

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

HOUSE BILL 1390

5 By: Representatives Sabin, Hutchison
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE ARKANSAS DISTRIBUTED GENERATION
9 ACT; TO INCREASE THE USE OF RENEWABLE ENERGY
10 RESOURCES IN THE STATE; TO REGULATE THE USE OF
11 DISTRIBUTED GENERATION CONTRACTS; AND FOR OTHER
12 PURPOSES.
13
14

Subtitle

15 TO CREATE THE ARKANSAS DISTRIBUTED
16 GENERATION ACT.
17
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:

Subchapter 10 – Arkansas Distributed Generation Act

23-18-1001. Title.

24 This subchapter shall be known and may be cited as the “Arkansas
25 Distributed Generation Act”.
26
27
28
29

23-18-1002. Legislative findings and purpose.

30 (a) The General Assembly finds that it is in the public interest to:

31 (1) Promote and encourage the development and use of the state’s
32 renewable energy resources;
33

34 (2) Foster investment in emerging renewable energy technologies
35 using the renewable energy resources available in this state; and

36 (3) Require electric utilities to include renewable energy



1 resources as an integral part of their energy portfolios.

2 (b) The purpose of this subchapter is to:

3 (1) Ensure that each electric utility includes renewable energy
 4 resources as an integral part of its energy resource plan;

5 (2) Provide for increased consumer choice in obtaining
 6 electrical energy; and

7 (3) Encourage additional competition within the energy sector.

8
 9 23-18-1003. Definitions.

10 As used in this subchapter:

11 (1) "Avoided cost" means the costs to an electric utility of
 12 electric energy or capacity, or both that, but for the purchase from a
 13 renewable electric generation facility, the electric utility would have to
 14 generate on its own or purchase from another source using the same renewable
 15 energy technology;

16 (2) "Dispatch" means the use of renewable energy throughout an
 17 electric grid;

18 (3) "Distributed generation contract" means a feed-in tariff
 19 approved by the Arkansas Public Service Commission or a regulatory authority
 20 that governs the purchase of energy by an electric utility from a renewable
 21 electric generation facility;

22 (4) "Electric utility" means a publicly owned or an investor-
 23 owned utility, an electric cooperative, or a municipal utility that is
 24 engaged in the business of supplying electricity to an end user in this
 25 state;

26 (5) "Nameplate value" means the maximum load an electric
 27 generation facility can output;

28 (6) "Regulatory authority" means the Arkansas Public Service
 29 Commission or the appropriate regulatory governing body for an electric
 30 utility that is not regulated by the commission;

31 (7) "Renewable electric generation facility" means a facility
 32 for the generation of electric energy that:

33 (A) Is connected to an electric utility grid;

34 (B) Is fueled by a renewable energy resource; and

35 (C) Has an effective alternating current generation
 36 capacity that does not exceed twenty megawatts (20 MW) nameplate value;

1 (8) “Renewable energy generation credit” means the monetary
 2 value per kilowatt hour (kWh) of the added value, environmental benefits, and
 3 cost of renewable energy above the avoided cost; and

4 (9) “Renewable energy resource” means a solar, wind, water,
 5 geothermal, or biomass resource, including without limitation agricultural
 6 waste and landfill waste that is converted into renewable energy, located in
 7 the state.

8
 9 23-18-1004. Distributed generation contracts – Requirements –
 10 Approval.

11 (a)(1) The Arkansas Public Service Commission and each regulatory
 12 authority shall develop a standardized distributed generation contract for
 13 the residential and commercial generation of each renewable energy resource.

14 (2) The distributed generation contracts required under
 15 subdivision (a)(1) of this section shall:

16 (A)(i) Require the electric utility to purchase renewable
 17 energy produced by a renewable electric generation facility at the rate and
 18 terms approved by the commission or the regulatory authority for a period of
 19 not less than twenty (20) years.

20 (ii) However, a renewable electric generation
 21 facility may request the execution of a distributed generation contract for a
 22 period of less than twenty (20) years;

23 (B) Contain terms and conditions that:

24 (i) Attract investment in and encourage the
 25 development and use of renewable energy resources to generate electricity
 26 within the state;

27 (ii) Protect the integrity and reliability of each
 28 electric utility’s electric system; and

29 (iii) Protect the health, safety, and welfare of the
 30 public;

31 (C) Allow for rates to be:

32 (i) Differentiated by the renewable energy
 33 generation technology being used, including without limitation the system,
 34 public policy, and environmental attributes of the renewable electric
 35 generation facility;

36 (ii) Differentiated by the size and capacity of the

1 renewable electric generation facility;

2 (iii) Differentiated by the electric utility's
3 ability to dispatch the renewable energy generated by a renewable electric
4 generation facility; and

5 (iv) Based on the avoided cost plus the renewable
6 energy generation credit approved by the commission or regulatory authority;

7 (D) Be in the public interest, as determined under § 23-
8 18-1002; and

9 (E) Not include an indemnity and liability provision
10 applicable to the state, an entity of the state, a local government, an
11 entity of a local government, or a federal agency.

12 (b) After providing notice and a hearing, the commission or regulatory
13 authority shall approve the distributed generation contracts developed under
14 subsection (a) of this section and make the distributed generation contracts
15 available to each electric utility by July 1, 2014.

16 (c)(1) After the commission approves and makes the distributed
17 generation contracts available under subsection (b) of this section, each
18 electric utility shall begin accepting offers to enter into a distributed
19 generation contract on a first-come, first-served basis to renewable electric
20 generation facilities that are located within the allocated service territory
21 of the electric utility.

22 (2) An electric utility shall offer to enter into distributed
23 generation contracts until the electric utility meets its proportionate share
24 of one thousand two hundred megawatts (1,200 MW) nameplate value, which
25 represents the combined cumulatively rated alternating current generation
26 capacity of the renewable electric generation facilities in this state.

27 (3)(A) The determination of each electric utility's
28 proportionate-share requirement under subdivision (c)(2) of this section
29 shall be based on a comparison of the electric utility's peak demand to the
30 total statewide peak demand of all the electric utilities in the state.

31 (B) An electric utility may meet up to fifty percent (50%)
32 of the electric utility's proportionate-share requirement under subdivision
33 (c)(2) of this section by installing, owning, and operating a renewable
34 electric generation facility.

35 (C)(i) An electric utility shall offer at least twenty
36 percent (20%) of the electric utility's proportionate-share requirement under

1 subdivision (c)(2) of this section to one (1) or more residential or
2 commercial renewable electric generation facilities.

3 (ii) However, the commission or regulatory authority
4 may modify the requirement under subdivision (c)(3)(C)(i) of this section if
5 an electric utility's costs of satisfying the requirement outweigh the
6 distribution system, environmental, and public policy benefits of the
7 requirement.

8
9 23-18-1005. Renewable electric generation facilities.

10 (a)(1) If a renewable electric generation facility is located on a
11 residential or commercial structure that also consumes energy, the
12 residential or commercial structure shall meet the requirements of the
13 Arkansas Energy Code for New Building Construction adopted by the Arkansas
14 Energy Office and in effect at the time the structure was constructed.

15 (2) However, the requirement under subdivision (a)(1) of this
16 section does not apply to a commercial structure that is not habitable,
17 including without limitation a warehouse or agricultural structure.

18 (b) A net-metering facility installed or interconnected under the
19 Arkansas Renewable Energy Development Act of 2001, § 23-18-601 et seq., on or
20 after the effective date of this act, qualifies as a renewable electric
21 generation facility under this subchapter.

22 (c)(1) The distributed generation contracts approved and made
23 available by the Arkansas Public Service Commission under § 23-18-1004 shall
24 be used for a renewable electric generation facility that does not exceed
25 five hundred kilowatts (500 kW) nameplate value.

26 (2)(A) A renewable electric generation facility in excess of
27 five hundred kilowatts (500 kW) nameplate value may enter into a distributed
28 generation contract under this subchapter.

29 (B) The Arkansas Public Service Commission or regulatory
30 authority may modify a distributed generation contract approved under this
31 subchapter for use by a renewable electric generation facility under
32 subdivision (c)(2)(A) of this section by including terms that consider the:

33 (1) Location of the renewable electric generation
34 facility; and

35 (2) Costs of a necessary utility interconnection
36 facility upgrade to connect the renewable electric generation facility.

1
2 23-18-1006. Renewable energy generation credits.

3 A renewable energy generation credit shall:

4 (1) Be conveyed to the electric utility under the distributed
5 generation contract; and

6 (2) Qualify in helping an electric utility meet any statewide
7 clean energy standards adopted by the state.

8
9 23-18-1007. Cost of interconnection facilities.

10 (a) The cost of an addition or modification to an electric utility's
11 grid that is made at or beyond the point at which a renewable electric
12 generation facility interconnects with an electric utility's grid for the
13 sole purpose of receiving electricity from a renewable electric generation
14 facility is the exclusive responsibility of the renewable electric generation
15 facility unless the Arkansas Public Service Commission or regulatory
16 authority requires the electric utility to bear the cost or a portion of that
17 cost under § 23-18-1008.

18 (b) A necessary metering upgrade for a renewable electric generation
19 facility that has executed a distributed generation contract under this
20 subchapter is the responsibility of the electric utility.

21
22 23-18-1008. Cost recovery.

23 The Arkansas Public Service Commission or regulatory authority shall
24 allow an electric utility to:

25 (1) Recover through an increase in rates the cost of electric
26 energy purchased under a distributed generation contract that exceeds the
27 avoided cost;

28 (2) Recover through an increase in rates the cost of electric
29 energy produced from a renewable electric generation facility owned and
30 operated by the electric utility that is comparable to the costs recovered
31 under a distributed generation contract for the electric energy purchased by
32 the electric utility from a renewable electric generation facility not owned
33 and operated by the electric utility;

34 (3) Recover through an increase in rates and earn a return on
35 the reasonable and prudent investment cost incurred by the electric utility
36 for the construction of an electric system upgrade that is reasonably

1 necessary to receive the electric energy purchased under a distributed
 2 generation contract; and

3 (4) Recover through an increase in rates any prudent costs
 4 incurred by the electric utility to administer and manage a distributed
 5 generation contract.

6
 7 23-18-1009. Limitation on distributed generation contracts.

8 The Arkansas Public Service Commission and each regulatory authority
 9 shall:

10 (1) Continually monitor the rate impact of distributed
 11 generation contracts executed under this subchapter; and

12 (2) Limit the number of new distributed generation contracts
 13 executed under this subchapter as necessary to avoid an undue burden on
 14 electricity customers as the result of a significant increase in rates.

15
 16 23-18-1010. Rules.

17 The Arkansas Public Service Commission and any regulatory authority
 18 shall promulgate rules necessary to implement and administer this subchapter,
 19 including without limitation rules concerning the following:

20 (1) The expansion of the scope or capacity requirement of a
 21 distributed generation contract if the costs of satisfying the scope or
 22 capacity requirement outweigh the distribution system, environmental, and
 23 public policy benefits of the scope or capacity requirement; and

24 (2) The adjustment of the rates and terms of a future
 25 distributed generation contract if the costs of the rates and terms outweigh
 26 the distribution system, environmental, and public policy benefits of the
 27 rates and terms.