

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 87th General Assembly  
3 Regular Session, 2009  
4

*As Engrossed: S3/16/09*

# A Bill

SENATE BILL 663

5 By: Senator Horn  
6 By: Representative Rainey  
7  
8

## For An Act To Be Entitled

10 AN ACT TO PROVIDE AN ALTERNATIVE PROCEDURE FOR  
11 MODIFYING THE RATES AND CHARGES OF A GENERATION  
12 AND TRANSMISSION COOPERATIVE; TO PROVIDE AN  
13 ALTERNATIVE PROCEDURE FOR MODIFYING THE RATES AND  
14 CHARGES OF A MEMBER COOPERATIVE; AND FOR OTHER  
15 PURPOSES.  
16

## Subtitle

17 TO PROVIDE AN ALTERNATIVE PROCEDURE FOR  
18 MODIFYING THE RATES AND CHARGES OF A  
19 GENERATION AND TRANSMISSION COOPERATIVE  
20 AND A MEMBER COOPERATIVE.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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26 SECTION 1. Arkansas Code Title 23, Chapter 4 is amended to add an  
27 additional subchapter to read as follows:

28 23-4-1101. Definitions.

29 As used in this subchapter:

30 (1) "Board" means the board of directors of a generation and  
31 transmission cooperative;

32 (2) "Generation and transmission cooperative" means a rural electric  
33 cooperative formed under the Electric Cooperative Corporation Act, § 23-18-  
34 301 et seq., that:

35 (A) Does not have a certificated service territory; and

36 (B) Exclusively sells electricity at wholesale;



1       (3) "Member cooperative" means a rural electric cooperative that sells  
2 electricity at retail and is a member of a generation and transmission  
3 cooperative; and

4       (4) "Retail cooperative member" means the individual member-owner of a  
5 member cooperative.

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7       23-4-1102. Exemption from general rate case procedure.

8       (a) A generation and transmission cooperative may modify its rates and  
9 charges if:

10           (1) At least three-fourths (3/4) of its board votes to change  
11 its rates and charges;

12           (2) A proposed increase in the generation and transmission  
13 cooperative's rates and charges does not exceed five percent (5%) in any  
14 twelve-month period of the total gross revenues of the generation and  
15 transmission cooperative; and

16           (3) Any additional requirements of this subchapter are  
17 satisfied.

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19       23-4-1103. Notification of proposed rate and charge modification.

20       (a)(1) A generation and transmission cooperative shall notify the  
21 Arkansas Public Service Commission, the Attorney General, and the member  
22 cooperatives in writing at least sixty (60) days before the board votes on a  
23 proposed modification of its rates and charges under § 23-4-1102.

24           (2)(A) The notice under subdivision (a)(1) of this section  
25 shall:

26                   (i) Be in writing;

27                   (ii) Include a schedule of the proposed modification  
28 of rates and charges; and

29                   (iii) Include the effective date of the proposed  
30 change.

31           (B) However, if the board subsequently reduces a proposed  
32 increase in rates and charges after providing notice under subdivision (a)(1)  
33 of this section, the board does not have to provide any additional notice  
34 under this subsection.

35       (b)(1) The generation and transmission cooperative shall provide  
36 notice of its proposed modification of its rates and charges to the public

1 not less than forty (40) days before the board votes on the proposed change  
2 in its rates and charges.

3 (2) The notice under subdivision (b)(1) of this section shall:

4 (A) Be substantially similar to the public notice required  
5 by the commission's Rules of Practice and Procedure for general rate case  
6 procedures;

7 (B) Be published in:

8 (i) A newspaper of general circulation in the  
9 service territory of the generation and transmission cooperative; or

10 (ii) Either of the following:

11 (a) Any publication that is regularly provided  
12 to the retail cooperative members by the member cooperatives; or

13 (b) The generation and transmission  
14 cooperative's newsletter to retail cooperative members; and

15 (C) Include a statement estimating:

16 (i) The retail impact of the proposed change in  
17 rates and charges on:

18 (a) A per-kilowatt-hour basis; and

19 (b) An average residential retail cooperative  
20 member's monthly bill; and

21 (ii) The effective date of the proposed change in  
22 rates and charges.

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24 23-4-1104. Alternative procedure for modifying the rates and charges  
25 of a generation and transmission cooperative.

26 (a)(1)(A) After the board approves the modification in rates and  
27 charges under § 23-4-1102, the generation and transmission cooperative shall  
28 file for the approval of the Arkansas Public Service Commission an  
29 application for the change in rates and charges and tariffs containing the  
30 proposed change in rates and charges.

31 (B) However, a rate rider or other rider to the generation  
32 and transmission cooperative's base rates and charges shall not be modified  
33 under this subchapter unless the commission determines otherwise.

34 (2) In addition to an attachment containing the proposed  
35 tariffs to effect the modification of the rates and charges, the application  
36 shall provide the following:

1 (A) Proof of the board vote required by § 23-4-1102;

2 (B) The proof of notice required by § 23-4-1103;

3 (C) A current calculation of the generation and  
4 transmission cooperative's:

5 (i) Times interest earned ratio;

6 (ii) Debt service coverage ratio; and

7 (iii) Margins as a percent of revenue for the last  
8 available calendar year;

9 (D) An analysis of the impact of the proposed change in  
10 rates and charges on each member cooperative's cost of wholesale power that  
11 is acquired from the generation and transmission cooperative;

12 (E) Documentary evidence that the impact of the proposed  
13 change in rates and charges does not exceed five percent (5%) of the  
14 generation and transmission cooperative's total gross revenues for the  
15 previous calendar year;

16 (F) Documentation that shows the derivation of the  
17 generation and transmission cooperative's proposed changes in its rates and  
18 charges; and

19 (G)(i) Any other supporting documentation or evidence  
20 required by the commission.

21 (ii)(a) However, the commission shall not require  
22 the generation and transmission cooperative to prepare a cost of service  
23 study.

24 (b) Instead of a new cost of service study,  
25 the generation and transmission cooperative shall rely upon the most recent  
26 commission-approved cost allocation.

27 (b) Within ninety (90) days after the date of filing the generation  
28 and transmission cooperative's application, the commission shall issue its  
29 final determination regarding the proposed modification of the rates and  
30 charges of the generation and transmission cooperative.

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32 23-4-1105. Alternative procedure for modifying the rates and charges  
33 of a member cooperative.

34 (a) A member cooperative may propose a modification of its retail  
35 rates and charges to incorporate the proposed change in the generation and  
36 transmission cooperative's wholesale rates and charges filed under § 23-4-

1 1104 if:

2 (1) The member cooperative files its application for a  
3 modification of its retail rates and charges with the Arkansas Public Service  
4 Commission on the same date as the generation and transmission cooperative  
5 files its application for a modification of its change in wholesale rates and  
6 charges under § 23-4-1104; and

7 (2) The member cooperative apportions its proposed change in  
8 rates and charges in a manner that reflects, as closely as practicable, its  
9 cost of providing service to each class.

10 (b) Within ninety (90) days after a member cooperative files its  
11 application under subsection (a) of this section, the commission shall review  
12 and approve the modification of the rates and charges of a member  
13 cooperative's retail rates and charges that reasonably reflect those changes  
14 in the generation and transmission cooperative's wholesale rates and charges  
15 that were approved by the commission under § 23-4-1104.

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17 23-4-1106. Limitation on increase in rates.

18 The generation and transmission cooperative shall not increase its  
19 rates and charges under this subchapter by an aggregate total of more than  
20 eight percent (8%) during any twenty-four-month period.

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22 23-4-1107. Arkansas Public Service Commission's jurisdiction not  
23 affected.

24 This subchapter does not affect the Arkansas Public Service  
25 Commission's jurisdiction over a generation and transmission cooperative,  
26 including without limitation the authority to investigate and set the rates  
27 and charges of the generation and transmission cooperative, or a member  
28 cooperative as otherwise provided by law.

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30 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
31 General Assembly of the State of Arkansas that the costs that drive electric  
32 utility costs are constantly changing; that electric cooperatives need to  
33 have procedures that permit their rates to change in response to those  
34 changing conditions; and that this act is immediately necessary because it is  
35 crucial to the provision of safe and reliable electric service that electric  
36 cooperatives recover their costs in a timely manner. Therefore, an emergency

1 is declared to exist and this act being immediately necessary for the  
2 preservation of the public peace, health, and safety shall become effective  
3 on:

- 4 (1) The date of its approval by the Governor;  
5 (2) If the bill is neither approved nor vetoed by the Governor,  
6 the expiration of the period of time during which the Governor may veto the  
7 bill; or  
8 (3) If the bill is vetoed by the Governor and the veto is  
9 overridden, the date the last house overrides the veto.

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