

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: H2/26/07 S3/12/07 S3/20/07*

2 86th General Assembly

# A Bill

3 Regular Session, 2007

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

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## 9 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.

13

14

### Subtitle

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

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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.

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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 (a) 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 (b) Nothing in this subchapter shall interfere with the Arkansas  
35 Public Service Commission's authority to regulate public utilities pursuant  
36 to § 23-2-301 et seq.

1  
2 23-18-706. Fees and charges.

3 (a) An electric utility may charge a broadband affiliate, an  
4 unaffiliated broadband Internet service provider, or a broadband operator for  
5 the costs of the construction, installation, operation, and maintenance of  
6 the broadband system of the broadband affiliate, unaffiliated broadband  
7 Internet service provider, or broadband operator.

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

14 (2)(A) Costs allocated to nonregulated broadband services:

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

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

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

21 (B) Revenues received by an electric utility attributable  
22 to the providing of nonregulated broadband services shall not be included as  
23 revenues to the electric utility for purposes of establishing its rates for  
24 the providing of electric service.

25 (c)(1) If all or part of a broadband system is installed on poles or  
26 other structures of a telephone utility and the broadband operator is  
27 unaffiliated with the electric utility that owns the electric delivery  
28 system, before installing equipment the unaffiliated broadband operator shall  
29 enter into the customary agreement used by the telephone utility for access  
30 to the electrical delivery system and shall pay the telephone utility an  
31 annual fee consistent with the usual and customary charges for access to the  
32 space occupied by that portion of the broadband system.

33 (2) If all or part of a broadband system is installed on poles  
34 or other structures of a telephone utility and the broadband operator is an  
35 electric utility or broadband affiliate, the existing contract governing  
36 placement of the electric utility's attachments on poles or other structures

1 shall apply and no additional annual fee or approval shall be required if the  
2 broadband system is installed within the space allocated for electric service  
3 under the contract.

4 (d) An electric utility shall not:

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

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

11 (e) A transaction between an electric utility and an affiliate and  
12 allocations between an electric utility account and a nonutility account with  
13 respect to broadband services and broadband systems are subject to this  
14 subchapter.

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16 23-18-707. Reliability of electric systems maintained.

17 (a) An electric utility that installs or operates or permits the  
18 installation or operation of a broadband system on its electric delivery  
19 system shall employ all reasonable measures to ensure that the operation of  
20 the broadband system does not interfere with or diminish the reliability of  
21 the electric utility's electric delivery system.

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

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

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28 23-18-708. Compliance with federal law.

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

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

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36 SECTION 2. Arkansas Code § 14-200-101, concerning municipal

1 jurisdiction over utilities, is amended to add a new subsection to read as  
2 follows:

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

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

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

13 18-15-503. Powers.

14 (a)(1)(A) Any electric utility organized or domesticated under the laws  
15 of this state for the purpose of generating, transmitting, distributing, or  
16 supplying electricity to or for the public for compensation or for public use  
17 may construct, operate, and maintain such lines of wire, cables, poles, or  
18 other structures necessary for the transmission or distribution of  
19 electricity and broadband services:

20 (i) Along and over the public highways and the  
21 streets of the cities and towns of the state;

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

23 (iii) Over any lands or public works belonging to  
24 the state;

25 (iv) On and over the lands of private individuals or  
26 other persons;

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

29 (vi) On and over the bridges, trestles, and  
30 structures of railroads.

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

35 (2)(A) However, the ordinary use of the public highways,  
36 streets, works, railroads, bridges, trestles, or structures and turnpikes

1 shall not be obstructed, nor the navigation of the waters impeded, and just  
2 damages shall be paid to the owners of such lands, railroads, and turnpikes.

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

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

12 (2) However, no electric utility shall be required to secure by  
13 consent, contract, or agreement or to procure by condemnation the right to  
14 provide broadband services over its own lines of wire, cables, poles, or  
15 other structures that are in service at the time that the electric utility  
16 provides broadband services over the lines of wire, cables, poles, or other  
17 structures.

18 (c) Whenever an electric utility desires to construct its line on or  
19 along the lands of individuals or other persons or on the right-of-way and  
20 the structures of any railroad or upon and along any turnpike, the electric  
21 utility, by its agent, shall have the right to enter peacefully upon the  
22 lands, structures, or right-of-way and survey, locate, and lay out its line  
23 thereon, being liable, however, for any damage that may result by reason of  
24 the acts.

25  
26 SECTION 4. Arkansas Code § 18-15-504, concerning petitions to assess  
27 damages for installing electric power lines, is amended to add a new  
28 subsection to read as follows:

29 (e)(1) No electric utility shall be required to petition a court in  
30 order to provide broadband services over its own lines of wire, cables,  
31 poles, or other structures that are in service at the time that the electric  
32 utility provides broadband services over the lines of wire, cables, poles, or  
33 other structures.

34 (2) An owner of property upon which an electric utility's lines  
35 of wire, cables, poles, or other structures are located may petition the  
36 circuit court of the county in which the property is situated for any

1 compensation to which it might be entitled under this subchapter.

2  
3 SECTION 5. Arkansas Code § 18-15-507(a), concerning the assessment of  
4 damages for installing electric power lines, is amended to read as follows:

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

9 (2)(A) If an owner of property petitions a court under § 18-15-  
10 504(e), the amount of damages, if any, payable to the owner for the use of  
11 preexisting lines of wire, cables, poles, or other structures by an electric  
12 utility to provide broadband services shall be limited to an amount  
13 sufficient to compensate the property owner for the increased interference,  
14 if any, with the owner's use of the property caused by any new or additional  
15 physical attachments to the preexisting facility for the purpose of providing  
16 broadband services.

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

20 /s/ Pace  
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