

1 State of Arkansas
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4

A Bill

SENATE BILL 489

5 By: Senator B. Davis
6 By: Representative Maddox
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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17

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 § 23-4-1207(d) and § 23-4-
 36 1208(a)(2)(B) and (C).

1 (2)(A) The commission shall not adjust the rates under
2 subsection (e) or subsection (f) of this section for an electric utility if
3 the electric utility's class of customers with the highest level of
4 consumption per customer that has rates that include a demand component, and
5 any successors to such a class, as they existed on January 1, 2021, has an
6 annual usage for the class as a whole in excess of seven million megawatt
7 hours (7,000,000 MWh), except as provided in § 23-4-1207(d) and § 23-4-
8 1208(a)(2)(B) and (C), if the electric utility has a formula rate review
9 approved and in effect under § 23-4-1208(a)(1) on or before March 15, 2021.

10 (B) The commission is not required to make the findings
11 specified in subdivision (b)(1) of this section as a prerequisite to follow
12 subsection (d)(2)(A) of this section.

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

17 (1) It is in the public interest;

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

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

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

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

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

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

7
8 SECTION 2. Arkansas Code § 23-4-1205(c)(3), concerning the procedure
9 for a rate change under the Formula Rate Review Act, is amended to read as
10 follows:

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

15 (B) As part of an extension of the initial five-year term
16 of a formula rate review under § 23-4-1207(d) and § 23-4-1208(a)(3), 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, any successors to such a class, as they existed on January
20 1, 2021, has an annual usage for the class as a whole in excess of seven
21 million megawatt hours (7,000,000 MWh), the commission shall approve changes
22 to the rate design within an individual customer class consistent with § 23-
23 4-422(b)(1).

24
25 SECTION 3. Arkansas Code § 23-4-1206 is amended to read as follows:

26 23-4-1206. Formula rate review – Required information.

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

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

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

36 (2) In the case of a formula rate review test period that uses a

1 test period based on a projected year, an electing public utility may
2 support, in its discretion, any portion of that projected data through the
3 use of information that relies on historical averages.

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

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

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

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

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

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

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

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

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

35 (ii) The Arkansas Public Service Commission shall
36 calculate an adjustment to net any differences under subdivision (e)(1) of

1 this section by calculating the differences between the prior formula rate
2 review test period changes in revenue and the prior projected year revenue
3 for the year being netted.

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

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

13 (ii) Proportioned by:

14 (a) Calculating the sum of:

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

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

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

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

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

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

28 (C)(i) For the initial term of a formula rate review
29 mechanism approved and in effect on or before March 15, 2021, for an electric
30 utility if the electric utility's class of customers with the highest level
31 of consumption per customer that has rates that include a demand component,
32 and any successors to such a class, as they existed on January 1, 2021, has
33 an annual usage for the class as a whole in excess of seven million megawatt
34 hours (7,000,000 MWh), a public utility may choose to apply either
35 subdivision (e)(4)(B)(i) or subdivision (e)(4)(B)(ii) of this section for the
36 term of an approved formula rate review approved under § 23-4-1208(a)(1).

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

3 (iii) Except as provided in subdivisions (e)(4)(D)
4 and (E) of this section, the authorized methodology shall remain in effect.

5 (D) During the final year of the initial five-year term of
6 any formula rate review mechanism approved and in effect before March 15,
7 2021, for an electric utility if the electric utility's class of customers
8 with the highest level of consumption per customer that has rates that
9 include a demand component, and any successors to such a class, as they
10 existed on January 1, 2021, has an annual usage for the class as a whole in
11 excess of seven million megawatt hours (7,000,000 MWh), that uses a test
12 period based upon a projected year, the public utility shall follow
13 subdivision (e)(4)(B)(ii) of this section.

14 (E)(i) During any five-year extension term of a formula
15 rate review mechanism that uses a test period based upon a projected year,
16 for an electric utility if the electric utility's class of customers with the
17 highest level of consumption per customer that has rates that include a
18 demand component, and any successors to such a class, as they existed on
19 January 1, 2021, has an annual usage for the class as a whole in excess of
20 seven million megawatt hours (7,000,000 MWh), the public utility shall
21 propose, and the Arkansas Public Service Commission shall authorize, a public
22 utility to follow subdivision (e)(4)(B)(ii) of this section for the five-year
23 extension of the term of the formula rate review mechanism.

24 (ii) For any formula rate review mechanism that uses
25 a test period based upon a projected year and has an initial term that
26 commences after January 1, 2021, for an electric utility if the electric
27 utility's class of customers with the highest level of consumption per
28 customer that has rates that include a demand component, and any successors
29 to such a class, as they existed on January 1, 2021, has an annual usage for
30 the class as a whole in excess of seven million megawatt hours (7,000,000
31 MWh), the public utility shall follow subdivision (e)(4)(B)(ii) of this
32 section for the initial five-year term of the formula rate review mechanism.

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

36 (g)(1) A Except as provided in subdivision (g)(2) of this section and

1 § 23-4-1208(a)(4) and (5), a public utility or any other party to the
2 proceeding subject to the ~~commission's~~ Arkansas Public Service Commission's
3 rules and procedures may propose additional adjustments that are based on
4 factors unique to the public utility.

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

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

13 (B) The Arkansas Public Service Commission shall not
14 approve any adjustments or changes to the formula rate review filings that
15 are inconsistent with the findings in the Arkansas Public Service
16 Commission's order on the public utility's application for a general change
17 in rates or charges, including:

18 (i) A review of all of the components of a public
19 utility's books and records, including the balance sheet and income statement
20 accounts as were included in the findings in the Arkansas Public Service
21 Commission's order on the public utility's application for a general change
22 in rates or charges, and shall continue to treat those items in a manner
23 consistent with the findings in the Arkansas Public Service Commission's
24 order on the public utility's most recent application for a general change in
25 rates or charges; and

26 (ii) The public utility has designated the public
27 utility's formula rate review test period as based on a projected year under
28 § 23-4-1205(a)(2) shall be allowed to recover its allowance for funds used
29 during construction and is determined according to the uniform system of
30 accounts adopted by the Arkansas Public Service Commission, and any
31 applicable accounting guidance issued by the Federal Energy Regulatory
32 Commission, and conforms with generally accepted accounting principles,
33 through rates.

34
35 SECTION 4. Arkansas Code § 23-4-1207(d), concerning the formula for
36 adjustments under the Formula Rate Review Act, is amended to read as follows:

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

6 (B) As part of an extension of the five-year term of a
 7 formula rate review under § 23-4-1208(a)(3), for an electric utility if the
 8 electric utility’s class of customers with the highest level of consumption
 9 per customer that has rates that include a demand component, and any
 10 successors to such a class, as they existed on January 1, 2021, has an annual
 11 usage for the class as a whole in excess of seven million megawatt hours
 12 (7,000,000 MWh), the commission shall adjust the cost allocation, with
 13 respect to the total change in the formula rate review mechanism revenue
 14 level under subdivision (d)(1)(A) of this section, to each applicable rate
 15 schedule consistent with § 23-4-422 and using the public utility’s most
 16 recent cost of service that was submitted under the terms of the public
 17 utility’s formula rate review mechanism.

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

20 (2) The total amount of a revenue increase or decrease for each
 21 rate class shall not exceed four percent (4%) of each rate class’s total
 22 revenue for the twelve (12) calendar months preceding the formula rate review
 23 test period.

24
 25 SECTION 5. Arkansas Code § 23-4-1208 is amended to read as follows:
 26 23-4-1208. Term – Formula rate review.

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

31 (2)(A)(i) Upon a determination that it is in the public
 32 interest, a public utility may request and the commission may extend the term
 33 of the formula rate review mechanism by a period of no more than five (5)
 34 years beyond the initial five-year term.

35 (ii) For an electric utility if the electric
 36 utility’s class of customers with the highest level of consumption per

1 customer that has rates that include a demand component, and any successors
2 to such a class, as they existed on January 1, 2021, has an annual usage for
3 the class as a whole in excess of seven million megawatt hours (7,000,000
4 MWh), and electric utility may request, and the commission shall approve, an
5 extension of the term of the formula rate review mechanism by a period of
6 five (5) years beyond the initial five-year term.

7 (B) As part of any extension of the five-year term of a
8 formula rate review, for an electric utility if the electric utility's class
9 of customers with the highest level of consumption per customer that has
10 rates that include a demand component, and any successors to such a class, as
11 they existed on January 1, 2021, has an annual usage for the class as a whole
12 in excess of seven million megawatt hours (7,000,000 MWh), the commission
13 shall adjust the cost allocation of any adjustment with respect to the total
14 change in the formula rate review mechanism revenue level under § 23-4-
15 1207(d) to each applicable rate schedule consistent with § 23-4-422 using the
16 public utility's most recent cost of service that was submitted under the
17 terms of the public utility's formula rate review mechanism, and the public
18 utility shall file with the commission the resulting rate schedules as part
19 of any formula rate review compliance filing.

20 (C) As part of any extension of the initial five-year term
21 of a formula rate review mechanism, for an electric utility if the electric
22 utility's class of customers with the highest level of consumption per
23 customer that has rates that include a demand component, and any successors
24 to such a class, as they existed on January 1, 2021, has an annual usage for
25 the class as a whole in excess of seven million megawatt hours (7,000,000
26 MWh), the commission shall approve changes to the rate design within an
27 individual customer class under § 23-4-1205(c)(3)(B) and subject to § 23-4-
28 422(b)(1) using the public utility's most recent cost of service that was
29 submitted under the terms of the public utility formula rate review
30 mechanism, and the public utility shall file with the commission the
31 resulting rate schedules as part of any formula rate review compliance
32 filing.

33 (3) During the five-year term of an extension of any formula
34 rate review mechanism with an initial five-year term approved before March
35 15, 2021, for an electric utility if the electric utility's class of
36 customers with the highest level of consumption per customer that has rates

1 that include a demand component, and any successors to such a class, as they
2 existed on January 1, 2021, has an annual usage for the class as a whole in
3 excess of seven million megawatt hours (7,000,000 MWh):

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

9 (a) Use a public utility's most recent cost of
10 service that was submitted under the terms of the public utility's formula
11 rate review mechanism;

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

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

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

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

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

31 (D) For a public utility's nonresidential classes of
32 customers that have rates with a demand component other than the class of
33 customers with the highest level of consumption per customer that has rates
34 with a demand component, the public utility shall establish a maximum level
35 of consumption or demand to be eligible for service as part of those classes
36 that is lower than the minimum level of consumption or demand to be eligible

1 for the class of customers with the highest level of consumption per customer
2 that has rates with a demand component; and

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

8 (i) The commission shall approve changes to the rate
9 design within an individual customer class under § 23-4-1205(c)(3)(B) subject
10 to § 23-4-422(b)(1) using the utility's most recent cost of service that was
11 submitted under the terms of its formula rate review mechanism;

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

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

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

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

36 (B) If the commission imputes a level of short-term debt

1 for ratemaking purposes, the amount, stated as a percentage, shall not exceed
2 the amount included in the capital structure reflected in the commission
3 order issued on December 11, 2020, addressing the annual formula rate review
4 filing during the final year of the initial five-year term;

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

8 (D) All other capital structure components, for the
9 purpose of setting rates as well as all other components of a public
10 utility's books and records, including the balance sheet and income statement
11 accounts, shall be determined consistent with § 23-4-1206(g); and

12 (E) If the commission imputes any amount for any
13 liabilities that are reflected in the capital structure for ratemaking
14 purposes, it shall not include any amount stated as a percentage that exceeds
15 the amount stated as a percentage included in the capital structure reflected
16 in the commission order issued on December 11, 2020, addressing the annual
17 formula rate review filing during the final year of the initial five-year
18 term.

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

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

36 (ii) The public utility shall use its four-year

1 average historical plant balances for enumerated blanket funding projects
2 associated with capital investment that are mandated by law or regulation,
3 customer-driven, or necessary to maintain the reliability of the electric
4 grid as the baseline for the investments going forward, and to complete this,
5 the public utility may categorize investments according to the public
6 utility's primary objective, including mandated work, preapproved projects,
7 storm work, and reliability work instead of using the public utility's
8 corporate budget to determine the amount included in the projected year.

9 (iii) For any projects that fall outside the
10 recurring enumerated categories that are based on the historical averaging,
11 the public utility shall separately identify, to the extent practicable, each
12 project and support the project as a specific adjustment to the projected
13 year amounts, similar to the presentation of an adjustment made during an
14 application for a general change or modification in rates and charges, and to
15 complete this, the public utility may determine that projects should be
16 grouped together when the projects contain a combination of proposed
17 investments associated with both baseline reliability and load stability
18 projects, such as pole line and circuit inspection programs, and other
19 reliability efforts that the public utility plans to undertake in the
20 projected year;

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

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

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

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

1 (ii) If not practicable, the public utility shall
2 use reasonable efforts to establish a similar framework to present capital
3 investment;

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

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

9 (i) The public utility shall make available to the
10 other eligible parties in the formula rate review proceeding information
11 regarding the public utility's construction projects and purchases that
12 closed to plant during the historical year; and

13 (ii) To the extent reasonably practicable, the
14 public utility shall provide an overview of its planned distribution projects
15 describing the public utility's projected year planned distribution
16 unadjusted investment and expenses.

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

21 ~~(3)~~(7) The rate review mechanism shall continue until all
22 historical years have been netted under § 23-4-1206(e)(1) and rates have been
23 adjusted under § 23-4-1207(c).

24 (b)(1) A formula rate review shall continue until a final order is
25 issued on an application for a general change in rates and charges filed by a
26 public utility or an application for a change in general rates and charges
27 filed by the public utility as ordered by the commission. The rate review
28 mechanism shall continue until all historical years have been netted under §
29 23-4-1206(e)(1) and rates have been adjusted under § 23-4-1207(c).

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

33 (B) If the public utility does not file an application for
34 a change in general rates and charges under § 23-4-401 et seq. under
35 subdivision (b)(2)(A) of this section before the final year of a five-year
36 extension term, the public utility shall do so during the final year of the

1 five-year extension of the term of a formula rate review mechanism.

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

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

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

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

17
18 SECTION 6. DO NOT CODIFY. Retroactivity. This act applies to any
19 formula rate review approved and in effect under § 23-4-1208 on or before
20 March 15, 2021.

21
22 SECTION 7. DO NOT CODIFY. Applicability. This act applies to any
23 formula rate review approved and in effect under § 23-4-1208 on or before
24 March 15, 2021.

25
26 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the
27 General Assembly of the State of Arkansas that investments by public
28 utilities that provide utility service in Arkansas are required to provide
29 reliable service at reasonable rates, but the costs that drive public utility
30 rates are changing; that public utilities need to have procedures that permit
31 the rates to change in response to those changing conditions that affect
32 costs and address the allocation of costs and design of rates; and that this
33 act is immediately necessary to maintain stable rates and to mitigate the
34 magnitude of future rate changes by public utilities by clarification of the
35 regulatory framework to ease the investment procedure for public utilities.
36 Therefore, an emergency is declared to exist, and this act being immediately

1 necessary for the preservation of the public peace, health, and safety shall
2 become effective on:

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

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

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

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