 80°F is met or exceeded.... Due to the variable presence of heat in many work environments, the assessment of an employee’s exposure to heat as a hazard must take into account local conditions at the work site.” Such provision places a heavy burden on management, to not only plan the work schedule around weather forecasts, which are inaccurate many times, but to also take the current temperature at the work site. The majority of New Mexicans know just how quickly weather conditions can change, which can include “twilight zone” conditions, wherein half of a work site may experience rain, while the other half is inundated with sunlight. Thus, prescheduled, planned work would possibly have to continually be replanned at the work site. PNM also suggests it may be unrealistic to trigger such assessment requirement at such a low threshold (80°F), as the Proposed Rule should be focusing on the hottest days of Summer (90°F and above).

PNM notes that Subsection 11.5.7.10(A) requires use of the NIOSH Criteria for a Recommended Standard, Occupational Exposure to Heat and Hot Environments.³ The Proposed Rule in its current form therefore includes the older 1993 version which should be replaced for accuracy. PNM recommends that the 2016 version be used as Table 3: Work Rest Schedule in the Proposed Rule.

PNM Comment 4 - Lack of Supporting Documentation:

Finally, PNM is unaware of any fiscal impact report or economic impact study having been performed that provides objective analysis of the potential economic impact of the Proposed Rule to New Mexico. If such a study or studies have been completed, PNM suggests they be made available to all stakeholders and the public, via publication on the NMED website, such that all impacts of the Proposed Rule may be considered. PNM has a similar suggestion regarding any technical or scientific publications which provide the bases for certain details of the Proposed Rule, such as the temperature standards (throughout) or the allowable percentages of regular work schedules in Section 11.5.7.10. Those should be made available on the NMED website as well.

PNM appreciates the opportunity to provide these comments on NMED’s Proposed Rule. Please contact PNM’s Director of Safety, Chad Krukowski, at chad.krukowski@txnmenergy.com or (505) 241-2057 to discuss further, or if you would like to meet to better understand either PNM’s safety programs or our comments on the Proposed Rule.

³ See <https://www.cdc.gov/niosh/docs/2016-106.pdf>.