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SENATE BILL 597

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO UTILITIES; AMENDING THE REQUIREMENTS TO PROTEST A
PROPOSED RURAL ELECTRIC COOPERATIVE RATE CHANGE.

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 by Laws 2011, Chapter 155,
Section 1 and by Laws 2011, Chapter 170, Section 1) 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

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

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

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1 adopt rules identifying criteria for various rate and tariff
2 filings to be eligible for suspension periods shorter than what
3 is allowed by this subsection and to be eligible for summary
4 approval without hearing.

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

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

25 (1) whether the existence of a particular

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

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

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

14 (4) the proper adjustment period to be
15 employed.

16 F. Except as otherwise provided by law, any
17 increase in rates or charges for a public utility as defined in
18 Paragraph (3) of Subsection G of Section 62-3-3 NMSA 1978 based
19 upon cost factors other than taxes or cost of fuel, gas,
20 purchased power or acquisition of water resources shall be
21 permitted only after notice and hearing as provided by this
22 section. For the purposes of this subsection, "acquisition of
23 water resources" does not include the purchase or other
24 permanent acquisition of water rights. The commission shall
25 enact rules governing the use of tax, fuel, gas, purchased

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1 power or water resource acquisition adjustment clauses by such
2 utilities that enable the commission to consider periodically
3 at least the following:

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

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

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

19 (4) the proper adjustment period to be
20 employed.

21 G. The commission may eliminate or condition a
22 particular adjustment clause if it finds such elimination or
23 condition is consistent with the purposes of the Public Utility
24 Act, including serving the goal of providing reasonable and
25 proper service at fair, just and reasonable rates to all

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1 customer classes; provided, however, that no such elimination
2 or condition shall be ordered unless such elimination or
3 condition will not place the affected utility at a competitive
4 disadvantage. The commission rules shall also provide for
5 variances and may provide for separate examination of a
6 utility's adjustment clause based upon that utility's
7 particular operating characteristics.

8 H. Whenever there is filed with the commission a
9 schedule proposing new rates by a rural electric cooperative
10 organized under the Rural Electric Cooperative Act or by a
11 foreign distribution cooperative, the rates shall become
12 effective as proposed by the rural electric cooperative or the
13 foreign distribution cooperative without a hearing, except as
14 provided in this subsection. The rural electric cooperative or
15 the foreign distribution cooperative shall give written notice
16 of the proposed rates to its affected patrons in New Mexico at
17 least thirty days prior to the filing with the commission.
18 Upon the filing with the commission of a protest setting forth
19 grounds for review of the proposed rates signed by [~~the lesser~~
20 ~~of one~~] at least two percent of [~~or twenty-five~~] the members of
21 a customer rate class of the rural electric cooperative or
22 foreign distribution cooperative and if the commission
23 determines that there is just cause for reviewing the proposed
24 rates on one or more of the grounds of the protest, the
25 commission shall suspend the rates and conduct a hearing

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1 concerning the reasonableness of any proposed rates filed by a
2 rural electric cooperative or a foreign distribution
3 cooperative pursuant to Subsections C and D of this section.
4 The protest shall be filed no later than twenty days after the
5 filing with the commission of the schedule proposing the new
6 rates. The hearing and review shall be limited to the issues
7 set forth in the protest and for which the commission may find
8 just cause for the review, which issues shall be contained in
9 the notice of hearing. The provisions of this subsection shall
10 not be construed to affect commission authority or procedure to
11 regulate the sale, furnishing or delivery by wholesale
12 suppliers of electricity to rural electric cooperatives or
13 foreign distribution cooperatives pursuant to Section 62-6-4
14 NMSA 1978. In addition to the adjustments permitted by
15 Subsections E and G of this section, the commission may
16 authorize rate schedules of rural electric cooperatives and
17 foreign distribution cooperatives to recover, without notice
18 and hearing, changes in the cost of debt capital incurred
19 pursuant to securities that are lawfully issued. This
20 subsection shall not apply to any foreign distribution
21 cooperative that proposes rates for any of its customer rate
22 classes in the state that are higher than the rates it charges
23 to the same or substantially similar customer rate class in the
24 state under the laws of which the foreign distribution
25 cooperative is organized. For the purposes of this subsection:

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