

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 676 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

As Engrossed: S3/16/09

A Bill

SENATE BILL 663

4
5 By: Senator Horn
6 By: Representative Rainey

7
8
9 **For An Act To Be Entitled**

10 AN ACT TO PROVIDE AN ALTERNATIVE PROCEDURE FOR
11 MODIFYING THE RATES AND CHARGES OF A GENERATION
12 AND TRANSMISSION COOPERATIVE; TO PROVIDE AN
13 ALTERNATIVE PROCEDURE FOR MODIFYING THE RATES AND
14 CHARGES OF A MEMBER COOPERATIVE; AND FOR OTHER
15 PURPOSES.

16
17 **Subtitle**

18 TO PROVIDE AN ALTERNATIVE PROCEDURE FOR
19 MODIFYING THE RATES AND CHARGES OF A
20 GENERATION AND TRANSMISSION COOPERATIVE
21 AND A MEMBER COOPERATIVE.

22
23
24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

25
26 SECTION 1. Arkansas Code Title 23, Chapter 4 is amended to add an
27 additional subchapter to read as follows:

28 23-4-1101. Definitions.

29 As used in this subchapter:

30 (1) "Board" means the board of directors of a generation and
31 transmission cooperative;

32 (2) "Generation and transmission cooperative" means a rural electric
33 cooperative formed under the Electric Cooperative Corporation Act, § 23-18-
34 301 et seq., that:

35 (A) Does not have a certificated service territory; and



1 (B) Exclusively sells electricity at wholesale;

2 (3) "Member cooperative" means a rural electric cooperative that sells
3 electricity at retail and is a member of a generation and transmission
4 cooperative; and

5 (4) "Retail cooperative member" means the individual member-owner of a
6 member cooperative.

7
8 23-4-1102. Exemption from general rate case procedure.

9 (a) A generation and transmission cooperative may modify its rates and
10 charges if:

11 (1) At least three-fourths (3/4) of its board votes to change
12 its rates and charges;

13 (2) A proposed increase in the generation and transmission
14 cooperative's rates and charges does not exceed five percent (5%) in any
15 twelve-month period of the total gross revenues of the generation and
16 transmission cooperative; and

17 (3) Any additional requirements of this subchapter are
18 satisfied.

19
20 23-4-1103. Notification of proposed rate and charge modification.

21 (a)(1) A generation and transmission cooperative shall notify the
22 Arkansas Public Service Commission, the Attorney General, and the member
23 cooperatives in writing at least sixty (60) days before the board votes on a
24 proposed modification of its rates and charges under § 23-4-1102.

25 (2)(A) The notice under subdivision (a)(1) of this section
26 shall:

27 (i) Be in writing;

28 (ii) Include a schedule of the proposed modification
29 of rates and charges; and

30 (iii) Include the effective date of the proposed
31 change.

32 (B) However, if the board subsequently reduces a proposed
33 increase in rates and charges after providing notice under subdivision (a)(1)
34 of this section, the board does not have to provide any additional notice
35 under this subsection.

36 (b)(1) The generation and transmission cooperative shall provide

1 notice of its proposed modification of its rates and charges to the public
2 not less than forty (40) days before the board votes on the proposed change
3 in its rates and charges.

4 (2) The notice under subdivision (b)(1) of this section shall:

5 (A) Be substantially similar to the public notice required
6 by the commission's Rules of Practice and Procedure for general rate case
7 procedures;

8 (B) Be published in:

9 (i) A newspaper of general circulation in the
10 service territory of the generation and transmission cooperative; or

11 (ii) Either of the following:

12 (a) Any publication that is regularly provided
13 to the retail cooperative members by the member cooperatives; or

14 (b) The generation and transmission
15 cooperative's newsletter to retail cooperative members; and

16 (C) Include a statement estimating:

17 (i) The retail impact of the proposed change in
18 rates and charges on:

19 (a) A per-kilowatt-hour basis; and

20 (b) An average residential retail cooperative
21 member's monthly bill; and

22 (ii) The effective date of the proposed change in
23 rates and charges.

24
25 23-4-1104. Alternative procedure for modifying the rates and charges
26 of a generation and transmission cooperative.

27 (a)(1)(A) After the board approves the modification in rates and
28 charges under § 23-4-1102, the generation and transmission cooperative shall
29 file for the approval of the Arkansas Public Service Commission an
30 application for the change in rates and charges and tariffs containing the
31 proposed change in rates and charges.

32 (B) However, a rate rider or other rider to the generation
33 and transmission cooperative's base rates and charges shall not be modified
34 under this subchapter unless the commission determines otherwise.

35 (2) In addition to an attachment containing the proposed
36 tariffs to effect the modification of the rates and charges, the application

1 shall provide the following:

2 (A) Proof of the board vote required by § 23-4-1102;

3 (B) The proof of notice required by § 23-4-1103;

4 (C) A current calculation of the generation and
5 transmission cooperative's:

6 (i) Times interest earned ratio;

7 (ii) Debt service coverage ratio; and

8 (iii) Margins as a percent of revenue for the last
9 available calendar year;

10 (D) An analysis of the impact of the proposed change in
11 rates and charges on each member cooperative's cost of wholesale power that
12 is acquired from the generation and transmission cooperative;

13 (E) Documentary evidence that the impact of the proposed
14 change in rates and charges does not exceed five percent (5%) of the
15 generation and transmission cooperative's total gross revenues for the
16 previous calendar year;

17 (F) Documentation that shows the derivation of the
18 generation and transmission cooperative's proposed changes in its rates and
19 charges; and

20 (G)(i) Any other supporting documentation or evidence
21 required by the commission.

22 (ii)(a) However, the commission shall not require
23 the generation and transmission cooperative to prepare a cost of service
24 study.

25 (b) Instead of a new cost of service study,
26 the generation and transmission cooperative shall rely upon the most recent
27 commission-approved cost allocation.

28 (b) Within ninety (90) days after the date of filing the generation
29 and transmission cooperative's application, the commission shall issue its
30 final determination regarding the proposed modification of the rates and
31 charges of the generation and transmission cooperative.

32
33 23-4-1105. Alternative procedure for modifying the rates and charges
34 of a member cooperative.

35 (a) A member cooperative may propose a modification of its retail
36 rates and charges to incorporate the proposed change in the generation and

1 transmission cooperative's wholesale rates and charges filed under § 23-4-
2 1104 if:

3 (1) The member cooperative files its application for a
4 modification of its retail rates and charges with the Arkansas Public Service
5 Commission on the same date as the generation and transmission cooperative
6 files its application for a modification of its change in wholesale rates and
7 charges under § 23-4-1104; and

8 (2) The member cooperative apportions its proposed change in
9 rates and charges in a manner that reflects, as closely as practicable, its
10 cost of providing service to each class.

11 (b) Within ninety (90) days after a member cooperative files its
12 application under subsection (a) of this section, the commission shall review
13 and approve the modification of the rates and charges of a member
14 cooperative's retail rates and charges that reasonably reflect those changes
15 in the generation and transmission cooperative's wholesale rates and charges
16 that were approved by the commission under § 23-4-1104.

17
18 23-4-1106. Limitation on increase in rates.

19 The generation and transmission cooperative shall not increase its
20 rates and charges under this subchapter by an aggregate total of more than
21 eight percent (8%) during any twenty-four-month period.

22
23 23-4-1107. Arkansas Public Service Commission's jurisdiction not
24 affected.

25 This subchapter does not affect the Arkansas Public Service
26 Commission's jurisdiction over a generation and transmission cooperative,
27 including without limitation the authority to investigate and set the rates
28 and charges of the generation and transmission cooperative, or a member
29 cooperative as otherwise provided by law.

30
31 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
32 General Assembly of the State of Arkansas that the costs that drive electric
33 utility costs are constantly changing; that electric cooperatives need to
34 have procedures that permit their rates to change in response to those
35 changing conditions; and that this act is immediately necessary because it is
36 crucial to the provision of safe and reliable electric service that electric

1 cooperatives recover their costs in a timely manner. Therefore, an emergency
2 is declared to exist and this act being immediately necessary for the
3 preservation of the public peace, health, and safety shall become effective
4 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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12 */s/ Horn*

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14 **APPROVED: 3/27/2009**

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