

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: H3/13/15

A Bill

HOUSE BILL 1655

5 By: Representative Collins
6

For An Act To Be Entitled

8 *AN ACT TO REFORM RATE MAKING OF PUBLIC UTILITIES; TO*
9 *DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.*

Subtitle

12 *TO REFORM RATE MAKING OF PUBLIC*
13 *UTILITIES; AND TO DECLARE AN EMERGENCY.*

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16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 *SECTION 1. Arkansas Code § 23-4-410, concerning the authority of the*
20 *Arkansas Public Service Commission, is amended to add additional subsections*
21 *to read as follows:*

22 *(c) The public utility or any party to a proceeding before the*
23 *commission to consider an application for a general change in rates and*
24 *charges may, according to the commission's rules and procedures, present*
25 *evidence regarding a requested return on common equity in a filing, including*
26 *without limitation:*

27 *(1) The basis for the requested return on common equity,*
28 *including quantitative analysis based on widely accepted methodologies,*
29 *current market data, qualitative discussion, and analysis of factors that*
30 *influence the requested return on common equity;*

31 *(2) Evidence that the requested return on common equity is*
32 *comparable to values that have recently been approved for public utilities*
33 *that are delivering similar services with corresponding risks within this*
34 *state and in other regulatory jurisdictions in the same general geographic*
35 *area;*

36 *(3) Evidence of the financial, business, and other risks faced*



1 by the utility, including regulatory oversight, numbers and types of
2 customers, rate mechanisms, cost allocation methods, rate levels, rate
3 design, reliability, and quality of service, as compared to those faced by
4 utilities delivering similar services within this state and in the same
5 general geographic area; and

6 (4) Any other information, including without limitation:

7 (A) Macroeconomic data;

8 (B) Relevant commentary from ratings agencies and
9 investment analysts;

10 (C) Independent analysis of utility industry trends; and

11 (D) Any other relevant information.

12 (d) If any evidence is presented as described in subsection (c) of
13 this section, the commission shall discuss that evidence and demonstrate in
14 its order that it considered the evidence in making its findings. The
15 commission shall make its findings based on substantial evidence.

16 (e) The allowance for funds used during construction that will be
17 accrued and capitalized and included as a component of the costs recoverable
18 through rates approved by the commission shall be determined according to the
19 requirements of the uniform system of accounts adopted by the commission in
20 its rules. The rate of return on common equity to be used shall be the rate
21 of return on common equity most recently approved by the commission for the
22 utility.

23 (f) An electric cooperative corporation established under the Electric
24 Cooperative Corporation Act, § 23-18-301 et seq., is not subject to
25 subsections (c) and (d) of this section.

26
27 SECTION 2. Arkansas Code Title 23, Chapter 4, Subchapter 4, is amended
28 to add an additional section to read as follows:

29 23-4-422. Cost allocation.

30 (a)(1) The Arkansas Public Service Commission shall establish and
31 regulate the rates and charges of a public utility under this subchapter and
32 shall allocate or assign costs among all classes of customers of the public
33 utility.

34 (2) In determining the rates for utility services and the cost
35 allocation among all of a public utility's classes of customers, the
36 commission shall:

1 (A) Consider the costs and expenses incurred by the public
2 utility in providing the utility services to customers in each class;

3 (B) Consider the economic impact of the proposed rates and
4 charges for utility services by giving equal consideration to each class of
5 customers; and

6 (C) Make findings that are based on substantial evidence.

7 (b) Notwithstanding the commission's authority to otherwise determine
8 and fix rates for all classes of customers, including allocating or assigning
9 costs and designing rates, if the commission finds that it will be beneficial
10 to economic development or the promotion of employment opportunities, the
11 commission shall determine rates and charges for utility services that:

12 (1) For the class of customers with the highest level of
13 consumption per customer which has rates that include a demand component, and
14 any successors to such class, as they existed on January 1, 2015, ensure that
15 all costs and expenses related to demand and capacity, are identified and
16 allocated on a demand basis and recovered from customers in those classes
17 through a demand rate component and not through a volumetric rate component
18 unless the commission determines that the rates should be adjusted under
19 subsections (e) and (f) of this section;

20 (2)(A) For the retail jurisdiction rate classes, ensure that all
21 electric utility production plant are classified such that production related
22 costs, all nonfuel production-related costs, purchased capacity costs, and
23 any energy costs incurred resulting from the electric utility's environmental
24 compliance as production demand costs.

25 (B) Ensure that production demand costs shall be allocated
26 to each customer class pursuant to the average and excess method shown in
27 Table 4-10B on page 51 of the 1992 National Association of Regulatory Utility
28 Commissioners Manual, as it existed on January 1, 2015, using the average of
29 the four (4) monthly coincident peaks for the months of June, July, August,
30 and September for each class for the coincident peak referenced in Table 4-
31 10B of the manual, as it existed on January 1, 2015, or any subsequent
32 version of the manual to the extent it produces an equivalent result.

33 (C) Nothing in subdivision (b)(2)(B) of this section shall
34 prescribe an allocation for wind production plant; and

35 (3)(A)(i) For purposes of allocation of natural gas distribution
36 plant costs, including costs in distribution mains and related distribution

1 plant expenses, among the state's retail jurisdiction rate classes, each gas
2 utility shall classify all natural gas distribution plant costs as customer-
3 related or capacity-related.

4 (ii) For purposes of subdivision (b)(3)(A)(i) of
5 this section, the natural gas distribution plant costs shall include:

6 (a) Amounts charged to account numbers 374
7 through 387, as defined under the account numbering system in the Uniform
8 System of Accounts prescribed for natural gas public utilities by the rules
9 of the commission; and

10 (b) Related depreciation, return on
11 investment, property insurance and taxes, excluding state and federal income
12 taxes, fixed operation and maintenance expense charged to account numbers 870
13 through 894, as defined under the account numbering system in the Uniform
14 System of Accounts prescribed for natural gas public utilities by the rules
15 of the commission, including all labor-related costs for the expenses
16 described in this subdivision.

17 (iii) To develop a cost allocation method under this
18 section for natural gas utilities, the commission shall use the Gas
19 Distribution Rate Design Manual, June 1989 edition, as prepared by the
20 National Association of Regulatory Utility Commissioners, as it existed on
21 January 1, 2015, or any subsequent version of the manual, to the extent it
22 produces an equivalent result.

23 (B)(i) The customer-related natural gas distribution plant
24 costs shall be allocated to each customer class based on the number of
25 customers in each class.

26 (ii) The customer-related portion of natural gas
27 distribution plant costs related to account numbers 374 through 376, as
28 defined under the account numbering system in the Uniform System of Accounts
29 prescribed for natural gas public utilities by the rules of the commission,
30 shall be the percentage of the average cost of all mains that is represented
31 by the average cost of the minimum size main and computed using a cost
32 allocation method based upon the predominant size main that is installed by
33 the natural gas public utility that is at least two inches (2") in diameter,
34 with the investment costs of the predominant size mains set as the minimum
35 size.

36 (iii) The customer-related portion of natural gas

1 distribution costs related to account numbers 377 through 387, as defined
2 under the account numbering system in the Uniform System of Accounts
3 prescribed for natural gas public utilities by the rules of the commission,
4 shall be computed using a study that reflects the investments required to
5 meter, regulate, and connect each class of customers to the natural gas
6 utility's system.

7 (iv) Any remaining natural gas distribution plant
8 costs shall be classified as capacity-related costs.

9 (C)(i) Except for natural gas distribution plant costs
10 related to account numbers 380 through 385, as defined under the account
11 numbering system in the Uniform System of Accounts prescribed for natural gas
12 public utilities by the rules of the commission, the natural gas distribution
13 plant costs classified as capacity-related costs shall be allocated to the
14 customer classes based on the contribution to peak day demand that is made by
15 each customer class.

16 (ii) As used in subdivision (b)(2)(C)(i) of this
17 section, "peak day demand" means the computed quantity of gas that would be
18 supplied to each customer class calculated using the coldest day in a recent
19 thirty-year period for each gas utility.

20 (c) An application for a general change or modification in a public
21 utility's rates and charges under this subchapter shall include:

22 (1) Evidence that demonstrates that the implementation of rates
23 under subsection (b) of this section will result in rates that will be
24 beneficial to economic development or the promotion of employment
25 opportunities; and

26 (2) Evidence of whether or not rate design in subdivision (b)(1)
27 of this section results in an increase to the base rate charges that are
28 billed to customers in the affected class of more than ten percent (10%) as
29 compared to the then currently approved base rate charges of the applicable
30 rate schedules.

31 (d) Unless the commission adjusts the rates under subsection (e) or
32 subsection (f) of this section, the commission shall by order establish and
33 design rates, allocate or assign costs to all classes of customers, and
34 regulate the rates for each class of customers of a public utility according
35 to this section.

36 (e) Notwithstanding the commission's authority to otherwise determine

1 and fix rates for all classes of customers, including allocating or assigning
2 costs and designing rates, the commission may adjust rates under subdivision
3 (b)(2) and (b)(3) of this section if the commission finds:

4 (1) It is in the public interest;

5 (2) It necessary to produce just and reasonable rates;

6 (3) Implementation of rates under subdivision (b)(2) and (b)(3)
7 of this section will result in rates that are not beneficial to economic
8 development or the promotion of employment opportunities.

9 (f) If implementation of rates under subsection (b) of this section
10 will result in an increase in the base rate charges billed to customers in
11 the affected class of more than ten percent (10%) as compared to the
12 currently approved base rate charges of the applicable rate schedules, the
13 commission may adjust the rates to ensure that the greatest increase in the
14 base rate charges billed to customers in the affected class is ten percent
15 (10%) as compared to the then currently approved base rate charges of the
16 applicable rate schedules.

17 (g) If the commission makes any adjustment under subsections (e) and
18 (f) of this section, the commission shall provide in an order the rationale
19 for determining that rates under subsection (b) of this section may not be
20 just and reasonable and the rationale for determining that the rates adjusted
21 in the order of the commission are just and reasonable and in the public
22 interest. The commission shall make its findings based on substantial
23 evidence.

24 (h) An electric cooperative corporation established under the Electric
25 Cooperative Corporation Act, § 23-18-301 et seq., is not subject to this
26 section.

27 (i) The cost allocation provisions of this section shall apply to any
28 pending application for a change in general rates and charges when this act
29 becomes effective.

30
31 SECTION 3. Arkansas Code Title 23, Chapter 4, is amended to add an
32 additional subchapter to read as follows:

33 Subchapter 12 — Formula Rate Review

34
35 23-4-1201. Title.

36 This subchapter shall be known and may be cited as the "Formula Rate

1 Review Act".

2
3 23-4-1202. Findings and intent.

4 (a) The General Assembly finds that:

5 (1) Electricity and natural gas services are essential to the
6 public health and safety of citizens of this state;

7 (2) Affordable electricity and natural gas encourage economic
8 activity within the state and benefit the state's industrial, commercial, and
9 agricultural industries to increase the number of available jobs and to
10 attract new business and industry to the state; and

11 (3) A new regulatory scheme for the review, approval, and
12 allocation of investments and rates by the Public Service Commission is
13 needed to allow this state to be competitive with surrounding states for jobs
14 and capital by retaining existing businesses and locating new businesses in
15 the state.

16 (b) The intent of this act is to establish a regulatory framework that
17 implements rate reforms to provide just and reasonable rates to consumers in
18 this state and enables public utilities in this state to provide reliable
19 service while maintaining stable rates.

20
21 23-4-1203. Definitions.

22 As used in this subchapter:

23 (1)(A) "Earned return rate" means a public utility's return on
24 common equity for a formula rate review test period that is based on the
25 numbers or values of the formula rate review test period and calculated by
26 dividing the weighted earned common equity rate by the common equity ratio
27 percentage.

28 (B) As used in subdivision (1)(A) of this section,
29 "weighted earned common equity rate" means the weighted formula rate review
30 test period cost rate for common equity minus the operating income
31 deficiency, or excess, divided by a public utility's rate base;

32 (2) "Formula rate review test period" means a test period as
33 stated in § 23-4-406 or a projected year;

34 (3) "Historical year" means, when using a formula rate review
35 test period containing projections, the twelve (12) consecutive months that
36 precede the second and any subsequent formula rate review test period;

1 (4) "Projected year" means the twelve (12) months following the
2 proposed effective date under § 23-4-1205 for the first formula rate review
3 filing and each subsequent consecutive twelve-month period; and

4 (5) "Target return rate" means a cost rate of common equity
5 value as established by the Arkansas Public Service Commission in the
6 commission's order addressing the public utility's most recent application
7 for a general change in rates and charges.

8
9 23-4-1204. Formula rate review — Authorized.

10 (a) A formula rate review is authorized to provide an annual
11 streamlined review of a public utility's rates to determine if adjustments
12 are needed to comply with this subchapter.

13 (b) An electric cooperative corporation established under the Electric
14 Cooperative Corporation Act, § 23-18-301 et seq., shall not be regulated by a
15 formula rate review.

16
17 23-4-1205. Filing — Procedure.

18 (a)(1) A public utility filing an application for a general change or
19 modification to its rates and charges under § 23-4-401 et seq., may as part
20 of its application, file a notice with the Arkansas Public Service Commission
21 that the public utility is electing to have its rates regulated under a
22 formula rate review mechanism as authorized by this subchapter.

23 (2) The notice shall designate the formula rate review test
24 period based upon either a projected year or a test period under § 23-4-406.

25 (b) Upon receipt of a notice as described in subdivision (a)(1) of
26 this section, the commission shall:

27 (1) Regulate the rates of the public utility according to this
28 subchapter; and

29 (2) Be required to approve a formula rate review mechanism
30 utilizing the formula rate review test period designated by the public
31 utility.

32 (c)(1) A public utility that has filed a notice of intent or has an
33 application for a general change in rates and charges pending under § 23-4-
34 401 et seq. that contains a notice of election to be regulated under a
35 formula rate review when this subchapter becomes effective shall be regulated
36 under this subchapter.

1 (2) A public utility shall not file for an initial formula rate
2 review until at least one hundred eighty (180) days after rates have become
3 effective pursuant to the final order on the application for a general change
4 in rates. A public utility that has filed a notice of intent or has an
5 application for a general change in rates and charges pending under § 23-4-
6 401 et seq. that contains a notice of election to be regulated under a
7 formula rate review when this subchapter becomes effective may file for the
8 initial formula rate review one hundred fifty (150) days after rates have
9 become effective pursuant to the final order in the general rate case.

10 (3) The rates that are approved in the application for a general
11 change in rates and charges shall remain in effect during the formula rate
12 review term under § 23-4-1208, subject to the rate adjustments under this
13 subchapter.

14 (d) An approved formula rate review mechanism shall require the public
15 utility to file the information required by the commission under this
16 subchapter not more than one hundred eighty (180) days before the date on
17 which the rates determined by the formula rate review mechanism will go into
18 effect for each year.

19 (e) An approved formula rate review mechanism shall require any party
20 according to the commission's rules and procedures to file with the
21 commission a statement of the errors or objections at least ninety (90) days
22 before the date on which rates determined by the formula rate review
23 mechanism will go into effect for each year.

24 (f) An approved formula rate review mechanism shall require the public
25 utility to file with the commission any corrections or a rebuttal to the
26 errors or objections raised by the parties at least seventy-five (75) days
27 before the date on which rates determined by the formula rate review
28 mechanism will go into effect for each year.

29 (g)(1) The commission shall conduct a hearing, unless waived by the
30 parties, at least fifty (50) days before the date on which rates determined
31 by the formula rate review mechanism will go into effect for each year.

32 (2) The commission shall issue a final order at least twenty
33 (20) days before the date on which rates determined by the formula rate
34 review mechanism will go into effect for each year.

35 (3)(A) If a final order is not issued at least twenty (20) days
36 before the date on which rates determined by the formula rate review

1 mechanism will go into effect for each year, the public utility may put the
2 proposed formula rate rider changes into effect subject to refund.

3 (B) The commission may require reasonable security to
4 assure the prompt payment of any refunds, including interest, that may be
5 ordered.

6
7 23-4-1206. Utility formula rate review — Required information.

8 (a) A formula rate review mechanism approved by the Arkansas Public
9 Service Commission shall specify the minimum information required with each
10 annual rate review filing.

11 (b) Annual formula rate review filings under an approved formula rate
12 review mechanism shall be developed using the formula rate review test period
13 designated by the public utility under § 23-4-1205(a)(2).

14 (c) Annual formula rate review filings shall be prepared consistent
15 with the commission's order on the public utility's application for a general
16 change in rates and charges.

17 (d) Any costs disallowed by the commission in its order on the public
18 utility's application for a general change in rates and charges shall not be
19 eligible for recovery under a formula rate review mechanism.

20 (e)(1) If a formula rate review test period utilizes projected data
21 under § 23-4-406 or a projected year, rate changes under § 23-4-1207 shall
22 include an adjustment to net any differences between the prior formula rate
23 review test period change in revenue and the actual historical year change in
24 revenue for that same year.

25 (2) A public utility shall report any differences between the
26 prior formula rate review test period change in revenue and the historical
27 year change in revenue for the same year.

28 (3) Netting shall not begin until a public utility has
29 accumulated a full twelve (12) months of a historical year to prepare a
30 report.

31 (f) The public utility shall submit documentation fully supporting all
32 calculations and adjustments as required by the rules of the commission.

33 (g) A public utility, or any other party to the proceeding subject to
34 the commission's rules and procedures, may propose additional adjustments
35 that are based on factors unique to the utility.

36

1 23-4-1207. Formula — Adjustment of customer rates.

2 (a) Customer rates shall be adjusted in a formula rate review
3 mechanism based on a comparison of the earned return rate to the target
4 return rate.

5 (b) Adjustments of customer rates shall be calculated using the
6 following formula:

7 (1) If the earned return rate is less than the target return
8 rate minus five-tenths percent (0.5%), the formula rate review mechanism
9 revenue level for the formula rate review test period shall be increased by
10 an amount necessary to increase the earned return rate to the target return
11 rate;

12 (2) If the earned return rate is greater than the target return
13 rate plus five-tenths percent (0.5%), the formula rate review mechanism
14 revenue level for the formula rate review test period shall be decreased by
15 an amount necessary to decrease the earned return rate to the target return
16 rate; or

17 (3) If the earned return rate is less than or equal to the
18 target return rate plus five-tenths percent (0.5%), and greater than or equal
19 to the target return rate minus five-tenths percent (0.5%), the formula rate
20 review mechanism revenue level for the formula rate review test period shall
21 not change or be adjusted.

22 (c) If a formula rate review test period utilizes projected data under
23 § 23-4-406 or a projected year, rates shall be adjusted by the netting of
24 historical year differences under § 23-4-1206.

25 (d)(1) The total change in the formula rate review mechanism revenue
26 level shall be allocated to each applicable rate schedule based on an equal
27 percentage of the base rate revenue used in the development of rates in the
28 Arkansas Public Service Commission's order addressing the public utility's
29 last application for a general change in rates and charges.

30 (2) The total amount of a revenue increase or decrease for each
31 rate class shall not exceed four percent (4%) of each rate class' revenue for
32 the twelve (12) calendar months preceding the formula rate review test
33 period.

34 (e) Only one (1) rate review adjustment shall occur during any period
35 of three hundred sixty-five (365) days.

36

1 23-4-1208. Term — Formula rate review.

2 (a)(1) The term of any formula rate review approved by the Arkansas
3 Public Service Commission shall not exceed five (5) years from the date of
4 the commission's final order on the application by the public utility for a
5 general change in rates and charges.

6 (2) Upon a determination that it is in the public interest, the
7 commission may extend the term by a period of no more than five (5) years
8 beyond the initial term.

9 (3) The rate review mechanism shall continue until all
10 historical years have been netted under § 23-4-1206(e)(1) and rates have been
11 adjusted under § 23-4-1207(c).

12 (b) A formula rate review shall continue until a final order is issued
13 on an application for a general change in rates and charges is filed by a
14 public utility or an application for a change in general rates and charges
15 filed by the public utility as ordered by the commission. The rate review
16 mechanism shall continue until all historical years have been netted under §
17 23-4-1206(e)(1) and rates have been adjusted under § 23-4-1207(c).

18
19 23-4-1209. Construction.

20 This subchapter does not repeal any other provision in this chapter and
21 is supplemental to other laws governing the regulation of public utility
22 rates.

23
24 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
25 General Assembly of the State of Arkansas that the costs that drive public
26 utility rates are changing; that public utilities need to have procedures
27 that permit their rates to change in response to those changing conditions;
28 that there is a need to address the allocation of costs and design of rates;
29 that there is a need to maintain stable rates and to mitigate the magnitude
30 of future rate changes; and that affordable electricity and natural gas
31 encourage economic activity within the state and benefit the state's
32 industries to increase the number of available jobs and to attract new
33 businesses and industries to the state. Therefore, an emergency is declared
34 to exist, and this act being immediately necessary for the preservation of
35 the public peace, health, and safety shall become effective on:

36 (1) The date of its approval by the Governor;

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(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Collins