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AN ACT

RELATING TO PUBLIC UTILITIES; AMENDING THE PUBLIC UTILITY  
ACT; ALLOWING WATER UTILITIES TO ADJUST RATES DUE TO THE COST  
OF ACQUISITION OF WATER RESOURCES WITHOUT NOTICE AND HEARING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 62-8-7 NMSA 1978 (being Laws 1991,  
Chapter 251, Section 1, as amended) is amended to read:

"62-8-7. CHANGE IN RATES.--

A. At any hearing involving an increase in rates  
or charges sought by a public utility, the burden of proof to  
show that the increased rate or charge is just and reasonable  
shall be upon the utility.

B. Unless the commission otherwise orders, no  
public utility shall make any change in any rate that has  
been duly established except after thirty days' notice to the  
commission, which notice shall plainly state the changes  
proposed to be made in the rates then in force and the time  
when the changed rates will go into effect and other  
information as the commission by rule requires. The utility  
shall also give notice of the proposed changes to other  
interested persons as the commission may direct. All  
proposed changes shall be shown by filing new schedules that  
shall be kept open to public inspection. The commission for  
good cause shown may allow changes in rates without requiring

1 the thirty days' notice, under conditions that it may  
2 prescribe.

3 C. Whenever there is filed with the commission by  
4 any public utility a complete application as prescribed by  
5 commission rule proposing new rates, the commission may, upon  
6 complaint or upon its own initiative, except as otherwise  
7 provided by law, upon reasonable notice, enter upon a hearing  
8 concerning the reasonableness of the proposed rates. If the  
9 commission determines a hearing is necessary, it shall  
10 suspend the operation of the proposed rates before they  
11 become effective but not for a longer initial period than  
12 nine months beyond the time when the rates would otherwise go  
13 into effect, unless the commission finds that a longer time  
14 will be required, in which case the commission may extend the  
15 period for an additional three months. The commission shall  
16 hear and decide cases with reasonable promptness. The  
17 commission shall adopt rules identifying criteria for various  
18 rate and tariff filings to be eligible for suspension periods  
19 shorter than what is allowed by this subsection and to be  
20 eligible for summary approval without hearing.

21 D. If after a hearing the commission finds the  
22 proposed rates to be unjust, unreasonable or in any way in  
23 violation of law, the commission shall determine the just and  
24 reasonable rates to be charged or applied by the utility for  
25 the service in question and shall fix the rates by order to

1 be served upon the utility, or the commission by its order  
2 shall direct the utility to file new rates respecting such  
3 service that are designed to produce annual revenues no  
4 greater than those determined by the commission in its order  
5 to be just and reasonable. Those rates shall thereafter be  
6 observed until changed, as provided by the Public Utility  
7 Act.

8 E. Except as otherwise provided by law, any  
9 increase in rates or charges for the utility commodity based  
10 upon cost factors other than taxes or cost of fuel, gas or  
11 purchased power, filed for after April 4, 1991, shall be  
12 permitted only after notice and hearing as provided by this  
13 section. The commission shall enact rules governing the use  
14 of tax, fuel, gas or purchased power adjustment clauses by  
15 utilities that enable the commission to consider periodically  
16 at least the following:

17 (1) whether the existence of a particular  
18 adjustment clause is consistent with the purposes of the  
19 Public Utility Act, including serving the goal of providing  
20 reasonable and proper service at fair, just and reasonable  
21 rates to all customer classes;

22 (2) the specific adjustment mechanism to  
23 recover tax, gas, fuel or purchased power costs;

24 (3) which costs should be included in an  
25 adjustment clause, procedures to avoid the inclusion of costs

1 in an adjustment clause that should not be included and  
2 methods by which the propriety of costs that are included may  
3 be determined by the commission in a timely manner, including  
4 what informational filings are required to enable the  
5 commission to make such a determination; and

6 (4) the proper adjustment period to be  
7 employed.

8 F. Except as otherwise provided by law, any  
9 increase in rates or charges for a public utility as defined  
10 in Paragraph (3) of Subsection G of Section 62-3-3 NMSA 1978  
11 based upon cost factors other than taxes or cost of fuel,  
12 gas, purchased power or acquisition of water resources shall  
13 be permitted only after notice and hearing as provided by  
14 this section. For the purposes of this subsection,  
15 "acquisition of water resources" does not include the  
16 purchase or other permanent acquisition of water rights. The  
17 commission shall enact rules governing the use of tax, fuel,  
18 gas, purchased power or water resource acquisition adjustment  
19 clauses by such utilities that enable the commission to  
20 consider periodically at least the following:

21 (1) whether the existence of a particular  
22 adjustment clause is consistent with the purposes of the  
23 Public Utility Act, including serving the goal of providing  
24 reasonable and proper service at fair, just and reasonable  
25 rates to all customer classes;

1 (2) the specific adjustment mechanism to  
2 recover tax, gas, fuel, purchased power or acquisition of  
3 water resource costs;

4 (3) which costs should be included in an  
5 adjustment clause, procedures to avoid the inclusion of costs  
6 in an adjustment clause that should not be included and  
7 methods by which the propriety of costs that are included may  
8 be determined by the commission in a timely manner, including  
9 what informational filings are required to enable the  
10 commission to make such a determination; and

11 (4) the proper adjustment period to be  
12 employed.

13 G. The commission may eliminate or condition a  
14 particular adjustment clause if it finds such elimination or  
15 condition is consistent with the purposes of the Public  
16 Utility Act, including serving the goal of providing  
17 reasonable and proper service at fair, just and reasonable  
18 rates to all customer classes; provided, however, that no  
19 such elimination or condition shall be ordered unless such  
20 elimination or condition will not place the affected utility  
21 at a competitive disadvantage. The commission rules shall  
22 also provide for variances and may provide for separate  
23 examination of a utility's adjustment clause based upon that  
24 utility's particular operating characteristics.

25 H. Whenever there is filed with the commission a

1 schedule proposing new rates by a rural electric cooperative  
2 organized under the Rural Electric Cooperative Act, the rates  
3 shall become effective as proposed by the rural electric  
4 cooperative without a hearing. However, the cooperative  
5 shall give written notice of the proposed rates to its  
6 affected patrons at least thirty days prior to the filing  
7 with the commission, and the commission shall suspend the  
8 rates and conduct a hearing concerning the reasonableness of  
9 any proposed rates filed by a rural electric cooperative  
10 pursuant to Subsections C and D of this section upon the  
11 filing with the commission of a protest setting forth grounds  
12 for review of the proposed rates signed by the lesser of one  
13 percent of or twenty-five members of a customer class of the  
14 rural electric cooperative and if the commission determines  
15 there is just cause for reviewing the proposed rates on one  
16 or more of the grounds of the protest. The protest shall be  
17 filed no later than twenty days after the filing with the  
18 commission of the schedule proposing the new rates. The  
19 hearing and review shall be limited to the issues set forth  
20 in the protest and for which the commission may find just  
21 cause for the review, which issues shall be contained in the  
22 notice of hearing. The provisions of this subsection shall  
23 not be construed to affect commission authority or procedure  
24 to regulate the sale, furnishing or delivery by wholesale  
25 suppliers of electricity to rural electric cooperatives

1 pursuant to Section 62-6-4 NMSA 1978. In addition to the  
2 adjustments permitted by Subsections E and G of this section,  
3 the commission may authorize rate schedules of rural electric  
4 cooperatives to recover, without notice and hearing, changes  
5 in the cost of debt capital incurred pursuant to securities  
6 that are lawfully issued. For the purposes of this  
7 subsection, a member of a rural electric cooperative is a  
8 member as defined by the Rural Electric Cooperative Act."

9 SECTION 2. EFFECTIVE DATE.--The effective date of the  
10 provisions of this act is July 1, 2011. \_\_\_\_\_

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