

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number	23-204	Rule Number	En 700
1. Agency Name & Address: Department of Energy 21 S. Fruit St., Ste. 10 Concord, NH 03301		2. RSA Authority: RSA 12-P:5, IV; RSA 370:3; RSA 370:5; RSA 374:39; RSA 374:50 3. Federal Authority: _____ 4. Type of Action: <input checked="" type="checkbox"/> Adopt <input type="checkbox"/> Repeal <input type="checkbox"/> Readoption <input type="checkbox"/> Readoption w/amendment	

5. Short Title: **En 700 RULES FOR WATER SERVICE**

6. Contact person for copies and questions:

Name: **Andrew J. Harmon, Esq.**

Title: **Hearings Examiner**

Address: **21 S. Fruit St., Suite. 10
Concord, NH 03301**

Phone #: **603-271-2443**

Email: **andrew.j.harmon@energy.nh.gov**

7. The rulemaking notice appeared in the Rulemaking Register on August 31, 2023

**SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET
AND ONE COPY OF THE FOLLOWING:
(optional to number correspondingly)**

8. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

9. A report or summary of the public comments received on the Initial Proposal and an explanation of how they were addressed in the Final Proposal as required by RSA 541-A:12, II(e).

10. Yes ☐ N/A ☒ Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

11. Yes ☒ N/A ☐ Agency form(s) as required by RSA 541-A:12, II-a which this rule incorporates by reference or whose requirements are set forth in the rule pursuant to RSA 541-A:19-b.

12. Yes ☒ N/A ☐ The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).

13. Yes ☐ N/A ☒ The amended fiscal impact statement pursuant to RSA 541-A:5, VI because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS), or there is an error in the original FIS which must be corrected.

Notice Number 2023-205Rule Number En 700

1. Agency Name & Address:

**Department of Energy
21 S. Fruit St., Ste. 10
Concord, NH 03301**

2. RSA Authority: **RSA 12-P:5, IV; RSA 370:3;
RSA 370:5; RSA 374:39;
RSA 374:50**

3. Federal Authority: _____

4. Type of Action:

Adoption X

Repeal _____

Readoption _____

Readoption w/amendment _____

5. Short Title: **Rules for Sewer Utilities**

6. (a) Summary of what the rule says and of any proposed amendments:

The substance of the new En 700 rules regarding sewer utilities proposed by the Department of Energy (the Department) is the same as various provisions of the existing Puc 700 rules, but with modifications, such as by replacing the term “Commission” with the term “Department,” with the En 700 rules effectuating the division of sewer utility service regulatory responsibilities between the Department and the Public Utilities Commission (the PUC). The division of responsibilities also resulted in the renumbering of the existing Puc rules that are to be included in the En rules. The only exception is the addition of the rule that utilities comply with the Underground Utility Damage Prevention Program consistent with the same rule contained in the existing Puc 600 rules and in the new En 600 rules for Water Service. The Department drafted the En 700 rules in coordination with the PUC pursuant to RSA 12-P:3,II.

The Department intends to adopt new Chapter En 700 rules in accordance with RSA 12-P:2, which created the Department effective July 1, 2021.

The Department intends to adopt all applicable, existing Puc 700 rules in adopting the new Chapter En 700 rules pursuant to RSA 362, et seq.; RSA 374:1, et seq.; and RSA 12-P:5, IV. More specifically, the En 700 rules apply to sewer utilities and operators in the State and govern sewer service by adopting the existing Puc 700 rules regarding quality of service, meter accuracy and testing, equipment and facilities, records and reports, safety and inspections, accident and leak reporting, other reporting and accounting, and applicable forms.

6. (b) Brief description of the groups affected:

The rules affect regulated sewer utilities operating in New Hampshire.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Specific State Statute the Rule Implements
En 701.01 – En 702.13	RSA 12-P:5, IV; RSA 362, et seq.
En 703.01 – En 703.03	RSA 12-P:5, IV; RSA 370:1-8; RSA 374:3
En 704.01 – En 704.03	RSA 12-P:5, IV; RSA 370:2
En 705.01 – En 705.02	RSA 12-P:5, IV; RSA 374:3, 48-56
En 706.01 – En 706.04	RSA 12-P:5, IV; RSA 374:4, 13
En 707.01 – En 707.04	RSA 12-P:5, IV; RSA 374:3, 4, 37-39
En 708.01	RSA 12-P:5, IV; RSA 374:3, 4, 15, 39

Rule	Specific State Statute the Rule Implements
En 708.02	RSA 12-P:5, IV; RSA 370:2-5; 374:4, 15
En 708.03	RSA 12-P:5, IV; RSA 374:4, 13, 15
En 708.04 – En 708.05	RSA 12-P:5, IV; RSA 374:4, 15

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Andrew J. Harmon, Esq.** Title: **Hearings Examiner**
Address: **21 S. Fruit St., Ste. 10** Phone #: **603-271-2443**
Concord, NH 03301 Fax#: **NA**
E-mail: **andrew.j.harmon@energy.nh.gov**
TTY/TDD Access: Relay NH 1-800-735-2964
or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Wednesday, October 18, 2023**

☐ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Wednesday, October 4, 2023 at 10:00 am**
Place: **New Hampshire Public Utilities Commission, Hearing Room B**
21 South Fruit Street, Suite 10
Concord, NH 03301

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant):

FIS # 23:204, dated 08/18/2023

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

The proposed rules are new, however the proposed new En 700 adopt various provisions of the existing Puc 700 rules without any difference in costs.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules do not modify an existing program or responsibility, and do not assign any responsibility to any political subdivision and therefore is not proposed in violation of Part I, Article 28-a.

STATE OF NEW HAMPSHIRE

COMMISSIONER
Jared S. Chicoine

DEPUTY COMMISSIONER
Christopher J. Ellms, Jr.



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Rules for Sewer Utilities: En 700

Summary of Comments on Initial Proposal with Responses

January 19, 2024

In accordance with the Appendix II-C Rulemaking Notice, the Department held a public comment hearing on October 4, 2023, and allowed written comments through October 18, 2023.

Substantive public comments made either at the hearing, in writing, or both were as follows:

“En 703.02, Discontinuation of Service, prohibits disconnection of sewer service for non-payment, which ...can disproportionately harm certain regulated sewer utilities who lack a public water utility to collaborate with in collecting overdue payments. ...The only collection option under those circumstances becomes pursuing the customer in an expensive collections action. ...[T]he suggested revisions expand partnering utilities to also include electric and gas utilities.”

After fully considering these comments in deliberations involving numerous staff, the Department did not adopt the proposed changes.

Adopt En 700 to read as follows:

CHAPTER En 700 RULES FOR SEWER UTILITIES

PART En 701 APPLICATION OF RULES

En 701.01 Application of Rules. These rules shall apply to every sewer utility as defined in En 702.11.

PART En 702 DEFINITIONS

En 702.01 "Commission" means the New Hampshire public utilities commission.

En 702.02 "Customer" means any person, firm, corporation, municipality or any other entity being supplied sewage disposal service by a sewer utility.

Edit: comma

En 702.03 "Department" means the New Hampshire department of energy.

En 702.04 "Main" means a sewage pipe owned, operated, or maintained by a sewer utility which is used to transport sewage from the service pipe to the point of disposal.

En 702.05 "Meter" means a device installed by a sewer utility for the measurement of water quantities to be used as a basis for determining charges for water service.

En 702.06 "Septic pumping" means the removal of sludge and scum from a septic or holding tank system for transport to appropriate disposal facilities.

En 702.07 "Service pipe" means the sewer utility-owned pipe used to transport sewage from the customer-owned service pipe to the main.

En 702.08 "Sewage" means ground garbage, human or animal excretions, and all other waterborne waste normally disposed of by residential, industrial, or commercial facilities through a sanitary sewage disposal system excluding solid waste, industrial waste, and septic pumping.

En 702.09 "Sewage disposal service" means the collection, transportation, treatment, and disposal of sewage including but not limited to the active processing of sewage to remove impurities and its ultimate discharge in the environment. This definition does not include septic pumping.

En 702.10 "Sewage disposal system" means the plant and property, including all pipes, pumps, structures, and other facilities and equipment owned, operated, and controlled, or managed by a sewer utility in connection with the sewage disposal service to its customers.

Edit: delete the period

En 702.11 "Sewer utility" means any "public utility" as defined in RSA 362:2 owning, operating, or managing any plant or equipment or any part of the same for the furnishing of sewage disposal for the public except:

- (a) Municipal corporations operating within their corporate limits;
- (b) Municipal corporations which are exempt pursuant to RSA 362:4, to the extent of such exemption;
- (c) Any landlord supplying sewage disposal service to its tenants which service is included in a rental fee;
- (d) Any association of residents supplying sewage disposal service to themselves; or

(e) Any other entity otherwise exempt from regulation by statute or commission order.

En 702.12 "Water service" means the furnishing of water to a customer in this state by a water utility.

En 702.13 "Water utility" means any "public utility" as defined in RSA 362:2 owning, operating, or managing any plant or equipment or any part of the same for supplying of water to the public, or engaged in the transmission or sale of water ultimately sold to the public within New Hampshire.

PART En 703 SERVICE PROVISIONS

En 703.01 Customer Bill Adjustments.

(a) Where the sewage disposal service to a customer is billed based on metered water consumption as measured by the water meter of the serving water utility, and where the water meter is found to be inaccurate, the customer's sewer bill shall be adjusted accordingly, following the corresponding rules for adjusting the customer's water bill contained in En 605.05.

(b) Where the sewage utility service to a customer is measured by the sewage meter of the serving sewer utility, and where the meter is found to be inaccurate, the customer's bill shall be adjusted accordingly, following the corresponding rules set out at En 605.05 for adjusting the customer's water bill.

En 703.02 Discontinuance of Service.

(a) Sewer service shall not be disconnected due to nonpayment.

(b) If the utility is a combined water and sewer utility, it may discontinue water service for nonpayment of sewer bills. Discontinuance of service by either a water utility or a combined water and sewer utility shall be carried out in accordance with En 1203.11.

(c) A sewer utility may contract with a serving water utility to discontinue water service for nonpayment of sewer utility bills.

(d) The contract between the sewer and water utilities in (c) above shall contain specific provisions regarding responsibilities involving notice of termination, termination, reconnection, and fair and reasonable compensation based on the actual cost to the water utility of providing such service.

(e) Compensation referred to in (d) above shall be based on disconnection and reconnection charges in the water utility's tariff or as otherwise agreed to by the parties.

(f) The contract between the water utility and the sewer utility shall be submitted to the department approved by the department consistent with the criteria contained in En 1203.11 prior to any termination of service in accordance with its provisions so that each company is treated in a just and reasonable manner.

(g) The sewer utility shall send written notice to the customer of its intent to request the termination of its water service pursuant to the requirements contained in and referenced in En 1203.11 (b).

(h) One working day prior to the chosen disconnect date the sewer utility shall contact the water utility with which it has contracted for disconnection to confirm the need for disconnection.

(i) The sewer utility shall notify the water utility with which the sewer utility has contracted for disconnection when the cause for disconnection has been removed. Upon receipt of such notice the water utility shall restore water service pursuant to En 1203.13 (c) and (d).

Note to JCLAR: The department represented to OLS staff that these rules were being worked on

Unclear/Edit: unclear as written. Missing a word between "shall be submitted to the department" and "approved by the department."

Edit: delete the extra space

(j) Reconnection of water service which has been terminated for nonpayment of sewer bills shall be subject to the fees of both the water utility and the sewer utility involved as provided in their respective tariffs or as otherwise agreed to by the parties as provided in (e) above.

(k) A sewer utility shall not charge for reconnection of service when the cause for disconnection was not in compliance with this section or with applicable provisions of En 1203.11.

En 703.03 Customer Relations. Each sewer utility shall comply with rules governing provision of service to customers contained in En 1200, uniform administration of utility customer relations.

PART En 704 QUALITY OF SERVICE

En 704.01 Effluent Standards.

See Note to JLCAR on
previous page about the
En 1200 rules

(a) The sewer utility shall not receive for treatment or allow the discharge into the sewage disposal system any of the following:

- (1) Any substance of a type or quality or in a quantity which would impair its ability to render sewer service;
- (2) Any substance which is not sewage, including but not limited to the following:
 - a. Solid waste;
 - b. Corrosive or toxic industrial waste;
 - c. Flammable or explosive materials;
 - d. Rainwater from roofs, streets, or other areas;
 - e. Storm or surface water; and
 - f. Ground water from foundation drains; and
- (3) Any substance prohibited by the United States Environmental Protection Agency, the New Hampshire department of environmental services, the sewer utility's tariff, or any applicable municipal ordinance.

En 704.02 Cross-Connections.

(a) No physical connection shall be permitted, except as provided in (b) below, including but not limited to connections of the following types:

- (1) Between one sewer system and another;
- (2) Between a sewer system and a stream; or
- (3) Between a sewer system and a public or private water supply.

(b) This section shall not prohibit a sewer utility which has received all federal, state, and municipal approval in connection therewith, from:

- (1) Discharging treated effluent from a sewage treatment facility in accordance with such approvals; or
- (2) Transmitting sewage from one sewer system to another, in accordance with such approvals, for treatment.

En 704.03 Interruptions of Service.

(a) Each sewer utility shall use all reasonable means to avoid interruptions to service.

(b) Should interruption of service occur, the sewer utility shall re-establish service within the shortest time practicable, consistent with safety.

Note to JCLAR: The department represented to OLS staff that these rules were being worked on.

PART En 705 EQUIPMENT AND FACILITIES

En 705.01 Construction and Maintenance. Each sewer utility shall construct, install, operate, and maintain its plant, structures, equipment, and mains in accordance with good engineering practice, and in such manner to best accommodate the public, and to prevent interference with service furnished by other underground or above ground facilities, including electric, telephone, water, gas, or steam equipment or facilities, insofar as practical.

En 705.02 Underground Utility Damage Prevention Program. All sewer utilities shall comply with En 800, the underground utility damage prevention program rules.

PART En 706 RECORDS AND REPORTS

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En 706.01 Records in General. All records shall be organized, arranged, or prepared to ensure that sufficient data is available to determine the status of compliance with these rules. Records pertaining to the system design or that are necessary for future evaluation of the system's safety shall be retained for the life of the facility involved.

En 706.02 Station Records. Each sewer utility shall keep sufficient records of the operation of its pumping, treatment, and other units to show the characteristics and performance of each.

En 706.03 System Maps.

(a) Each sewer utility shall have on file at its principal office located within New Hampshire a suitable map, maps, or drawings showing the following:

- (1) Size, character, and location of all mains, service pipes, including disposal points, and manholes;
- (2) Location and layout of all treatment plants and pumping stations; and
- (3) Description of service area.

(b) In lieu of showing service locations on maps, referred to in (a)(1) above, a card record or other suitable means may be used.

En 706.04 Reports to Department.

(a) The sewer utility shall furnish the department with any information concerning the sewer utility's facilities or operations which the department shall request and need for evaluating rates and the practices of the sewer utility, including whether the service provided and facilities used are reasonably safe and adequate.

(b) Each utility shall file periodic reports with the department as required by En 708.

Unclear: Unclear if the department will the rules in this chapter to establish the standard of what constitutes "reasonably safe and adequate", or if there are other rules or legal precedent that out or explain this standard.

PART En 707 SAFETY AND INSPECTIONS

En 707.01 Safety Instructions.

(a) Each sewer utility shall adopt comprehensive instructions for the safety of employees regarding the operation, construction, and maintenance of its plant and facilities.

(b) Each sewer utility shall institute practices and programs to establish that its employees have been properly informed of safe practices and are cognizant of all hazards involved, including those involving exposure to hazardous atmospheres.

En 707.02 Resuscitation.

(a) Each sewer utility shall institute and maintain a program instructing its employees engaged in electrical work or work in hazardous atmospheres, such as in-ground pump stations or meter vaults, in safety procedures for resuscitation emergencies.

(b) The sewer utility shall furnish copies of the relevant safety procedures to each such employee.

En 707.03 Accidents.

(a) Each sewer utility shall report to the department as soon as possible after each accident occurring in connection with the operation of its property, facilities, or services, wherein any person shall have been killed or seriously injured or whereby serious property damage has been caused.

(b) The first report of an accident may be preliminary, but, if so, shall be followed by as full a statement as possible of the cause and details of the accident and the precautions taken, if any, to prevent recurrence.

(c) Accidents resulting in slight injuries which do not incapacitate the person injured from active work for more than 6 days in the aggregate during the 10 days immediately following the injury shall not be required to be reported.

(d) The sewer utility shall report on department "Form E-5, Utility Accident Report Form", dated April 2023 described in En 708.01, to the department any accident related to its sewer utility operations which is not a slight accident as described in (c) above.

En 707.04 Department Inspection. The department shall, from time to time, inspect the works and system of each sewer utility and the manner in which it has conformed and presently conforms to statutes or department or commission rules or orders.

PART En 708 FORMS TO BE FILED

En 708.01 E-5 - Utility Accident Report

(a) Each sewer utility shall file with the department and the commission a completed department "Form E-5, Utility Accident Report", dated April 2023 within 10 working days of when a sewer utility accident, as described in En 707.03 (a) and (d), occurs.

(b) Each sewer utility shall include the following on the department "Form E-5, Utility Accident Report":

(1) The report number, date, and name and address of the sewer utility;

(2) The date and the location of the accident and the time of discovery;

Edit: date in rule text and on the form will need to be updated once the form is approved by JLCAR

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Unclear: This form was not submitted to OLS with the FP

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(3) A description of the person injured including:

- a. Name;
- b. Age;
- c. Residence;
- d. Employer; and
- e. Status of injured person, whether employee, person under contract, invitee, licensee, trespasser, or other;

(4) A description of the injury, current condition, duration of disability, and, if applicable, anticipated return to work date;

(5) A description of the cause and manner of the accident;

(6) If applicable, the cause of death and previous accident report number of the report filed prior to the death;

(7) The designation of any federal or state statute violated, if applicable;

(8) A recommendation for guarding against repetition of the accident; and

(9) The signature and date submitted of a sewer utility official authorized to submit the form and printed name and the title of the official.

En 708.02 E-16 Report of Sewer Meter Complaint Tests.

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(a) Each sewer utility shall report on department "Form E-16, Report of Sewer Meter Complaint Tests", dated January 2024 to the department monthly if water or sewer meter complaints occur, the former if the sewage service is being measured by the water meter.

(b) A sewer utility shall include on form E-16 the following:

Edit: "effective" or "revised"

Edit: date in rule text and on the form will need to be updated once the form is approved by JLCAR

- (1) The name of the company;
- (2) The month of report;
- (3) The customer's name and address;
- (4) The meter manufacturer, model number, company number, type, and size;
- (5) The percent of registration of meters that are fast and percent of registration that are slow;
- (6) If a bill adjustment occurs, the amount refunded or collected and the period covered by the bill adjustment;
- (7) The date; and
- (8) The signature of the sewer utility official authorized to submit the form and the printed name and the title of the official.

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En 708.03 F-16-Sewer Utilities Annual Report.

(a) Each sewer utility which maintains its books on a calendar year basis shall complete the public utilities commission form "F-16-Sewer Utilities, Annual Report of [Exact Legal Name of Respondent]" dated January 2024, available on the department's website at www.energy.nh.gov, and file one signed original and one electronic copy with the department and the commission annually on or before March 31st.

(b) Each sewer utility which maintains its books on a fiscal year basis which does not coincide with a calendar year shall complete the public utilities commission Form "F-16-Sewer Utilities, Annual Report of [Exact Legal Name of Respondent]" dated January 2024, available on the department's website at www.energy.nh.gov, and file with the department and the commission one signed original and one electronic copy by email or through the department's electronic records filing system no later than 90 days following the close of each fiscal year.

(c) Each sewer utility shall comply with the electronic filing requirement regarding the public utilities commission form "F-16-Sewer Utilities, Annual Report of [Exact Legal Name of Respondent]", dated January 2024 as provided in En 708.05.

En 708.04 F-22 Information Sheet.

(a) Each sewer utility shall file with the department and the commission a completed department "Form F-22, Information Sheet" dated April 2023 (this is a generic form not in need of a new date), available on the department's website at www.energy.nh.gov:

(1) Annually; and

(2) Whenever any changes occur to the information included in the form F-22 filing.

(b) Each sewer utility shall include the following on department "Form F-22, Information Sheet", dated April 2023:

(1) The name of the sewer utility;

(2) The person's name and address to receive the annual report form;

(3) The person's name and address to receive the sewer utility assessment tax;

(4) The names and titles of the principal officers of the company; and

(5) The signature, the printed full name, and title of the sewer utility employee who supervised the preparation of the form as well as the date submitted.

En 708.05 Electronic Filing Requirement, Annual Report.

(a) "Electronic filing" means the filing with the department or the commission of an electronic version of a document or form.

(b) The department shall maintain a list on its web site of the types of electronic file formats compatible with its and the commission's computer systems.

(c) Any sewer utility serving fewer than 600 customers shall be exempt from the requirements of this section.

(d) Any sewer utility may petition the department for a one year waiver from the electronic filing requirement pursuant to the waiver provisions of En 201.05.

Note to JCLAR: The department represented to OLS staff that these rules were being worked on.

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(e) In its application for a waiver under (d) above, a sewer utility shall describe and provide evidence to demonstrate that:

- (1) It does not have the computer capability to generate electronic reports or filings due to the small size of its overall operations or its lack of computer equipment, expertise, or both; or
- (2) Its existing available computer systems are not compatible with the computer systems of the department or the commission and because of this incompatibility it would be prohibitively expensive or cumbersome to file electronically; or
- (3) Other circumstances would make electronic filing prohibitively expensive or cumbersome.

(f) The department shall issue a waiver under (d) and (e) above if it determines that the burden on the sewer utility of electronic filing outweighs the benefit to the administrative process.

(g) The department shall make available to each sewer utility upon request an electronic version of the annual report form when the department has prepared and has available an electronic version.

Appendix A

Rule	Specific State Statute the Rule Implements
En 701.01 – En 702.13	RSA 12-P:5, IV; RSA 362, et seq.
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