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# A Bill

HOUSE BILL 1895

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10 By: Senators S. Harrelson, J. Dismang, Files, Hendren, G. Jeffress, J. Jeffress, M. Lamoureux, B.  
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12

## For An Act To Be Entitled

13 AN ACT TO AMEND THE UTILITY FACILITY ENVIRONMENTAL  
14 AND ECONOMIC PROTECTION ACT; TO CLARIFY REQUIREMENTS  
15 FOR MAJOR UTILITY FACILITIES; TO DECLARE AN  
16 EMERGENCY; TO MAKE CONFORMING CHANGES; TO MAKE  
17 TECHNICAL CORRECTIONS; AND FOR OTHER PURPOSES.  
18

## Subtitle

19 TO AMEND THE UTILITY FACILITY  
20 ENVIRONMENTAL AND ECONOMIC PROTECTION  
21 ACT; TO CLARIFY REQUIREMENTS FOR MAJOR  
22 UTILITY FACILITIES; TO DECLARE AN  
23 EMERGENCY; AND TO MAKE TECHNICAL  
24 CORRECTIONS.  
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30 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
31

32 SECTION 1. Arkansas Code § 23-18-502 is amended to read as follows:

33 23-18-502. Legislative findings ~~and declarations~~ - Intent - Purpose.

34 (a) (1) The General Assembly finds and declares that there is at  
35 present and will continue to be a growing need for electric and gas public  
36 utility services ~~which~~ that will require the construction of major new



1 facilities.

2 (2) It is recognized that the facilities cannot be built without  
3 affecting in some way the physical environment ~~where such~~ in which the  
4 facilities are located and without the expenditure of massive amounts of  
5 capital.

6 (3) It is also recognized that the future economic development  
7 of the state requires the ready availability of public utility energy  
8 resources to serve industrial, commercial, and residential customers.

9 (b) The General Assembly further finds that it is essential ~~in~~ to the  
10 public interest to minimize any adverse effect upon the environment and upon  
11 the quality of life of the people of the state ~~which~~ that the new facilities  
12 might cause and to minimize the economic costs to the people of the state of  
13 obtaining reliable, clean, safe, and adequate energy supplies.

14 (c)(1) The General Assembly further finds that ~~present~~ laws and  
15 practices relating to the location, financing, construction, and operation of  
16 the utility facilities should ~~be strengthened to protect~~ provide for the  
17 protection of environmental values, ~~to~~ encourage the development of  
18 alternative renewable and nonrenewable energy technologies ~~which~~ that are  
19 energy-efficient, and ~~to~~ take into account the total cost to society of ~~such~~  
20 the facilities, including without limitation the cost of providing safe,  
21 reliable, and cost-effective energy resources. ~~Present~~

22 (2)(A) Without further clarification, ~~present laws and practices~~  
23 may result in undue costly delays in new construction, may encourage the  
24 development of energy technologies ~~which~~ that are relatively inefficient, and  
25 may increase costs, which will eventually be borne by the people of the state  
26 in the form of higher utility rates. ~~These~~

27 (B) Interpretations of existing laws ~~and practices~~ could  
28 threaten the ability of utilities to meet the needs of the people of the  
29 state for economical and reliable utility service, and thus, the existing  
30 laws require further clarification.

31 (d) Furthermore, the General Assembly finds that there should be  
32 provided an adequate opportunity for individuals, groups interested in energy  
33 and resource conservation and the protection of the environment, state and  
34 regional agencies, local governments, and other public bodies to participate  
35 in timely fashion in decisions regarding the location, financing,  
36 construction, and operation of major utility facilities.

1 (e)(1) The General Assembly, therefore, declares that it ~~shall be~~ is  
 2 the purpose of this subchapter to provide ~~a~~ an exclusive forum with ~~exclusive~~  
 3 primary and final jurisdiction, except as provided in §§ 23-18-505 and 23-18-  
 4 506, for the expeditious resolution of all matters concerning the location,  
 5 financing, construction, and operation of ~~electric generating plants and~~  
 6 ~~electric and gas transmission lines and associated facilities~~ a major utility  
 7 facility in a single proceeding to which access will be open to individuals,  
 8 groups, state and regional agencies, local governments, and other public  
 9 bodies to enable them to participate in these decisions.

10 (2) ~~These~~ The matters ~~presently~~ identified in subdivision (e)(1)  
 11 of this section that were formerly under the jurisdiction of multiple state,  
 12 regional, and local agencies are declared to be of statewide interest.

13 (f) It is the intent of the General Assembly to provide for the  
 14 expeditious and efficient review of the siting of major utility facilities.  
 15

16 SECTION 2. Arkansas Code § 23-18-503 is amended to read as follows:  
 17 23-18-503. Definitions.

18 As used in this subchapter:

19 (1) "Applicant" means the utility or other person making  
 20 application to the Arkansas Public Service Commission for a certificate of  
 21 environmental compatibility and public need;

22 (2)(A) "Commence to construct" means any clearing of land,  
 23 excavation, or other action that would adversely affect the natural  
 24 environment of the site or route of a major utility facility, ~~but~~

25 (B) "Commence to construct" does not include changes;

26 (i) Changes needed for temporary use of sites or  
 27 routes for nonutility purposes, ~~or uses~~

28 (ii) Uses in securing survey or geological data,  
 29 including necessary borings to ascertain foundation conditions;

30 (3) "Commission" means the Arkansas Public Service Commission;

31 (4) "Energy-efficient" means economical in the use of energy;

32 (5) "Energy resource declaration-of-need proceeding" means a  
 33 utility-specific proceeding conducted by the Arkansas Public Service  
 34 Commission under §§ 23-18-106 and 23-18-107 and the rules and regulations  
 35 adopted thereunder to determine the need for additional energy supply and  
 36 transmission resources by a public utility;

1           ~~(5)~~ (6) "Major utility facility" means:

2                   (A) ~~Electric~~ An electric generating plant and associated  
3 transportation and storage facilities for fuel and other facilities designed  
4 for, or capable of, operation at a capacity of fifty megawatts (50 MW) or  
5 more;

6                   (B) For the sole purpose of requiring an environmental  
7 impact statement ~~hereunder~~ under this subchapter, an electric transmission  
8 line and associated facilities, including substations, of: a

9                                 (i) A design voltage of one hundred kilovolts (100  
10 kV) or more, and extending a distance of more than ten (10) miles; ~~or of a~~

11                                (ii) A design voltage of one hundred seventy  
12 kilovolts (170 kV) or more, and extending a distance of more than one (1)  
13 mile; ~~and~~ or

14                   (C) For the sole purpose of requiring an environmental  
15 impact statement ~~hereunder~~ under this subchapter, a gas transmission line and  
16 associated facilities designed for, or capable of, transporting gas at  
17 pressures in excess of one hundred twenty-five pounds per square inch (125  
18 lbs. psi), and extending a distance of more than one (1) mile, ~~excepting,~~  
19 ~~however, those~~ except gas pipelines devoted solely to the gathering of gas  
20 from gas wells constructed within the limits of any gas field as defined by  
21 the Oil and Gas Commission;

22                   ~~(6)~~ (7) "Merchant generator" means a person or entity, including  
23 an affiliate of a public utility, engaged directly or indirectly through one  
24 (1) or more affiliates, that is in the business of owning or operating all or  
25 part of a facility for generating electric energy and selling electric energy  
26 at wholesale;

27                   ~~(7)~~ (8) "Merchant transmission provider" means ~~any~~ a person or  
28 entity that owns or operates facilities used for the transmission of electric  
29 energy and whose rates or charges are not subject to the jurisdiction of the  
30 commission;

31                   ~~(8)~~ (9) "Municipality" means any county or municipality within  
32 ~~this~~ the state;

33                   ~~(9)~~ (10) "National interest electric transmission corridor"  
34 means ~~any~~ an area of ~~Arkansas~~ the state found by the United States Secretary  
35 of Energy to be experiencing electric energy transmission capacity  
36 constraints or congestion and therefore designated as a national interest

1 electric transmission corridor by the United States Secretary of Energy  
2 ~~pursuant to~~ under the authority granted by section 1221(a) of the Energy  
3 Policy Act of 2005, Pub. L. No. 109-58;

4 ~~(10)~~ (11) "Nonrenewable energy technology" or "nonrenewable  
5 energy sources" means any technology or source of energy ~~which~~ that depends  
6 upon the use of depletable fossil fuels such as oil, gas, and coal;

7 ~~(11)~~ (12) "Person" includes ~~any~~ an individual, group, firm,  
8 partnership, corporation, cooperative association, municipality, government  
9 subdivision, government agency, local government, or other organization;

10 ~~(12)~~ (13) "Public utility" or "utility" means ~~any~~ a person  
11 engaged in the production, storage, distribution, sale, delivery, or  
12 furnishing of electricity or gas, or both, to or for the public, as defined  
13 in § 23-1-101(9)(A)(i) and ~~(9)~~(B), but does not include an exempt wholesale  
14 generator as defined in § 23-1-101(5);

15 ~~(13)~~ (14) "Regional transmission organization" means an entity  
16 approved by the Federal Energy Regulatory Commission to plan and operate  
17 facilities for the transmission of electric energy within a designated  
18 region; and

19 ~~(14)~~ (15) "Renewable energy technology" means any technology or  
20 source of energy that is not depletable, such as including without limitation  
21 solar, wind, biomass conversion, hydroelectric, or geothermal, ~~which is not~~  
22 depletable.

23  
24 SECTION 3. Arkansas Code § 23-18-504 is amended to read as follows:

25 23-18-504. Exemptions - Waiver.

26 (a) This subchapter ~~shall~~ does not apply to ~~any~~ a major utility  
27 facility:

28 (1) For which, ~~prior to~~ before July 24, 1973, an application for  
29 the approval of the major utility facility ~~has been~~ was made to any federal,  
30 state, regional, or local governmental agency, ~~which agency~~ that possesses  
31 the jurisdiction to consider the matters prescribed for finding and  
32 determination in § 23-18-519(a) and (b);

33 (2) For which, ~~prior to~~ before July 24, 1973, the Arkansas  
34 Public Service Commission ~~has~~ issued a certificate of convenience and  
35 necessity or otherwise approved the construction of the major utility  
36 facility;

1 (3) Over which an agency of the federal government has exclusive  
2 jurisdiction;

3 (4) ~~That~~ A majority of which is owned by one (1) or more exempt  
4 wholesale generators as defined in § 23-1-101(5); or

5 (5) That is a major utility facility for generating electric  
6 energy, if the majority of the major utility facility is owned by *any person*,  
7 including without limitation a public utility that will not recover the cost  
8 of the major utility facility, if the costs of the facility will not be  
9 ~~recovered~~ in rates subject to regulation by the commission.

10 (b)(1)(A) ~~Any~~ A person intending to construct any a major utility  
11 facility excluded or exempted from this subchapter may elect to waive the  
12 exclusion or exemption by delivering notice of the waiver to the commission.

13 (B) The filing of an application by a public utility under § 23-  
14 18-511 is not a notice of waiver or an election to waive an exclusion or  
15 exemption.

16 (C) The responsibility for determining whether a proposed  
17 major utility facility is exempt from the requirements of this subchapter is  
18 within the primary and exclusive jurisdiction of the commission.

19 (2) ~~This~~ Upon the commission's receipt of the notice of an  
20 election to waive the exclusion or exemption, this subchapter shall  
21 thereafter apply to each major utility facility identified in the notice ~~from~~  
22 ~~the date of its receipt by the commission.~~

23 (c) A public utility owning a minority interest in an exempt major  
24 utility facility shall not be entitled to recover its costs of ownership or  
25 operation in rates subject to the jurisdiction of the Arkansas Public Service  
26 Commission without first obtaining the right to own and operate a portion of  
27 the major utility facility under a certificate of public convenience and  
28 necessity under §§ 23-3-201 – 23-3-206.

29  
30 SECTION 4. Arkansas Code § 23-18-506 is amended to read as follows:

31 23-18-506. Arkansas Department of Environmental Quality's and Arkansas  
32 Pollution Control and Ecology Commission's jurisdiction unaffected by  
33 subchapter.

34 ~~Nothing herein contained shall~~ (a) This subchapter does not affect  
35 the: jurisdiction

36 (1) Jurisdiction of the Arkansas Department of Environmental

1 Quality or the Arkansas Pollution Control and Ecology Commission with respect  
2 to water and air pollution control or other matters within ~~its~~ the  
3 jurisdiction of the department or the Arkansas Pollution Control and Ecology  
4 Commission, nor shall it affect the requirement; and

5 (2) Requirement that a person apply for and obtain a permit from  
6 the department as provided by the Arkansas Water and Air Pollution Control  
7 Act, §§ 8-4-101 – 8-4-106, 8-4-201 – 8-4-229, and 8-4-301 – 8-4-313.

8 (b) Nor shall anything contained in this This subchapter does not  
9 confer upon the Arkansas Public Service Commission any authority or  
10 jurisdiction conferred by law upon the department or the Arkansas Pollution  
11 Control and Ecology Commission.

12 (c) Notwithstanding the exemption provisions of § 23-18-504, each  
13 major utility facility constructed in Arkansas is subject to the  
14 environmental rules and regulations of the state and federal regulatory  
15 bodies having jurisdiction over the air, water, and other environmental  
16 impacts associated with the major utility facility.

17  
18 SECTION 5. Arkansas Code § 23-18-507, concerning the authority of the  
19 Arkansas Public Service Commission, is amended to add an additional  
20 subsection to read as follows:

21 (f)(1) Under §§ 23-18-106 and 23-18-107 and the rules and regulations  
22 adopted thereunder, the commission may determine the need for additional  
23 energy supply and transmission resources by public utilities in an energy  
24 resource declaration-of-need proceeding.

25 (2) A determination of need under subdivision (f)(1) of this  
26 section shall be deemed the basis for the need for the construction of a  
27 major utility facility to be sited and constructed under this subchapter.

28  
29 SECTION 6. Arkansas Code § 23-18-511 is amended to read as follows:

30 23-18-511. Application for certificate – Contents generally.

31 An applicant for a certificate shall file with the Arkansas Public  
32 Service Commission a verified application in ~~such~~ the form ~~as~~ required by the  
33 commission ~~may prescribe~~ and containing the following information:

34 (1) A general description of the location and type of the major  
35 utility facility proposed to be built;

36 (2) A general description of any reasonable alternate location

1 or locations considered for the proposed facility;

2 (3) A statement of the need and reasons for construction of the  
3 facility, including, if applicable, a reference to any prior commission  
4 action in an energy resource declaration-of-need proceeding determining the  
5 need for additional energy supply or transmission resources by the public  
6 utility;

7 (4) A statement of the estimated costs of the major utility  
8 facility and the proposed method of financing the construction of the major  
9 utility facility;

10 (5)(A) A general description of any reasonable alternate methods  
11 of financing the construction of the major utility facility and a description  
12 of the comparative merits and detriments of each alternate financing method  
13 considered.

14 (B) If at the time of filing of the application the  
15 federal income tax laws and the state laws would permit the issuance of tax-  
16 exempt bonds to finance the construction of the proposed major utility  
17 facility for the applicant by a state financing agency, the application shall  
18 also include a discussion of the merits and detriments of financing the major  
19 utility facility with ~~such~~ the bonds;

20 (6) An analysis of the projected economic or financial impact on  
21 the applicant and the local community ~~where~~ in which the major utility  
22 facility is to be located as a result of the construction and the operation  
23 of the proposed major utility facility;

24 (7) An analysis of the estimated effects on energy costs to the  
25 consumer as a result of the construction and operation of the proposed major  
26 utility facility;

27 (8)(A) An exhibit containing an environmental impact statement,  
28 ~~which shall fully develop~~ that fully develops the four (4) factors listed in  
29 subdivision (8)(B) of this section, treating in reasonable detail such  
30 considerations, if applicable, as: ~~the~~

31 (i) The proposed major utility facility's direct and  
32 indirect effect on the following in the area in which the major utility  
33 facility is to be located:

34 (a) The ecology of the land, air, and water  
35 environment, established;

36 (b) Established park and recreational areas,



1 ~~and on any; and~~

2 (c) Any sites of natural, historic, and scenic  
3 values and resources of the area in which the major utility facility is to be  
4 located; ~~and any~~

5 (ii) Any other relevant environmental effects.

6 (B) The environmental impact statement shall ~~set out~~  
7 state:

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

9 (ii) Any adverse environmental effects ~~which that~~  
10 cannot be avoided;

11 (iii) A description of the comparative merits and  
12 detriments of each alternate location ~~or~~ considered for the major utility  
13 facility; for

14 (iv) For generating plants, the energy production  
15 process considered; ~~and a~~

16 (v) A statement of the reasons why the proposed  
17 location and production process were selected for the major utility facility;  
18 and

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

22 (9) The interstate benefits expected to be achieved by the  
23 proposed construction or modification of ~~a major~~ an electric transmission  
24 facility line and associated facilities, as described in § 23-18-503~~(5)(B)~~  
25 (6)(B), that is located within a national interest electric transmission  
26 corridor; and

27 (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.

30  
31 SECTION 7. Arkansas Code § 23-18-513(d), concerning the notice  
32 required for each application for a certificate of environmental  
33 compatibility and public need, is amended to read as follows:

34 (d)(1) Each application shall also be accompanied by proof that public  
35 notice ~~thereof~~ of the application was given to persons residing in  
36 municipalities and counties entitled to receive notice under subsection (a)

1 of this section by the publication in a newspaper having substantial  
2 circulation in the municipalities or counties, of:

3 (A) A summary of the application;

4 (B) A statement of the date on or about which it is to be  
5 filed; and

6 (C) A statement that intervention or limited appearances  
7 ~~must~~ shall be filed with the commission within thirty (30) days after the  
8 date ~~set forth~~ stated in the notice, unless good cause is shown ~~pursuant to~~  
9 under § 23-18-517.

10 (2)(A) For purposes of this subsection, ~~any~~ an environmental  
11 impact statement submitted as an exhibit to the application need not be  
12 summarized, but the published notice shall include a statement that the  
13 impact statements are on file at the office of the commission and available  
14 for public inspection or are available electronically on the commission's  
15 website.

16 (B) The applicant shall also cause copies of the  
17 environmental impact statement to be furnished to at least one (1) of its  
18 local offices, if any, in the counties in which any portion of the major  
19 utility facilities are to be located, both as primarily or as alternatively  
20 proposed, to be there available for public inspection.

21 (C) The published notice shall contain a statement of the  
22 location of ~~these~~ the local offices described in subdivision (d)(2)(B) of  
23 this section and the times the impact statements will be available for public  
24 inspection.

25

26 SECTION 8. Arkansas Code § 23-18-517(a), concerning the parties to a  
27 certification proceeding, is amended to read as follows:

28 (a) The parties to a certification proceeding shall include:

29 (1) The applicant;

30 (2) Each municipality, county, and government agency or  
31 department or other person entitled to receive service of a copy of the  
32 application under § 23-18-513(a) ~~and (b)~~ if it has filed with the Arkansas  
33 Public Service Commission a notice of intervention as a party within thirty  
34 (30) days after service; or

35 (3) ~~Any~~ A person residing in a municipality or county ~~which~~ that  
36 is entitled to receive service of a copy of the application under § 23-18-

1 513(a) ~~and (b)~~ or any domestic nonprofit corporation, formed in whole or in  
2 part to promote conservation or natural beauty, to promote energy  
3 conservation, to protect the environment, personal health, or other  
4 biological values, to represent commercial and industrial groups, or to  
5 promote the orderly development of the areas in which the facility is to be  
6 located, ~~where such a person~~ if the:

7 (A) Person or organization has an interest ~~which that~~ that may  
8 be directly affected by the commission's action ~~and which interest;~~

9 (B) Interest is not adequately represented by other  
10 parties, ~~if such a person;~~ and

11 (C) Person or corporation has petitioned the commission  
12 for leave to intervene as a party within thirty (30) days after the date  
13 given in the public notice as the date of filing the application.  
14

15 SECTION 9. Arkansas Code § 23-18-519(a) and (b), concerning the  
16 Arkansas Public Service Commission's decision to grant or deny an application  
17 for certification, are amended to read as follows:

18 (a) (1) The Arkansas Public Service Commission shall render a decision  
19 upon the record either granting or denying the application as filed or  
20 granting it upon such terms, conditions, or modifications of the location,  
21 financing, construction, operation, or maintenance of the major utility  
22 facility as the commission may deem appropriate.

23 (2) The record may include by reference the findings of the  
24 commission in an energy resource declaration-of-need proceeding that the  
25 utility needs additional energy supply resources or transmission resources.

26 (b) The commission ~~may~~ shall not grant a certificate for the location,  
27 financing, construction, operation, and maintenance of a major utility  
28 facility, either as proposed or as modified by the commission, unless it  
29 ~~shall find and determine~~ finds and determines:

30 (1)(A) The basis of the need for the major utility facility.

31 (B) In determining the basis of the need for the major  
32 utility facility, the commission may rely upon the commission's determination  
33 in an energy resource declaration-of-need proceeding that the utility needs  
34 additional energy supply resources or transmission resources;

35 (2) That the major utility facility will serve the public  
36 interest, convenience, and necessity;

1 (3) The nature of the probable environmental impact of the major  
2 utility facility;

3 (4) That the major utility facility represents an acceptable  
4 adverse environmental impact, considering the state of available technology,  
5 the requirements of the customers of the applicant for utility service, the  
6 nature and economics of the proposal, any state or federal permit for the  
7 environmental impact, and the various alternatives, if any, and other  
8 pertinent considerations;

9 (5) The nature of the probable economic impact of the major  
10 utility facility;

11 (6) That the major utility facility financing method either as  
12 proposed or as modified by the commission represents an acceptable economic  
13 impact, considering economic conditions and the need for and cost of  
14 additional public utility services;

15 (7) In the case of an electric transmission line, that ~~such a~~  
16 the major utility facility is not inconsistent with ~~known~~ plans of other  
17 electric systems serving the state, ~~which plans that~~ have been filed with the  
18 commission;

19 (8) In the case of a gas transmission line, that the location of  
20 the line will not pose an undue hazard to persons or property along the area  
21 to be traversed by the line;

22 (9) That the energy efficiency of the ~~power production~~ major  
23 utility facility has been given significant weight in the decision-making  
24 process;

25 (10) That the location of the major utility facility as proposed  
26 conforms as closely as practicable to applicable state, regional, and local  
27 laws and regulations issued thereunder, except that the commission may refuse  
28 to apply all or ~~any~~ part of any regional or local law or regulation if it  
29 finds that, as applied to the proposed major utility facility, ~~that the~~ the law  
30 or regulation is unreasonably restrictive in view of the existing technology,  
31 ~~or of~~ factors of cost or economics, or ~~of~~ the needs of consumers whether  
32 located inside or outside of the directly affected government subdivisions;

33 (11) The interstate benefits expected to be achieved by the  
34 proposed construction or modification of ~~a major an~~ an electric transmission  
35 facility line and associated facilities, as described in § 23-18-503(5)(B)  
36 (6)(B), that is located within a national interest electric transmission

1 corridor; and

2 (12) That any conditions attached to a certificate for the  
3 construction or modification of a ~~major~~ an electric transmission ~~facility~~  
4 line and associated facilities, as described in § 23-18-503(5)(B) ~~(6)(B)~~,  
5 that is located within a national interest electric transmission corridor do  
6 not interfere with reduction of electric transmission congestion in  
7 interstate commerce or render the project economically infeasible.

8

9 SECTION 10. Arkansas Code § 23-18-521 is amended to read as follows:  
10 23-18-521. Issuance of certificate – Effect.

11 (a) A certificate to construct and operate a major utility facility  
12 may ~~only~~ be issued ~~pursuant to~~ only under this subchapter.

13 (b)(1) ~~Any~~ A certificate issued ~~hereunder~~ under this subchapter to an  
14 applicant ~~shall be~~ is in lieu of, and ~~exempt~~ exempts the applicant from, the  
15 requirements of obtaining a certificate of convenience and necessity ~~pursuant~~  
16 ~~to~~ under § 23-3-201 et seq.

17 (2) ~~It shall also entitle~~ A certificate issued under this  
18 subchapter entitles the applicant to a permit under § 23-3-501 et seq.  
19 without any further notice or hearing if the applicant has filed with the  
20 Arkansas Public Service Commission the consent or authorization required by §  
21 23-3-504(7) and paid the damages ~~set out~~ stated in § 23-3-501 et seq.

22

23 SECTION 11. Arkansas Code § 23-18-525 is amended to read as follows:  
24 23-18-525. Jurisdiction of courts.

25 Except as ~~expressly set forth~~ stated in §§ 23-18-505, 23-18-506, and  
26 23-18-524, ~~no~~ a court of this state ~~shall~~ does not have jurisdiction to ~~hear~~;

27 (1) Hear or determine ~~any~~ an issue, case, or controversy  
28 concerning ~~any~~ a matter ~~which~~ that was or could have been determined in a  
29 proceeding under this subchapter before the Arkansas Public Service  
30 Commission ~~under this subchapter~~; or ~~to stop~~

31 (2) Stop or delay the financing, construction, operation, or  
32 *maintenance of a major utility facility except to enforce compliance with*  
33 *this subchapter or the provisions of a certificate issued ~~pursuant to~~ under*  
34 *this subchapter after the exhaustion of administrative remedies before the*  
35 *commission.*

36

1 SECTION 12. Arkansas Code § 23-3-201 is amended to read as follows:

2 23-3-201. Requirement for new construction or extension.

3 (a) New construction or operation of ~~any~~ equipment or facilities for  
4 supplying a public service or the extension of a public service shall not be  
5 undertaken without first obtaining from the Arkansas Public Service  
6 Commission a certificate that public convenience and necessity require or  
7 will require the construction or operation.

8 (b) This section does not require a certificate of public convenience  
9 and necessity for:

10 (1) The replacement or expansion of existing equipment or  
11 facilities with similar equipment or facilities in substantially the same  
12 location or the rebuilding, upgrading, modernizing, or reconstructing of  
13 equipment or facilities that increase capacity if no increase in the width of  
14 an existing right-of-way is required;

15 (2) The construction or operation of equipment or facilities for  
16 supplying a public service that has begun under a limited or conditional  
17 certificate or authority as provided in §§ 23-3-203 – 23-3-205; ~~or~~

18 (3) The extension of a public service:

19 (A) Within a municipality or district where a public  
20 service has been lawfully supplied;

21 (B) Within or to territory then being served; or

22 (C) That is necessary in the ordinary course~~+~~; or

23 (4) Except as provided in § 23-18-504(c), the construction or  
24 operation of a major utility facility as defined in the Utility Facility  
25 Environmental and Economic Protection Act, § 23-18-501 et seq., or any  
26 exemption under the Utility Facility Environmental and Economic Protection  
27 Act.

28  
29 SECTION 13. EMERGENCY CLAUSE. It is found and determined by the  
30 General Assembly of the State of Arkansas that recent decisions by the  
31 Arkansas Court of Appeals and the Arkansas Supreme Court have pointed out the  
32 need for the General Assembly to clarify its intentions regarding the  
33 certification and authorization of the location, financing, construction, and  
34 operation of major utility facilities; and that this act is immediately  
35 necessary to provide for the continued economic development of the state and  
36 the orderly and efficient development of essential energy resources.

1 Therefore, an emergency is declared to exist and this act being immediately  
2 necessary for the preservation of the public peace, health, and safety shall  
3 become effective on:

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

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

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

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11 /s/Powers

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**APPROVED: 04/01/2011**

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