

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 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/17/05 H3/18/05

A Bill

HOUSE BILL 1880

5 By: Representatives Verkamp, Pickett
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7

For An Act To Be Entitled

9 AN ACT TO CLARIFY NOTICE REQUIREMENTS FOR CHANGES
10 IN RATES AND CHARGES BY PUBLIC UTILITIES; TO ADD
11 NOTICE AND PROCEDURAL REQUIRMENTS FOR THE
12 SETTLEMENT OF GENERAL RATE CASES BEFORE THE
13 ARKANSAS PUBLIC SERVICE COMMISSION; TO ESTABLISH
14 ADDITIONAL REQUIREMENTS FOR THE COMMISSION'S
15 ISSUANCE OF A PROTECTIVE ORDER; AND FOR OTHER
16 PURPOSES.

Subtitle

17
18 AN ACT TO AMEND THE ARKANSAS PUBLIC
19 SERVICE COMMISSION'S AUTHORITY TO CHANGE
20 THE RATES AND CHARGES OF A PUBLIC
21 UTILITY, TO ISSUE PROTECTIVE ORDERS, AND
22 TO ADD A PROCEDURE FOR THE SETTLEMENT OF
23 GENERAL RATE CASES.
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26
27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

29 SECTION 1. Arkansas Code § 23-2-103 is amended to read as follows:
30 23-2-103. Offices - Place of hearings and investigations.

31 (a) The office of the Arkansas Public Service Commission shall be in
32 the State Capitol, but the commission may conduct hearings and make
33 investigations anywhere in the different parts of the state when, in the
34 opinion of the commission, the hearings will best serve the interest and
35 convenience of the public.

36 (b)(1) ~~When a formal proceeding to consider a general change or~~



1 ~~modification in the rates and charges of a public utility has been initiated~~
2 ~~before the commission, the~~ The commission shall conduct a hearing for the
3 purpose of receiving public comment in an appropriate location or locations
4 within the service territory of the public utility;

5 (A) If a formal proceeding to consider a general change or
6 modification in the rates and charges of a public utility has been initiated
7 before the commission; and

8 (B) After the filing of a settlement in a formal
9 proceeding to consider a general change or modification in the rates and
10 charges of a public utility if the hearing required in subdivision (b)(1)(A)
11 of this section:

12 (i) Was conducted before the filing of the
13 settlement; or

14 (ii) Will be required to be rescheduled to meet the
15 notice requirements of subdivision (b)(2) of this section.

16 (2) The commission shall cause the public utility to provide
17 reasonable notice, including the publication of a public notice in a
18 newspaper of general circulation in the affected service area, to the print
19 and broadcast media at least two (2) weeks before each hearing conducted in
20 accordance with subdivision (b)(1) of this section.

21
22 SECTION 2. Arkansas Code § 23-2-316 is amended to read as follows:

23 23-2-316. Records of commission open to public - Exceptions -
24 Protective orders.

25 (a) ~~All~~ Except as provided in subdivisions (b) and (c) of this
26 section, all facts and information, including all reports, records, files,
27 books, accounts, papers, and memoranda in the possession of the commission,
28 shall be public and open to public inspection at all reasonable times.

29 (b)(1) ~~Whenever the commission determines it to be necessary in the~~
30 ~~interest of the public or, as to proprietary facts or trade secrets, in the~~
31 ~~interest of the utility to withhold such facts and information from the~~
32 ~~public, the commission shall do so.~~ Except as authorized under subdivision
33 (c)(1) of this section, the commission shall issue a protective order
34 authorizing the withholding of facts and information from the public whenever
35 it finds that the party seeking a protective order has proved by a
36 preponderance of the evidence that withholding is:

1 (A) In the public interest; or

2 (B) In the interest of the public utility with respect to
3 proprietary facts or trade secrets.

4 (2) A hearing is required if:

5 (A) A party timely objects to the issuance of a protective
6 order; or

7 (B) A nonparty challenges the protective order under the
8 rules promulgated under subsection (d) of this section.

9 (3)(A) Unless the commission orders a shorter period, a
10 protective order is effective for a period of three (3) years after the date
11 of its issuance.

12 (B) A protective order may be reissued before its
13 expiration if the conditions of subdivision (b)(1) of this section are
14 satisfied.

15 ~~(2) The commission may take such action in the nature of, but~~
16 ~~not limited to, issuing protective orders, temporarily or permanently sealing~~
17 ~~records, or making other appropriate orders to prevent or otherwise limit~~
18 ~~public disclosure of facts and information.~~

19 (c)(1) Whenever it determines that there is good cause, the commission
20 may issue an interim protective order authorizing the withholding of specific
21 facts and information from the public for a period of time not to exceed
22 fifteen (15) days from the date of the issuance of the interim protective
23 order.

24 (2) At its discretion, the commission may extend an interim
25 protective order's expiration date one (1) time for a period not to exceed
26 fifteen (15) days after the date of the interim protective order's original
27 date of expiration.

28 (d) The commission shall adopt rules that provide a procedure for
29 persons who were not parties to a proceeding in which a protective order was
30 issued to challenge the propriety of the commission's issuance of a
31 protective order under subsection (b) of this section.

32
33 SECTION 3. Arkansas Code Title 23, Chapter 2, Subchapter 3 is amended
34 to add an additional section to read as follows:

35 23-2-317. Settlement of an application for a general change or
36 modification in the rates and charges of a public utility.

1 (a) As used in this section:

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

3 (2) "General staff" means the investigative and advocacy
4 component of the commission that participates as a party in proceedings
5 before the commission in accordance with the commission's rules; and

6 (3) "Settlement" means an agreement between some or all of the
7 parties to a commission proceeding on the resolution of a proceeding or some
8 part of a proceeding.

9 (b) The commission may approve a settlement if after a public hearing
10 the settling parties prove by a preponderance of the evidence that the
11 settlement is fair, just and reasonable, and in the public interest.

12 (c)(1) Before any party engages in a settlement discussion, it shall
13 give reasonable notice of that intention to the other parties in the
14 proceeding; and

15 (2) Provide a reasonable opportunity for any party in the
16 proceeding to participate in any settlement discussion.

17 (d) Whenever a settlement is filed for commission approval, it shall
18 be accompanied by a pleading or written testimony containing:

19 (1) The factual and legal considerations on which the
20 commission's acceptance is sought, and

21 (2) An explanation of the settlement's effect on each settling
22 party's previously asserted position, if any.

23 (e)(1)(A) Any party may file an objection to a settlement within ten
24 (10) days after the settlement was filed.

25 (B) Objections shall specify:

26 (i) The portions of the settlement that are opposed;

27 (ii) The legal basis for that opposition; and

28 (iii) Any facts that are contested.

29 (2) Any party failing to file a timely objection waives his or
30 her right to cross examine witnesses at any hearing on the settlement's
31 merits.

32
33 SECTION 4. Arkansas Code § 23-4-401 is amended to read as follows:

34 23-4-401. Notice of intention to file application.

35 (a) Every public utility shall notify the Secretary of the Arkansas
36 Public Service Commission in writing of its intention to file an application

1 for a general change or modification in its rates and charges that may affect
2 ten percent (10%) or more of that utility's customers at least sixty (60)
3 days but no earlier than ninety (90) days before the application is filed.

4 (b) Failure to provide such notice or failure to comply with its terms
5 shall be grounds for denial of the application. Such grounds may be waived by
6 the commission when the public interest permits.

7
8 SECTION 5. Arkansas Code § 23-4-402 is amended to read as follows:
9 23-4-402. Notice of proposed changes.

10 (a) Unless the Arkansas Public Service Commission otherwise orders, no
11 public utility shall make any change in any rate or charge duly established
12 under this act except after thirty (30) days' notice to the commission.

13 (b) This notice shall plainly state:

14 (1) ~~the~~ The changes proposed to be made in the rates or charges
15 then in force and the time when the changed rates or charges will go into
16 effect;

17 (2) The number of customers to be affected; and

18 (3) The annual revenue effect of the change in the rate or
19 charge, if any.

20 ~~(b)(c)~~ (c) The utility shall also give notice of the proposed changes to
21 other interested parties as the commission in its discretion may direct.

22
23 SECTION 6. Arkansas Code § 23-4-407 is amended to read as follows:
24 23-4-407. Suspension of proposed rates.

25 (a) Pending its investigation and the decision thereon, the Arkansas
26 Public Service Commission may suspend the operation of the rate by written
27 order at any time before the new rate becomes effective. However, the
28 suspension shall not be for a longer period than nine (9) months beyond the
29 time when the rate would otherwise go into effect. Any order initially
30 suspending the rate shall set a specific date for the commencement of a
31 hearing inquiring into the rate requested unless waived by the applicant
32 utility.

33 (b)(1) Provided, however, that the commission may suspend, for a time
34 certain, the operation of the rate or rates for a longer period than nine (9)
35 months beyond the time when such rate or rates would otherwise go into effect
36 if the public utility which filed the rate or rates files a waiver in writing

1 with the commission before the expiration of the previously ordered
2 suspension period consenting to such an additional suspension.

3 (2)(A) Except as provided in subdivision (b)(2)(B) of this
4 section, the The commission may not suspend a rate or rates for any
5 additional period greater than that consented to by the public utility.

6 (B) If the public utility is a party to a proposed
7 settlement, the commission may suspend the operation of the rates or rates
8 for a period up to thirty (30) days beyond the time when the rates would
9 otherwise go into effect.

10 ~~(2)(c)~~ The provisions of ~~this subsection~~ subsection (b) of this
11 section shall not apply to any telephone company or telephone cooperative
12 which has fewer than ten thousand (10,000) access lines.

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14 /s/ Verkamp, et al
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