

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Senator Hopkins

SENATE BILL 665

"AN ACT TO PROVIDE AFFORDABLE SOURCES OF ELECTRIC POWER AND ENERGY TO THE CITIZENS AND INHABITANTS OF THE STATE; TO CREATE THE ARKANSAS PUBLIC POWER AUTHORITY AND DEFINE ITS POWERS AND DUTIES; TO ESTABLISH A PROCEDURE FOR THE AUTHORITY TO ACQUIRE EXISTING ELECTRIC SYSTEM FACILITIES OWNED BY MULTI-STATE HOLDING COMPANIES OR THEIR AFFILIATES BY EMINENT DOMAIN; TO MAKE PROVISIONS FOR THE ESTABLISHMENT OF RATES AND CHARGES FOR ELECTRIC POWER AND ENERGY PROVIDED BY THE AUTHORITY; TO AUTHORIZE THE ISSUANCE OF BONDS OF THE AUTHORITY, AND PROVIDING FOR THE TERMS AND SECURITY THEREOF; TO PROVIDE FOR ANNUAL REPORTS; AND FOR OTHER PURPOSES.

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

SECTION 1.00. SHORT TITLE. This Act shall be known as, and may be cited as, the "Arkansas Public Power Authority Act."

SECTION 2.00. LEGISLATIVE FINDINGS AND DECLARATION OF PUBLIC NECESSITY. The General Assembly hereby finds:

(A) That legal proceedings beyond the jurisdiction of the State of Arkansas may ultimately effect the charges for electric energy which must be borne by the State of Arkansas, its citizens and residents; that in these legal proceedings decisions may be made by public bodies which will have substantial adverse economic impact in this State and on its citizens and residents; and that this state of affairs requires the General Assembly of the State of Arkansas to protect the State, its citizens and residents from burdensome charges for electric energy in order that the State of Arkansas, its citizens and residents may have control over their own affairs.

(B) Therefore, there now exists beyond the control of any private person, corporation, their lessees, assigns, trustees, receivers or other successors in interest an absence, a shortage and lack of ability to provide the State of Arkansas, its citizens and residents, the most affordable sources of electric energy, and that the lack thereof impairs the economic viability of the entire State, and if permitted to exist shall result in economic harm to the entire State of Arkansas, its citizens and residents and shall frustrate other efforts of the State and various agencies, both public and private, to encourage economic growth and eliminate out-migration of our population.

(C) That a major consequence of the lack of affordable sources of electric energy is a serious economic burden to elderly persons and to families and individuals of low and moderate income; that such lack and shortage of sources of affordable electric energy will contribute to the severe reduction of the economic growth of the entire state; and the resulting lack and shortage of affordable sources of electric energy will cause substantial unemployment throughout the State of Arkansas, will result in hardships, waste human resources, increase the public assistance burdens of the state, impair the security and formation of family life, impede the economic and physical development of the state, and will adversely effect, the welfare, health and prosperity of all the people of this State.

(D) That a more stable and adequate means of providing affordable sources of electric energy is required and should be managed, operated and held in an orderly and sustained manner, thereby reducing and improving the aforesaid conditions; that in order to encourage the investment of private capital and to alleviate serious and sustained economic conditions within the state by reason of the lack of and the shortage of affordable electric energy and to improve the health, safety, convenience and welfare of the citizens of the State, provision should be made for the creation of a State Public Power Authority, which Authority shall have the power to issue tax exempt revenue bonds to acquire and maintain electric utility systems and their facilities; and that the foregoing is a public purpose and use for which public monies may be borrowed, expended, advanced loaned and granted.

SECTION 3.00 DEFINITIONS. The following words or terms, as used in this Act, shall have the following meanings unless a different meaning clearly appears from the context:

3.01. "Act" means the Arkansas Public Power Authority Act.

3.02. "Affiliate" shall mean a corporation which is a regulated public utility and which by reason of the ownership thereof of at least a majority of its outstanding shares by a Multi-State Holding Company, as defined herein, is affiliated with and is a part of a Multi-State Holding Company, and which has as its principal activity, the ownership and operation of Electric System Facilities as defined herein.

3.02. "Authority" shall mean the Arkansas Public Power Authority created by Section 4 of this Act.

3.04. "Bonds" shall mean the notes, bonds, certificates of indebtedness, or other evidence of indebtedness bearing interest at fixed or variable rates of interest issued by the Authority pursuant to this Act.

3.05. "Commission" shall mean the Arkansas Public Service Commission or any successor agency or commission.

3.06. "Construct" shall mean to acquire or build, in whole or in part, in such manner and by such method, including contracting therefore, and if the latter, by negotiation or bidding upon such terms and pursuant to such advertising as the Authority shall determine to be in the public interest and necessary, under the circumstances existing at the time, to accomplish the purposes of and authorities set forth in this Act.

3.07. "Electric system facilities" or "facilities" shall include real property and personal property, tangible and intangible, or mixed property of any and every kind and any interest therein, including without limitation, rights of way, materials, equipment, fixtures, machinery, furniture, furnishings, buildings, transmission lines, contract rights, other improvements of every nature and kind used or useful or to be used for the produc-

tion, generation, transmission, delivery or furnishing of electric power or energy.

3.08. "Electric system" means any system for the generation, transmission and/or distribution of electric power or energy.

3.09. "Equip" shall mean to install or place on or in any building or structure equipment of any and every kind, whether or not affixed, including, without limiting the generality of the foregoing, building service equipment, machinery, furniture, furnishings and personal property of every kind.

3.10. "Multi-State Holding Company" shall mean a corporation owning at least a majority of the outstanding shares of an Affiliate or Affiliates as defined herein, which Affiliate or Affiliates collectively or separately operate in more than one state and which Affiliate's primary activity is the ownership and operation of an Electric System, as defined herein.

3.11. "Person" shall mean any natural person, firm, partnership, association, corporation, non-profit corporation or improvement district.

3.12. "Public utility" shall include all persons and corporations, or their lessees, trustees and receivers producing, generating, transmitting, delivering or furnishing electric power or energy to any other person or corporation for resale or distribution to or for the public for compensation. The term "public utility" shall not include any person or corporation, who or which furnishes electric power or energy exclusively to himself or itself, or to his or its employees or tenants, when such electric power or energy is not resold to, or used by others.

3.13. "Real property" shall mean land and improvements thereon, including air rights.

3.14. "State" shall mean the State of Arkansas.

3.15. "State agency" shall mean any office, department, board, com-

mission, bureau, division, public corporation, agency or instrumentality of the State.

SECTION 4.00. CREATION AND ORGANIZATION. There is hereby established a public body corporate and politic, with corporate succession, to be known as the "Arkansas Public Power Authority".

4.01. The Board of Directors of the Authority shall consist of the Director of the Department of Finance and Administration, and eight (8) public members to be appointed by the Governor, with the advice and consent of the Senate; provided that the members appointed by the Governor shall be residents of the State and shall have been a qualified elector therein for at least one year preceding the time of appointment. The Board of Directors shall be appointed from the State at large; provided, however, that each Congressional District shall be represented by a member of the Board of Directors resident thereof and, provided further, that no three (3) board members shall be appointed from any single Congressional District. The Governor shall appoint two public members of the Board for terms of one year each, two for terms of two (2) years each, one for a term of three (3) years, one for a term of four (4) years, one for a term of five (5) years and one for a term of six (6) years, and thereafter, on the expiration of such terms, public members shall be appointed for a term of six years. Each Board member shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. Any vacancy in the Board of Directors occurring other than by expiration of term shall be filled by the appointment of the Governor, for the unexpired term only, within thirty days from the date of such vacancy. Upon failure of the Governor to fill the vacancy within thirty days, the remaining Board members shall make the appointment for the unexpired term.

4.02. Each appointed public Board member may be removed from office by the Governor for cause, subject to judicial review, and may be suspended by the Governor pending the completion of such review. Each Board member, before entering upon his duties, shall take and subscribe an oath to perform the duties of his office faithfully, impartially and justly to the best of his ability. A record of such oath shall be filed in the office of the

Secretary of State.

4.03. The Arkansas Public Power Authority shall have such rights, powers and privileges and shall be subject to such duties as provided by this Act. The Board of Directors shall, from the public members of the Board appointed by the Governor annually elect one of their members as a Chairman, and one of their members as a Vice-Chairman. The Board shall also employ an Executive Director, and may enter into an employment agreement with such Executive Director which shall not exceed the term of four years from the date of employment. The Board shall appoint and employ such additional officers, accountants, attorneys, engineers, financial advisors or experts, agents and employees as it may require and shall determine their qualifications, duties and compensation. The Executive Director shall be an ex-officio non-voting member of the Authority and may be elected Secretary of the Board. The powers of the Authority shall be vested in the members of the Board of Directors in office from time to time and five (5) members of the Board shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the Board at any meeting thereof by a majority vote of a quorum present, provided such majority shall consist of at least four (4) Board members. No vacancy in the membership of the Board shall impair the right of the quorum of the members to exercise all the powers and perform all duties of the Board.

4.04. Before the issuance of any bonds, each member of the Board of Directors of the Authority shall execute a surety bond in the penal sum of Twenty-five thousand dollars (\$25,000) and the Executive Director of the Agency will execute a surety bond in the penal sum of fifty thousand dollars (\$50,000) each, such surety bond to be conditioned upon the faithful performance of the duties of the office of such Board member or Executive Director, as the case may be, to be executed by a surety company authorized to transact business in the State of Arkansas, as surety, and to be approved by the Attorney General. At all times after the issuance of any bonds of the Authority each member of the Board of Directors of the Authority shall maintain such surety bonds in full force and effect. All costs of such surety bonds shall be borne by the Authority.

4.05. The members of the Board of Directors of the Authority shall serve without compensation, but the Authority may reimburse its Board members for actual expenses necessarily incurred in the discharge of their official duties.

4.06. No part of the funds of the Authority shall inure to the benefit of, or be distributed to its employees, officers, or Board of Directors, except that the Authority shall be authorized and empowered to pay its employees reasonable compensation.

4.07. In addition to its authority to employ private attorneys, the Authority may obtain from the Attorney General of Arkansas such legal services as it shall reasonably request.

4.08. The Authority may be dissolved by act of the General Assembly on condition that the Authority has no debts or obligations outstanding or provision has been made for the payment of retirement of such debts or obligations. Upon such dissolution of the Authority, all property, funds and assets thereof shall be vested in the State.

SECTION 5.00. POWERS OF THE AUTHORITY. Generally, the Authority is created for the purpose of owning, operating, managing, leasing and contracting concerning an Electric System and Electric System Facilities used or useful or to be used in the generation, transmission and distribution of electric power or energy within and without the state and to that end shall have the powers granted to public utilities by law including specifically the power of eminent domain. The Authority shall also have the power:

5.01. To sue and be sued;

5.02. To have a seal and alter the same as its pleasure;

5.03. To make and alter by-laws for its organization and internal management;

5.04. To make and issue such rules and regulations as may be necessary or convenient to carry out the purposes of this Act;

5.05. To acquire, by gift, devise, purchase, exchange, condemnation or otherwise Electric System Facilities, within or without the state, where otherwise not prohibited, whether the same be real or personal property, tangible or intangible, or mixed, or any interest therein and to hold, operate, maintain, mortgage, lease, transfer and contract concerning any and all of the same.

5.06. To sell, devise, exchange and dispose of an Electric System and/or Electric System Facilities and any and all of its properties, real and personal, tangible and intangible, or mixed, or any interest therein which in the opinion of the Board of Directors of the Authority is deemed to be expedient, and upon such terms as the Authority deems reasonable.

5.07. To construct and equip an Electric System and/or Electric System Facilities, where the same be real or personal property, tangible or intangible, or mixed, or any interest therein and to hold, operate, maintain, mortgage, lease, transfer and contract concerning any and all of the same.

5.08. To appoint officers, agents and employees and prescribe their duties and qualifications and to fix their compensation;

5.09. To borrow money and to issue notes, bonds and other obligations and to provide for the rights of the lenders or holders thereof;

5.10. To fix, alter, charge and collect rates, fees and charges for electric power and energy, for the use of its facilities, for services rendered, or for any commodities furnished by the Authority, such rates, fees and charges to be at least sufficient to provide for payment of all expenses of the Authority, the conservation, maintenance and operation of its facilities and properties, the payment of principal of and interest on its notes, bonds and other evidences of indebtedness or obligation and to fulfill the terms and provisions of any agreements made with the purchasers or holders

of any such notes, bonds or other evidences of indebtedness or obligation;

5.11. To enter into contracts with or accept gifts, grants, loans and other aid from the Federal government, the State or any state agency, or any person or corporation, foundation or legal entity, and to agree and comply with any conditions attached to Federal and State financial assistance not inconsistent with provisions of this Act;

5.12. To invest monies of the Authority not required for immediate use including proceeds from the sale of any bonds, notes or other evidences of indebtedness or obligation, subject to any agreement with bondholders in (i) direct obligations of, or obligations which are guaranteed by, United States of America, (ii) obligations, debentures, notes or evidences of indebtedness issued or guaranteed by any of the following: bank cooperatives; federal intermediate credits banks; Federal Home Loan Bank System - Import Bank of the United States; Federal Financing Bank; Federal Land Bank; Federal National Mortgage Association; Farmers Home Administration; Federal Home Loan Mortgage Corporation; Government National Mortgage Association; Federal Housing Administration, (iii) repurchase agreements with banks or trust companies, acting as principal or agent for securities described in (i) and (ii) above, if either such securities are delivered to the authority or a trustee on its behalf, (iv) obligations issued by public agencies and instrumentalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract with the United States of America or temporary notes, preliminary loan notes or project notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by requisition or payment agreement with the United States of America, (v) certificates of deposit or time deposits with a bank or banks insured by the Federal Deposit Insurance Corporation, or savings or loan associations or associations insured by the Federal Savings and Loan Insurance Corporation, and to provide for the sale of any such investment and for the reinvestment of proceeds thereof, (vi) investment agreements, capital notes or banking arrangements with banks or trust companies (or holding companies thereof), approved by the Board of Directors of the Authority;

5.13. The Authority is hereby authorized to make application and to

enter into contracts for and accept grants-in-aid in loans from the United States and the State of Arkansas, and their agencies, for planning, acquiring, constructing, expanding, maintaining and operating any Electric System or participating in any research or development program, or performing any function which a public utility may be authorized by law to provide or to perform;

5.14. To procure insurance against any loss in connection with its facilities, properties and other assets;

5.15. The Authority may participate as a joint owner with other persons of Electric System Facilities within or without the State;

5.16. The Authority shall have the power to contract with any person for any term relating to the purchase, sale interchange or wheeling of electric power or energy; provided, however, that the Authority may not contract to purchase electric power or energy from any person under terms which obligate the Authority to make payments whether or not the seller's electric system facilities are being provided notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of the seller's electric system facilities or the electric power or energy contracted for;

5.17. To do and perform all acts and things authorized by this Act and convenient to carry out its purposes hereunder, through, or by means by its officers, agents or employees or by contracts with any person, firm or corporation;

5.18. In addition to the power and authority to exercise eminent domain generally granted to public utilities, the Authority shall also be empowered to exercise the right of eminent domain with respect to existing Electric System Facilities as set forth in Section 6 of this Act.

SECTION 6.00. PROCEDURE FOR EXERCISE OF POWER OF EMINENT DOMAIN OVER ELECTRIC SYSTEM FACILITIES OWNED BY A MULTI-STATE HOLDING COMPANY OR ITS AFFILIATE. The Authority shall exercise its power of eminent domain

over existing Electric System Facilities owned by a Multi-State Holding company or its affiliate by filing an appropriate petition naming the present owner thereof and describing the Electric System Facilities sought to be acquired with the Arkansas Public Service Commission, which shall have exclusive original jurisdiction to hear condemnation cases originated by the Authority under this Section of the Act. The condemnation petition shall describe the Electric System Facilities sought to be acquired for state public power purposes and shall be sworn to by the Executive Director of the Authority, or his designatee. The Authority shall give notice of the pendency of the condemnation petition to the owner of the property to be taken by mailing the same to its designated agent for service of process and to its corporate headquarters, if a corporation, directed to the attention of its chief executive officer.

6.01. HEARING BY THE COMMISSION: FINDINGS AND AWARD ORDER. The owner of the property to be taken shall have twenty (20) days from the date notice is received to respond to the condemnation petition of the Authority. Thereafter, the Arkansas Public Service Commission shall set the condemnation petition for hearing, and after taking testimony and evidence thereof presented by the Authority, the owner of the property to be taken, and any other parties to the condemnation proceedings and after being well and sufficiently advised of all points of law involved in the condemnation proceedings shall determine the just compensation to be paid for the Electric System Facilities so acquired by the Authority. After its initial decision is rendered in the condemnation proceedings, all parties shall have fifteen (15) days within which to recommend and suggest to the Commission the form of its findings and condemnation award (the "Award Order"). The Commission's decision, findings of fact and Award Order shall be entered no sooner than thirty (30) days from the announcement of this decision and shall be in sufficient detail to enable any court in which any action of the Commission is involved to determine the controverted question presented by the condemnation proceeding. A copy of such Award Order certified under the seal of the Commission shall be served upon the person or corporation against whom it runs, or his or its attorney, and notice thereof shall be given to the Authority and to other parties to the proceedings or their attorneys. Said Award Order shall take effect and become operative imme-

diately upon the service thereof, unless otherwise provided, and shall continue in force unless or until changed or modified by the Commission, or vacated upon review.

6.02 REHEARING AND JUDICIAL REVIEW. (a) Any party to a condemnation proceeding before the Commission aggrieved by an order issued by the Commission or by the Award Order may apply for rehearing within thirty (30) days after the service of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing or to reopen the record for the purpose of receiving and considering additional evidence. Unless the Commission acts upon the application for rehearing within thirty (30) days after it is filed, such application shall be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any party unless such party shall have made application to the Commission for a rehearing thereon. An order or decision made after such rehearing, abrogating, changing or modifying the original order or award, shall have the same force and effect as an original order or award, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the Commission.

(b) Any party to a condemnation proceeding before the Commission under this Act, aggrieved by the Award Order issued by the Commission in such proceeding may obtain a review of such order in the Arkansas Court of Appeals by filing in such court and serving upon all other parties to the condemnation proceeding, within thirty (30) days after the Award Order of the commission upon the application for rehearing or within thirty (30) Days from the date of the application as deemed to have been denied as provided in Subsection (a) of this Section, a written petition stating the nature of the condemnation proceeding before the Commission, identifying the Award Order or Orders complained of and the reason why said Order is claimed to be unlawful or the award inadequate or excessive, and praying that the Award Order of the commission be modified, remanded, or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk

of the Court of Appeals to the Secretary of the Commission; and thereupon all other parties to the condemnation proceeding shall respond to said petition within thirty (30) days from the service thereof; and the Commission shall file within the same period of time with the Court of Appeals the record upon which the Award Order complained of was entered. The record shall consist of the complete transcript of the record in the case made before the Commission which shall include a copy of all pleadings, proceedings, testimony, exhibits, orders, findings, and opinions in the case; provided however, that the parties and the Commission may stipulate that only a specified portion of the record as made before the Commission shall be included in the transcript to be filed with the Court of Appeals. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive to affirm, modify, or set aside the Award Order of the Commission in whole or part. No objection to the Award Order of the Commission shall be considered by the Court of Appeals unless such objection shall have been urged upon the Commission in the application for rehearing unless there is reasonable ground for failure to do so. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. The review shall not be extended further than to determine whether the Commission's findings are so supported by substantial evidence and whether the Commission has regularly pursued its authority, including a determination of whether the Award Order under review violates any right of the petitioner under the laws or the Constitution of the United States or the State of Arkansas. All evidence received by the Commission shall be considered by the court regardless of any evidentiary rule which might have rendered the same inadmissible if originally offered in the trial of any action at law or in equity. The judgment of the Court of Appeals, affirming, modifying, or setting aside, in whole or in part, any such Award Order of the Commission, shall be final, subject to appeal to the Supreme Court of Arkansas as otherwise provided by law.

(c) Filing of an application for rehearing under Subsection (a) of this Section shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's Award Order. The Court of Appeals may enter an order suspending or staying the operation of the award Order pending its review of such order.

6.03. ABANDONMENT OF CONDEMNATION PROCEEDINGS. If in the judgment of the Authority, the award of just compensation to the owner of the Electrical System Facilities by the Commission or as modified or amended on appeal makes it unfeasible to own, manage or operate the Electrical System Facilities sought to be taken for public power purposes, the Authority on its own motion may abandon the condemnation proceedings, and thereupon the Commission or court, as the case may be, will enter its order dismissing the condemnation petition, and under such circumstances each party to the condemnation proceedings shall bear their own cost of the condemnation proceeding.

6.04. PAYMENT OF CONDEMNATION AWARD; ORDER OF TAKING. After the amount of the just compensation for Electric System Facilities so acquired by the condemnation proceedings has been judicially determined as set forth in this Act, the Authority shall satisfy the Award Order so entered by the Commission, and as may be amended or modified on appeal, by making payment to the former owner of the property taken within six months from the date of such Award Order or final order upon appeal, determining the amount thereof in (i) cash and/or (ii) note or notes or other evidence of its obligation. If payment is made in any part pursuant to the provisions of (ii) hereof, such notes of the Authority or other evidence of obligation shall be made payable to the former owner of the Electric System Facilities so acquired by the condemnation proceedings, secured by all the assets of the Authority and its revenues, payable in such installments as the Authority may designate, bear interest at a rate per annum as shall be established by the Commission and payable in full if not otherwise paid, within five (5) years from the date delivered. The Authority shall have the right to prepay its note or notes or other evidence of obligation in whole or in part without penalty upon thirty (30) days notice to the holder thereof. Upon payment of the condemnation award as set forth herein, the Commission shall thereupon enter its Order of Taking transmitting the payment made to the former owner of the property so acquired and establishing the mechanics of the transfer of possession of the Electric System Facilities so acquired to the Authority. The Commission may enter such supplemental orders as may be required incident to the condemnation proceedings, payment of the condemnation award and

possession of the effected Electric System Facilities as shall be necessary to implement the purposes of the Act. Should the Authority fail to make payment pursuant to these condemnation proceedings within six months from the date of the Award Order, or final order upon appeal, the former owner of the property shall have the right to have the Award Order, or final order upon appeal quashed by filing a petition to that effect with the Commission and substantiating the same at a hearing that the Commission will hold for that purpose. Either party may have rehearing and judicial review of such order as may be entered by the Commission as provided in Section 6.02 hereof.

6.05. TITLE TO VEST UPON ENTRY OF ORDER OF TAKING. Immediately upon the payment of the condemnation award as set forth in Section 6.04 thereof and the entry of the Order of Taking, title to the Electric System Facilities so acquired shall vest in the Authority, and shall relate back to the date of the filing of the condemnation petition by the Authority. The title to all property which is a part of the Electric System Facilities so acquired shall vest in the Authority in fee simple (or conditional fee of mineral rights sought to be preserved to the property owner) or such lesser estate or interest therein as is owned by the former owner and as specified in the Order of Taking; provided, however, possession of the Electric System Facilities so acquired shall not pass to the Authority until the Commission shall enter its Order of Taking, pursuant to Section 6.04 hereof, which order shall specify the date upon which possession of the Electric System Facilities so acquired shall pass to the Authority.

SECTION 7.00. AUTHORITY TO ESTABLISH RATES AND CHARGES FOR ITS SERVICES. Pursuant to the power and authority granted the Authority in Section 5.10 hereof, the Authority shall fix and collect its initial rates and charges for electric power and energy provided by it and shall file the same with the Arkansas Public Service Commission. Thereafter, whenever the Authority shall wish to adjust (increase or decrease) rates and charges for electric power and energy provided by it, it may establish and fix such fees and charges which shall go into effect under such rules and regulations as the Authority shall prescribe. All such rates and charges subsequently made shall be subject to the jurisdiction of the Arkansas Public Service

Commission, the same as any other public utility which it regulates, and the Arkansas Public Service Commission shall have the authority to make whatever adjustment in the Authority's rates and charges for electric service it deems to be in the public interest; provided, however, the Arkansas Public Service Commission shall not adjust rates of the Authority in a manner which will impair the security of the holders of the bonds, notes, or evidences of indebtedness of the Authority or violate any covenant or agreement with them or for their benefit.

SECTION 8.00. JURISDICTION OF ARKANSAS PUBLIC SERVICE COMMISSION.

Except with regard to its initial rates which the Authority shall have the power to fix, collect and enforce as set forth herein, in all other respects it shall own, operate and manage an Electrical System and/or Electrical System Facilities the same as any other public utility and be under the jurisdiction, rules and regulations of the Arkansas Public Service Commission; provided, however, that the Commission shall not be authorized to take any action which will impair the security of the holders of the notes, bonds or other evidences of indebtedness of the Authority or violate any agreement or covenant with them or for their benefit.

SECTION 9.00. ISSUANCE OR REVENUE BONDS. The Authority is hereby authorized and empowered to issue revenue bonds, from time to time, in amounts to be determined by the Authority. The Authority is authorized and empowered to use the proceeds thereof, together with any other available funds, for the purpose of acquiring, constructing or equipping real and personal property, both tangible and intangible, constituting facilities for the generation, transformation and distribution of electric energy within and without the State, to provide funds for energy within and without the State, to provide funds for the maintenance and operation of the same; paying the expense of authorizing and issuing the bonds; and paying interest on the bonds until revenues thereon are available in sufficient amounts, and funding a debt service reserve, if the Authority deems it necessary or desirable.

9.01. The bonds shall be authorized by resolution of the Authority ("Authorizing Resolution"). The bonds may be coupon bonds, payable to bearer, or may be registerable as to principal only or as to principal and

interest, any may be made interchangeable for bonds of another denomination. The bonds may be in such form or denominations, may have such date or dates, may be stated to mature at such time, may bear interest payable at such time and at such rate or rates either exempt or subject to federal income taxation, may be made payable at such place within or without the State of Arkansas, may be subject to such terms and conditions, all as the Authority may determine. The bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration set forth above. The Authorizing Resolution may contain any other terms, covenants or conditions that are deemed desirable by the Authority, including, without limitation, those pertaining to the maintenance of various funds and reserves, the collection and extent of the security, the collection and disposition of revenues, the investing and reinvesting (in securities specified by the Authority) of any monies during periods not needed for authorized purposes, and the rights, duties and obligations of the Authority and of the holders and registered owners of the bonds.

The Authorizing Resolution may provide for the execution by the Authority with a bank or trust company, within or without the State of Arkansas, of a Trust Indenture. The Trust Indenture may contain any terms, covenants or conditions that are deemed desirable by the Authority including, without limitation, those pertaining to the maintenance of various funds and reserves, the nature and extent of the security, the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the investing and reinvesting (in securities specified by the Authority) of any monies during periods not needed for authorized purposes, and the rights, duties and obligations of the Authority and of the holders and registered owners of the bonds.

9.02. The bonds may be sold at such price (including sale at a discount), in such manner (either at public or private sale) and upon such terms as the Authority shall approve.

9.03. The bonds shall be executed by the manual or facsimile signature of the Chairman of the Authority and by the manual or facsimile signature of

the Executive Director of the Authority. The coupons attached to the bonds shall be executed by the facsimile signature of the Chairman of the agency. In case any of the officers whose signatures appear on the bonds coupons, shall cease to be such officers before the deliver of such bonds or coupons, their signature shall, nevertheless, be valid and sufficient for all purposes. The authority shall adopt and use its seal in the execution insurance of the bonds, and each bond shall be impressed or imprinted with the seal of the agency. Bonds issued in registered form will in all respects comply with the provisions of the Registered Public Obligations Act of Arkansas.

SECTION 10.00 BOND PROVISIONS. It shall be plainly stated on the face of each revenue bond that it has been issued under the provisions of this Act, that the bonds so issued shall be obligations only of the Authority, and that in no event shall they constitute an indebtedness for which the faith and credit of the State of Arkansas or any of its revenues are pledged. No member of the Authority shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into in carrying out the purposes and intent of this Act unless he shall have acted with a corrupt intent.

10.01. The principal of, interest on and trustee's paying agents fees in connection with the revenue bonds shall be secured by a lien and pledge of the Authority's revenues and the pledge of the Authority's assets.

SECTION 11.00. AUTHORIZING RESOLUTION. Any Authorizing Resolution and Trust Indenture shall, together with this Act, constitute a contract between the Authority and the holders and registered owners of the Bonds; which contract, and all covenants, agreements and obligations therein, shall be promptly performed in strict compliance with the terms and provisions of such contract, and all covenants, agreements and obligations therein, shall be promptly performed in strict compliance with the terms and provisions of such contract, and the covenants, agreements and obligations of the Authority may be enforced by mandamus or other appropriate proceedings at law or in equity.

SECTION 12.00. TAX EXEMPTION. Bonds issued under the provisions of this Act, and the interest thereon, shall be exempt from all state, county, and municipal taxes, except property taxes, and the exemption shall include income, inheritance and estate taxes.

SECTION 13.00. PLEDGE OF REVENUES. Any pledge of revenues, monies, funds for other property made by the Authority shall be valid and binding from the time when the pledge is made; the revenues, monies, funds or other properties so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties had notice thereof. Neither the resolution or any other instrument by which a pledge is created need be filed or recorded except in the records of the Authority.

SECTION 14.00. NO PERSONAL LIABILITY. Neither the members of the Authority nor any person executing bonds or notes issued pursuant to this Authority shall be liable personally on such bonds or notes by reason of the issuance thereof.

SECTION 15.00. SPECIAL FUNDS. The Authority may create and establish one or more special funds to secure its bonds, herein referred to as Capital Reserve Funds, and shall pay into any such Capital Reserve Fund:

15.01. Any monies appropriated and made available by the State for the purpose of such fund;

15.02. Any proceeds of sale of bonds, to the extent provided in the Resolution of the Authority authorizing the issuance thereof;

15.03. Any other monies which may be available to the Authority for the purpose of such fund from any other source or sources.

SECTION 16.00. REVENUES DESIGNATED CASH FUNDS. All revenues received

by the Authority, except revenues derived from appropriations, are hereby specifically declared to be cash funds restricted in their use, and dedicated and to be used solely as provided in this Act. The pledged revenues shall not be deposited into the State Treasury but, when received shall be deposited by the Authority in such account or accounts, in such depository or depositories and shall be specified by Resolution of the Authority and used by the Authority solely for the purpose of carrying out the provisions of any Resolution or an indenture securing bonds of the Authority or other agreement entered into by the Authority, pursuant to the provisions of this Act. All revenues of the Authority, except revenues, specifically derived from appropriation by the General Assembly, are hereby specifically exempted from the provisions of the Revenue Stabilization Law of Arkansas (Act 750 of the 1973 Acts of Arkansas) and are not subject to biannual appropriation by the General Assembly.

SECTION 17.00. REFUNDING BONDS. Bonds may be issued for the purpose of refunding any bonds issued under this Act. Refunding Bonds may either be sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may either be applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement of the bonds being refunded, as shall be specified by the Authority in the Resolution or trust agreement securing the Refunding Bonds. The Resolution or Trust Indenture securing the Refunding Bonds may provide that the Refunding Bonds shall have the same security for their payment as was enjoyed by the bonds being refunded. Refunding Bonds shall be sold and secured in accordance with the provisions of this Act pertaining to the sale and security of bonds.

SECTION 18.00. STATE OF ARKANSAS COVENANT WITH BONDHOLDERS. In order to protect those subscribing to, purchasing or acquiring the notes, bonds, evidence of indebtedness or other obligations of the Authority, the State of Arkansas does hereby covenant and agree with any person, firm or corporation, the government of the United States of America, and any corporation or agency created, designated or established by the United States, subscribing to, purchasing or acquiring the notes, bonds, evidence of indebtedness or other obligations hereto or hereafter issued or incurred by the

Authority for any authorized purpose, the State will not alter, limit or restrict the power of the Authority to, and the Authority shall fix, establish, maintain and collect rates, fees and charges for the use of the facilities of or for the services rendered or for any commodities furnished by the Authority, at least sufficient to provide the payment of all expense of the Authority, the conservation, maintenance and operation of the facilities and properties and the payment of the interest on, or principal of, and premium if any, on its notes, bonds, evidences of indebtedness or other obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such notes, bonds, evidences of indebtedness or obligations heretofore or hereafter issued or incurred.

SECTION 19.00. PAYMENTS IN LIEU OF TAXES. The Authority shall pay annually to the counties, municipalities and school districts such sums of money in lieu of taxes on all such lands owned and acquired by the Authority pursuant to the provisions of this Act in such amounts as if such lands and properties were subject to assessment and taxation. Provided, however, all payments in lieu of taxes shall be subordinated to the payment or satisfaction of (i) debt service on the Authority's indebtedness, (ii) operating and the maintenance expenses of the Authority, and (iii) reserve requirements specified in the Authority's Authorizing Resolutions and/or Trust Indentures.

SECTION 20.00. AUDIT OF RECORDS. The Legislative Joint Audit Committee and any other agency of the State of Arkansas authorized by law to audit the records and accounts of the various agencies of the state are hereby authorized and directed to audit the records and accounts of the Authority, to cooperate with any other independent audit, and to furnish a copy of the report thereof to the Authority and the Governor.

SECTION 21.00. ANNUAL REPORT. On or before the last day of March in each year, the Authority shall make an annual report of its activities for the preceding calendar year to the Governor, the President Pro Tem of the Senate, the Speaker of the House, the Chairman of the Legislative Council, the Chairman of the Legislative Joint Audit Committee and the Arkansas Public Service Commission. Each such report shall set forth a complete and

detail accounting of:

21.01. The Authority's operations, programs and accomplishments of the previous year and proposed operations and programs for the next year;

21.02. The Authority's receipts and expenditures during the preceding year in accordance with the categories and classifications established by the Authority for its operating and Outlay purposes;

21.03. The Authority's assets and liabilities at the end of its fiscal year, including a schedule reflecting the status of reserve, special, or other funds; and

21.04. A schedule of its bonds notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year.

SECTION 22.00. EXEMPTION OF FACILITIES FROM APPLICATION OF OTHER LAWS. Participation by the Authority in the acquisition, construction, reconstruction, enlargement, equipment or operation and maintenance of facilities under the provisions of this Act need not comply with the requirement of any other law applicable to the acquisition, construction, reconstruction, enlargement, equipment or operation and maintenance of public works or facilities, including, without limitation, laws pertaining to public bidding, paying prevailing wages, transfer or exchange of title to real or personal property, or any other aspect of the acquiring, constructing, reconstructing, enlarging, equipping or operation or maintenance of public works or public utilities, or transfer or exchange of title to real or personal property, none of which laws shall be applicable to facilities hereunder.

SECTION 23.00. EMPLOYEE BENEFIT PLANS. The Authority shall provide to its employees such employee benefit plans as it shall determine to be in the best interest of the Authority and its employees.

23.01. Provided, however, whenever the Authority acquires by condemnation or otherwise, any Electric System Facilities from a Multi-State

Holding Company or its Affiliate and the employees of such Multi-State Holding Company or its affiliate have been for at least two years and are at the time of acquisition covered by any plan for individual annuity contracts, retirement income policies, group annuity contracts, group insurance for the benefit of employees, or any other contract for the benefit of employees, the Authority shall, when the personnel is retained by the Authority, assume all of the obligations and liabilities of the private utility acquired with relation to such plan and the employees covered thereby at the time of acquisition; or the Authority may be agreement with a majority of the employees affected substitute a plan or contract of the same or like nature. The Authority in acquiring Electric System Facilities from a Multi-State Holding Company or its Affiliate shall proceed in such manner as is necessary so as not to reduce or impair any benefits or privileges which such employees of a Multi-State Holding Company or its Affiliate would have received or be entitled to, had such acquisition or condemnation not been effected. The Authority shall pay all or any part of the premiums of such payments required therefor out of the revenues derived from the operation of its properties.

23.02. Further, any person affected by Section 23.01 hereof who was employed by a Multi-State Holding Company or its Affiliate at the time of acquisition may, at his option, apply to the Authority for admission to any plan available to other employees of the Authority. Every such person who was covered at the time of acquisition by a plan with the Multi-State Holding Company or its Affiliate shall have added and accredited to his period of employment or service his period of immediately preceding continuous service with such Multi-State Holding Company or its Affiliate, if he remains in the service of the Authority until such plan for which he seeks admission becomes applicable to him.

No such person shall have added and accredited to his period of employment his period of service with said Multi-State Holding Company or its Affiliate, unless he or a third party shall pay to the fund of the plan to which he seeks admission his contribution for the period of such service from the Multi-State Holding Company or its Affiliate at the rate provided for or for such plan to which he desires admission, or if he shall be

entitled to any private benefits, as a result of such private service, unless he agrees at the time of his employment with the Authority to accept a reduction in the payment of any benefits payable under the plan to which he requests entry that are based in whole or in part on such added and accredited service by the amount of benefits received. For the purposes of contributions, the date of entry of service shall be deemed the date of entry of service with the Multi-State Holding Company or its Affiliates, which service is accredited by this Section, and the amount of contributions for the period of accredited service shall be based on the wages or salaries for such person during that added and accredited period of service with the Multi-State Holding Company or its Affiliate.

The Authority may receive such payments from a third party and shall make from such payments contributions with respect to such prior service as may be necessary to enable it to assume its obligations.

After such contributions have been made and such service added and accredited, such employee shall be established in the plan to which he seeks admission with all rights, benefits and privileges that he would have been entitled to had he been a member of the plan from the beginning of his immediately preceding continuous employment with the Multi-State Holding Company or its Affiliate, or of his eligibility.

SECTION 24.00. STATE COOPERATION. All officers, departments, boards, agencies, divisions, and commissions to the State are hereby authorized and empowered to render any and all of such services to the Authority as may be within the area of their respective governmental functions as fixed or established by law, as may be requested by the Authority. The cost and expense of any such services shall be met and provided for by the Authority.

SECTION 25.00. PERSONAL GAIN OF AUTHORITY MEMBERS. No officer or employee or the Authority, for purposes of personal gain, shall have or attempt to have, directly or indirectly, any interest in any contract or agreement of the Authority in connection with the sale or purchase of any bonds or notes or investments by the Authority:

25.01. Any member, officer, employee, or agent of the Authority who shall be found guilty of violating the provisions of this section shall be barred from public employment of any State in any capacity whatsoever for a period of five (5) years from the date he was adjudged guilty of such misdemeanor, in addition to such other penalties as may be provided by law.

SECTION 26.00 SUPERSEDING EFFECT. It is the intent of the General Assembly that in the event of any conflict or inconsistency in the provisions of this Act, and any other acts pertaining to matters herein established or provided for in any rules or regulations adopted under this Act or said other acts, to the extent of such conflict or inconsistency, the provisions of this Act and the rules and regulations adopted thereunder shall be enforced and the provisions of such other actions, rules, and regulations adopted thereunder shall be of no force and effect.

SECTION 27.00. SEVERABILITY. If any clause, sentence, paragraph, section, or part of the Act shall be judged by any court of confident jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 28.00. LIBERAL CONSTRUCTION. This Act shall be construed liberally to effectuate the legislative intent and the purposes of this Act as a complete and independent authority for the performance of each and every act and thing herein authorized; and all powers herein granted shall be broadly interpreted to effectuate such intent and purposes and not as a limitation of powers.

SECTION 29.00. EMERGENCY CLAUSE. If it is hereby found and determined by the General Assembly that a serious economic threat to the economic viability of the State of Arkansas exists due to the lack of affordable sources of electric energy; that to remedy the same provision should be promptly made for the creation of a State Public Power Authority with the rights, powers and duties as specified in this Act; and that delay in the effective date of this Act could work irreparable harm upon the proper administration

and providing of essential governmental services. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

