

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.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: S3/6/01

A Bill

Act 988 of 2001
HOUSE BILL 1811

5 By: Representatives Hausam, Jacobs, Allison, Biggs, Bookout, Boyd, Bright, Cleveland, Fite, Holt,
6 Parks, Rodgers, Salmon, Schall, Scroggin, Trammell
7 By: Senators Hoofman, Brown, Wooldridge, Baker, Trusty, Cash
8
9

For An Act To Be Entitled

11 AN ACT TO AMEND THE JOINT MUNICIPAL ELECTRIC
12 POWER GENERATION ACT TO AMEND CERTAIN DEFINITIONS
13 AND TO EXPAND THE AUTHORITY OF MUNICIPALITIES TO
14 PARTICIPATE IN JOINT OR COOPERATIVE MAJOR UTILITY
15 FACILITY PROJECTS; DECLARING AN EMERGENCY; AND
16 FOR OTHER PURPOSES.
17

Subtitle

18 TO AMEND THE JOINT MUNICIPAL ELECTRIC
19 POWER GENERATION ACT.
20
21
22

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

25 SECTION 1. Arkansas Code 14-202-102 is amended to read as follows:
26 14-202-102. Definitions.

27 As used in this chapter, unless the context otherwise requires:

28 (1) "Bonds" means bonds and any series of bonds authorized by and
29 issued pursuant to the provisions of this chapter;

30 (2) "Clerk" means city clerk, city recorder, town recorder, or other
31 similar office hereafter created or established;

32 (3) "Costs" or "project costs" means, but shall not be limited to:

33 (A) All costs of acquisition, construction, reconstruction,
34 improvement, enlargement, betterment, or extension of any project including
35 the costs of studies, plans, specifications, surveys, and estimates of costs
36 and revenues relating thereto;

1 (B) All costs of land, land rights, rights-of-way and easements,
2 water rights, fees, permits, approvals, licenses, certificates, franchises,
3 and the preparation of applications for and securing the same;

4 (C) Administrative, organizational, legal, engineering, and
5 inspection expenses;

6 (D) Financing fees, expenses, and costs;

7 (E) Working capital;

8 (F) Initial and reload fuel costs;

9 (G) All machinery and equipment including construction equipment;

10 (H) Interest on the bonds during the period of construction and
11 for such reasonable period thereafter as may be determined by the issuing
12 municipality;

13 (I) Establishment of reserves; and

14 (J) All other expenditures of the issuing municipality
15 incidental, necessary, or convenient to the acquisition, construction,
16 reconstruction, improvement, enlargement, betterment, or extension of any
17 project and the placing of the project in operation;

18 (4) "Electric system" means any system for the generation,
19 transmission, or distribution of electric power or energy;

20 (5) "Energy service provider" means an energy service provider as
21 defined by § 23-14-102(10);

22 ~~(5)~~(6) "Governing body" means the council, board of directors,
23 commission, or other governing body of a municipality;

24 ~~(6)~~(7) "Interest" or "interest in a project" means any ownership
25 interest in a project including, without limitation, an undivided interest as
26 a tenant in common;

27 ~~(7)~~(8) "Major utility facility" means any electric generating plant and
28 related necessary and appurtenant land rights, substation, fuel, fuel
29 handling, processing and storage equipment, water supply facilities, and
30 similar necessary equipment and property, whether real, personal, or mixed;

31 ~~(8)~~ "Municipality" means any city of the first class which owns an
32 electric system whether operated by it or by a person under a franchise,
33 lease, or other agreement or arrangement between the municipality and the
34 person;

35 (9) "Municipality" means any city of the first or second class
36 incorporated under the laws of this state, or any commission or agency

1 thereof, including any municipally owned or controlled corporations, or any
 2 improvement district, consolidated public or municipal utility system
 3 improvement district, or nonprofit corporation lessee of such entity which
 4 owns or operates an electric system;

5 ~~(9)~~(10) "Person" means any natural person, firm, corporation, electric
 6 cooperative corporation, energy service provider, nonprofit corporation,
 7 association, or improvement district;

8 (11) "Power requirements of the municipality" means the maximum hourly
 9 electric consumption by the municipality's retail customers;

10 ~~(10)~~(12) "Project" means any major utility facility owned in whole or
 11 in part by one (1) or more public utilities, persons, or municipalities,
 12 whether the major utility facility is located entirely or partly within, or
 13 wholly without, a municipality;

14 ~~(11)~~(13) "Public utility" means any person engaged in generation and
 15 sale of electric power and energy and which was prior to the enactment of Act
 16 1556 of 1999 subject to regulation by the Arkansas Public Service Commission
 17 as to such generation and sale; and

18 ~~(12)~~(14) "State" means the State of Arkansas.
 19

20 SECTION 2. Arkansas Code 14-202-103 is amended to read as follows:

21 14-202-103. Authorization to construct and operate project.

22 (a)(1) A municipality is authorized and empowered to acquire,
 23 construct, reconstruct, enlarge, equip, operate, and maintain an interest in a
 24 project, jointly with one (1) or more municipalities, ~~or persons and with one~~
 25 ~~(1)~~ or ~~more~~ public utilities, and is authorized and empowered to enter into
 26 agreements for the joint or cooperative ownership, financing, construction, or
 27 operation and maintenance of any project, and to enter into agreements for the
 28 exchange and to exchange with other municipalities, persons, or public
 29 utilities of an interest in one (1) or more portions of a project for an
 30 interest in one (1) or more other portions of the project.

31 (2) In particular, but without limiting the generality of the
 32 foregoing, any municipality may participate in the financing of any project
 33 owned or to be owned by the other party or parties to the agreement, in
 34 exchange for the ownership of a portion thereof, for the use of the project or
 35 for an agreed upon portion of the power and energy output thereof.

36 (3) Any agreement may provide for the creation of a joint board

1 or committee for administration of the undertaking covered by the agreement or
 2 for the delegation of authority to administer an undertaking to one (1) or
 3 more parties to the agreement and may contain such other terms and conditions
 4 as the parties consider appropriate.

5 (b) Prior to exercising any such authority or power, the governing body
 6 of the municipality shall determine the needs of the municipality for power
 7 and energy for the present and a reasonable period in the future as shall be
 8 determined by the governing body of the municipality. In determining the ~~power~~
 9 ~~requirements of a municipality, for the present and a reasonable period in the~~
 10 ~~future~~ desirability of a proposed project, there shall be taken into account
 11 the following:

12 (1) The economies, ~~and~~ efficiencies and revenues estimated to be
 13 achieved in acquiring, constructing, and operating the proposed project;

14 (2) The municipality's estimated requirements for power and
 15 energy from the project and for reserve capacity and to meet obligations under
 16 pooling and reserve sharing agreements reasonably related to its needs for
 17 power and energy to which it is or is anticipated to become a party; ~~and~~

18 (3) The cost of existing or alternative power supply sources;
 19 and-

20 (4) The marketability of electric power in excess of the power
 21 requirements of the municipality.

22 (c) Any municipality is authorized to make, or cause to be made, and
 23 pay for engineering and other studies as it may deem necessary or desirable.

24 (d) A municipality shall not undertake the acquisition, construction,
 25 enlarging, or equipping of an interest in the project which will result in a
 26 municipality ~~obtaining~~ owning electric power capacity ~~in excess~~ which shall
 27 exceed two hundred fifty percent (250%) of the power requirements of the
 28 municipality ~~for the present and a reasonable time in the future.~~ Provided,
 29 however, the limitations on resulting power capacity in this subsection (d)
 30 shall not apply to a municipality participating in retail open access pursuant
 31 to § 23-19-104(b).

32 (e) A municipality shall not participate in retail competition through
 33 a project prior to its governing body adopting enabling legislation to
 34 participate in retail open access pursuant to § 23-19-104(b).

35
 36 SECTION 3. Arkansas Code 14-202-104(a) is amended to read as follows:

1 (a) The acquisition of an interest in a project ~~shall~~ may include the
 2 purchase or lease by mutual voluntary agreement with another person or
 3 municipality of an existing project or an interest therein or the
 4 participation in the planning, engineering, and legal aspects of preparing for
 5 the construction of and securing necessary state, local, or federal permits
 6 for the construction of a proposed project or a project on which construction
 7 has been begun but not completed.

8
 9 SECTION 4. Arkansas Code 14-207-104 is amended to read as follows:
 10 14-207-104. Procedures and valuation formula.

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

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

17 (2) The book value, net of depreciation, of all properties and
 18 facilities not being acquired or portions thereof, which were constructed or
 19 purchased, in good faith, by the electric public utility in order to serve
 20 customers in the annexed area, less the book value, net of depreciation, of
 21 the properties and facilities, to the extent that at the time that title to
 22 the properties or facilities being taken pursuant to this act is transferred,
 23 the properties and facilities not being acquired:

24 (A) Are required for serving customers of the electric
 25 public utility not in the annexed area; and

26 (B) May be reasonably expected to serve customers not in
 27 the annexed area within eight years following the acquisition; plus

28 ~~(2)(3)~~ *An amount equal to the cost of constructing any necessary*
 29 *facilities to reintegrate the system of the electric public utility outside*
 30 *the annexed area after detaching the portion to be sold; plus*

31 ~~(3)(4)~~ *In the event that the electric public utility system does*
 32 *not provide wholesale power service to the municipality acquiring its*
 33 *properties, facilities, and customers under this subchapter, then, in addition*
 34 *to the amounts required by subdivisions (a)(1) and ~~(2)(3)~~ of this section, the*
 35 *municipality shall pay the electric public utility either:*

36 (A) Three hundred fifty-five percent (355%) of gross

1 revenues less gross receipts taxes received by the electric public utility for
2 the twelve-month period preceding notification from customers in the annexed
3 area; or

4 (B) The amount required by subdivision ~~(a)(3)(A)~~ (a)(4)(A)
5 of this section payable over five (5) years with interest at the then-
6 prevailing AAA insured tax-exempt municipal bond interest rate.

7 (b) In the event that the electric public utility system ceases to
8 provide wholesale power service to the municipality prior to five (5) years
9 after the acquisition of the properties, facilities, and customers of the
10 electric power utility under this subchapter, then the municipality will pay,
11 pro rata for the remainder of such five-year period, in accordance with
12 subdivision ~~(a)(3)(A)~~ (a)(4)(A) of this section.

13
14 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the General
15 Assembly that the public relies upon reasonably priced supplies of electricity
16 and that the ability of municipalities to invest in and construct electric
17 utility generating facilities and ensure the lowest practicable electric rates
18 for their residents is unreasonably reduced by restriction of project partners
19 to regulated utilities. Therefore, an emergency is declared to exist and this
20 act being immediately necessary for the preservation of the public peace,
21 health and safety shall become effective on the date of its approval by the
22 Governor. If the bill is neither approved nor vetoed by the Governor, it
23 shall become effective on the expiration of the period of time during which
24 the Governor may veto the bill. If the bill is vetoed by the Governor and the
25 veto is overridden, it shall become effective on the date the last house
26 overrides the veto.

27 /s/ Hausam

30 APPROVED: 3/21/2001