

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

As Engrossed: S3/9/21 S4/7/21

# A Bill

SENATE BILL 489

5 By: Senator B. Davis  
6 By: Representative Maddox  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE FORMULA RATE REVIEW ACT; TO  
10 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.  
11

## Subtitle

14 TO AMEND THE FORMULA RATE REVIEW ACT; AND  
15 TO DECLARE AN EMERGENCY.  
16  
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

20 SECTION 1. Arkansas Code § 23-4-422 is amended to read as follows:

21 23-4-422. Cost allocation – Definition.

22 (a)(1) The Arkansas Public Service Commission shall establish and  
23 regulate the rates and charges of a public utility under this subchapter and  
24 shall allocate or assign costs among all classes of customers of the public  
25 utility.

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

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

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

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

35 (b) Notwithstanding the commission's authority to otherwise determine  
36 and fix rates for all classes of customers, including allocating or assigning



1 costs and designing rates, if the commission finds that it will be beneficial  
2 to economic development or the promotion of employment opportunities, and  
3 that it will result in just and reasonable rates for all classes of  
4 customers, the commission shall determine rates and charges for utility  
5 services that:

6 (1) For the class of customers with the highest level of  
7 consumption per customer which has rates that include a demand component, and  
8 any successors to such class, as they existed on ~~January 1, 2015~~ January 1,  
9 2021, ensure that all costs and expenses related to demand and capacity are  
10 identified and allocated on a demand basis and recovered from customers in  
11 those classes through a demand rate component and not through a volumetric  
12 rate component unless the commission determines that the rates should be  
13 adjusted under subsections (e) and (f) of this section;

14 (2) For the retail jurisdiction rate classes, ensure that:

15 (A) All electric utility production plant, production-  
16 related costs, nonfuel production-related costs, purchased capacity costs,  
17 and any energy costs incurred resulting from the electric utility's  
18 environmental compliance are classified as production demand costs; and

19 (B)(i) Production demand costs are allocated to each  
20 customer class pursuant to the average and excess method shown in Table 4-10B  
21 on page 51 of the 1992 National Association of Regulatory Utility  
22 Commissioners Electric Utility Cost Allocation Manual, as it existed on  
23 ~~January 1, 2015~~ January 1, 2021, using the average of the four (4) monthly  
24 coincident peaks for the months of June, July, August, and September for each  
25 class for the coincident peak referenced in Table 4-10B of the ~~manual~~ 1992  
26 National Association of Regulatory Utility Commissioners Electric Utility  
27 Cost Allocation Manual, as it existed on ~~January 1, 2015~~ January 1, 2021, or  
28 any subsequent version of the ~~manual~~ National Association of Regulatory  
29 Utility Commissioners Electric Utility Cost Allocation Manual to the extent  
30 it produces an equivalent result.

31 (ii) Subdivision (b)(2)(B)(i) of this section does  
32 not prescribe an allocation for a wind production plant; and

33 (3)(A)(i) For purposes of allocation of natural gas distribution  
34 plant costs, including costs in distribution mains and related distribution  
35 plant expenses, among the state's retail jurisdiction rate classes, ensure  
36 that each natural gas public utility classifies all natural gas distribution

1 plant costs as customer-related or capacity-related.

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

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

8 (b) Related depreciation, return on  
9 investment, property insurance and taxes, excluding state and federal income  
10 taxes, and fixed operation and maintenance expense charged to account numbers  
11 870 through 894, as defined under the account numbering system in the Uniform  
12 System of Accounts prescribed for natural gas public utilities by the rules  
13 of the commission, including all labor-related costs for the expenses  
14 described in this subdivision (b)(3)(A).

15 (iii) To develop a cost allocation method under this  
16 section for natural gas utilities, the commission shall use the Gas  
17 Distribution Rate Design Manual, June 1989 edition, as prepared by the  
18 National Association of Regulatory Utility Commissioners, as it existed on  
19 ~~January 1, 2015~~ January 1, 2021, or any subsequent version of the ~~manual~~ Gas  
20 Distribution Rate Design Manual, to the extent it produces an equivalent  
21 result.

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

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

35 (iii) The customer-related portion of natural gas  
36 distribution costs related to account numbers 377 through 387, as defined

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

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

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

15 (ii) As used in subdivision (b)(3)(C)(i) of this  
16 section, "peak day demand" means the computed quantity of gas that would be  
17 supplied to each customer class calculated using the coldest day in a recent  
18 thirty-year period for each gas utility.

19 (c) In an application for a general change or modification in a public  
20 utility's rates and charges under this subchapter:

21 (1) A public utility may present evidence that demonstrates that  
22 the implementation of rates under subsection (b) of this section will result  
23 in rates that will be beneficial to economic development or the promotion of  
24 employment opportunities and result in just and reasonable rates for all  
25 classes of customers; and

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

31 (d)(1) Unless the commission adjusts the rates under subsection (e) or  
32 subsection (f) of this section, the commission shall by order establish and  
33 design rates, allocate or assign costs to all classes of customers, and  
34 regulate the rates for each class of customers of a public utility according  
35 to this section except as limited under § 23-4-1205(c)(3)(B), § 23-4-1207(d),  
36 and § 23-4-1208(a)(2)(B) and (C).

1           (2) For an electric utility whose class of customers with the  
2 highest level of consumption per customer that has rates that include a  
3 demand component, and any successors to such a class, as they existed on  
4 January 1, 2021, has an annual usage for the class as a whole in excess of  
5 five million megawatt hours (5,000,000 MWh), and if the electric utility has  
6 a formula rate review approved and in effect under § 23-4-1208(a)(1) on or  
7 before March 15, 2021:

8           (A) The commission shall determine rates and charges for  
9 utility services in accord with § 23-4-422(b)(1) and (2) without regard to  
10 any findings described in § 23-4-422; and

11           (B) The commission shall not adjust the rates under  
12 subsection (e) or subsection (f) of this section, except as provided in § 23-  
13 4-1207(d) and § 23-4-1208(a)(2)(B) and (C).

14           (e) Pursuant to the commission's authority to otherwise determine and  
15 fix rates for all classes of customers, including allocating or assigning  
16 costs and designing rates, the commission may adjust rates under subdivisions  
17 (b)(2) and (3) of this section if the commission finds:

18           (1) It is in the public interest;

19           (2) It is necessary to produce just and reasonable rates; or

20           (3) Implementation of rates under subdivisions (b)(2) and (3) of  
21 this section will result in rates that are not beneficial to economic  
22 development or the promotion of employment opportunities.

23           (f) If implementation of rates under subdivision (b)(1) of this  
24 section will result in an increase in the base rate charges billed to  
25 customers in the affected class of more than ten percent (10%) as compared to  
26 the currently approved base rate charges of the applicable rate schedules,  
27 the commission may adjust the rates to ensure that the greatest increase in  
28 the base rate charges billed to customers in the affected class is ten  
29 percent (10%) as compared to the then currently approved base rate charges of  
30 the applicable rate schedules.

31           (g) If the commission makes any adjustment under subsections (e) and  
32 (f) of this section, the commission shall provide in an order the rationale  
33 for determining that rates under subsection (b) of this section may not be  
34 just and reasonable and the rationale for determining that the rates adjusted  
35 in the order of the commission are just and reasonable and in the public  
36 interest. The commission shall make its findings based on substantial

1 evidence.

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

5 (i) Effective March 27, 2015, the cost allocation provisions of this  
6 section shall apply to any pending application for a change in general rates  
7 and charges.

8

9 SECTION 2. Arkansas Code § 23-4-1205(c), concerning the procedure for  
10 a rate change under the Formula Rate Review Act, is amended to read as  
11 follows:

12 (c)(1)(A) A *An electric or natural gas* public utility that has filed a  
13 notice of intent or has an application for a general change in rates and  
14 charges pending under § 23-4-401 et seq. that contains a notice of election  
15 to be regulated under a formula rate review effective March 27, 2015, shall  
16 be regulated under this subchapter.

17 (B)(i) A water or sewer public utility that has filed a  
18 notice of intent or has an application for a general change in rates and  
19 charges pending under § 23-4-401 et seq. that contains a notice of election  
20 to be regulated under a formula rate review effective March 27, 2015, may  
21 request that the water or sewer public utility be regulated under this  
22 subchapter.

23 (ii) Upon a public interest determination, the  
24 commission may authorize the water or sewer public utility's request under  
25 subdivision (c)(1)(B)(i) of this section to be regulated under this  
26 subchapter.

27 (2)(A) A public utility shall not file for an initial formula  
28 rate review until at least one hundred eighty (180) days after rates have  
29 become effective pursuant to the final order on the application for a general  
30 change in rates.

31 (B) A public utility that has filed a notice of intent or  
32 has an application for a general change in rates and charges pending under §  
33 23-4-401 et seq. that contains a notice of election to be regulated under a  
34 formula rate review effective March 27, 2015, may file for the initial  
35 formula rate review one hundred fifty (150) days after rates have become  
36 effective pursuant to the final order in the general rate case.

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

5           (B) As part of an extension of the initial five-year term  
6 of a formula rate review under § 23-4-1207(d) and § 23-4-1208(a)(3), for an  
7 electric utility if the electric utility's class of customers with the  
8 highest level of consumption per customer that has rates that include a  
9 demand component, any successors to such a class, as they existed on January  
10 1, 2021, has an annual usage for the class as a whole in excess of five  
11 million megawatt hours (5,000,000 MWh), the commission shall, and for all  
12 other utilities the commission may approve changes to the rate design within  
13 an individual customer class consistent with § 23-4-422(b)(1).

14  
15           SECTION 3. Arkansas Code § 23-4-1206 is amended to read as follows:  
16           23-4-1206. Formula rate review – Required information.

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

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

23           (c)(1) Annual formula rate review filings shall be prepared consistent  
24 with the ~~commission's~~ Arkansas Public Service Commission's order on the  
25 public utility's application for a general change in rates and charges.

26           (2) In the case of a formula rate review test period that uses a  
27 test period based on a projected year, an electing public utility may support  
28 any portion of the electing public utility's projected data through the use  
29 of information that relies on historical averages.

30           (d) Any costs disallowed by the ~~commission~~ Arkansas Public Service  
31 Commission in its order on the public utility's application for a general  
32 change in rates and charges shall not be eligible for recovery under a  
33 formula rate review mechanism.

34           (e)(1) If a formula rate review test period utilizes projected data  
35 under § 23-4-406 or a projected year, rate changes under § 23-4-1207 shall  
36 include an adjustment to net any differences between the prior formula rate

1 review test period change in revenue and the actual historical year change in  
2 revenue for that same year.

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

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

9 (4)(A) When calculating the adjustment to net any differences  
10 under subdivision (e)(1) of this section, the Arkansas Public Service  
11 Commission shall include the actual historical year change in revenue for a  
12 historical year, which shall be determined as follows:

13 (i) For the purpose of including all of the elements  
14 of the change of revenue in calculating an adjustment to net any differences  
15 under subdivision (e)(1) of this section, the Arkansas Public Service  
16 Commission shall ensure that the revenue received for the historical year  
17 shall be composed of:

18 (a) Prior formula rate review test period  
19 changes in revenue;

20 (b) Netting revenue from a prior formula rate  
21 review test period; and

22 (c) In order to isolate the change in revenue  
23 for the corresponding prior projected year being netted, prior projected year  
24 revenue for the year being netted; and

25 (ii) The Arkansas Public Service Commission shall  
26 calculate an adjustment to net any differences under subdivision (e)(1) of  
27 this section by calculating the differences between the prior formula rate  
28 review test period changes in revenue and the prior projected year revenue  
29 for the year being netted.

30 (B) If the prior formula rate review test period change in  
31 revenue being netted was limited by § 23-4-1207(d)(2), the Arkansas Public  
32 Service Commission shall ensure that the revenue recovered shall be either:

33 (i) Applied first to any revenue amounts remaining  
34 from the prior approved formula rate review test periods specified in  
35 subdivision (e)(4)(A) of this section, second to the netting adjustment  
36 specified in subdivision (e)(4)(A) of this section, and last to the prior

1 projected year revenue for the year being netted specified in subdivision  
2 (e)(4)(A) of this section; or

3 (ii) Proportioned by:

4 (a) Calculating the sum of:

5 (1) The revenue adjustment amount  
6 determined under § 23-4-1207(b); and

7 (2) The netting adjustment determined  
8 under subdivision (e)(2) of this section and this subdivision (e)(4);

9 (b) Calculating the percentage of the sum  
10 represented by:

11 (1) The revenue adjustment amount  
12 determined under § 23-4-1207(b); and

13 (2) The netting adjustment determined  
14 under subdivision (e)(2) of this section and this subdivision (e)(4); and

15 (c) Applying the percentages calculated in  
16 subdivision (e)(4)(B)(ii)(b) of this section to the actual historical year  
17 change in revenue for that same year.

18 (C)(i) For the initial term of a formula rate review  
19 mechanism approved and in effect on or before March 15, 2021, a public  
20 utility may choose to apply either subdivision (e)(4)(B)(i) or subdivision  
21 (e)(4)(B)(ii) of this section for the term of an approved formula rate review  
22 approved under § 23-4-1208(a)(1).

23 (ii) The Arkansas Public Service Commission shall  
24 authorize the public utility to use the chosen methodology.

25 (iii) Except as provided in subdivisions (e)(4)(D)  
26 and (E) of this section, the authorized methodology shall remain in effect.

27 (D) During the final year of the initial five-year term of  
28 any formula rate review mechanism approved and in effect before March 15,  
29 2021, that uses a test period based upon a projected year, the public utility  
30 shall follow subdivision (e)(4)(B)(ii) of this section.

31 (E)(i) During any five-year extension term of a formula  
32 rate review mechanism that uses a test period based upon a projected year,  
33 the public utility shall propose, and the Arkansas Public Service Commission  
34 shall authorize, a public utility to follow subdivision (e)(4)(B)(ii) of this  
35 section for the five-year extension of the term of the formula rate review  
36 mechanism.

1 (ii) For any formula rate review mechanism that uses  
2 a test period based upon a projected year and has an initial term that  
3 commences after January 1, 2021, the public utility shall follow subdivision  
4 (e)(4)(B)(ii) of this section for the initial five-year term of the formula  
5 rate review mechanism.

6 (f) The public utility shall submit documentation fully supporting all  
7 calculations and adjustments as required by the rules of the ~~commission~~  
8 Arkansas Public Service Commission.

9 (g)(1) A Except as provided in subdivision (g)(4) of this section and  
10 § 23-4-1208(a)(2)(A)(ii) and (5), a public utility or any other party to the  
11 proceeding subject to the ~~commission's~~ Arkansas Public Service Commission's  
12 rules and procedures may propose additional adjustments that are based on  
13 factors unique to the public utility.

14 (2) The Arkansas Public Service Commission shall not make any  
15 adjustments to the rates that are approved in the application for a general  
16 change in rates and charges during the formula rate review term except for  
17 those made under § 23-4-1205(c)(3)(B).

18 (3) If a public utility has designated its formula rate review  
19 test period as based on a projected year under § 23-4-1205(a)(2), the public  
20 utility shall be allowed to recover its allowance for funds used during  
21 construction that is determined according to the uniform system of accounts  
22 adopted by the Arkansas Public Service Commission and any applicable  
23 accounting guidance issued by the Federal Energy Regulatory Commission and  
24 conforms with generally accepted accounting principles, through rates  
25 developed using a projected year.

26 (4) Unless the Arkansas Public Service Commission finds that it  
27 is in the public interest and makes specific findings in support, the  
28 Arkansas Public Service Commission shall not approve any adjustments or  
29 changes to the formula rate review filings that are inconsistent with the  
30 findings in the Arkansas Public Service Commission's order on the public  
31 utility's application for a general change in rates or charges, including a  
32 review of all of the components of a public utility's books and records,  
33 including the balance sheet and income statement accounts as were included in  
34 the findings in the Arkansas Public Service Commission's order on the public  
35 utility's application for a general change in rates or charges, and shall  
36 continue to treat those items in a manner consistent with the findings in the

1 Arkansas Public Service Commission's order on the public utility's most  
2 recent application for a general change in rates or charges, except that an  
3 adjustment shall not be approved under this subsection that is inconsistent  
4 with other provisions of this chapter.

5  
6 SECTION 4. Arkansas Code § 23-4-1207(d), concerning the formula for  
7 adjustments under the Formula Rate Review Act, is amended to read as follows:

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

13 (B) As part of an extension of the five-year term of a  
14 formula rate review under § 23-4-1208(a)(3), for an electric utility if the  
15 electric utility's class of customers with the highest level of consumption  
16 per customer that has rates that include a demand component, and any  
17 successors to such a class, as they existed on January 1, 2021, has an annual  
18 usage for the class as a whole in excess of five million megawatt hours  
19 (5,000,000 MWh), the commission shall, and for all other utilities the  
20 commission may, adjust the cost allocation, with respect to the total change  
21 in the formula rate review mechanism revenue level under subdivision  
22 (d)(1)(A) of this section, to each applicable rate schedule consistent with §  
23 23-4-422(b)(2) and § 23-4-422(d)(2) and using the public utility's most  
24 recent cost of service that was submitted under the terms of the public  
25 utility's formula rate review mechanism.

26 (C) The public utility shall file the resulting rate  
27 schedules as part of any formula rate review compliance filing.

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

32  
33 SECTION 5. Arkansas Code § 23-4-1208 is amended to read as follows:  
34 23-4-1208. Term – Formula rate review.

35 (a)(1) The term of any formula rate review approved by the Arkansas  
36 Public Service Commission shall not exceed five (5) years from the date of

1 the commission's final order on the application by the public utility for a  
2 general change in rates and charges.

3 (2)(A)(i) Upon a determination that it is in the public  
4 interest, a public utility may request and the commission may extend the term  
5 of the formula rate review mechanism by a period of no more than five (5)  
6 years beyond the initial term.

7 (ii) Except as provided in subdivision  
8 (a)(2)(A)(iii) of this section, as part of granting any extension of the  
9 initial term of a formula rate mechanism, the public utility may propose and  
10 the commission may make the following adjustments, consistent with this  
11 subchapter and other applicable statutory provisions for a public utility or  
12 any other party to a proceeding subject to the commission's jurisdiction that  
13 may be proposed, and the commission may approve:

14 (a) Reasonable and necessary revisions to the  
15 formula rate plan mechanism proposed by the parties that are necessary to  
16 ensure that the mechanism is consistent with the public interest but that do  
17 not materially change the provisions of the formula rate plan mechanism; and

18 (b) An increase or decrease to the utility's  
19 authorized return on equity by no more than ten (10) basis points based upon  
20 consideration of § 23-4-410(c)-(e), including making any required findings.

21 (iii) For an electric utility if the electric  
22 utility's class of customers with the highest level of consumption per  
23 customer that has rates that include a demand component, and any successors  
24 to such a class, as they existed on January 1, 2021, has an annual usage for  
25 the class as a whole in excess of five million megawatt hours (5,000,000  
26 MWh):

27 (a) An electric utility may request, and the  
28 commission shall approve, an extension of the term of the formula rate review  
29 mechanism by a period of five (5) years beyond the initial five-year term,  
30 provided the request is made on or before March 15, 2021; and

31 (b) Any requests for an extension of the  
32 initial term of a formula rate plan mechanism made after March 15, 2021,  
33 shall be subject to subdivision (a)(2)(A)(i) of this section.

34 (B) As part of any extension of the initial term of a  
35 formula rate review, for an electric utility if the electric utility's class  
36 of customers with the highest level of consumption per customer that has

1 rates that include a demand component, and any successors to such a class, as  
2 they existed on January 1, 2021, has an annual usage for the class as a whole  
3 in excess of five million megawatt hours (5,000,000 MWh), the commission  
4 shall adjust the cost allocation of any adjustment with respect to the total  
5 change in the formula rate review mechanism revenue level under § 23-4-  
6 1207(d) to each applicable rate schedule consistent with § 23-4-422(b)(2) and  
7 § 23-4-422(d)(2) using the public utility's most recent cost of service that  
8 was submitted under the terms of the public utility's formula rate review  
9 mechanism, and the public utility shall file with the commission the  
10 resulting rate schedules as part of any formula rate review compliance  
11 filing.

12 (C) As part of any extension of the initial term of a  
13 formula rate review mechanism, for an electric utility if the electric  
14 utility's class of customers with the highest level of consumption per  
15 customer that has rates that include a demand component, and any successors  
16 to such a class, as they existed on January 1, 2021, has an annual usage for  
17 the class as a whole in excess of five million megawatt hours (5,000,000  
18 MWh), the commission shall approve changes to the rate design within an  
19 individual customer class under § 23-4-1205(c)(3)(B) and subject to § 23-4-  
20 422(b)(1) using the public utility's most recent cost of service that was  
21 submitted under the terms of the public utility formula rate review  
22 mechanism, and the public utility shall file with the commission the  
23 resulting rate schedules as part of any formula rate review compliance  
24 filing.

25 (3) During the five-year term of an extension of any formula  
26 rate review mechanism with an initial five-year term approved before March  
27 15, 2021, for an electric utility if the electric utility's class of  
28 customers with the highest level of consumption per customer that has rates  
29 that include a demand component, and any successors to such a class, as they  
30 existed on January 1, 2021, has an annual usage for the class as a whole in  
31 excess of five million megawatt hours (5,000,000 MWh):

32 (A)(i) If the commission as part of its order in the  
33 public utility's most recent application for a general change in rates and  
34 charges under § 23-4-401 et seq. adjusted the cost allocation to each  
35 applicable rate schedule under the then-applicable provisions of § 23-4-422,  
36 then the commission shall:

1 (a) Use a public utility's most recent cost of  
2 service that was submitted under the terms of the public utility's formula  
3 rate review mechanism;

4 (b) Adjust the revenues recoverable from each  
5 class of customers to implement the unadjusted cost allocation in an equal  
6 annual adjustment over the five-year term of an extension; and

7 (c) This subdivision (a)(3)(A) shall be used  
8 to adjust the amounts under § 23-4-1207(d)(1).

9 (ii) The commission shall not make any other  
10 adjustments to the amounts under § 23-4-1207(d);

11 (B) For a public utility's class of customers with the  
12 highest level of consumption per customer that has rates with a demand  
13 component, any decrease in the costs allocated to that class of customers  
14 under subdivision (a)(3)(A) of this section shall serve to lower the maximum  
15 amount of the revenue increase for that class under § 23-4-1207(d)(2);

16 (C) For a public utility's classes of customers other than  
17 the class of customers with the highest level of consumption per customer  
18 that has rates with a demand component, any increase in the costs allocated  
19 to those classes of customers as well as any amounts that lower the maximum  
20 revenue increase for any class of customers under subdivision (a)(3)(B) of  
21 this section shall be included in the adjustment of customer rates for those  
22 classes of customers subject to § 23-4-1207(d)(2);

23 (D) For a public utility's nonresidential classes of  
24 customers that have rates with a demand component other than the class of  
25 customers with the highest level of consumption per customer that has rates  
26 with a demand component, the public utility may establish and the commission  
27 shall approve a maximum level of consumption or demand to be eligible for  
28 service as part of those classes that is lower than the minimum level of  
29 consumption or demand to be eligible for the class of customers with the  
30 highest level of consumption per customer that has rates with a demand  
31 component; and

32 (E) If the commission as part of its order in the public  
33 utility's most recent application for a general change in rates and charges  
34 under § 23-4-401 et seq. adjusted the rate design for the class of customers  
35 with the highest level of consumption per customer that has rates with a  
36 demand component under the then-applicable provisions of § 23-4-422, then:

1 (i) The commission shall approve changes to the rate  
2 design within an individual customer class under § 23-4-1205(c)(3)(B) subject  
3 to § 23-4-422(b)(1) using the utility's most recent cost of service that was  
4 submitted under the terms of its formula rate review mechanism;

5 (ii) The commission shall modify the rate design  
6 changes required under § 23-4-422(b)(1), § 23-4-1205(c)(3)(B), and this  
7 subdivision (a)(3), as described in this subdivision (a)(3)(E); and

8 (iii) The commission shall adjust the rate design to  
9 the class of customers with the highest level of consumption per customer,  
10 which has rates with a demand component in an equal annual adjustment over  
11 the first three (3) years of the five-year term of an extension, and the  
12 public utility shall file the resulting rate schedules annually as part of  
13 any formula rate review compliance filing until the adjustment in this  
14 subdivision (a)(3)(E)(iii) is fully implemented.

15 (4) During the five-year term of an extension, for an electric  
16 public utility with a formula rate review mechanism that uses a test period  
17 based on a projected year with an initial five-year term and that was  
18 approved and in effect by the commission before March 15, 2021, for an  
19 electric utility if the electric utility's class of customers with the  
20 highest level of consumption per customer that has rates that include a  
21 demand component, and any successors to such a class, as they existed on  
22 January 1, 2021, has an annual usage for the class as a whole in excess of  
23 five million megawatt hours (5,000,000 MWh):

24 (A) The debt-to-equity ratio, for the purpose of setting  
25 rates, shall be fixed at a public utility's actual debt-to-equity ratio  
26 reflected in the commission order issued on December 11, 2020, addressing the  
27 annual formula rate review filing during the final year of the initial five-  
28 year term;

29 (B) If the commission imputes a level of short-term debt  
30 for ratemaking purposes, the amount, stated as a percentage, shall not exceed  
31 the amount included in the capital structure reflected in the commission  
32 order issued on December 11, 2020, addressing the annual formula rate review  
33 filing during the final year of the initial five-year term;

34 ((C) The target return rate in effect during the five-year  
35 term of the formula rate review mechanism shall be set equal to an amount  
36 that is ten (10) basis points lower than the target return rate in effect

1 during the initial five-year term of the formula rate review mechanism;

2 (D) All other capital structure components, for the  
3 purpose of setting rates as well as all other components of a public  
4 utility's books and records, including the balance sheet and income statement  
5 accounts, shall be determined consistent with § 23-4-1206(g); and

6 (E) If the commission imputes any amount for any  
7 liabilities that are reflected in the capital structure for ratemaking  
8 purposes, it shall not include any amount stated as a percentage that exceeds  
9 the amount stated as a percentage included in the capital structure reflected  
10 in the commission order issued on December 11, 2020, addressing the annual  
11 formula rate review filing during the final year of the initial five-year  
12 term.

13 (5) During the five-year term of an extension, for an electric  
14 public utility with a formula rate review mechanism that uses a test period  
15 based on a projected year with an initial five-year term and that was  
16 approved and in effect by the commission before March 15, 2021, for an  
17 electric utility if the electric utility's class of customers with the  
18 highest level of consumption per customer that has rates that include a  
19 demand component, and any successors to such a class, as they existed on  
20 January 1, 2021, has an annual usage for the class as a whole in excess of  
21 five million megawatt hours (5,000,000 MWh), to the extent practicable, the  
22 public utility shall do the following with respect to providing support for  
23 its annual formula rate review evaluation reports during the five-year term  
24 of the extension:

25 (A)(i) The public utility shall support the purpose for  
26 and level of its projected year investments or expenses with those  
27 projections based primarily upon historical averages and making specific  
28 adjustments to those amounts instead of basing those projections primarily on  
29 the public utility's corporate budget.

30 (ii) The public utility shall use its four-year  
31 average historical plant balances for enumerated blanket funding projects  
32 associated with capital investment that are mandated by law or regulation,  
33 customer-driven, or necessary to maintain the reliability of the electric  
34 grid as the baseline for the investments going forward, and to complete this,  
35 the public utility may categorize investments according to the public  
36 utility's primary objective, including mandated work, preapproved projects,

1 storm work, and reliability work instead of using the public utility's  
2 corporate budget to determine the amount included in the projected year.

3 (iii) For any projects that fall outside the  
4 recurring enumerated categories that are based on the historical averaging,  
5 the public utility shall separately identify, to the extent practicable, each  
6 project and support the project as a specific adjustment to the projected  
7 year amounts, similar to the presentation of an adjustment made during an  
8 application for a general change or modification in rates and charges, and to  
9 complete this, the public utility may determine that projects should be  
10 grouped together when the projects contain a combination of proposed  
11 investments associated with both baseline reliability and load stability  
12 projects, such as pole line and circuit inspection programs, and other  
13 reliability efforts that the public utility plans to undertake in the  
14 projected year;

15 (B) The public utility shall use the four-year historical  
16 averages described in subdivision (a)(5)(A)(ii) of this section, except that:

17 (i) The public utility shall adjust the historical  
18 averages upward or downward for specific capital projects and anticipated  
19 cost increases or decreases that the utility reasonably expects are likely to  
20 occur within the projected year and for which the utility provides additional  
21 support consistent with other filing support thresholds that the commission  
22 applied to the utility's formula rate review mechanism during its initial  
23 five-year term; and

24 (ii) Expenses related to capital investments that  
25 the utility has already explained shall not require separate support,  
26 including depreciation and property taxes;

27 (C)(i) The support for the projected year, described in  
28 subdivisions (a)(5)(A) and (B) of this section, shall be applied to the  
29 transmission and generation functional areas to the extent deemed practicable  
30 by the public utility.

31 (ii) If not practicable, the public utility shall  
32 use reasonable efforts to establish a similar framework to present capital  
33 investment;

34 (D) The public utility shall use reasonable efforts to  
35 develop a similar methodology as described in subdivision (a)(4) of this  
36 section and this subdivision (a)(5) for projected year expenses; and

1 (E) Not less than forty-five (45) days before the public  
2 utility's annual evaluation report filing:

3 (i) The public utility shall make available to the  
4 other eligible parties in the formula rate review proceeding information  
5 regarding the public utility's construction projects and purchases that  
6 closed to plant during the historical year; and

7 (ii) To the extent reasonably practicable, the  
8 public utility shall provide an overview of its planned distribution projects  
9 describing the public utility's projected year planned distribution  
10 unadjusted investment and expenses.

11 (6) Subdivisions (a)(4) and (5) of this section are subject to  
12 the applicable accounting and tax requirements, including the normalization  
13 rules of the Internal Revenue Service as in effect on January 1, 2021, and  
14 generally acceptable accounting principles.

15 ~~(3)(7)~~ The rate review mechanism shall continue until all  
16 historical years have been netted under § 23-4-1206(e)(1) and rates have been  
17 adjusted under § 23-4-1207(c).

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

24 (2)(A) A public utility may file an application for a change in  
25 rates and charges under § 23-4-401 et seq. at any time during an extension of  
26 the term of a formula rate review mechanism.

27 (B) If the public utility, during the five-year term of an  
28 extension, for an electric public utility with a formula rate review  
29 mechanism that uses a test period based on a projected year with an initial  
30 five-year term that was approved and in effect by the commission before March  
31 15, 2021, for an electric utility whose largest class of customers with the  
32 highest level of consumption per customer that has rates that include a  
33 demand component, and any successors to such a class, as they existed on  
34 January 1, 2021, has an annual usage for the class as a whole in excess of  
35 five million megawatt hours (5,000,000 MWh), does not file an application for  
36 a change in general rates and charges under § 23-4-401 et seq. under

1 subdivision (b)(2)(A) of this section before the final year of an extension  
2 term, the electric utility shall do so during the final year of the extension  
3 of the term of a formula rate review mechanism.

4 (3) In any application for a change in general rates and charges  
5 filed during or at the conclusion of the initial term or any extension of the  
6 term of a formula rate review mechanism that uses a test period based upon a  
7 projected year:

8 (A) A public utility's prior designation of a formula rate  
9 review test period based upon a projected year under § 23-4-1205(a)(2) shall  
10 not affect the public utility's right to designate a test period to justify  
11 new rates under § 23-4-406;

12 (B) A public utility's formula rate review test period  
13 based upon a projected year under § 23-4-1205(a)(2) may include, at the  
14 public utility's discretion, all or part of the same historical periods or  
15 projected periods as those included in a test period to justify new rates  
16 under § 23-4-406; and

17 (C) An application described in this subdivision (b)(3)  
18 shall not limit subdivision (b)(1) of this section.

19  
20 SECTION 6. DO NOT CODIFY. Retroactivity. This act applies to any  
21 formula rate review approved and in effect under the Formula Rate Review Act,  
22 § 23-4-1201 et seq., on or before March 15, 2021.

23  
24 SECTION 7. DO NOT CODIFY. Applicability. This act applies to any  
25 formula rate review approved and in effect under the Formula Rate Review Act,  
26 § 23-4-1201 et seq., on or before March 15, 2021.

27  
28 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the  
29 General Assembly of the State of Arkansas that investments by public  
30 utilities that provide utility service in Arkansas are required to provide  
31 reliable service at reasonable rates, but the costs that drive public utility  
32 rates are changing; that public utilities need to have procedures that permit  
33 the rates to change in response to those changing conditions that affect  
34 costs and address the allocation of costs and design of rates; and that this  
35 act is immediately necessary to maintain stable rates and to mitigate the  
36 magnitude of future rate changes by public utilities by clarification of the

1 regulatory framework to ease the investment procedure for public utilities.  
2 Therefore, an emergency is declared to exist, and this act being immediately  
3 necessary for the preservation of the public peace, health, and safety shall  
4 become effective on:

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

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

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

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13 */s/B. Davis*  
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