

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

SENATE BILL 537

5 By: Senators Teague, U. Lindsey, Maloch, Rice
6 By: Representatives Watson, Beck, Dalby, Lundstrum, Maddox
7

For An Act To Be Entitled

8
9 AN ACT TO ESTABLISH THE ELECTRIC RATEPAYER PROTECTION
10 ACT OF 2017; TO DECLARE AN EMERGENCY; AND FOR OTHER
11 PURPOSES.
12
13

Subtitle

14
15 TO ESTABLISH THE ELECTRIC RATEPAYER
16 PROTECTION ACT OF 2017; AND TO DECLARE AN
17 EMERGENCY.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 23, Chapter 18, is amended to add an
23 additional subchapter to read as follows:

24 Subchapter 11 – Electric Ratepayer Protection Act of 2017

25

26 23-18-1101. Title.

27 This subchapter shall be known and may be cited as the “Electric
28 Ratepayer Protection Act of 2017”.

29

30 23-18-1102. Legislative findings and intent.

31 (a) The General Assembly finds that:

32 (1) There is at present and will continue to be a risk of
33 increased costs being imposed on the ratepayers of electric public utility
34 companies by municipal electric utility systems and merchant transmission
35 providers that acquire the electric transmission facilities of municipal
36 electric utility systems without the proper prior review and approval of the



1 Arkansas Public Service Commission;

2 (2) Municipal electric utility systems and merchant transmission
3 providers that acquire the electric transmission facilities of municipal
4 electric utility systems have the present ability, without prior review and
5 approval of the Arkansas Public Service Commission, to unilaterally transfer
6 functional control of those electric transmission facilities to a regional
7 transmission organization and thereby transfer a substantial portion of the
8 associated annual transmission revenue requirement to the ratepayers of
9 electric public utility companies located within the same regional
10 transmission organization zone in which the municipal electric utility system
11 or merchant transmission provider is located;

12 (3) These transactions could lead to the inclusion of the
13 associated annual transmission revenue requirement of the electric
14 transmission facilities in the open access transmission tariff of a regional
15 transmission organization and thereby be recovered in part from the
16 ratepayers of electric public utility companies;

17 (4) The Arkansas Public Service Commission should be empowered
18 with the statutory authority to conduct an appropriate evidentiary review of
19 these transactions before the transactions are consummated in order to ensure
20 that the transactions will not impose unreasonable rate increases on the
21 ratepayers of electric public utility companies;

22 (5) The Federal Energy Regulatory Commission has exclusive
23 jurisdiction over the open access transmission tariff of a regional
24 transmission organization, therefore this subchapter shall not be interpreted
25 as a grant of jurisdiction or authority to the Arkansas Public Service
26 Commission over the open access transmission tariff of a regional
27 transmission organization or over the regional transmission organization's
28 ability under its open access transmission tariff to determine the proper
29 methodology or allocation of electric transmission facility costs to be
30 recovered through operation of the open access transmission tariff; and

31 (6) It is essential to the public interest to minimize any
32 adverse effect upon the ratepayers of electric public utility companies as a
33 result of such transactions.

34 (b) The General Assembly declares that:

35 (1) It is the purpose of this subchapter to provide the Arkansas
36 Public Service Commission with the authority to review all transactions by or

1 between municipal electric utility systems and merchant transmission
2 providers, as described in § 23-18-1104(c)(2), before the transactions may be
3 consummated; and

4 (2) It is essential to the public interest that the Arkansas
5 Public Service Commission be granted the authority to conduct a formal public
6 evidentiary proceeding to determine whether such transactions are in the
7 overall public interest and to reject or approve such transactions based upon
8 substantial evidence of record.

9
10 23-18-1103. Definitions.

11 As used in this subchapter:

12 (1) "Annual transmission revenue requirement" means the total
13 annual costs of electric transmission facilities owned by a municipal
14 electric utility system or a merchant transmission provider to be included
15 and recovered through the zonal cost recovery allocation as defined and
16 established under a regional transmission organization's open access
17 transmission tariff;

18 (2) "Electric transmission facilities" means an interconnected
19 group of electric power lines and associated equipment for the movement or
20 transfer of electric energy between points of supply and points at which it
21 is transformed for delivery to customers or is delivered to other electric
22 systems;

23 (3) "Merchant transmission provider" means a person or entity
24 that owns or operates facilities used for the transmission of electric energy
25 and whose rates or charges are not subject to the jurisdiction of the
26 Arkansas Public Service Commission;

27 (4) "Municipality" means a city, a town, an improvement district
28 other than a county, and any other quasi-public corporation that is created
29 or organized under the Arkansas Constitution or laws of the State of
30 Arkansas;

31 (5) "Municipal electric utility system" means an electric
32 utility system owned or operated by a municipality, including all equipment
33 and facilities used for the generation, transmission, or distribution of
34 electric energy at retail or wholesale;

35 (6) "Open access transmission tariff" means a tariff of a
36 regional transmission organization that is mandated and approved by the

1 Federal Energy Regulatory Commission that is designed to allow others to use
2 a utility's transmission and distribution facilities to move bulk power from
3 one point to another on a nondiscriminatory basis for a cost-based fee; and

4 (7) "Regional transmission organization" means an entity
5 approved by the Federal Energy Regulatory Commission to plan and operate
6 facilities for the transmission of electric energy within a designated
7 region.

8
9 23-18-1104. Authority of Arkansas Public Service Commission.

10 (a) The Arkansas Public Service Commission shall review transactions
11 subject to this subchapter and described in subdivision (c)(2) of this
12 section.

13 (b) After a full review of an application of a municipality or a
14 merchant transmission provider and after a public hearing, unless the public
15 hearing is waived by all parties, the commission shall enter its final
16 written ruling based upon the evidentiary record established in the
17 application proceeding.

18 (c)(1) The commission shall not approve the proposed transaction
19 unless it determines, based upon substantial evidence of record, that the
20 proposed transaction will serve the overall public interest, taking into
21 consideration any costs, benefits, and financial impacts of the proposed
22 transaction.

23 (2) A transaction under this section includes a municipality
24 operating a municipal electric utility system or a merchant transmission
25 provider that seeks to:

26 (1) Transfer functional control of electric transmission
27 facilities to a regional transmission organization;

28 (2) Sell or otherwise convey electric transmission
29 facilities to a merchant transmission provider; or

30 (3) Construct new electric transmission facilities for or
31 on behalf of the municipality.

32 (d) Absent the formal approval of the commission, the municipality or
33 merchant transmission provider shall not consummate the proposed transaction.

34
35 23-18-1105. Applicability.

36 (a) This subchapter applies to a municipality operating a municipal

1 electric utility system or a merchant transmission provider that seeks to:

2 (1) Transfer functional control of electric transmission
3 facilities to a regional transmission organization;

4 (2) Sell or otherwise convey electric transmission facilities to
5 a merchant transmission provider; or

6 (3) Construct new electric transmission facilities for or on
7 behalf of the municipality.

8 (b) Before executing a transaction described in subsection (a) of this
9 section, the municipality or the merchant transmission provider, or both,
10 shall submit to the jurisdiction and authority of the Arkansas Public Service
11 Commission for the limited purpose of applying for and securing the review
12 and final written approval of the commission before executing the
13 transaction.

14
15 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
16 General Assembly of the State of Arkansas that there is a need for consistent
17 application of utility regulation in this state; that the Arkansas Public
18 Service Commission requires additional statutory authority as provided in
19 this act in order to protect the ratepayers of electric public utilities in
20 this state; and that this act is immediately necessary because the Arkansas
21 Public Service Commission needs to be empowered to protect electric utility
22 ratepayers. Therefore, an emergency is declared to exist, and this act being
23 immediately necessary for the preservation of the public peace, health, and
24 safety shall become effective on:

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

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

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

31
32
33
34
35
36