



The Legislature
of the
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER 170

HOUSE BILL 215

Introduced by

REPRESENTATIVE GEORGE DODGE, JR.

REPRESENTATIVE JIM R. TRUJILLO
REPRESENTATIVE BEN LUJAN
REPRESENTATIVE THOMAS A. GARCIA
REPRESENTATIVE DONA G. IRWIN



Chapter 170

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

1 days' notice, under conditions that it may prescribe.

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

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

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

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

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

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

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

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

4 (4) the proper adjustment period to be
5 employed.

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

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

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

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

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

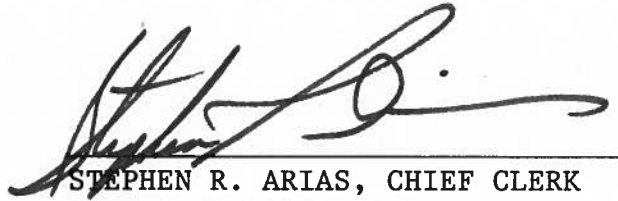
17 (2) "member of a foreign distribution
18 cooperative" means a retail customer in New Mexico serviced by
19 a foreign distribution cooperative; and

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

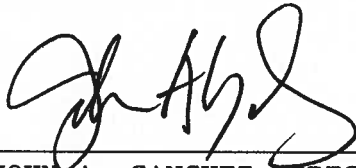
23 SECTION 2. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2011. _____



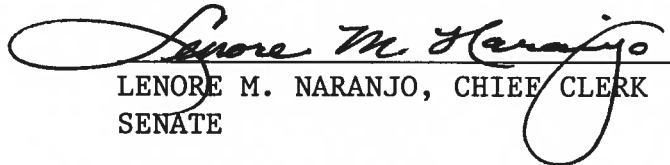
BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES

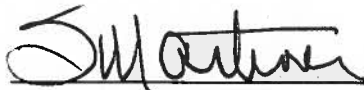


JOHN A. SANCHEZ, PRESIDENT
SENATE



LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this 24th day of April, 2011



SUSANA MARTINEZ, GOVERNOR
STATE OF NEW MEXICO

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