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SENATE BILL 322

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Stephen H. Fischmann

AN ACT

RELATING TO UTILITIES; PROVIDING FOR A PERIODIC EXAMINATION OF
UTILITY RATES BY THE PUBLIC REGULATION COMMISSION.

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--EXAMINATION OF RATES.--

A. At any hearing involving an increase in rates or
charges sought by a public utility or the examination of
current rates or charges as ordered by the commission, the
burden of proof to show that the increased [~~rate or charge is~~]
rates or current rates and charges are 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. The rates and charges of a public utility with
6 more than ten thousand customers shall be examined by the
7 commission no less frequently than every five years. If a
8 public utility has not filed a rate change request with the
9 commission as provided in Subsection B of this section during
10 the five-year period being considered, the commission shall
11 initiate the examination by ordering the utility to provide
12 notice of the examination to interested parties as the
13 commission directs. Following this notice, the commission
14 shall proceed with a hearing and exercise its powers as
15 provided in Subsection E of this section.

16 ~~[D.]~~ E. If after a hearing the commission finds the
17 proposed rates or current rates to be unjust, unreasonable or
18 in any way in violation of law, the commission shall determine
19 the just and reasonable rates to be charged or applied by the
20 utility for the service in question and shall fix the rates by
21 order to be served upon the utility or the commission by its
22 order shall direct the utility to file new rates respecting
23 such service that are designed to produce annual revenues no
24 greater than those determined by the commission in its order to
25 be just and reasonable. Those rates shall thereafter be

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1 observed until changed, as provided by the Public Utility Act.

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

11 (1) whether the existence of a particular
12 adjustment clause is consistent with the purposes of the Public
13 Utility Act, including serving the goal of providing reasonable
14 and proper service at fair, just and reasonable rates to all
15 customer classes;

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

18 (3) which costs should be included in an
19 adjustment clause, procedures to avoid the inclusion of costs
20 in an adjustment clause that should not be included and methods
21 by which the propriety of costs that are included may be
22 determined by the commission in a timely manner, including what
23 informational filings are required to enable the commission to
24 make such a determination; and

25 (4) the proper adjustment period to be

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1 employed.

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

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

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