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SENATE BILL 235

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

William P. Soules

AN ACT

RELATING TO PUBLIC UTILITIES; LIMITING THE FREQUENCY IN RATE  
CHANGES AND RATE-CHANGE REQUESTS OF CERTAIN ELECTRIC UTILITIES.

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. A public utility as defined in Paragraph (1) of  
Subsection G of Section 62-3-3 NMSA 1978 that is not a rural

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1 electric cooperative shall not change or petition for a change  
2 in its charge for utility service, as that charge applies to a  
3 particular customer class, more than once in any three-year  
4 period beginning on or after the effective date of this 2017  
5 act. Unless the commission otherwise orders, no public utility  
6 shall make any change in any rate that has been duly  
7 established except after thirty days' notice to the commission,  
8 which notice shall plainly state the changes proposed to be  
9 made in the rates then in force and the time when the changed  
10 rates will go into effect and other information as the  
11 commission by rule requires. The utility shall also give  
12 notice of the proposed changes to other interested persons as  
13 the commission may direct. All proposed changes shall be shown  
14 by filing new schedules that shall be kept open to public  
15 inspection. The commission for good cause shown may allow  
16 changes in rates without requiring the thirty days' notice,  
17 under conditions that it may prescribe.

18 C. Whenever there is filed with the commission by  
19 any public utility a complete application as prescribed by  
20 commission rule proposing new rates, the commission may, upon  
21 complaint or upon its own initiative, except as otherwise  
22 provided by law, upon reasonable notice, enter upon a hearing  
23 concerning the reasonableness of the proposed rates. If the  
24 commission determines a hearing is necessary, it shall suspend  
25 the operation of the proposed rates before they become

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1 effective but not for a longer initial period than nine months  
2 beyond the time when the rates would otherwise go into effect,  
3 unless the commission finds that a longer time will be  
4 required, in which case the commission may extend the period  
5 for an additional three months. The commission shall hear and  
6 decide cases with reasonable promptness. The commission shall  
7 adopt rules identifying criteria for various rate and tariff  
8 filings to be eligible for suspension periods shorter than what  
9 is allowed by this subsection and to be eligible for summary  
10 approval without hearing.

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

22 E. Except as otherwise provided by law, any  
23 increase in rates or charges for the utility commodity based  
24 upon cost factors other than taxes or cost of fuel, gas or  
25 purchased power, filed for after April 4, 1991, shall be

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1 permitted only after notice and hearing as provided by this  
2 section. The commission shall enact rules governing the use of  
3 tax, fuel, gas or purchased power adjustment clauses by  
4 utilities that enable the commission to consider periodically  
5 at least the following:

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

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

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

20 (4) the proper adjustment period to be  
21 employed.

22 F. Except as otherwise provided by law, any  
23 increase in rates or charges for a public utility as defined in  
24 Paragraph (3) of Subsection G of Section 62-3-3 NMSA 1978 based  
25 upon cost factors other than taxes or cost of fuel, gas,

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1 purchased power or acquisition of water resources shall be  
2 permitted only after notice and hearing as provided by this  
3 section. For the purposes of this subsection, "acquisition of  
4 water resources" does not include the purchase or other  
5 permanent acquisition of water rights. The commission shall  
6 enact rules governing the use of tax, fuel, gas, purchased  
7 power or water resource acquisition adjustment clauses by such  
8 utilities that enable the commission to consider periodically  
9 at least the following:

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

15 (2) the specific adjustment mechanism to  
16 recover tax, gas, fuel, purchased power or acquisition of water  
17 resource 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 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 H. Whenever there is filed with the commission a  
15 schedule proposing new rates by a rural electric cooperative  
16 organized under the Rural Electric Cooperative Act or by a  
17 foreign distribution cooperative, the rates shall become  
18 effective as proposed by the rural electric cooperative or the  
19 foreign distribution cooperative without a hearing, except as  
20 provided in this subsection. The rural electric cooperative or  
21 the foreign distribution cooperative shall give written notice  
22 of the proposed rates to its affected patrons in New Mexico at  
23 least thirty days prior to the filing with the commission.  
24 Upon the filing with the commission of a protest setting forth  
25 grounds for review of the proposed rates signed by the lesser

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

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1 cooperative that proposes rates for any of its customer rate  
2 classes in the state that are higher than the rates it charges  
3 to the same or substantially similar customer rate class in the  
4 state under the laws of which the foreign distribution  
5 cooperative is organized. For the purposes of this subsection:

6 (1) "foreign distribution cooperative" means a  
7 rural electric distribution cooperative corporation serving its  
8 members at retail and transacting business in New Mexico  
9 pursuant to the authority granted under Section 62-15-26 NMSA  
10 1978;

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

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