

New Mexico Board of Licensure for
Professional Engineers Professional Surveyors

Industrial Exemption FAQ's

Question #	Category	Question	Answer
1	Changes made in Field	<i>During construction, changes are sometimes made in the field. This requires that these changes be made by the GIS Specialist and mapped as redlines to the original map. Will these redline changes have to be re-stamped?</i>	<i>If those changes fall under the practice of engineering or surveying then they will be required to be stamped by the professional in responsible charge. The Board Act and Rules do not require the sealing of as-built drawings.</i> <i>Refer to 61-23-3.H. & O NMSA 1978.</i>
2	Consultants	<i>How will this change affect engineering consultant reviews?</i>	<i>The industrial exemption is applied if it was designed "in-house" and on utility owned or leased property. Engineering work done by a consultant is the practice of engineering regardless of location. Refer to 61-23-21 and 61-23-22.B. NMSA 1978.</i>
3	Easements	<i>Regarding Public Spaces, are utility easements or owned property, even if not secured by physical protections, considered to be in public space?</i>	<i>Refer to 61-23-22.B. NMSA 1978. There are no physical protections required.</i>
4	Emergency work	<i>Will maintenance or emergency jobs require stamps? These jobs include transformer replacements and upgrades, pole hit replacement, and refusing.</i>	<i>If the job were a replacement in-kind (or in some cases a betterment) it should not require an engineer to review. Upgrades or changes in design that follow applicable stamped standards would not need an engineer to review. However, if upgrades or changes in design are not per standards, then engineer review is required.</i> <i>Refer to 61-23-3.H. NMSA 1978.</i>
5	Emergency work	<i>Under emergency situations such as tornadoes, can we rebuild without having it stamped as long as we go back to what was there because that would have been pre-engineered or grandfathered in?</i>	<i>If the job were a replacement in-kind (or in some cases a betterment) it should not require an engineer to review. Upgrades or changes in design that follow applicable stamped standards would not need an engineer to review. However, if upgrades or changes in design are not per standards, then engineer review is required.</i> <i>Refer to 61-23-3.H NMSA 1978.</i>
6	Enforcement	<i>Is there another state in the U.S. that EPE can use as an example for guidance on the expectations specific to electric utility work?</i>	<i>The Engineering and Surveying Practice Act, and Minimum Standards for Surveying define what the practice of Engineering and Surveying is in New Mexico.</i> <i>Refer to 61-23-3.H. & O. NMSA & 12.8.2. NMAC</i>
7	Enforcement	<i>PNM does not employ enough licensed staff currently to comply as of today - how does PNM go about seeking an additional extension to comply? While PNM is working to establish revised job descriptions and hire additional staffing, it may take an extended time to complete those efforts, which are already underway but will not be fully completed by January 1, 2024.</i>	<i>The date to comply was extended to January 1, 2025.</i>
8	Enforcement	<i>Will there be audits performed to see for compliance with respect to the rule?</i>	<i>The Board would investigate any complaints of the practice of Engineering or Surveying without a license that are not covered by the Industrial Exemption. Information on how to file a complaint may be found here: https://www.sblpes.state.nm.us/enforcement/file-a-complaint/</i>
9	Enforcement	<i>When will the response to these questions be submitted (whether it is a FAQ or other guidelines) being that the rule is going into place on January 1, 2024?</i>	<i>The date to comply was extended to January 1, 2025.</i>
10	Enforcement	<i>With respect to the additional impacts on the co-ops, the major companies that are here, the gas companies, how does the fusion apply to wind, solar and broadband?</i>	<i>The Industrial exemption applies to all businesses. Refer to 61-23-22 B. and 61-23-27.10 NMSA 1978</i>

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11	Franchise Agreements	Will working within an area where EPE has a Franchise Agreement exempt EPE from submitting a professional engineer's stamped design?	No, a franchise agreement does not supersede the Engineering and Surveying Practice Act or the Minimum Standards for Surveying in New Mexico. A franchise agreement typically allows a utility to place facilities within the public rights-of-way. A franchise agreement does not address detailed engineering design.
12	Joint Use/3rd Party	Does the Licensing Board require PNM stamp/seal in addition to joint use entity stamp/seal for attachments to utility assets by joint use third parties?	Refer to NMAC 16.39.3.12.E., F., and G; and NMAC 16.39.5.11.E., and F.
13	Joint Use/3rd Party	When a communication company submits a permit for an attachment to our poles and are enforced to have a PE stamp, where is the responsibility going to lie as far as how the Board sees it?	Refer to NMAC 16.39.3.12.E., F., and G; and NMAC 16.39.5.11.E., and F.
14	Other	PNM is interpreting the rule to be limited to transmission line and distribution line design. Does the Licensing Board Rule change also contemplate associated protection design and settings? Does the rule extend beyond those designs of line and facilities in the public space?	The regulated environment is defined in 61-23-22.B NMSA 1978. Any practice of engineering or surveying not within that regulated environment is exempt, even if it is connected to an area that is not exempt.
15	Other	Will the Board provide guidelines for the application of the rule or FAQ page as you work through the questions asked today?	Board Advisory Opinions will be provided in the future and a formal response is being provided.
16	Other	Comment: Believes rules should have legislative review before they are enacted because every rule ultimately comes from a piece of legislation.	Comment Noted
17	Other	Comment: This rule change has affected many different departments because they now have to write a new set of rules.	Comment Noted
18	Other	Comment: Another concern of mine is the extra layer that we have to go through in order to release a project for construction. This will slow us down in building out that system and increase costs of our members.	Comment Noted
19	Other	Comment: I hope that the Board will help to ensure that PNM designates an engineer to be in "responsible charge" of its Grid Modernization project, which is before the PRC. PNM has not yet submitted any testimony that indicates that anyone has performed a coordination study to ensure that the new type of meters that they are planning to install on the public's private property and attached to our houses and businesses are properly protected from over voltage and fault current hazards on PNM's specific system.	Comment Noted - Information provided to the PRC
20	Other	Comment: Also, PNM has thus far failed to submit any testimony from any engineer willing to be in responsible charge of the project, that asserts that the meters meet applicable standards and that whatever standards, or other criteria that PNM relies upon, are sufficient to ensure public safety. I'm troubled by this. Furthermore, it is my hope that the Board will let the NM Public Regulation Commission know that public officials must not inadvertently practice engineering by making engineering decisions, such as whether projects are safe or have had proper engineering analysis without basing those decisions on qualified expertise, i.e., testimony and/or reports by a licensed NM Professional Engineer who is in "responsible charge" of the project.	Comment Noted - Information provided to the PRC

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21	Out of State Firms or Out of country Manufacturers	How does PNM comply if designs are coming from out of state engineering firms or out of country large electrical equipment manufacturers, such as transformer manufacturers for example?	Out-of-state engineering firms that are practicing engineering in the state should seek state licensure before the engineering is finalized or completed. Large electrical equipment manufacturers provide a piece of equipment that say the equipment meets the specifications and can be used in the following manner. It is still the obligation of the user to ensure they put it in to applicable use, but it's the manufacturer's responsibility to ensure that the equipment meets the specifications.
22	Out of State Firms or Out of country Manufacturers	Additionally, does PNM need to seal/stamp design reviews or Issued for Construction document packages done by contract engineering firms, including those out of state?	Engineering work performed by contractors or consultants needs to be stamped by a NMPE associated/employed with the firm who performed or oversaw the work product.
23	Professional Practice of Engineering and Surveying	We cover 11,000 square miles in NM with hundreds of work orders annually. Does every work order have to be stamped by a PE? What typically happens in the Co-op industry is a percentage of work orders over a specified time period are randomly chosen to be inspected to make sure everything's in compliance with all standards and regulations, then they are stamped by a PE as having been reviewed, and those are turned into the federal government, USDA, for funding purposes. So not every single one we do is inspected, as they are randomly selected for inspection. So, we need more information on this rule. Is it going to apply to every work order we do or will our current process satisfy this requirement?	Refer to 61-23-21 and 61-23-27.9 NMSA 1978
24	Professional Practice of Engineering and Surveying	How far does this go; both as drop calculations, transformer sizing, and service drop sizing?	Refer to 61-23-21 and 61-23-27.9 NMSA 1978
25	Property	1. How is this applied to daily operations, such as drop service requests, etc.? 2. What is the definition of Property? Is this merely applicable to premises, or land - or does this include their lines, poles, etc.? 3. Property owned should coincide with the property we report to the Property Tax Division, so it is everything, not just real estate and would mean all our lines etc. within the legal boundary of our ROW. Is this correct?	Refer to 61-23-22 & 61-23-27.10 NMSA 1978.
26	Property	EPE design engineers do not perform surveying. EPE requires customers to hire a professional surveyor to install property irons. EPE only marks the location of proposed EPE overhead or underground electrical facilities. Does the definition of surveying in the Engineering and Surveying Practice Act require EPE to hire a licensed surveyor for all work that requires EPE to take field measurements? If this interpretation is correct, this will increase the cost of every job that will have a significant financial impact on all customers. Please clarify this interpretation.	Refer to 61-23-3.Q NMSA 1978 for the practice of surveying.
27	Property	Do these rule changes apply to all electric utility companies in New Mexico such as investor-owned utilities and electric cooperatives?	Yes, as well as other utility installations such as water, gas, and communications. The rule changes also apply to other industries that have facilities which are outside their property boundaries such as oil and gas pipelines.

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28	Property	What does "private property" mean; does this apply to customer owned property or utility owned property, i.e. if he received a request to extend a utility line through private property owned by a customer and is also paid for by the customer, would that be considered public (exempt or non-exempt)?	If the project is funded by public funds, you need a licensed surveyor to do the construction staking. If it is private construction funded by a private entity, then a licensed surveyor is not required. Refer to 61-23-3.Q NMSA 1978. for the practice of surveying which requires a professional surveyor.
29	Property	Does the NM Engineering and Surveying Practices Act require that when a utility (or any company) undertakes a project that may affect public safety, said project to be implemented outside of the private property boundaries of said company, the company must designate a professional engineer to be in "responsible charge" of that project?	Refer to 61-23-22.B NMSA 1978.
30	Property	Is the answer to the above question the same regardless of whether the current project was submitted for regulatory approval prior to the recent clarification of the Industrial Exemption (61-23-22. B.) that took effect on July 1, 2023?	Only the practice of engineering and surveying completed on or after July 1, 2023, is subject to the requirements of the revised 61-23-22. B NMSA 1978.
31	Property	Do the proposed rule changes require engineering designs of electrical substations that are within a leased or owned property, to be PE stamped?	The industrial exemption is applied if it was designed "in-house" and on utility owned or leased property. Engineering work done by a consultant is the practice of engineering regardless of location. Refer to 61-23-21 and 61-23-22.B. NMSA 1978
32	Property	I was looking for the \$100,000 or less exemption regarding utilities in the Public Works Section, but utilities were not included in there. This seems to be intended more for the state and its political subdivisions. Why did this change exclude utilities in the Public Works category.	The exemption for Public Works projects less than \$100,000 has gone away. All Public works projects, regardless of the dollar amount is within the perview of the Practice Act. Refer to the Practice of Engineering and the Practice of Surveying to determine which activities are regulated, NMSA 61-23-21 & 61-23-27.9. and NMSA 61-23-22.B & 61-23-27.10 for the exemption.
33	Rule making process	To the best of our knowledge, EPE did not receive written notification of the proposed rule changes during the rule-making process. Therefore, EPE did not have the opportunity to submit comments on these proposed rule changes. If EPE was notified of these changes, will you please provide EPE with a copy of the notification along with EPE's response, if any?	The notice was posted on the Board's website, the Sunshine Portal, the newspaper, and minutes are also available on the Board's website. Refer to 1.24.1-25 NMAC Rules - New Mexico Register Rule making process. https://statenm.my.salesforce-sites.com/public/SSP_RuleHearingSearchPublic
34	Rule making process	Which law required this change?	Refer to the response on question #37.
35	Rule making process	Was there any cost benefit analyst that was provided by the Board that companies can use as IOUS to justify the additional costs and rate cases?	The Board did a fiscal impact report for the bill. This report was based on the fiscal impact of the Board, not for the utilities or the companies. Refer to the response on question #37 for the reason for the change.
36	Rule making process	Is the Board aware of any issues that have occurred in the past 80 years that prompted this rule change?	See response from question #37.

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37	Rule making process	We have co-ops here today giving testimony that we have been doing this for over 80 years and now a new rule was written for it. Why is it necessary for the change in process?	The change was meant to bring about clarity based on input from the public. The Board received periodic inquiries from the public over the past nine years regarding why certain activities do not fall under the Boards purview when they're in a public space where people interact with them. In addition, feedback was received from NTSB for an incident that happened out-of-state. They were recommending reduction in scope of industrial exemptions, noting too that not all US jurisdictions have an industrial exemption. The change focuses on the mission of protecting the public.
38	Standards	EPE follows established standards and guidelines for both overhead and underground installations; these standards cover all of our constructions with a few exceptions for non-typical installations. If EPE can stamp the standards book, would that cover all jobs done following said standards?	If standard designs are developed and individually sealed, for example as part of standards book, they could be used (without modification) without an additional seal on subsequent projects with the understanding that the original engineer retains responsibility for their design. If the standard designs are modified in any way for a particular application, they would require the seal of a new professional in responsible charge.
39	Standards	EPE design engineers create maps for jobs using ESRI ArcMap. a. Will these maps have to be stamped? b. if the answer to question 3.a is yes, would that stamp be adequate?	Refer to 61-23-3.Q. (6) NMSA 1978.
40	Standards	Is there a threshold established as to what type or quantity of work will require a stamp? For example, will the installation of a fuse on an overhead line or a single pole require the job to be stamped?	Refer to 61-23-3.H NMSA 1978.
41	Standards	EPE creates jobs to address voltage drop and flicker. EPE's calculations are done using EPE's diversity factors pre-established by EPE.	Refer to 61-23-3.H. & P NMSA 1978. Diversity factors and calculation process could be included in the set of stamped standards.
42	Standards	Does PNM need to seal/stamp both its standards and its individual designs, or are the standards sufficient?	A standard design that has already been sealed does not need an additional seal if included in an overall plan set. However, anything that is not purely a previously sealed standard design will require a new review and seal.
43	Standards	The rule as written is burdensome on a utility such as Socorro Electric because we're mostly residential. We have many requests for 50-amp RV hook-up and 200-amp service hookup which do not require a PE stamp. I would like to ask the Board add clarification of how the rule is applied so the public can better understand it.	Refer to 61-23-21 NMSA 1978.
44	Standards	The Practice Act includes planning calculations, specifications, and design as covered under the practice of engineering. I work in Transmission Planning. Would this type of work be included under the revised practice act?	It is likely elements of Transmission Planning meet the definition of practice of engineering. Refer to 61-23-3 H., 61-23-21, and 61-23-22 B. NMSA 1978
45	Standards	Would specifications and future designs be under the new definition of practice of engineering outside of the industrial exemption and how will this affect the day-to-day?	Refer to 61-23-21 and 61-23-27.9 NMSA 1978 and 61-23-22 B. and 61-23-27.10 NMSA 1978
46	Standards	Would a document similar to that of a standards document, that can be stamped by a PE, be utilized for planning in the future?	Design documents and design standards are considered engineering documents therefore are considered as the practice of engineering, in accordance with 61-23-3 H., 61-23-21, and 61-23-22 B. NMSA 1978

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47	Standards	<i>How far does this new role extend; a service drop going to a house, to a secondary line being built another, to a primary line?</i>	<i>Refer to 61-23-21 and 61-23-27.9 NMSA 1978 and 61-23-22.B. and 61-23-27.10 NMSA 1978</i>
48	Value	<i>The rates we charge our customers will increase in order to have multiple PE's sign off on designs. What value does this add?</i>	<i>The public welfare is served with the changes to the Engineering and Surveying Practice Act.</i>