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
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. Except as otherwise provided by law, any
increase in rates or charges for a public utility as defined
in Paragraph (3) of Subsection G of Section 62-3-3 NMSA 1978
based upon cost factors other than taxes or cost of fuel,
gas, purchased power or acquisition of water resources shall
be permitted only after notice and hearing as provided by
this section. For the purposes of this subsection,
"acquisition of water resources" does not include the
purchase or other permanent acquisition of water rights. The
commission shall enact rules governing the use of tax, fuel,
gas, purchased power or water resource acquisition adjustment
clauses by such 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, purchased power or acquisition of water resource 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.

G. 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.

H. Whenever there is filed with the commission a
schedule proposing new rates by a rural electric cooperative
organized under the Rural Electric Cooperative Act, the rates
shall become effective as proposed by the rural electric
cooperative without a hearing. However, the cooperative
shall give written notice of the proposed rates to its
affected patrons at least thirty days prior to the filing
with the commission, and the commission shall suspend the
rates and conduct a hearing concerning the reasonableness of
any proposed rates filed by a rural electric cooperative
pursuant to Subsections C and D of this section 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 class of the
rural electric cooperative and if the commission determines
there is just cause for reviewing the proposed rates on one
or more of the grounds of the protest. 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
pursuant to Section 62-6-4 NMSA 1978. In addition to the
adjustments permitted by Subsections E and G of this section,
the commission may authorize rate schedules of rural electric
cooperatives to recover, without notice and hearing, changes
in the cost of debt capital incurred pursuant to securities
that are lawfully issued. For the purposes of this
subsection, a member of a rural electric cooperative is 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.