

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 498

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Sander Rue

AN ACT

RELATING TO PUBLIC UTILITIES; LIMITING COSTS THAT CAN BE  
CHARGED BY CERTAIN ELECTRIC PUBLIC UTILITIES 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 by Laws 2011, Chapter 155,  
Section 1 and by Laws 2011, Chapter 170, Section 1) 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

underscoring material = new  
~~[bracketed material]~~ = delete

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

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

.199445.3

underscored material = new  
[bracketed material] = delete

1 decide cases with reasonable promptness. The commission shall  
2 adopt rules identifying criteria for various rate and tariff  
3 filings to be eligible for suspension periods shorter than what  
4 is allowed by this subsection and to be eligible for summary  
5 approval without hearing.

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

17 E. Except as otherwise provided by law, any  
18 increase in rates or charges for the utility commodity by a  
19 public utility as defined in Paragraph (1) of Subsection G of  
20 Section 62-3-3 NMSA 1978 that is not a rural electric  
21 cooperative organized under the Rural Electric Cooperative Act  
22 or a foreign distribution cooperative, based upon cost factors  
23 other than taxes, shall be permitted only after notice and  
24 hearing as provided by this section.

25 [~~E.~~] F. Except as otherwise provided by law, any

underscored material = new  
[bracketed material] = delete

1 increase in rates or charges for the utility commodity by a  
2 public utility as defined in Paragraph (2), (4), (5) or (6) of  
3 Subsection G of Section 62-3-3 NMSA 1978, or by a rural  
4 electric cooperative organized under the Rural Electric  
5 Cooperative Act, or by a foreign distribution cooperative,  
6 based upon cost factors other than taxes or cost of fuel, gas  
7 or purchased power, filed for after April 4, 1991, shall be  
8 permitted only after notice and hearing as provided by this  
9 section. ~~[The commission shall enact rules governing the use~~  
10 ~~of tax, fuel, gas or purchased power adjustment clauses by~~  
11 ~~utilities that enable the commission to consider periodically~~  
12 ~~at least the following:~~

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

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

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

.199445.3

underscored material = new  
[bracketed material] = delete

1 ~~make such a determination; and~~

2 ~~(4) the proper adjustment period to be~~  
3 ~~employed.~~

4 F.] G. Except as otherwise provided by law, any  
5 increase in rates or charges for a public utility as defined in  
6 Paragraph (3) of Subsection G of Section 62-3-3 NMSA 1978 based  
7 upon cost factors other than taxes or cost of fuel, gas,  
8 purchased power or acquisition of water resources shall be  
9 permitted only after notice and hearing as provided by this  
10 section. For the purposes of this subsection, "acquisition of  
11 water resources" does not include the purchase or other  
12 permanent acquisition of water rights.

13 H. The commission shall enact rules governing the  
14 use of tax, fuel, gas, purchased power or water resource  
15 acquisition adjustment clauses by [~~such~~] utilities that enable  
16 the commission to consider periodically at least the following:

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

22 (2) the specific adjustment mechanism to  
23 recover tax, gas, fuel, purchased power or acquisition of water  
24 resource costs;

25 (3) which costs should be included in an

.199445.3

underscored material = new  
[bracketed material] = delete

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

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

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

21 [~~H.~~] J. Whenever there is filed with the commission  
22 a schedule proposing new rates by a rural electric cooperative  
23 organized under the Rural Electric Cooperative Act or by a  
24 foreign distribution cooperative, the rates shall become  
25 effective as proposed by the rural electric cooperative or the

.199445.3

underscoring material = new  
~~[bracketed material] = delete~~

1 foreign distribution cooperative without a hearing, except as  
2 provided in this subsection. The rural electric cooperative or  
3 the foreign distribution cooperative shall give written notice  
4 of the proposed rates to its affected patrons in New Mexico at  
5 least thirty days prior to the filing with the commission.  
6 Upon the filing with the commission of a protest setting forth  
7 grounds for review of the proposed rates signed by the lesser  
8 of one percent of or twenty-five members of a customer rate  
9 class of the rural electric cooperative or foreign distribution  
10 cooperative and if the commission determines that there is just  
11 cause for reviewing the proposed rates on one or more of the  
12 grounds of the protest, the commission shall suspend the rates  
13 and conduct a hearing concerning the reasonableness of any  
14 proposed rates filed by a rural electric cooperative or a  
15 foreign distribution cooperative pursuant to Subsections C and  
16 D of this section. The protest shall be filed no later than  
17 twenty days after the filing with the commission of the  
18 schedule proposing the new rates. The hearing and review shall  
19 be limited to the issues set forth in the protest and for which  
20 the commission may find just cause for the review, which issues  
21 shall be contained in the notice of hearing. The provisions of  
22 this subsection shall not be construed to affect commission  
23 authority or procedure to regulate the sale, furnishing or  
24 delivery by wholesale suppliers of electricity to rural  
25 electric cooperatives or foreign distribution cooperatives

.199445.3

underscoring material = new  
~~[bracketed material] = delete~~

1 pursuant to Section 62-6-4 NMSA 1978. In addition to the  
2 adjustments permitted by Subsections ~~[E]~~ F and ~~[G]~~ I of this  
3 section, the commission may authorize rate schedules of rural  
4 electric cooperatives and foreign distribution cooperatives to  
5 recover, without notice and hearing, changes in the cost of  
6 debt capital incurred pursuant to securities that are lawfully  
7 issued. This subsection shall not apply to any foreign  
8 distribution cooperative that proposes rates for any of its  
9 customer rate classes in the state that are higher than the  
10 rates it charges to the same or substantially similar customer  
11 rate class in the state under the laws of which the foreign  
12 distribution cooperative is organized. For the purposes of  
13 this subsection:

14 (1) "foreign distribution cooperative" means a  
15 rural electric distribution cooperative corporation serving its  
16 members at retail and transacting business in New Mexico  
17 pursuant to the authority granted under Section 62-15-26 NMSA  
18 1978;

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

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