

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 86th General Assembly
3 Regular Session, 2007

A Bill

HOUSE BILL 1589

4
5 By: Representatives Pace, Berry, Blount, Cook, Glidewell, Hardy, J. Johnson, Patterson, Rainey, Schulte
6 By: Senators Bookout, Capps, Glover, Hendren, B. Johnson, J. Taylor, Trusty, Wilkins
7

For An Act To Be Entitled

10 AN ACT TO ENABLE THE USE OF ELECTRIC UTILITY
11 POWER LINES TO DEPLOY BROADBAND NETWORKS; AND FOR
12 OTHER PURPOSES.

Subtitle

15 TO ENABLE THE USE OF ELECTRIC UTILITY
16 POWER LINES TO DEPLOY BROADBAND
17 NETWORKS.

18
19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21
22 SECTION 1. Arkansas Code Title 23, Chapter 18 is amended to add an
23 additional subchapter to read as follows:

24 23-18-701. Title.

25 This subchapter shall be known and may be cited as the "Broadband Over
26 Power Lines Enabling Act".

27
28 23-18-702. Definitions.

29 As used in this subchapter and §§ 14-200-101, 18-15-503, 18-15-504, and
30 18-15-507:

31 (1) "Broadband affiliate" or "affiliate" means an entity that is
32 at least ten percent (10%) owned or controlled, directly or indirectly, by
33 the electric utility formed to provide regulated or nonregulated broadband
34 services;

35 (2) "Broadband Internet service provider" means an entity that
36 provides Internet broadband services to others on a wholesale basis or to



1 end-use customers on a retail basis;

2 (3) "Broadband operator" means an entity that owns or operates a
3 broadband system on the electric power lines and related facilities of an
4 electric utility;

5 (4) "Broadband services" means the provision of regulated or
6 nonregulated connectivity to a high-speed, high-capacity transmission medium
7 that can carry signals from multiple independent network carriers over
8 electric power lines and related facilities, whether above or below ground;

9 (5) "Broadband system" means the materials, equipment, and other
10 facilities installed to facilitate the provision of broadband services;

11 (6) "Electric delivery system" means the power lines and related
12 facilities used by an electric utility to deliver electric energy;

13 (7) "Electric utility" means a public utility as defined under §
14 23-1-101 that produces, generates, transmits, delivers, or furnishes
15 electricity to or for the public for compensation;

16 (8) "Nonregulated broadband services" means broadband services
17 and technologies that are not provided for the operational performance of an
18 electric utility, including without limitation, the provision of broadband
19 services at wholesale or at retail; and

20 (9) "Regulated broadband services" means broadband services and
21 technologies that are used and useful for the operational performance and
22 service reliability of an electric utility, including without limitation:

23 (A) Automated meter reading;

24 (B) Real-time system monitoring;

25 (C) Remote service control;

26 (D) Outage detection and restoration;

27 (E) Predictive maintenance and diagnostics; and

28 (F) Monitoring and enhancement of power quality.

29
30 23-18-703. Permissible broadband systems.

31 (a) An electric utility, an affiliate of an electric utility, or a
32 person unaffiliated with an electric utility may own, construct, maintain,
33 and operate a broadband system and provide broadband services on an electric
34 utility's electric delivery system consistent with the requirements of this
35 subchapter.

36 (b) This subchapter does not require an electric utility to implement

1 a broadband system, provide broadband services, or allow others to install
2 broadband facilities or use the electric utility's facilities to provide
3 broadband services.

4 (c) An electric utility, a broadband affiliate, or a broadband
5 operator may elect to install and operate a broadband system on part or all
6 of its electric delivery system in any part or all of its certificated
7 service territory.

8
9 23-18-704. Ownership and operation of broadband system.

10 (a) An electric utility may:

11 (1) Own or operate a broadband system on the electric utility's
12 electric delivery system;

13 (2) Allow an affiliate to own or operate a broadband system on
14 the electric utility's electric delivery system;

15 (3) Allow an unaffiliated entity to own or operate a broadband
16 system on the electric utility's electric delivery system;

17 (4) Provide broadband service, including without limitation,
18 Internet service over a broadband system; and

19 (5) Allow an affiliate or unaffiliated entity to provide
20 broadband service, including without limitation, Internet service over a
21 broadband system.

22 (b) The electric utility shall determine which broadband Internet
23 service providers may have access to broadband capacity on the broadband
24 system.

25
26 23-18-705. Jurisdiction.

27 Except as provided in this subchapter, neither the state nor any
28 agency, instrumentality, or political subdivision of the state has
29 jurisdiction over:

30 (1) An electric utility's ownership or operation of a broadband
31 system; or

32 (2) The provision of broadband services by the electric utility, a
33 broadband affiliate, or a broadband operator.

34
35 23-18-706. Fees and charges.

36 (a) An electric utility may charge a broadband affiliate, an

1 unaffiliated broadband Internet service provider, or a broadband operator for
2 the costs of the construction, installation, operation, and maintenance of
3 the broadband system of the broadband affiliate, unaffiliated broadband
4 Internet service provider, or broadband operator.

5 (b)(1) The costs incurred by an electric utility to own, operate,
6 construct, and maintain a broadband system and to provide broadband services
7 on its electric delivery system either by itself or through a broadband
8 affiliate or broadband operator shall be allocated to the electric utility's
9 accounts between regulated broadband services and nonregulated broadband
10 services in accordance with applicable accounting principles and standards.

11 (2)(A) Costs allocated to regulated broadband services:

12 (i) Are deemed used and useful for the operational
13 performance and service reliability of an electric utility to provide
14 electric service to the public; and

15 (ii) Shall be recoverable by an electric utility
16 through its rates under § 23-4-101 et seq.

17 (B) Capital costs shall be eligible:

18 (i) For inclusion in the electric utility's invested
19 capital; or

20 (ii) To be allocated to operating expenses in the
21 form of a fee covering the cost of the investment, including depreciation
22 expense and a return consistent with the electric utility's overall cost of
23 capital authorized by the Public Service Commission in the electric utility's
24 most recent general rate case proceeding.

25 (C) Operation, maintenance, and administrative costs shall
26 be recovered through rates as an operating expense.

27 (3)(A) Costs allocated to nonregulated broadband services:

28 (i) Are outside the scope of an electric utility's
29 providing of electric service to the public;

30 (ii) Shall not be recoverable through its rates for
31 the providing of electric service; and

32 (iii) Are not subject to the jurisdiction of the
33 state or any agency, instrumentality, or political subdivision of the state.

34 (B) Revenues received by an electric utility attributable
35 to the providing of nonregulated broadband services shall not be included as
36 revenues to the electric utility for purposes of establishing its rates for

1 the providing of electric service.

2 (c)(1) If all or part of a broadband system is installed on poles or
 3 other structures of a telephone utility and the broadband operator is
 4 unaffiliated with the electric utility that owns the electric delivery
 5 system, before installing equipment the unaffiliated broadband operator shall
 6 enter into the customary agreement used by the telephone utility for access
 7 to the electrical delivery system and shall pay the telephone utility an
 8 annual fee consistent with the usual and customary charges for access to the
 9 space occupied by that portion of the broadband system.

10 (2) If all or part of a broadband system is installed on poles
 11 or other structures of a telephone utility and the broadband operator is an
 12 electric utility or broadband affiliate, the existing contract governing
 13 placement of the electric utility's attachments on poles or other structures
 14 shall apply and no additional annual fee or approval shall be required if the
 15 broadband system is installed within the space allocated for electric service
 16 under the contract.

17 (d) An electric utility shall not:

18 (1) Charge an affiliate under this section an amount less than
 19 the electric utility would charge an unaffiliated entity for the same item or
 20 class of items; or

21 (2) Pay an affiliate under this section an amount more than the
 22 affiliate would charge an unaffiliated entity for the same item or class of
 23 items.

24 (e)(1) A transaction between an electric utility and an affiliate and
 25 allocations between an electric utility account and a nonutility account with
 26 respect to broadband services and broadband systems are subject to this
 27 subchapter.

28 (2) For the purpose of the commission's review under § 23-1-101
 29 et seq. of transactions or allocations under this subsection (e), this
 30 subchapter supersedes affiliate codes of conduct, the rules or orders of the
 31 commission governing affiliate transactions, and transfer pricing.

32
 33 23-18-707. Reliability of electric systems maintained.

34 (a) An electric utility that installs or operates or permits the
 35 installation or operation of a broadband system on its electric delivery
 36 system shall employ all reasonable measures to ensure that the operation of

1 the broadband system does not interfere with or diminish the reliability of
2 the electric utility's electric delivery system.

3 (b) If a disruption in the provision of electric service occurs, the
4 electric utility shall be governed by the terms and conditions of the retail
5 electric delivery service tariff.

6 (c) The provision of broadband services shall be at all times
7 secondary to the reliable provision of electric delivery services.

8
9 23-18-708. Compliance with federal law.

10 (a) A broadband operator shall comply with all applicable federal
11 laws, including those protecting licensed spectrum users from interference by
12 broadband systems.

13 (b) To the extent required by Federal Communications Commission rules,
14 the operator of a radio frequency device shall discontinue using a radio
15 frequency device that causes harmful interference.

16
17 SECTION 2. Arkansas Code § 14-200-101, concerning municipal
18 jurisdiction over utilities, is amended to add a new subsection to read as
19 follows:

20 (e)(1) No city or town may impose additional franchise fees upon any
21 provider of regulated broadband services under the Broadband Over Power Lines
22 Enabling Act, § 23-18-701 et seq.

23 (2) A city or town may impose franchise fees upon any provider
24 of nonregulated broadband services under the Broadband Over Power Lines
25 Enabling Act, § 23-18-701 et seq., at the same rates that the city or town
26 charges other providers of broadband network services.

27
28 SECTION 3. Arkansas Code § 18-15-503, concerning electric utility
29 easements, is amended to read as follows:

30 18-15-503. Powers.

31 (a)(1)(A) Any electric utility organized or domesticated under the laws
32 of this state for the purpose of generating, transmitting, distributing, or
33 supplying electricity to or for the public for compensation or for public use
34 may construct, operate, and maintain such lines of wire, cables, poles, or
35 other structures necessary for the transmission or distribution of
36 electricity and broadband services:

1 (i) Along and over the public highways and the
2 streets of the cities and towns of the state;

3 (ii) Across or under the waters of the state;

4 (iii) Over any lands or public works belonging to
5 the state;

6 (iv) On and over the lands of private individuals or
7 other persons;

8 (v) Upon, along, and parallel to any railroad or
9 turnpike of the state; and

10 (vi) On and over the bridges, trestles, and
11 structures of railroads.

12 (B) In constructing such dams as the electric utility may
13 be authorized to construct for the purpose of generating electricity by water
14 power, the electric utility may flow the lands above the dams with backwater
15 resulting from construction.

16 (2)(A) However, the ordinary use of the public highways,
17 streets, works, railroads, bridges, trestles, or structures and turnpikes
18 shall not be obstructed, nor the navigation of the waters impeded, and just
19 damages shall be paid to the owners of such lands, railroads, and turnpikes.

20 (B) The permission of the proper municipal authorities shall be
21 obtained for the use of the streets.

22 (b)(1) In the event that an electric utility, upon application to the
23 individual, railroad, turnpike company, or other persons, should fail to
24 secure by consent, contract, or agreement, a right-of-way for the purposes
25 enumerated in subsection (a) of this section, then the electric utility shall
26 have the right to proceed to procure the condemnation of the property, lands,
27 rights, privileges, and easements in the manner prescribed in this
28 subchapter.

29 (2) However, no electric utility shall be required to secure by
30 consent, contract, or agreement or to procure by condemnation the right to
31 provide broadband services over its own lines of wire, cables, poles, or
32 other structures that are in service at the time that the electric utility
33 provides broadband services over the lines of wire, cables, poles, or other
34 structures.

35 (c) Whenever an electric utility desires to construct its line on or
36 along the lands of individuals or other persons or on the right-of-way and

1 the structures of any railroad or upon and along any turnpike, the electric
 2 utility, by its agent, shall have the right to enter peacefully upon the
 3 lands, structures, or right-of-way and survey, locate, and lay out its line
 4 thereon, being liable, however, for any damage that may result by reason of
 5 the acts.

6
 7 SECTION 4. Arkansas Code § 18-15-504, concerning petitions to assess
 8 damages for installing electric power lines, is amended to add a new
 9 subsection to read as follows:

10 (e)(1) No electric utility shall be required to petition a court in
 11 order to provide broadband services over its own lines of wire, cables,
 12 poles, or other structures that are in service at the time that the electric
 13 utility provides broadband services over the lines of wire, cables, poles, or
 14 other structures.

15 (2) An owner of property upon which an electric utility's lines
 16 of wire, cables, poles, or other structures are located may petition the
 17 circuit court of the county in which the property is situated for any
 18 compensation to which it might be entitled under this subchapter.

19
 20 SECTION 5. Arkansas Code § 18-15-507(a), concerning the assessment of
 21 damages for installing electric power lines, is amended to read as follows:

22 (a)(1) The amount of damages to be paid the owner of the lands for the
 23 right-of-way for the use of the electric utility shall be determined and
 24 assessed irrespective of any other benefit that the owner may receive from
 25 any improvement proposed by the electric utility.

26 (2)(A) If an owner of property petitions a court under § 18-15-
 27 504(e), the amount of damages, if any, payable to the owner for the use of
 28 preexisting lines of wire, cables, poles, or other structures by an electric
 29 utility to provide broadband services shall be limited to an amount
 30 sufficient to compensate the property owner for the increased interference,
 31 if any, with the owner's use of the property caused by any new or additional
 32 physical attachments to the preexisting facility for the purpose of providing
 33 broadband services.

34 (B) Evidence of revenues or profits derived by an electric
 35 utility from providing broadband services is not admissible for any purpose
 36 in a proceeding under § 18-15-504(e).