

1 State of Arkansas  
2 93rd General Assembly  
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4

# A Bill

HOUSE BILL 1661

5 By: Representative Maddox  
6 By: Senator B. Davis  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE FORMULA RATE REVIEW ACT; TO  
10 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.  
11

## Subtitle

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13  
14 TO AMEND THE FORMULA RATE REVIEW ACT; AND  
15 TO DECLARE AN EMERGENCY.  
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17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

20 SECTION 1. Arkansas Code § 23-4-422 is amended to read as follows:

21 23-4-422. Cost allocation – Definition.

22 (a)(1) The Arkansas Public Service Commission shall establish and  
23 regulate the rates and charges of a public utility under this subchapter and  
24 shall allocate or assign costs among all classes of customers of the public  
25 utility.

26 (2) In determining the rates for utility services and the cost  
27 allocation among all of a public utility’s classes of customers, the  
28 commission shall:

29 (A) Consider the costs and expenses incurred by the public  
30 utility in providing the utility services to customers in each class;

31 (B) Consider the economic impact of the proposed rates and  
32 charges for utility services by giving equal consideration to each class of  
33 customers; and

34 (C) Make findings that are based on substantial evidence.

35 (b) Notwithstanding the commission’s authority to otherwise determine  
36 and fix rates for all classes of customers, including allocating or assigning



1 costs and designing rates, if the commission finds that it will be beneficial  
 2 to economic development or the promotion of employment opportunities, and  
 3 that it will result in just and reasonable rates for all classes of  
 4 customers, the commission shall determine rates and charges for utility  
 5 services that:

6 (1) For the class of customers with the highest level of  
 7 consumption per customer which has rates that include a demand component, and  
 8 any successors to such class, as they existed on ~~January 1, 2015~~ January 1,  
 9 2021, ensure that all costs and expenses related to demand and capacity are  
 10 identified and allocated on a demand basis and recovered from customers in  
 11 those classes through a demand rate component and not through a volumetric  
 12 rate component unless the commission determines that the rates should be  
 13 adjusted under subsections (e) and (f) of this section;

14 (2) For the retail jurisdiction rate classes, ensure that:

15 (A) All electric utility production plant, production-  
 16 related costs, nonfuel production-related costs, purchased capacity costs,  
 17 and any energy costs incurred resulting from the electric utility's  
 18 environmental compliance are classified as production demand costs; and

19 (B)(i) Production demand costs are allocated to each  
 20 customer class pursuant to the average and excess method shown in Table 4-10B  
 21 on page 51 of the 1992 National Association of Regulatory Utility  
 22 Commissioners Electric Utility Cost Allocation Manual, as it existed on  
 23 ~~January 1, 2015~~ January 1, 2021, using the average of the four (4) monthly  
 24 coincident peaks for the months of June, July, August, and September for each  
 25 class for the coincident peak referenced in Table 4-10B of the ~~manual~~ 1992  
 26 National Association of Regulatory Utility Commissioners Electric Utility  
 27 Cost Allocation Manual, as it existed on ~~January 1, 2015~~ January 1, 2021, or  
 28 any subsequent version of the ~~manual~~ National Association of Regulatory  
 29 Utility Commissioners Electric Utility Cost Allocation Manual to the extent  
 30 it produces an equivalent result.

31 (ii) Subdivision (b)(2)(B)(i) of this section does  
 32 not prescribe an allocation for a wind production plant; and

33 (3)(A)(i) For purposes of allocation of natural gas distribution  
 34 plant costs, including costs in distribution mains and related distribution  
 35 plant expenses, among the state's retail jurisdiction rate classes, ensure  
 36 that each natural gas public utility classifies all natural gas distribution

1 plant costs as customer-related or capacity-related.

2 (ii) For purposes of subdivision (b)(3)(A)(i) of  
3 this section, the natural gas distribution plant costs shall include:

4 (a) Amounts charged to account numbers 374  
5 through 387, as defined under the account numbering system in the Uniform  
6 System of Accounts prescribed for natural gas public utilities by the rules  
7 of the commission; and

8 (b) Related depreciation, return on  
9 investment, property insurance and taxes, excluding state and federal income  
10 taxes, and fixed operation and maintenance expense charged to account numbers  
11 870 through 894, as defined under the account numbering system in the Uniform  
12 System of Accounts prescribed for natural gas public utilities by the rules  
13 of the commission, including all labor-related costs for the expenses  
14 described in this subdivision (b)(3)(A).

15 (iii) To develop a cost allocation method under this  
16 section for natural gas utilities, the commission shall use the Gas  
17 Distribution Rate Design Manual, June 1989 edition, as prepared by the  
18 National Association of Regulatory Utility Commissioners, as it existed on  
19 ~~January 1, 2015~~ January 1, 2021, or any subsequent version of the ~~manual~~ Gas  
20 Distribution Rate Design Manual, to the extent it produces an equivalent  
21 result.

22 (B)(i) The customer-related natural gas distribution plant  
23 costs shall be allocated to each customer class based on the number of  
24 customers in each class.

25 (ii) The customer-related portion of natural gas  
26 distribution plant costs related to account numbers 374 through 376, as  
27 defined under the account numbering system in the Uniform System of Accounts  
28 prescribed for natural gas public utilities by the rules of the commission,  
29 shall be the percentage of the average cost of all mains that is represented  
30 by the average cost of the minimum size main and computed using a cost  
31 allocation method based upon the predominant size main that is installed by  
32 the natural gas public utility that is at least two inches (2") in diameter,  
33 with the investment costs of the predominant size mains set as the minimum  
34 size.

35 (iii) The customer-related portion of natural gas  
36 distribution costs related to account numbers 377 through 387, as defined

1 under the account numbering system in the Uniform System of Accounts  
2 prescribed for natural gas public utilities by the rules of the commission,  
3 shall be computed using a study that reflects the investments required to  
4 meter, regulate, and connect each class of customers to the natural gas  
5 utility's system.

6 (iv) Any remaining natural gas distribution plant  
7 costs shall be classified as capacity-related costs.

8 (C)(i) Except for natural gas distribution plant costs  
9 related to account numbers 380 through 385, as defined under the account  
10 numbering system in the Uniform System of Accounts prescribed for natural gas  
11 public utilities by the rules of the commission, the natural gas distribution  
12 plant costs classified as capacity-related costs shall be allocated to the  
13 customer classes based on the contribution to peak day demand that is made by  
14 each customer class.

15 (ii) As used in subdivision (b)(3)(C)(i) of this  
16 section, "peak day demand" means the computed quantity of gas that would be  
17 supplied to each customer class calculated using the coldest day in a recent  
18 thirty-year period for each gas utility.

19 (c) In an application for a general change or modification in a public  
20 utility's rates and charges under this subchapter:

21 (1) A public utility may present evidence that demonstrates that  
22 the implementation of rates under subsection (b) of this section will result  
23 in rates that will be beneficial to economic development or the promotion of  
24 employment opportunities and result in just and reasonable rates for all  
25 classes of customers; and

26 (2) A public utility shall present evidence of whether or not  
27 rate design in subdivision (b)(1) of this section results in an increase to  
28 the base rate charges that are billed to customers in the affected class of  
29 more than ten percent (10%) as compared to the then currently approved base  
30 rate charges of the applicable rate schedules.

31 (d)(1) Unless the commission adjusts the rates under subsection (e) or  
32 subsection (f) of this section, the commission shall by order establish and  
33 design rates, allocate or assign costs to all classes of customers, and  
34 regulate the rates for each class of customers of a public utility according  
35 to this section except as limited under § 23-4-1207(d) and § 23-4-  
36 1208(a)(2)(B) and (C).

1           (2)(A) The commission shall not adjust the rates under  
2 subsection (e) or subsection (f) of this section for an electric utility if  
3 the electric utility's class of customers with the highest level of  
4 consumption per customer that has rates that include a demand component, and  
5 any successors to such a class, as they existed on January 1, 2021, has an  
6 annual usage for the class as a whole in excess of seven million megawatt  
7 hours (7,000,000 MWh), except as provided in § 23-4-1207(d) and § 23-4-  
8 1208(a)(2)(B) and (C), if the electric utility has a formula rate review  
9 approved and in effect under § 23-4-1208(a)(1) on or before March 15, 2021.

10           (B) The commission is not required to make the findings  
11 specified in subdivision (b)(1) of this section as a prerequisite to follow  
12 subsection (d)(2)(A) of this section.

13           (e) Pursuant to the commission's authority to otherwise determine and  
14 fix rates for all classes of customers, including allocating or assigning  
15 costs and designing rates, the commission may adjust rates under subdivisions  
16 (b)(2) and (3) of this section if the commission finds:

17                 (1) It is in the public interest;

18                 (2) It is necessary to produce just and reasonable rates; or

19                 (3) Implementation of rates under subdivisions (b)(2) and (3) of  
20 this section will result in rates that are not beneficial to economic  
21 development or the promotion of employment opportunities.

22           (f) If implementation of rates under subdivision (b)(1) of this  
23 section will result in an increase in the base rate charges billed to  
24 customers in the affected class of more than ten percent (10%) as compared to  
25 the currently approved base rate charges of the applicable rate schedules,  
26 the commission may adjust the rates to ensure that the greatest increase in  
27 the base rate charges billed to customers in the affected class is ten  
28 percent (10%) as compared to the then currently approved base rate charges of  
29 the applicable rate schedules.

30           (g) If the commission makes any adjustment under subsections (e) and  
31 (f) of this section, the commission shall provide in an order the rationale  
32 for determining that rates under subsection (b) of this section may not be  
33 just and reasonable and the rationale for determining that the rates adjusted  
34 in the order of the commission are just and reasonable and in the public  
35 interest. The commission shall make its findings based on substantial  
36 evidence.

1 (h) An electric cooperative corporation established under the Electric  
2 Cooperative Corporation Act, § 23-18-301 et seq., is not subject to this  
3 section.

4 (i) Effective March 27, 2015, the cost allocation provisions of this  
5 section shall apply to any pending application for a change in general rates  
6 and charges.

7  
8 SECTION 2. Arkansas Code § 23-4-1205(c)(3), concerning the procedure  
9 for a rate change under the Formula Rate Review Act, is amended to read as  
10 follows:

11 (3)(A) The rates that are approved in the application for a  
12 general change in rates and charges shall remain in effect during the formula  
13 rate review term under § 23-4-1208, subject to the rate adjustments under  
14 this subchapter.

15 (B) As part of an extension of the initial five-year term  
16 of a formula rate review under § 23-4-1207(d) and § 23-4-1208(a)(3), for an  
17 electric utility if the electric utility's class of customers with the  
18 highest level of consumption per customer that has rates that include a  
19 demand component, any successors to such a class, as they existed on January  
20 1, 2021, has an annual usage for the class as a whole in excess of seven  
21 million megawatt hours (7,000,000 MWh), the commission shall approve changes  
22 to the rate design within an individual customer class consistent with § 23-  
23 4-422(b)(1).

24  
25 SECTION 3. Arkansas Code § 23-4-1206 is amended to read as follows:

26 23-4-1206. Formula rate review – Required information.

27 (a) A formula rate review mechanism approved by the Arkansas Public  
28 Service Commission shall specify the minimum information required with each  
29 annual rate review filing.

30 (b) Annual formula rate review filings under an approved formula rate  
31 review mechanism shall be developed using the formula rate review test period  
32 designated by the public utility under § 23-4-1205(a)(2).

33 (c)(1) Annual formula rate review filings shall be prepared consistent  
34 with the ~~commission's~~ Arkansas Public Service Commission's order on the  
35 public utility's application for a general change in rates and charges.

36 (2) In the case of a formula rate review test period that uses a

1 test period based on a projected year, an electing public utility may  
 2 support, in its discretion, any portion of that projected data through the  
 3 use of information that relies on historical averages.

4 (d) Any costs disallowed by the ~~commission~~ Arkansas Public Service  
 5 Commission in its order on the public utility's application for a general  
 6 change in rates and charges shall not be eligible for recovery under a  
 7 formula rate review mechanism.

8 (e)(1) If a formula rate review test period utilizes projected data  
 9 under § 23-4-406 or a projected year, rate changes under § 23-4-1207 shall  
 10 include an adjustment to net any differences between the prior formula rate  
 11 review test period change in revenue and the actual historical year change in  
 12 revenue for that same year.

13 (2) A public utility shall report any differences between the  
 14 prior formula rate review test period change in revenue and the historical  
 15 year change in revenue for the same year.

16 (3) Netting shall not begin until a public utility has  
 17 accumulated a full twelve (12) months of a historical year to prepare a  
 18 report.

19 (4)(A) When calculating the adjustment to net any differences  
 20 under subdivision (e)(1) of this section, the Arkansas Public Service  
 21 Commission shall include the actual historical year change in revenue for a  
 22 historical year, which shall be determined as follows:

23 (i) For the purpose of including all of the elements  
 24 of the change of revenue in calculating an adjustment to net any differences  
 25 under subdivision (e)(1) of this section, the Arkansas Public Service  
 26 Commission shall ensure that the revenue received for the historical year  
 27 shall be composed of:

28 (a) Prior formula rate review test period  
 29 changes in revenue;

30 (b) Netting revenue from a prior formula rate  
 31 review test period; and

32 (c) In order to isolate the change in revenue  
 33 for the corresponding prior projected year being netted, prior projected year  
 34 revenue for the year being netted; and

35 (ii) The Arkansas Public Service Commission shall  
 36 calculate an adjustment to net any differences under subdivision (e)(1) of

1 this section by calculating the differences between the prior formula rate  
2 review test period changes in revenue and the prior projected year revenue  
3 for the year being netted.

4 (B) If the prior formula rate review test period change in  
5 revenue being netted was limited by § 23-4-1207(d)(2), the Arkansas Public  
6 Service Commission shall ensure that the revenue recovered shall be either:

7 (i) Applied first to any revenue amounts remaining  
8 from the prior approved formula rate review test periods specified in  
9 subdivision (e)(4)(A) of this section, second to the netting adjustment  
10 specified in subdivision (e)(4)(A) of this section, and last to the prior  
11 projected year revenue for the year being netted specified in subdivision  
12 (e)(4)(A) of this section; or

13 (ii) Proportioned by:

14 (a) Calculating the sum of:

15 (1) The revenue adjustment amount  
16 determined under § 23-4-1207(b); and

17 (2) The netting adjustment determined  
18 under subdivision (e)(2) of this section and this subdivision (e)(4);

19 (b) Calculating the percentage of the sum  
20 represented by:

21 (1) The revenue adjustment amount  
22 determined under § 23-4-1207(b); and

23 (2) The netting adjustment determined  
24 under subdivision (e)(2) of this section and this subdivision (e)(4); and

25 (c) Applying the percentages calculated in  
26 subdivision (e)(4)(B)(ii)(b) of this section to the actual historical year  
27 change in revenue for that same year.

28 (C)(i) For the initial term of a formula rate review  
29 mechanism approved and in effect on or before March 15, 2021, for an electric  
30 utility if the electric utility's class of customers with the highest level  
31 of consumption per customer that has rates that include a demand component,  
32 and any successors to such a class, as they existed on January 1, 2021, has  
33 an annual usage for the class as a whole in excess of seven million megawatt  
34 hours (7,000,000 MWh), a public utility may choose to apply either  
35 subdivision (e)(4)(B)(i) or subdivision (e)(4)(B)(ii) of this section for the  
36 term of an approved formula rate review approved under § 23-4-1208(a)(1).



1                   (ii) The Arkansas Public Service Commission shall  
2 authorize the public utility to use the chosen methodology.

3                   (iii) Except as provided in subdivisions (e)(4)(D)  
4 and (E) of this section, the authorized methodology shall remain in effect.

5                   (D) During the final year of the initial five-year term of  
6 any formula rate review mechanism approved and in effect before March 15,  
7 2021, for an electric utility if the electric utility's class of customers  
8 with the highest level of consumption per customer that has rates that  
9 include a demand component, and any successors to such a class, as they  
10 existed on January 1, 2021, has an annual usage for the class as a whole in  
11 excess of seven million megawatt hours (7,000,000 MWh), that uses a test  
12 period based upon a projected year, the public utility shall follow  
13 subdivision (e)(4)(B)(ii) of this section.

14                   (E)(i) During any five-year extension term of a formula  
15 rate review mechanism that uses a test period based upon a projected year,  
16 for an electric utility if the electric utility's class of customers with the  
17 highest level of consumption per customer that has rates that include a  
18 demand component, and any successors to such a class, as they existed on  
19 January 1, 2021, has an annual usage for the class as a whole in excess of  
20 seven million megawatt hours (7,000,000 MWh), the public utility shall  
21 propose, and the Arkansas Public Service Commission shall authorize, a public  
22 utility to follow subdivision (e)(4)(B)(ii) of this section for the five-year  
23 extension of the term of the formula rate review mechanism.

24                   (ii) For any formula rate review mechanism that uses  
25 a test period based upon a projected year and has an initial term that  
26 commences after January 1, 2021, for an electric utility if the electric  
27 utility's class of customers with the highest level of consumption per  
28 customer that has rates that include a demand component, and any successors  
29 to such a class, as they existed on January 1, 2021, has an annual usage for  
30 the class as a whole in excess of seven million megawatt hours (7,000,000  
31 MWh), the public utility shall follow subdivision (e)(4)(B)(ii) of this  
32 section for the initial five-year term of the formula rate review mechanism.

33                   (f) The public utility shall submit documentation fully supporting all  
34 calculations and adjustments as required by the rules of the ~~commission~~  
35 Arkansas Public Service Commission.

36                   (g)(1) A Except as provided in subdivision (g)(2) of this section and

1 § 23-4-1208(a)(4) and (5), a public utility or any other party to the  
2 proceeding subject to the ~~commission's~~ Arkansas Public Service Commission's  
3 rules and procedures may propose additional adjustments that are based on  
4 factors unique to the public utility.

5 (2) The Arkansas Public Service Commission shall not approve any  
6 adjustments or changes to the formula rate review filings that are  
7 inconsistent with the findings in the Arkansas Public Service Commission's  
8 order on the public utility's application for a general change in rates or  
9 charges, including:

10 (A) The rates that are approved in the application for a  
11 general change in rates and charges remain in effect during the formula rate  
12 review term consistent with § 23-4-1205(c)(3)(B); and

13 (B) The Arkansas Public Service Commission shall not  
14 approve any adjustments or changes to the formula rate review filings that  
15 are inconsistent with the findings in the Arkansas Public Service  
16 Commission's order on the public utility's application for a general change  
17 in rates or charges, including:

18 (i) A review of all of the components of a public  
19 utility's books and records, including the balance sheet and income statement  
20 accounts as were included in the findings in the Arkansas Public Service  
21 Commission's order on the public utility's application for a general change  
22 in rates or charges, and shall continue to treat those items in a manner  
23 consistent with the findings in the Arkansas Public Service Commission's  
24 order on the public utility's most recent application for a general change in  
25 rates or charges; and

26 (ii) The public utility has designated the public  
27 utility's formula rate review test period as based on a projected year under  
28 § 23-4-1205(a)(2) shall be allowed to recover its allowance for funds used  
29 during construction and is determined according to the uniform system of  
30 accounts adopted by the Arkansas Public Service Commission, and any  
31 applicable accounting guidance issued by the Federal Energy Regulatory  
32 Commission, and conforms with generally accepted accounting principles,  
33 through rates.

34  
35 SECTION 4. Arkansas Code § 23-4-1207(d), concerning the formula for  
36 adjustments under the Formula Rate Review Act, is amended to read as follows:

1 (d)(1)(A) The total change in the formula rate review mechanism  
2 revenue level shall be allocated to each applicable rate schedule based on an  
3 equal percentage of the base rate revenue used in the development of rates in  
4 the Arkansas Public Service Commission's order addressing the public  
5 utility's last application for a general change in rates and charges.

6 (B) As part of an extension of the five-year term of a  
7 formula rate review under § 23-4-1208(a)(3), for an electric utility if the  
8 electric utility's class of customers with the highest level of consumption  
9 per customer that has rates that include a demand component, and any  
10 successors to such a class, as they existed on January 1, 2021, has an annual  
11 usage for the class as a whole in excess of seven million megawatt hours  
12 (7,000,000 MWh), the commission shall adjust the cost allocation, with  
13 respect to the total change in the formula rate review mechanism revenue  
14 level under subdivision (d)(1)(A) of this section, to each applicable rate  
15 schedule consistent with § 23-4-422 and using the public utility's most  
16 recent cost of service that was submitted under the terms of the public  
17 utility's formula rate review mechanism.

18 (C) The public utility shall file the resulting rate  
19 schedules as part of any formula rate review compliance filing.

20 (2) The total amount of a revenue increase or decrease for each  
21 rate class shall not exceed four percent (4%) of each rate class's total  
22 revenue for the twelve (12) calendar months preceding the formula rate review  
23 test period.

24  
25 SECTION 5. Arkansas Code § 23-4-1208 is amended to read as follows:  
26 23-4-1208. Term – Formula rate review.

27 (a)(1) The term of any formula rate review approved by the Arkansas  
28 Public Service Commission shall not exceed five (5) years from the date of  
29 the commission's final order on the application by the public utility for a  
30 general change in rates and charges.

31 (2)(A)(i) Upon a determination that it is in the public  
32 interest, a public utility may request and the commission may extend the term  
33 of the formula rate review mechanism by a period of no more than five (5)  
34 years beyond the initial five-year term.

35 (ii) For an electric utility if the electric  
36 utility's class of customers with the highest level of consumption per

1 customer that has rates that include a demand component, and any successors  
2 to such a class, as they existed on January 1, 2021, has an annual usage for  
3 the class as a whole in excess of seven million megawatt hours (7,000,000  
4 MWh), and electric utility may request, and the commission shall approve, an  
5 extension of the term of the formula rate review mechanism by a period of  
6 five (5) years beyond the initial five-year term.

7 (B) As part of any extension of the five-year term of a  
8 formula rate review, for an electric utility if the electric utility's class  
9 of customers with the highest level of consumption per customer that has  
10 rates that include a demand component, and any successors to such a class, as  
11 they existed on January 1, 2021, has an annual usage for the class as a whole  
12 in excess of seven million megawatt hours (7,000,000 MWh), the commission  
13 shall adjust the cost allocation of any adjustment with respect to the total  
14 change in the formula rate review mechanism revenue level under § 23-4-  
15 1207(d) to each applicable rate schedule consistent with § 23-4-422 using the  
16 public utility's most recent cost of service that was submitted under the  
17 terms of the public utility's formula rate review mechanism, and the public  
18 utility shall file with the commission the resulting rate schedules as part  
19 of any formula rate review compliance filing.

20 (C) As part of any extension of the initial five-year term  
21 of a formula rate review mechanism, for an electric utility if the electric  
22 utility's class of customers with the highest level of consumption per  
23 customer that has rates that include a demand component, and any successors  
24 to such a class, as they existed on January 1, 2021, has an annual usage for  
25 the class as a whole in excess of seven million megawatt hours (7,000,000  
26 MWh), the commission shall approve changes to the rate design within an  
27 individual customer class under § 23-4-1205(c)(3)(B) and subject to § 23-4-  
28 422(b)(1) using the public utility's most recent cost of service that was  
29 submitted under the terms of the public utility formula rate review  
30 mechanism, and the public utility shall file with the commission the  
31 resulting rate schedules as part of any formula rate review compliance  
32 filing.

33 (3) During the five-year term of an extension of any formula  
34 rate review mechanism with an initial five-year term approved before March  
35 15, 2021, for an electric utility if the electric utility's class of  
36 customers with the highest level of consumption per customer that has rates

1 that include a demand component, and any successors to such a class, as they  
2 existed on January 1, 2021, has an annual usage for the class as a whole in  
3 excess of seven million megawatt hours (7,000,000 MWh):

4 (A)(i) If the commission as part of its order in the  
5 public utility's most recent application for a general change in rates and  
6 charges under § 23-4-401 et seq. adjusted the cost allocation to each  
7 applicable rate schedule under the then-applicable provisions of § 23-4-422,  
8 then the commission shall:

9 (a) Use a public utility's most recent cost of  
10 service that was submitted under the terms of the public utility's formula  
11 rate review mechanism;

12 (b) Adjust the revenues recoverable from each  
13 class of customers to implement the unadjusted cost allocation in an equal  
14 annual adjustment over the five-year term of an extension; and

15 (c) This subdivision (a)(3)(A) shall be used  
16 to adjust the amounts under § 23-4-1207(d)(1).

17 (ii) The commission shall not make any other  
18 adjustments to the amounts under § 23-4-1207(d);

19 (B) For a public utility's class of customers with the  
20 highest level of consumption per customer that has rates with a demand  
21 component, any decrease in the costs allocated to that class of customers  
22 under subdivision (a)(3)(A) of this section shall serve to lower the maximum  
23 amount of the revenue increase for that class under § 23-4-1207(d)(2);

24 (C) For a public utility's classes of customers other than  
25 the class of customers with the highest level of consumption per customer  
26 that has rates with a demand component, any increase in the costs allocated  
27 to those classes of customers as well as any amounts that lower the maximum  
28 revenue increase for any class of customers under subdivision (a)(3)(B) of  
29 this section shall be included in the adjustment of customer rates for those  
30 classes of customers subject to § 23-4-1207(d)(2);

31 (D) For a public utility's nonresidential classes of  
32 customers that have rates with a demand component other than the class of  
33 customers with the highest level of consumption per customer that has rates  
34 with a demand component, the public utility shall establish a maximum level  
35 of consumption or demand to be eligible for service as part of those classes  
36 that is lower than the minimum level of consumption or demand to be eligible

1 for the class of customers with the highest level of consumption per customer  
2 that has rates with a demand component; and

3 (E) If the commission as part of its order in the public  
4 utility's most recent application for a general change in rates and charges  
5 under § 23-4-401 et seq. adjusted the rate design for the class of customers  
6 with the highest level of consumption per customer that has rates with a  
7 demand component under the then-applicable provisions of § 23-4-422, then:

8 (i) The commission shall approve changes to the rate  
9 design within an individual customer class under § 23-4-1205(c)(3)(B) subject  
10 to § 23-4-422(b)(1) using the utility's most recent cost of service that was  
11 submitted under the terms of its formula rate review mechanism;

12 (ii) The commission shall modify the rate design  
13 changes required under § 23-4-422(b)(1), § 23-4-1205(c)(3)(B), and this  
14 subdivision (a)(3), as described in this subdivision (a)(3)(E); and

15 (iii) The commission shall adjust the rate design to  
16 the class of customers with the highest level of consumption per customer,  
17 which has rates with a demand component in an equal annual adjustment over  
18 the first three (3) years of the five-year term of an extension, and the  
19 public utility shall file the resulting rate schedules annually as part of  
20 any formula rate review compliance filing until the adjustment in this  
21 subdivision (a)(3)(E)(iii) is fully implemented.

22 (4) During the five-year term of an extension, for an electric  
23 public utility with a formula rate review mechanism that uses a test period  
24 based on a projected year with an initial five-year term and that was  
25 approved and in effect by the commission before March 15, 2021, for an  
26 electric utility if the electric utility's class of customers with the  
27 highest level of consumption per customer that has rates that include a  
28 demand component, and any successors to such a class, as they existed on  
29 January 1, 2021, has an annual usage for the class as a whole in excess of  
30 seven million megawatt hours (7,000,000 MWh):

31 (A) The debt-to-equity ratio, for the purpose of setting  
32 rates, shall be fixed at a public utility's actual debt-to-equity ratio  
33 reflected in the commission order issued on December 11, 2020, addressing the  
34 annual formula rate review filing during the final year of the initial five-  
35 year term;

36 (B) If the commission imputes a level of short-term debt

1 for ratemaking purposes, the amount, stated as a percentage, shall not exceed  
2 the amount included in the capital structure reflected in the commission  
3 order issued on December 11, 2020, addressing the annual formula rate review  
4 filing during the final year of the initial five-year term;

5 (C) The target rate of return in effect during the initial  
6 five-year term of the formula rate review mechanism shall continue to be in  
7 effect for the five-year term of an extension;

8 (D) All other capital structure components, for the  
9 purpose of setting rates as well as all other components of a public  
10 utility's books and records, including the balance sheet and income statement  
11 accounts, shall be determined consistent with § 23-4-1206(g); and

12 (E) If the commission imputes any amount for any  
13 liabilities that are reflected in the capital structure for ratemaking  
14 purposes, it shall not include any amount stated as a percentage that exceeds  
15 the amount stated as a percentage included in the capital structure reflected  
16 in the commission order issued on December 11, 2020, addressing the annual  
17 formula rate review filing during the final year of the initial five-year  
18 term.

19 (5) During the five-year term of an extension, for an electric  
20 public utility with a formula rate review mechanism that uses a test period  
21 based on a projected year with an initial five-year term and that was  
22 approved and in effect by the commission before March 15, 2021, for an  
23 electric utility if the electric utility's class of customers with the  
24 highest level of consumption per customer that has rates that include a  
25 demand component, and any successors to such a class, as they existed on  
26 January 1, 2021, has an annual usage for the class as a whole in excess of  
27 seven million megawatt hours (7,000,000 MWh), to the extent practicable, the  
28 public utility shall do the following with respect to providing support for  
29 its annual formula rate review evaluation reports during the five-year term  
30 of the extension:

31 (A)(i) The public utility shall support the purpose for  
32 and level of its projected year investments or expenses with those  
33 projections based primarily upon historical averages and making specific  
34 adjustments to those amounts instead of basing those projections primarily on  
35 the public utility's corporate budget.

36 (ii) The public utility shall use its four-year

1 average historical plant balances for enumerated blanket funding projects  
2 associated with capital investment that are mandated by law or regulation,  
3 customer-driven, or necessary to maintain the reliability of the electric  
4 grid as the baseline for the investments going forward, and to complete this,  
5 the public utility may categorize investments according to the public  
6 utility's primary objective, including mandated work, preapproved projects,  
7 storm work, and reliability work instead of using the public utility's  
8 corporate budget to determine the amount included in the projected year.

9 (iii) For any projects that fall outside the  
10 recurring enumerated categories that are based on the historical averaging,  
11 the public utility shall separately identify, to the extent practicable, each  
12 project and support the project as a specific adjustment to the projected  
13 year amounts, similar to the presentation of an adjustment made during an  
14 application for a general change or modification in rates and charges, and to  
15 complete this, the public utility may determine that projects should be  
16 grouped together when the projects contain a combination of proposed  
17 investments associated with both baseline reliability and load stability  
18 projects, such as pole line and circuit inspection programs, and other  
19 reliability efforts that the public utility plans to undertake in the  
20 projected year;

21 (B) The public utility shall use the four-year historical  
22 averages described in subdivision (a)(5)(A)(ii) of this section, except that:

23 (i) The public utility shall adjust the historical  
24 averages upward or downward for specific capital projects and anticipated  
25 cost increases or decreases that the utility reasonably expects are likely to  
26 occur within the projected year and for which the utility provides additional  
27 support consistent with other filing support thresholds that the commission  
28 applied to the utility's formula rate review mechanism during its initial  
29 five-year term; and

30 (ii) Expenses related to capital investments that  
31 the utility has already explained shall not require separate support,  
32 including depreciation and property taxes;

33 (C)(i) The support for the projected year, described in  
34 subdivisions (a)(5)(A) and (B) of this section, shall be applied to the  
35 transmission and generation functional areas to the extent deemed practicable  
36 by the public utility.



1                   (ii) If not practicable, the public utility shall  
2 use reasonable efforts to establish a similar framework to present capital  
3 investment;

4                   (D) The public utility shall use reasonable efforts to  
5 develop a similar methodology as described in subdivision (a)(4) of this  
6 section and this subdivision (a)(5) for projected year expenses; and

7                   (E) Not less than forty-five (45) days before the public  
8 utility's annual evaluation report filing:

9                   (i) The public utility shall make available to the  
10 other eligible parties in the formula rate review proceeding information  
11 regarding the public utility's construction projects and purchases that  
12 closed to plant during the historical year; and

13                   (ii) To the extent reasonably practicable, the  
14 public utility shall provide an overview of its planned distribution projects  
15 describing the public utility's projected year planned distribution  
16 unadjusted investment and expenses.

17                   (6) Subdivisions (a)(4) and (5) of this section are subject to  
18 the applicable accounting and tax requirements, including the normalization  
19 rules of the Internal Revenue Service as in effect on January 1, 2021, and  
20 generally acceptable accounting principles.

21                   ~~(3)(7)~~ The rate review mechanism shall continue until all  
22 historical years have been netted under § 23-4-1206(e)(1) and rates have been  
23 adjusted under § 23-4-1207(c).

24                   (b)(1) A formula rate review shall continue until a final order is  
25 issued on an application for a general change in rates and charges filed by a  
26 public utility or an application for a change in general rates and charges  
27 filed by the public utility as ordered by the commission. The rate review  
28 mechanism shall continue until all historical years have been netted under §  
29 23-4-1206(e)(1) and rates have been adjusted under § 23-4-1207(c).

30                   (2)(A) A public utility may file an application for a change in  
31 rates and charges under § 23-4-401 et seq. at any time during a five-year  
32 extension of the term of a formula rate review mechanism.

33                   (B) If the public utility does not file an application for  
34 a change in general rates and charges under § 23-4-401 et seq. under  
35 subdivision (b)(2)(A) of this section before the final year of a five-year  
36 extension term, the public utility shall do so during the final year of the

1 five-year extension of the term of a formula rate review mechanism.

2 (3) In any application for a change in general rates and charges  
3 filed during or at the conclusion of the initial five-year term or any five-  
4 year extension of the term of a formula rate review mechanism that uses a  
5 test period based upon a projected year:

6 (A) A public utility's prior designation of a formula rate  
7 review test period based upon a projected year under § 23-4-1205(a)(2) shall  
8 not affect the public utility's right to designate a test period to justify  
9 new rates under § 23-4-406;

10 (B) A public utility's formula rate review test period  
11 based upon a projected year under § 23-4-1205(a)(2) may include, at the  
12 public utility's discretion, all or part of the same historical periods or  
13 projected periods as those included in a test period to justify new rates  
14 under § 23-4-406; and

15 (C) An application described in this subdivision (b)(3)  
16 shall not limit subdivision (b)(1) of this section.

17  
18 SECTION 6. DO NOT CODIFY. Retroactivity. This act applies to any  
19 formula rate review approved and in effect under § 23-4-1208 on or before  
20 March 15, 2021.

21  
22 SECTION 7. DO NOT CODIFY. Applicability. This act applies to any  
23 formula rate review approved and in effect under § 23-4-1208 on or before  
24 March 15, 2021.

25  
26 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the  
27 General Assembly of the State of Arkansas that investments by public  
28 utilities that provide utility service in Arkansas are required to provide  
29 reliable service at reasonable rates, but the costs that drive public utility  
30 rates are changing; that public utilities need to have procedures that permit  
31 the rates to change in response to those changing conditions that affect  
32 costs and address the allocation of costs and design of rates; and that this  
33 act is immediately necessary to maintain stable rates and to mitigate the  
34 magnitude of future rate changes by public utilities by clarification of the  
35 regulatory framework to ease the investment procedure for public utilities.  
36 Therefore, an emergency is declared to exist, and this act being immediately

1 necessary for the preservation of the public peace, health, and safety shall  
2 become effective on:

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

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

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

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