

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Wilson**

A BILL OF 1991
SENATE BILL 577

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE §§23-2-422 AND 23-2-423 TO
9 CLARIFY THE DATE TO APPLY FOR REHEARING; TO REPEAL THE
10 REQUIREMENT THAT THE COMMISSION FILE AN ANSWER ON APPEAL;
11 AND FOR OTHER PURPOSES."

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

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15 SECTION 1. Arkansas Code §23-2-422 is hereby amended to read as
16 follows:

17 "23-2-422. Public Service Commission orders - Rehearings.

18 (a) Any party to a proceeding before the Arkansas Public Service
19 Commission aggrieved by an order issued by the commission may apply for a
20 rehearing within thirty (30) days after the date of mailing of the order of
21 the commission.

22 (b) The application for rehearing shall set forth specifically the
23 grounds upon which the application is based.

24 (c) Upon receiving the application, the commission shall have power to
25 grant or deny rehearing, to abrogate or modify its order without further
26 hearing, or to reopen the record for the purpose of receiving and considering
27 additional evidence.

28 (d) Unless the commission acts upon the application for rehearing
29 within thirty (30) days after it is filed, the application shall be deemed to
30 have been denied.

31 (e) An order or decision made after the rehearing abrogating, changing,
32 or modifying the original order or decision shall have the same force and
33 effect as an original order or decision but shall not affect any right or the
34 enforcement of any right arising from or by virtue of the original order or
35 decision unless so ordered by the commission."

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1 SECTION 2. Arkansas Code §23-2-423 is hereby amended to read as
2 follows:

3 "23-2-423. Public Service Commission orders - Judicial review -
4 Procedure.

5 (a) (1) Any party to a proceeding before the commission aggrieved by an
6 order issued by the commission in the proceeding may obtain a review of the
7 order in the Court of Appeals of Arkansas. The review of the order may be had
8 by filing in that court, within thirty (30) days after the order of the
9 commission upon the application for rehearing or within thirty (30) days from
10 the date the application is deemed to be denied as provided in §23-2-422, a
11 notice of appeal stating the nature of the proceeding before the commission,
12 identifying the order complained of and the reasons why the order is claimed
13 to be unlawful, and praying that the order of the commission be modified,
14 remanded, or set aside in whole or in part.

15 (2) No proceeding to review any order of the commission shall be
16 brought by any party unless that party has made application to the commission
17 for a rehearing on the order.

18 (b) (1) A copy of the petition shall immediately be transmitted by the
19 clerk of the Court of Appeals to the secretary of the commission. Thereupon
20 the commission, within thirty (30) days from the service of the notice, shall
21 file with the Court of Appeals the record upon which the order complained of
22 was entered.

23 (2) The record shall consist of a complete transcript of the
24 record in the case made before the commission which shall include a copy of
25 all pleadings, proceedings, testimony, exhibits, orders, findings, and
26 opinions in the case. However, the parties and the commission may stipulate
27 that only a specified portion of the record as made before the commission
28 shall be included in the transcript to be filed with the Court of Appeals.

29 (c) (1) Upon the filing of the petition, the court shall have original
30 jurisdiction, which, upon the filing of the record with it, shall be
31 exclusive, to affirm, modify, or set aside the order of the commission in
32 whole or in part.

33 (2) No objection to any order of the commission shall be
34 considered by the Court of Appeals unless the objection shall have been urged
35 before the commission in the application for rehearing.

1 (3) The finding of the commission as to the facts, if supported
2 by substantial evidence, shall be conclusive.

3 (4) The review shall not be extended further than to determine
4 whether the commission's findings are supported by substantial evidence and
5 whether the commission has regularly pursued its authority, including a
6 determination of whether the order or decision under review violated any right
7 of the petitioner under the laws or Constitution of the United States or of
8 the State of Arkansas.

9 (5) All evidence before the commission shall be considered by the
10 court regardless of any technical rule which might have rendered the evidence
11 inadmissible if originally offered in the trial of any action at law or in
12 equity.

13 (d) The Court of Appeals, on review, shall advance Arkansas Public
14 Service Commission cases as matters of public interest over all other civil
15 cases except child custody cases, and appeals under the Workers' Compensation
16 Law, §11-9-101 et seq., and the Employment Security Law, §11-10-101 et seq.

17 (e) Section 23-2-425 shall have no application to judicial review of
18 orders of the commission."

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20 SECTION 3. All provisions of this act of a general and permanent nature
21 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
22 Revision Commission shall incorporate the same in the Code.

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24 SECTION 4. If any provision of this act or the application thereof to
25 any person or circumstance is held invalid, such invalidity shall not affect
26 other provisions or applications of the act which can be given effect without
27 the invalid provision or application, and to this end the provisions of this
28 act are declared to be severable.

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30 SECTION 5. All laws and parts of laws in conflict with this act are
31 hereby repealed.

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