

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H2/17/03 S3/4/03

A Bill

Act 366 of 2003
HOUSE BILL 1413

5 By: Representatives Childers, P. Bookout, Biggs, Bledsoe, Boyd, Dees, Dobbins, Fite, Goss, Hardwick,
6 Jacobs, Jones, Martin, Parks, Roebuck, Scroggin, Sumpter, Thomason, Thyer, *Pickett, Napper*
7 By: Senators J. Bookout, Baker, Broadway, Bryles, Faris, Higginbothom, Laverty, Malone, Salmon,
8 *Wooldridge*
9

For An Act To Be Entitled

10
11 THE ARKANSAS MUNICIPAL ELECTRIC UTILITY
12 INTERLOCAL COOPERATION ACT OF 2003; AN ACT TO
13 AUTHORIZE AND GOVERN THE PLANNING, CONSTRUCTION,
14 FINANCING, OWNERSHIP, OPERATION, AND MANAGEMENT
15 OF ELECTRIC PROJECTS THROUGH FORMATION OF
16 SEPARATE POLITICAL SUBDIVISIONS BY MUNICIPALITIES
17 OWNING OR OPERATING ELECTRIC UTILITY SYSTEMS
18 THROUGH THE EXISTING INTERLOCAL AGREEMENT ACT
19 PROCESS; AND FOR OTHER PURPOSES.
20

Subtitle

21
22 AN ACT TO CREATE ARKANSAS MUNICIPAL
23 ELECTRIC UTILITY CONSOLIDATED
24 AUTHORITIES.
25
26
27

28 WHEREAS, the General Assembly finds that municipally owned electric
29 utility systems are unique in the electric utility industry because
30 municipally owned electric utility systems are owned and operated by
31 municipal governments primarily as a benefit to those who reside within the
32 municipalities and the rates and operating practices thereof have
33 historically been established by the elected officials of the municipalities
34 through their delegated legislative authority; and

35 WHEREAS, Arkansas's municipally owned electric utility systems and
36 their customers have a need for reliable, low cost supplies; and



1 WHEREAS, the ability of municipal electric utility systems to act
2 outside their boundaries or to formally cooperate to acquire, construct and
3 operate generation and transmission facilities, of the sort identified herein
4 as "Electric Projects", has historically been limited.

5
6 NOW THEREFORE,

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

8
9 SECTION 1. Arkansas Code Title 25, Chapter 20 is amended to add an
10 additional subchapter to read as follows:

11 25-20-401. Title.

12 This subchapter shall be known and may be cited as the "Arkansas
13 Municipal Electric Utility Interlocal Cooperation Act of 2003".

14
15 25-20-402. Definitions.

16 As used in this subchapter unless the context otherwise requires:

17 (a) "Authority" means a municipal electric consolidated authority
18 created pursuant to this subchapter;

19 (b) "Electric Project" means:

20 (1) Any plant, works, system, or facilities, and real and personal property
21 of any nature whatsoever associated therewith, together with all parts
22 thereof and appurtenances thereto, which is used or useful in the generation,
23 transmission, coordination, purchase, sale, exchange, or interchange of
24 electric capacity and energy, and provision of ancillary services, including
25 facilities and property for the acquisition, extraction, conversion,
26 transportation, storage, reprocessing, or disposal of fuel and other
27 materials of any kind for such purposes or that may be necessary or advisable
28 for the proper and efficient operation of the authority's facilities;

29 (2) Any interest in or right to the use, services, or electric capacity and
30 energy of any such plant, works, system, or facilities;

31 (3) Any study to determine the feasibility or costs of any of the foregoing,
32 including, but not limited to, engineering, legal, financial, and other
33 services necessary to determine the legality and financial and engineering
34 feasibility of any electric project; and

35 (4) Any contract or agreement associated with generation, transmission,
36 coordination, purchase, sale, exchange, or interchange of electric capacity

1 and energy or ancillary services.

2 (c) "Electric transmission system" and "electric transmission
3 facility" mean electric utility properties and facilities necessary for
4 transmitting electricity at 69 kV phase-to-phase or higher and not for
5 service to a directly tapped, retail, end-use customer or customers;

6 (d) "Governing body of a municipal electric utility" means the city
7 council, board of directors, improvement district commissioners, or other
8 elected or appointed authority having the rate-making and debt issuance
9 authority for the municipal electric utility;

10 (e) "Municipality" means any city of the first class or city of the
11 second class incorporated under the laws of the State of Arkansas, or any
12 commission or agency thereof, including any municipally owned or controlled
13 corporation, or any improvement district, consolidated public or municipal
14 utility system improvement district, or nonprofit corporation lessee of such
15 entity;

16 (f) "Municipal electric utility" means any electric generation,
17 transmission or distribution system owned or operated on the effective date
18 of this subchapter by any city of the first or second class or a town,
19 incorporated under the laws of the State of Arkansas, or any commission,
20 department, division, or agency thereof, including any municipally owned or
21 controlled corporation, or any improvement district, consolidated public or
22 municipal utility system improvement district, or nonprofit corporation
23 lessee of such entity;

24 (g) "Person" means any natural person, firm, corporation, electric
25 cooperative corporation, energy service provider, nonprofit corporation,
26 association, or improvement district; and

27 (h) "Public utility" means any person or entity, engaged in the
28 generation or sale of electric power and energy, which is subject to
29 regulation by the Arkansas Public Service Commission.

30
31 25-20-403. Creation.

32 (a)(1) The governing body of any two (2) or more municipal electric
33 utilities entering into an interlocal agreement under the Interlocal
34 Cooperation Act, § 25-20-101 et seq. are authorized to create an authority as
35 a separate legal entity for the purposes set forth in this subchapter.

36 (2) For the purposes of this section, a rural electric

1 cooperative corporation that is not a member of a generation or transmission
2 cooperative or a municipal electric utility system in another state may join
3 in the formation of an authority.

4 (b) An authority created under this subchapter shall be referenced as
5 an Arkansas Municipal Electric Consolidated Authority # 1, #2, #3, and so
6 forth as determined by the Secretary of State.

7 (c)(1) The governing body of a municipal electric utility wishing to
8 create an authority under this subchapter shall approve, by ordinance or
9 resolution or otherwise pursuant to law, an interlocal agreement specifying
10 the matters set forth in § 25-20-104.

11 (2) An application shall be filed with the Secretary of State.

12 (3) Review by the Secretary of State as contemplated by this
13 section shall be in addition to those filings required by § 25-20-104(f) and
14 § 25-20-105(a).

15 (d) An interlocal agreement shall:

16 (1) Specify any limitations on the exercise of the authority's powers,
17 including such matters, if any, as to which the governing body of the
18 municipal electric utilities reserve rights to approve, disapprove, or
19 otherwise participate in any exercise of the authority's powers;

20 (2) Provide for reasonable payments in lieu of taxes, or other payments by
21 the authority to the participating governing bodies of the municipal electric
22 utilities, as the governing bodies may deem appropriate;

23 (3) Specify the number of commissioners of the authority, the terms of
24 office of the commissioners, the manner of appointing or electing the
25 commissioners, the residency requirements applicable to commissioners, and
26 the voting rights of each commissioner, which voting rights may vary by
27 commissioner; and

28 (4) Set forth other matters, not inconsistent with this subchapter, with
29 respect to the creation and operation of the authority as the governing
30 bodies of the municipal electric utilities may deem necessary or appropriate.

31 (e)(1) An application to create an authority under this subchapter
32 shall then be prepared, setting forth:

33 (A) A request that an authority be created under this
34 subchapter;

35 (B) The proposed name for the authority;

36 (C) The names of the participating governing bodies of

1 municipal electric utilities;

2 (D) The number of commissioners of the authority;

3 (E) The manner in which commissioners of the authority will be
4 appointed or elected and the residency requirements applicable to
5 commissioners;

6 (F) The voting rights of each commissioner;

7 (G) Special procedures for amending the certificate of
8 incorporation, if any; and

9 (H) Other matters, not inconsistent with this subchapter, with respect
10 to the creation and operation of the authority as the governing bodies of the
11 municipal electric utilities may deem necessary or appropriate.

12 (2) The application shall be signed on behalf of each governing
13 body of municipal electric utilities by an authorized official thereof.

14 (f)(1) In addition to the filing requirements contained in § 25-20-
15 104(f) and § 25-20-105(a), the Secretary of State shall examine the
16 application and, if the Secretary of State finds that the name proposed for
17 the authority is not identical with that of any other corporation, agency, or
18 instrumentality of the State of Arkansas, so nearly similar as to lead to
19 confusion and uncertainty, or otherwise deceptively misleading, the Secretary
20 of State shall:

21 (A) Receive and file the application;

22 (B) Record the application in an appropriate book of
23 record in his or her office;

24 (C) Make and issue a certificate of incorporation under the seal of
25 the State of Arkansas setting forth the name of the authority and the names
26 of the participating municipal electric utilities; and

27 (D) Record the certificate in an appropriate book of record
28 in his or her office.

29 (2) A copy of the certificate of incorporation, certified by the
30 Secretary of State, shall be admissible in evidence in any suit, action, or
31 proceeding involving the validity or enforcement of, or relating to, any
32 contract of the authority and shall be conclusive proof of the filing and
33 contents of the certificate and the effective creation of the authority
34 absent fraud in the premises being established.

35 (g)(1) Any certificate of incorporation issued by the Secretary of
36 State under this subchapter may be amended from time to time in the manner

1 provided in the certificate of incorporation then existing or, if the
2 certificate of incorporation does not specify a procedure for its amendment,
3 with the consent of a majority of the commissioners of the authority who are
4 entitled to vote.

5 (2)(A) The amendment shall be signed by an officer or other
6 authorized person of the authority, who shall certify that the certificate of
7 incorporation has been amended in accordance with the procedures of this
8 subchapter and, as applicable, in the manner prescribed in the then-existing
9 certificate of incorporation.

10 (B) Upon filing of the amendment with the Secretary of
11 State in the manner provided in this section, the Secretary of State shall
12 make and issue an amendment to the certificate of incorporation.

13
14 25-20-404. Powers and duties of board of commissioners.

15 (a) All powers of an authority created under this subchapter shall be
16 exercised by, or under the authority of, and the business and affairs of the
17 authority managed under the direction of its board of commissioners, subject
18 to any limitation set forth in the authority's interlocal agreement.

19 (b) The duties of the board of commissioners shall be stated in the
20 interlocal agreement and may include, but shall not be limited to:

21 (1) Appointing a chief executive officer, who shall not be a
22 member of the board of commissioners, and setting compensation and other
23 terms of employment for the chief executive officer;

24 (2) Approving all budgets of the authority;

25 (3) Adopting such rules, regulations, and by-laws as the board
26 of commissioners may deem necessary and expedient for the proper ownership
27 and operation of its electric projects, which rules, regulations, and by-laws
28 may be altered, changed, or amended at its discretion; and

29 (4) Performing other duties as set forth in the interlocal
30 agreement.

31
32 25-20-405. Powers of authority.

33 Each authority created under this subchapter shall have the power to:

34 (1) Have perpetual succession as a body politic and corporate;

35 (2) Maintain offices as it may deem appropriate;

36 (3) Execute and perform contracts;

1 (4) Sue and be sued;

2 (5) Apply for and receive permits, licenses, certificates, and
3 approvals as may be necessary and own and operate facilities in accordance
4 with this subchapter and the interlocal agreement;

5 (6) Employ the services of all personnel necessary to its
6 operations and, in connection therewith, adopt and implement such healthcare,
7 disability, bonus, retirement, and other employee benefit plans as the board
8 of commissioners shall deem appropriate;

9 (7) Employ the services of professionals;

10 (8) Purchase insurance, maintain reserves for self-insurance,
11 and become self-insured for the payment of compensation under the Workers'
12 Compensation Law, § 11-9-101 et seq., and in compliance with the requirements
13 of § 11-9-404(a)(2), provided that deposit of an indemnity bond, letter of
14 credit, or securities shall not be required;

15 (9) Plan, purchase, receive, own, hold, improve, use, repair,
16 lease, sell, convey, exchange, transfer, assign, mortgage, pledge, and
17 otherwise acquire, dispose of, and deal with real and personal property and
18 any legal or equitable interest therein in its own name;

19 (10) Apply for, receive, and use loans, grants, taxes,
20 donations, and contributions from any public agency or other lawful source,
21 including any proceeds from the sale of bonds;

22 (11) Borrow money on a secured or unsecured basis, and in
23 connection therewith, issue bonds, promissory notes, or other evidence of
24 indebtedness and make and deliver indentures, mortgages, pledges, security
25 agreements, financing statements, and other instruments encumbering assets of
26 the authority;

27 (12) Make payments to the governing body of the municipal
28 electric utilities in such amounts as may be required or permitted by the
29 authority's interlocal agreement and to any political subdivision in which an
30 electric project is situated in such amounts as may be agreed to by the
31 authority and the political subdivision;

32 (13) Exercise other powers, privileges, and authorities as the
33 participating municipal electric utilities shall have delegated to the
34 authority by their interlocal agreement, subject to restrictions of
35 applicable law;

36 (14) As specified in the interlocal agreement between the

1 governing bodies of the municipal electric utilities forming an authority,
2 the authority created under this subchapter shall have full authority to
3 plan, construct, own, manage, operate, repair, finance, improve, extend,
4 acquire, reconstruct, equip, sell, lease, contract concerning, deal in,
5 dispose of, and maintain electric projects;

6 (15) As specified in the interlocal agreement between the
7 governing bodies of the municipal electric utilities forming an authority,
8 the authority shall have full authority to fix, charge, and collect, and from
9 time to time change, the rates for electricity and other goods and services
10 provided by the authority; and

11 (16) To the extent not inconsistent with applicable law, have
12 other and further powers relating to the ownership and operation of an
13 electric project as are now by law given to the governing body of any
14 municipal electric utilities and do any and all other acts and things
15 necessary, convenient, or desirable to carry out the purposes of, and to
16 exercise the powers granted to the authority by this subchapter.

17
18 25-20-406. Operation.

19 (a) It is the purpose of this subchapter to allow municipal electric
20 utilities to utilize the provisions of the Interlocal Cooperative Act, § 25-
21 20-101 et seq., for the purpose of planning, developing, and operating
22 electric projects.

23 (b)(1) Participating municipal electric utilities are authorized to
24 contribute to an authority such real and personal property as the governing
25 body of the municipal electric utility shall deem necessary or appropriate to
26 the ownership and operation of an electric project, as otherwise allowed by
27 law.

28 (2) However, any contributions of reserve funds held in trust
29 under §§ 14-73-101 through 14-73-104 or any official action of the governing
30 body of a municipal electric utility, or other trust related agreements shall
31 be made on the condition that the funds may be used only for the purposes
32 described in the applicable trust agreement and until so used shall remain in
33 a trust fund complying with the requirements of §§ 14-73-101 through 14-73-
34 104 or any applicable official action of the governing body of a municipal
35 electric utility or any other trust agreements.

36 (c) Governing bodies of municipal electric utilities shall have the

1 power to execute any and all contracts, leases, deeds, bills of sale,
2 easements, assignments, and other instruments of conveyance as may be
3 required or convenient to exercise the powers granted in this subchapter.

4 (d) No authority shall provide electric service at retail, nor enter
5 into contracts for the sale of energy or capacity to another party, other
6 than the authority's participating municipal electric utilities, for a term
7 of more than one (1) year, except in the event the Arkansas Public Service
8 Commission authorizes a longer period pursuant to § 23-18-531.

9
10 25-20-407. Eminent domain.

11 (a) Any authority may acquire by the exercise of the power of eminent
12 domain any private property that it may deem necessary for its purposes, in
13 the manner prescribed in §§ 18-15-301 through 18-15-309, provided that the
14 power of eminent domain shall not apply to any personal or real property that
15 may be owned or leased by a public utility or any personal or real property
16 used to generate electric energy or sell electric energy at wholesale that is
17 owned or leased by an exempt wholesale generator, as defined in
18 § 23-1-105.

19 (b) An authority shall not be authorized to acquire through
20 condemnation procedures any plant, property, facilities, or business owned or
21 operated by any public utility or pipeline company subject to the
22 jurisdiction of the Arkansas Public Service Commission or any personal or
23 real property used to generate electric energy or sell electric energy at
24 wholesale that is owned or leased by an exempt wholesale generator, as
25 defined in § 23-1-105, but notwithstanding § 25-20-108 and subsection (a) of
26 this section, an authority shall be authorized to enter into any contract,
27 agreement, or undertaking to purchase or otherwise acquire and to jointly
28 construct or operate such plant, property, or facilities.

29
30 25-20-408. Financing.

31 (a)(1) An authority is authorized to use any available funds,
32 revenues, and long or short term debt to pay and provide for costs and
33 expenses of accomplishing the purposes authorized by this subchapter.

34 (2) For the purposes of paying the costs of any electric project
35 or the portion thereof pertaining to its interest in the electric project, an
36 authority may issue revenue bonds as provided in this subchapter.

1 (b)(1) Whenever any authority shall elect, consistent with this
2 subchapter, to plan, purchase, construct, acquire, operate, or otherwise
3 participate in an electric project or shall desire to construct improvements,
4 betterments, repairs, and extensions thereto, it may issue revenue bonds
5 under the provisions of this section to pay the costs thereof.

6 (2) The procedure for issuance of bonds shall be as provided in
7 this section.

8 (c)(1) Bonds issued in accordance with this section shall be
9 authorized by resolution of the board of commissioners.

10 (2) The bonds may be issued as registered bonds and may be
11 exchangeable for bonds of another denomination or in another form.

12 (3) The bonds may:

13 (A) Be in such form and denominations as the board of
14 commissioners shall determine;

15 (B) Have such date or dates as the board of commissioners
16 shall determine;

17 (C) Be stated to mature at such time or times as the board
18 of commissioners shall determine;

19 (D) Bear interest payable at such times and at such rate
20 or rates as the board of commissioners shall determine;

21 (E) Be payable at such places within or without the State
22 of Arkansas as the board of commissioners shall determine;

23 (F) Be subject to such terms of redemption in advance of maturity at
24 such prices as the board of commissioners shall determine; and

25 (G) Contain such terms and conditions as the board of commissioners
26 shall determine.

27 (4) The bonds shall have all the qualities of and shall be deemed to be
28 negotiable instruments under the laws of the State of Arkansas, subject to
29 provisions as to registration as set forth in this subsection.

30 (5) The authorizing resolution may contain any other terms, covenants, and
31 conditions that the board of commissioners deems reasonable and desirable,
32 including, without limitation, those pertaining to the:

33 (A) Maintenance of various funds and reserves;

34 (B) Nature and extent of any security for payment of the
35 bonds;

36 (C) Priority among successive issues of bonds;

1 (D) Custody and application of the proceeds of the bonds;

2 (E) Collection and disposition of revenues;

3 (F) Investing and reinvesting of any moneys during periods
4 not needed for authorized purposes; and

5 (G) Rights, duties, and obligations of the authority and the holders
6 and registered owners of the bonds.

7 (d)(1) The authorizing resolution may provide for the execution of a
8 trust indenture between the authority and any financial institution or trust
9 company within or without the State of Arkansas.

10 (2) The trust indenture may contain any terms, covenants, and
11 conditions that are deemed desirable by the board of commissioners,
12 including, without limitation, those pertaining to the:

13 (A) Maintenance of various funds and reserves;

14 (B) Nature and extent of any security for the payment of
15 the bonds;

16 (C) Priority among successive issues of bonds;

17 (D) Custody and application of the proceeds of the bonds;

18 (E) Collection and disposition of revenues;

19 (F) Investing and reinvesting of any moneys during periods not needed
20 for authorized purposes; and

21 (G) Rights, duties, and obligations of the authority and the holders
22 and registered owners of the bonds.

23 (e)(1) Any authorizing resolution and any trust indenture relating to
24 the issuance and security of the bonds shall constitute a contract between
25 the authority and holders and registered owners of the bonds.

26 (2) The contract and all covenants, agreements, and obligations
27 therein, shall be promptly performed in strict compliance with the terms and
28 provisions of the contract, and the covenants, agreements, and obligations of
29 the authority may be enforced by mandamus or other appropriate proceeding at
30 law or in equity.

31 (f) The rates, rents, fees, and other charges to be charged for the
32 services of the electric project or the specified portion of the electric
33 project with revenues pledged to the payment of the bonds shall be sufficient
34 to provide:

35 (1) For the payment of all principal of and interest on all bonds as and
36 when due; and

1 (2) For renewals and replacements and other appropriate costs for the
2 electric project or the specified portion of the electric project with
3 revenues pledged to the payment of the bonds.

4 (g)(1) The proceeds derived from the sale of the bonds shall be used
5 solely for the purpose of:

6 (A) Planning, purchasing, constructing, acquiring, or participating in
7 an electric project, and making betterments, improvements, repairs, and
8 extensions to an electric project;

9 (B) Paying interest on the bonds during or after the period of
10 acquisition and construction or establishment of an electric project or
11 betterments, improvements, and extensions thereto;

12 (C) Establishing any necessary reserves for the bonds;

13 (D) Paying the costs of issuing or refunding bonds; and

14 (E) Paying any other costs and expenditures of whatever
15 nature incidental to the planning, construction acquisition, establishment,
16 or operation of an electric project or improvements, repairs, and betterments
17 thereto.

18 (2) The terms "betterments", "improvements", and "extensions"
19 include land, as may be necessary or advisable for the proper and efficient
20 operation of the authority's electric project.

21 (h)(1) Bonds issued under the provisions of this subchapter shall be
22 payable solely from revenues derived from the electric project or any
23 specified portion of the electric project.

24 (2) The bonds shall not in any event constitute an indebtedness
25 of, nor pledge of the faith and credit of, the State of Arkansas or the
26 participating municipal electric utilities or governing bodies of municipal
27 electric utilities within the meaning of any constitutional provisions or
28 limitations.

29 (3) It shall be plainly stated on the face of each bond that it:

30 (A) Is issued under the provisions of this subchapter;

31 (B) Does not constitute an indebtedness of the State of Arkansas or
32 the participating municipal electric utilities or governing bodies of
33 municipal electric utilities within the meaning of any constitutional
34 provisions or limitations; and

35 (C) Is not backed by the full faith and credit of the State of
36 Arkansas or the participating municipal electric utilities or governing

1 bodies of municipal electric utilities.

2 (4) Bonds issued under the provisions of this subchapter and the
3 income therefrom shall be exempt from all state, county, and municipal taxes,
4 including, without limitation, all income, property, and inheritance taxes.

5 (i)(1) The bonds may be sold in the manner, either at public or
6 private sale, and upon such terms as the board of commissioners shall
7 determine to be reasonable and expedient for effectuating the purposes of the
8 authority.

9 (2) The bonds may be sold at any price the board of
10 commissioners may accept, including sale at discount.

11 (j) The bonds shall be executed in the manner provided for by the
12 Registered Public Obligations Act of Arkansas, § 19-9-401 et seq., as now or
13 hereafter amended.

14
15 25-20-409. Lien in favor of bond holders.

16 (a) The payment of the principal of bonds issued under this subchapter
17 and the interest thereon may, but need not, be secured by a lien on and
18 security interest in an electric project or any specified portion of the
19 electric project.

20 (b) It shall not be necessary to the perfection of the lien and pledge
21 for such purposes that the trustee in connection with the bond issue or the
22 holders of the bonds take possession of the collateral security.

23 (c) Subject to whatever restrictions may be contained in the
24 resolution or indenture governing the bonds, any holder of bonds issued under
25 the provisions of this subchapter may enforce either at law or in equity the
26 mortgage lien and may compel by proper suit the performance of the duties of
27 the officers of the issuing authority set forth in this subchapter.

28 (d) If there be default in the payment of the principal of or interest
29 on any of the bonds, any court having jurisdiction in any proper action may
30 appoint a receiver to administer the electric project or the specified
31 portion of the electric project pledged to the payment of the bonds on behalf
32 of the authority, with power to charge and collect rates sufficient to
33 provide for the payment of the bonds and the interest thereon and for the
34 payment of the operating expenses of the electric project, and to apply the
35 income and revenues in conformity with this subchapter and the resolution or
36 indenture providing for the issuance of the bonds.

1
2 25-20-410. Refunding bonds.

3 (a)(1) Bonds may be issued for the purpose of refunding any
4 obligations issued under this subchapter.

5 (2) The refunding bonds may be combined with bonds issued under
6 § 25-20-408 into a single issue.

7 (b)(1) When bonds are issued under this section for refunding
8 purposes, the bonds may either be sold or delivered in exchange for the
9 outstanding obligations.

10 (2) If sold, the proceeds may be either applied to the payment
11 of the obligations refunded or deposited in escrow for the retirement thereof
12 either at maturity or upon any authorized redemption date.

13 (c)(1) All bonds issued under this section shall in all respects be
14 authorized, issued, and secured in the manner provided for other bonds issued
15 under this subchapter and shall have all the attributes of such bonds.

16 (2) The resolution or indenture under which the refunding bonds
17 are issued may provide that any of the refunding bonds shall have the same
18 priority of lien on the revenues pledged for their payment as was enjoyed by
19 the obligations refunded thereby.

20
21 25-20-411. Security deposit of public funds.

22 Bonds issued under this subchapter shall be eligible to secure the
23 deposit of public funds.

24
25 25-20-412. No personal liability.

26 No commissioner or officer of the authority shall be liable personally
27 for any reason arising from the issuance of bonds under this subchapter
28 unless he or she shall have acted with a willful and wanton intent.

29
30 25-20-413. Zoning exemption.

31 Any authority maintaining facilities in an area zoned subsequent to the
32 construction of the facilities may add to, alter, expand, or change the
33 facilities upon that land, or upon lands immediately adjacent thereto,
34 without regard to the zoning regulation for the area, if the board of
35 commissioners deems the action necessary for the proper operation of an
36 electric project.

1
2 25-20-414. Tax exempt status of property owners and income.

3 (a) Each authority created under this subchapter will be performing
4 public functions and will be a public instrumentality of the participating
5 municipal electric utilities.

6 (b) Accordingly, all properties at any time owned by the authority,
7 and the income therefrom, shall be exempt from all taxation in the State of
8 Arkansas.

9
10 25-20-415. Immunity.

11 (a) This subchapter does not abrogate or in any other manner affect
12 the immunity under existing law of the participating municipal electric
13 utilities.

14 (b) The immunity shall extend also to any authority created under this
15 subchapter and to each commissioner, officer, and employee thereof.

16
17 25-20-416. No public utility status.

18 No authority created under this subchapter shall be a "public utility"
19 within the meaning of either §§ 14-200-101 through 14-200-105 or §§ 23-1-101
20 through 23-4-509, or a "person, company, or corporation which has secured a
21 franchise from any municipality" within the meaning of § 14-200-102.

22
23 25-20-417. Annual report and audit.

24 (a) During each calendar year, each authority shall make a public,
25 written report to the governing bodies of the municipal electric utilities
26 concerning its activities for the preceding calendar year.

27 (b) Each report shall set forth a complete operating and financial
28 statement covering its operation during the year, including, without
29 limitation, an audit of the authority's revenues and expenses performed by an
30 independent certified public accountant.

31
32 25-20-418. Provisions supplemental and controlling.

33 This subchapter shall be deemed to provide an additional and
34 alternative method for the doing of the things authorized hereby and shall be
35 regarded as supplemental and additional to powers conferred by other laws.

36

1 25-20-419. Construction.

2 (a)(1) This subchapter shall be liberally construed to accomplish its
3 intent and purposes and shall be the sole authority required for the
4 accomplishment of its purposes, and to this end it shall not be necessary to
5 comply with the provisions of other laws relating to the issuance and sale of
6 the bonds authorized by this subchapter.

7 (2) This subchapter shall be construed as an additional and
8 alternative method for the issuance and sale of bonds.

9 (b) An authority shall not be subject to Arkansas Public Service
10 Commission regulatory authority except as provided for in the Utility
11 Facility Environmental and Economic Protection Act, § 23-18-501 et seq.
12

13 25-20-420. Use of revenue.

14 Nothing in this subchapter shall modify a governing body of a municipal
15 electric utility's existing right to use available funds generated by its
16 electric utility operations for other municipal purposes.
17

18 25-20-421. Effect of other laws.

19 The provisions of any other law, except as expressly provided in this
20 subchapter, or in such other law by way of express reference to this
21 subchapter, shall not limit or restrict the operation of this subchapter in any
22 manner.
23

24 25-20-422. Reliability rules and transmission upgrades.

25 (a) An authority shall comply with all requirements of federal law,
26 federal regulation, reliability council rule, or regional transmission
27 organization rule or regulation associated with reliability of electric utility
28 operations that are generally applicable to other similarly situated, publicly-
29 owned electric projects in the region.

30 (b) An authority shall reimburse any entity owning or operating an
31 electrical transmission system for the reasonable costs, as they are incurred
32 and as established by the regulatory authority having jurisdiction, of upgrades
33 to the system necessary to interconnect any generation plant owned, leased, or
34 operated by the authority to the electrical transmission system, and the
35 authority shall support such participant funding principles, if applicable,
36 before the appropriate regulatory agencies.

1
2 25-20-423. Termination or dissolution.

3 The governing bodies of the municipal electric utility forming an
4 authority shall include in their interlocal agreement a provision allowing
5 for the termination or dissolution of the authority, the winding up of the
6 authority's affairs, and appropriate disposal or distribution of the
7 authority's property.

8
9 25-20-424.

10 (a) An authority created pursuant to this subchapter shall be
11 authorized to and shall join or contract for the control of its electric
12 transmission facilities with an independent transmission system operator,
13 independent transmission company, regional transmission organization, or
14 other independent transmission entity approved by the Federal Energy
15 Regulatory Commission for this state or a larger region of which this state
16 is a part as, if, and when other similarly situated electric transmission
17 systems are so required to join or contract.

18 (b) However, any authority established under this subchapter shall be
19 authorized to and shall join the appropriate reliability council responsible
20 for operations in its geographic area as appropriate.

21
22 25-20-425.

23 (a) An authority created pursuant to this subchapter shall be
24 prohibited from engaging in any sham transaction.

25 (b) For purposes of this section a sham transaction shall be defined
26 as the acquisition or construction of an electric project authorized by this
27 subchapter for the purpose of:

28 (1) A subsequent sale or transfer of the electric project to any
29 municipal electric utility, public utility or other person engaged in the
30 selling or distributing of electricity to consumers other than a municipal
31 electric utility, public utility, or other person engaged in selling or
32 distributing electricity to consumers, that was selling or distributing
33 electricity to consumers on the effective date of the subchapter; or

34 (2) Providing electric service directly to an end user.

35
36 SECTION 2. Arkansas Code § 25-20-103 is amended to read as follows:

1 25-20-103. Definitions.

2 As used in this chapter, unless the context otherwise requires:

3 (1) "Public agency" means any school district, any political
4 subdivision of this state, any agency of the state government or of the
5 United States, any political subdivision of another state, water districts
6 created under the provisions of the Regional Water Distribution Act, Arkansas
7 Code § 14-116-101 et seq., governing bodies of municipal electric utilities
8 as defined in § 25-20-402, and fire departments organized under the laws of
9 this state if the fire departments offer fire protection services to
10 unincorporated areas and have received approval by their quorum courts for
11 participation in an interlocal cooperation agreement; and

12 (2) "State" means a state of the United States and the District
13 of Columbia.

14
15 SECTION 3. Arkansas Code § 14-202-102 (9) is amended to read as follows:

16 (9) "Municipality" means any city of the first class or city of
17 the second class incorporated under the laws of this state, or any commission
18 or agency thereof, including any municipally owned or controlled corporations,
19 or any improvement district, consolidated public or municipal utility system
20 improvement district, or nonprofit corporation lessee of such entity which owns
21 or operates an electric system and any authority created under the Arkansas
22 Municipal Electric Utility Interlocal Cooperation Act of 2003, § 25-20-401 et
23 seq.;

24
25 SECTION 4. Arkansas Code § 18-15-301(e)(1)(B) is amended to read as
26 follows:

27 (B) Any electric utility, ~~as defined by § 23-19-102 (9)~~ or
28 an independent transmission system operator, independent transmission
29 company, independent regional transmission group, or other independent
30 transmission entity operating transmission facilities in this state ~~under §~~
31 ~~23-19-103 (g)~~; and

32
33 SECTION 5. Arkansas Code § 14-202-103(d) is amended to read as follows:

34 (d)~~(1)~~ A municipality shall not undertake the acquisition,
35 construction, enlarging, or equipping of an interest in the project which
36 will result in the municipality's owning electric power capacity which shall

1 exceed two hundred fifty percent (250%) of the power requirements of the
2 municipality.

3 ~~(2) Provided, however, the limitations on resulting power~~
4 ~~capacity in subdivision (d)(1) of this section shall not apply to the~~
5 ~~municipality's participating in retail open access pursuant to § 23-19-~~
6 ~~104(b).~~

7
8 SECTION 6. Arkansas Code § 14-202-103(e) is repealed:

9 ~~(e) A municipality shall not participate in retail competition through~~
10 ~~a project prior to its governing body adopting enabling legislation to~~
11 ~~participate in retail open access pursuant to Section 23-19-104(b).~~

12
13 SECTION 7. Arkansas Code, Title 23, Chapter 18, Subchapter 5, the
14 Utility Facility Environmental and Economic Protection Act, is amended to add
15 three additional sections to read as follows:

16 23-18-530. Treatment of major utility facility generating plant -
17 Proposals of authority.

18 (a) Electric utility systems or facilities owned by a municipal
19 electric consolidated authority created under the Arkansas Municipal Electric
20 Utility Interlocal Cooperation Act of 2003, § 25-20-401 et seq., shall be
21 subject to the Utility Facility Environmental and Economic Protection Act, §
22 23-18-501 et seq., except with regard to major utility facilities consisting
23 of generating plants as defined in § 23-18-503(5)(A), subsections (b) through
24 (f) of this section shall apply.

25 (b)(1) Prior to construction by an authority of a major utility
26 facility consisting of generating plant as defined in § 23-18-503(5)(A), the
27 Arkansas Public Service Commission shall determine the needs of the authority
28 for power and energy for the present and a reasonable period in the future as
29 provided for in this section.

30 (2) Notwithstanding any other provision of this chapter, in
31 determining the desirability of and need for a proposed major utility
32 facility as defined in § 23-18-503(5)(A) to be constructed by an authority,
33 the Arkansas Public Service Commission shall take into account the following:

34 (A) The economies, efficiencies, and revenues estimated to
35 be achieved in acquiring, constructing, and operating the proposed major
36 utility facility;

1 (B) The authority's estimated requirements based on a
2 comprehensive resource plan for power and energy, for reserve capacity, and
3 to meet obligations under pooling and reserve sharing agreements reasonably
4 related to the need for the power and energy to which the authority is or is
5 anticipated to become a party;

6 (C) The cost of existing or alternative power supply
7 sources;

8 (D) The marketability of electric power in excess of the
9 authority's requirements;

10 (E) The environmental impact of the major utility facility
11 as required by § 23-18-511(8); and

12 (F) Any likely adverse impact on retail customers of public
13 utilities subject to the jurisdiction of the Arkansas Public Service
14 Commission not served by members of the authority.

15 (c) For purposes of subdivision (b)(2)(F) of this section, if the
16 authority proposes to sell electricity to any municipal electric utility only
17 a public utility subject to the jurisdiction of the Arkansas Public Service
18 Commission that supplies or has previously supplied capacity and energy
19 within the previous five (5) years to the municipal electric utility to which
20 a sale is proposed and the Attorney General shall have standing to raise an
21 objection to the sale under subsection (b)(2)(F).

22 (d) The Arkansas Public Service Commission shall not issue a
23 certificate with regard to the authority's major utility facility as defined
24 in § 23-18-503(5)(A), either as proposed or as modified by the commission,
25 unless it finds and determines:

26 (1) The authority has adequate financial, technical, and managerial
27 capability to assure construction and operation of the major utility facility
28 in continuing compliance with the terms and conditions of the certificate;

29 (2) The major utility facility will not unduly interfere with the orderly
30 development of the region or with development of the region's integrated
31 electric transmission system;

32 (3) The major utility facility will not have an unreasonable adverse effect
33 on aesthetics, historic sites, air and water quality, the natural
34 environment, and public health and safety; and

35 (4) The factors the commission must consider pursuant to subsection (b) of
36 this section support the issuance of a certificate.

1 (e) If the commission determines that the location or design of all or
2 part of the proposed facility should be modified, it may condition its
3 certificate upon the modification.

4 (f) The commission shall have the authority to review and approve
5 conveyance of any major utility facility consisting of generating plant as
6 defined in § 23-18-503(5)(A) by an authority holding a Certificate of
7 Environmental Compatibility and Public Need thereto to any entity other than
8 an authority or a municipal electric utility.

9
10 23-18-531.

11 (a)(1) An authority may, with the consent of the commission, purchase,
12 acquire, or lease all or part of any existing electric generation facility
13 from any entity other than an authority or a municipal electric utility.

14 (2) An authority may, with the consent of the Commission, sell
15 wholesale power and energy to an entity that is not a member of the authority
16 for a term of up to three (3) years.

17 (3) Commission consent shall not be required for a purchase,
18 acquisition, or lease of an existing electric generation facility by an
19 authority from another authority or a municipal electric utility, or for a
20 sale of wholesale power and energy by an authority for a term of one (1) year
21 or less, or for a sale of wholesale power and energy by the authority to a
22 member of the authority.

23 (b)(1) Application for the approval and consent of the commission
24 shall be made by the authority and shall contain a concise statement of the
25 proposed transaction, the reasons therefore, and such other information as
26 may be required by the commission.

27 (2)(A) Upon the filing of an application, the commission shall
28 investigate it, with or without public hearing, and in the case of a public
29 hearing, upon such notice as the commission may require.

30 (B) If it finds that the proposed transaction is
31 consistent with the public interest, it shall give its consent and approval
32 in writing.

33 (3) Any transaction required by this section to be submitted to
34 the commission for its consent and approval shall be void unless the
35 commission shall give its consent and approval thereto in writing.

36 (c) In the event an authority purchases or acquires all or part of an

1 existing generation facility from an entity other than another authority or a
2 municipal electric utility, and the entity paid taxes, or made payments in
3 lieu of taxes, to a political subdivision of the state, the authority
4 purchasing or acquiring the facility shall make payments in lieu of taxes at
5 a rate no less than the rate at which the entity from which the facility is
6 purchased or acquired paid taxes, or made payments in lieu of taxes, would
7 have otherwise have been obligated to make payment.

8
9 23-18-532.

10 Except as provided specifically in the Utility Facility Environmental
11 and Economic Protection Act §§ 23-18-501 et seq., an authority shall not be
12 subject to the jurisdiction or regulatory authority of the Arkansas Public
13 Service Commission.

14
15 */s/ Childers*

16
17
18 *APPROVED: 3/13/2003*

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