

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

Subtitle of House Bill No. 2369

"TO GRANT THE ARKANSAS PUBLIC SERVICE COMMISSION ADDITIONAL
AUTHORITY TO ENSURE THE AVAILABILITY OF ELECTRICITY."

Amendment No. 1 to House Bill No. 2369.

Amend House Bill No. 2369 as originally introduced:

Delete Sections 1 through 4 and substitute the following:

"SECTION 1. Arkansas Code 23-18-101 is amended to read as follows:
23-18-101. Areas of service.

(a) Notwithstanding any provisions of law or the terms of any certificate of convenience and necessity, franchise, permit, license, or other authority granted to a public utility or electric cooperative corporation by the state or a municipality, ~~no public~~ such electric utility or electric cooperative corporation shall furnish, or offer to furnish, electric service at retail and not for resale in any area allocated by the Arkansas Public Service Commission to another electric ~~cooperative corporation or public utility~~, except as provided in subsection (b) or in the Electric Consumer Choice Act of 1999, as now or hereafter amended.

(b) As an interim measure to assist in ensuring an adequate supply of electricity until retail open access is implemented for an electric utility pursuant to the Electric Consumer Choice Act of 1999, as now or hereafter amended:

(1) The Arkansas Public Service Commission may allow an electric utility customer to choose to obtain directly or indirectly all or part of the customer's firm, interruptible or other electric generation service from an alternative supplier or suppliers, including the customer's affiliates and the customer's generation sources at one or more locations.

(2) The commission shall implement this subsection (b) only after notice and hearing and upon terms and conditions that are just, reasonable, non-discriminatory, consistent with the public interest and necessary or advisable to ensure an adequate supply of electric generation capacity. In determining the public interest, the commission shall ensure that neither the reliability nor the rates of other customers or customer classes are adversely affected.

(3) This subsection (b) shall in no way restrict any customer's or class of customers' rights to participate in retail open access pursuant to the Electric Consumer Choice Act of 1999, as now or hereafter amended,

when retail open access is implemented for the electric utility serving the areas in which the customer or customer class is located.

SECTION 2. Arkansas Code 23-3-701 through 23-3-705 are repealed:

~~23-3-701. Legislative determination.~~

~~(a) It is declared to be the policy of this state that while the development of qualifying cogeneration and small power production facilities should be encouraged, electric utilities should not be required to purchase power from the facilities at excessive rates which would result in an increase in the cost of providing electrical service to customers of the electric utility.~~

~~(b) In furtherance of this declared policy, it is recognized that the Arkansas Public Service Commission has adopted cogeneration rules and it shall continue to provide for electric utilities to purchase electric energy or capacity from qualifying facilities at rates which are just and reasonable to the electric consumer of the electric utility, which do not increase the cost of providing electrical service to customers of the electric utility, are in the public interest, which do not discriminate against qualifying facilities, and which do not exceed avoided costs.~~

~~23-3-702. Definitions.~~

~~As used in this subchapter, unless the context otherwise requires:~~

~~(1) "Qualifying facility" means a cogeneration facility or a small power production facility which has obtained qualifying status under the cogeneration rules adopted by the Arkansas Public Service Commission pursuant to the Public Utility Regulatory Policies Act of 1978 and the rules and regulations of the Federal Energy Regulatory Commission promulgated under that act;~~

~~(2) "Commission" means the Arkansas Public Service Commission;~~

~~(3) "Purchase" means the purchase of electric energy or capacity, or both, from a qualifying facility by an electric utility;~~

~~(4) "Rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale or purchase of electric energy or capacity or any rule, regulation, or practice respecting any rate, charge, or classification and any contract pertaining to the sale or purchase of electric energy or capacity;~~

~~(5) "Avoided costs" means the costs to an electric utility of electric energy or capacity, or both, that, but for the purchase from the qualifying facility or qualifying facilities, the utility would generate itself or purchase from another source.~~

~~23-3-703. Establishment of rates.~~

~~The commission shall establish rates to be paid by an electric utility to qualifying cogeneration and small power production facilities which do not, over the term of the purchased power contract, exceed avoided cost and are based upon the preponderance of evidence in the record before the commission. However, rates established for purchases from qualifying facilities whose construction commenced earlier than November 9, 1978, may be ten percent (10%) less than avoided cost.~~

~~23-3-704. Basis of rate determination — Waiver of avoided cost standard.~~

~~(a) A determination of the avoided energy cost rate or rates for the electric utility shall be based on the electric utility's estimated avoided cost of producing or purchasing electrical energy during the time period of the purchase of electrical energy from the qualifying facility. It shall not be based upon the production or purchase of electrical energy at any time other than during the time period of the purchasing of electrical energy from the qualifying facility. A determination of the avoided capacity cost rate or rates for the electric utility shall be based at the electric utility's cost of capacity additions or purchases avoided during the time period of the purchase of electrical capacity from the qualifying facility. It shall not be based upon the purchase of electrical capacity at any time other than during the time period of the purchase of electrical capacity from the qualifying facility.~~

~~(b)(1) In the event the commission finds and determines that the avoided cost rate is not necessary to encourage the appropriate amount of construction of qualifying facilities and that a rate less than the avoided cost rate is just and reasonable to the electric consumer of the electric utility, is in the public interest, and will not discriminate against qualifying facilities, the commission shall take all reasonable and appropriate steps to obtain a waiver of the avoided cost standard from the Federal Energy Regulatory Commission or any successor agency.~~

~~(2) In addition, a determination of the avoided cost rate or rates for energy or capacity purchased by an electric utility shall:~~

~~(A) Be just and reasonable to the electric consumer of the electric utility and in the public interest; and~~

~~(B) Not discriminate against qualifying cogeneration and small power production facilities.~~

~~(c) Nothing in this subsection requires any electric utility to pay more than the avoided costs for purchases.~~

~~23-3-705. Lower contract rates permitted. Nothing in this subchapter shall prohibit an electric utility and a qualifying facility from negotiating a contract rate lower than the avoided cost rate established by the commission for the electric utility.~~

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly that electricity is a necessity and that existing law may unnecessarily limit the authority of the Arkansas Public Service Commission in ensuring that the citizens of Arkansas have an adequate supply of electricity. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

The Amendment was read _____

By: Representative Broadway

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LDH029

Chief Clerk