

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/19/01
A Bill

HOUSE BILL 2456

5 By: Representative McMellon
6 By: Senator Hoofman
7
8

9 **For An Act To Be Entitled**

10 AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS
11 CODE GRANTING CERTAIN PRIVILEGES AND PRESCRIBING
12 CERTAIN DUTIES OF ELECTRIC UTILITIES ORGANIZED
13 FOR THE PURPOSE OF GENERATING, TRANSMITTING,
14 DISTRIBUTING, OR SUPPLYING ELECTRICITY TO OR FOR
15 THE PUBLIC FOR COMPENSATION OR FOR THE PUBLIC
16 USE; AND FOR OTHER PURPOSES.

17
18 **Subtitle**

19 AN ACT GRANTING PRIVILEGES TO PUBLIC
20 UTILITIES ORGANIZED FOR THE PURPOSE OF
21 GENERATING, TRANSMITTING, OR SUPPLYING
22 ELECTRICITY TO THE PUBLIC.
23
24

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

26
27 SECTION 1. Arkansas Code 18-15-501 is amended to read as follows:
28 18-15-501. Right-of-way construed.

29 The right-of-way provided for under this section and §§ 18-15-502 -
30 18-15-509 shall be construed to include all lands necessary for dams and the
31 backwater resulting therefrom, levees, approaches, abutments, canals,
32 reservoirs, powerhouses, and other purposes incident to the business of
33 generating, transmitting, ~~and distributing, or supplying electricity for~~
34 public use to or for the public for compensation, or for public use, by an
35 electric utility, as defined in § 18-15-512.
36

1 SECTION 2. Arkansas Code 18-15-502 is amended to read as follows:
2 18-15-502. Exception.

3 No action to condemn the right-of-way over, upon, or along any street
4 or alley in any city or incorporated town shall be instituted or maintained
5 by ~~a corporation~~ an electric utility as against any city or incorporated
6 town.

7
8 SECTION 3. Arkansas Code 18-15-503 is amended to read as follows:
9 18-15-503. Powers.

10 (a)(1) Any ~~corporation~~ electric utility organized or domesticated
11 under the laws of this state for the purpose of generating, transmitting, ~~and~~
12 distributing, or supplying electricity to or for the public for compensation,
13 or for public use, may construct, operate, and maintain such lines of wire,
14 cables, poles, ~~etc.,~~ or other structures necessary for the transmission or
15 distribution of electricity along and over the public highways, and the
16 streets of the cities and towns of this state or across or under the waters,
17 and over any lands or public works belonging to the state, and on and over
18 the lands of private individuals, or other persons, and upon, along, and
19 parallel to any railroad or turnpike of this state, and on and over the
20 bridges, trestles, and structures of railroads. In constructing such dams as
21 the ~~corporation~~ electric utility may be authorized to construct, for the
22 purpose of generating electricity by water power, the ~~corporation~~ electric
23 utility may flow the lands above the dams with backwater resulting from
24 construction.

25 (2) However, the ordinary use of the public highways, streets,
26 works, railroads, bridges, trestles, or structures and turnpikes shall not be
27 obstructed, nor the navigation of the waters impeded, and just damages shall
28 be paid to the owners of such lands, railroads, and turnpikes. The
29 permission of the proper municipal authorities shall be obtained for the use
30 of the streets.

31 (b) In the event ~~a corporation~~ an electric utility should, upon
32 application to the individual, railroad, ~~{or}~~ turnpike company, or other
33 persons, fail to secure by consent, contract, or agreement, a right-of-way
34 for the purposes enumerated in subsection (a) of this section, then the
35 ~~corporation~~ electric utility shall have the right to proceed to procure the
36 condemnation of the property, lands, rights, privileges, and easements in the

1 manner prescribed in this subchapter.

2 (c) Whenever ~~a corporation~~ an electric utility desires to construct
3 its line on or along the lands of individuals or other persons or on the
4 right-of-way and the structures of any railroad, or upon and along any
5 turnpike, the ~~corporation~~ electric utility, by its agent, shall have the
6 right to enter peacefully upon the lands, structures, or right-of-way and
7 survey, locate, and lay out its line thereon, being liable, however, for any
8 damage that may result by reason of the acts.

9

10 SECTION 4. Arkansas Code 18-15-504 is amended to read as follows:

11 18-15-504. Petition for assessment of damages.

12 (a) Any ~~corporation~~ electric utility, having surveyed and located its
13 line under the power conferred by §§ 18-15-501 - 18-15-509, if it fails to
14 obtain, by agreement with the owner of the property through which the line
15 may be located, the right-of-way over the property, may apply, by petition,
16 to the circuit court of the county in which the property is situated, to have
17 the damages for the right-of-way assessed, giving the owner of the property
18 at least ten (10) days' notice in writing by certified mail, return receipt
19 requested, of the time and place where the petition will be heard.

20 (b) In case property sought to be condemned is ~~owned by any individual~~
21 ~~or corporation and is~~ located in more than one (1) county, the petition may
22 be filed in the circuit court of any county in which the whole or a part of
23 the property may be located, and proceedings had therein will apply
24 to all property designated in the petition.

25 (c) If the owners of the property are nonresidents of the state,
26 infants, or persons of unsound mind, the notice shall be given as follows:

27 (1)(A) By publication in any newspaper in the county which is
28 authorized by law to publish legal notices.

29 (B) The notices shall be published for the same length of
30 time as may be required in other civil causes.

31 (2) If there is no such newspaper published in the county, then
32 the publication shall be made in some newspaper designated by the circuit
33 clerk and one (1) written or printed notice thereof posted on the door of the
34 courthouse of the county; and

35 (3) In writing by certified mail, return receipt requested, to
36 the address of the owners of the property as it appears on the records in the

1 office of the county sheriff or county tax assessor for the mailing of
2 statements of taxes, as provided in § 26-35-705.

3 (d) The petition shall, as nearly as may be, describe the lands over
4 which the right-of-way is located and for which damages are asked to be
5 assessed, whether improved or unimproved, and be sworn to.

6
7 SECTION 5. Arkansas Code 18-15-506 is amended to read as follows:
8 18-15-506. Trial by jury.

9 It shall be the duty of the court to impanel a jury of twelve (12)
10 persons, as in other civil cases, to ascertain the amount of compensation
11 which the ~~corporation~~ electric utility shall pay, and the matter shall
12 proceed and be determined as other civil causes.

13
14 SECTION 6. Arkansas Code 18-15-507 is amended to read as follows:
15 18-15-507. Damages.

16 (a) The amount of damages to be paid the owner of the lands for the
17 right-of-way for the use of the ~~company~~ electric utility shall be determined
18 and assessed irrespective of any other benefit that owner may receive from
19 any improvement proposed by the ~~company~~ electric utility.

20 (b) In all cases where damages for the right-of-way for the use of the
21 ~~electric power corporation~~ electric utility shall have been assessed, in the
22 manner provided, it shall be the duty of the ~~corporation~~ electric utility to
23 deposit with the court or pay to the owners the amount so assessed, and pay
24 such costs as may in the discretion of the court be adjudged against it
25 within thirty (30) days after the assessment. Whereupon, it shall and may be
26 lawful for the ~~company~~ electric utility to enter upon, use, and have the
27 right-of-way over the lands forever.

28 (c) In all cases where the ~~corporation~~ electric utility shall not pay
29 or deposit the amount of damages assessed pursuant to §§ 18-15-501 -
30 18-15-509, within thirty (30) days after the assessment, they shall forfeit
31 all rights in the premises.

32
33 SECTION 7. Arkansas Code 18-15-508 is amended to read as follows:
34 18-15-508. Deposit in case of controversy.

35 (a) Where the determination of questions in controversy in the
36 proceedings is likely to retard the progress of work on or the business of

1 the ~~corporation~~ electric utility, the court or judge in vacation shall
 2 designate an amount of money to be deposited by the ~~corporation~~ electric
 3 utility, subject to the order of the court, and for the purpose of making
 4 compensation when the amount thereof has been assessed, as aforesaid, and the
 5 judge shall designate the place of deposit.

6 (b) Whenever the deposit has been made in compliance with the order of
 7 the court or judge, it shall be lawful for the ~~corporation~~ electric utility
 8 to enter upon the land and proceed with its work, through and over the lands
 9 in controversy, prior to the assessment and payment of damages for the use
 10 and right to be determined as provided in §§ 18-15-501 - 18-15-509.

11
 12 SECTION 8. Arkansas Code 18-15-509 is amended to read as follows:

13 18-15-509. Destruction or injury to company property.

14 Any person who shall destroy or injure the wire, cable, pole, dam,
 15 reservoir, canal, power house, or machinery, or appliances therein of the
 16 ~~corporation~~ electric utility, shall be guilty of a misdemeanor and upon
 17 conviction shall be fined in any sum not less than fifty dollars (\$50.00) nor
 18 more than one thousand dollars (\$1,000) and imprisoned in the county jail for
 19 a period of not less than ten (10) days nor more than six (6) months.

20
 21 SECTION 9. Arkansas Code Title 18, Chapter 15, Subchapter 5 is amended
 22 to add an additional section to read as follows:

23 18-15-511. Declaration of public interest.

24 The business of generating electricity, transmitting electricity,
 25 distributing electricity, or supplying electricity, to or for the public for
 26 compensation, or for public use, is hereby declared to be in the public
 27 interest.

28
 29 SECTION 10. Arkansas Code Title 18, Chapter 15, Subchapter 5 is amended
 30 to add an additional section to read as follows:

31 18-15-512. Definition of Electric Utility.

32 As used in this subchapter the term "electric utility" means an
 33 electric utility as defined by § 23-19-102(9), or an independent transmission
 34 system operator, independent transmission company, independent regional
 35 transmission group, other independent transmission entity operating
 36 transmission facilities in this state under § 23-19-103(g).

1
2 SECTION 11. Arkansas Code 23-3-108(a), concerning domestication of
3 foreign railroad, pipeline, or electric light and power corporations, is
4 amended to read as follows:

5 (a)(1) Before any foreign railroad corporation, foreign pipeline
6 corporation, or foreign light and power corporation ~~of any other state or~~
7 ~~territory~~ organized for the purpose of generating, transmitting, ~~and~~
8 distributing, or supplying electricity ~~electric power and energy for public~~
9 ~~use~~ to or for the public for compensation or for public use, shall be
10 permitted to avail itself of the benefits of §§ 23-3-108, 23-11-302, 23-11-
11 401, 23-11-402, and 23-11-404 or any part thereof, the corporation shall file
12 with the Secretary of State of this state a certified copy of its articles of
13 incorporation or articles of organization, if incorporated or organized under
14 a general law of the state or territory, or a certified copy of the statute
15 laws of the state or territory incorporating or organizing the company where
16 the charter of the railroad, pipeline, or light and power corporation was
17 granted by special statute of the state.

18 (2) Upon the filing of its articles of incorporation, articles
19 of organization or its charter ~~with a map and profile of the proposed line~~
20 and payment of the fees prescribed by law for railroad, pipeline, or light
21 and power charters, the railroad, pipeline, or light and power company, for
22 all intents and purposes, shall become a railroad, pipeline, or light and
23 power corporation of this state, subject to all the laws of this state, the
24 same as if it was formally incorporated or organized in this state, anything
25 in its articles of incorporation, articles of organization or charter to the
26 contrary notwithstanding.

27 (3) Such acts on the part of the corporation shall be conclusive
28 evidence of the intent of the corporation to create and become a domestic
29 corporation.

30
31 SECTION 12. Arkansas Code Title 23, Chapter 3, Subchapter 1 is amended
32 to add an additional section to read as follows:

33 23-3-120. Definition.

34 As used in this subchapter, unless the context requires otherwise, the
35 terms "corporation" or "company" include a corporation and a limited
36 liability company.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

/s/ McMillon