

"AN ACT TO PROTECT CONSUMERS FROM EXCESS GENERATING COSTS BY PROVIDING THAT AN ELECTRIC UTILITY SHALL NOT BE REQUIRED TO PAY IN EXCESS OF AVOIDED COST FOR PURCHASED ELECTRICITY FROM ANY QUALIFYING COGENERATION OR SMALL POWER PRODUCTION FACILITY; TO REQUIRE THE ARKANSAS PUBLIC SERVICE COMMISSION TO APPLY FOR A WAIVER FROM THE FEDERAL ENERGY REGULATORY COMMISSION; TO ESTABLISH CRITERIA FOR DETERMINING AVOIDED COST; AND FOR OTHER PURPOSES."

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

SECTION 1. It is hereby declared to be the policy of this State that while the development of qualifying cogeneration and small power production facilities should be encouraged, electric utilities should not be required to purchase power from such facilities at excessive rates which would result in an increase in the cost of providing electrical service to customers of the electric utility. In furtherance of this declared policy, it is recognized that the Arkansas Public Service Commission has adopted cogeneration rules and it shall continue to provide for electric utilities to purchase electric energy or capacity from such qualifying facilities at rates which are just and reasonable to the electric consumer of the electric utility, do not increase the cost of providing electrical service to customers of the electric utility, are in the public interest, which do not discriminate against qualifying facilities and which do not exceed avoided costs.

SECTION 2. Whenever used or referred to in this Act, unless a different meaning clearly appears from the context:

(a) "Qualifying facility" means a cogeneration facility or a small power production facility which has obtained qualifying status under the cogeneration rules adopted by the Arkansas Public Service Commission pursuant to the Public Utility Regulatory Policies Act of 1978, and the rules and regulations of the Federal Energy Regulatory Commission promulgated thereunder.

(b) "Commission" means the Arkansas Public Service Commission.

(c) "Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility.

(d) "Rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity.

(e) "Avoided costs" means the costs to an electric utility of electric energy or capacity or both that, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.

SECTION 3. The Commission shall establish rates to be paid by an electric utility to qualifying cogeneration and small power production facilities which do not, over the term of the purchased power contract, exceed avoided cost and are based upon the preponderance of evidence in the record before the Commission, provided, however, that rates established for purchases from qualifying facilities whose construction commenced earlier than November 9, 1978, may be ten percent (10%) less than avoided cost.

SECTION 4. In the event the Commission finds and determines that: (1) the avoided cost rate is not necessary to encourage the appropriate amount of construction of qualifying facilities and (2) a rate less than the avoided cost rate is just and reasonable to the electric consumer of the electric utility, is in the public interest and will not discriminate against qualifying facilities, the Commission shall take all reasonable and appropriate steps to obtain a waiver of the avoided cost standard from the Federal Energy Regulatory Commission or any successor agency.

SECTION 5. A determination of the avoided energy cost rate or rates for the electric utility shall be based on the electric utility's estimated avoided cost of producing or purchasing electrical energy during the time period of the purchase of electrical energy from the qualifying facility and shall not be based upon the production or purchase of electrical energy at any time other than during the time period of the purchase of electrical energy from the qualifying facility. A determination of the avoided capacity cost rate or rates for the electric utility shall be based at the electric utility's cost of capacity additions or purchases avoided during the time period of the purchase of electrical capacity from the qualifying facility and shall not be based upon the purchase of electrical capacity at any time other than during the time period of the purchase of electrical capacity from the qualifying facility.

In addition, a determination of the avoided cost rate or rates for energy or capacity purchased by an electric utility shall:

(i) Be just and reasonable to the electric consumer of the electric utility and in the public interest;

(ii) Not discriminate against qualifying cogeneration and small power production facilities; and

(iii) Nothing in this Section requires any electric utility to pay more than the avoided costs for purchases.

SECTION 6. Nothing in this Act shall prohibit an electric utility and a qualifying facility from negotiating a contract rate lower than the avoided cost rate established by the Commission for the electric utility.

SECTION 7. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 8. 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 this 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.

APPROVED: April 8, 1987

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