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HOUSE BILL 47

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

John A. Heaton

FOR THE ECONOMIC AND RURAL DEVELOPMENT AND
TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO ENERGY; AMENDING SECTIONS OF THE PUBLIC UTILITY ACT
TO PROVIDE FOR ELECTRIC UTILITIES TO RECOVER ALL REASONABLE
COSTS INCURRED FOR INVESTMENT IN NEW TRANSMISSION FACILITIES
THAT ARE CERTIFIED AND APPROVED BY THE PUBLIC REGULATION
COMMISSION TO FACILITATE ECONOMIC DEVELOPMENT AND DEVELOPMENT
OF RENEWABLE ENERGY.

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.

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

14 C. Whenever there is filed with the commission by
15 any public utility a complete application as prescribed by
16 commission rule proposing new rates, the commission may, upon
17 complaint or upon its own initiative, except as otherwise
18 provided by law, upon reasonable notice, enter upon a hearing
19 concerning the reasonableness of the proposed rates. If the
20 commission determines a hearing is necessary, it shall suspend
21 the operation of the proposed rates before they become
22 effective but not for a longer initial period than nine months
23 beyond the time when the rates would otherwise go into effect,
24 unless the commission finds that a longer time will be
25 required, in which case the commission may extend the period

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1 for an additional three months. The commission shall hear and
2 decide cases with reasonable promptness. The commission shall
3 adopt rules identifying criteria for various rate and tariff
4 filings to be eligible for suspension periods shorter than what
5 is allowed by this subsection and to be eligible for summary
6 approval without hearing.

7 D. If after a hearing the commission finds the
8 proposed rates to be unjust, unreasonable or in any way in
9 violation of law, the commission shall determine the just and
10 reasonable rates to be charged or applied by the utility for
11 the service in question and shall fix the rates by order to be
12 served upon the utility or the commission by its order shall
13 direct the utility to file new rates respecting such service
14 that are designed to produce annual revenues no greater than
15 those determined by the commission in its order to be just and
16 reasonable. Those rates shall thereafter be observed until
17 changed, as provided by the Public Utility Act.

18 E. Except as otherwise provided by law, any
19 increase in rates or charges for the utility commodity based
20 upon cost factors other than taxes or cost of fuel, gas or
21 purchased power, filed for after April 4, 1991, shall be
22 permitted only after notice and hearing as provided by this
23 section. The commission shall enact rules governing the use of
24 tax, fuel, gas or purchased power adjustment clauses by
25 utilities that enable the commission to consider periodically

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1 at least the following:

2 (1) whether the existence of a particular
3 adjustment clause is consistent with the purposes of the Public
4 Utility Act, including serving the goal of providing reasonable
5 and proper service at fair, just and reasonable rates to all
6 customer classes;

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

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

16 (4) the proper adjustment period to be
17 employed.

18 F. The commission shall adopt rules that provide
19 for full and timely cost recovery of an electric utility's
20 investment in new transmission facilities that are certified
21 and approved by the commission to facilitate economic
22 development and development of renewable energy in the state.
23 The rules shall provide for a transmission rate adjustment
24 clause that authorizes monthly rate adjustments outside of a
25 general rate case to reflect investment and costs incurred by

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1 an electric utility to comply with a commission order pursuant
2 to the Public Utility Act.

3 ~~[F-]~~ G. The commission may eliminate or condition a
4 particular adjustment clause if it finds such elimination or
5 condition is consistent with the purposes of the Public Utility
6 Act, including serving the goal of providing reasonable and
7 proper service at fair, just and reasonable rates to all
8 customer classes; provided, however, that no such elimination
9 or condition shall be ordered unless such elimination or
10 condition will not place the affected utility at a competitive
11 disadvantage. The commission rules shall also provide for
12 variances and may provide for separate examination of a
13 utility's adjustment clause based upon that utility's
14 particular operating characteristics.

15 ~~[G-]~~ H. Whenever there is filed with the commission
16 a schedule proposing new rates by a rural electric cooperative
17 organized under the Rural Electric Cooperative Act, the rates
18 shall become effective as proposed by the rural electric
19 cooperative without a hearing. However, the cooperative shall
20 give written notice of the proposed rates to its affected
21 patrons at least thirty days prior to the filing with the
22 commission, and the commission shall suspend the rates and
23 conduct a hearing concerning the reasonableness of any proposed
24 rates filed by a rural electric cooperative pursuant to
25 Subsections C and D of this section upon the filing with the

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1 commission of a protest setting forth grounds for review of the
2 proposed rates signed by one or more members of the rural
3 electric cooperative and if the commission determines there is
4 just cause for reviewing the proposed rates on one or more of
5 the grounds of the protest. The protest shall be filed no
6 later than twenty days after the filing with the commission of
7 the schedule proposing the new rates. The hearing and review
8 shall be limited to the issues set forth in the protest and for
9 which the commission may find just cause for the review, which
10 issues shall be contained in the notice of hearing. The
11 provisions of this subsection shall not be construed to affect
12 commission authority or procedure to regulate the sale,
13 furnishing or delivery by wholesale suppliers of electricity to
14 rural electric cooperatives pursuant to Section 62-6-4 NMSA
15 1978. In addition to the adjustments permitted by Subsections
16 E [~~and F~~] through G of this section, the commission may
17 authorize rate schedules of rural electric cooperatives to
18 recover, without notice and hearing, changes in the cost of
19 debt capital incurred pursuant to securities that are lawfully
20 issued. For the purposes of this subsection, a member of a
21 rural electric cooperative is a member as defined by the Rural
22 Electric Cooperative Act."

23 Section 2. Section 62-9-1 NMSA 1978 (being Laws 1941,
24 Chapter 84, Section 46, as amended) is amended to read:

25 "62-9-1. NEW CONSTRUCTION--RATEMAKING PRINCIPLES.--

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1 A. No public utility shall begin the construction
2 or operation of any public utility plant or system or of any
3 extension of any plant or system without first obtaining from
4 the commission a certificate that public convenience and
5 necessity require or will require such construction or
6 operation. This section does not require a public utility to
7 secure a certificate for an extension within any municipality
8 or district within which it lawfully commenced operations
9 before June 13, 1941 or for an extension within or to territory
10 already served by it, necessary in the ordinary course of its
11 business, or for an extension into territory contiguous to that
12 already occupied by it and that is not receiving similar
13 service from another utility. If any public utility or mutual
14 domestic water consumer association in constructing or
15 extending its line, plant or system unreasonably interferes or
16 is about to unreasonably interfere with the service or system
17 of any other public utility or mutual domestic water consumer
18 association rendering the same type of service, the commission,
19 on complaint of the public utility or mutual domestic water
20 consumer association claiming to be injuriously affected, may,
21 upon and pursuant to the applicable procedure provided in
22 Chapter 62, Article 10 NMSA 1978, and after giving due regard
23 to public convenience and necessity, including reasonable
24 service agreements between the utilities, make an order and
25 prescribe just and reasonable terms and conditions in harmony

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1 with the Public Utility Act to provide for the construction,
2 development and extension, without unnecessary duplication and
3 economic waste.

4 B. If a certificate of public convenience and
5 necessity is required pursuant to this section for the
6 construction or extension of a generating plant or transmission
7 lines and associated facilities, a public utility may include
8 in the application for the certificate a request that the
9 commission determine the ratemaking principles and treatment
10 that will be applicable for the facilities that are the subject
11 of the application for the certificate. If such a request is
12 made, the commission shall, in the order granting the
13 certificate, set forth the ratemaking principles and treatment
14 that will be applicable to the public utility's stake in the
15 certified facilities in all ratemaking proceedings on and after
16 such time as the facilities are placed in service. The
17 commission shall use the ratemaking principles and treatment
18 specified in the order in all proceedings in which the cost of
19 the public utility's stake in the certified facilities is
20 considered. If the commission later decertifies the
21 facilities, the commission shall apply the ratemaking
22 principles and treatment specified in the original
23 certification order to the costs associated with the facilities
24 that were incurred by the public utility prior to
25 decertification.

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1 C. If the commission issues a certificate of
2 convenience and necessity to an electric utility for
3 transmission and transmission-related facilities or if the
4 commission orders an electric utility to construct or enlarge
5 transmission or transmission-related facilities that the
6 commission determines are needed for achieving the goals of
7 promoting economic development or development of renewable
8 energy projects, the commission shall find that the
9 transmission facilities are used and useful for providing
10 public utility service in accordance with this section and are
11 prudent and includable in the utility's rate base, regardless
12 of the extent of the utility's actual use of the facilities.

13 ~~[C.]~~ D. The commission may approve the application
14 for the certificate without a formal hearing if no protest is
15 filed within sixty days of the date that notice is given,
16 pursuant to commission order, that the application has been
17 filed. The commission shall issue its order granting or
18 denying the application within nine months from the date the
19 application is filed with the commission. Failure to issue its
20 order within nine months is deemed to be approval and final
21 disposition of the application; provided, however, that the
22 commission may extend the time for granting approval for an
23 additional six months for good cause shown.

24 ~~[D.]~~ E. As used in this section, "mutual domestic
25 water consumer association" means an association created and

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organized pursuant to the provisions of:

(1) Laws 1947, Chapter 206; Laws 1949, Chapter
79; or Laws 1951, Chapter 52; or

(2) the Sanitary Projects Act."

- 10 -