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SENATE BILL 543

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO UTILITIES; AMENDING A SECTION OF THE PUBLIC UTILITY
ACT TO LIMIT RATE INCREASES.

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. In determining whether that burden has
been met, the commission shall consider an economic impact
study to be presented by the utility that quantifies any
adverse impact that a proposed rate change will have on New
Mexico's economy, employment and business activity. Interested

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1 parties and commission staff shall be permitted to contest the
2 results of any such study or present their own study, which the
3 commission shall also consider. If the commission determines
4 that a proposed rate change will adversely affect New Mexico's
5 economy, employment or business activity, it shall consider
6 this in determining the justness and reasonableness of the
7 proposed rate change. The commission shall not adjust rates
8 between customer classes as a means to remove adverse impacts,
9 unless the adjustment is otherwise justified.

10 B. Any public utility that has increased its rates
11 by three percent or more after January 1, 2008 without
12 presenting an economic impact study as described in this
13 section shall by July 1, 2011 submit to the commission a study
14 of the present and future economic impact to the employment,
15 business and industry in the state of that rate increase. The
16 commission shall determine such impacts by January 1, 2012. If
17 the commission determines that a utility rate increase after
18 January 1, 2008 has adversely affected the state's economy,
19 employment or business activity, it shall require the utility
20 to file a new general rate case within one hundred twenty days.

21 ~~[B.]~~ C. Unless the commission otherwise orders, no
22 public utility shall make any change in any rate that has been
23 duly established except after thirty days' notice to the
24 commission, which notice shall plainly state the changes
25 proposed to be made in the rates then in force and the time

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1 when the changed rates will go into effect and other
2 information as the commission by rule requires. The utility
3 shall also give notice of the proposed changes to other
4 interested persons as the commission may direct. All proposed
5 changes shall be shown by filing new schedules that shall be
6 kept open to public inspection. The commission for good cause
7 shown may allow changes in rates without requiring the thirty
8 days' notice, under conditions that it may prescribe.

9 ~~[G-]~~ D. Whenever there is filed with the commission
10 by any public utility a complete application as prescribed by
11 commission rule proposing new rates, the commission may, upon
12 complaint or upon its own initiative, except as otherwise
13 provided by law, upon reasonable notice, enter upon a hearing
14 concerning the reasonableness of the proposed rates. If the
15 commission determines a hearing is necessary, it shall suspend
16 the operation of the proposed rates before they become
17 effective but not for a longer initial period than nine months
18 beyond the time when the rates would otherwise go into effect,
19 unless the commission finds that a longer time will be
20 required, in which case the commission may extend the period
21 for an additional three months. The commission shall hear and
22 decide cases with reasonable promptness. The commission shall
23 adopt rules identifying criteria for various rate and tariff
24 filings to be eligible for suspension periods shorter than what
25 is allowed by this subsection and to be eligible for summary

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1 approval without hearing.

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

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

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

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1 customer classes;

2 (2) the specific adjustment mechanism to
3 recover tax, gas, fuel or purchased power 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 methods
7 by which the propriety of costs that are included may be
8 determined by the commission in a timely manner, including what
9 informational filings are required to enable the commission to
10 make such a determination; and

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

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

25 H. The total of all rate adjustments that occur

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1 without a hearing for an electric public utility after a
2 general rate case shall not cause an increase greater than one
3 percent to that utility's total revenues, unless the commission
4 has determined, after notice and hearing, that a proposed
5 adjustment exceeding one percent will have no adverse impact on
6 the economy, employment or business activity in the state.

7 ~~[G.]~~ I. Whenever there is filed with the commission
8 a schedule proposing new rates by a rural electric cooperative
9 organized under the Rural Electric Cooperative Act, the rates
10 shall become effective as proposed by the rural electric
11 cooperative without a hearing. However, the cooperative shall
12 give written notice of the proposed rates to its affected
13 patrons at least thirty days prior to the filing with the
14 commission, and the commission shall suspend the rates and
15 conduct a hearing concerning the reasonableness of any proposed
16 rates filed by a rural electric cooperative pursuant to
17 Subsections ~~[G- and]~~ D and E of this section upon the filing
18 with the commission of a protest setting forth grounds for
19 review of the proposed rates signed by the lesser of one
20 percent of or twenty-five members of a customer class of the
21 rural electric cooperative and if the commission determines
22 there is just cause for reviewing the proposed rates on one or
23 more of the grounds of the protest. The protest shall be filed
24 no later than twenty days after the filing with the commission
25 of the schedule proposing the new rates. The hearing and

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1 review shall be limited to the issues set forth in the protest
2 and for which the commission may find just cause for the
3 review, which issues shall be contained in the notice of
4 hearing. The provisions of this subsection shall not be
5 construed to affect commission authority or procedure to
6 regulate the sale, furnishing or delivery by wholesale
7 suppliers of electricity to rural electric cooperatives
8 pursuant to Section 62-6-4 NMSA 1978. In addition to the
9 adjustments permitted by Subsections [~~E and~~] F and G of this
10 section, the commission may authorize rate schedules of rural
11 electric cooperatives to recover, without notice and hearing,
12 changes in the cost of debt capital incurred pursuant to
13 securities that are lawfully issued. For the purposes of this
14 subsection, a member of a rural electric cooperative is a
15 member as defined by the Rural Electric Cooperative Act."