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4

A Bill

HOUSE BILL 1662

5 By: Representative Maddox
6 By: Senator B. Davis
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE FORMULA RATE REVIEW ACT; TO
10 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.
11

Subtitle

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14 TO AMEND THE FORMULA RATE REVIEW ACT; AND
15 TO DECLARE AN EMERGENCY.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code § 23-4-422 is amended to read as follows:

21 23-4-422. Cost allocation – Definition.

22 (a)(1) The Arkansas Public Service Commission shall establish and
23 regulate the rates and charges of a public utility under this subchapter and
24 shall allocate or assign costs among all classes of customers of the public
25 utility.

26 (2) In determining the rates for utility services and the cost
27 allocation among all of a public utility's classes of customers, the
28 commission shall:

29 (A) Consider the costs and expenses incurred by the public
30 utility in providing the utility services to customers in each class;

31 (B) Consider the economic impact of the proposed rates and
32 charges for utility services by giving equal consideration to each class of
33 customers; and

34 (C) Make findings that are based on substantial evidence.

35 (b) Notwithstanding the commission's authority to otherwise determine
36 and fix rates for all classes of customers, including allocating or assigning



1 costs and designing rates, if the commission finds that it will be beneficial
2 to economic development or the promotion of employment opportunities, and
3 that it will result in just and reasonable rates for all classes of
4 customers, the commission shall determine rates and charges for utility
5 services that:

6 (1) For the class of customers with the highest level of
7 consumption per customer which has rates that include a demand component, and
8 any successors to such class, as they existed on ~~January 1, 2015~~ January 1,
9 2021, ensure that all costs and expenses related to demand and capacity are
10 identified and allocated on a demand basis and recovered from customers in
11 those classes through a demand rate component and not through a volumetric
12 rate component unless the commission determines that the rates should be
13 adjusted under subsections (e) and (f) of this section;

14 (2) For the retail jurisdiction rate classes, ensure that:

15 (A) All electric utility production plant, production-
16 related costs, nonfuel production-related costs, purchased capacity costs,
17 and any energy costs incurred resulting from the electric utility's
18 environmental compliance are classified as production demand costs; and

19 (B)(i) Production demand costs are allocated to each
20 customer class pursuant to the average and excess method shown in Table 4-10B
21 on page 51 of the 1992 National Association of Regulatory Utility
22 Commissioners Electric Utility Cost Allocation Manual, as it existed on
23 ~~January 1, 2015~~ January 1, 2021, using the average of the four (4) monthly
24 coincident peaks for the months of June, July, August, and September for each
25 class for the coincident peak referenced in Table 4-10B of the ~~manual~~ 1992
26 National Association of Regulatory Utility Commissioners Electric Utility
27 Cost Allocation Manual, as it existed on ~~January 1, 2015~~ January 1, 2021, or
28 any subsequent version of the ~~manual~~ National Association of Regulatory
29 Utility Commissioners Electric Utility Cost Allocation Manual to the extent
30 it produces an equivalent result.

31 (ii) Subdivision (b)(2)(B)(i) of this section does
32 not prescribe an allocation for a wind production plant; and

33 (3)(A)(i) For purposes of allocation of natural gas distribution
34 plant costs, including costs in distribution mains and related distribution
35 plant expenses, among the state's retail jurisdiction rate classes, ensure
36 that each natural gas public utility classifies all natural gas distribution

1 plant costs as customer-related or capacity-related.

2 (ii) For purposes of subdivision (b)(3)(A)(i) of
3 this section, the natural gas distribution plant costs shall include:

4 (a) Amounts charged to account numbers 374
5 through 387, as defined under the account numbering system in the Uniform
6 System of Accounts prescribed for natural gas public utilities by the rules
7 of the commission; and

8 (b) Related depreciation, return on
9 investment, property insurance and taxes, excluding state and federal income
10 taxes, and fixed operation and maintenance expense charged to account numbers
11 870 through 894, as defined under the account numbering system in the Uniform
12 System of Accounts prescribed for natural gas public utilities by the rules
13 of the commission, including all labor-related costs for the expenses
14 described in this subdivision (b)(3)(A).

15 (iii) To develop a cost allocation method under this
16 section for natural gas utilities, the commission shall use the Gas
17 Distribution Rate Design Manual, June 1989 edition, as prepared by the
18 National Association of Regulatory Utility Commissioners, as it existed on
19 ~~January 1, 2015~~ January 1, 2021, or any subsequent version of the ~~manual~~ Gas
20 Distribution Rate Design Manual, to the extent it produces an equivalent
21 result.

22 (B)(i) The customer-related natural gas distribution plant
23 costs shall be allocated to each customer class based on the number of
24 customers in each class.

25 (ii) The customer-related portion of natural gas
26 distribution plant costs related to account numbers 374 through 376, as
27 defined under the account numbering system in the Uniform System of Accounts
28 prescribed for natural gas public utilities by the rules of the commission,
29 shall be the percentage of the average cost of all mains that is represented
30 by the average cost of the minimum size main and computed using a cost
31 allocation method based upon the predominant size main that is installed by
32 the natural gas public utility that is at least two inches (2") in diameter,
33 with the investment costs of the predominant size mains set as the minimum
34 size.

35 (iii) The customer-related portion of natural gas
36 distribution costs related to account numbers 377 through 387, as defined

1 under the account numbering system in the Uniform System of Accounts
2 prescribed for natural gas public utilities by the rules of the commission,
3 shall be computed using a study that reflects the investments required to
4 meter, regulate, and connect each class of customers to the natural gas
5 utility's system.

6 (iv) Any remaining natural gas distribution plant
7 costs shall be classified as capacity-related costs.

8 (C)(i) Except for natural gas distribution plant costs
9 related to account numbers 380 through 385, as defined under the account
10 numbering system in the Uniform System of Accounts prescribed for natural gas
11 public utilities by the rules of the commission, the natural gas distribution
12 plant costs classified as capacity-related costs shall be allocated to the
13 customer classes based on the contribution to peak day demand that is made by
14 each customer class.

15 (ii) As used in subdivision (b)(3)(C)(i) of this
16 section, "peak day demand" means the computed quantity of gas that would be
17 supplied to each customer class calculated using the coldest day in a recent
18 thirty-year period for each gas utility.

19 (c) In an application for a general change or modification in a public
20 utility's rates and charges under this subchapter:

21 (1) A public utility may present evidence that demonstrates that
22 the implementation of rates under subsection (b) of this section will result
23 in rates that will be beneficial to economic development or the promotion of
24 employment opportunities and result in just and reasonable rates for all
25 classes of customers; and

26 (2) A public utility shall present evidence of whether or not
27 rate design in subdivision (b)(1) of this section results in an increase to
28 the base rate charges that are billed to customers in the affected class of
29 more than ten percent (10%) as compared to the then currently approved base
30 rate charges of the applicable rate schedules.

31 (d)(1) Unless the commission adjusts the rates under subsection (e) or
32 subsection (f) of this section, the commission shall by order establish and
33 design rates, allocate or assign costs to all classes of customers, and
34 regulate the rates for each class of customers of a public utility according
35 to this section except as limited under § 23-4-1205(c)(3)(B), § 23-4-1207(d)
36 and § 23-4-1208(a)(2)(B) and (C).

1 (2) For an electric utility whose class of customers with the
2 highest level of consumption per customer that has rates that include a
3 demand component, and any successors to such a class, as they existed on
4 January 1, 2021, has an annual usage for the class as a whole in excess of
5 seven million megawatt hours (7,000,000 MWh), and if the electric utility has
6 a formula rate review approved and in effect under § 23-4-1208(a)(1) on or
7 before March 15, 2021:

8 (A) The commission shall determine rates and charges for
9 utility services in accord with § 23-4-422(b)(1) and (2) without regard to
10 any findings described in § 23-4-422; and

11 (B) The commission shall not adjust the rates under
12 subsection (e) or subsection (f) of this section, except as provided in § 23-
13 4-1207(d) and § 23-4-1208(a)(2)(B) and (C).

14 (e) Pursuant to the commission's authority to otherwise determine and
15 fix rates for all classes of customers, including allocating or assigning
16 costs and designing rates, the commission may adjust rates under subdivisions
17 (b)(2) and (3) of this section if the commission finds:

18 (1) It is in the public interest;

19 (2) It is necessary to produce just and reasonable rates; or

20 (3) Implementation of rates under subdivisions (b)(2) and (3) of
21 this section will result in rates that are not beneficial to economic
22 development or the promotion of employment opportunities.

23 (f) If implementation of rates under subdivision (b)(1) of this
24 section will result in an increase in the base rate charges billed to
25 customers in the affected class of more than ten percent (10%) as compared to
26 the currently approved base rate charges of the applicable rate schedules,
27 the commission may adjust the rates to ensure that the greatest increase in
28 the base rate charges billed to customers in the affected class is ten
29 percent (10%) as compared to the then currently approved base rate charges of
30 the applicable rate schedules.

31 (g) If the commission makes any adjustment under subsections (e) and
32 (f) of this section, the commission shall provide in an order the rationale
33 for determining that rates under subsection (b) of this section may not be
34 just and reasonable and the rationale for determining that the rates adjusted
35 in the order of the commission are just and reasonable and in the public
36 interest. The commission shall make its findings based on substantial

1 evidence.

2 (h) An electric cooperative corporation established under the Electric
3 Cooperative Corporation Act, § 23-18-301 et seq., is not subject to this
4 section.

5 (i) Effective March 27, 2015, the cost allocation provisions of this
6 section shall apply to any pending application for a change in general rates
7 and charges.

8

9 SECTION 2. Arkansas Code § 23-4-1205(c)(3), concerning the procedure
10 for a rate change under the Formula Rate Review Act, is amended to read as
11 follows:

12 (3)(A) The rates that are approved in the application for a
13 general change in rates and charges shall remain in effect during the formula
14 rate review term under § 23-4-1208, subject to the rate adjustments under
15 this subchapter.

16 (B) As part of an extension of the initial five-year term
17 of a formula rate review under § 23-4-1207(d) and § 23-4-1208(a)(3), for an
18 electric utility if the electric utility's class of customers with the
19 highest level of consumption per customer that has rates that include a
20 demand component, any successors to such a class, as they existed on January
21 1, 2021, has an annual usage for the class as a whole in excess of seven
22 million megawatt hours (7,000,000 MWh), the commission shall approve changes
23 to the rate design within an individual customer class consistent with § 23-
24 4-422(b)(1).

25

26 SECTION 3. Arkansas Code § 23-4-1206 is amended to read as follows:

27 23-4-1206. Formula rate review – Required information.

28 (a) A formula rate review mechanism approved by the Arkansas Public
29 Service Commission shall specify the minimum information required with each
30 annual rate review filing.

31 (b) Annual formula rate review filings under an approved formula rate
32 review mechanism shall be developed using the formula rate review test period
33 designated by the public utility under § 23-4-1205(a)(2).

34 (c)(1) Annual formula rate review filings shall be prepared consistent
35 with the ~~commission's~~ Arkansas Public Service Commission's order on the
36 public utility's application for a general change in rates and charges.

1 (2) In the case of a formula rate review test period that uses a
 2 test period based on a projected year, an electing public utility may
 3 support, in its discretion, any portion of that projected data through the
 4 use of information that relies on historical averages.

5 (d) Any costs disallowed by the ~~commission~~ Arkansas Public Service
 6 Commission in its order on the public utility's application for a general
 7 change in rates and charges shall not be eligible for recovery under a
 8 formula rate review mechanism.

9 (e)(1) If a formula rate review test period utilizes projected data
 10 under § 23-4-406 or a projected year, rate changes under § 23-4-1207 shall
 11 include an adjustment to net any differences between the prior formula rate
 12 review test period change in revenue and the actual historical year change in
 13 revenue for that same year.

14 (2) A public utility shall report any differences between the
 15 prior formula rate review test period change in revenue and the historical
 16 year change in revenue for the same year.

17 (3) Netting shall not begin until a public utility has
 18 accumulated a full twelve (12) months of a historical year to prepare a
 19 report.

20 (4)(A) When calculating the adjustment to net any differences
 21 under subdivision (e)(1) of this section, the Arkansas Public Service
 22 Commission shall include the actual historical year change in revenue for a
 23 historical year, which shall be determined as follows:

24 (i) For the purpose of including all of the elements
 25 of the change of revenue in calculating an adjustment to net any differences
 26 under subdivision (e)(1) of this section, the Arkansas Public Service
 27 Commission shall ensure that the revenue received for the historical year
 28 shall be composed of:

29 (a) Prior formula rate review test period
 30 changes in revenue;

31 (b) Netting revenue from a prior formula rate
 32 review test period; and

33 (c) In order to isolate the change in revenue
 34 for the corresponding prior projected year being netted, prior projected year
 35 revenue for the year being netted; and

36 (ii) The Arkansas Public Service Commission shall

1 calculate an adjustment to net any differences under subdivision (e)(1) of
2 this section by calculating the differences between the prior formula rate
3 review test period changes in revenue and the prior projected year revenue
4 for the year being netted.

5 (B) If the prior formula rate review test period change in
6 revenue being netted was limited by § 23-4-1207(d)(2), the Arkansas Public
7 Service Commission shall ensure that the revenue recovered shall be either:

8 (i) Applied first to any revenue amounts remaining
9 from the prior approved formula rate review test periods specified in
10 subdivision (e)(4)(A) of this section, second to the netting adjustment
11 specified in subdivision (e)(4)(A) of this section, and last to the prior
12 projected year revenue for the year being netted specified in subdivision
13 (e)(4)(A) of this section; or

14 (ii) Proportioned by:

15 (a) Calculating the sum of:

16 (1) The revenue adjustment amount
17 determined under § 23-4-1207(b); and

18 (2) The netting adjustment determined
19 under subdivision (e)(2) of this section and this subdivision (e)(4);

20 (b) Calculating the percentage of the sum
21 represented by:

22 (1) The revenue adjustment amount
23 determined under § 23-4-1207(b); and

24 (2) The netting adjustment determined
25 under subdivision (e)(2) of this section and this subdivision (e)(4); and

26 (c) Applying the percentages calculated in
27 subdivision (e)(4)(B)(ii)(b) of this section to the actual historical year
28 change in revenue for that same year.

29 (C)(i) For the initial term of a formula rate review
30 mechanism approved and in effect on or before March 15, 2021, a public
31 utility may choose to apply either subdivision (e)(4)(B)(i) or subdivision
32 (e)(4)(B)(ii) of this section for the term of an approved formula rate review
33 approved under § 23-4-1208(a)(1).

34 (ii) The Arkansas Public Service Commission shall
35 authorize the public utility to use the chosen methodology.

36 (iii) Except as provided in subdivisions (e)(4)(D)

1 and (E) of this section, the authorized methodology shall remain in effect.

2 (D) During the final year of the initial five-year term of
3 any formula rate review mechanism approved and in effect before March 15,
4 2021, that uses a test period based upon a projected year, the public utility
5 shall follow subdivision (e)(4)(B)(ii) of this section.

6 (E)(i) During any five-year extension term of a formula
7 rate review mechanism that uses a test period based upon a projected year,
8 the public utility shall propose, and the Arkansas Public Service Commission
9 shall authorize, a public utility to follow subdivision (e)(4)(B)(ii) of this
10 section for the five-year extension of the term of the formula rate review
11 mechanism.

12 (ii) For any formula rate review mechanism that uses
13 a test period based upon a projected year and has an initial term that
14 commences after January 1, 2021, the public utility shall follow subdivision
15 (e)(4)(B)(ii) of this section for the initial five-year term of the formula
16 rate review mechanism.

17 (f) The public utility shall submit documentation fully supporting all
18 calculations and adjustments as required by the rules of the ~~commission~~
19 Arkansas Public Service Commission.

20 (g)(1) A Except as provided in subdivision (g)(2) of this section and
21 § 23-4-1208(a)(4) and (5), a public utility or any other party to the
22 proceeding subject to the ~~commission's~~ Arkansas Public Service Commission's
23 rules and procedures may propose additional adjustments that are based on
24 factors unique to the public utility.

25 (2) The Arkansas Public Service Commission shall not approve any
26 adjustments or changes to the formula rate review filings that are
27 inconsistent with the findings in the Arkansas Public Service Commission's
28 order on the public utility's application for a general change in rates or
29 charges, including:

30 (A) The rates that are approved in the application for a
31 general change in rates and charges shall remain in effect during the formula
32 rate review term consistent with § 23-4-1205(c)(3)(B); and

33 (B) The Arkansas Public Service Commission shall not
34 approve any adjustments or changes to the formula rate review filings that
35 are inconsistent with the findings in the Arkansas Public Service
36 Commission's order on the public utility's application for a general change

1 in rates or charges, including:

2 (i) A review of all of the components of a public
3 utility's books and records, including the balance sheet and income statement
4 accounts as were included in the findings in the Arkansas Public Service
5 Commission's order on the public utility's application for a general change
6 in rates or charges, and shall continue to treat those items in a manner
7 consistent with the findings in the Arkansas Public Service Commission's
8 order on the public utility's most recent application for a general change in
9 rates or charges; and

10 (ii) The public utility has designated the public
11 utility's formula rate review test period as based on a projected year under
12 § 23-4-1205(a)(2) shall be allowed to recover its allowance for funds used
13 during construction and is determined according to the uniform system of
14 accounts adopted by the Arkansas Public Service Commission, and any
15 applicable accounting guidance issued by the Federal Energy Regulatory
16 Commission, and conforms with generally accepted accounting principles,
17 through rates.

18
19 SECTION 4. Arkansas Code § 23-4-1207(d), concerning the formula for
20 adjustments under the Formula Rate Review Act, is amended to read as follows:

21 (d)(1)(A) The total change in the formula rate review mechanism
22 revenue level shall be allocated to each applicable rate schedule based on an
23 equal percentage of the base rate revenue used in the development of rates in
24 the Arkansas Public Service Commission's order addressing the public
25 utility's last application for a general change in rates and charges.

26 (B) As part of an extension of the five-year term of a
27 formula rate review under § 23-4-1208(a)(3), for an electric utility if the
28 electric utility's class of customers with the highest level of consumption
29 per customer that has rates that include a demand component, and any
30 successors to such a class, as they existed on January 1, 2021, has an annual
31 usage for the class as a whole in excess of seven million megawatt hours
32 (7,000,000 MWh), the commission shall adjust the cost allocation, with
33 respect to the total change in the formula rate review mechanism revenue
34 level under subdivision (d)(1)(A) of this section, to each applicable rate
35 schedule consistent with § 23-4-422(b)(2) and § 23-4-422(d)(2) and using the
36 public utility's most recent cost of service that was submitted under the

1 terms of the public utility's formula rate review mechanism.

2 (C) The public utility shall file the resulting rate
3 schedules as part of any formula rate review compliance filing.

4 (2) The total amount of a revenue increase or decrease for each
5 rate class shall not exceed four percent (4%) of each rate class's total
6 revenue for the twelve (12) calendar months preceding the formula rate review
7 test period.

8
9 SECTION 5. Arkansas Code § 23-4-1208 is amended to read as follows:
10 23-4-1208. Term – Formula rate review.

11 (a)(1) The term of any formula rate review approved by the Arkansas
12 Public Service Commission shall not exceed five (5) years from the date of
13 the commission's final order on the application by the public utility for a
14 general change in rates and charges.

15 (2)(A)(i) Upon a determination that it is in the public
16 interest, a public utility may request and the commission may extend the term
17 of the formula rate review mechanism by a period of no more than five (5)
18 years beyond the initial term.

19 (ii) For an electric utility if the electric
20 utility's class of customers with the highest level of consumption per
21 customer that has rates that include a demand component, and any successors
22 to such a class, as they existed on January 1, 2021, has an annual usage for
23 the class as a whole in excess of seven million megawatt hours (7,000,000
24 MWh):

25 (a) An electric utility may request, and the
26 commission shall approve, an extension of the term of the formula rate review
27 mechanism by a period of five (5) years beyond the initial five-year term,
28 provided the request is made on or before March 15, 2021; and

29 (b) Any requests for an extension of the
30 initial term of a formula rate plan mechanism made after March 15, 2021,
31 shall be subject to subdivision (a)(2)(A)(i) of this section.

32 (B) As part of any extension of the initial term of a
33 formula rate review, for an electric utility if the electric utility's class
34 of customers with the highest level of consumption per customer that has
35 rates that include a demand component, and any successors to such a class, as
36 they existed on January 1, 2021, has an annual usage for the class as a whole

1 in excess of seven million megawatt hours (7,000,000 MWh), the commission
2 shall adjust the cost allocation of any adjustment with respect to the total
3 change in the formula rate review mechanism revenue level under § 23-4-
4 1207(d) to each applicable rate schedule consistent with § 23-4-422(b)(2) and
5 § 23-4-422(d)(2) using the public utility's most recent cost of service that
6 was submitted under the terms of the public utility's formula rate review
7 mechanism, and the public utility shall file with the commission the
8 resulting rate schedules as part of any formula rate review compliance
9 filing.

10 (C) As part of any extension of the initial term of a
11 formula rate review mechanism, for an electric utility if the electric
12 utility's class of customers with the highest level of consumption per
13 customer that has rates that include a demand component, and any successors
14 to such a class, as they existed on January 1, 2021, has an annual usage for
15 the class as a whole in excess of seven million megawatt hours (7,000,000
16 MWh), the commission shall approve changes to the rate design within an
17 individual customer class under § 23-4-1205(c)(3)(B) and subject to § 23-4-
18 422(b)(1) using the public utility's most recent cost of service that was
19 submitted under the terms of the public utility formula rate review
20 mechanism, and the public utility shall file with the commission the
21 resulting rate schedules as part of any formula rate review compliance
22 filing.

23 (3) During the five-year term of an extension of any formula
24 rate review mechanism with an initial five-year term approved before March
25 15, 2021, for an electric utility if the electric utility's class of
26 customers with the highest level of consumption per customer that has rates
27 that include a demand component, and any successors to such a class, as they
28 existed on January 1, 2021, has an annual usage for the class as a whole in
29 excess of seven million megawatt hours (7,000,000 MWh):

30 (A)(i) If the commission as part of its order in the
31 public utility's most recent application for a general change in rates and
32 charges under § 23-4-401 et seq. adjusted the cost allocation to each
33 applicable rate schedule under the then-applicable provisions of § 23-4-422,
34 then the commission shall:

35 (a) Use a public utility's most recent cost of
36 service that was submitted under the terms of the public utility's formula

1 rate review mechanism;

2 (b) Adjust the revenues recoverable from each
3 class of customers to implement the unadjusted cost allocation in an equal
4 annual adjustment over the five-year term of an extension; and

5 (c) This subdivision (a)(3)(A) shall be used
6 to adjust the amounts under § 23-4-1207(d)(1).

7 (ii) The commission shall not make any other
8 adjustments to the amounts under § 23-4-1207(d);

9 (B) For a public utility's class of customers with the
10 highest level of consumption per customer that has rates with a demand
11 component, any decrease in the costs allocated to that class of customers
12 under subdivision (a)(3)(A) of this section shall serve to lower the maximum
13 amount of the revenue increase for that class under § 23-4-1207(d)(2);

14 (C) For a public utility's classes of customers other than
15 the class of customers with the highest level of consumption per customer
16 that has rates with a demand component, any increase in the costs allocated
17 to those classes of customers as well as any amounts that lower the maximum
18 revenue increase for any class of customers under subdivision (a)(3)(B) of
19 this section shall be included in the adjustment of customer rates for those
20 classes of customers subject to § 23-4-1207(d)(2);

21 (D) For a public utility's nonresidential classes of
22 customers that have rates with a demand component other than the class of
23 customers with the highest level of consumption per customer that has rates
24 with a demand component, the public utility may establish and the commission
25 shall approve a maximum level of consumption or demand to be eligible for
26 service as part of those classes that is lower than the minimum level of
27 consumption or demand to be eligible for the class of customers with the
28 highest level of consumption per customer that has rates with a demand
29 component; and

30 (E) If the commission as part of its order in the public
31 utility's most recent application for a general change in rates and charges
32 under § 23-4-401 et seq. adjusted the rate design for the class of customers
33 with the highest level of consumption per customer that has rates with a
34 demand component under the then-applicable provisions of § 23-4-422, then:

35 (i) The commission shall approve changes to the rate
36 design within an individual customer class under § 23-4-1205(c)(3)(B) subject

1 to § 23-4-422(b)(1) using the utility's most recent cost of service that was
2 submitted under the terms of its formula rate review mechanism;

3 (ii) The commission shall modify the rate design
4 changes required under § 23-4-422(b)(1), § 23-4-1205(c)(3)(B), and this
5 subdivision (a)(3), as described in this subdivision (a)(3)(E); and

6 (iii) The commission shall adjust the rate design to
7 the class of customers with the highest level of consumption per customer,
8 which has rates with a demand component in an equal annual adjustment over
9 the first three (3) years of the five-year term of an extension, and the
10 public utility shall file the resulting rate schedules annually as part of
11 any formula rate review compliance filing until the adjustment in this
12 subdivision (a)(3)(E)(iii) is fully implemented.

13 (4) During the five-year term of an extension, for an electric
14 public utility with a formula rate review mechanism that uses a test period
15 based on a projected year with an initial five-year term and that was
16 approved and in effect by the commission before March 15, 2021, for an
17 electric utility if the electric utility's class of customers with the
18 highest level of consumption per customer that has rates that include a
19 demand component, and any successors to such a class, as they existed on
20 January 1, 2021, has an annual usage for the class as a whole in excess of
21 seven million megawatt hours (7,000,000 MWh):

22 (A) The debt-to-equity ratio, for the purpose of setting
23 rates, shall be fixed at a public utility's actual debt-to-equity ratio
24 reflected in the commission order issued on December 11, 2020, addressing the
25 annual formula rate review filing during the final year of the initial five-
26 year term;

27 (B) If the commission imputes a level of short-term debt
28 for ratemaking purposes, the amount, stated as a percentage, shall not exceed
29 the amount included in the capital structure reflected in the commission
30 order issued on December 11, 2020, addressing the annual formula rate review
31 filing during the final year of the initial five-year term;

32 (C) The target rate of return in effect during the initial
33 five-year term of the formula rate review mechanism shall continue to be in
34 effect for the five-year term of an extension;

35 (D) All other capital structure components, for the
36 purpose of setting rates as well as all other components of a public

1 utility's books and records, including the balance sheet and income statement
2 accounts, shall be determined consistent with § 23-4-1206(g); and

3 (E) If the commission imputes any amount for any
4 liabilities that are reflected in the capital structure for ratemaking
5 purposes, it shall not include any amount stated as a percentage that exceeds
6 the amount stated as a percentage included in the capital structure reflected
7 in the commission order issued on December 11, 2020, addressing the annual
8 formula rate review filing during the final year of the initial five-year
9 term.

10 (5) During the five-year term of an extension, for an electric
11 public utility with a formula rate review mechanism that uses a test period
12 based on a projected year with an initial five-year term and that was
13 approved and in effect by the commission before March 15, 2021, for an
14 electric utility if the electric utility's class of customers with the
15 highest level of consumption per customer that has rates that include a
16 demand component, and any successors to such a class, as they existed on
17 January 1, 2021, has an annual usage for the class as a whole in excess of
18 seven million megawatt hours (7,000,000 MWh), to the extent practicable, the
19 public utility shall do the following with respect to providing support for
20 its annual formula rate review evaluation reports during the five-year term
21 of the extension:

22 (A)(i) The public utility shall support the purpose for
23 and level of its projected year investments or expenses with those
24 projections based primarily upon historical averages and making specific
25 adjustments to those amounts instead of basing those projections primarily on
26 the public utility's corporate budget.

27 (ii) The public utility shall use its four-year
28 average historical plant balances for enumerated blanket funding projects
29 associated with capital investment that are mandated by law or regulation,
30 customer-driven, or necessary to maintain the reliability of the electric
31 grid as the baseline for the investments going forward, and to complete this,
32 the public utility may categorize investments according to the public
33 utility's primary objective, including mandated work, preapproved projects,
34 storm work, and reliability work instead of using the public utility's
35 corporate budget to determine the amount included in the projected year.

36 (iii) For any projects that fall outside the

1 recurring enumerated categories that are based on the historical averaging,
2 the public utility shall separately identify, to the extent practicable, each
3 project and support the project as a specific adjustment to the projected
4 year amounts, similar to the presentation of an adjustment made during an
5 application for a general change or modification in rates and charges, and to
6 complete this, the public utility may determine that projects should be
7 grouped together when the projects contain a combination of proposed
8 investments associated with both baseline reliability and load stability
9 projects, such as pole line and circuit inspection programs, and other
10 reliability efforts that the public utility plans to undertake in the
11 projected year;

12 (B) The public utility shall use the four-year historical
13 averages described in subdivision (a)(5)(A)(ii) of this section, except that:

14 (i) The public utility shall adjust the historical
15 averages upward or downward for specific capital projects and anticipated
16 cost increases or decreases that the utility reasonably expects are likely to
17 occur within the projected year and for which the utility provides additional
18 support consistent with other filing support thresholds that the commission
19 applied to the utility's formula rate review mechanism during its initial
20 five-year term; and

21 (ii) Expenses related to capital investments that
22 the utility has already explained shall not require separate support,
23 including depreciation and property taxes;

24 (C)(i) The support for the projected year, described in
25 subdivisions (a)(5)(A) and (B) of this section, shall be applied to the
26 transmission and generation functional areas to the extent deemed practicable
27 by the public utility.

28 (ii) If not practicable, the public utility shall
29 use reasonable efforts to establish a similar framework to present capital
30 investment;

31 (D) The public utility shall use reasonable efforts to
32 develop a similar methodology as described in subdivision (a)(4) of this
33 section and this subdivision (a)(5) for projected year expenses; and

34 (E) Not less than forty-five (45) days before the public
35 utility's annual evaluation report filing:

36 (i) The public utility shall make available to the

1 other eligible parties in the formula rate review proceeding information
2 regarding the public utility's construction projects and purchases that
3 closed to plant during the historical year; and

4 (ii) To the extent reasonably practicable, the
5 public utility shall provide an overview of its planned distribution projects
6 describing the public utility's projected year planned distribution
7 unadjusted investment and expenses.

8 (6) Subdivisions (a)(4) and (5) of this section are subject to
9 the applicable accounting and tax requirements, including the normalization
10 rules of the Internal Revenue Service as in effect on January 1, 2021, and
11 generally acceptable accounting principles.

12 ~~(3)~~(7) The rate review mechanism shall continue until all
13 historical years have been netted under § 23-4-1206(e)(1) and rates have been
14 adjusted under § 23-4-1207(c).

15 (b)(1) A formula rate review shall continue until a final order is
16 issued on an application for a general change in rates and charges filed by a
17 public utility or an application for a change in general rates and charges
18 filed by the public utility as ordered by the commission. The rate review
19 mechanism shall continue until all historical years have been netted under §
20 23-4-1206(e)(1) and rates have been adjusted under § 23-4-1207(c).

21 (2)(A) A public utility may file an application for a change in
22 rates and charges under § 23-4-401 et seq. at any time during an extension of
23 the term of a formula rate review mechanism.

24 (B) If the public utility does not file an application for
25 a change in general rates and charges under § 23-4-401 et seq. under
26 subdivision (b)(2)(A) of this section before the final year of an extension
27 term, the public utility shall do so during the final year of the extension
28 of the term of a formula rate review mechanism.

29 (3) In any application for a change in general rates and charges
30 filed during or at the conclusion of the initial term or any extension of the
31 term of a formula rate review mechanism that uses a test period based upon a
32 projected year:

33 (A) A public utility's prior designation of a formula rate
34 review test period based upon a projected year under § 23-4-1205(a)(2) shall
35 not affect the public utility's right to designate a test period to justify
36 new rates under § 23-4-406;

1 (B) A public utility's formula rate review test period
2 based upon a projected year under § 23-4-1205(a)(2) may include, at the
3 public utility's discretion, all or part of the same historical periods or
4 projected periods as those included in a test period to justify new rates
5 under § 23-4-406; and

6 (C) An application described in this subdivision (b)(3)
7 shall not limit subdivision (b)(1) of this section.

8
9 SECTION 6. DO NOT CODIFY. Retroactivity. This act applies to any
10 formula rate review approved and in effect under the Formula Rate Review Act,
11 § 23-4-1201 et seq., on or before March 15, 2021.

12
13 SECTION 7. DO NOT CODIFY. Applicability. This act applies to any
14 formula rate review approved and in effect under the Formula Rate Review Act,
15 § 23-4-1201 et seq., on or before March 15, 2021.

16
17 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the
18 General Assembly of the State of Arkansas that investments by public
19 utilities that provide utility service in Arkansas are required to provide
20 reliable service at reasonable rates, but the costs that drive public utility
21 rates are changing; that public utilities need to have procedures that permit
22 the rates to change in response to those changing conditions that affect
23 costs and address the allocation of costs and design of rates; and that this
24 act is immediately necessary to maintain stable rates and to mitigate the
25 magnitude of future rate changes by public utilities by clarification of the
26 regulatory framework to ease the investment procedure for public utilities.
27 Therefore, an emergency is declared to exist, and this act being immediately
28 necessary for the preservation of the public peace, health, and safety shall
29 become effective on:

30 (1) The date of its approval by the Governor;

31 (2) If the bill is neither approved nor vetoed by the Governor,
32 the expiration of the period of time during which the Governor may veto the
33 bill; or

34 (3) If the bill is vetoed by the Governor and the veto is
35 overridden, the date the last house overrides the veto.

36