

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

*As Engrossed: S1/25/01 S1/31/01 H2/9/01*

2 83rd General Assembly

# A Bill

3 Regular Session, 2001

SENATE BILL 236

4

5 By: Senators Gwatney, *T. Smith, Faris, Argue, Beebe, Bryles, Cash, Critcher, Everett, Fitch, Gullett,*

6 *Hill, Hoofman, Horn, J. Jeffress, B. Johnson, Mahony, D. Malone, P. Malone, Miller, Riggs, Simes, K.*

7 *Smith, B. Walker, Wilkins, Wilkinson, Wooldridge, Brown, Baker, Bisbee, DeLay, Hunter, Trusty, Webb,*

8 *Whitaker*

9 By: Representatives Cleveland, Magnus, Glover, *Bookout, Cook, Hausam, House, R. Smith, Files, J.*

10 *Lewellen, Creekmore, Biggs, Ferguson, L. Thomas, Moore, T. Roebuck, McMellon*

11

12

13

## For An Act To Be Entitled

14

AN ACT TO AMEND VARIOUS SECTIONS OF THE ELECTRIC

15

CONSUMER CHOICE ACT OF 1999.

16

17

## Subtitle

18

TO AMEND VARIOUS SECTIONS OF THE

19

ELECTRIC CONSUMER CHOICE ACT OF 1999.

20

21

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

23

24 SECTION 1. Arkansas Code 23-3-201 [Effective January 1, 2002], as it

25 appears on page 33 of the 1999 supplement to Volume 22 of the Arkansas Code,

26 is repealed.

27 ~~23-3-201. Requirement for new construction or extension. [Effective~~

28 ~~January 1, 2002.]~~

29 ~~(a) No new construction or operation of any equipment or facilities for~~

30 ~~supplying a public service, or extension thereof, shall be undertaken without~~

31 ~~first obtaining from the Arkansas Public Service Commission a certificate that~~

32 ~~public convenience and necessity require, or will require, such construction~~

33 ~~or operation. Provided, however, no such certificate shall be required for~~

34 ~~electric generation facilities.~~

35 ~~(b) If the construction or operation has been commenced under a limited~~

36 ~~or conditional certificate, or authority as provided in §§ 23-3-203—23-3-~~

1 ~~205, this section shall not be construed to require the certificate, nor shall~~  
2 ~~the certificate be required for an extension within any municipality or~~  
3 ~~district within which service has been lawfully supplied, or for any extension~~  
4 ~~within, or to territory then being served, or necessary in the ordinary~~  
5 ~~course.~~

6 SECTION 2. Effective October 1, 2003, Arkansas Code 23-3-201(a), as it  
7 appears on page 78 of the bound Volume 22 of the Arkansas Code, is amended to  
8 read as follows:

9 (a) No new construction or operation of any equipment or facilities for  
10 supplying a public service, or extension thereof, shall be undertaken without  
11 first obtaining from the Arkansas Public Service Commission a certificate that  
12 public convenience and necessity require, or will require, such construction  
13 or operation. Provided, however, no such certificate shall be required for  
14 electric generation facilities.

15  
16 SECTION 3. Section 7 of Act 1556 of 1999, which would repeal Arkansas  
17 Code 23-18-103 effective January 1, 2002, is repealed.

18 ~~Section 7. Effective January 1, 2002, Arkansas Code 23-18-103 is~~  
19 ~~repealed.~~

20  
21 SECTION 4. Effective October 1, 2003, Arkansas Code 23-18-103 is  
22 repealed.

23 ~~23-18-103. Purchase of electricity from affiliated company.~~

24 ~~(a) As used in this section, unless the context otherwise requires:~~

25 ~~(1) "Affiliated company" means any business entity which is owned~~  
26 ~~wholly or partly by an electric utility or which wholly or partly owns an~~  
27 ~~electric utility, or any business entity which is owned by another business~~  
28 ~~entity which wholly or partly owns an electric utility;~~

29 ~~(2) "Electric utility" means an electric utility subject to the~~  
30 ~~jurisdiction of the Arkansas Public Service Commission.~~

31 ~~(b) Without the prior approval of the Arkansas Public Service~~  
32 ~~Commission, no electric utility shall enter into any agreement for the~~  
33 ~~purchase of electricity from an affiliated company.~~

34 ~~(c) Any agreement entered into in violation of this section shall be~~  
35 ~~void.~~

36 ~~(d) The Arkansas Public Service Commission shall promulgate such~~

1 ~~regulations as are necessary to implement this section.~~

2 ~~(e) This section shall apply to agreements entered into on or after~~  
3 ~~June 28, 1985.~~

4  
5 SECTION 5. Section 8 of Act 1556 of 1999, which would repeal Arkansas  
6 Code 23-18-104, effective January 1, 2002, is repealed.

7 ~~Section 8. Effective January 1, 2002, Arkansas Code 23-18-104 is~~  
8 ~~repealed.~~

9  
10 SECTION 6. Effective October 1, 2003, Arkansas Code 23-18-104 is  
11 repealed.

12 ~~23-18-104. Construction of power generating facilities outside the~~  
13 ~~state.~~

14 ~~(a) No public utility subject to the jurisdiction of the Arkansas~~  
15 ~~Public Service Commission shall commence construction of any power generating~~  
16 ~~facility to be located outside the boundaries of this state without the~~  
17 ~~express written approval of the Arkansas Public Service Commission.~~

18 ~~(b) Any public utility proposing such construction shall render~~  
19 ~~adequate written notice to the commission of its intent in order that the~~  
20 ~~commission may conduct any germane inspection, investigation, public hearing,~~  
21 ~~or take any other action deemed appropriate by the commission.~~

22 ~~(c) Failure on the part of any public utility to obtain prior approval~~  
23 ~~of the commission, as established in this section, shall constitute grounds~~  
24 ~~for disallowance, by the commission, of all costs and expenses associated with~~  
25 ~~the construction and subsequent operation of the facility when computing the~~  
26 ~~utility's cost of service for purposes of any rate making proceedings.~~

27 ~~(d) Any electric utility which does not own in whole or part another~~  
28 ~~electric utility and which is not owned in whole or part by a holding company~~  
29 ~~and which derives less than twenty five percent (25%) of its total revenues~~  
30 ~~from Arkansas customers is exempt from the provisions of this section.~~

31  
32 SECTION 7. Arkansas Code 23-18-511 [Effective January 1, 2002], as it  
33 appears on pages 171 and 172 of the 1999 Supplement to Volume 22 of the  
34 Arkansas Code, is repealed.

35 ~~23-18-511. Application for certificate—Contents generally. [Effective~~  
36 ~~January 1, 2002.]~~

1           An applicant for a certificate shall file with the Arkansas Public  
2 Service Commission a verified application in such form as the commission may  
3 prescribe and containing the following information:—

4           (1)—A general description of the location and type of the major utility  
5 facility proposed to be built;—

6           (2)—A general description of any reasonable alternate location or  
7 locations considered for the proposed facility;—

8           (3)—Except in the case of a major utility facility as defined by § 23-  
9 18-503(2)(A), a statement of the need and reasons for construction of the  
10 facility;—

11           (4)—Except in the case of a major utility facility as defined by § 23-  
12 18-503(2)(A), a statement of the estimated costs of the facility and the  
13 proposed method of financing the construction of the facility;—

14           (5)(A)—Except in the case of a major utility facility as defined by §  
15 23-18-503(2)(A), a general description of any reasonable alternate methods of  
16 financing the construction of the facility;—

17                   (B)—A description of the comparative merits and detriments of  
18 each alternate financing method considered;—

19                   (C)—If, at the time of filing of the application, the federal  
20 income tax laws and the state laws would permit the issuance of tax exempt  
21 bonds to finance the construction of the proposed facility for the applicant  
22 by a state financing agency, the application shall also include a discussion  
23 of the merits and detriments of financing the facility with such bonds;—

24           (6)—An analysis of the projected economic or financial impact on the  
25 applicant and the local community where the facility is to be located as a  
26 result of the construction and the operation of the proposed facility;—

27           (7)—Except in the case of a major utility facility as defined by § 23-  
28 18-503(2)(A), an analysis of the estimated effects on energy costs to the  
29 consumer as a result of the construction and operation of the proposed  
30 facility;—

31           (8)(A)—An exhibit containing an environmental impact statement, which  
32 shall fully develop the four (4) factors listed in subdivision (8)(B) of this  
33 section, treating in reasonable detail such considerations, if applicable, as  
34 the proposed facility's direct and indirect effect on the ecology of the land,  
35 air and water environment, established park and recreational areas, and on any  
36 sites of natural, historic, and scenic values and resources of the area in

1 which the facility is to be located, and any other relevant environmental  
2 effects.—

3 ~~(B) The environmental impact statement shall set out:—~~

4 ~~(i) The environmental impact of the proposed action;—~~

5 ~~(ii) Any adverse environmental effects which cannot be  
6 avoided;—~~

7 ~~(iii) A description of the comparative merits and  
8 detriments of each alternate location or for generating plants, the energy  
9 production process considered, and a statement of the reasons why the proposed  
10 location and production process were selected for the facility; and—~~

11 ~~(iv) Any irreversible and irretrievable commitments of  
12 resources which would be involved in the proposed action should it be  
13 implemented;—~~

14 ~~(9) In the case of a major utility facility as defined by § 23-18-  
15 503(2)(B), the effect of the proposed facility on competition for the sale of  
16 electric generation in the state or region; and—~~

17 ~~(10) Such other information of an environmental or economic nature as  
18 the applicant may consider relevant or as the commission may by regulation or  
19 order require.—~~

20  
21 SECTION 8. Effective October 1, 2003, Arkansas Code 23-18-511, as it  
22 appears on pages 502 and 503 of the bound Volume 22 of the Arkansas Code, is  
23 amended to read as follows:

24 23-18-511. Application for certificate - Contents generally. [Effective  
25 October 1, 2003.]

26 An applicant for a certificate shall file with the Arkansas Public  
27 Service Commission a verified application in such form as the commission may  
28 prescribe and containing the following information:

29 (1) A general description of the location and type of the major utility  
30 facility proposed to be built;

31 (2) A general description of any reasonable alternate location or  
32 locations considered for the proposed facility;

33 (3) A Except in the case of a major utility facility as defined by §  
34 23-18-503(2)(A), a statement of the need and reasons for construction of the  
35 facility;

36 (4) A Except in the case of a major utility facility as defined by §

1 23-18-503(2)(A), a statement of the estimated costs of the facility and the  
2 proposed method of financing the construction of the facility;

3 (5)(A) A Except in the case of a major utility facility as defined by §  
4 23-18-503(2)(A), a general description of any reasonable alternate methods of  
5 financing the construction of the facility;

6 (B) A description of the comparative merits and detriments of  
7 each alternate financing method considered;

8 (C) If, at the time of filing of the application, the federal  
9 income tax laws and the state laws would permit the issuance of tax-exempt  
10 bonds to finance the construction of the proposed facility for the applicant  
11 by a state financing agency, the application shall also include a discussion  
12 of the merits and detriments of financing the facility with such bonds;

13 (6) An analysis of the projected economic or financial impact on the  
14 applicant and the local community where the facility is to be located as a  
15 result of the construction and the operation of the proposed facility;

16 (7) ~~As~~ Except in the case of a major utility facility as defined by §  
17 23-18-503(2)(A), an analysis of the estimated effects on energy costs to the  
18 consumer as a result of the construction and operation of the proposed  
19 facility;

20 (8)(A) An exhibit containing an environmental impact statement, which  
21 shall fully develop the four (4) factors listed in subdivision (8)(B) of this  
22 section, treating in reasonable detail such considerations, if applicable, as  
23 the proposed facility's direct and indirect effect on the ecology of the land,  
24 air and water environment, established park and recreational areas, and on any  
25 sites of natural, historic, and scenic values and resources of the area in  
26 which the facility is to be located, and any other relevant environmental  
27 effects.

28 (B) The environmental impact statement shall set out:

29 (i) The environmental impact of the proposed action;

30 (ii) Any adverse environmental effects which cannot be  
31 avoided;

32 (iii) A description of the comparative merits and  
33 detriments of each alternate location or for generating plants, the energy  
34 production process considered, and a statement of the reasons why the proposed  
35 location and production process were selected for the facility; and

36 (iv) Any irreversible and irretrievable commitments of

1 resources which would be involved in the proposed action should it be  
2 implemented;

3 (9) In the case of a major utility facility as defined by § 23-18-  
4 503(2)(B), the effect of the proposed facility on competition for the sale of  
5 electric generation in the state or region; and

6 ~~(9)(10)~~ Such other information of an environmental or economic nature  
7 as the applicant may consider relevant or as the commission may by regulation  
8 or order require.

9

10 SECTION 9. Arkansas Code 23-18-519 [Effective January 1, 2002], as it  
11 appears on pages 175 through 177 of the 1999 Supplement to Volume 22 of the  
12 Arkansas Code, is repealed.

13 ~~23-18-519. Decision of commission—Modifications of application—~~  
14 ~~[Effective January 1, 2002.]~~

15 ~~(a) The Arkansas Public Service Commission shall render a decision upon~~  
16 ~~the record either granting or denying the application as filed, or granting it~~  
17 ~~upon such terms, conditions, or modifications of the location, financing,~~  
18 ~~construction, operation, or maintenance of the major utility facility as the~~  
19 ~~commission may deem appropriate.—~~

20 ~~(b) The Arkansas Public Service Commission may not grant a certificate~~  
21 ~~for the location, financing, construction, operation, and maintenance of a~~  
22 ~~major utility facility, either as proposed or as modified by the commission,~~  
23 ~~unless it shall find and determine:—~~

24 ~~(1) Except in the case of a major utility facility as defined by~~  
25 ~~§ 23-18-503(2)(A), the basis of the need for the facility;—~~

26 ~~(2) Except in the case of a major utility facility as defined by~~  
27 ~~§ 23-18-503(2)(A), that the facility will serve the public interest,~~  
28 ~~convenience, and necessity;—~~

29 ~~(3) The nature of the probable environmental impact of the~~  
30 ~~facility;—~~

31 ~~(4) That the facility represents an acceptable adverse~~  
32 ~~environmental impact, considering the state of available technology, the~~  
33 ~~requirements of the customers of the applicant for utility service, the nature~~  
34 ~~and economics of the proposal, and the various alternatives, if any, and other~~  
35 ~~pertinent considerations;—~~

36 ~~(5) The nature of the probable economic impact of the facility;—~~

1           ~~(6) Except in the case of a major utility facility as defined by~~  
2 ~~§ 23-18-503(2)(A), that the facility financing method either as proposed or as~~  
3 ~~modified by the commission represents an acceptable economic impact,~~  
4 ~~considering economic conditions and the need for and cost of additional public~~  
5 ~~utility services;~~

6           ~~(7) In the case of an electric transmission line, that such~~  
7 ~~facility is not inconsistent with known plans of other electric systems~~  
8 ~~servicing the state, which plans have been filed with the commission;~~

9           ~~(8) In the case of a gas transmission line, that the location of~~  
10 ~~the line will not pose an undue hazard to persons or property along the area~~  
11 ~~to be traversed by the line;~~

12           ~~(9) In the case of a major utility facility, as defined by § 23-~~  
13 ~~18-503(2)(B), the effect of the proposed facility on competition for the sale~~  
14 ~~of electric generation in the state or region; and~~

15           ~~(10) That the location of the facility as proposed conforms as~~  
16 ~~closely as practicable to applicable state, regional, and local laws and~~  
17 ~~regulations issued thereunder, except that the commission may refuse to apply~~  
18 ~~all or any part of any regional or local law or regulation if it finds that,~~  
19 ~~as applied to the proposed facility, that law or regulation is unreasonably~~  
20 ~~restrictive in view of the existing technology, or of factors of cost or~~  
21 ~~economics, or of the needs of consumers whether located inside or outside of~~  
22 ~~the directly affected government subdivisions.~~

23           ~~(c)(1) If the commission determines that the location or design of all~~  
24 ~~or a part of the proposed facility should be modified, it may condition its~~  
25 ~~certificate upon the modification, provided that the municipalities, counties,~~  
26 ~~and persons residing therein affected by the modification shall have been~~  
27 ~~given reasonable notice thereof, if the persons, municipalities, or counties~~  
28 ~~have not previously been served with notice of the application.~~

29           ~~(2) If the commission requires, in the case of a transmission~~  
30 ~~line, that a portion thereof shall be located underground in one (1) or more~~  
31 ~~areas, the commission, after giving appropriate notice and an opportunity to~~  
32 ~~be heard to affected ratepayers, shall have the power and authority to~~  
33 ~~authorize the adjustment of rates and charges to customers within the areas~~  
34 ~~where the underground portion of the transmission line is located in order to~~  
35 ~~compensate for the additional costs, if any, of such underground construction.~~

36           ~~(d)(1) If the commission determines that financing of all or part of~~



1 the proposed facility should be modified, it may condition its certificate  
2 upon the modification.—

3 ~~(2) If at the time of filing of the application, or within sixty~~  
4 ~~(60) days thereafter, the federal income tax laws and the state laws would~~  
5 ~~permit the issuance of tax exempt bonds to finance the construction of the~~  
6 ~~proposed facility for the applicant and if the commission determines that~~  
7 ~~financing the facility with such tax exempt bonds would be in the best~~  
8 ~~interests of the people of the state, the commission, after giving appropriate~~  
9 ~~notice and an opportunity to be heard to the parties, shall have the power and~~  
10 ~~authority to require by order or regulation that the facility be financed in~~  
11 ~~such manner as may be provided elsewhere by law.—~~

12 ~~(e) A copy of the decision and any order issued therewith shall be~~  
13 ~~served upon each party within sixty (60) days after the conclusion of each~~  
14 ~~hearing held under this subchapter.—~~

15  
16 SECTION 10. Effective October 1, 2003, Arkansas Code 23-18-519(b), as  
17 it appears on pages 508 and 509 of the bound Volume 22 of the Arkansas Code,  
18 is amended to read as follows:

19 (b) The commission may not grant a certificate for the location,  
20 financing, construction, operation, and maintenance of a major utility  
21 facility, either as proposed or as modified by the commission, unless it shall  
22 find and determine:

23 (1) ~~The~~ Except in the case of a major utility facility as defined  
24 by § 23-18-503(2)(A), the basis of the need for the facility;

25 (2) ~~That~~ Except in the case of a major utility facility as  
26 defined by § 23-18-503(2)(A), that the facility will serve the public  
27 interest, convenience, and necessity;

28 (3) The nature of the probable environmental impact of the  
29 facility;

30 (4) That the facility represents an acceptable adverse  
31 environmental impact, considering the state of available technology, the  
32 requirements of the customers of the applicant for utility service, the nature  
33 and economics of the proposal, and the various alternatives, if any, and other  
34 pertinent considerations;

35 (5) The nature of the probable economic impact of the facility;

36 (6) ~~That~~ Except in the case of a major utility facility as

1 defined by § 23-18-503(2)(A), that the facility financing method either as  
 2 proposed or as modified by the commission represents an acceptable economic  
 3 impact, considering economic conditions and the need for and cost of  
 4 additional public utility services;

5 (7) In the case of an electric transmission line, that such  
 6 facility is not inconsistent with known plans of other electric systems  
 7 serving the state, which plans have been filed with the commission;

8 (8) In the case of a gas transmission line, that the location of  
 9 the line will not pose an undue hazard to persons or property along the area  
 10 to be traversed by the line;

11 ~~That the energy efficiency of the power production facility~~  
 12 ~~has been given significant weight in the decision making process;~~ In the case  
 13 of a major utility facility as defined by § 23-18-503(2)(B), the affect of the  
 14 proposed facility on competition for the sale of electric generation in the  
 15 state or regions; and

16 (10) That the location of the facility as proposed conforms as  
 17 closely as practicable to applicable state, regional, and local laws and  
 18 regulations issued thereunder, except that the commission may refuse to apply  
 19 all or any part of any regional or local law or regulation if it finds that,  
 20 as applied to the proposed facility, that law or regulation is unreasonably  
 21 restrictive in view of the existing technology, or of factors of cost or  
 22 economics, or of the needs of consumers whether located inside or outside of  
 23 the directly affected government subdivisions.

24  
 25 SECTION 11. Arkansas Code 23-19-101(d) is amended to read as follows:

26 (d) The General Assembly finds that a competitive retail electric  
 27 market that gives retail customers the opportunity to choose the retail  
 28 customer's provider of electricity and that encourages full and fair  
 29 competition among providers of electricity should be established by ~~January 1,~~  
 30 ~~2002~~ October 1, 2003, but no later than ~~June 30, 2003~~ October 1, 2005. The  
 31 General Assembly further finds that reciprocity among electric utilities and  
 32 other providers of electric service to the extent permitted in this chapter is  
 33 necessary to promote fair competition and to ensure the benefits of  
 34 competition to the greatest number of consumers, and that reciprocity to the  
 35 extent authorized in this chapter would assist in the transition from  
 36 regulation to competition.

1  
2 SECTION 12. Arkansas Code 23-19-103(a) and (b) are amended to read as  
3 follows:

4 (a) Retail open access shall be implemented by electric utilities on  
5 ~~January 1, 2002~~ October 1, 2003. As to any particular utility or utilities,  
6 after notice and hearing, the Arkansas Public Service Commission may delay the  
7 implementation of retail open access for ~~ninety (90) days~~ not to exceed twelve  
8 (12) months and ~~for successive 90 day periods thereafter~~ successive periods  
9 thereafter, not to exceed twelve (12) months, but not beyond ~~June 30, 2003~~  
10 October 1, 2005, upon finding that:

11 (1) The particular electric utility or electric utilities have not had  
12 a reasonable opportunity to commence determination of their stranded costs, if  
13 any, pursuant to § 23-19-303 because of circumstances beyond the control of  
14 the utility or utilities and shall not include an election by the utility to  
15 delay filing an application for stranded cost recovery until after the  
16 implementation of retail open access pursuant to § 23-19-301(a);

17 (2) Necessary approvals from the Federal Energy Regulatory Commission,  
18 or any successor agency, have not been obtained;

19 (3) Implementation of retail open access would have an immediate,  
20 irreparable, and adverse financial effect on county or municipal governments,  
21 or school districts;

22 (4) Appropriate metering, billing, and collection procedures have not  
23 been established or all electronic data exchange and information systems  
24 necessary for implementation of retail open access have not been fully  
25 developed, installed and tested;

26 (5) Implementation of retail open access would have a significant,  
27 adverse effect on the reliability of the electric system in Arkansas; ~~or~~

28 (6) Implementation of retail open access would have a material adverse  
29 effect upon the public interest, especially including upon residential or  
30 small business customers in this state;

31 (7) Most customers would not have a reasonable opportunity to realize  
32 net benefits, specifically including relative price benefits for residential  
33 and small business customers; or

34 (8) Demonstrably effective market structures are not in place,  
35 including but not limited to:

36 (A) All electric utilities have not subjected their transmission

1 facilities to control by an independent transmission entity, pursuant to § 23-  
 2 19-103(g), approved by the Federal Energy Regulatory Commission; and

3 (B) There is insufficient generation and transmission capacity to  
 4 serve the current and projected demand of Arkansas consumers.

5 (b) If retail open access implementation is delayed pursuant to  
 6 subsection (a) of this section for one (1) or more utilities that serve, in  
 7 the aggregate, fifty-one percent (51%) or more of the total customers served  
 8 by electric utilities in this state, implementation shall be delayed for all  
 9 electric utilities. Provided, however, that an electric utility may, at the  
 10 utility's election, petition the commission for approval to proceed with  
 11 retail open access implementation for its customers notwithstanding that  
 12 implementation has been delayed for electric utilities that serve, in the  
 13 aggregate, fifty-one percent (51%) or more of the total customers served by  
 14 electric utilities in this state. If delayed pursuant to this subsection (b),  
 15 retail open access implementation shall resume, on a utility-by-utility basis  
 16 as provided in subsection (a) of this section, as expeditiously as possible  
 17 after the commission determines that electric utilities serving more than  
 18 fifty-one percent (51%) of the electric utility customers in this state are  
 19 ready to proceed with retail open access implementation. Except as provided  
 20 in § 23-19-106(e), in no event shall retail open access be delayed beyond ~~June~~  
 21 ~~30, 2003~~ October 1, 2005. For purposes of this subsection, the number of  
 22 customers served by a particular electric utility shall be determined by the  
 23 commission's most recent annual report to the Governor pursuant to § 23-2-315.  
 24 Each such report issued after July 30, 1999, shall include the number of  
 25 customers served by each electric utility.

26  
 27 SECTION 13. Arkansas Code 23-19-107(a) is amended to read as follows:

28 (a) Before January 15, 2001, and thereafter before January 15 of each  
 29 odd-numbered year through ~~2005~~ 2007, the Arkansas Public Service Commission  
 30 shall report to the General Assembly on the progress of the development of  
 31 competition in electric markets and the impact, if any, of competition and  
 32 industry restructuring on retail customers in Arkansas. The report shall  
 33 include:

34 (1) An assessment of the impact of competition on the rates and  
 35 availability of electric service for each class of retail customers in each  
 36 allocated service territory, including, but not limited to, the extent of

1 customer choice with regard to each customer class in each service territory,  
2 or in such other smaller units as may be determined by the commission;

3 (2) A summary of commission actions over the preceding two (2)  
4 years that reflect changes in the scope of competition in regulated electric  
5 markets;

6 (3) An analysis of the effect, if any, of competition on the  
7 reliability of the electric system and on the quality of service provided to  
8 customers; and

9 (4) Recommendations to the General Assembly for further  
10 legislation that the commission finds appropriate to promote the public  
11 interest in a competitive electric market.

12

13 SECTION 14. Arkansas Code 23-19-107(c) is amended to read as follows:

14 (c) Before January 15, 2003, and before January 15 of each year  
15 thereafter that the General Assembly convenes in regular sessions through ~~2013~~  
16 2017, the commission shall submit a report to the General Assembly that  
17 contains such information as the commission determines is necessary to allow  
18 the General Assembly to determine whether electric utilities or energy service  
19 providers are charging higher rates or refusing to serve or otherwise  
20 separating out for disparate treatment customers who live in particular areas  
21 or neighborhoods. Included in the report will be comparisons of the average  
22 rates charged by electric utilities or energy service providers to residential  
23 customers in different regions of the state. The commission shall be empowered  
24 to demand disclosure of this information from every electric utility or energy  
25 service provider certified to do business in this state.

26

27 SECTION 15. Arkansas Code 23-19-205(e) is amended to read as follows:

28 (e) In addition to its proposed tariffs, the utility may file  
29 supporting cost data for costs, if any, that have been found to exist as of  
30 that date, to be recovered through a customer transition charge that has been  
31 determined pursuant to §§ 23-19-303 and 23-19-304, and information specifying  
32 the rate of its qualified intangible charge or charges, if any, resulting from  
33 a securitization of stranded costs. ~~On or before July 1, 2001~~ Not later than  
34 one hundred and eighty (180) days before the implementation of retail open  
35 access, and in accordance with a schedule and the procedures it may establish,  
36 the Arkansas Public Service Commission shall, after hearing, approve or modify

1 and make effective as of that date, each electric utility's proposed tariffs  
2 for distribution services and any other services that will remain subject to  
3 rate regulation and shall require electric utilities to show separate rates  
4 and charges for their unbundled services on bills to retail electric  
5 customers.

6  
7 SECTION 16. Arkansas Code 23-19-301(a) is amended to read as follows:

8 (a) No later than December 31, 1999, any electric utility that intends  
9 to seek recovery of stranded costs shall file notice of such intent with the  
10 Arkansas Public Service Commission. Such notice may subsequently be withdrawn  
11 by the electric utility prior to filing its application pursuant to this  
12 subsection but no later than December 31, 2001, thereby precluding any  
13 recovery of stranded costs through a customer transition charge. Any electric  
14 utility that does not file its election by that date shall not be eligible for  
15 such recovery. Such election shall be at the sole discretion of the electric  
16 utility. Following receipt of such notice, the commission shall, at the  
17 earliest practicable date, direct the electric utility to file an application  
18 setting forth the methods that the utility proposes to determine its stranded  
19 costs. In no event shall the commission direct that the electric utility file  
20 such application any later than one hundred eighty (180) days following the  
21 implementation of retail open access. Commission proceedings on such  
22 application shall be pursuant to notice and hearing.

23  
24 SECTION 17. Arkansas Code 23-19-402(a) is amended to read as follows:

25 (a) On and after the implementation of retail open access, each  
26 incumbent electric utility, or a retail affiliate thereof, doing business in  
27 this state shall offer a standard service package on such conditions as may be  
28 set by the Arkansas Public Service Commission within its distribution service  
29 territory and shall have an obligation to provide such service ~~unless and~~  
30 ~~until~~ to any customer who chooses to receive such service, or when any such  
31 customer has ~~elected~~ not selected an alternative energy service provider, or  
32 in the event any such customer has not been able to secure an alternative  
33 energy service provider. The obligation to offer the standard service package  
34 shall be continuous and any customer may choose to receive service or to  
35 return to service under the standard service package, subject to terms and  
36 conditions which the commission may establish in the interest of maintaining a

1 stable competitive market. The commission shall, after notice and hearing,  
2 establish procedures and methods by which the electric utility or a retail  
3 affiliate thereof shall demonstrate that its rates for such standard service  
4 package are consistent with competitive market prices. The commission may  
5 require that the electric utility or a retail affiliate thereof use  
6 competitive bidding to procure some or all of the generation necessary to  
7 fulfill its obligations under this subsection. The previous two (2) sentences  
8 shall not apply to an electric utility or retail affiliate thereof which  
9 agrees to have its rates for this service established pursuant to §§ 23-4-101  
10 - 23-4-207 and §§ 23-4-401 - 23-4-509, and in the case of a rural electric  
11 cooperative, the additional provisions in §§ 23-4-901 - 23-4-909.

12  
13 SECTION 18. Arkansas Code 23-19-404(b) is amended to read as follows:

14 (b) Upon application, complaint, or its own motion, and after notice  
15 and hearing, the commission shall issue ~~by June 1, 2001, or for good cause~~  
16 ~~shown, no later than thirty (30) days thereafter, and at such later times as~~  
17 ~~the commission shall determine,~~ an order finding whether any provider of a  
18 product or service for which competition is authorized by this chapter has  
19 market power. Within sixty (60) days of the issuance of such order, unless the  
20 commission grants an extension of time, such provider shall file with the  
21 commission, consistent with any rules or orders of the commission, a market  
22 power mitigation plan designed to eliminate the market power found by the  
23 commission. Such plan may include, without limitation, price caps,  
24 transitional standard offers, the auction of generation to be sold under long-  
25 term power contracts, the placement of assets or activities in affiliated  
26 corporations, and divestiture of assets or activities. After notice and  
27 hearing considering such plan, along with any alternative plans proposed by  
28 intervenors or commission staff, the commission shall order such provider to  
29 implement those measures determined by the commission to be necessary to  
30 mitigate the market power that it finds to be in the public interest. Such  
31 mitigation measures shall be implemented ~~by January 1, 2002, or such later~~  
32 ~~date as may be authorized by the commission, but such date shall be no later~~  
33 ~~than the implementation of retail open access~~ as soon as practicable, in  
34 accordance with a schedule established by the commission, taking into account  
35 the planned date for the implementation of retail open access. The measures  
36 ordered by the commission may include, but are not limited to, price caps,

1 transitional standard offers, the auction of generation to be sold under long-  
2 term power contracts, the auction or other competitive selection of the right  
3 to serve customers who have not made an affirmative selection of an electric  
4 utility or electric service provider as provided in subsection (c) of this  
5 section, and divestiture of assets or activities. Provided, the commission may  
6 not order an electric utility or affiliated energy services provider to divest  
7 assets or activities without the consent of such utility or affiliated energy  
8 services provider, unless and until the commission determines that other  
9 available measures will not adequately mitigate the utility's or affiliated  
10 energy services provider's market power. Furthermore, the commission may delay  
11 implementation of divestiture until after the implementation of retail open  
12 access if implementing divestiture prior thereto would increase the utility's  
13 stranded costs and would be contrary to the public interest. If the commission  
14 determines that no mitigation plan proposed or considered pursuant to this  
15 subsection will adequately mitigate market power, the commission shall notify  
16 the House and Senate Committees on Insurance and Commerce and may refer its  
17 findings and any recommendations to appropriate state or federal authorities,  
18 file an action or actions under applicable laws in any court of competent  
19 jurisdiction, or take such other action as is authorized by law. Nothing in  
20 this subsection shall in any way limit the obligations or liability, under  
21 state or federal anti-trust or consumer protection laws or regulations, of an  
22 electric utility or energy service provider for conduct arising after  
23 implementation of retail open access. In addition, a proceeding pursuant to  
24 this subsection shall not be a condition precedent to an action pursuant to  
25 state or federal anti-trust or consumer protection laws or regulations.

26

27 *SECTION 19.* Arkansas Code 23-19-404(e) is amended to read as follows:

28 (e) No later than ~~July 1, 2008~~ April 1, 2009, and annually thereafter,  
29 the commission shall submit to the General Assembly a report assessing the  
30 competitiveness of those markets for which competition has been authorized by  
31 this chapter. Each such report shall include a recommendation as to whether  
32 the authority granted to the commission under this section should be  
33 continued, revised, or repealed. Upon receipt of such report, the House and  
34 Senate Committees on Insurance and Commerce shall make a recommendation to the  
35 General Assembly as to whether to revise or repeal this section.

36



1           SECTION 20. EMERGENCY CLAUSE. It is hereby found and determined by the  
2 Eighty-third General Assembly that the timetable established by the Electric  
3 Consumer Choice Act of 1999 for its implementation does not offer enough time  
4 to properly implement the act; that this act modifies that timetable to  
5 provide for adequate time for the implementation; that some provisions of the  
6 Electric Consumer Choice Act of 1999 will go into effect prior to ninety-one  
7 (91) days after the adjournment of this session; that this act is designed to  
8 postpone those implementation dates; and that unless this emergency clause is  
9 adopted, this act will not go into effect until after provisions of the  
10 Electric Consumer Choice Act are already effective which would result in  
11 confusion, if not chaos. Therefore, an emergency is declared to exist and  
12 this act being immediately necessary for the preservation of the public peace,  
13 health and safety shall become effective on the date of its approval by the  
14 Governor. If the bill is neither approved nor vetoed by the Governor, it  
15 shall become effective on the expiration of the period of time during which  
16 the Governor may veto the bill. If the bill is vetoed by the Governor and the  
17 veto is overridden, it shall become effective on the date the last house  
18 overrides the veto.

19                               */s/ Gwatney, et al.*  
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