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4

As Engrossed: S2/18/19 S3/4/19

# A Bill

SENATE BILL 145

5 By: Senators D. Wallace, Hester  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND CERTAIN DEFINITIONS UNDER THE  
9 ARKANSAS RENEWABLE ENERGY DEVELOPMENT ACT OF 2001; TO  
10 AMEND THE LAW CONCERNING THE AUTHORITY OF THE  
11 ARKANSAS PUBLIC SERVICE COMMISSION; AND FOR OTHER  
12 PURPOSES.  
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## Subtitle

15 TO AMEND CERTAIN DEFINITIONS UNDER THE  
16 ARKANSAS RENEWABLE ENERGY DEVELOPMENT ACT  
17 OF 2001; AND TO AMEND THE LAW CONCERNING  
18 THE AUTHORITY OF THE ARKANSAS PUBLIC  
19 SERVICE COMMISSION.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
24

25 SECTION 1. Arkansas Code § 23-18-603 is amended to read as follows:  
26 23-18-603. Definitions.

27 As used in this subchapter:

28 (1) "Avoided cost" means:

29 (A) For an electric utility other than a municipal  
30 utility, the costs to an electric utility of electric energy or capacity, or  
31 both, that, but for the generation from the net metering facility or  
32 facilities, the utility would generate itself or purchase from another  
33 source, as determined by a commission consistent with § 23-3-701 et seq.; or

34 (B) For a municipal utility, the definition provided by  
35 the governing body of the municipal utility;

36 ~~(1)~~(2) "Commission" means the Arkansas Public Service Commission



1 or other appropriate governing body for an electric utility as defined in  
2 subdivision ~~(2)~~ (3) of this section;

3 ~~(2)~~(3) "Electric utility" means a public or investor-owned  
4 utility, an electric cooperative, ~~municipal utility~~, or any private power  
5 supplier or marketer that is engaged in the business of supplying electric  
6 energy to the ultimate consumer or any customer classes within the state;

7 (4)(A) "Municipal utility" means a utility system owned or  
8 operated by a municipality that provides electricity.

9 (B) "Municipal utility" includes without limitation a:

10 (i) Utility system managed or operated by a  
11 nonprofit corporation under § 14-199-701 et seq.; and

12 (ii) Utility system owned or operated by a  
13 municipality or by a consolidated utility district under the General  
14 Consolidated Public Utility System Improvement District Law, § 14-217-101 et  
15 seq.;

16 ~~(3)~~(5) "Net excess generation" means the amount of electricity  
17 as measured in kilowatt hours or kilowatt hours multiplied by the applicable  
18 rate that a net-metering customer has fed back to the electric utility that  
19 exceeds the amount of electricity as measured in kilowatt hours or kilowatt  
20 hours multiplied by the applicable rate used by that customer during the  
21 applicable period determined by a commission;

22 ~~(4)~~(6) "Net metering" means measuring the difference ~~between~~ in  
23 amount of electricity as measured in kilowatt hours or kilowatt hours  
24 multiplied by the applicable rate supplied by an electric utility to a net  
25 metering customer and the electricity generated by a net-metering customer  
26 and fed back to the electric utility over the applicable ~~billing~~ period  
27 determined by a commission;

28 ~~(5)~~(7) "Net-metering customer" means ~~an owner of a net-metering~~  
29 ~~facility;~~ a customer of an electric utility that:

30 (A) Is an owner of a net-metering facility;

31 (B) Leases a net-metering facility subject to the  
32 following limitations:

33 (i) A lease shall not permit the sale of electric  
34 energy measured in kilowatt hours or electric capacity measured in kilowatts  
35 between the lessor and lessee; and

36 (ii) A lease shall not include any charge per

1 kilowatt hour or any charge per kilowatt; or

2 (C) Is a government entity or other entity that is exempt  
 3 from state and federal income tax, and that, for the sole purpose of this  
 4 subchapter, obtains electric energy from a net metering facility under a  
 5 service contract qualifying for safe-harbor protection as provided under 26  
 6 U.S.C. § 7701(e)(3)(A), as in effect on the effective date of this act;

7 ~~(6)(8)~~ “Net-metering facility” means a facility for the  
 8 production of ~~electrical~~ electric energy that:

9 (A) Uses solar, wind, hydroelectric, geothermal, or  
 10 biomass resources to generate electricity, including, but not limited to,  
 11 fuel cells and micro turbines that generate electricity if the fuel source is  
 12 entirely derived from renewable resources;

13 (B) Has a generating capacity of not more than:

14 (i) The greater of twenty-five kilowatts (25 kW) or  
 15 one hundred percent (100%) of the net-metering customer’s highest monthly  
 16 usage in the previous twelve (12) months for residential use; ~~or~~

17 (ii) ~~Three hundred kilowatts (300 kW)~~ For customers  
 18 of electric utilities, one thousand kilowatts (1,000 kW) for ~~any other~~ use  
 19 other than residential use unless otherwise allowed by a commission under §  
 20 ~~23-18-604(b)(5)~~ 23-18-604; or

21 (iii) For customers of a municipal utility, the  
 22 limits established by the governing body of the municipal utility under § 23-  
 23 18-605;

24 (C) Is located in Arkansas;

25 (D) Can operate in parallel with an electric utility’s  
 26 existing transmission and distribution facilities; ~~and~~

27 (E) Is intended primarily to offset part or all of the  
 28 net-metering customer requirements for electricity; and

29 (F)(i) May include an energy storage device that is  
 30 configured to receive electric energy solely from a net metering facility.

31 (ii) The capacity of an energy storage device shall  
 32 not be used to calculate the capacity limits listed in subdivision (8)(B) of  
 33 this section if the energy storage device is configured to receive electric  
 34 energy solely from a net metering facility;

35 (9) “Quantifiable benefits” means the:

36 (A) Reasonably demonstrated costs that:

1 (i) Are related to the provision of electric service  
 2 and based on the utility's most recent cost-of-service study filed with the  
 3 commission; and

4 (ii) Will be avoided by the utility by the use of  
 5 net metering;

6 (B) Monetary value provided to a utility by the use of net  
 7 metering as specified by a market mechanism, if any, of the regional  
 8 transmission organization of which the electric utility is a member; and

9 (C) Monetary value provided to a utility by the use of net  
 10 metering as specified by a market mechanism, if any, that measures utility  
 11 distribution system benefits; and

12 ~~(7)~~(10) "Renewable energy credit" means the environmental,  
 13 economic, and social attributes of a unit of electricity, such as a megawatt  
 14 hour, generated from renewable fuels that can be sold or traded separately.

15  
 16 SECTION 2. Arkansas Code § 23-18-604 is amended to read as follows:

17 23-18-604. Commission authority – Definition.

18 (a) An electric utility shall allow net-metering facilities to be  
 19 interconnected using a standard meter capable of registering the flow of  
 20 electricity in two (2) directions.

21 (b) Following notice and opportunity for public comment, a commission:

22 (1) Shall establish appropriate rates, terms, and conditions for  
 23 ~~net-metering contracts, including:~~ net metering;

24 ~~(A)(i) A requirement that the rates charged to each net-~~  
 25 ~~metering customer recover the electric utility's entire cost of providing~~  
 26 ~~service to each net-metering customer within each of the electric utility's~~  
 27 ~~class of customers.~~

28 ~~(ii) The electric utility's entire cost of providing~~  
 29 ~~service to each net-metering customer within each of the electric utility's~~  
 30 ~~class of customers under subdivision (b)(1)(A)(i) of this section:~~

31 ~~(a) Includes without limitation any~~  
 32 ~~quantifiable additional cost associated with the net-metering customer's use~~  
 33 ~~of the electric utility's capacity, distribution system, or transmission~~  
 34 ~~system and any effect on the electric utility's reliability; and~~

35 ~~(b) Is net of any quantifiable benefits~~  
 36 ~~associated with the interconnection with and providing service to the net-~~

1 ~~metering customer, including without limitation benefits to the electric~~  
2 ~~utility's capacity, reliability, distribution system, or transmission system;~~  
3 ~~and~~

4 (2) For net-metering customers who receive service under a rate  
5 that does not include a demand component, may:

6 (A) Require an electric utility to credit the net-metering  
7 customer with any accumulated net excess generation as measured in kilowatt  
8 hours or kilowatt hours multiplied by the applicable rate in the next  
9 applicable billing period and base the bill of the net-metering customer on  
10 the net amount of electricity as measured in kilowatt hours or kilowatt hours  
11 multiplied by the applicable rate that the net-metering customer has received  
12 from or fed back to the electric utility during the billing period;

13 (B) Take the following actions if those actions are in the  
14 public interest and doing so will not result in an unreasonable allocation of  
15 or increase in costs to other utility customers:

16 (i) Separately meter the electric energy, measured  
17 in kilowatt hours, supplied by the electric utility to the net-metering  
18 customer and the electric energy, measured in kilowatt hours, that is  
19 generated by the net-metering customer's net-metering facility that is fed  
20 back to the electric utility at any time during the applicable billing  
21 period;

22 (ii) Apply the commission-approved retail rate to  
23 all kilowatt hours that are supplied by the electric utility to a net-  
24 metering customer by the electric utility during the applicable period  
25 determined by a commission;

26 (iii) Apply the avoided cost of the electric utility  
27 plus any additional sum determined under subdivision (b)(2)(B)(iv) of this  
28 section to all kilowatt hours supplied to the electric utility by a net-  
29 metering customer, during the period determined by a commission, which shall  
30 be credited to the total bill of the net-metering customer in a dollar value;  
31 and

32 (iv) The additional sum added to the avoided cost of  
33 the electric utility may be applied after the demonstration of quantifiable  
34 benefits by the net-metering customer and shall not exceed forty percent  
35 (40%) of the avoided cost of the electric utility;

36 (C) Authorize an electric utility to assess a net-metering

1 customer that is being charged a rate that does not include a demand  
2 component a per-kilowatt-hour fee or charge to recover the quantifiable  
3 direct demand-related distribution cost of the electric utility for providing  
4 electricity to the net-metering customer that is not:

5 (i) Avoided as a result of the generation of  
6 electricity by the net-metering facility; and

7 (ii) Offset by quantifiable benefits; or

8 (D) Take other actions that are in the public interest and  
9 do not result in an unreasonable allocation of costs to other utility  
10 customers.

11 ~~(B)(3)~~ A requirement shall require that net-metering equipment  
12 be installed to accurately measure the electricity:

13 ~~(i)(A)~~ Supplied by the electric utility to each net-  
14 metering customer; and

15 ~~(ii)(B)~~ Generated by each net-metering customer that is  
16 fed back to the electric utility over the applicable billing period;

17 ~~(2)(4)~~ May authorize an electric utility to assess a net-  
18 metering customer a greater fee or charge of any type, if the electric  
19 utility's direct costs of interconnection and administration of net metering  
20 outweigh the distribution system, environmental, and public policy benefits  
21 of allocating the costs among the electric utility's entire customer base;

22 ~~(3)(5)~~ shall For net-metering customers who receive service  
23 under a rate that does not include a demand component, shall require an  
24 electric utility to credit a net-metering customer with the amount  
25 of any accumulated net excess generation as measured in kilowatt hours or  
26 kilowatt hours multiplied by the applicable rate in the next applicable  
27 billing period;

28 (6) Except as provided in subdivision (b)(9) of this section,  
29 for net-metering customers who receive service under a rate that includes a  
30 demand component, shall require an electric utility to credit the net-  
31 metering customer with any accumulated net excess generation in the next  
32 applicable billing period and base the bill of the net-metering customer on  
33 the net amount of electricity that the net-metering customer has received  
34 from or fed back to the electric utility during the billing period;

35 ~~(4)(7)~~ May expand the scope of net metering to include  
36 additional facilities that do not use a renewable energy resource for a fuel

1 if so doing results in distribution system, environmental, or public policy  
2 benefits;

3 ~~(5) May increase the generating capacity limits for individual~~  
4 ~~net-metering facilities if doing so results in distribution system,~~  
5 ~~environmental, or public policy benefits;~~

6 ~~(6)(8)~~ Shall provide that:

7 (A)(i) The amount of the net excess generation credit as  
8 measured in kilowatt hours or kilowatt hours multiplied by the applicable  
9 rate remaining in a net-metering customer's account at the close of a billing  
10 cycle shall not expire and shall be carried forward to subsequent billing  
11 cycles indefinitely.

12 (ii) However, for net excess generation credits  
13 older than twenty-four (24) months, a net-metering customer may elect to have  
14 the electric utility purchase the net excess generation credits in the net-  
15 metering customer's account at the electric utility's ~~estimated annual~~  
16 ~~average avoided cost, rate for wholesale energy plus any additional sum~~  
17 determined under this section, if the sum to be paid to the net-metering  
18 customer is at least one hundred dollars (\$100).

19 (iii) An electric utility shall purchase at the  
20 electric utility's ~~estimated annual average avoided cost, rate for wholesale~~  
21 ~~energy plus any additional sum determined under this section,~~ any net excess  
22 generation credit remaining in a net-metering customer's account when the  
23 net-metering customer:

24 (a) Ceases to be a customer of the electric  
25 utility;

26 (b) Ceases to operate the net-metering  
27 facility; or

28 (c) Transfers the net-metering facility to  
29 another person; and

30 (B) A renewable energy credit created as the result of  
31 electricity supplied by a net-metering customer is the property of the net-  
32 metering customer that generated the renewable energy credit; and

33 ~~(7)(9)~~ May allow a net-metering facility with a generating  
34 capacity that exceeds ~~three hundred kilowatts (300 kW)~~ the limits provided  
35 under § 23-18-603(8)(ii) or § 23-18-603(8)(iii) of up to twenty thousand  
36 kilowatts (20,000 kW) if:

1 (A) For any net-metering facility with a generating  
2 capacity of less than five thousand kilowatts (5,000 kW):

3 (i) The net-metering facility is not for residential  
4 use;

5 (ii) Increasing the generating capacity limits for  
6 individual net-metering facilities results in distribution system,  
7 environmental, or public policy benefits, or allowing an increased generating  
8 capacity for the net-metering facility would increase the state's ability to  
9 attract businesses to Arkansas; and

10 (iii) Allowing an increased generating capacity for  
11 the net-metering facility is in the public interest; or

12 (B) For any net-metering facility with a generating  
13 capacity of greater than five thousand kilowatts (5,000 kW):

14 (i) The net-metering facility is not for residential  
15 use;

16 (ii) Increasing the generating capacity limits for  
17 individual net-metering facilities results in distribution system,  
18 environmental, or public policy benefits, or allowing an increased generating  
19 capacity for the net-metering facility would increase the ability of the  
20 state to attract business to Arkansas;

21 (iii) Allowing an increased generating capacity for  
22 the net-metering facility does not result in an unreasonable allocation of  
23 costs to other utility customers; and

24 (iv) Allowing an increased generating capacity for  
25 the net-metering facility is in the public interest; and

26 ~~(A) The net-metering facility is not for residential use;~~  
27 ~~and~~

28 ~~(B) Allowing an increased generating capacity for the net-~~  
29 ~~metering facility would increase the state's ability to attract businesses to~~  
30 ~~Arkansas.~~

31 (10)(A) Shall allow the net-metering facility of a net-metering  
32 customer who has submitted a standard interconnection agreement, as referred  
33 to in the rules of the Arkansas Public Service Commission, to the electric  
34 utility after the effective date of this act but before December 31, 2022, to  
35 remain under the rate structure in effect when the net-metering contract was  
36 signed, for a period not to exceed twenty (20) years, subject to approval by



1 a commission.

2 (B) A net-metering facility under subdivision (b)(10)(A)  
3 of this section remains subject to any other change or modification in rates,  
4 terms, and conditions.

5 ~~(c)(1) As used in this section, "avoided costs":~~

6 ~~(A) For the Arkansas Public Service Commission, means the~~  
7 ~~same as defined in § 23-3-702; and~~

8 ~~(B) For a municipal utility, is defined by the governing~~  
9 ~~body of the municipal utility.~~

10 ~~(2) Avoided costs shall be determined under § 23-3-704.~~

11 ~~(d)(1)~~ Except as provided in subdivision ~~(d)(2)(c)(2)~~ of this section,  
12 an electric utility shall separately meter, bill, and credit each net-  
13 metering facility even if one (1) or more net-metering facilities are under  
14 common ownership.

15 (2)(A)(i) At the net-metering customer's discretion, an electric  
16 utility may apply net-metering credits from a net-metering facility to the  
17 bill for another meter location if the net-metering facility and the separate  
18 meter location are under common ownership within a single electric utility's  
19 service area.

20 (ii) Subdivision (c)(2)(A)(i) of this section does  
21 not apply if more than two (2) customers that are governmental entities or  
22 other entities that are exempt from state and federal income tax defined  
23 under § 23-18-603(7)(C) co-locate at a site hosting the net-metering  
24 facility.

25 (B) Net excess generation shall be credited first to the  
26 net-metering customer's meter to which the net-metering facility is  
27 physically attached.

28 (C) After applying net excess generation under subdivision  
29 ~~(d)(2)(B)(c)(2)(B)~~ of this section and upon request of the net-metering  
30 customer under subdivision ~~(d)(2)(A)(c)(2)(A)~~ of this section, any remaining  
31 net excess generation shall be credited to one (1) or more of the net-  
32 metering customer's meters in the rank order provided by the net-metering  
33 customer.

34 (d) A person who acts as a lessor or service provider as described in  
35 § 23-18-603(7)(B) or (C) shall not be considered a public utility as defined  
36 in § 23-1-101(9).

1  
2       SECTION 3. Arkansas Code Title 23, Chapter 18, Subchapter 6 is amended  
3 to add an additional section to read as follows:

4       23-18-605. Municipal utilities.

5       (a) A municipal utility shall allow a net-metering facilities to be  
6 interconnected according to the ordinances, rules or regulations established  
7 by the governing body of the municipal utility.

8       (b) The governing body of municipal utility may elect to follow  
9 procedures under § 23-18-604 or may adopt ordinances, rules or regulations  
10 establishing the rates, terms and conditions allowing the interconnection of  
11 net-metering facilities, including generation facilities and energy storage  
12 devices whether owned or leased by a customer or operated by a third-party on  
13 behalf of a customer.

14       (c) The governing body of a municipal utility may limit the generating  
15 capacity of a net-metering facility to less than twenty-five kilowatts (25  
16 kW) for residential customers or three hundred kilowatts (300 kW) for  
17 nonresidential customers only after the governing body finds that the  
18 capacity limit is necessary for reliable utility operations or the public  
19 health, safety, or welfare.

20       (d) The governing body of a municipal utility shall not establish a  
21 rate or fee that reduces the value of electric energy from a net-metering  
22 facility to below the avoided cost of the municipal utility.

23       (e) For customers who receive service under a rate that includes a  
24 demand component, the governing body of the municipal utility shall require a  
25 municipal utility to credit a net-metering customer with any accumulated net  
26 excess generation in the next applicable billing period and base the bill of  
27 the customer on the net amount of electricity that the net-metering customer  
28 has received from or fed back to the municipal utility during the billing  
29 period.

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32                               /s/D. Wallace