

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.

Act 658 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H3/9/07

A Bill

HOUSE BILL 2697

5 By: Representative Wyatt
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7

For An Act To Be Entitled

9 AN ACT TO PREVENT FEDERAL PREEMPTION OF STATE LAW
10 BY REQUIRING A CERTIFICATE OF ENVIRONMENTAL
11 COMAPTABILITY AND PUBLIC NEED BEFORE CONSTRUCTING
12 A MAJOR ELECTRIC TRANSMISSION FACILITY IN A
13 NATIONAL INTEREST ELECTRIC TRANSMISSION CORRIDOR;
14 TO REQUIRE AN ADDITIONAL REQUIREMENT TO THE
15 APPLICATION FOR A MAJOR UTILITY FACILITY; TO
16 INCREASE THE AMOUNT OF TIME ALLOWED FOR THE
17 ARKANSAS PUBLIC SERVICE COMMISSION TO STUDY AN
18 APPLICATION FOR MAJOR UTILITY FACILITY BEFORE THE
19 COMMENCEMT OF THE REQUIRED PUBLIC HEARING; TO
20 REQUIRE ADDITIONAL FINDINGS BEFORE GRANTING A
21 CERTIFICATE; AND FOR OTHER PURPOSES.
22

Subtitle

23 TO PREVENT FEDERAL PREEMPTION OF STATE
24 LAW REQUIREMENTS FOR A CERTIFICATE OF
25 ENVIRONMENTAL COMPATABILITY AND PUBLIC
26 NEED BEFORE CONSTRUCTING A MAJOR UTILITY
27 FACILITY.
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31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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33 SECTION 1. Arkansas Code § 23-18-503(6) – (14), concerning
34 definitions, is amended to add additional subdivisions to read as follows:

35 (6) “Merchant generator” means a person or entity, including an



1 affiliate of a public utility, engaged directly or indirectly through one (1)
2 or more affiliates, who is in the business of owning or operating all or part
3 of a facility for generating electric energy and selling electric energy at
4 wholesale;

5 (7) "Merchant transmission provider" means any person or entity
6 who owns or operates facilities used for the transmission of electric energy
7 and whose rates or charges are not subject to the jurisdiction of the
8 commission;

9 (8) "Municipality" means any county or municipality within this
10 state;

11 (9) "National interest electric transmission corridor" means any
12 area of Arkansas found by the United States Secretary of Energy to be
13 experiencing electric energy transmission capacity constraints or congestion
14 and therefor designated as a National Interest Electric Transmission Corridor
15 by the secretary pursuant to the authority granted by section 1221(a) of the
16 Energy Policy Act of 2005, Pub. L. No. 109-58;

17 ~~(7)~~(10) "Nonrenewable energy technology" or "nonrenewable energy
18 sources" means any technology or source of energy which depends upon the use
19 of depletable fossil fuels such as oil, gas, and coal;

20 ~~(8)~~(11) "Person" includes any individual, group, firm,
21 partnership, corporation, cooperative association, municipality, government
22 subdivision, government agency, local government, or other organization;

23 ~~(9)~~(12) "Public utility" or "utility" means any person engaged
24 in the production, storage, distribution, sale, delivery, or furnishing of
25 electricity or gas, or both, to or for the public, as defined in § 23-1-
26 101(9)(A)(i) and (9)(B), but does not include an exempt wholesale generator
27 as defined in § 23-1-101(5); and

28 (13) "Regional transmission organization" means an entity
29 approved by the Federal Energy Regulatory Commission to plan and operate
30 facilities for the transmission of electric energy within a designated
31 region; and

32 ~~(10)~~(14) "Renewable energy technology" means any technology or
33 source of energy, such as solar, wind, biomass conversion, or geothermal,
34 which is not depletable.

35
36 SECTION 2. Arkansas Code § 23-18-510 is amended to read as follows:

1 23-18-510. Certificate of environmental compatibility and public need -
2 Requirement - Exceptions.

3 (a) No person shall commence to construct a major utility facility in
4 the state, except those exempted as provided in subsection (b) of this
5 section and §§ 23-18-504(a) and 23-18-508, without first having obtained a
6 certificate of environmental compatibility and public need, hereafter called
7 a "certificate", issued with respect to the facility by the commission. The
8 replacement or expansion of an existing transmission facility with a similar
9 facility in substantially the same location or the rebuilding, upgrading,
10 modernizing, or reconstruction for the purposes of increasing capacity shall
11 not constitute construction of a major utility facility if no increase in
12 width of right-of-way is required.

13 (b) No entity, including but not limited to, a person, public utility,
14 utility, regional transmission organization, municipality, merchant
15 transmission provider, merchant generator, or other entity, whether regulated
16 or not by the commission, shall commence to construct a major electric
17 transmission facility, as defined in § 23-18-503, within a national interest
18 electric transmission corridor without first having obtained a certificate of
19 environmental compatibility and public need issued with respect to such
20 facility by the commission.

21 (c) Nothing in this subchapter shall be construed to require a
22 certificate under this subchapter or an amendment thereof for:

23 (1) ~~reconstruction~~ Reconstruction, alteration, or relocation of
24 any major utility facility which must be reconstructed, altered, or relocated
25 because of the requirements of any federal, state, or county governmental
26 body or agency for purposes of highway transportation, public safety, or air
27 and water quality; or

28 (2) Any major electric transmission facility to be constructed
29 or operated by a municipal electric system which is located within the
30 territorial limits of such municipal electric utility system.

31 (d) Any entity granted a certificate pursuant to § 23-18-510(b) shall
32 have the right of eminent domain as provided by Arkansas law for the limited
33 purpose of constructing the certificated major electric transmission facility
34 to the extent that the facility is located within a national interest
35 electric transmission corridor.

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1 SECTION 3. Arkansas Code § 23-18-511(8) – (10), concerning the
2 contents of an application for a certificate, is amended add a subdivision to
3 read as follows:

4 (8)(A) An exhibit containing an environmental impact statement,
5 which shall fully develop the four (4) factors listed in subdivision (8)(B)
6 of this section, treating in reasonable detail such considerations, if
7 applicable, as the proposed facility's direct and indirect effect on the
8 ecology of the land, air and water environment, established park and
9 recreational areas, and on any sites of natural, historic, and scenic values
10 and resources of the area in which the facility is to be located, and any
11 other relevant environmental effects.

12 (B) The environmental impact statement shall set out:

13 (i) The environmental impact of the proposed action;

14 (ii) Any adverse environmental effects which cannot
15 be avoided;

16 (iii) A description of the comparative merits and
17 detriments of each alternate location or for generating plants, the energy
18 production process considered, and a statement of the reasons why the
19 proposed location and production process were selected for the facility; and

20 (iv) Any irreversible and irretrievable commitments
21 of resources that would be involved in the proposed action should it be
22 implemented; ~~and~~

23 (9) The interstate benefits expected to be achieved by the
24 proposed construction or modification of a major electric transmission
25 facility, as defined by § 23-18-503(5)(B), within a national interest
26 electric transmission corridor; and

27 ~~(9)(10)~~ Such other information of an environmental or economic
28 nature as the applicant may consider relevant or as the commission may by
29 regulation or order require.

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31 SECTION 4. Arkansas Code § 23-18-516(a)(1), concerning the date for a
32 public hearing on an application for a certificate, is amended to read as
33 follows:

34 (a)(1) Upon receipt of an application complying with §§ 23-18-511 -
35 23-18-514, the Arkansas Public Service Commission shall promptly fix a date
36 for the commencement of a public hearing thereon, which date shall be not

1 fewer than forty (40) days nor more than ~~ninety (90)~~ one hundred eighty (180)
2 days after the receipt of the application, and shall conclude the proceedings
3 as expeditiously as practicable.
4

5 SECTION 5. Arkansas Code § 23-18-519(b), concerning findings required
6 by the commission, is amended to add additional subdivisions to read as
7 follows:

8 (9) That the energy efficiency of the power production facility
9 has been given significant weight in the decision-making process; ~~and~~

10 (10) That the location of the facility as proposed conforms as
11 closely as practicable to applicable state, regional, and local laws and
12 regulations issued thereunder, except that the commission may refuse to apply
13 all or any part of any regional or local law or regulation if it finds that,
14 as applied to the proposed facility, that law or regulation is unreasonably
15 restrictive in view of the existing technology, or of factors of cost or
16 economics, or of the needs of consumers whether located inside or outside of
17 the directly affected government subdivisions;

18 (11) The interstate benefits expected to be achieved by the
19 proposed construction or modification of a major electric transmission
20 facility, as defined in § 23-18-503, located within a national interest
21 electric transmission corridor; and

22 (12) That any conditions attached to a certificate for the
23 construction or modification of a major electric transmission facility, as
24 defined in § 23-18-503, located within a national interest electric
25 transmission corridor do not interfere with reduction of electric
26 transmission congestion in interstate commerce or render the project
27 economically infeasible.

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29 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
30 General Assembly of the State of Arkansas that in the immediate future the
31 United States Secretary of Energy may designate portions of Arkansas as a
32 national interest electric transmission corridor; that such a designation
33 could result in the federal preemption of state law; and that this act is
34 necessary to provide a means for the construction of transmission facilities
35 that are less onerous than under federal law. Therefore, an emergency is
36 declared to exist and this act being immediately necessary for the

1 preservation of the public peace, health, and safety shall become effective
2 on:

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

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

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

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10 /s/ Wyatt

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12 APPROVED: 3/28/2007
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