

1 State of Arkansas As Engrossed: H3/20/15 H3/24/15 H3/26/15

2 90th General Assembly

# A Bill

3 Regular Session, 2015

HOUSE BILL 1633

5 By: Representative Sabin

## For An Act To Be Entitled

8 AN ACT TO ALLOW A UTILITY TO ENTER INTO A POWER  
9 PURCHASE AGREEMENT; AND FOR OTHER PURPOSES.

### Subtitle

13 TO ALLOW A UTILITY TO ENTER INTO A POWER  
14 PURCHASE AGREEMENT.

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

19 SECTION 1. Arkansas Code Title 23, Chapter 18, Subchapter 1, is  
20 amended to add an additional section to read as follows:

21 23-18-108. Power purchase agreement.

22 (a) As used in this section:

23 (1) "Power purchase agreement" means an agreement between a  
24 generator of electricity and a utility for the sale of electricity,  
25 generation capacity, or ancillary products to the utility; and

26 (2) "Utility" means an electric utility subject to the  
27 jurisdiction of the Arkansas Public Service Commission.

28 (b) A utility may enter into a power purchase agreement.

29 (c) A utility shall not enter into a power purchase agreement for a  
30 term of more than five (5) years or recover the cost of the power purchase  
31 agreement in rates unless the commission finds that:

32 (1) The cost of the power purchase agreement is reasonable and  
33 prudent;

34 (2) The power purchase agreement will provide savings for retail  
35 customers as compared to other generation and power supply options over the  
36 term of the power purchase agreement;



1 (3) The power purchase agreement is required by public  
2 convenience and necessity;

3 (4) The power purchase agreement is necessary to supplement or  
4 replace the utility's existing generation sources; and

5 (5) Approval of the power purchase agreement is in the public  
6 interest.

7 (d) After making the findings required under subsection (c) of this  
8 section, the commission may enter an order approving the power purchase  
9 agreement and providing for the utility to recover the costs of the power  
10 purchase agreement over the term of the power purchase agreement.

11 (e)(1)(A) If the commission approves a power purchase agreement under  
12 this section, the commission may authorize the utility to recover an  
13 additional sum as determined by the commission in recognition of the unique  
14 characteristics of the power purchase agreement if the commission finds that  
15 including the additional sum is in the public interest.

16 (B) However, an additional sum is not appropriate if the  
17 generator party to the power purchase agreement is an affiliate of the  
18 utility.

19 (2) In determining the additional sum allowed under subdivision  
20 (e)(1) of this section, the commission may consider:

21 (A) The risks of the power purchase agreement;

22 (B) A commensurate return on the power purchase agreement  
23 as would be allowed for an equivalent investment in a power plant;

24 (C)(i) An equitable sharing of any savings between the  
25 utility and the retail customers of the utility.

26 (ii) However, the retail customers' share shall not  
27 be less than seventy-five percent (75%); and

28 (D) Any other reasonable mechanisms for determining the  
29 additional sum that:

30 (i) Are in the public interest;

31 (ii) Equitably balance the interests of the utility  
32 and the retail customers of the utility; and

33 (iii) Provide results that are comparable to the  
34 criteria described in subdivision (e)(2)(B) or (C) of this section.

35 (3) If the commission authorizes an additional sum under this  
36 subsection, the utility shall recover the additional sum over the entire term

1 of the power purchase agreement in the same manner as it recovers the cost of  
2 the power purchase agreement as long as electricity, generation capacity, or  
3 ancillary products are being delivered in accordance with the terms of the  
4 power purchase agreement.

5 (f) This section does not apply to an electric cooperative corporation  
6 established under the Electric Cooperative Corporation Act, § 23-18-301 et  
7 seq.

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/s/Sabin

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