

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

*As Engrossed: S3/9/21*

# A Bill

SENATE BILL 489

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

14 TO AMEND THE FORMULA RATE REVIEW ACT; AND  
15 TO DECLARE AN EMERGENCY.  
16  
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 § 23-4-1205(c)(3)(B), § 23-4-1207(d),  
36 and § 23-4-1208(a)(2)(B) and (C).

1           (2) For an electric utility whose class of customers with the  
2 highest level of consumption per customer that has rates that include a  
3 demand component, and any successors to such a class, as they existed on  
4 January 1, 2021, has an annual usage for the class as a whole in excess of  
5 seven million megawatt hours (7,000,000 MWh), and if the electric utility has  
6 a formula rate review approved and in effect under § 23-4-1208(a)(1) on or  
7 before March 15, 2021:

8           (A) The commission shall determine rates and charges for  
9 utility services in accord with § 23-4-422(b)(1) and (2) without regard to  
10 any findings described in § 23-4-422; and

11           (B) The commission shall not adjust the rates under  
12 subsection (e) or subsection (f) of this section, except as provided in § 23-  
13 4-1207(d) and § 23-4-1208(a)(2)(B) and (C).

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

18           (1) It is in the public interest;

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

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

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

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

1 evidence.

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

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

8

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

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

16 (B) As part of an extension of the initial five-year term  
17 of a formula rate review under § 23-4-1207(d) and § 23-4-1208(a)(3), for an  
18 electric utility if the electric utility's class of customers with the  
19 highest level of consumption per customer that has rates that include a  
20 demand component, any successors to such a class, as they existed on January  
21 1, 2021, has an annual usage for the class as a whole in excess of seven  
22 million megawatt hours (7,000,000 MWh), the commission shall approve changes  
23 to the rate design within an individual customer class consistent with § 23-  
24 4-422(b)(1).

25

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

27 23-4-1206. Formula rate review – Required information.

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

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

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

1           (2) In the case of a formula rate review test period that uses a  
2 test period based on a projected year, an electing public utility may  
3 support, in its discretion, any portion of that projected data through the  
4 use of information that relies on historical averages.

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

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

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

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

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

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

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

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

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

36                                   (ii) The Arkansas Public Service Commission shall

1 calculate an adjustment to net any differences under subdivision (e)(1) of  
2 this section by calculating the differences between the prior formula rate  
3 review test period changes in revenue and the prior projected year revenue  
4 for the year being netted.

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

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

14 (ii) Proportioned by:

15 (a) Calculating the sum of:

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

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

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

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

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

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

29 (C)(i) For the initial term of a formula rate review  
30 mechanism approved and in effect on or before March 15, 2021, a public  
31 utility may choose to apply either subdivision (e)(4)(B)(i) or subdivision  
32 (e)(4)(B)(ii) of this section for the term of an approved formula rate review  
33 approved under § 23-4-1208(a)(1).

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

36 (iii) Except as provided in subdivisions (e)(4)(D)



1 and (E) of this section, the authorized methodology shall remain in effect.

2 (D) During the final year of the initial five-year term of  
3 any formula rate review mechanism approved and in effect before March 15,  
4 2021, that uses a test period based upon a projected year, the public utility  
5 shall follow subdivision (e)(4)(B)(ii) of this section.

6 (E)(i) During any five-year extension term of a formula  
7 rate review mechanism that uses a test period based upon a projected year,  
8 the public utility shall propose, and the Arkansas Public Service Commission  
9 shall authorize, a public utility to follow subdivision (e)(4)(B)(ii) of this  
10 section for the five-year extension of the term of the formula rate review  
11 mechanism.

12 (ii) For any formula rate review mechanism that uses  
13 a test period based upon a projected year and has an initial term that  
14 commences after January 1, 2021, the public utility shall follow subdivision  
15 (e)(4)(B)(ii) of this section for the initial five-year term of the formula  
16 rate review mechanism.

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

20 (g)(1) A Except as provided in subdivision (g)(2) of this section and  
21 § 23-4-1208(a)(4) and (5), a public utility or any other party to the  
22 proceeding subject to the ~~commission's~~ Arkansas Public Service Commission's  
23 rules and procedures may propose additional adjustments that are based on  
24 factors unique to the public utility.

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

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

33 (B) The Arkansas Public Service Commission shall not  
34 approve any adjustments or changes to the formula rate review filings that  
35 are inconsistent with the findings in the Arkansas Public Service  
36 Commission's order on the public utility's application for a general change

1 in rates or charges, including:

2 (i) A review of all of the components of a public  
3 utility's books and records, including the balance sheet and income statement  
4 accounts as were included in the findings in the Arkansas Public Service  
5 Commission's order on the public utility's application for a general change  
6 in rates or charges, and shall continue to treat those items in a manner  
7 consistent with the findings in the Arkansas Public Service Commission's  
8 order on the public utility's most recent application for a general change in  
9 rates or charges; and

10 (ii) The public utility has designated the public  
11 utility's formula rate review test period as based on a projected year under  
12 § 23-4-1205(a)(2) shall be allowed to recover its allowance for funds used  
13 during construction and is determined according to the uniform system of  
14 accounts adopted by the Arkansas Public Service Commission, and any  
15 applicable accounting guidance issued by the Federal Energy Regulatory  
16 Commission, and conforms with generally accepted accounting principles,  
17 through rates.

18  
19 SECTION 4. Arkansas Code § 23-4-1207(d), concerning the formula for  
20 adjustments under the Formula Rate Review Act, is amended to read as follows:

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

26 (B) As part of an extension of the five-year term of a  
27 formula rate review under § 23-4-1208(a)(3), for an electric utility if the  
28 electric utility's class of customers with the highest level of consumption  
29 per customer that has rates that include a demand component, and any  
30 successors to such a class, as they existed on January 1, 2021, has an annual  
31 usage for the class as a whole in excess of seven million megawatt hours  
32 (7,000,000 MWh), the commission shall adjust the cost allocation, with  
33 respect to the total change in the formula rate review mechanism revenue  
34 level under subdivision (d)(1)(A) of this section, to each applicable rate  
35 schedule consistent with § 23-4-422(b)(2) and § 23-4-422(d)(2) and using the  
36 public utility's most recent cost of service that was submitted under the

1 terms of the public utility's formula rate review mechanism.

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

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

8  
9 SECTION 5. Arkansas Code § 23-4-1208 is amended to read as follows:  
10 23-4-1208. Term – Formula rate review.

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

15 (2)(A)(i) Upon a determination that it is in the public  
16 interest, a public utility may request and the commission may extend the term  
17 of the formula rate review mechanism by a period of no more than five (5)  
18 years beyond the initial term.

19 (ii) For an electric utility if the electric  
20 utility's class of customers with the highest level of consumption per  
21 customer that has rates that include a demand component, and any successors  
22 to such a class, as they existed on January 1, 2021, has an annual usage for  
23 the class as a whole in excess of seven million megawatt hours (7,000,000  
24 MWh):

25 (a) An electric utility may request, and the  
26 commission shall approve, an extension of the term of the formula rate review  
27 mechanism by a period of five (5) years beyond the initial five-year term,  
28 provided the request is made on or before March 15, 2021; and

29 (b) Any requests for an extension of the  
30 initial term of a formula rate plan mechanism made after March 15, 2021,  
31 shall be subject to subdivision (a)(2)(A)(i) of this section.

32 (B) As part of any extension of the initial term of a  
33 formula rate review, for an electric utility if the electric utility's class  
34 of customers with the highest level of consumption per customer that has  
35 rates that include a demand component, and any successors to such a class, as  
36 they existed on January 1, 2021, has an annual usage for the class as a whole

1 in excess of seven million megawatt hours (7,000,000 MWh), the commission  
2 shall adjust the cost allocation of any adjustment with respect to the total  
3 change in the formula rate review mechanism revenue level under § 23-4-  
4 1207(d) to each applicable rate schedule consistent with § 23-4-422(b)(2) and  
5 § 23-4-422(d)(2) using the public utility's most recent cost of service that  
6 was submitted under the terms of the public utility's formula rate review  
7 mechanism, and the public utility shall file with the commission the  
8 resulting rate schedules as part of any formula rate review compliance  
9 filing.

10 (C) As part of any extension of the initial term of a  
11 formula rate review mechanism, for an electric utility if the electric  
12 utility's class of customers with the highest level of consumption per  
13 customer that has rates that include a demand component, and any successors  
14 to such a class, as they existed on January 1, 2021, has an annual usage for  
15 the class as a whole in excess of seven million megawatt hours (7,000,000  
16 MWh), the commission shall approve changes to the rate design within an  
17 individual customer class under § 23-4-1205(c)(3)(B) and subject to § 23-4-  
18 422(b)(1) using the public utility's most recent cost of service that was  
19 submitted under the terms of the public utility formula rate review  
20 mechanism, and the public utility shall file with the commission the  
21 resulting rate schedules as part of any formula rate review compliance  
22 filing.

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

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

35 (a) Use a public utility's most recent cost of  
36 service that was submitted under the terms of the public utility's formula

1 rate review mechanism;

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

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

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

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

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

21 (D) For a public utility's nonresidential classes of  
22 customers that have rates with a demand component other than the class of  
23 customers with the highest level of consumption per customer that has rates  
24 with a demand component, the public utility may establish and the commission  
25 shall approve a maximum level of consumption or demand to be eligible for  
26 service as part of those classes that is lower than the minimum level of  
27 consumption or demand to be eligible for the class of customers with the  
28 highest level of consumption per customer that has rates with a demand  
29 component; and

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

35 (i) The commission shall approve changes to the rate  
36 design within an individual customer class under § 23-4-1205(c)(3)(B) subject

1 to § 23-4-422(b)(1) using the utility's most recent cost of service that was  
2 submitted under the terms of its formula rate review mechanism;

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

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

13 (4) During the five-year term of an extension, for an electric  
14 public utility with a formula rate review mechanism that uses a test period  
15 based on a projected year with an initial five-year term and that was  
16 approved and in effect by the commission before March 15, 2021, 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, and any successors to such a class, as they existed on  
20 January 1, 2021, has an annual usage for the class as a whole in excess of  
21 seven million megawatt hours (7,000,000 MWh):

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

27 (B) If the commission imputes a level of short-term debt  
28 for ratemaking purposes, the amount, stated as a percentage, shall not exceed  
29 the amount included in the capital structure reflected in the commission  
30 order issued on December 11, 2020, addressing the annual formula rate review  
31 filing during the final year of the initial five-year term;

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

35 (D) All other capital structure components, for the  
36 purpose of setting rates as well as all other components of a public

1 utility's books and records, including the balance sheet and income statement  
2 accounts, shall be determined consistent with § 23-4-1206(g); and

3 (E) If the commission imputes any amount for any  
4 liabilities that are reflected in the capital structure for ratemaking  
5 purposes, it shall not include any amount stated as a percentage that exceeds  
6 the amount stated as a percentage included in the capital structure reflected  
7 in the commission order issued on December 11, 2020, addressing the annual  
8 formula rate review filing during the final year of the initial five-year  
9 term.

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

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

27 (ii) The public utility shall use its four-year  
28 average historical plant balances for enumerated blanket funding projects  
29 associated with capital investment that are mandated by law or regulation,  
30 customer-driven, or necessary to maintain the reliability of the electric  
31 grid as the baseline for the investments going forward, and to complete this,  
32 the public utility may categorize investments according to the public  
33 utility's primary objective, including mandated work, preapproved projects,  
34 storm work, and reliability work instead of using the public utility's  
35 corporate budget to determine the amount included in the projected year.

36 (iii) For any projects that fall outside the

1 recurring enumerated categories that are based on the historical averaging,  
2 the public utility shall separately identify, to the extent practicable, each  
3 project and support the project as a specific adjustment to the projected  
4 year amounts, similar to the presentation of an adjustment made during an  
5 application for a general change or modification in rates and charges, and to  
6 complete this, the public utility may determine that projects should be  
7 grouped together when the projects contain a combination of proposed  
8 investments associated with both baseline reliability and load stability  
9 projects, such as pole line and circuit inspection programs, and other  
10 reliability efforts that the public utility plans to undertake in the  
11 projected year;

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

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

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

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

28 (ii) If not practicable, the public utility shall  
29 use reasonable efforts to establish a similar framework to present capital  
30 investment;

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

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

36 (i) The public utility shall make available to the



1 other eligible parties in the formula rate review proceeding information  
2 regarding the public utility's construction projects and purchases that  
3 closed to plant during the historical year; and

4 (ii) To the extent reasonably practicable, the  
5 public utility shall provide an overview of its planned distribution projects  
6 describing the public utility's projected year planned distribution  
7 unadjusted investment and expenses.

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

12 ~~(3)~~(7) The rate review mechanism shall continue until all  
13 historical years have been netted under § 23-4-1206(e)(1) and rates have been  
14 adjusted under § 23-4-1207(c).

15 (b)(1) A formula rate review shall continue until a final order is  
16 issued on an application for a general change in rates and charges filed by a  
17 public utility or an application for a change in general rates and charges  
18 filed by the public utility as ordered by the commission. The rate review  
19 mechanism shall continue until all historical years have been netted under §  
20 23-4-1206(e)(1) and rates have been adjusted under § 23-4-1207(c).

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

24 (B) If the public utility does not file an application for  
25 a change in general rates and charges under § 23-4-401 et seq. under  
26 subdivision (b)(2)(A) of this section before the final year of an extension  
27 term, the public utility shall do so during the final year of the extension  
28 of the term of a formula rate review mechanism.

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

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

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

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

8  
9           SECTION 6. DO NOT CODIFY. Retroactivity. This act applies to any  
10 formula rate review approved and in effect under the Formula Rate Review Act,  
11 § 23-4-1201 et seq., on or before March 15, 2021.

12  
13           SECTION 7. DO NOT CODIFY. Applicability. This act applies to any  
14 formula rate review approved and in effect under the Formula Rate Review Act,  
15 § 23-4-1201 et seq., on or before March 15, 2021.

16  
17           SECTION 8. EMERGENCY CLAUSE. It is found and determined by the  
18 General Assembly of the State of Arkansas that investments by public  
19 utilities that provide utility service in Arkansas are required to provide  
20 reliable service at reasonable rates, but the costs that drive public utility  
21 rates are changing; that public utilities need to have procedures that permit  
22 the rates to change in response to those changing conditions that affect  
23 costs and address the allocation of costs and design of rates; and that this  
24 act is immediately necessary to maintain stable rates and to mitigate the  
25 magnitude of future rate changes by public utilities by clarification of the  
26 regulatory framework to ease the investment procedure for public utilities.  
27 Therefore, an emergency is declared to exist, and this act being immediately  
28 necessary for the preservation of the public peace, health, and safety shall  
29 become effective on:

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

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

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

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*/s/B. Davis*