

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 commission, which notice shall plainly state the changes proposed to be made in the rates then in force and the time when the changed rates will go into effect and other information as the commission by rule requires. The utility shall also give notice of the proposed changes to other interested persons as the commission may direct. All proposed changes shall be shown by filing new schedules that shall be kept open to public inspection. The commission for good cause shown may allow changes in rates without requiring the thirty

days' notice, under conditions that it may prescribe.

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

D. If after a hearing the commission finds the proposed rates to be unjust, unreasonable or in any way in violation of law, the commission shall determine the just and reasonable rates to be charged or applied by the utility for the service in question and shall fix the rates by order to be served upon the utility or the commission by its order shall

direct the utility to file new rates respecting such service that are designed to produce annual revenues no greater than those determined by the commission in its order to be just and reasonable. Those rates shall thereafter be observed until changed, as provided by the Public Utility Act.

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

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

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

(3) which costs should be included in an adjustment clause, procedures to avoid the inclusion of costs in an adjustment clause that should not be included and methods by which the propriety of costs that are included may

be determined by the commission in a timely manner, including what informational filings are required to enable the commission to make such a determination; and

(4) the proper adjustment period to be employed.

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

G. Whenever there is filed with the commission a schedule proposing new rates by a rural electric cooperative organized under the Rural Electric Cooperative Act or by a foreign distribution cooperative, the rates shall become effective as proposed by the rural electric cooperative or the foreign distribution cooperative without a hearing, except as provided in this subsection. The rural electric cooperative or the foreign distribution cooperative shall give written

notice of the proposed rates to its affected patrons in New Mexico at least thirty days prior to the filing with the commission. Upon the filing with the commission of a protest setting forth grounds for review of the proposed rates signed by the lesser of one percent of or twenty-five members of a customer rate class of the rural electric cooperative or foreign distribution cooperative and if the commission determines that there is just cause for reviewing the proposed rates on one or more of the grounds of the protest, the commission shall suspend the rates and conduct a hearing concerning the reasonableness of any proposed rates filed by a rural electric cooperative or a foreign distribution cooperative pursuant to Subsections C and D of this section. The protest shall be filed no later than twenty days after the filing with the commission of the schedule proposing the new rates. The hearing and review shall be limited to the issues set forth in the protest and for which the commission may find just cause for the review, which issues shall be contained in the notice of hearing. The provisions of this subsection shall not be construed to affect commission authority or procedure to regulate the sale, furnishing or delivery by wholesale suppliers of electricity to rural electric cooperatives or foreign distribution cooperatives pursuant to Section 62-6-4 NMSA 1978. In addition to the adjustments permitted by Subsections E and F of this section, the

commission may authorize rate schedules of rural electric cooperatives and foreign distribution cooperatives to recover, without notice and hearing, changes in the cost of debt capital incurred pursuant to securities that are lawfully issued. This subsection shall not apply to any foreign distribution cooperative that proposes rates for any of its customer rate classes in the state that are higher than the rates it charges to the same or substantially similar customer rate class in the state under the laws of which the foreign distribution cooperative is organized. For the purposes of this subsection:

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

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

(3) "member of a rural electric cooperative" means a member as defined by the Rural Electric Cooperative Act."

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