

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senators Bookout, Russ, Gibson, Cassady, Walters, Gordon, Hardin, Hoofman, Bearden,**
5 **Todd, Ross and Everett**

A Bill ACT 745 OF 1991

SENATE BILL 572

For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE §14-207-101, §14-207-103,
10 §14-207-104 and §14-207-106 CONCERNING THE ACQUISITION OF
11 THE PROPERTIES, FACILITIES AND CUSTOMERS OF AN ELECTRIC
12 PUBLIC UTILITY BY A MUNICIPALITY WHICH OWNS OR OPERATES AN
13 ELECTRIC UTILITY SYSTEM; AND FOR OTHER PURPOSES."

14
15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

16
17 SECTION 1. Ark. Code Ann. §14-207-101, the same being Section 1 of Act
18 639 of 1989, is hereby amended to read as follows:

19
20 "14-207-101. Definitions.

21 As used herein the following terms shall have the following definitions:

22 (1) Municipality shall mean both Arkansas municipal corporations and
23 consolidated municipal utility improvement districts;

24 (2) Electric public utility and electric public utility system
25 shall include persons, corporations, and other entities providing electric
26 power to the public at wholesale or retail, but shall not include electric
27 cooperative corporations providing electric power predominantly for resale.

28 (3) Franchise or franchise agreement shall mean an agreement
29 between a municipality which owns or operates an electric utility system and
30 an electric public utility (including but not limited to franchise agreements
31 within the meaning of Act 324 of 1935, as amended), whereby the electric
32 public utility continues to serve customers in its allocated service area and
33 pays to the municipality which owns or operates an electric utility system
34 franchise fees in accordance with applicable law and the rules and regulations
35 of the Arkansas Public Service Commission."

36

1 SECTION 2. Ark. Code Ann. §14-207-103, the same being Section 3 of Act
2 639 of 1989, is hereby amended to read as follows:

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4 "14-207-103. Right to acquire properties, facilities and customers.

5 (a) Unless otherwise agreed between a municipality which owns or
6 operates an electric utility system and an electric public utility, the
7 inclusion by annexation, whether voluntary or involuntary according to
8 applicable law, of any part of the assigned service area of an electric public
9 utility within the boundaries of any Arkansas municipality shall not in any
10 respect impair or affect the rights of the electric public utility to continue
11 and extend electric service throughout any part of its assigned service area
12 unless a municipality which owns or operates an electric utility system
13 elects, within three (3) years after the certification of annexation, to
14 purchase from the electric public utility all customers, distribution
15 properties and facilities reasonably utilized or reasonably necessary to serve
16 customers of the electric public utility within the annexed areas in
17 accordance with the provisions of this subchapter. If the municipality which
18 owns or operates an electric utility system and the electric public utility
19 agree to a franchise agreement for a specific term of years, unless otherwise
20 agreed, the municipality's obligation to elect to acquire public utility
21 properties within a period of three (3) years as required by this subsection
22 shall not commence until the termination of the franchise agreement. A
23 municipality which owns or operates an electric utility system and an electric
24 public utility may agree to franchise agreements defined in §14-207-101(3)
25 whether or not the service territory of the electric public utility is brought
26 into the municipality's corporate limits before or after the effective date of
27 this Act.

28 Unless otherwise agreed between a municipality which owns or operates an
29 electric utility system and an electric public utility, a municipality may not
30 undertake or commence any construction or operation of any equipment or
31 facilities for the supplying of electric service, or extension thereof, to the
32 annexed areas without having made a timely election and complying with the
33 provisions of this subchapter. Any violation shall vest the affected electric
34 public utility with a right to injunctive relief.

35 (b) The municipality shall give a six-months' written notice to the

1 electric public utility of its election to acquire from the electric public
2 utility all customers, distribution properties and facilities reasonably
3 utilized or reasonably necessary to serve customers of the electric public
4 utility within the annexed areas. Within the six-month period after the
5 notification, the municipality and the electric public utility shall meet and
6 negotiate in good faith the terms of the acquisition, including, as an
7 alternative, granting the electric public utility a franchise or franchise
8 agreement to serve the annexed area. In the event that the electric public
9 utility system does not provide wholesale power service to the municipality
10 acquiring its properties, facilities and customers, the municipality and the
11 electric public utility shall also negotiate, consistent with the laws, rules
12 and regulations of appropriate authorities and existing power supply
13 agreements, for power contracts which would provide for the purchase of power
14 by the municipality from the electric public utility for an amount of power
15 equivalent to the loss of any sales to customers of the electric public
16 utility acquired by the municipality under this subchapter."

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18 SECTION 3. Ark. Code Ann. §14-207-104, the same being Section 4 of Act
19 639 of 1989, is hereby amended to read as follows:

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21 "14-207-104. Procedures and valuation formula.

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23 In the event that an agreement pursuant to §14-207-103(a) or (b) cannot
24 be reached within such six-month period, the municipality shall pay to the
25 electric public utility an amount equal to the following:

26 (1) The present-day reproduction cost, new, of the properties and
27 facilities being acquired, less depreciation computed on a straight-line
28 basis; plus

29 (2) An amount equal to the cost of constructing any necessary
30 facilities to reintegrate the system of the electric public utility outside
31 the annexed area after detaching the portion to be sold; plus

32 (3) In the event that the electric public utility system does not
33 provide wholesale power service to the municipality acquiring its properties,
34 facilities, and customers under this subchapter, then, in addition to the
35 amounts required by subdivisions (1) and (2) of this section, the municipality

1 shall pay the electric public utility either:

2 (A) Three hundred fifty-five percent (355%) of gross revenues
3 less gross receipts taxes received by the electric public utility for the
4 twelve-month period preceding notification from customers in the annexed area;
5 or

6 (B) The amount required by subdivision (3)(A) of this section
7 payable over five (5) years with interest at the then prevailing AAA insured
8 tax exempt municipal bond interest rate.

9 In the event that the electric public utility system ceases to provide
10 wholesale power service to the municipality prior to five (5) years after the
11 acquisition of the properties, facilities and customers of the electric power
12 utility under this subchapter, then the municipality will pay, pro rata for
13 the remainder of such five-year period, in accordance with subdivision (3)(B)
14 of this section."

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16 SECTION 4. Ark. Code Ann. §14-207-106, the same being Section 6 of Act
17 639 of 1989, is hereby amended to read as follows:

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19 "14-207-106. Exercise of power of eminent domain.

20 (a) At the conclusion of the six-month notification period, in the
21 event that agreement is not reached pursuant to §14-207-103(a) or (b), or the
22 municipality and the electric public utility disagree on the valuations
23 described in §14-207-104, but no later than three (3) years from certification
24 of annexation or three (3) years from termination of any franchise agreement
25 authorized by this Act, the municipality may, after paying, or, if applicable,
26 commencing payment of, any amounts not in dispute and depositing into the
27 registry of the court the amount in dispute, or such lesser amounts as the
28 court, after hearing, determines to be just, exercise the right and power of
29 eminent domain under the procedures of §18-15-301 et seq., and may take
30 possession of the properties and facilities and commence service to the
31 customers as of the date it makes the deposit; provided, however, that any
32 compensation or damages for the properties, facilities and customers taken
33 shall be determined in accordance with §14-207-104.

34 (b) The date of taking for the purposes of this subchapter shall be
35 either the date the deposit authorized by this section is made or, in the

1 event no deposit is made, the date of the court award."

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3 SECTION 5. All provisions of this Act of a general and permanent nature
4 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
5 Revision Commission shall incorporate the same in the Code.

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7 SECTION 6. If any provisions of this Act or the application thereof to
8 any person or circumstances is held invalid, such invalidity shall not affect
9 other provisions or applications of the Act which can be given effect without
10 the invalid provision or application, and to this end the provisions of this
11 Act are declared to be severable.

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13 SECTION 7. All laws and parts of laws in conflict herewith are hereby
14 repealed. Specifically, A.C.A. §14-207-103, §14-207-104 and §14-207-106 where
15 in conflict with this Act are hereby repealed. This Act shall be applicable
16 to all acquisitions of electric public utility properties coming within
17 municipalities owning or operating electric utility systems on or after the
18 effective date of this Act. Acquisitions of electric public utility
19 properties located within municipalities owning or operating electric utility
20 systems prior to the effective date of this Act shall be governed by Act 639
21 of 1989 (including provisions specifically repealed by this Section) or other
22 law, if any, applicable prior to the effective date of this Act.

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24 SECTION 8. Emergency. It is hereby found and determined by the
25 Seventy-Eighth General Assembly of the State of Arkansas that the acquisition
26 of the properties, facilities and customers of an electric public utility by a
27 municipality which owns or operates an electric utility system may result in
28 an adverse impact on the electric public utility, that Act 639 of 1989 was
29 enacted to alleviate this situation but that certain sections of Act 639 of
30 1989, codified as Arkansas Code, Title 14, Chapter 207, need to be amended to
31 strengthen and clarify the procedures. Therefore, in order to strengthen and
32 clarify the intent of Arkansas Code, Title 14, Chapter 207, an emergency is
33 hereby declared to exist, and this Act being necessary for the immediate
34 preservation of the public peace, health, and safety, shall be in full force
35 and effect from and after its passage and approval.

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