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SENATE BILL 209

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

INTRODUCED BY

Clinton D. Harden

AN ACT

RELATING TO PUBLIC UTILITIES; AMENDING THE PUBLIC UTILITY ACT;  
ALLOWING WATER UTILITIES TO ADJUST RATES DUE TO THE COST OF  
ACQUISITION OF WATER RESOURCES WITHOUT NOTICE AND 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. Except as otherwise provided by law, any  
16 increase in rates or charges for a public utility as defined in  
17 Paragraph (3) of Subsection G of Section 62-3-3 NMSA 1978 based  
18 upon cost factors other than taxes or cost of fuel, gas,  
19 purchased power or acquisition of water resources 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, purchased power or water resource acquisition  
23 adjustment clauses by such utilities that enable the commission  
24 to consider periodically 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, purchased power or acquisition of water  
7 resource costs;

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

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

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

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1 variances and may provide for separate examination of a  
2 utility's adjustment clause based upon that utility's  
3 particular operating characteristics.

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

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

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