

Hall of the House of Representatives
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of House Bill No. 1337

"TO AMEND VARIOUS SECTIONS OF THE ELECTRIC CONSUMER CHOICE ACT OF
1999."

Amendment No. 3 to House Bill No. 1337.

Amend House Bill No. 1337 as originally introduced:

Page 14, delete Section 16 and substitute the following:

"SECTION 16. Arkansas Code 23-19-301 is amended to read as follows:

~~23-19-301. Utility election for stranded cost recovery and recovery of nuclear decommissioning costs Recovery of stranded costs prohibited.~~

~~(a) No later than December 31, 1999, any electric utility that intends to seek recovery of stranded costs shall file notice of such intent with the Arkansas Public Service Commission. Any electric utility that does not file its election by that date shall not be eligible for such recovery. Such election shall be at the sole discretion of the electric utility. Following receipt of such notice, the commission shall, at the earliest practicable date, direct the electric utility to file an application setting forth the methods that the utility proposes to determine its stranded costs. In no event shall the commission direct that the electric utility file such application any later than one hundred eighty (180) days following the implementation of retail open access. Commission proceedings on such application shall be pursuant to notice and hearing. No electric utility may hereafter recover stranded costs from its customers.~~

~~(b) An electric utility that does not elect to recover stranded costs under this subchapter shall have no claim for stranded costs recovery under this chapter, or otherwise. The Arkansas Code Revision Commission shall determine which provisions of the Arkansas Code should be changed as a result of this section and report suggested changes to the House and Senate Interim Committees on Insurance and Commerce no later than July 1, 2002.~~

~~(c) In its application to the commission, the electing electric utility shall, for all of its generation assets, purchased power, and fuel and fuel transportation costs, identify the methods and procedures which it proposes to use to value its stranded costs and request all necessary commission approvals to implement such methods. The electric utility may propose, without limitation, any of the following methods or any combination thereof:~~

~~(1) Sale of assets. The electing utility may request commission approval of the sale of some or all of its generation assets, including any agreements to sell electricity or any purchased power or fuel and fuel~~

~~transportation agreements related to those assets. The electing electric utility shall propose procedures to ensure a bona fide arms length transaction under a competitive offering. If the electing electric utility proposes to sell only part of an asset, it shall specify one (1) or more of the other methods in this subsection that it proposes to be used to establish the market value of the remaining portion of the asset;~~

~~(2) Stock valuation method.~~

~~(A) The electing electric utility may request commission approval of a procedure whereby the utility transfers generation assets, including any related agreements to purchase fuel, fuel transportation agreements, or agreements to sell electricity or any purchased power contracts, to a separate affiliated or nonaffiliated corporation, and:~~

~~(i) At least nineteen percent (19%) of the common stock of the corporation is divested and listed with a national stock exchange for sale to public investors;~~

~~(ii) The common stock of the transferee corporation has been traded for not less than one hundred eighty (180) days;~~

~~(iii) Ninety five percent (95%) or more of the book value of the transferee corporation's assets consist of generation assets or purchased power obligations transferred from the electric utility and which are includable in the determination of stranded costs allocable to Arkansas ratepayers;~~

~~(iv) The transferee corporation's assets do not include regulatory assets; and~~

~~(v) The assets transferred to the transferee corporation were owned by, or were obligations of, the electric utility on December 31, 1998; then the resulting average daily closing price of the common stock over sixty (60) consecutive trading days chosen by the commission out of the one hundred twenty (120) consecutive trading days before the filing by the electric utility of its application under this section would be used to establish the market value of the common stock equity in the transferee corporation.~~

~~(B) Should the commission determine it to be in the public interest to use the method described in subdivision (c)(2) of this section, the book value of the transferee corporation's debt and preferred stock securities shall be added to the market value of the transferee corporation's common stock equity in determining the market value of its assets. The resulting market value of the assets shall be used to establish the market value of the generation assets transferred by the electric utility to the separate corporation.~~

~~(C)(i) If less than fifty one percent (51%) of the common stock of the transferee corporation described in subdivision (c)(2)(A) of this section is divested and listed with a national stock exchange for sale to public investors, then the commission shall convene a valuation panel of five (5) independent financial experts to recommend whether the common stock held by the public is fairly representative of the total common stock equity or whether a control premium exists for the retained interest. The panel shall recommend the amount of any control premium, which amount shall be presumed to be appropriate unless the commission determines by clear and convincing evidence that the recommended amount is unreasonable. The reasonable costs and expenses of the panel shall be paid by the utility whose assets are being valued. These costs and expenses may not be recoverable from ratepayers by the~~

~~electric utility.~~

~~(ii) The valuation panel must consist of financial experts chosen from proposals submitted in response to commission requests from the top thirty (30) investment banks as measured by the dollar amount of domestic public offerings of long term debt and equity over the immediately preceding three (3) calendar years as ranked by the publications Securities Data or Institutional Investor. An investment bank shall not be eligible to submit a proposal if it has been retained by the electric utility, whose assets are being valued, for purposes of underwriting the transfer of the assets being valued, or if the bank was among the top two (2) primary providers of investment services to the utility during the last two (2) years as measured by the fees paid by the utility and its affiliates for investment services. Two (2) panel members shall be chosen by the utility whose assets are being valued. Two (2) panel members shall be chosen collectively by the commission's general staff and any non utility parties to the proceeding. The four (4) panel members so chosen shall choose the fifth panel member. If the commission's general staff and any non utility parties to the proceeding are unable to agree on two (2) panel members, each non utility party shall be entitled to propose a panel member and the commission shall choose the two (2) panel members.~~

~~(D) Should the commission determine that then current market conditions do not reflect the value of the underlying stock, the commission may extend the one hundred twenty day period described in subdivision (c)(2)(A)(v) of this section to include up to three hundred sixty five (365) days after the filing by the electric utility of its application under this section.~~

~~(E) Any commission order approving a transfer of assets pursuant to subdivision (c)(2) of this section shall determine a floor market value for the assets. The provisions of any other subdivision of (c)(2) of this section to the contrary notwithstanding, should the commission determine it to be in the public interest to use the method described in subdivision (c)(2) of this section, the amount included in calculating any customer transition charge as contemplated by subsection (a) of this section or title 23, chapter 19, subchapter 6, shall be the greater of the floor market value; or the value determined pursuant to subdivision (c)(2)(B) of this section, as adjusted pursuant to subdivisions (c)(2)(C) and (D) of this section, if applicable. However, should the utility show by clear and convincing evidence that the value determined pursuant to subdivision (c)(2)(B) of this section, as adjusted pursuant to subdivisions (c)(2)(C) and (D) of this section, if applicable, accurately reflects the market value of the assets notwithstanding that such value is below the floor market value, then the commission shall use such value in calculating the amount of any customer transition charge as contemplated by subsection (a) of this section or § 23-19-601 et seq.~~

~~(3) Capacity sale.~~

~~(A) The electing electric utility may request commission approval of a proposal to solicit to sell an amount of power equal to at least ten percent (10%) of the electric output of the generating asset or assets being valued under this section, for a period of not less than ten (10) years, in a bona fide arms length transaction under a competitive wholesale offering, so that the price realized from the sale of such wholesale purchased power would be the discounted net present value of the expected revenues resulting from the purchased power sale reduced by all generating costs of the~~

~~generating asset or assets being valued using this method. In this process, the commission shall assure that in this or in any other method chosen, there are credited against stranded costs all SO2 allowances and deferred tax balances. The utility may propose that the price realized from the sale of a portion of the output of a generating facility be imputed to the remaining portion of the facility. Generating costs include all fuel, operating and maintenance expenses, future capital investments required to maintain plant operations to meet regulatory and safety requirements or expenditures that result in a net reduction of stranded costs, and all applicable taxes. The expected output of the generating asset or assets and representative generating costs will be based upon at least three (3) years of recent operating experience at the same plant or plants, adjusted for known and measurable changes. If the expected life of the generating asset or assets is greater than the term of the purchased power sale, then the average of the expected revenues in the final three (3) years of the purchased power sale reduced by the estimated generating costs shall be escalated at the rate of inflation as measured by the Gross Domestic Product Implicit Price Deflator, published by the United States Department of Commerce, or any successor index, as determined by a recognized forecasting service for the remaining years of the plant life.~~

~~(4) The electing electric utility may request commission approval to establish the value of assets, purchased power, fuel, and fuel transportation agreements through other valuation methods not specified in subdivisions (c)(1) through (c)(3) of this section. To the extent reasonable and practical, such other methods must be based on and consistent with publicly available market data of bona fide arms length transactions involving sales of generation assets or long term power sales, or be reasonable projections of such market data. To the extent reasonable and practical, any alternative analysis or forecast shall be based on and consistent with publicly available market based data generally accepted within the industry or be a reasonable projection of market data. In addition to such data, without limitation, the following data may be incorporated in the analyses, to the extent necessary to yield a reasonable market valuation of the assets or agreements being valued using subdivision (c)(4) of this section:—~~

~~(A) Generation plant technical and performance characteristics such as capacity ratings, fuel types, heat rates, and cost characteristics;~~

~~(B) Reasonable forecasts of the supply of, demand for, and price of electricity in relevant regional power markets;~~

~~(C) Reasonable forecasts of the supply of, demand for, and price of fuels used to generate electricity; and~~

~~(D) Reasonable estimates of the cost of constructing, owning, and operating new generation plants. With the consent of the commission, the utility may use one of the other methods specified in this subsection to determine the utility's stranded costs.~~

~~(d) The commission shall review the application submitted by an electing electric utility as directed by the commission pursuant to subsection (a) of this section to determine whether the methods and procedures the utility has proposed to determine its stranded costs comply with the requirements of this chapter and are reasonably structured to ensure that the proposed methods will result in bona fide arms length transactions or estimates, utilizing market data or reasonable projections of market data, of~~

~~the value that would be achieved in bona fide arms length transactions and whether the proposed valuation methods would have an undue impact on the determination of the utility's stranded costs and on the public interest.~~

~~(e)(1) Following its review pursuant to subsection (d) of this section, the commission may approve, disapprove, or modify the utility's proposals. Provided, however, that:~~

~~(A) Such modifications shall not require transactions or estimates other than those specified in subsection (c) of this section; and~~

~~(B) The commission may not approve a transaction proposed by a utility under § 23-19-301(c)(1), (2), or (3) unless the commission first has found that the market in which such transaction is to occur has developed sufficiently to allow a full and accurate determination of the market value of the transaction.~~

~~(2) If the commission approves a sale of assets under subdivision (c)(1) of this section or a capacity sale under subdivision (c)(3) of this section, the commission may approve or modify the proposed procedures to ensure that they result in bona fide arms length transactions.~~

~~(3) If the commission approves transactions pursuant to subdivision (c)(1) of this section or subdivision (c)(3) of this section, the commission may condition its approval on the receipt by the utility of a specified minimum price for the assets or capacity, and any such minimum price shall be consistent with the values indicated by similar market transactions for comparable generating units, the value of capacity and energy from such units as indicated by published indicators of prices for energy commodities or transactions in the energy market, and reasonable estimates of forward looking costs of production and continued ownership of the capacity. The floor price should be set so as to reflect the public interest in encouraging reasonable bids for the capacity or assets being sold.~~

~~(f) In any proceeding under this section, the commission shall, within at least one hundred eighty (180) days after the filing of the utility's application, enter an order on the procedures to implement the proposed transactions. The commission may extend this period up to ninety (90) additional days, for good cause shown.~~

The Amendment was read _____

By: Representative Duggar

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Chief Clerk