

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas As Engrossed: H2/20/23 H2/21/23

2 94th General Assembly

A Bill

3 Regular Session, 2023

HOUSE BILL 1370

4

5 By: Representative L. Fite

6 By: Senator J. Dismang

7

8

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS RENEWABLE ENERGY
10 DEVELOPMENT ACT OF 2001; TO PREVENT COST-SHIFTING AND
11 ENSURE FAIRNESS TO ALL RATEPAYERS; TO CREATE THE
12 CUSTOMER PROTECTIONS FOR NET-METERING CUSTOMER ACT;
13 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

14

15

16

Subtitle

17 TO AMEND THE ARKANSAS RENEWABLE ENERGY
18 DEVELOPMENT ACT OF 2001; TO PREVENT COST-
19 SHIFTING AND ENSURE FAIRNESS TO ALL
20 RATEPAYERS; TO CREATE THE CUSTOMER
21 PROTECTIONS FOR NET-METERING CUSTOMERS
22 ACT; AND TO DECLARE AN EMERGENCY.

23

24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26

27 SECTION 1. Arkansas Code Title 23, Chapter 18, Subchapter 6 is amended
28 to read as follows:

29 Subchapter 6 – Arkansas ~~Renewable Energy Development~~ Cost-Shifting Prevention
30 Act of ~~2001~~ 2023

31

32 23-18-601. Title.

33 This subchapter shall be known and cited as the “Arkansas ~~Renewable~~
34 ~~Energy Development~~ Cost-Shifting Prevention Act of ~~2001~~ 2023”.

35

36 23-18-602. Legislative findings and declarations.



1 ~~(a) Net energy metering encourages the use of renewable energy~~
 2 ~~resources and renewable energy technologies by reducing utility~~
 3 ~~interconnection and administrative costs for small consumers of electricity.~~
 4 ~~More than thirty (30) other states have passed similar laws or regulations in~~
 5 ~~support of net energy metering programs. Increasing the consumption of~~
 6 ~~renewable resources promotes the wise use of Arkansas's natural energy~~
 7 ~~resources to meet a growing energy demand, increases Arkansas's use of~~
 8 ~~indigenous energy fuels while reducing dependence on imported fossil fuels,~~
 9 ~~fosters investments in emerging renewable technologies to stimulate economic~~
 10 ~~development and job creation in the state, including the agricultural~~
 11 ~~sectors, reduces environmental stresses from energy production, and provides~~
 12 ~~greater consumer choices. The General Assembly finds that:~~

13 ~~(1) Arkansas has an established process for the billing option~~
 14 ~~that enables customer-owned net-metering facilities to offset part or all of~~
 15 ~~a net-metering customer's electric consumption;~~

16 ~~(2) This billing option should continue subject to certain~~
 17 ~~modifications for the benefit and rate protection of all electric utility~~
 18 ~~customers in Arkansas; and~~

19 ~~(b)(3) Arkansas has actively encouraged the manufacture of new~~
 20 ~~technologies in the state through promotion of the Arkansas Emerging~~
 21 ~~Technology Development Act of 1999, § 15-4-2101 et seq. [repealed]. Net~~
 22 ~~metering would help to further attract energy technology manufacturers, to~~
 23 ~~provide a foothold for these technologies in the Arkansas economy, and to~~
 24 ~~make it easier for customer access to these technologies.~~

25 ~~(c) Therefore, the General Assembly finds that it It is in Arkansas's~~
 26 ~~long-term interest to adopt this subchapter the modifications set forth in~~
 27 ~~this subchapter.~~

28
 29 23-18-603. Definitions.

30 As used in this subchapter:

31 (1) "Avoided cost" means:

32 (A) For an electric utility other than a municipal
 33 utility, the ~~costs to an electric utility of electric energy or capacity, or~~
 34 ~~both, that, but for the generation from the net-metering facility or~~
 35 ~~facilities, the utility would generate itself or purchase from another~~
 36 ~~source, as determined by a commission consistent with § 23-3-701 et seq.~~

1 twelve-month average for the prior calendar year of the applicable Locational
2 Marginal Price associated with the electric utility's load zone in the
3 following applicable Independent System Operator market:

4 (i) The Midcontinent Independent System Operator; or

5 (ii) The Southwest Power Pool; or

6 (B) For a municipal utility, the definition provided by
7 the governing body of the municipal utility;

8 (2) "Commission" means the Arkansas Public Service Commission or
9 other appropriate governing body for an electric utility as defined in
10 subdivision (3) of this section;

11 (3) "Electric utility" means a public or investor-owned utility,
12 an electric cooperative, or any private power supplier or marketer that is
13 engaged in the business of supplying electric energy to the ultimate consumer
14 or any customer classes within the state;

15 (4) "Monthly grid charge" means a charge expressed in dollars
16 per kilowatt applied to the nameplate direct current capacity of the net-
17 metering facility;

18 ~~(4)(A)(5)(A)~~ "Municipal utility" means a utility system owned or
19 operated by a municipality that provides electricity.

20 (B) "Municipal utility" includes without limitation a:

21 (i) Utility system managed or operated by a
22 nonprofit corporation under § 14-199-701 et seq.; and

23 (ii) Utility system owned or operated by a
24 municipality or by a consolidated utility district under the General
25 Consolidated Public Utility System Improvement District Law, § 14-217-101 et
26 seq.;

27 ~~(5)(6)~~ "Net excess generation" means the amount of electricity
28 as measured in kilowatt hours or kilowatt hours multiplied by the applicable
29 rate that a net-metering customer has fed back to the electric utility that
30 exceeds the amount of electricity as measured in kilowatt hours or kilowatt
31 hours multiplied by the applicable rate used by that customer during the
32 applicable period determined by a commission;

33 ~~(6)(7)~~ "Net metering" means ~~measuring a billing option that~~
34 measures the difference in amount of electricity as measured in kilowatt
35 ~~hours or kilowatt hours multiplied by the applicable rate~~ supplied by an
36 electric utility to ~~a~~ an individual net-metering customer and separately

1 measuring the electricity as measured in kilowatt hours generated by a net-
 2 metering customer and an individual net-metering customer's net-metering
 3 facility and fed back to the electric utility over the applicable period
 4 determined by a commission;

5 (8) "Net-metering surplus" means the dollar value resulting from
 6 multiplying the avoided cost of the electric utility to all kilowatt hours
 7 supplied to the electric utility by a net-metering customer during the
 8 applicable billing period under § 23-18-604(c)(4);

9 ~~(7)(9)(A)~~ "Net-metering customer" means a an individual customer
 10 of an electric utility that:

11 ~~(A)(i)~~ Is an owner of a net-metering facility;

12 ~~(B)(ii)~~ Leases a net-metering facility subject to the
 13 following limitations:

14 ~~(i)(a)~~ A lease shall not permit the sale of electric
 15 energy measured in kilowatt hours or electric capacity measured in kilowatts
 16 between the lessor and lessee; and

17 ~~(ii)(b)~~ A lease shall not include any charge per
 18 kilowatt hour or any charge per kilowatt; or

19 ~~(G)(iii)(a)~~ Is a government entity or other entity that is
 20 exempt from state and federal income tax, and that, for the sole purpose of
 21 this subchapter, obtains electric energy from a net-metering facility under a
 22 service contract qualifying for safe-harbor protection as provided under 26
 23 U.S.C. § 7701(e)(3)(A), as in effect on July 24, 2019; August 16, 2022.

24 (b) Revenues collected under contracts for
 25 obtaining electric energy from a net-metering facility under a service
 26 contract qualifying for safe-harbor protection as provided under 26 U.S.C. §
 27 7701(e)(3)(A), as in effect on August 16, 2022, are exempt from state and
 28 local sales taxes.

29 (B) "Net-metering customer" does not mean a customer that
 30 is an interruptible customer of the electric utility and takes service under
 31 an electric utility's rate schedule for interruptible service, unless a
 32 commission has:

33 (i) Considered an application and issued an order, before
 34 December 31, 2022, addressing an individual net-metering customer's
 35 application for approval of a net-metering facility with a name plate
 36 generating capacity in excess of ten thousand kilowatts (10,000 kW) where an

1 individual net-metering customer also takes service under an electric
 2 utility's rate schedule for interruptible service; and

3 (ii) Concluded that it is in the public interest for that
 4 individual interruptible customer to be a net-metering customer;

5 ~~(8)(10)~~ "Net-metering facility" means a facility for the
 6 production of electric energy to meet all or part of a net-metering
 7 customer's need for electric energy within a single utility's allocated
 8 service territory that:

9 (A) Uses solar, wind, hydroelectric, geothermal, or
 10 biomass resources to generate electricity, including, but not limited to,
 11 fuel cells and micro turbines that generate electricity if the fuel source is
 12 entirely derived from renewable resources;

13 (B)(i) Has a nameplate generating capacity of not more
 14 than:

15 ~~(i)(a) The greater of twenty-five kilowatts (25 kW)~~
 16 ~~or one~~ For a residential customer for residential use, the lesser of twenty-
 17 five kilowatts (25 kW) alternating current or one hundred percent (100%) of
 18 the net-metering customer's highest monthly usage in the previous twelve (12)
 19 months for residential use;

20 ~~(ii)(b) For customers of electric utilities, one~~
 21 ~~thousand kilowatts (1,000 kW) for use other than residential use unless~~
 22 ~~otherwise allowed by a commission under § 23-18-604~~ For nonresidential
 23 customers of electric utilities for nonresidential use, less than or equal to
 24 the lesser of five thousand kilowatts (5,000 kW) alternating current or one
 25 hundred percent (100%) of the net-metering customer's highest monthly usage
 26 in the previous twelve (12) months within a single utility's allocated
 27 service territory where a single net-metering facility is physically located
 28 behind a net-metering customer's electric utility meter that represents one
 29 hundred percent (100%) of the net-metering customer's energy usage served by
 30 the net-metering facility; or

31 ~~(iii)(c) For customers of a municipal utility,~~
 32 the limits established by the governing body of the municipal utility under §
 33 23-18-605+.

34 (ii)(a) The total nameplate generating capacity of
 35 all net-metering facilities owned by, leased by, or providing electric energy
 36 under one (1) or more qualifying service contracts of an individual net-

1 metering customer, including without limitation any net-metering facilities
 2 serving multiple meter locations under common ownership of any net-metering
 3 customer, within a single utility's allocated service territory, shall be
 4 less than or equal to the lesser of five thousand kilowatts (5,000 kW)
 5 alternating current or one hundred percent (100%) of the net-metering
 6 customer's highest monthly usage in the previous twelve (12) months, unless a
 7 commission approved a greater amount for an individual net-metering customer
 8 before December 31, 2022.

9 (b)(1) A net-metering facility serving
 10 multiple meter locations under common ownership shall be located on a
 11 separate property from any other net-metering facility or only co-locate on a
 12 property with one (1) other net-metering facility within a single utility's
 13 allocated service territory.

14 (2) For a net-metering facility under
 15 subdivision (10)(B)(ii)(b)(1) of this section, the nameplate generating
 16 capacity under this subdivision (10)(B)(ii) includes the total kilowatt
 17 nameplate-generating capacity of all net-metering facilities within a single
 18 electric utility's allocated service territory owned by, leased by, or
 19 providing electric energy under one (1) or more qualifying service contracts
 20 to a net-metering customer, including without limitation any net-metering
 21 facilities serving multiple meter locations under common ownership;

22 (C) Is located in Arkansas;

23 (D) Can operate in parallel with an electric utility's
 24 existing transmission and distribution facilities existing distribution
 25 facilities or, if permitted by the electric utility, an electric utility's
 26 transmission facilities;

27 (E) Is intended primarily to offset part or all of the an
 28 individual net-metering customer customer's requirements for electricity; and

29 (F)(i) May include an energy storage device that is
 30 configured to receive electric energy solely from a net-metering facility.

31 (ii) The capacity of an energy storage device shall
 32 not be used to calculate the capacity limits listed in subdivision
 33 ~~(8)(B)~~(10)(B) of this section if the energy storage device is configured to
 34 receive electric energy solely from a net-metering facility;

35 ~~(9) "Quantifiable benefits" means the+~~

36 ~~(A) Reasonably demonstrated costs that+~~

1 ~~(i) Are related to the provision of electric service~~
2 ~~and based on the utility's most recent cost-of-service study filed with the~~
3 ~~commission; and~~

4 ~~(ii) Will be avoided by the utility by the use of~~
5 ~~net metering;~~

6 ~~(B) Monetary value provided to a utility by the use of net~~
7 ~~metering as specified by a market mechanism, if any, of the regional~~
8 ~~transmission organization of which the electric utility is a member; and~~

9 ~~(C) Monetary value provided to a utility by the use of net~~
10 ~~metering as specified by a market mechanism, if any, that measures utility~~
11 ~~distribution system benefits; and~~

12 ~~(10)(11)~~ (11) "Renewable energy credit" means the environmental,
13 economic, and social attributes of a unit of electricity, such as a megawatt
14 hour, generated from renewable fuels that can be sold or traded separately.

15
16 23-18-604. Commission authority – Definition.

17 (a)(1) An electric utility shall allow net-metering facilities to be
18 interconnected using, at a minimum, a single standard two-channel digital
19 meter capable of registering the flow of electricity in two (2) directions
20 that separately measures the electric energy in kilowatt hours that is:

21 (A) Supplied by an electric utility to the net-metering
22 customer; and

23 (B) Generated by the net-metering customer's net-metering
24 facility and fed back to an electric utility.

25 (2) An electric utility may impose a charge to recover any cost
26 of the standard two-channel digital meter that is not otherwise included in
27 the rates paid by the net-metering customer.

28 (b)(1) Following notice, ~~and~~ opportunity for public comment, ~~and a~~
29 hearing, a commission ~~shall~~+

30 ~~(1) Shall~~ establish appropriate rates, terms, and conditions for
31 net metering, including without limitation the adoption or revision of any
32 applicable rules on or before June 30, 2023+.

33 (2) ~~For net-metering customers who receive service under a rate~~
34 ~~that does not include a demand component, may+~~

35 ~~(A) Require an electric utility to credit the net-metering~~
36 ~~customer with any accumulated net excess generation as measured in kilowatt~~

~~hours or kilowatt hours multiplied by the applicable rate in the next applicable billing period and base the bill of the net metering customer on the net amount of electricity as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate that the net metering customer has received from or fed back to the electric utility during the billing period;~~

~~(B) Take the following actions if those actions are in the public interest and doing so will not result in an unreasonable allocation of or increase in costs to other utility customers:~~

~~(i) Separately meter the electric energy, measured in kilowatt hours, supplied by the electric utility to the net metering customer and the electric energy, measured in kilowatt hours, that is generated by the net metering customer's net metering facility that is fed back to the electric utility at any time during the applicable billing period;~~

~~(ii) Apply the commission-approved retail rate to all kilowatt hours that are supplied by the electric utility to a net metering customer by the electric utility during the applicable period determined by a commission;~~

~~(iii) Apply the avoided cost of the electric utility plus any additional sum determined under subdivision (b)(2)(B)(iv) of this section to all kilowatt hours supplied to the electric utility by a net metering customer, during the period determined by a commission, which shall be credited to the total bill of the net metering customer in a dollar value; and~~

~~(iv) The additional sum added to the avoided cost of the electric utility may be applied after the demonstration of quantifiable benefits by the net metering customer and shall not exceed forty percent (40%) of the avoided cost of the electric utility;~~

~~(C) Authorize an electric utility to assess a net metering customer that is being charged a rate that does not include a demand component a per kilowatt hour fee or charge to recover the quantifiable direct demand related distribution cost of the electric utility for providing electricity to the net metering customer that is not:~~

~~(i) Avoided as a result of the generation of electricity by the net metering facility; and~~

~~(ii) Offset by quantifiable benefits; or~~

1 ~~(D) Take other actions that are in the public interest and~~
2 ~~do not result in an unreasonable allocation of costs to other utility~~
3 ~~customers; The right to a hearing under this subsection may be waived by the~~
4 ~~parties.~~

5 (c) Through its actions under subdivision (b)(1) of this section, a
6 commission shall:

7 (1)(A) Ensure that each net-metering customer pays the costs of
8 an electric utility's facilities and associated expenses required to:

9 (i) Provide service to the net-metering customer;
10 and

11 (ii) Enable the net-metering customer's use of the
12 electric utility's facilities.

13 (B) The costs described under subdivision (c)(1)(A) of
14 this section include without limitation any costs that are:

15 (i) Recovered through rates using the cost-of-
16 service study underlying the rates approved by a commission in the electric
17 utility's most recent application for a general change or modification of the
18 electric utility's rates under § 23-4-401 et seq.;

19 (ii) Recovered through riders or surcharges; and

20 (iii) Adjusted for any commission-approved:

21 (a) Formula rate plan adjustments under the
22 Formula Rate Review Act, § 23-4-1201 et seq.; or

23 (b) Adjustments under § 23-4-901 et seq.

24 (C) By June 30, 2023, a commission shall approve
25 modifications to each electric utility's rate schedules applicable to net-
26 metering customers to ensure that all existing and prospective net-metering
27 customers pay all applicable riders and surcharges;

28 (2) Allow an electric utility to modify the rates, terms, and
29 conditions, including without limitation the rate structure and any
30 individual rate components for net-metering customers, subject to approval by
31 the commission, without filing an application for a general change or
32 modification of the electric utility's rates under § 23-4-401 et seq.;

33 (3) Not adjust the costs of an electric utility's facilities and
34 associated expenses required to provide service to a net-metering customer
35 and to enable the net-metering customer's use of the electric utility's
36 facilities as specified in subdivision (c)(1)(A) of this section with any

1 amounts that are not quantified in the cost-of-service study underlying the
2 retail rates approved by a commission in the electric utility's most recent
3 application for a general change or modification in rates under § 23-4-401 et
4 seq., including without limitation any commission-approved:

5 (A) Formula rate plan adjustments under the Formula Rate
6 Review Act, § 23-4-1201 et seq.; or

7 (B) Adjustments under § 23-4-901 et seq.;

8 (4) Establish rates for a net-metering customer using one (1) of
9 the rate structures under § 23-18-606;

10 (5) Separately meter the electric energy, measured in kilowatt
11 hours, supplied by the electric utility to the net-metering customer and the
12 electric energy, measured in kilowatt hours, that is fed back to the electric
13 utility from the net-metering customer's net-metering facility at any time
14 during the applicable billing period;

15 (6) Apply the commission-approved customer charge, demand
16 charge, or minimum bill provision and other applicable commission-approved
17 charges addressed in subdivision (c)(1)(A) of this section;

18 (7) Apply the commission-approved charges addressed in
19 subdivision (c)(1)(A) of this section to the applicable net-metering
20 customers, including without limitation any rates, riders, and surcharges
21 that are applied based on the volume of kilowatt hours of electricity
22 supplied by an electric utility, to all kilowatt hours that are supplied by
23 the electric utility to a net-metering customer by the electric utility
24 during the applicable billing period;

25 (8) Authorize an electric utility to recover any net-metering
26 surplus or the dollar value of any net excess generation applied to the bills
27 of net-metering customers in the same manner that the electric utility
28 recovers the cost of fuel and purchased energy;

29 ~~(3) Shall require that net-metering equipment be installed to~~
30 ~~accurately measure the electricity:~~

31 ~~(A) Supplied by the electric utility to each net-metering~~
32 ~~customer; and~~

33 ~~(B) Generated by each net-metering customer that is fed~~
34 ~~back to the electric utility over the applicable billing period;~~

35 ~~(4) May authorize (9)(A) Authorize an electric utility to~~
36 ~~assess a net-metering customer a greater fee or charge of any type, if the~~

~~electric utility's direct costs of interconnection and administration of net metering outweigh the distribution system, environmental, and public policy benefits of allocating the costs among the electric utility's entire customer base standard one-time fee, to be approved by the commission, to recover administrative and related interconnection review costs.~~

(B) Any costs incurred by the electric utility for an interconnection study are the sole responsibility of the net-metering customer and shall be paid in advance of any work's being undertaken by the electric utility to:

(i) Enable the interconnection; and

(ii) Recover the electric utility's direct costs of interconnection and any grid upgrades required to connect the net-metering customer's net-metering facility;

(10)(A) Require that a net-metering customer retains any renewable energy credit created as a result of the electricity supplied by a net-metering customer that generated the renewable energy credit.

(B) The renewable energy credit may be retained, retired, or sold for the sole benefit of the net-metering customer; and

~~(5) For net-metering customers who receive service under a rate that does not include a demand component, shall require an electric utility to credit a net-metering customer with the amount of any accumulated net excess generation as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate in the next applicable billing period;~~

~~(6) Except as provided in subdivision (b)(9) of this section, for net-metering customers who receive service under a rate that includes a demand component, shall require an electric utility to credit the net-metering customer with any accumulated net excess generation in the next applicable billing period and base the bill of the net-metering customer on the net amount of electricity that the net-metering customer has received from or fed back to the electric utility during the billing period;~~

~~(7) May expand the scope of net metering to include additional facilities that do not use a renewable energy resource for a fuel if so doing results in distribution system, environmental, or public policy benefits;~~

~~(8) Shall provide that:~~

~~(A)(i) The amount of the net excess generation credit as measured in kilowatt hours or kilowatt hours multiplied by the applicable~~

1 ~~rate remaining in a net metering customer's account at the close of a billing~~
2 ~~cycle shall not expire and shall be carried forward to subsequent billing~~
3 ~~cycles indefinitely.~~

4 ~~(ii) However, for net excess generation credits~~
5 ~~older than twenty four (24) months, a net metering customer may elect to have~~
6 ~~the electric utility purchase the net excess generation credits in the net-~~
7 ~~metering customer's account at the electric utility's avoided cost, plus any~~
8 ~~additional sum determined under this section, if the sum to be paid to the~~
9 ~~net metering customer is at least one hundred dollars (\$100).~~

10 ~~(iii) An electric utility shall purchase at the~~
11 ~~electric utility's avoided cost, plus any additional sum determined under~~
12 ~~this section, any net excess generation credit remaining in a net metering~~
13 ~~customer's account when the net metering customer:~~

14 ~~(a) Ceases to be a customer of the electric~~
15 ~~utility;~~

16 ~~(b) Ceases to operate the net metering~~
17 ~~facility; or~~

18 ~~(c) Transfers the net metering facility to~~
19 ~~another person; and~~

20 ~~(B) A renewable energy credit created as the result of~~
21 ~~electricity supplied by a net metering customer is the property of the net-~~
22 ~~metering customer that generated the renewable energy credit; and~~

23 ~~(9) May allow a net metering facility with a generating capacity~~
24 ~~that exceeds the limits provided under § 23-18-603(8)(B)(ii) or § 23-18-~~
25 ~~603(8)(B)(iii) of up to twenty thousand kilowatts (20,000 kW) if:~~

26 ~~(A) For any net metering facility with a generating~~
27 ~~capacity of less than five thousand kilowatts (5,000 kW):~~

28 ~~(i) The net metering facility is not for residential~~
29 ~~use;~~

30 ~~(ii) Increasing the generating capacity limits for~~
31 ~~individual net metering facilities results in distribution system,~~
32 ~~environmental, or public policy benefits or allowing an increased generating~~
33 ~~capacity for the net metering facility would increase the state's ability to~~
34 ~~attract businesses to Arkansas; and~~

35 ~~(iii) Allowing an increased generating capacity for~~
36 ~~the net metering facility is in the public interest; or~~

1 ~~(B) For any net metering facility with a generating~~
2 ~~capacity of greater than five thousand kilowatts (5,000 kW):~~

3 ~~(i) The net metering facility is not for residential~~
4 ~~use;~~

5 ~~(ii) Increasing the generating capacity limits for~~
6 ~~individual net metering facilities results in distribution system,~~
7 ~~environmental, or public policy benefits or allowing an increased generating~~
8 ~~capacity for the net metering facility would increase the ability of the~~
9 ~~state to attract business to Arkansas;~~

10 ~~(iii) Allowing an increased generating capacity for~~
11 ~~the net metering facility does not result in an unreasonable allocation of~~
12 ~~costs to other utility customers; and~~

13 ~~(iv) Allowing an increased generating capacity for~~
14 ~~the net metering facility is in the public interest; and~~

15 ~~(10)(A) Shall allow the net metering facility of a net metering~~
16 ~~customer who has submitted a standard interconnection agreement, as referred~~
17 ~~to in the rules of the Arkansas Public Service Commission, to the electric~~
18 ~~utility after July 24, 2019, but before December 31, 2022, to remain under~~
19 ~~the rate structure in effect when the net metering contract was signed, for a~~
20 ~~period not to exceed twenty (20) years, subject to approval by a commission.~~

21 ~~(B) A net metering facility under subdivision (b)(10)(A)~~
22 ~~of this section remains subject to any other change or modification in rates,~~
23 ~~terms, and conditions (11)(A) Allow a net-metering customer that submitted a~~
24 ~~standard interconnection agreement to the electric utility before December~~
25 ~~31, 2023, or has submitted a facilities agreement or equivalent document to~~
26 ~~establish an account with an electric utility and paid all costs of~~
27 ~~constructing the electric utility facilities necessary to interconnect the~~
28 ~~net-metering facility before December 31, 2023, to remain under the rate~~
29 ~~structure in effect before December 31, 2022, as set forth in § 23-18-~~
30 ~~606(a)(2)(A)-(G), until June 1, 2040.~~

31 ~~(B) A net-metering customer that does not meet the~~
32 ~~requirements of subdivision (c)(11)(A) of this section shall be billed using~~
33 ~~one (1) of the rate structures established in § 23-18-606.~~

34 ~~(C) A net-metering facility billed using the rate~~
35 ~~structures described in subdivisions (c)(11)(A) and (B) of this section~~
36 ~~remains subject to any other change or modification in rates, terms, and~~

1 conditions.

2 ~~(e)(1)(d)(1)~~ Except as provided in subdivision ~~(e)(2)(d)(2)~~ of this
3 section, an electric utility shall separately meter, bill, and credit each
4 net-metering facility even if one (1) or more net-metering facilities are
5 under common ownership.

6 (2)(A)(i) At ~~the~~ an individual net-metering customer's
7 discretion, an electric utility ~~may~~ shall apply ~~net-metering credits~~ the net-
8 metering surplus from a an individual net-metering customer's net-metering
9 facility to the bill for another meter location of the individual net-
10 metering customer if the net-metering facility and the separate meter
11 location are under common ownership of the same individual net-metering
12 customer within a single electric utility's allocated service area territory
13 and:

14 (a) Are located within a five (5) miles radius
15 of the individual net-metering customer's net-metering facility, unless a
16 commission has approved a greater distance for an individual net-metering
17 customer before December 31, 2022; or

18 (b) For a net-metering facility that did not
19 require approval by a commission, are constructed at a greater distance and
20 included in an executed standard interconnection agreement submitted before
21 December 31, 2023.

22 (ii) ~~Subdivision (e)(2)(A)(i) of this section does~~
23 ~~not apply if more than two (2) customers that are governmental entities or~~
24 ~~other entities that are exempt from state and federal income tax defined~~
25 ~~under § 23-18-603(7)(C) co-locate at a site hosting the net-metering facility~~
26 A separate meter location under subdivision (d)(2)(A)(i) of this section
27 shall be credited only with net-metering surplus from one (1) net-metering
28 facility owned by the same net-metering customer, with all accounts being
29 under common ownership for the same individual net-metering customer.

30 (B) ~~Net-excess generation~~ Net-metering surplus shall be
31 credited first to ~~the~~ an individual net-metering customer's bill for the
32 meter to which the net-metering facility is physically attached.

33 (C) After applying ~~net-excess generation~~ net-metering
34 surplus under subdivision ~~(e)(2)(B)(d)(2)(B)~~ of this section and upon request
35 of the net-metering customer under subdivision ~~(e)(2)(A)(d)(2)(A)~~ of this
36 section, any remaining ~~net-excess generation~~ net-metering surplus shall be

1 credited to one (1) or more of the individual net-metering customer's bills
2 for the individual net-metering customer's meters in the rank order provided
3 by the individual net-metering customer.

4 ~~(d)~~(e) A person ~~who~~ that acts as a lessor or service provider as
5 described in ~~§ 23-18-603(7)(B)~~ § 23-18-603(9)(B) or ~~§ 23-18-603(7)(C)~~ § 23-
6 18-603(9)(C) shall not be considered a public utility as defined in § 23-1-
7 101.

8 (f) An electric utility shall not be obligated to:

9 (1) Accept or release any portion of its or another electric
10 utility's allocated service territory to accommodate the development,
11 construction, or operation of a net-metering facility; or

12 (2) Publish, provide, or release any information regarding its
13 electric utility facilities or system to aid in the location of the net-
14 metering facilities beyond its established site review process.

15
16 23-18-605. Municipal utilities.

17 (a) A municipal utility shall allow net-metering facilities to be
18 interconnected according to the ordinances, rules, or regulations established
19 by the governing body of the municipal utility.

20 (b) The governing body of a municipal utility may elect to follow
21 procedures under § 23-18-604, § 23-18-606, or § 23-18-607 or may adopt
22 ordinances, rules, or regulations establishing the rates, terms, and
23 conditions allowing the interconnection of net-metering facilities, including
24 generation facilities and energy storage devices, whether owned or leased by
25 a customer or operated by a third party on behalf of a customer.

26 (c) The governing body of a municipal utility may limit the generating
27 capacity of a net-metering facility to less than twenty-five kilowatts (25
28 kW) for residential customers or three hundred kilowatts (300 kW) for
29 nonresidential customers only after the governing body finds that the
30 capacity limit is necessary for reliable utility operations or the public
31 health, safety, or welfare.

32 (d) The governing body of a municipal utility shall not establish a
33 rate or fee that reduces the value of electric energy from a net-metering
34 facility to below the avoided cost of the municipal utility.

35 (e) For customers who receive service under a rate that includes a
36 demand component, the governing body of the municipal utility shall require a

1 municipal utility to credit a net-metering customer with any accumulated net
2 excess generation in the next applicable billing period and base the bill of
3 the customer on the net amount of electricity that the net-metering customer
4 has received from or fed back to the municipal utility during the billing
5 period.

6
7 23-18-606. Rate structure determination.

8 (a) At its discretion, an electric utility may elect to use one (1) of
9 the following rate structures to develop rates for net-metering customers:

10 (1) A rate structure in which the electric utility:

11 (A) Separately meters the electric energy, measured in
12 kilowatt hours:

13 (i) Supplied by the electric utility to the net-
14 metering customer; and

15 (ii) Fed back to the electric utility from the net-
16 metering customer's net-metering facility at any time during the applicable
17 billing period;

18 (B) Applies the:

19 (i) Commission-approved customer charge, demand
20 charge, minimum bill provision, and other applicable commission-approved
21 charges under § 23-18-604(c)(1)(A);

22 (ii) Commission-approved charges under § 23-18-
23 604(c)(1)(A) to the applicable net-metering customers, including without
24 limitation any rates, riders, and surcharges applied based on the volume of
25 kilowatt hours of electricity supplied by an electric utility, to all
26 kilowatt hours that are supplied by the electric utility to a net-metering
27 customer by the electric utility during the applicable billing period; and

28 (iii) Avoided cost of the electric utility to all
29 kilowatt hours supplied to the electric utility by a net-metering customer
30 during the applicable billing period to be credited to the total bill of the
31 net-metering customer in a dollar value, excluding the customer charge and
32 any applicable demand charge or minimum bill provision that the net-metering
33 customer shall pay each month;

34 (C) Credits the net-metering customer with any accumulated
35 net-metering surplus as measured in dollars during the next applicable
36 billing period; and

1 (D) Credits the bills of the net-metering customer's other
2 meters with the net-metering surplus measured in dollars under § 23-18-
3 604(d)(2); or

4 (2) A rate structure in which the electric utility:

5 (A) Separately meters the electric energy, measured in
6 kilowatt hours:

7 (i) Supplied by the electric utility to the net-
8 metering customer; and

9 (ii) Fed back to the electric utility from the net-
10 metering customer's net-metering facility at any time during the applicable
11 billing period;

12 (B) Applies the:

13 (i) Commission-approved customer charge, demand
14 charge, minimum bill provision, and other applicable commission-approved
15 charges under § 23-18-604(c)(1)(A); and

16 (ii) Commission-approved riders or surcharges under
17 § 23-18-604(c)(1)(A), including without limitation any rates, riders, and
18 surcharges applied based on the volume of kilowatt hours of electricity
19 supplied by an electric utility, to all kilowatt hours that are supplied by
20 the electric utility to a net-metering customer by the electric utility
21 during the applicable billing period prior to crediting any net excess
22 generation under subdivision (a)(2)(C) of this section;

23 (C) Credits the net-metering customer with any accumulated
24 net excess generation during the next applicable billing period;

25 (D) Calculates the net kilowatt hours of the electric
26 energy supplied by the electric utility to the net-metering customer, less
27 the net excess generation and any net excess generation carried forward from
28 prior billing periods;

29 (E) Applies the commission-approved retail rate, except as
30 provided in subdivision (a)(2)(B) of this section, not to exceed the kilowatt
31 hours supplied to the net-metering customer by the electric utility during
32 the applicable billing period;

33 (F) Carries forward any net excess generation that exceeds
34 the kilowatt hours supplied by the electric utility during the applicable
35 billing period to the next billing period;

36 (G) Excludes any net excess generation applied to another

1 meter location of the net-metering customer under § 23-18-604(d); and

2 (H) Applies the monthly grid charge under § 23-18-607.

3 (b) A commission shall approve the rates established by a rate
4 structure used by an electric utility under subsection (a) of this section.

5
6 23-18-607. Monthly grid charge.

7 (a)(1) If an electric utility follows the rate structure in § 23-18-
8 606(2), the electric utility shall apply a monthly grid charge to:

9 (A) Collect any of the fixed charges that are collected
10 through volumetric charges, including without limitation any riders and
11 surcharges; and

12 (B) Exclude the cost of fuel and purchased energy.

13 (2) The monthly grid charge shall be calculated based upon the:

14 (A) Currently approved rates; and

15 (B) Cost-of-service study underlying the electric
16 utility's currently approved rates adjusted for any commission-approved:

17 (i) Formula rate plan adjustments under the Formula
18 Rate Review Act, § 23-4-1201 et seq.; or

19 (ii) Adjustments under § 23-4-901 et seq.

20 (b) The monthly grid charge under this section shall be calculated for
21 each customer class as follows:

22 (1)(A) Calculate the sum of all fixed costs collected through
23 volumetric rates.

24 (B) The fixed costs collected through volumetric rates
25 shall be any demand-related or customer-related costs collected in rates
26 stated in dollars per kilowatt hour; and

27 (2)(A) Convert the fixed costs calculated in subdivision (b)(1)
28 of this section into a rate, expressed in dollars per kilowatt hour, by
29 dividing the total of the fixed costs under subdivision (b)(1) of this
30 section for each customer class by the electric utility's sales during the
31 test-year used to develop the retail rates approved by the commission in the
32 electric utility's most recent application for a general change or
33 modification in rates under § 23-4-401 et seq.

34 (B) The monthly grid charge for each customer class shall
35 be determined by multiplying the fixed costs expressed under subdivision
36 (b)(2)(A) of this section by the expected monthly output of a one-kilowatt

1 direct current solar photovoltaic solar system determined under subsection
2 (c) of this section.

3 (c)(1) The expected monthly output of a one-kilowatt direct current
4 solar photovoltaic solar system shall be:

5 (A) Expressed in kilowatt hours; and

6 (B) Calculated by dividing the expected average annual
7 output for a one-kilowatt direct current solar photovoltaic solar system
8 using the process described in subdivisions (c)(2) and (3) of this section by
9 twelve (12).

10 (2) For a fixed-tilt solar photovoltaic system, the average
11 annual output for a one-kilowatt direct current solar photovoltaic solar
12 system shall be:

13 (A) Expressed in kilowatt hours; and

14 (B) Determined using the National Renewable Energy
15 Laboratory PVWatts Calculator using a direct current to alternating current
16 (DC/AC) ratio of one and one-tenth (1.1) using a single location central to
17 the electric utility's service territory.

18 (3) For a single-axis tracking solar photovoltaic system, the
19 average annual output for a one-kilowatt direct current solar photovoltaic
20 solar system shall be:

21 (A) Expressed in kilowatt hours; and

22 (B) Determined using the National Renewable Energy
23 Laboratory PVWatts Calculator using a direct current to alternating current
24 (DC/AC) ratio of one and three-tenths (1.3) using a single location central
25 to the electric utility's service territory.

26 (d) The monthly grid charge shall not be less than the amount of any
27 electric utility fixed costs that are collected through volumetric charges,
28 including without limitation any riders, and excluding the cost of fuel and
29 purchased energy that the net-metering customer avoids.

30
31 SECTION 2. Arkansas Code Title 4, Chapter 88, is amended to add an
32 additional subchapter to read as follows:

33 Subchapter 11 – Customer Protections for Net-metering Customers Act

34
35 4-88-1101. Title.

36 This subchapter shall be known and may be cited as "Customer

1 Protections for Net-metering Customers Act".

2
3 4-88-1102. Definitions.

4 As used in this subchapter:

5 (1) "Net-metering customer" has the same meaning as defined in
6 the Arkansas Cost-Shifting Prevention Act of 2023, § 23-18-601 et. seq; and

7 (2) "Net-metering facility" has the same meaning as defined in
8 the Arkansas Cost-Shifting Prevention Act of 2023, § 23-18-601 et. seq.

9
10 4-88-1103. Net-metering customer protections.

11 The net-metering customer protections shall include without limitation
12 the following, a:

13 (1) Requirement that any person who sells or leases a net-
14 metering facility or who provides a net-metering service to a net-metering
15 customer under the Arkansas Cost-Shifting Prevention Act of 2023, § 23-18-601
16 et. seq shall:

17 (A)(i) Provide a prospective or existing net-metering
18 customer a minimum of five (5) business days to evaluate a proposal to
19 construct a net-metering facility to provide all or part of the prospective
20 or existing net-metering customer's needs for electric energy within a single
21 electric utility's allocated service territory.

22 (ii) The proposal to the prospective or existing
23 net-metering customer shall include:

24 (a) A description of the system and the
25 system's placement on the net-metering customer's premises or other location
26 consistent with the requirements of this subchapter;

27 (b) A description of the nameplate generating
28 capacity and expected monthly and annual output of the net-metering facility
29 in kilowatt hours;

30 (c) The estimated annual degradation to the
31 net-metering facility;

32 (d) An estimated timeline for the installation
33 of the net-metering facility;

34 (e) The total cost of the net-metering
35 facility;

36 (f) The amounts due at the signing for and at

1 the completion of the installation;

2 (g) The payment schedule;

3 (h) The payback period;

4 (i) The forecasted savings monthly and annual
5 bill savings provided by the proposed net-metering facility in dollars based
6 on the rate structure as defined in § 23-18-606;

7 (j) A description of any warranties;

8 (k) The length of the term of any warranties;

9 and

10 (l) Notice that the prospective or existing
11 net-metering customer may file a complaint with the Attorney General;

12 (B) Perform an energy efficiency audit on the potential or
13 existing net-metering customer's premises and any customer meter locations to
14 be served by the proposed net-metering facility as part of the proposal to
15 sell or lease a net-metering facility or provide a net-metering service to a
16 net-metering customer under the Arkansas Cost-Shifting Prevention Act of
17 2023, § 23-18-601 et. seq, or inform the prospective or existing net-metering
18 customer of how to obtain an energy efficiency audit; and

19 (C) Inform the prospective or existing net-metering
20 customer of the available energy efficiency measures to address the results
21 of the audit as part of the proposal to sell or lease a net-metering facility
22 or provide a net-metering service to a net-metering customer under the
23 Arkansas Cost-Shifting Prevention Act of 2023, § 23-18-601 et. seq;

24 (2) Demonstration to the prospective or existing net-metering
25 customer that the proposed net-metering facility meets all applicable safety
26 requirements and standards; and

27 (3) Demonstration to the prospective or existing net-metering
28 customer that the person who sells or leases a net-metering facility or who
29 provides a net metering service to a net metering customer holds:

30 (A) All required permits to install, construct, or operate
31 a net-metering facility in the state, and, if the governing county, city, or
32 local authority does not require an electrical inspection, an executed
33 certification that no electrical inspection or permit is required; and

34 (B) A bond or other acceptable financial security to
35 ensure proper maintenance of the net-metering facility and decommissioning of
36 the net-metering facility.

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4-88-1104. Enforcement.

Any violation of this subchapter may be enforced under the powers of the office of the Attorney General under the Arkansas Deceptive Trade Practices Act, § 4-88-101 et seq., including without limitation all enforcement powers.

SECTION 3. DO NOT CODIFY. TEMPORARY LANGUAGE. Rules.

(a) The Arkansas Public Service Commission, after notice and hearing, shall:

(1) Modify the commission rules to conform to this act; and

(2) Submit the commission rules to the Legislative Council by June 30, 2023.

(b) The commission shall approve modifications to the electric utilities' rate schedules applicable to net-metering to conform to this act by June 30, 2023.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that delay in the enactment of this act may result in unjust, unreasonable, and unduly discriminatory rates; and that this act is immediately necessary for the protection of Arkansas ratepayers. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

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

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

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

/s/L. Fite