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HOUSE BILL 563

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO UTILITIES; ESTABLISHING LIMITS ON RURAL ELECTRIC COOPERATIVES INVESTMENTS IN SUBSIDIARY BUSINESSES; REMOVING REQUIRED PUBLIC REGULATION COMMISSION APPROVAL ON CERTAIN FEDERAL LOANS ALREADY APPROVED BY A FEDERAL AGENCY; REPEALING THE REPEAL OF CERTAIN LAWS PERTAINING TO UTILITIES.

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

Section 1. A new section of the Rural Electric Cooperative Act is enacted to read:

"[NEW MATERIAL] SUBSIDIARY BUSINESS ACTIVITIES. --

A. Cooperatives may form, organize, acquire, hold, dispose of and operate any interest up to and including full controlling interest in separate business entities that provide energy services and products and telecommunications and communications services and products, including cable and

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1 satellite television and water and wastewater collection and
2 treatment, without prior approval from the public regulation
3 commission so long as those other business entities meet all of
4 the following conditions:

5 (1) the subsidiary is not financed with loans
6 from the federal rural utilities service of the United States
7 department of agriculture or the United States department of
8 agriculture or with similar financing from any successor
9 agency. This limitation shall not apply to rural utilities
10 service loans or United States department of agriculture loans,
11 or loans from successor agencies, to the extent the loan is to
12 be used for a purpose authorized by the lending agency;

13 (2) the subsidiary fully compensates the
14 cooperative for the use of personnel, services, equipment,
15 tangible property and the cooperative's fully distributed
16 costs, including all direct and indirect costs and the cost of
17 capital incurred in providing the personnel, services,
18 equipment or tangible property in question; and

19 (3) the subsidiary does not receive from a
20 cooperative any investment, loan, guarantee or pledge of assets
21 in an amount that, in the aggregate, exceeds twenty percent of
22 the assets of that cooperative.

23 B. A director, or spouse of a director, of a
24 cooperative may not be employed or have any financial interest
25 in a separate business entity formed, organized, acquired, held

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1 or operated by that cooperative pursuant to the provisions of
2 this section.

3 C. Should the public regulation commission, upon
4 complaint showing reasonable grounds for investigation, find
5 after investigation that the charges for the transactions
6 between the cooperative and other business entity do not
7 conform with the provisions of this section, the public
8 regulation commission is authorized to direct the cooperative
9 to adjust those charges to comply with the provisions of this
10 section. If the cooperative does not comply with the public
11 regulation commission's directive, the public regulation
12 commission is authorized to direct the cooperative to divest
13 its interest in the other business entity. For purposes of
14 enforcing this section, members of the public regulation
15 commission, and the public regulation commission staff, are
16 authorized to inspect the books and records of such other
17 business entities and the cooperatives, provided that
18 proprietary or confidential data or information of the separate
19 business entities shall not be disclosed to a third party. The
20 public regulation commission shall adopt rules and reporting
21 requirements to enforce the provisions of this section."

22 Section 2. Section 62-6-6 NMSA 1978 (being Laws 1941,
23 Chapter 84, Section 18, as amended) is amended to read:

24 "62-6-6. ISSUANCE, ASSUMPTION OR GUARANTEE OF
25 SECURITIES. --

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1 A. The power of a public utility to issue, assume
2 or guarantee securities and to create liens on its property
3 situated within this state is a special privilege subject to
4 the supervision and control of the commission as set forth in
5 the Public Utility Act.

6 B. Except as provided in Subsection E of this
7 section, a public utility, when authorized by order of the
8 commission and not otherwise, may issue stocks and stock
9 certificates and may issue, assume or guarantee other
10 securities payable at periods of more than eighteen months
11 after the date thereof for the following purposes only:

12 (1) making loans or grants from the proceeds
13 of federal loans for economic development projects benefiting
14 its service area;

15 (2) the acquisition of property;

16 (3) the construction, completion, extension or
17 improvement of its facilities;

18 (4) the improvement or maintenance of its
19 service;

20 (5) the discharge or lawful refunding of its
21 obligations; or

22 (6) the reimbursement of money actually
23 expended for purposes set forth in this subsection from income
24 or from any other money in the treasury not secured by or
25 obtained from the issue, assumption or guarantee of securities,

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1 within five years next prior to the filing of an application
2 with the commission for the required authorization.

3 C. Notwithstanding the provisions of Subsection B
4 of this section, the commission may authorize issuance by a
5 public utility of shares of stock of any class as a dividend on
6 outstanding shares of stock of the public utility of any class
7 and may authorize the issuance of the same or a different
8 number of shares of stock of any class in exchange for
9 outstanding shares of stock of any class of the public utility,
10 and the public utility may issue the stock so authorized.

11 D. The commission shall not authorize a borrowing
12 under the provisions of Paragraph (1) of Subsection B of this
13 section unless the governing board has approved the borrowing
14 by a two-thirds' majority vote of the members present at a
15 special meeting called for that purpose. The commission shall
16 review the terms of the economic development loan or grant to
17 ascertain the adequacy of any collateral, to have the right to
18 inspect books and review the level of co-participation by the
19 borrower or grantee.

20 E. Commission approval is not required for any
21 security of a utility whose securities are subject to oversight
22 and approval by the federal government or any of its agencies
23 or subdivisions."

24 Section 3. Section 62-6-8.1 NMSA 1978 (being Laws 1979,
25 Chapter 50, Section 1) is amended to read:

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1 "62-6-8. 1. ADDITIONAL JURISDICTION. -- Except as provided
2 in Subsection E of Section 62-6-6 NMSA 1978 and notwithstanding
3 any other provision of Sections 62-6-1 through 62-6-11 NMSA
4 1978, the commission shall have jurisdiction over and may
5 regulate, by general order or regulation, securities of a
6 public utility incorporated under the laws of this state
7 [~~which~~] that would otherwise be exempt from regulation by the
8 commission [~~under~~] pursuant to Section 62-6-6 NMSA 1978 or
9 Subsection A of Section 62-6-8 NMSA 1978 and [~~which~~] that is
10 subject to regulation [~~under~~] pursuant to 16 USC 824. "

11 Section 4. Section 62-8-7 NMSA 1978 (being Laws 1991,
12 Chapter 251, Section 1, as amended) is amended to read:

13 "62-8-7. CHANGE IN RATES. --

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

18 B. Unless the commission otherwise orders, no
19 public utility shall ~~make~~ any change in any rate that has been
20 duly established except after thirty days' notice to the
21 commission, which notice shall plainly state the changes
22 proposed to be ~~made~~ in the rates then in force and the time
23 when the changed rates will go into effect and other
24 information as the commission by rule requires. The utility
25 shall also give notice of the proposed changes to other

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1 interested persons as the commission may direct. All proposed
2 changes shall be shown by filing new schedules that shall be
3 kept open to public inspection. The commission for good cause
4 shown may allow changes in rates without requiring the thirty
5 days' notice, under conditions that it may prescribe.

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

24 D. If after a hearing the commission finds the
25 proposed rates to be unjust, unreasonable or in any way in

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

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

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

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

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

8 (4) the proper adjustment period to be
9 employed.

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

22 G. Whenever there is filed with the commission a
23 schedule proposing new rates by a rural electric cooperative
24 organized under the Rural Electric Cooperative Act, the rates
25 shall become effective as proposed by the rural electric

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1 cooperative without a hearing. However, the cooperative shall
2 give written notice of the proposed rates to its affected
3 patrons at least thirty days prior to the filing with the
4 commission, and the commission shall suspend the rates and
5 conduct a hearing concerning the reasonableness of any proposed
6 rates filed by a rural electric cooperative pursuant to
7 Subsections C and D of this section upon the filing with the
8 commission of a protest setting forth grounds for review of the
9 proposed rates signed by one or more members of the rural
10 electric cooperative and if the commission determines there is
11 just cause for reviewing the proposed rates on one or more of
12 the grounds of the protest. The protest shall be filed no
13 later than twenty days after the filing with the commission of
14 the schedule proposing the new rates. The hearing and review
15 shall be limited to the issues set forth in the protest and for
16 which the commission may find just cause for the review, which
17 issues shall be contained in the notice of hearing. The
18 provisions of this subsection shall not be construed to affect
19 commission authority or procedure to regulate the sale,
20 furnishing or delivery by wholesale suppliers of electricity to
21 rural electric cooperatives pursuant to Section 62-6-4 NMSA
22 1978. In addition to the adjustments permitted by Subsections
23 E and F of this section, the commission may authorize rate
24 schedules of rural electric cooperatives to recover, without
25 notice and hearing, changes in the cost of debt capital

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1 incurred pursuant to securities [~~the issuance of which are~~
2 ~~approved by the commission~~] that are lawfully issued. For the
3 purposes of this subsection, a member of a rural electric
4 cooperative is a member as defined by the Rural Electric
5 Cooperative Act. "

6 Section 5. REPEAL. --Laws 1998, Chapter 108, Section 82,
7 as amended by Laws 2000, Chapter 88, Section 3, is repealed.

8 Section 6. EFFECTIVE DATE. --The effective date of the
9 provisions of this act is July 1, 2003.