

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 H2/27/23 H2/28/23

2 94th General Assembly

A Bill

3 Regular Session, 2023

HOUSE BILL 1370

4

5 By: Representatives L. Fite, *Wardlaw*

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 alternating current capacity of the
 17 net-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 serving multiple meter locations under common ownership of
2 any net-metering customer, within a single utility's allocated service
3 territory, shall be less than or equal to the lesser of five thousand
4 kilowatts (5,000 kW) alternating current or one hundred percent (100%) of the
5 net-metering customer's highest monthly usage in the previous twelve (12)
6 months, unless:

7 (1) A commission approved a greater
8 amount for an individual net-metering customer before December 31, 2022;

9 (2) An individual net-metering customer
10 has executed a contract with a net-metering facility developer by February
11 22, 2023, to purchase a net-metering facility with a nameplate capacity not
12 to exceed twenty thousand kilowatts (20,000 kW) and has filed that contract
13 with a commission under a protective order by March 31, 2023; or

14 (3) An individual net-metering customer
15 has filed an application with a commission for approval of a net-metering
16 facility with a nameplate generating capacity not to exceed twenty thousand
17 kilowatts (20,000 kW) before December 31, 2022.

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

23 (2) For a net-metering facility under
24 subdivision (10)(B)(ii)(b)(1) of this section, the nameplate generating
25 capacity under this subdivision (10)(B)(ii) includes the total kilowatt
26 nameplate-generating capacity of all net-metering facilities serving multiple
27 meter locations under common ownership within a single electric utility's
28 allocated service territory owned by, leased by, or providing electric energy
29 under one (1) or more qualifying service contracts to a net-metering
30 customer, including without limitation any net-metering facilities serving
31 multiple meter locations under common ownership;

32 (C) Is located in Arkansas;

33 (D) Can operate in parallel with an electric utility's
34 existing transmission and distribution facilities existing distribution
35 facilities or, if permitted by the electric utility, an electric utility's
36 transmission facilities;

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

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

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

9 ~~(9) "Quantifiable benefits" means the:~~

10 ~~(A) Reasonably demonstrated costs that:~~

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

14 ~~(ii) Will be avoided by the utility by the use of~~
 15 ~~net metering;~~

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

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

22 ~~(10)(11)~~ "Renewable energy credit" means the environmental,
 23 economic, and social attributes of a unit of electricity, such as a megawatt
 24 hour, generated from renewable fuels that can be sold or traded separately.

25
 26 23-18-604. Commission authority - Definition.

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

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

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

35 (2) An electric utility may impose a charge to recover any cost
 36 of the standard two-channel digital meter that is not otherwise included in

1 the rates paid by the net-metering customer.

2 (b)(1) Following notice, ~~and opportunity for public comment, and a~~
3 hearing, a commission shall

4 ~~(1) Shall establish appropriate rates, terms, and conditions for~~
5 ~~net metering, including without limitation the adoption or revision of any~~
6 applicable rules on or before December 31, 2023.

7 (2) ~~For net-metering customers who receive service under a rate~~
8 ~~that does not include a demand component, may:~~

9 ~~(A) Require an electric utility to credit the net-metering~~
10 ~~customer with any accumulated net excess generation as measured in kilowatt~~
11 ~~hours or kilowatt hours multiplied by the applicable rate in the next~~
12 ~~applicable billing period and base the bill of the net-metering customer on~~
13 ~~the net amount of electricity as measured in kilowatt hours or kilowatt hours~~
14 ~~multiplied by the applicable rate that the net-metering customer has received~~
15 ~~from or fed back to the electric utility during the billing period;~~

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

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

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

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

35 ~~(iv) The additional sum added to the avoided cost of~~
36 ~~the electric utility may be applied after the demonstration of quantifiable~~

1 ~~benefits by the net metering customer and shall not exceed forty percent~~
2 ~~(40%) of the avoided cost of the electric utility;~~

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

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

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

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

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

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

19 (i) Provide service to the net-metering customer;
20 and

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

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

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

29 (ii) Recovered through riders or surcharges; and

30 (iii) Adjusted for any commission-approved:

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

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

34 (C) By December 31, 2023, a commission shall approve
35 modifications to each electric utility's rate schedules applicable to net-
36 metering customers pursuant to the rate structure the electric utility elects

1 under § 23-18-606(a);

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

7 (3) Not adjust the costs of an electric utility's facilities and
8 associated expenses required to provide service to a net-metering customer
9 and to enable the net-metering customer's use of the electric utility's
10 facilities as specified in subdivision (c)(1)(A) of this section with any
11 amounts that are not quantified in the cost-of-service study underlying the
12 retail rates approved by a commission in the electric utility's most recent
13 application for a general change or modification in rates under § 23-4-401 et
14 seq., including without limitation any commission-approved:

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

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

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

20 (5) Separately meter the electric energy, measured in kilowatt
21 hours, supplied by the electric utility to the net-metering customer and the
22 electric energy, measured in kilowatt hours, that is fed back to the electric
23 utility from the net-metering customer's net-metering facility at any time
24 during the applicable billing period;

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

28 (7) Apply the commission-approved charges addressed in
29 subdivision (c)(1)(A) of this section to the applicable net-metering
30 customers, including without limitation any rates, riders, and surcharges
31 that are applied based on the volume of kilowatt hours of electricity
32 supplied by an electric utility, to all kilowatt hours that are supplied by
33 the electric utility to a net-metering customer by the electric utility
34 during the applicable billing period;

35 (8) Authorize an electric utility to recover any net-metering
36 surplus or the dollar value of any net excess generation applied to the bills

1 of net-metering customers in the same manner that the electric utility
2 recovers the cost of fuel and purchased energy;

3 ~~(3) Shall require that net metering equipment be installed to~~
4 ~~accurately measure the electricity;~~

5 ~~(A) Supplied by the electric utility to each net metering~~
6 ~~customer; and~~

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

9 ~~(4) May authorize (9)(A) Authorize an electric utility to~~
10 ~~assess a net-metering customer a greater fee or charge of any type, if the~~
11 ~~electric utility's direct costs of interconnection and administration of net~~
12 ~~metering outweigh the distribution system, environmental, and public policy~~
13 ~~benefits of allocating the costs among the electric utility's entire customer~~
14 ~~base standard one-time fee, to be approved by the commission, to recover~~
15 ~~administrative and related interconnection review costs.~~

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

20 ~~(i) Enable the interconnection; and~~

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

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

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

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

34 ~~(6) Except as provided in subdivision (b)(9) of this section,~~
35 ~~for net metering customers who receive service under a rate that includes a~~
36 ~~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 rate remaining in a net metering customer's account at the close of a billing cycle shall not expire and shall be carried forward to subsequent billing cycles indefinitely.~~

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

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

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

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

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

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

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

~~(A) For any net metering facility with a generating~~

1 ~~capacity of less than five thousand kilowatts (5,000 kW):~~

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

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

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

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

13 ~~(i) The net metering facility is not for residential~~
14 ~~use;~~

15 ~~(ii) Increasing the generating capacity limits for~~
16 ~~individual net metering facilities results in distribution system,~~
17 ~~environmental, or public policy benefits or allowing an increased generating~~
18 ~~capacity for the net metering facility would increase the ability of the~~
19 ~~state to attract business to Arkansas;~~

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

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

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

31 ~~(B) A net metering facility under subdivision (b)(10)(A)~~
32 ~~of this section remains subject to any other change or modification in rates,~~
33 ~~terms, and conditions (11)(A) Allow a net-metering facility of an individual~~
34 ~~net-metering customer to remain under the rate structure in effect before~~
35 ~~December 31, 2022, as set forth in § 23-18-606(a)(2)(A)-(G), until June 1,~~
36 ~~2040, if the net-metering customer has:~~

1 (i) Submitted a standard interconnection agreement
2 to the electric utility before September 30, 2024;

3 (ii) Submitted a facilities agreement or equivalent
4 document to establish an account with an electric utility and paid all costs
5 of constructing the electric utility facilities necessary to interconnect the
6 net-metering facility before September 30, 2024; or

7 (iii) Filed a complaint with a commission addressing
8 a disputed facilities agreement or equivalent document to establish an
9 account with an electric utility and paid all costs of constructing the
10 electric utility facilities necessary to interconnect the net-metering
11 facility before September 30, 2024.

12 (B) A net-metering facility of an individual net-metering
13 customer that does not meet the requirements of subdivision (c)(11)(A) of
14 this section shall be billed using one (1) of the rate structures established
15 in § 23-18-606.

16 (C) A net-metering facility billed using the rate
17 structures described in subdivisions (c)(11)(A) and (B) of this section
18 remains subject to any other change or modification in rates, terms, and
19 conditions.

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

24 (2)(A)(i) At ~~the~~ an individual net-metering customer's
25 discretion, an electric utility ~~may~~ shall apply net-metering credits for
26 customers who are billed under § 23-18-606(a)(2)(A)-(G) or the net-metering
27 surplus for all other customers from a an individual net-metering customer's
28 net-metering facility to the bill for another meter location of the
29 individual net-metering customer if the net-metering facility and the
30 separate meter location are under common ownership of the same individual
31 net-metering customer within a single electric utility's allocated service
32 area territory and:

33 (a) Are located within a one hundred (100)
34 miles radius of the individual net-metering customer's net-metering facility,
35 unless:

36 (1) A commission approved a greater

1 distance for an individual net-metering customer before December 31, 2022;

2 (2) An individual net-metering customer
3 has executed a contract with a net-metering facility developer by February
4 22, 2023, to purchase a net-metering facility with a nameplate capacity not
5 to exceed twenty thousand kilowatts (20,000 kW) with a greater distance and
6 has filed that contract with a commission under a protective order by March
7 31, 2023; or

8 (3) An individual net-metering customer
9 has filed an application with a commission for approval of a net-metering
10 facility with a nameplate generating capacity not to exceed twenty thousand
11 kilowatts (20,000 kW) with a greater distance before December 31, 2022; or

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

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

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

27 ~~(C) After applying net-excess generation~~ net-metering
28 surplus under subdivision ~~(e)(2)(B)~~ (d)(2)(B) of this section and upon request
29 of the net-metering customer under subdivision ~~(e)(2)(A)~~ (d)(2)(A) of this
30 section, any remaining ~~net-excess generation~~ net-metering surplus shall be
31 credited to one (1) or more of the individual net-metering customer's bills
32 for the individual net-metering customer's meters in the rank order provided
33 by the individual net-metering customer.

34 ~~(d)(e)~~ A person who that acts as a lessor or service provider as
35 described in ~~§ 23-18-603(7)(B)~~ § 23-18-603(9)(B) or ~~§ 23-18-603(7)(G)~~ § 23-
36 18-603(9)(C) shall not be considered a public utility as defined in § 23-1-

1 101.

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

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

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

9

10 23-18-605. Municipal utilities.

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

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

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

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

29 (e) For customers who receive service under a rate that includes a
30 demand component, the governing body of the municipal utility shall require a
31 municipal utility to credit a net-metering customer with any accumulated net
32 excess generation in the next applicable billing period and base the bill of
33 the customer on the net amount of electricity that the net-metering customer
34 has received from or fed back to the municipal utility during the billing
35 period.

36

1 23-18-606. Rate structure determination.

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

4 (1) 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);

16 (ii) Commission-approved charges under § 23-18-
17 604(c)(1)(A) to the applicable net-metering customers, including without
18 limitation any rates, riders, and surcharges applied based on the volume of
19 kilowatt hours of electricity supplied by an electric utility pursuant to the
20 rate structure the electric utility elects under this subsection; and

21 (iii) Avoided cost of the electric utility to all kilowatt hours
22 supplied to the electric utility by a net-metering customer during the
23 applicable billing period to be credited to the total bill of the net-
24 metering customer in a dollar value, excluding the customer charge and any
25 applicable demand charge or minimum bill provision that the net-metering
26 customer shall pay each month;

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

30 (D) Credits the bills of the net-metering customer's other
31 meters with the net-metering surplus measured in dollars under § 23-18-
32 604(d)(2); or

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

34 (A) Separately meters the electric energy, measured in
35 kilowatt hours:

36 (i) Supplied by the electric utility to the net-

1 metering customer; and

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

5 (B) Applies the:

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

9 (ii) Commission-approved riders or surcharges under
10 § 23-18-604(c)(1)(A), including without limitation any rates, riders, and
11 surcharges applied based on the volume of kilowatt hours of electricity
12 supplied by an electric utility pursuant to the rate structure the electric
13 utility elects under this subsection;

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

16 (D) Calculates the net kilowatt hours of the electric
17 energy supplied by the electric utility to the net-metering customer, less
18 the net excess generation and any net excess generation carried forward from
19 prior billing periods;

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

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

27 (G) Excludes any net excess generation applied to another
28 meter location of the net-metering customer under § 23-18-604(d); and

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

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

32
33 23-18-607. Monthly grid charge.

34 (a)(1) If an electric utility follows the rate structure in § 23-18-
35 606(2), the electric utility shall apply a monthly grid charge to:

36 (A) Collect any of the fixed charges that are collected

1 through volumetric charges, including without limitation any riders and
2 surcharges; and

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

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

5 (A) Currently approved rates; and

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

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

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

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

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

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

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

25 (B) The monthly grid charge for each customer class shall
26 be determined by multiplying the fixed costs expressed under subdivision
27 (b)(2)(A) of this section by the expected monthly output of a one-kilowatt
28 alternating current solar photovoltaic solar system determined under
29 subsection (c) of this section.

30 (c)(1) The expected monthly output of a one-kilowatt alternating
31 current solar photovoltaic solar system shall be:

32 (A) Expressed in kilowatt hours; and

33 (B) Calculated by dividing the expected average annual
34 output for a one-kilowatt alternating current solar photovoltaic solar system
35 using the process described in subdivisions (c)(2) and (3) of this section by
36 twelve (12).

1 (2) For a fixed-tilt solar photovoltaic system, the average
2 annual output for a one-kilowatt alternating current solar photovoltaic solar
3 system shall be:

4 (A) Expressed in kilowatt hours; and

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

9 (3) For a single-axis tracking solar photovoltaic system, the
10 average annual output for a one-kilowatt alternating current solar
11 photovoltaic solar system shall be:

12 (A) Expressed in kilowatt hours; and

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

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

21
22 SECTION 2. Arkansas Code Title 4, Chapter 88, is amended to add an
23 additional subchapter to read as follows:

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

25
26 4-88-1101. Title.

27 This subchapter shall be known and may be cited as "Customer
28 Protections for Net-metering Customers Act".

29
30 4-88-1102. Definitions.

31 As used in this subchapter:

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

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

36

1 4-88-1103. Net-metering customer protections.

2 The net-metering customer protections shall include without limitation
3 the following, a:

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

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

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

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

18 (b) A description of the nameplate generating
19 capacity and expected monthly and annual output of the net-metering facility
20 in kilowatt hours;

21 (c) The estimated annual degradation to the
22 net-metering facility;

23 (d) An estimated timeline for the installation
24 of the net-metering facility;

25 (e) The total cost of the net-metering
26 facility;

27 (f) The amounts due at the signing for and at
28 the completion of the installation;

29 (g) The payment schedule;

30 (h) The payback period;

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

34 (j) A description of any warranties;

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

36 and

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

3 (B) Perform an energy efficiency audit on the potential or
4 existing net-metering customer's premises and any customer meter locations to
5 be served by the proposed net-metering facility as part of the proposal to
6 sell or lease a net-metering facility or provide a net-metering service to a
7 net-metering customer under the Arkansas Cost-Shifting Prevention Act of
8 2023, § 23-18-601 et. seq., or inform the prospective or existing net-metering
9 customer of how to obtain an energy efficiency audit; and

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

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

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

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

25 (B) A bond or other acceptable financial security to
26 ensure proper maintenance of the net-metering facility and decommissioning of
27 the net-metering facility.

28
29 4-88-1104. Enforcement.

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

34
35 SECTION 3. DO NOT CODIFY. TEMPORARY LANGUAGE. Rules.

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

1 shall:

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

3 (2) Submit the commission rules to the Legislative Council by
4 December 31, 2023.

5 (b) The commission shall approve modifications to the electric
6 utilities' rate schedules applicable to net-metering to conform to this act
7 by December 31, 2023.

8

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

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

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

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

22

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/s/L. Fite

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