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HOUSE BILL 215

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

INTRODUCED BY

George Dodge, Jr.

AN ACT

RELATING TO PUBLIC UTILITIES; PROVIDING FOR THE IMPLEMENTATION
OF PROPOSED RATES BY A FOREIGN DISTRIBUTION COOPERATIVE WITHOUT
A HEARING.

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.

B. Unless the commission otherwise orders, no
public utility shall make any change in any rate that has been
duly established except after thirty days' notice to the

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

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

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1 filings to be eligible for suspension periods shorter than what
2 is allowed by this subsection and to be eligible for summary
3 approval without hearing.

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

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

24 (1) whether the existence of a particular
25 adjustment clause is consistent with the purposes of the Public

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1 Utility Act, including serving the goal of providing reasonable
2 and proper service at fair, just and reasonable rates to all
3 customer classes;

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

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

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

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

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1 particular operating characteristics.

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

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1 ~~the rural electric cooperative and if the commission determines~~
2 ~~there is just cause for reviewing the proposed rates on one or~~
3 ~~more of the grounds of the protest.]~~ The protest shall be filed
4 no later than twenty days after the filing with the commission
5 of the schedule proposing the new rates. The hearing and
6 review shall be limited to the issues set forth in the protest
7 and for which the commission may find just cause for the
8 review, which issues shall be contained in the notice of
9 hearing. The provisions of this subsection shall not be
10 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 F 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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1 [a]

2 (1) "foreign distribution cooperative" means a
3 rural electric distribution cooperative corporation serving its
4 members at retail and transacting business in New Mexico
5 pursuant to the authority granted under Section 62-15-26 NMSA
6 1978;

7 (2) "member of a foreign distribution
8 cooperative" means a retail customer in New Mexico serviced by
9 a foreign distribution cooperative; and

10 (3) "member of a rural electric cooperative"
11 [is] means a member as defined by the Rural Electric
12 Cooperative Act."

13 SECTION 2. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2011.

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