

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 86th General Assembly  
3 Regular Session, 2007  
4

*As Engrossed: H3/9/07*  
**A Bill**

HOUSE BILL 2697

5 By: Representative Wyatt  
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**For An Act To Be Entitled**

9 AN ACT TO PREVENT FEDERAL PREEMPTION OF STATE LAW  
10 BY REQUIRING A CERTIFICATE OF ENVIRONMENTAL  
11 COMAPTABILITY AND PUBLIC NEED BEFORE CONSTRUCTING  
12 A MAJOR ELECTRIC TRANSMISSION FACILITY IN A  
13 NATIONAL INTEREST ELECTRIC TRANSMISSION CORRIDOR;  
14 TO REQUIRE AN ADDITIONAL REQUIREMENT TO THE  
15 APPLICATION FOR A MAJOR UTILITY FACILITY; TO  
16 INCREASE THE AMOUNT OF TIME ALLOWED FOR THE  
17 ARKANSAS PUBLIC SERVICE COMMISSION TO STUDY AN  
18 APPLICATION FOR MAJOR UTILITY FACILITY BEFORE THE  
19 COMMENCEMT OF THE REQUIRED PUBLIC HEARING; TO  
20 REQUIRE ADDITIONAL FINDINGS BEFORE GRANTING A  
21 CERTIFICATE; AND FOR OTHER PURPOSES.

**Subtitle**

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24 TO PREVENT FEDERAL PREEMPTION OF STATE  
25 LAW REQUIREMENTS FOR A CERTIFICATE OF  
26 ENVIRONMENTAL COMPATABILITY AND PUBLIC  
27 NEED BEFORE CONSTRUCTING A MAJOR UTILITY  
28 FACILITY.  
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31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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33 SECTION 1. Arkansas Code § 23-18-503(6) – (14), concerning  
34 definitions, is amended to add additional subdivisions to read as follows:

35 (6) “Merchant generator” means a person or entity, including an  
36 affiliate of a public utility, engaged directly or indirectly through one (1)



1 or more affiliates, who is in the business of owning or operating all or part  
2 of a facility for generating electric energy and selling electric energy at  
3 wholesale;

4 (7) "Merchant transmission provider" means any person or entity  
5 who owns or operates facilities used for the transmission of electric energy  
6 and whose rates or charges are not subject to the jurisdiction of the  
7 commission;

8 (8) "Municipality" means any county or municipality within this  
9 state;

10 (9) "National interest electric transmission corridor" means any  
11 area of Arkansas found by the United states Secretary of Energy to be  
12 experiencing electric energy transmission capacity constraints or congestion  
13 and therefor designated as a National Interest Electric Transmission Corridor  
14 by the secretary pursuant to the authority granted by section 1221(a) of the  
15 Energy Policy Act of 2005, Pub. L. No. 109-58;

16 ~~(7)~~(10) "Nonrenewable energy technology" or "nonrenewable energy  
17 sources" means any technology or source of energy which depends upon the use  
18 of depletable fossil fuels such as oil, gas, and coal;

19 ~~(8)~~(11) "Person" includes any individual, group, firm,  
20 partnership, corporation, cooperative association, municipality, government  
21 subdivision, government agency, local government, or other organization;

22 ~~(9)~~(12) "Public utility" or "utility" means any person engaged  
23 in the production, storage, distribution, sale, delivery, or furnishing of  
24 electricity or gas, or both, to or for the public, as defined in § 23-1-  
25 101(9)(A)(i) and (9)(B), but does not include an exempt wholesale generator  
26 as defined in § 23-1-101(5); and

27 (13) "Regional transmission organization" means an entity  
28 approved by the Federal Energy Regulatory Commission to plan and operate  
29 facilities for the transmission of electric energy within a designated  
30 region; and

31 ~~(10)~~(14) "Renewable energy technology" means any technology or  
32 source of energy, such as solar, wind, biomass conversion, or geothermal,  
33 which is not depletable.

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35 SECTION 2. Arkansas Code § 23-18-510 is amended to read as follows:

36 23-18-510. Certificate of environmental compatibility and public need -

1 Requirement - Exceptions.

2 (a) No person shall commence to construct a major utility facility in  
3 the state, except those exempted as provided in subsection (b) of this  
4 section and §§ 23-18-504(a) and 23-18-508, without first having obtained a  
5 certificate of environmental compatibility and public need, hereafter called  
6 a "certificate", issued with respect to the facility by the commission. The  
7 replacement or expansion of an existing transmission facility with a similar  
8 facility in substantially the same location or the rebuilding, upgrading,  
9 modernizing, or reconstruction for the purposes of increasing capacity shall  
10 not constitute construction of a major utility facility if no increase in  
11 width of right-of-way is required.

12 (b) No entity, including but not limited to, a person, public utility,  
13 utility, regional transmission organization, municipality, merchant  
14 transmission provider, merchant generator, or other entity, whether regulated  
15 or not by the commission, shall commence to construct a major electric  
16 transmission facility, as defined in § 23-18-503, within a national interest  
17 electric transmission corridor without first having obtained a certificate of  
18 environmental compatibility and public need issued with respect to such  
19 facility by the commission.

20 (c) Nothing in this subchapter shall be construed to require a  
21 certificate under this subchapter or an amendment thereof for:

22 (1) ~~reconstruction~~ Reconstruction, alteration, or relocation of  
23 any major utility facility which must be reconstructed, altered, or relocated  
24 because of the requirements of any federal, state, or county governmental  
25 body or agency for purposes of highway transportation, public safety, or air  
26 and water quality; or

27 (2) Any major electric transmission facility to be constructed  
28 or operated by a municipal electric system which is located within the  
29 territorial limits of such municipal electric utility system.

30 (d) Any entity granted a certificate pursuant to § 23-18-510(b) shall  
31 have the right of eminent domain as provided by Arkansas law for the limited  
32 purpose of constructing the certificated major electric transmission facility  
33 to the extent that the facility is located within a national interest  
34 electric transmission corridor.

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36 SECTION 3. Arkansas Code § 23-18-511(8) – (10), concerning the

1 contents of an application for a certificate, is amended add a subdivision to  
2 read as follows:

3 (8)(A) An exhibit containing an environmental impact statement,  
4 which shall fully develop the four (4) factors listed in subdivision (8)(B)  
5 of this section, treating in reasonable detail such considerations, if  
6 applicable, as the proposed facility's direct and indirect effect on the  
7 ecology of the land, air and water environment, established park and  
8 recreational areas, and on any sites of natural, historic, and scenic values  
9 and resources of the area in which the facility is to be located, and any  
10 other relevant environmental effects.

11 (B) The environmental impact statement shall set out:

12 (i) The environmental impact of the proposed action;

13 (ii) Any adverse environmental effects which cannot  
14 be avoided;

15 (iii) A description of the comparative merits and  
16 detriments of each alternate location or for generating plants, the energy  
17 production process considered, and a statement of the reasons why the  
18 proposed location and production process were selected for the facility; and

19 (iv) Any irreversible and irretrievable commitments  
20 of resources that would be involved in the proposed action should it be  
21 implemented; ~~and~~

22 (9) The interstate benefits expected to be achieved by the  
23 proposed construction or modification of a major electric transmission  
24 facility, as defined by § 23-18-503(5)(B), within a national interest  
25 electric transmission corridor; and

26 ~~(9)(10)~~ Such other information of an environmental or economic  
27 nature as the applicant may consider relevant or as the commission may by  
28 regulation or order require.

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30 SECTION 4. Arkansas Code § 23-18-516(a)(1), concerning the date for a  
31 public hearing on an application for a certificate, is amended to read as  
32 follows:

33 (a)(1) Upon receipt of an application complying with §§ 23-18-511 -  
34 23-18-514, the Arkansas Public Service Commission shall promptly fix a date  
35 for the commencement of a public hearing thereon, which date shall be not  
36 fewer than forty (40) days nor more than ~~ninety (90)~~ one hundred eighty (180)

1 days after the receipt of the application, and shall conclude the proceedings  
2 as expeditiously as practicable.

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4 SECTION 5. Arkansas Code § 23-18-519(b), concerning findings required  
5 by the commission, is amended to add additional subdivisions to read as  
6 follows:

7 (9) That the energy efficiency of the power production facility  
8 has been given significant weight in the decision-making process; ~~and~~

9 (10) That the location of the facility as proposed conforms as  
10 closely as practicable to applicable state, regional, and local laws and  
11 regulations issued thereunder, except that the commission may refuse to apply  
12 all or any part of any regional or local law or regulation if it finds that,  
13 as applied to the proposed facility, that law or regulation is unreasonably  
14 restrictive in view of the existing technology, or of factors of cost or  
15 economics, or of the needs of consumers whether located inside or outside of  
16 the directly affected government subdivisions;

17 (11) The interstate benefits expected to be achieved by the  
18 proposed construction or modification of a major electric transmission  
19 facility, as defined in § 23-18-503, located within a national interest  
20 electric transmission corridor; and

21 (12) That any conditions attached to a certificate for the  
22 construction or modification of a major electric transmission facility, as  
23 defined in § 23-18-503, located within a national interest electric  
24 transmission corridor do not interfere with reduction of electric  
25 transmission congestion in interstate commerce or render the project  
26 economically infeasible.

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28 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the  
29 General Assembly of the State of Arkansas that in the immediate future the  
30 United States Secretary of Energy may designate portions of Arkansas as a  
31 national interest electric transmission corridor; that such a designation  
32 could result in the federal preemption of state law; and that this act is  
33 necessary to provide a means for the construction of transmission facilities  
34 that are less onerous than under federal law. Therefore, an emergency is  
35 declared to exist and this act being immediately necessary for the  
36 preservation of the public peace, health, and safety shall become effective

1 on:

2 (1) The date of its approval by the Governor;

3 (2) If the bill is neither approved nor vetoed by the Governor,  
4 the expiration of the period of time during which the Governor may veto the  
5 bill; or

6 (3) If the bill is vetoed by the Governor and the veto is  
7 overridden, the date the last house overrides the veto.

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9 */s/ Wyatt*

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