

"AN ACT TO AMEND SECTION 18 OF ACT 324 OF 1935, AS AMENDED, [ARK. STATS. 73-217], TO PROVIDE FOR APPROVAL OF UTILITY RATES; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 18 of Act 324 of 1935, as amended, the same being Ark. Stats. 73-217, is hereby amended to read as follows:

"Section 18. (a) Unless the Commission otherwise orders, no public utility shall make any change in any rate now in force or which shall hereafter have been duly established under this Act, except after thirty (30) days notice to the Commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. The utility shall also give notice of the proposed changes to other interested parties as the Commission in its discretion may direct. All proposed changes shall be shown by filing new schedules, or shall be plainly indicated upon schedules filed and in force at the time and kept open to public inspection. The Commission, for good cause shown, may allow changes in rates without requiring the thirty (30) days notice, under such conditions it may prescribe. All such allowed changes shall be immediately indicated upon its schedules by such public utility.

(b) Whenever there is filed with the Commission by any public utility any schedule stating a new rate or rates, the Commission, may, either upon complaint or upon its own motion, upon reasonable notice, enter upon any investigation concerning the lawfulness of such rate or rates; and pending such investigation and the decision thereon the Commission, by written order, may at any time before said new rate or rates become effective suspend the operation of said rate or rates, but not for a longer period than nine (9) months beyond the time when such rate or rates would otherwise go into effect. Any order initially suspending such rate or rates shall set a specific date for the commencement of a hearing inquiring into the rate or rates requested unless waived by the applicant utility. Provided, however, that if the public utility contends that an immediate and impelling necessity exists for the requested rate increase, a petition may be filed with the Commission narrating such alleged circumstances and requesting a hearing on such petition, which hearing must be commenced within thirty (30) days from the date of the filing of the petition or at such subsequent time as may be mutually agreeable to the Commission and the utility, and if the Commission finds at such hearing that there is substantial merit to the allegation of the utility's claims, said Commission may permit all or a portion of said rate to become effective under the following conditions: that there shall be filed with the Commission a bond to be approved to it, payable to the State of Arkansas in such amount and with such sufficient security to ensure the prompt payment of any damages or refunds, with interest, to the persons entitled thereto if the rate or rates so put into effect are finally determined to be excessive; or that may be substituted for such bond other arrangements satisfactory to the Commission for the protection of the parties interest. The findings of the Commission relative to the petition of the utility for the immediate and impelling necessity relief shall be issued on or before the 60th day following the date of filing of said petition. Unless the Commission finds an immediate and impelling necessity to exist, or fails to enter a timely order as provided for herein, no public utility shall place any rate increase into effect until a final decision and order is made by the Commission.

(c) (1) If, after such investigation and hearing thereon, the Commission finds such new rates to be unjust, unreasonable, discriminatory, or otherwise in violation of the law, or rules of the Commission, it shall determine and fix the just and reasonable rate or rates to be charged and applied by the utility for the service in question, from and after the time said new rate or rates took effect. Provided, however, that until rate schedules in compliance with such order can be filed and approved, any rate increase allowed in such order shall be apportioned among all classes of customers and shall become effective on all bills rendered thereafter through a temporary surcharge or other equitable means, as shall be prescribed in such order. Provided further, that in the event no final rate determination has been made upon the schedule for new rates within ten (10) months after the date the schedule for new rates was filed with the Commission then the public utility may put such suspended rate or rates into effect for all bills rendered thereafter immediately upon the filing of a bond to be approved by the Commission payable to the State of Arkansas in such amount and with sufficient security to insure prompt payment of any refunds to the persons entitled thereto including an interest rate as determined by the Commission not to exceed the maximum interest otherwise allowed by law, if the rate or rates so put into effect are finally determined to be excessive, or there may be substituted for such bond other arrangements satisfactory to the Commission for the protection of the parties interested.

(i) Notwithstanding any other provisions of this Act (Chapter), upon issuance of the findings and order of the Commission as prescribed in Section 30 of Act 324 of 1935, as amended, (Arkansas Statutes Annotated Sec. 73-229), no public utility subject to such order shall continue to collect any rates theretofore permitted to be collected under bond. Said public utility shall be permitted to collect only those rates set in the order of the Commission, and those rates shall be effective throughout any rehearing and judicial review proceedings permitted and prescribed in Section 3 of Act 231 of 1973, as amended, (Arkansas Statutes Annotated Sec. 73-229.1)

(ii) In the event that the rates set in the order of the Commission subsequently are determined to have been inadequate, either on rehearing or in accordance with court decision on judicial review, the public utility subject to such order shall be entitled to impose a surcharge on the affected customers for collection of the increased rates that otherwise would have been collected during the period between the effective date of the initial order and the effective date of the rates as increased, together with interest as determined by the Commission at a rate not to exceed the maximum interest rate otherwise allowed by law. Said surcharge shall be assessed over a period equal to the period between the date of the initial order and the effective date of the rates, as increased. Said surcharge shall be distributed among the affected customers in proportion to the amounts those customers were charged during the period between the date of the initial order and the effective date of the rates, as increased.

(iii) In the event a public utility shall have implemented under bond or other arrangements as a matter involving an immediate and impelling necessity pursuant to subsection (b) of Section 18 of Act 324 of 1935, as amended (Arkansas Statutes 73-217(b)), an amount which exceeds that allowed by the Commission in its final order, the Commission shall order the immediate refund of such excessive bonded collections. An application for rehearing pursuant to Section 3(a) of Act 231 of 1973 (Arkansas Statutes 73-229.1(a)) filed by a party aggrieved by the final order of the Commission shall not stay the effectiveness of such order as it pertains to refunds of excessive bonded collections. Provided, however, that in the event that the amount of refunds ordered by the Commission in its final order is subsequently determined to have been excessive, either on rehearing or in accordance with a court deci-

sion on judicial review, the public utility subject to such order shall be entitled to impose an additional surcharge on the affected customers to recover that portion of the refunds to which it was entitled, together with interest as determined by the Commission at a rate not to exceed the maximum interest rate otherwise allowed by law. Said surcharge shall be assessed over a period equal to the period between the date the rates were implemented under bond and the date of the Commission's final order. Said surcharge shall be distributed among the affected customers in proportion to the amount of refunds those customers received.

(c) (2) If such order shall not be issued before the expiration of the period of suspension, the field rates shall remain subject to refund as herein provided but the applicant utility shall have the right to petition the Circuit Court of Pulaski County for a writ of mandamus compelling the issuance of such order by the Commission within fifteen (15) days of the writ of mandamus issued by the Circuit Court of Pulaski County. Such petition shall be advanced on the docket above all other pending civil cases and a hearing thereon shall be held within seven days of the filing of such petition. The scope of review shall be limited to the issue of the failure of the Public Service Commission to act within the time limits provided for in this Act.

(d) If the public utility fails to make refund within thirty (30) days after the effective date of such order, the Commission shall, in the name of the State of Arkansas, for the use and benefit of all those entitled to a refund, bring suit in any court of competent jurisdiction and recover the amount of all refunds due, together with interest thereon at the rate not to exceed the maximum rate otherwise allowed by law and all court costs. Provided, that no suit to recover said refunds shall be maintained unless instituted within two (2) years after such final determination. The amount recovered shall be paid to the clerk of the court where said suit was pending, whose duty it shall be to distribute the same to the persons entitled thereto as directed by the order of judgement of the court."

SECTION 2. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 3. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 4. It is hereby found and determined by the General Assembly that because of the case Ricarte v. State, CR 86-31, a question has arisen over the validity of Act 1181 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.

APPROVED: April 14, 1987

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