



The Legislature
of the
State of New Mexico

50th Legislature, 1st Session

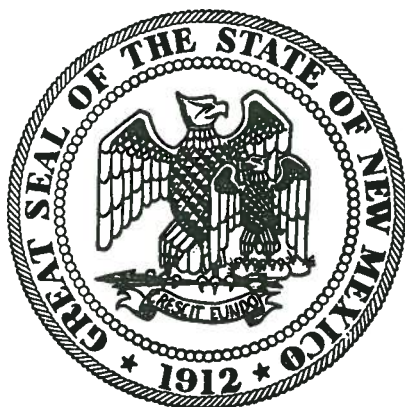
LAWS 2011

CHAPTER 155

SENATE BILL 209, as amended

Introduced by

SENATOR CLINTON D. HARDEN, JR.



Chapter 155

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
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

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

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

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

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

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

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

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

24 (3) which costs should be included in an
25 adjustment clause, procedures to avoid the inclusion of costs

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

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

8 F. Except as otherwise provided by law, any
9 increase in rates or charges for a public utility as defined
10 in Paragraph (3) of Subsection G of Section 62-3-3 NMSA 1978
11 based upon cost factors other than taxes or cost of fuel,
12 gas, purchased power or acquisition of water resources shall
13 be permitted only after notice and hearing as provided by
14 this section. For the purposes of this subsection,
15 "acquisition of water resources" does not include the
16 purchase or other permanent acquisition of water rights. The
17 commission shall enact rules governing the use of tax, fuel,
18 gas, purchased power or water resource acquisition adjustment
19 clauses by such utilities that enable the commission to
20 consider periodically at least the following:

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

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

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

11 (4) the proper adjustment period to be
12 employed.

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

25 H. Whenever there is filed with the commission a

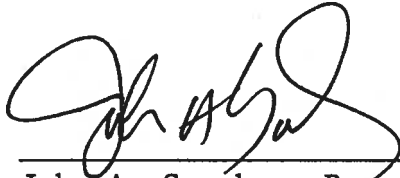
1 schedule proposing new rates by a rural electric cooperative
2 organized under the Rural Electric Cooperative Act, the rates
3 shall become effective as proposed by the rural electric
4 cooperative without a hearing. However, the cooperative
5 shall give written notice of the proposed rates to its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

1 pursuant to Section 62-6-4 NMSA 1978. In addition to the
2 adjustments permitted by Subsections E and G of this section,
3 the commission may authorize rate schedules of rural electric
4 cooperatives to recover, without notice and hearing, changes
5 in the cost of debt capital incurred pursuant to securities
6 that are lawfully issued. For the purposes of this
7 subsection, a member of a rural electric cooperative is a
8 member as defined by the Rural Electric Cooperative Act."

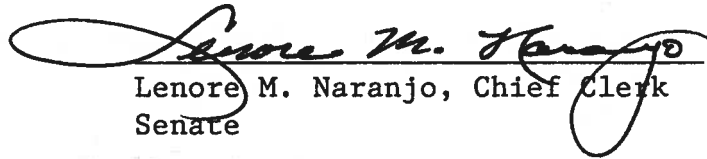
9 SECTION 2. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2011. _____

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John A. Sanchez, President
Senate



Lenore M. Naranjo, Chief Clerk
Senate



Ben Lujan, Speaker
House of Representatives



Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this 8th day of April, 2011



Governor Susana Martinez
State of New Mexico

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