

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: H3/19/15

A Bill

SENATE BILL 727

5 By: Senator Rice
6 By: Representative Baine
7

For An Act To Be Entitled

9 AN ACT TO MODIFY THE REGULATION OF PUBLIC UTILITIES
10 BY THE ARKANSAS PUBLIC SERVICE COMMISSION; TO DECLARE
11 AN EMERGENCY; AND FOR OTHER PURPOSES.
12
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Subtitle

15 TO MODIFY THE REGULATION OF PUBLIC
16 UTILITIES BY THE ARKANSAS PUBLIC SERVICE
17 COMMISSION; AND TO DECLARE AN EMERGENCY.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code § 23-3-505(b), concerning a hearing by the
23 Arkansas Public Service Commission, is amended to read as follows:

24 (b) ~~The~~ Unless waived by the parties, the hearing shall be held in the
25 offices of the commission or at such other place as the commission may
26 designate.
27

28 SECTION 2. Arkansas Code § 23-4-501 is amended to read as follows:

29 ~~23-4-501. Legislative findings and intent~~ Authority to recover costs
30 through interim rate schedule.

31 ~~(a)(1) It is recognized that legislative or administrative regulations~~
32 ~~impose certain legal requirements upon public utilities relating to the~~
33 ~~protection of the public health, safety, or the environment, and that:~~

34 ~~(1) In order to comply with such legislative or regulatory~~
35 ~~requirements, utilities are required to make substantial additional~~
36 ~~investments or incur additional expenses with respect to existing facilities~~



1 ~~used and useful in providing service to the utility's customers; and~~
2 ~~(2) Although such additional investments and expenses are~~
3 ~~necessary in order to provide service to the utility's customers, such~~
4 ~~additional investments and expenses are not included in the utility's rates~~
5 ~~and cannot be recovered in a prompt and timely fashion under existing~~
6 ~~regulatory procedures.~~

7 ~~(b) It is intended by the General Assembly that utilities be permitted~~
8 ~~to recover in a prompt and timely manner all such costs incurred by utilities~~
9 ~~in order to comply with such legislative or regulatory requirements through~~
10 ~~an interim surcharge which, if approved, shall be effective until the~~
11 ~~implementation of new rate schedules in connection with the next general rate~~
12 ~~filing of the utility wherein such additional investments or expenses can be~~
13 ~~included in the utility's base rate schedules~~ Upon a proper filing with the
14 Arkansas Public Service Commission, a public utility shall be permitted to
15 recover in a prompt and timely manner all investments and expenses through an
16 interim surcharge, if the investments or expenses:

17 (A) Are not currently being recovered in existing rates;

18 (B) Are reasonably incurred;

19 (C) Were not reasonably known and measurable at a time
20 that allowed for a reasonable opportunity for the inclusion and consideration
21 of the investments or expenses for recovery in the public utility's last
22 general rate case;

23 (D) Are incurred by the public utility to comply with
24 legislative or administrative rules, regulations, or requirements;

25 (E) Relate to the protection of the public health, safety,
26 or the environment;

27 (F) Cannot otherwise be recovered in a prompt and timely
28 manner; and

29 (G) Are any of the following:

30 (i) Mandatory;

31 (ii) A condition of continued operation of a utility
32 facility; or

33 (iii) Previously approved by the commission.

34 (2) The interim surcharge shall be effective until the
35 implementation of new rate schedules in connection with the next general rate
36 filing of the public utility in which such investments or expenses can be

1 included in the public utility's base rate schedule.

2 (3) However, the costs to be recovered through such an interim
 3 surchage described subdivisions (a)(1) and (2) of this section shall not
 4 include increases in the cost for employment compensation or benefits as a
 5 result of legislative or regulatory action.

6 (b)(1) A public utility shall be permitted to recover, through an
 7 interim surcharge, the allowance for funds used during construction that
 8 would otherwise be accrued and capitalized that is incurred during the
 9 construction of facilities and equipment required for compliance with such
 10 legislative or administrative rules, regulations, or requirements provided
 11 that any such allowance for funds used during construction have not been
 12 capitalized or otherwise included in the utility's currently effective rates.

13 (2) The public utility shall not capitalize or otherwise recover
 14 through rates any allowance for funds used during construction incurred in
 15 connection with investments described in subdivision (b)(1) of this section
 16 when the associated financing costs are included in an interim surcharge.

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 18 SECTION 3. Arkansas Code § 23-4-502 is amended to read as follows:
 19 23-4-502. Filing interim rate schedule.

20 ~~Any~~ A public utility as defined in § 23-1-101 may recover all ~~costs~~
 21 ~~investments and expenses reasonably incurred by such a utility as a direct~~
 22 ~~result of legislative or regulatory requirements relating to the protection~~
 23 ~~of the public health, safety, and the environment described in § 23-4-501 by~~
 24 ~~filing with the Arkansas Public Service Commission, no more frequently than~~
 25 ~~once one (1) time~~ every six (6) months, an interim rate schedule ~~which that~~
 26 would impose a separate surcharge in addition to its currently effective
 27 rates until the implementation of new rate schedules in connection with the
 28 next general rate filing of the public utility wherein in which such
 29 ~~additional expenditures~~ investments and expenses can be included in the
 30 public utility's base rate schedules.

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 32 SECTION 4. Arkansas Code § 23-4-503 is amended to read as follows:
 33 23-4-503. Calculation of ~~amount of~~ interim surcharge.

34 The amount of the interim surcharge to be added to the public utility's
 35 rates shall be calculated so as to produce annual revenues equal to the
 36 additional annualized revenue requirement to which the public utility would

1 be entitled had the ~~additional expenditures~~ investments and expenses
2 described in § 23-4-501 been included in the public utility's most recent
3 rate determination by the Arkansas Public Service Commission.

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5 SECTION 5. Arkansas Code § 23-4-507(a), concerning modification and
6 disapproval of surcharges by the Arkansas Public Service Commission, is
7 amended to read as follows:

8 (a) After its investigation and hearing thereon, the Arkansas Public
9 Service Commission may modify or disapprove all or any portion of the
10 surcharge upon a finding that:

11 (1) The ~~expenditures~~ investments or expenses were not made for
12 the purposes set forth in § 23-4-501 or were not reasonably incurred or were
13 not substantiated to comply with legislative or administrative rules,
14 regulations, or requirements;

15 (2) The amount of the surcharge has been erroneously calculated
16 investments or expenses do not relate to the protection of the public health,
17 safety, or the environment; or

18 (3) The allocation of the surcharge among the customers of the
19 utility is unreasonable investments or expenses were not substantiated;

20 (4) The amount of the surcharge has been erroneously calculated;

21 (5) The investments or expenses are already being recovered in
22 existing rates;

23 (6) The investments or expenses were reasonably known and
24 measurable at a time that allowed for a reasonable opportunity for their
25 inclusion and consideration for recovery in the public utility's last general
26 rate case;

27 (7) The investments or expenses were not reasonably incurred;

28 (8) The investments or expenses can otherwise be recovered in a
29 prompt and timely manner;

30 (9) The allocation of the surcharge among the customers of the
31 public utility is unreasonable; or

32 (10) The investments or expenses were not:

33 (A) Mandatory;

34 (B) A condition of continued operation of a utility
35 facility; or

36 (C) Previously approved by the commission.

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2 SECTION 6. Arkansas Code § 23-4-507(c), concerning determination of
3 the just and reasonable amount of surcharges if disapproved by the Arkansas
4 Public Service Commission, is amended to read as follows:

5 (c) ~~In the event that~~ If the commission determines that all or any
6 portion of the proposed surcharge should be disapproved ~~pursuant to either~~
7 under subdivision (a)(1) subsection (a), or (2) of this section, the
8 commission shall determine the just and reasonable amount of the surcharge to
9 be charged or applied by the public utility ~~from and~~ after the time the
10 proposed surcharge took effect. In the same order, the commission shall fix
11 the amounts, plus interest, if any, to be refunded to the utility's
12 customers.

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14 SECTION 7. Arkansas Code § 23-18-518 is amended to read as follows:

15 23-18-518. Conduct of hearing.

16 (a) The Arkansas Public Service Commission shall hold a hearing,
17 unless waived by the parties, on an application filed under § 23-18-511.

18 (b) A record shall be made of the hearing and of all testimony taken
19 and the cross-examination thereon.

20 ~~(b)(c)~~ Rules of evidence ~~as specified by the Arkansas Public Service~~
21 ~~Commission~~ the commission shall apply to the proceeding.

22 ~~(e)(d)~~ The commission may provide for the consolidation of the
23 representation of parties having similar interests.

24
25 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the
26 General Assembly of the State of Arkansas that a recent decision of the
27 Arkansas Court of Appeals has interpreted Act 310 of 1981 in a manner that is
28 inconsistent with the interpretation of the Arkansas Public Service
29 Commission; that this inconsistency impairs public utilities in their
30 recovery, through an interim rate surcharge, of all investments and expenses
31 that are not already included in the public utilities' currently effective
32 rates and that were reasonably incurred by the public utilities as a direct
33 result of legislative or administrative rules, regulations, or requirements
34 relating to the protection of the public health, safety, or the environment;
35 and that this act is immediately necessary to facilitate the timely recovery
36 of investments and expenses so that public utilities may provide services to

1 consumers in this state in a timely, efficient, and cost-effective manner.
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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12 */s/Rice*

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