State of Arkansas
96th General Assembly
Regular Session, 2027

A Bill

SENATE BILL 2

By: Senators C. Penzo, Caldwell, Rice, Hill, Hickey, Irvin, B. King, M. Johnson, J. Scott, Shephard

For An Act To Be Entitled

AN ACT TO REPEAL THE GENERATING ARKANSAS JOBS ACT OF 2025; AND FOR OTHER PURPOSES.

Subtitle

TO REPEAL THE GENERATING ARKANSAS JOBS ACT OF 2025.

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

SECTION 1. Arkansas Code § 23-3-201(a), concerning requirements for new construction or operation of equipment or facilities, is amended to read as follows:

(a) New construction or operation of equipment or facilities ~~that are located within this state~~ for supplying a public service or the extension of a public service ~~within this state~~ shall not be undertaken without first obtaining from the Arkansas Public Service Commission a certificate that public convenience and necessity require or will require the construction or operation ~~within this state~~.

SECTION 2. Arkansas Code § 23-3-201(b)(3), concerning when a certificate of public convenience is not required, is repealed.

~~(3)(A) A public utility shall provide notice to the commission of the public utility's intent to recover any strategic investments that are subject to this subchapter through a rider under the Generating Arkansas Jobs Act of 2025, § 23-4-1301 et seq., as part of the public utility's application under this subchapter.~~

~~(B) To the extent a member cooperative of a generation and~~

~~transmission cooperative is exempt from the requirement to obtain a certificate of public convenience and necessity under this subsection, the exemption shall extend to the generation and transmission cooperative.~~

~~(C) An exemption claimed by a public utility under this section or under § 23-18-504(a)(5) does not bar:~~

~~(i) The public utility from voluntarily seeking the issuance of a certificate of public convenience and necessity under this section; or~~

~~(ii) The commission from:~~

~~(a) Granting the public utility the certificate of public convenience and necessity sought under subdivision (d)(1) of this section; and~~

~~(b) Allowing the public utility to seek recovery of the reasonable cost of the equipment or facilities through rates.~~

SECTION 3. Arkansas Code § 23-3-201(e), concerning requirements for a certificate of public convenience and necessity, is repealed.

~~(e) As used in this section:~~

~~(1) "Generation and transmission cooperative" means the same as defined in § 23-4-1101;~~

~~(2) "Major utility facility" means the same as defined in § 23-18-503; and~~

~~(3) "Strategic investments" means the same as defined in § 23-4-1303.~~

SECTION 4. Arkansas Code § 23-3-207 is repealed.

~~23-3-207. Issuance of certificate of public convenience and necessity.~~

~~(a) If the Arkansas Public Service Commission determines that granting a certificate of public convenience and necessity is consistent with the public interest, the commission shall enter an order granting a certificate of public convenience and necessity within six (6) months after the public utility submits an application for a certificate of public convenience and necessity.~~

~~(b)(1) If the commission determines that granting a certificate of public convenience and necessity is not in the public interest, the commission shall enter an order denying the certificate of public convenience~~

~~and necessity.~~

~~(2) In the order entered by the commission under subdivision (b)(1) of this section, the commission shall discuss:~~

~~(A) The basis for the commission's findings; and~~

~~(B) Any evidence or other information submitted by the public utility as part of its notice or application that the commission deems to be insufficient.~~

~~(3)(A) If a public utility submits additional evidence or other information to the commission demonstrating that the strategic investments, as defined in § 23-4-1303, that are subject to this subchapter are reasonable, necessary, and in the public interest, then the commission shall enter an order granting the certificate of public convenience and necessity within thirty (30) days after the date of the public utility's filing.~~

~~(B) If the commission finds that the strategic investments that are subject to this subchapter are not reasonable, necessary, or in the public interest, the commission shall enter an order denying the certificate of public convenience and necessity.~~

~~(C) In the order issued under subdivision (b)(3)(B) of this section, the commission shall discuss:~~

~~(i) The basis for the commission's findings; and~~

~~(ii) Any evidence or other information submitted by the public utility as part of its notice or application that the commission deems to be insufficient.~~

~~(D) The process outlined in subdivisions (b)(3)(B) and (C) of this section may continue until the commission finds that:~~

~~(i) The public utility's application complies with this subchapter;~~

~~(ii) The public utility withdraws its application; or~~

~~(iii) The public utility appeals the commission's decision under § 23-2-423.~~

SECTION 5. Arkansas Code § 23-4-901(5) and (6), concerning definitions used for rural electronic distribution cooperations and the jurisdiction of the Arkansas Public Service Commission, are repealed.

~~(5) "Notice" means a written form document, not an application,~~

~~that contains only as much information as is needed to provide the necessary information to the commission and member-consumers as is specifically required under this subchapter; and~~

~~(6) "Rate case procedures" means the administrative procedures and requirements normally required by a co-op when adjusting rates and charges under §§ 23-4-402, 23-4-405, 23-4-407 – 23-4-418, 23-4-422, and 23-4-620 – 23-4-634 or other applicable statutes and rules of the commission.~~

SECTION 6. Arkansas Code § 23-4-902 is amended to read as follows:

23-4-902. Exemption from rate case procedures, etc.

A co-op, as defined in § 23-4-901, shall not be subject to rate case procedures and hearings and other requirements of §§ 23-4-401 – 23-4-405, 23-4-407 – 23-4-418, and 23-4-620 – 23-4-634 ~~by the~~ and Arkansas Public Service Commission rules, hereafter referred to as "rate case procedures", by the commission unless:

(1) By action of its board of directors, the co-op elects to be subject to rate case procedures by the commission;

(2) A proposed change in the co-op's rates and charges exceeds ten percent (10%) of total gross revenues;

(3) Ten percent (10%) of the co-op's member-consumers petition the commission to apply rate case procedures~~, and the commission notifies the co-op that the commission will initiate an investigation and may apply rate case procedures if the commission determines that there is substantial evidence indicating that rates and charges are unreasonable~~; or

(4) As otherwise provided in this subchapter.

SECTION 7. Arkansas Code § 23-4-903 is amended to read as follows:

23-4-903. Notification of proposed rate change.

~~(a)~~ Each co-op not subject to rate case procedures, at least ninety (90) days before the effective date of any proposed rate change, shall notify the Arkansas Public Service Commission and each of its member-consumers of the proposed rate change. Notice to the commission shall include a verified statement showing the then total number of member-consumers of the co-op. Notice by the co-op to its member-consumers shall:

(1) Be in a ~~notice~~ form prescribed by the commission;

(2) Be by regular mail and may be included in regular member-

consumer billings or in regularly published co-op newsletters provided to its member-consumers; and

(3) Include a schedule of the proposed rate change, the effective date of the proposed rate change, and the procedure necessary for the member-consumers to petition the commission to apply rate case procedures~~; and~~

~~(4) Not require a new cost-of-service study, application for approval, or additional rate case procedures requirement~~.

~~(b) The commission shall not require or establish additional notice or filing requirements for a co-op that is adjusting the co-op's rates and charges under this subchapter and shall certify whether the co-op met the notice requirements set forth in this subchapter.~~

SECTION 8. Arkansas Code § 23-4-905 is amended to read as follows:

23-4-905. Petition for relief from rate change — Effect.

(a)(1) If, by the effective date of the proposed change in rates and charges, the Arkansas Public Service Commission has received petitions from fewer than ~~ten percent (10%)~~ fifteen percent (15%) of the member-consumers requesting that the commission apply rate case procedures, then the commission shall immediately certify that fact to the co-op.

(2) The proposed rates and charges shall become effective as published in the notice to the member-consumers.

(b) Rates and charges so established shall be in effect for not less than one (1) year, subject to the procedure provided for in § 23-4-906. If, on or before the effective date of the proposed change in rates and charges, the commission has received petitions from ten percent (10%) of the member-consumers, then the commission shall notify the co-op that it will ~~initiate an investigation and may~~ apply rate case procedures ~~under § 23-4-908~~.

SECTION 9. Arkansas Code § 23-4-907 is amended to read as follows:

23-4-907. Commission's jurisdiction not affected.

Sections 23-4-902, 23-4-903, 23-4-905, and 23-4-906~~, 23-4-908, and 23-4-909~~ apply only to rates and charges and shall have no effect on the Arkansas Public Service Commission's jurisdiction over a co-op as otherwise provided by law.

SECTION 10. Arkansas Code § 23-4-908(a), concerning the authority of the Arkansas Public Service Commission, is amended to read as follows:

(a) ~~Upon receipt of a sufficient number of valid petitions under § 23-4-905, the~~ The Arkansas Public Service Commission shall have the authority to investigate and determine the reasonableness of the change in rates and charges of each co-op changing its rates and charges pursuant to this subchapter within one (1) year of the time of the change in rates and charges.

SECTION 11. Arkansas Code § 23-4-909 is amended to read as follows:

23-4-909. Apportionment of rates and charges.

~~(a) Upon receipt of a sufficient number of valid petitions under § 23-4-905, the Arkansas Public Service Commission may inquire into the reasonableness of the apportionment of rates and charges by a co-op.~~

~~(b)~~ When determining how rates and charges established under § 23-4-903 are to be allocated among different rate classes, a co-op shall endeavor to apportion the rates and charges in a manner ~~consistent with~~ that reflects, as closely as practicable, the ~~last approved cost-of-service study~~ costs of providing service to each class.

SECTION 12. Arkansas Code § 23-4-1102 is amended to read as follows:

23-4-1102. Exemption from general rate case procedure.

A generation and transmission cooperative may modify its rates and charges if:

(1) At least three-fourths (¾) of its board votes to change its rates and charges~~, including a proposed change to cost allocation and rate design of the generation and transmission cooperative~~;

(2) A proposed increase in the generation and transmission cooperative's rates and charges does not exceed five percent (5%) in any twelve-month period of the total gross revenues of the generation and transmission cooperative; and

(3) Any additional requirements of this subchapter are satisfied.

SECTION 13. Arkansas Code § 23-4-1104(a)(2), concerning alternative procedures for modifying rates and charges of a generation and transmission

cooperative, is amended to read as follows:

(2) In addition to an attachment containing the proposed tariffs to effect the modification of the rates and charges, the application shall provide the following:

(A) Proof of the board vote required by § 23-4-1102;

(B) The proof of notice required by § 23-4-1103;

(C) A current calculation of the generation and transmission cooperative's:

(i) Times interest earned ratio;

(ii) Debt service coverage ratio; and

(iii) Margins as a percent of revenue for the last available calendar year;

(D) An analysis of the impact of the proposed change in rates and charges on each member cooperative's cost of wholesale power that is acquired from the generation and transmission cooperative;

(E) Documentary evidence that the impact of the proposed change in rates and charges does not exceed five percent (5%) of the generation and transmission cooperative's total gross revenues for the previous ~~twelve-month period before the generation and transmission cooperative's notice under § 23-4-1103(a)(1)~~ calendar year;

(F) Documentation that shows the derivation of the generation and transmission cooperative's proposed changes in its rates and charges; and

(G)(i) Any other supporting documentation or evidence required by the commission ~~to validate the requirements of this subchapter~~.

(ii)(a) However, the commission shall not require the generation and transmission cooperative to prepare a cost-of-service study.

(b) ~~In lieu~~ Instead of ~~voluntarily filing~~ a new cost-of-service study ~~for approval~~, the generation and transmission cooperative shall rely upon the most recent commission-approved cost allocation.

SECTION 14. Arkansas Code § 23-4-1105(a), concerning the application for modification of retail rates, is amended to read as follows:

(a) A member cooperative may propose a modification of its retail

rates and charges to incorporate the proposed change in the generation and transmission cooperative's wholesale rates and charges filed under § 23-4-1104 if:

(1) The member cooperative files its application for a modification of its retail rates and charges with the Arkansas Public Service Commission ~~within ten (10) days from the~~ on the same date as the generation and transmission cooperative files its application for a modification of its change in wholesale rates and charges under § 23-4-1104; and

(2) The member cooperative apportions its proposed change in rates and charges in a manner that reflects, as closely as practicable, its cost of providing service to each class.

SECTION 15. Arkansas Code Title 23, Chapter 4, Subchapter 11, is amended to add an additional section to read as follows:

23-4-1108. Limitation on increase in rates.

The generation and transmission cooperative shall not increase its rates and charges under this subchapter by an aggregate total of more than eight percent (8%) during any twenty-four month period.

SECTION 16. Arkansas Code Title 23, Chapter 4, Subchapter 13, is repealed.

~~23-4-1301. Title.~~

~~This subchapter shall be known and may be cited as the "Generating Arkansas Jobs Act of 2025".~~

~~23-4-1302. Legislative findings.~~

~~The General Assembly finds that:~~

~~(1) Significant strategic investments in electric utility infrastructure and natural gas utility infrastructure are necessary to enable this state to:~~

~~(A) Attract and serve economic development projects across a variety of industries;~~

~~(B) Continue reliable support for existing customers by investing in additions of new electric utility infrastructure and natural gas utility infrastructure to support growth; and~~

~~(C) Replace retiring electric generation facilities and~~

~~other electric utility infrastructure and natural gas utility infrastructure;~~

~~(2) Strategic investments to ensure that electric utilities have adequate dispatchable generation resources to support reliable service for their customers continue to be a significant element in enabling this state to attract and serve these economic development opportunities;~~

~~(3) Strategic investments in electric utility infrastructure and natural gas utility infrastructure are needed to support the development of sites designated as available for economic development projects, as these sites are critical to this state's economic development efforts;~~

~~(4) While Arkansas's electric utilities have pursued beneficial resource acquisition opportunities for their customers, most will need to construct new electric generating facilities in the near future;~~

~~(5) Further strategic investments in electric utility infrastructure are needed to support the license extension for existing nuclear generation resources and ensure that electric utilities maintain adequate dispatchable generation resources to support reliable service for their customers;~~

~~(6) Supporting the continued evaluation of modular reactors and advanced nuclear technologies to identify opportunities to pursue strategic investments in those advanced nuclear technologies if it is in the public interest in considering whether or not those advanced nuclear technologies become technically feasible, commercially viable, and financially viable or otherwise beneficial to customers in Arkansas;~~

~~(7) Economic development projects and the continued provision of reliable electric utility service and reliable natural gas utility service are essential to the future of Arkansas;~~

~~(8) Failure to act now will result in the state's missing transformational opportunities for economic development, including new business opportunities as well as the expansion of existing businesses that may not be available again for many years to come;~~

~~(9) These prospective and existing businesses are prepared to invest in electric utility infrastructure and natural gas utility infrastructure in this state and will provide employment for Arkansas residents that will benefit the public interest;~~

~~(10) These prospective strategic investments and the resulting employment and workforce development opportunities for this state will~~

~~produce investment, economic growth and activity, and new state and local tax revenue that will strengthen communities throughout this state and will enhance the state's overall economic vitality and well-being;~~

~~(11) Existing regulatory frameworks for electric utilities and natural gas utilities are inadequate and were not designed to enable the electric utilities and the natural gas utilities to respond timely and make the required level of strategic investments in electric utility or natural gas utility infrastructure and the associated expenses, in addition to maintaining the financial viability necessary to support strategic investments requiring new infrastructure to serve the residents of Arkansas;~~

~~(12) Regulatory reform is required to keep pace with the evolving industry and help ensure that electric utilities and natural gas utilities are financially sound and able to make the strategic investments to continue providing customers safe, reliable, affordable, and sustainable electric utility service and natural gas utility service;~~

~~(13) To support economic development in Arkansas, nothing herein is intended to develop rates that would unreasonably shift costs from a customer or customer class to other customers in a manner that would result in rates that are not just and reasonable, not consistent with applicable law, or not in the public interest;~~

~~(14) It is the policy of this state to maintain adequate capacity of available, reliable, dispatchable, affordable, and resilient electric generation to provide for the existing and reasonably projected future energy consumption needs of all consumers of electricity in Arkansas;~~

~~(15) Arkansas can support a multitude of potential electric generating resources and fuel supply resources so as to be the national leader in the production of reliable and affordable energy in all forms that make sense and are technically feasible, commercially viable, and financially viable or otherwise beneficial to customers in Arkansas and the Arkansas Public Service Commission shall ensure that generation resources will maintain or improve the affordability, adequacy, and reliability of the electric grid in Arkansas;~~

~~(16) Strategic investments will support the expansion of Arkansas's natural gas production capacity that will lead to economic growth and employment opportunities in that business sector and will support the continued development and use of Arkansas's natural resources; and~~

~~(17) Strategic investments will enhance the capacity, reliability, and resiliency of Arkansas's electric and natural gas utility infrastructure, which will support the reliability and resiliency of Arkansas's overall utility infrastructure and reliable electric and natural gas utility service during extreme temperatures and other weather conditions and during other periods of high demand and usage.~~

~~23-4-1303. Definitions.~~

~~As used in this subchapter:~~

~~(1)(A) "Construction work in progress" means:~~

~~(i) Materials costs;~~

~~(ii) Labor costs;~~

~~(iii) Labor costs adders;~~

~~(iv) Costs associated with third-party vendors and consultants;~~

~~(v) Costs associated with procurement of real property rights;~~

~~(vi) Costs associated with securing all necessary approvals;~~

~~(vii) Taxes;~~

~~(viii) Tax gross-up charges;~~

~~(ix) Capital suspense charges; and~~

~~(x) Overheads for any strategic investments that are not yet complete or in service.~~

~~(B) "Construction work in progress" includes costs that are:~~

~~(i) Recorded under the requirements of the uniform system of accounts adopted by the Arkansas Public Service Commission by rule and any applicable accounting guidance issued by the Federal Energy Regulatory Commission that are adopted by the Arkansas Public Service Commission by rule; and~~

~~(ii) In conformance with generally accepted accounting principles;~~

~~(2) "Electric distribution cooperative" means a rural electric cooperative that sells electricity at retail and is a member of an electric generation and transmission cooperative;~~

~~(3) "Electric generation and transmission cooperative" means a rural electric cooperative formed under the Electric Cooperative Corporation Act, § 23-18-301 et seq., that:~~

~~(A) Does not have a certificated service territory; and~~

~~(B) Exclusively sells electricity at wholesale;~~

~~(4) "Investor-owned electric utility" means a public utility that is engaged in generating, transmitting, delivering, or furnishing electricity to or for the public for compensation and that is owned by investors and is not a cooperative;~~

~~(5) "Investor-owned natural gas utility" means a public utility that is engaged in the production, transport, delivery, or furnishing of natural gas to or for the public for compensation and that is owned by investors and is not a cooperative;~~

~~(6) "Major utility facility" means the same as defined in § 23-18-503;~~

~~(7) "Public utility" means the same as defined in § 23-1-101;~~

~~(8) "Rider" means a rate schedule approved by the Arkansas Public Service Commission to recover one (1) or more strategic investments and the recovery costs that are not included in other rates or rate schedules approved by the Arkansas Public Service Commission;~~

~~(9) "Rider test period" means a historical test period under § 23-4-406 which shall include adjustments identified by the electric utility or the natural gas utility to a historical test period to reflect the effects on an annualized basis of a change in circumstances which may occur within twelve (12) months after the end of the historical test year where the changes are reasonably known and measurable;~~

~~(10)(A) "Strategic investments" means investments, either construction or purchase, and associated operating expenses made by an electric public utility or natural gas public utility, and approved by the Arkansas Public Service Commission under § 23-3-201 et seq., the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq., or a notice under § 23-18-104 or as otherwise stated in subdivision (10)(B) of this section, to:~~

~~(i) Support growth and economic development in this state, including supporting the development of sites designated as available for economic development;~~

~~(ii) Maintain and improve the provision of reliable electric utility service and natural gas utility service to new and existing customers in this state;~~

~~(iii) Support the license extension for existing nuclear generation resources; and~~

~~(iv) Ensure that electric utilities maintain adequate dispatchable generation resources to support reliable service for their customers that is consistent with the resource adequacy requirements established by the applicable load balancing authority.~~

~~(B) "Strategic investments" includes without limitation investments and associated operating expenses associated with:~~

~~(i) A new electric generating facility, an associated transportation and storage facility for fuel, and other facilities designed for or capable of operation at a capacity of one hundred megawatts (100 MW) or more for a single facility;~~

~~(ii) An energy storage facility designed for or capable of operating at a capacity of fifty megawatts (50 MW) or more for a single facility or a combination of energy storage facilities and an electric generating facility designed for or capable of operation at a combined capacity of one hundred megawatts (100 MW) or more for a single facility to provide service to new and existing customers located in Arkansas;~~

~~(iii) Upgrades, expansions, or fuel conversions of existing electric generating facilities and associated transportation and storage facilities for fuel and other facilities, energy storage facilities, or any combination thereof to sustain or increase capacity and, therefore, improve reliability, to provide service to new and existing customers in Arkansas;~~

~~(iv) New electric transmission facilities, including substations with a design voltage of more than one hundred kilovolts (100 kV) or more to provide service to new and existing customers located in Arkansas;~~

~~(v) Upgrades or expansions of existing electric transmission facilities, including substations with a design voltage of more than one hundred kilovolts (100 kV) or more to increase capacity, therefore improving reliability to provide service to new and existing customers located in Arkansas;~~

~~(vi) New natural gas transmission lines or high~~

~~pressure distribution lines with a maximum allowable operating pressure of one hundred twenty-five pounds per square inch gauge (125 PSIG) or greater and natural gas storage facilities;~~

~~(vii) Upgrades or expansions of existing natural gas transmission lines, high pressure distribution lines with a maximum allowable operating pressure of one hundred twenty-five pounds per square inch gauge (125 PSIG) or greater and natural gas storage facilities; and~~

~~(viii) Feasibility studies of strategic investments and advanced energy technologies, as defined in § 23-4-1308, including site studies and due diligence to determine construction estimates.~~

~~(C)(i) A renewable resource strategic investment shall be eligible for recovery through the rider under this section if the Arkansas Public Service Commission finds in a proceeding under § 23-3-201 et seq., § 23-18-104, the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq., or any other proceeding for approval of a renewable resource strategic investment based on substantial evidence that a renewable resource strategic investment results in benefits to customers and the electric utility would continue to have adequate dispatchable resources to provide reliable service to its customers consistent with the resource adequacy requirements of the load balancing authority with the addition of the renewable resource strategic investment.~~

~~(ii) As used in subdivision (10)(C)(i) of this section, "benefits" shall include without limitation:~~

~~(a) The cost of the renewable resource strategic investment is reasonable and prudently incurred;~~

~~(b) The renewable resource strategic investment is necessary to supplement or replace the electric utility's existing generation resources;~~

~~(c) The renewable resource strategic investment provides energy and capacity benefits;~~

~~(d) The renewable resource provides generation resource mix diversification and fuel source mix benefits and risk mitigation benefits;~~

~~(e) The renewable resource strategic investment supports efforts to attract or retain economic development opportunities for this state; or~~

~~(f) A customer or customers contract to pay all or a portion of the cost of the strategic investment as a resource through a special rate contract, a renewable rate schedule, a contribution in aid of construction, or other form of payment.~~

~~(D) Wind resources located in Arkansas are not eligible for recovery through a rider under this subchapter; and~~

~~(11) "Times interest earned ratio" means earnings before interest and taxes divided by the total interest payable on bonds and other debt.~~

~~23-4-1304. Authorization to recover strategic investments through rider — Investor-owned electric utility and investor-owned natural gas utility.~~

~~(a) An investor-owned electric utility or an investor-owned natural gas utility may use a rider to recover strategic investments that are not otherwise recoverable through rates that were previously approved by the Arkansas Public Service Commission or charged by the investor-owned electric utility or the investor-owned natural gas utility after:~~

~~(1) A commission order approving an application under § 23-3-201 et seq. or the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq., or a notice under § 23-18-104; or~~

~~(2) A commission order approving any other application related to the siting or prudence of the decision to invest in the new strategic investments.~~

~~(b)(1) An investor-owned electric utility or an investor-owned natural gas utility may elect to file with the commission a rider to recover strategic investments that are not included in rates.~~

~~(2) The investor-owned electric utility or the investor-owned natural gas utility shall provide notice to the Attorney General of the filing of the rider by the investor-owned electric utility or the investor-owned natural gas utility on the date the investor-owned electric utility or the investor-owned natural gas utility files the rider with the commission.~~

~~(c)(1) An investor-owned electric utility or an investor-owned natural gas utility may select the date of the first annual filing update, with all subsequent updates to be filed on or by the same day annually as the first filing update.~~

~~(2) An investor-owned electric utility or an investor-owned natural gas utility shall provide notice to the Attorney General of the filing of the rider on the date the investor-owned electric utility or the investor-owned natural gas utility files each annual update to the rider with the commission.~~

~~(d) For a rider under this subchapter, an investor-owned electric utility or an investor-owned natural gas utility shall use a rider test period.~~

~~(e)(1) Upon receipt of an investor-owned electric utility's or an investor-owned natural gas utility's filing to implement the rider rate schedule and each annual update under this subchapter, the commission shall issue an order approving the rider rate schedule and each annual update to recover strategic investments under this subchapter if the commission determines that the investor-owned electric utility's or the investor-owned natural gas utility's application complies with the provisions of this section.~~

~~(2)(A) Unless the commission determines that approving the investor-owned electric utility's or the investor-owned natural gas utility's application for the rider and each annual update does not comply with this subchapter, the commission shall enter an order within ninety (90) calendar days following the date of the investor-owned electric utility's or the investor-owned natural gas utility's filing.~~

~~(B)(i) If the commission determines that approving an application for approval of a rider rate schedule or annual update under this subchapter does not comply with this section, the commission shall enter an order denying the application.~~

~~(ii) In the order entered by the commission under subdivision (e)(2)(B)(i) of this section, the commission shall discuss:~~

~~(a) The basis for the commission's findings; and~~

~~(b) Any evidence or other information submitted by the investor-owned electric utility or the investor-owned natural gas utility as part of its application that the commission deems to be insufficient.~~

~~(C) Each annual update shall include, for the initial rider test year, the construction work in progress costs that will ultimately~~

~~be capitalized on which the utility will earn a return, amounts that would otherwise be recorded as allowance for funds used during construction, and any expenses associated with the construction work in progress that will not be capitalized.~~

~~(D) The commission shall verify the amounts included in each annual update reflect the amounts authorized for recovery under this subchapter.~~

~~(E) The commission shall complete its review of each annual update filing and issue its order within ninety (90) days following the date of the annual update filing.~~

~~(F)(i) If the investor-owned electric utility or the investor-owned natural gas utility submits an amended filing remedying the areas of noncompliance identified by the commission in its order, the commission shall enter an order approving the application within ten (10) calendar days following the date of the amended filing unless the commission finds that the filing does not comply with the provisions of this subchapter.~~

~~(ii) If the commission finds that the amended filing does not remedy the areas of noncompliance, the commission shall enter an order denying the application.~~

~~(iii) In the order issued under subdivision (e)(2)(F)(ii) of this section, the commission shall discuss:~~

~~(a) The basis for the commission's findings; and~~

~~(b) Any evidence or other information submitted by the investor-owned electric utility or the investor-owned natural gas utility as part of its notice or application that the commission deems to be insufficient.~~

~~(G) The process outlined in subdivisions (e)(2)(B) and (F) of this section may continue until the commission finds that:~~

~~(i) The investor-owned electric utility's or the investor-owned natural gas utility's application complies with this subchapter; or~~

~~(ii) The investor-owned electric utility or the investor-owned natural gas utility withdraws its application or appeals the commission's decision under § 23-2-423.~~

~~(H) If the commission fails to issue its order within the~~

~~time frames stated in this section, the investor-owned electric utility's filing or the investor-owned natural gas utility's filing shall become effective by operation of law subject to completion of the commission's review under this subchapter.~~

~~(f)(1) At the election of the investor-owned electric utility or the investor-owned natural gas utility, strategic investments shall be recovered through the rider, separate from the investor-owned electric utility's or the investor-owned natural gas utility's formula rate plan implemented under the Formula Rate Review Act, § 23-4-1201 et seq., any other rider, or otherwise as part of the investor-owned electric utility's or the investor-owned natural gas utility's rates approved by the commission.~~

~~(2) If elected by an investor-owned electric utility or an investor-owned natural gas utility, the rider shall remain in effect under this subchapter until the investor-owned electric utility or the investor-owned natural gas utility decides to withdraw the rider with respect to future cost recovery for strategic investments to be made after the date of the withdrawal.~~

~~(g) For the purposes of calculating rates to recover the costs of strategic investments, including rates implemented through an individual customer contract, the commission shall ensure that the rates charged to customers recover the costs of strategic investments in a manner that is consistent with applicable law and in the public interest.~~

~~(h)(1) An amount collected through the rider under this subchapter shall be collected subject to refunds pending the completion of the commission's review under this subchapter.~~

~~(2) At any time during the process, if the commission finds that any costs were not prudently incurred, the commission shall order that the costs that were not prudently incurred be refunded to customers through bill credits.~~

~~(i) The rider elected by an investor-owned electric utility or an investor-owned natural gas utility under this subchapter to recover strategic investments is a revenue requirement rider and shall provide return on construction work in progress plus operating expenses during construction and return on rate base plus operating expenses once complete and in service.~~

~~(j)(1) An investor-owned electric utility or an investor-owned natural gas utility shall not accrue an allowance for funds used during construction~~

~~for strategic investments with costs recovered through the rider.~~

~~(2) Instead, the commission shall authorize an investor-owned electric utility or an investor-owned natural gas utility to earn a return through the rider under this subchapter on any construction work in progress.~~

~~(k) The commission shall authorize an investor-owned electric utility or an investor-owned natural gas utility to recover through the rider filed under this subchapter any expenses associated with the construction of strategic investments that will not be capitalized.~~

~~(l) In calculating construction work in progress, including actual costs and any projections, the investor-owned electric utility or the investor-owned natural gas utility shall base all amounts on year-end information not subject to averaging beginning-of-year or end-of-year balances.~~

~~(m)(1)(A) During the construction of strategic investments included in the rider, an investor-owned electric utility or an investor-owned natural gas utility shall include in the capital structure only short-term debt, long-term debt, and equity.~~

~~(B) The investor-owned electric utility or the investor-owned natural gas utility shall base the balances of those items under subdivision (m)(1)(A) of this section on the investor-owned electric utility's or the investor-owned natural gas utility's actual capital structure with a minimum equity percentage of thirty percent (30%) and a maximum equity percentage of fifty percent (50%).~~

~~(C) During the construction of strategic investments, the commission shall not require an investor-owned electric utility or an investor-owned natural gas utility that is electing to utilize a rider under this subchapter to include in the capital structure of the rider other items, including current, accrued, or other liabilities or accumulated deferred income taxes.~~

~~(D) For the purposes of the rider, the cost of debt used in calculating the cost of capital shall be the cost of short-term debt and the cost of long-term debt approved in the investor-owned electric utility's or the investor-owned natural gas utility's most recent general rate case proceeding or formula rate plan annual filing.~~

~~(2) For any strategic investment included in the rider under this section that is complete and in service, the investor-owned electric~~

~~utility or the investor-owned natural gas utility shall use the capital structure and overall rate of return that was approved in the investor-owned electric utility's or the investor-owned natural gas utility's most recent general rate case proceeding or annual formula rate plan filing.~~

~~(n) For the purpose of the rider, the return on equity used in calculating the cost of capital shall be set at the return on equity approved in the investor-owned electric utility's or the investor-owned natural gas utility's most recent general rate case proceeding.~~

~~(o)(1) On the strategic investments' being complete and in service, the commission shall authorize the investor-owned electric utility or the investor-owned natural gas utility to earn a fair and reasonable return through the rider on any capitalized costs for the strategic investments.~~

~~(2) Once the strategic investments go into service, the commission shall authorize the investor-owned electric utility or the investor-owned natural gas utility to recover through the rider any on-going expenses associated with the strategic investments.~~

~~(3) In the investor-owned electric utility's or the investor-owned natural gas utility's next general rate case proceeding, the commission shall allow the investor-owned electric utility or the investor-owned natural gas utility to include any capitalized amounts and associated expenses for completed strategic investments in its base rates.~~

~~(4)(A) In the investor-owned electric utility's or the investor-owned natural gas utility's next general rate case proceeding, the investor-owned electric utility or the investor-owned natural gas utility shall move any amounts for any completed strategic investments from the rider into base rates.~~

~~(B) The investor-owned electric utility or the investor-owned natural gas utility shall continue to recover through the rider implemented under this subchapter the costs and expenses associated with any strategic investments that are not complete and in service.~~

~~(p) The revenues from the rider shall be included in calculating the maximum amount of revenue increase or decrease under § 23-4-1207(d) for any formula rate plan implemented under the Formula Rate Review Act, § 23-4-1201 et seq., but shall otherwise be excluded from the revenues included in a formula rate plan under the Formula Rate Review Act, § 23-4-1201 et seq., for an investor-owned electric utility or an investor-owned natural gas utility.~~

~~(q)(1) For any excess accumulated deferred income tax associated with strategic investments, the commission shall:~~

~~(A) Authorize the investor-owned electric utility or the investor-owned natural gas utility to apply the excess deferred income taxes to offset the investor-owned electric utility's or the investor-owned natural gas utility's rate base used in calculating its rates; or~~

~~(B) Apply the excess deferred income taxes as a credit to customer bills.~~

~~(2) The commission shall determine which form and the timing of applying the accumulated deferred income taxes under this subsection is in the public interest.~~

~~(r) The commission shall authorize the investor-owned electric utility or the investor-owned natural gas utility to monetize or apply any tax credits or other tax incentives, including without limitation investment tax credits and production tax credits, where possible to reduce the cost of constructing or acquiring any strategic investments to benefit customers of an investor-owned electric utility or an investor-owned natural gas utility.~~

~~(s)(1) The investor-owned electric utility or the investor-owned natural gas utility shall seek federal funds and loan programs to reduce the cost of constructing, acquiring, and financing strategic investments if possible, appropriate, and available to reduce the cost of constructing or acquiring any strategic investments.~~

~~(2) If an investor-owned electric utility or an investor-owned natural gas utility requests and receives federal funding to support constructing or acquiring strategic investments, the applicable amount of federal funding shall be deducted from the value of the strategic investments that are capitalized and recoverable through rates charged to customers of an investor-owned electric utility or an investor-owned natural gas utility.~~

~~(t)(1) If an investor-owned electric utility or an investor-owned natural gas utility, with rates regulated under the Formula Rate Review Act, § 23-4-1201 et seq., has a return on equity above the return on the investor-owned electric utility's or the investor-owned natural gas utility's most recent general rate case proceeding, plus five-tenths percent (0.5%), and would otherwise be required to provide credits to a customer's bill, the investor-owned electric utility or the investor-owned natural gas utility shall not be required to adjust rates and provide credits to customers that~~

~~may otherwise be required under § 23-4-1207(b) if the investor-owned electric utility or the investor-owned natural gas utility has strategic investments under construction in an amount equal to or greater than the amount above the return on equity approved in the investor-owned electric utility's or the investor-owned natural gas utility's most recent general rate case proceeding, plus five-tenths percent (0.5%).~~

~~(2) For an investor-owned electric utility or an investor-owned natural gas utility, with rates regulated under the Formula Rate Review Act, § 23-4-1201 et seq., the commission shall not require a reduction of rates to the investor-owned electric utility's or the investor-owned natural gas utility's authorized rate of return, or reduce the investor-owned electric utility's or the investor-owned natural gas utility's target rate of return under § 23-4-1207(b) for any formula rate plan mechanism under the Formula Rate Review Act, § 23-4-1201 et seq., if an investor-owned electric utility or an investor-owned natural gas utility has strategic investments under construction in an amount equal to or greater than the level of earnings above the investor-owned electric utility's or the investor-owned natural gas utility's authorized rate of return or the investor-owned electric utility's or the investor-owned natural gas utility's target rate of return under § 23-4-1207(b) for any formula rate plan mechanism implemented under the Formula Rate Review Act, § 23-4-1201 et seq.~~

~~(3)(A) The investor-owned electric utility or the investor-owned natural gas utility shall first apply any amounts identified in subdivisions (t)(1) and (2) of this section to strategic investments under construction.~~

~~(B)(i) The commission may authorize the investor-owned electric utility or the investor-owned natural gas utility to record any amounts identified in subdivisions (t)(1) and (2) of this section and designate those amounts to offset the cost of approved strategic investments not yet under construction if the commission determines that doing so is in the public interest.~~

~~(ii) If the commission authorizes recording any amounts for the projects described in subdivision (t)(3)(B)(i) of this section, the investor-owned electric utility or the investor-owned natural gas utility shall deduct interest at a rate equal to the cost of short-term debt approved in the investor-owned electric utility's or the investor-owned natural gas utility's last general rate case proceeding from any amounts~~

~~recorded until those amounts are applied to offset the cost of strategic investments.~~

~~(C) The investor-owned electric utility or the investor-owned natural gas utility shall provide credits to customers equal to any remaining amounts identified in subdivisions (t)(1) and (2) of this section as required under § 23-4-1207(b), plus interest at a rate equal to the cost of short-term debt approved in the investor-owned electric utility's or the investor-owned natural gas utility's most recent general rate case proceeding or annual formula rate plan filing.~~

~~(u) Except as otherwise provided in this subchapter, this section does not alter the powers and authority of the commission.~~

~~(v) A commission review of the expenditures associated with strategic investments included in the rider, including evaluating whether or not any costs or expenses are reasonable and prudently incurred, shall be completed within twelve (12) calendar months after the date upon which the investor-owned electric utility or the investor-owned natural gas utility provides notice that the strategic investments are complete and in service.~~

~~(w) An expenditure associated with strategic investments for which an application for approval is pending before the commission as of March 20, 2025, shall be eligible for recovery through the rider under this subchapter if:~~

~~(1) The costs are not otherwise included in rates approved by the commission before March 20, 2025;~~

~~(2) The investor-owned electric utility or the investor-owned natural gas utility has an application pending that was filed before March 20, 2025, for approval:~~

~~(A) To construct a power generation facility outside of the state under § 23-18-104;~~

~~(B) To obtain a certificate of environmental compatibility and public need under the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq.;~~

~~(C) To obtain a certificate of public convenience and necessity under § 23-3-201 et seq.; or~~

~~(D) For any other application related to the siting or prudence of the decision to invest in the new strategic investments; and~~

~~(3) The commission enters an order after January 1, 2025,~~

~~approving an application that was filed before March 20, 2025, for approval:~~

~~(A) To construct a power generation facility outside of the state under § 23-18-104;~~

~~(B) To obtain a certificate of environmental compatibility and public need under the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq.;~~

~~(C) To obtain a certificate of public convenience and necessity under § 23-3-201 et seq.; or~~

~~(D) For any other application related to the siting or prudence of the decision to invest in the new strategic investments.~~

~~(x)(1) If a customer pays or multiple customers pay for a portion of any strategic investments through a contribution in aid of construction or through other form of payment, the strategic investments shall continue to be considered strategic investments and classified as part of the investor-owned electric utility's or the investor-owned natural gas utility's retail assets and recoverable through the investor-owned electric utility's or the investor-owned natural gas utility's retail rates, either in the base rates of the investor-owned electric utility or the investor-owned natural gas utility, through a rider under this subchapter, or rates otherwise approved by the commission.~~

~~(2)(A) A payment by a customer or customers for any portion of any strategic investments through a contribution in aid of construction shall be deducted from the cost of the strategic investments capitalized and recovered through rates.~~

~~(B) A payment by a customer or customers through any other forms of payment shall be recorded for ratemaking purposes, when the strategic investments are first included in rates and shall be recognized as payment over a period not to exceed the life of the strategic investments, in a manner that provides comparable benefits for other customers over the life of the strategic investments.~~

~~23-4-1305. Procedure to recover strategic investments through riders — Investor-owned electric utility and investor-owned natural gas utility.~~

~~(a) An investor-owned electric utility or an investor-owned natural gas utility electing to file with the Arkansas Public Service Commission a rider to recover strategic investments that are not otherwise included in~~

~~rates previously approved by the commission may file an application to implement the rider any time within twelve (12) months after:~~

~~(1) The commission enters an order approving an application under § 23-3-201 et seq. or the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq., or a notice under § 23-18-104; or~~

~~(2) Any other application related to the siting or prudence of the decision to invest in strategic investments.~~

~~(b)(1) An investor-owned electric utility or an investor-owned natural gas utility shall file:~~

~~(A) An annual update to the rider to reflect the annual expenditures; and~~

~~(B) An update to any projections included in the rider to recover strategic investments.~~

~~(2) An investor-owned electric utility's or an investor-owned natural gas utility's recovery through the rider shall be limited to the amounts identified by the investor-owned electric utility or the investor-owned natural gas utility in the proceeding in which the commission approved the strategic investments unless a greater amount is subsequently authorized by the commission.~~

~~(c) The annual update required under subsection (b) of this section shall include the information stated in subsections (a) and (b) of this section for strategic investments following subsequent commission orders approving strategic investments.~~

~~(d) An investor-owned electric utility or an investor-owned natural gas utility shall immediately notify the commission of any significant delays or material changes in the construction schedule to include any strategic investments that are abandoned before completion or for which construction has been indefinitely suspended or material changes in costs of any strategic investments recovered through the rider under this subsection.~~

~~(e)(1) An investor-owned electric utility or an investor-owned natural gas utility shall remove the cost of any strategic investments that are abandoned before completion or for which construction has been indefinitely suspended from the rider unless the commission determines, based on substantial evidence provided by the investor-owned electric utility or the investor-owned natural gas utility, that:~~

~~(A) The costs were reasonable and prudently incurred at~~

~~the time the costs were incurred;~~

~~(B) Continued recovery through the rider remains reasonable;~~

~~(C) The circumstance of the abandonment before completion or indefinite construction suspension is reasonable; and~~

~~(D) Recovery of those costs is in the public interest.~~

~~(2) Upon removal of any costs for strategic investments that are abandoned before completion or for which construction has been indefinitely suspended, the investor-owned electric utility or the investor-owned natural gas utility may seek recovery of those costs through rates if the commission determines, based on substantial evidence provided by the investor-owned electric utility or the investor-owned natural gas utility, that:~~

~~(A) The costs were reasonable and prudently incurred at the time those costs were incurred;~~

~~(B) The circumstance of the abandonment before completion or indefinite construction suspension is reasonable; and~~

~~(C) Recovery of those costs is in the public interest.~~

~~(3)(A) An investor-owned electric utility or an investor-owned natural gas utility may request recovery of any costs for strategic investments that are abandoned before completion or for which construction has been indefinitely suspended if the costs for strategic investments that are abandoned before completion or for which construction has been indefinitely suspended are removed from recovery through the rider in a separate proceeding.~~

~~(B) Upon receipt of a request for recovery of costs under subdivision (e)(3)(A) of this section, the commission shall determine:~~

~~(i) Whether recovery of those costs is in the public interest; and~~

~~(ii) The form and timing of recovery through rates charged to customers.~~

~~(f)(1)(A) Except as provided in subdivision (f)(2)(D)(i) of this section, an investor-owned electric utility's or an investor-owned natural gas utility's total amount of revenue increase from an annual update to the rider under this subchapter shall not result in the investor-owned electric utility's or the investor-owned natural gas utility's rates exceeding a level ten percent (10%) below the national average for all sectors.~~

~~(B) For this comparison, the rates under subdivision (f)(1)(A) of this section shall be calculated using:~~

~~(i) The same method as that used by the United States Energy Information Administration and published in its most recent edition of the Electric Power Annual report for electric utilities, as adopted by the commission by rule, or the Natural Gas Annual report for natural gas utilities, as adopted by the commission by rule; and~~

~~(ii) Data from the same calendar year as the United States Energy Information Administration's publication to which the investor-owned electric utility's or the investor-owned natural gas utility's revenue increase is compared.~~

~~(C) If the commission finds that the investor-owned electric utility or the investor-owned natural gas utility provides substantial evidence to the commission demonstrating that its rates will remain capable of attracting or retaining economic development opportunities for the state even if the rates exceed ten percent (10%) below national average and that doing so is in the public interest, then the commission shall approve each revenue increase.~~

~~(2)(A) If the commission approves a revenue increase for an investor-owned electric utility or an investor-owned natural gas utility from an annual update to the rider under this subchapter that results in the investor-owned electric utility's or the investor-owned natural gas utility's rates exceeding a level ten percent (10%) below the national average, the commission shall submit a letter to the cochairs of the Legislative Council notifying the General Assembly that the commission has approved a revenue increase for an investor-owned electric utility or investor-owned natural gas utility from an annual update to the rider under this subchapter that has resulted in an investor-owned electric utility's or an investor-owned natural gas utility's total rates inclusive of all riders exceeding a level ten percent (10%) below the national average.~~

~~(B) Unless the commission approves an increase in the total amount of revenue increase from an annual update to the rider under this subchapter that exceeds a level ten percent (10%) below the national average for all sectors under subdivision (f)(2)(A) of this section, the investor-owned electric utility or the investor-owned natural gas utility shall adjust its annual update to the rider under subsections (a)-(d) of this~~

~~section to include only a revenue increase that results in rates that are ten percent (10%) below the national average.~~

~~(C) The commission shall verify that an annual update to the rider under subsections (a)-(d) of this section does not include a revenue increase that results in rates exceeding a level ten percent (10%) below the national average unless it authorizes a greater amount under subdivision (f)(1)(A) of this section.~~

~~(D)(i) If an investor-owned natural gas utility's rates are above the national average for all sectors calculated using the same method as that used by the United States Energy Information Administration and published in its most recent edition of the Natural Gas Annual report for natural gas utilities, as adopted by the commission by rule, and calculated using data from the same calendar year as the United States Energy Information Administration publication to which the investor-owned natural gas utility's revenue increase is compared, the total amount of revenue increase or decrease for an investor-owned natural gas utility from an annual update to the rider under this subchapter shall not exceed four percent (4%) of each rate class's total revenue.~~

~~(ii) If a conflict exists between subdivision (f)(1) of this section and subdivision (f)(2)(D)(i) of this section, subdivision (f)(2)(D)(i) of this section shall control.~~

~~(E) The commission shall submit an annual report to the Legislative Council describing:~~

~~(i) The strategic investments included in the rider for an investor-owned electric utility or an investor-owned natural gas utility; and~~

~~(ii) The change in rates resulting from the investor-owned electric utility's and the investor-owned natural gas utility's annual update to the rider under this subchapter on the investor-owned electric utility's or the investor-owned natural gas utility's rates.~~

~~(3) An investor-owned electric utility shall submit an annual report to the commission describing its generation portfolio mix based on the generation capacity mix and on the energy mix.~~

~~(4) The commission shall submit an annual report to the Legislative Council describing the generation portfolio mix based on the generation capacity mix and based on the energy mix for each investor-owned~~

~~electric utility.~~

~~(g) Once strategic investments in public utility facilities are complete and in service, an investor-owned electric utility or an investor-owned natural gas utility shall:~~

~~(1) Reconcile the actual expenditures and any projected amounts included in the rider;~~

~~(2) Net any differences in projected amounts and actual expenditures; and~~

~~(3) Either:~~

~~(A) Reduce the amounts ultimately capitalized by any over-collection; or~~

~~(B) Recover any under-collection through subsequent years' rider filings.~~

~~(h) For recovery through the rider, an investor-owned electric utility or an investor-owned natural gas utility shall give priority to strategic investments in new electric generation and transmission facilities located in Arkansas, unless:~~

~~(1) The investor-owned electric utility or the investor-owned natural gas utility demonstrates and the commission finds that a strategic investment in new electric generation and transmission facilities located outside of Arkansas provides greater benefits to the investor-owned electric utility's or the investor-owned natural gas utility's customers in Arkansas than a comparable strategic investment in new electric generation and transmission facilities located in Arkansas;~~

~~(2) A comparable strategic investment in a new electric generation or transmission facility is not available or cannot be constructed in Arkansas; or~~

~~(3) A customer or customers contract to pay all or a portion of the cost of the strategic investment in the resource through a special rate contract, a renewable rate schedule, a contribution in aid of construction, or other form of payment.~~

~~23-4-1306. Authorization to recover strategic investments through rider — Electric distribution cooperative and electric generation and transmission cooperative.~~

~~(a) An electric distribution cooperative or an electric generation and~~

~~transmission cooperative may obtain a rider to recover strategic investments if not otherwise recoverable in rates previously approved by the Arkansas Public Service Commission after:~~

~~(1) A commission order approving an application under § 23-3-201 et seq. or the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq., or a notice under § 23-18-104; or~~

~~(2) A commission order approving any other application related to the siting or prudence of the decision to invest in the new strategic investments.~~

~~(b)(1) An electric distribution cooperative or an electric generation and transmission cooperative may elect to file with the commission a rider to recover strategic investments that are not included in rates.~~

~~(2) The electric distribution cooperative or the electric generation and transmission cooperative shall provide notice to the Attorney General of the filing of the rider by the electric distribution cooperative or the electric generation and transmission cooperative on the date the electric distribution cooperative or the electric generation and transmission cooperative files the rider with the commission.~~

~~(c) An electric distribution cooperative or an electric generation and transmission cooperative may select the date of the first annual filing update, with all subsequent updates to be filed on or by the same day annually as the first filing update.~~

~~(d) For a rider under this subchapter, an electric distribution cooperative or an electric generation and transmission cooperative shall use a rider test period.~~

~~(e)(1) Upon receipt of an electric distribution cooperative's or an electric generation and transmission cooperative's filing to implement the rider rate schedule and each annual update under this subchapter, the commission shall issue an order approving the rider rate schedule and each annual update to recover strategic investments under this subchapter if the commission determines that the electric distribution cooperative's or the electric generation and transmission cooperative's application complies with the provisions of this section.~~

~~(2)(A) Unless the commission determines that approving the electric distribution cooperative's or the electric generation and transmission cooperative's application does not comply with this subchapter,~~

~~the commission shall enter an order within ninety (90) calendar days following the date of the electric distribution cooperative's or the electric generation and transmission cooperative's filing.~~

~~(B)(i) If the commission determines that approving an application does not comply with this section, the commission shall enter an order denying the application.~~

~~(ii) In the order entered by the commission under subdivision (e)(2)(B)(i) of this section, the commission shall discuss:~~

~~(a) The basis for the commission's findings; and~~

~~(b) Any evidence or other information submitted by the electric distribution cooperative or the electric generation and transmission cooperative as part of its application that the commission deems to be insufficient.~~

~~(C) Each annual update shall include, for the initial rider test year, the construction work in progress costs that will ultimately be capitalized on which the utility will earn a return, amounts that would otherwise be recorded as allowance for funds used during construction, and any expenses associated with the construction work in progress that will not be capitalized.~~

~~(D) The commission shall verify the amounts included in each annual update reflect the amounts authorized for recovery under this subchapter.~~

~~(E) The commission shall complete its review of each annual update filing and issue its order within ninety (90) days following the date of the annual update filing.~~

~~(F)(i) If the electric distribution cooperative or the electric generation and transmission cooperative submits an amended filing remedying the areas of noncompliance identified by the commission in its order, the commission shall enter an order approving the application within ten (10) calendar days following the date of the amended filing unless the commission finds that the filing does not comply with the provisions of this subchapter.~~

~~(ii) If the commission finds that the amended filing does not remedy the areas of noncompliance, the commission shall enter an order denying the application.~~

~~(iii) In the order entered under subdivision (e)(2)(F)(ii) of this section, the commission shall discuss:~~

~~(a) The basis for the commission's findings; and~~

~~(b) Any evidence or other information submitted by the electric distribution cooperative or electric generation and transmission cooperative with its amended filing that the commission finds does not comply with specific provisions of this subchapter.~~

~~(G) The process outlined in subdivisions (e)(2)(B) and (e)(2)(F) of this section may continue until the commission finds that:~~

~~(i) The electric distribution cooperative's or the electric generation and transmission cooperative's application complies with this subchapter;~~

~~(ii) The electric distribution cooperative or the electric generation and transmission cooperative withdraws its application; or~~

~~(iii) The electric distribution cooperative or the electric generation and transmission cooperative appeals the commission's decision under § 23-2-423.~~

~~(H) If the commission fails to issue its order within the time frames stated in this subchapter, the electric distribution cooperative's or the electric generation and transmission cooperative's filing shall become effective by operation of law, subject to completion of the commission's review under this subchapter.~~

~~(f)(1) At the election of the electric distribution cooperative or the electric generation and transmission cooperative, strategic investments shall be recovered through the rider under this subchapter, separate from any rate adjustments by an electric distribution cooperative under § 23-4-901 et seq., any rate adjustments by an electric generation and transmission cooperative under § 23-4-1101 et seq., any other rider, or otherwise as part of the electric distribution cooperative's or the electric generation and transmission cooperative's rates approved by the commission.~~

~~(2) If elected by an electric distribution cooperative or an electric generation and transmission cooperative, the rider shall remain in effect under this subchapter until the electric distribution cooperative or the electric generation and transmission cooperative decides to withdraw the~~

~~rider with respect to future cost recovery for strategic investments to be made after the date of the withdrawal.~~

~~(g) For the purposes of calculating rates to recover the costs of strategic investments, including rates implemented through an individual customer contract, the commission shall ensure that the rates charged to customers recover the costs of strategic investments in a manner that is consistent with applicable law and in the public interest.~~

~~(h)(1) An amount collected through the rider under this subchapter shall be collected subject to refunds pending the completion of the commission's review under this subchapter.~~

~~(2) At any time during the process, if the commission finds that any costs were not prudently incurred, the commission shall order that the costs that were not prudently incurred be refunded to customers through bill credits .~~

~~(i) The rider elected by an electric distribution cooperative or an electric generation and transmission cooperative under this subchapter to recover strategic investments is a revenue requirement rider and shall provide an electric distribution cooperative's or an electric generation and transmission cooperative's approved times interest earned ratio, including any amounts to build members' equity, for the construction work in progress during construction and return on rate base plus operating expenses once the strategic investments are complete and in service.~~

~~(j)(1) An electric distribution cooperative or an electric generation and transmission cooperative shall not accrue an allowance for funds used during construction for strategic investments with costs recovered through the rider.~~

~~(2) Instead the commission may allow an electric distribution cooperative or an electric generation and transmission cooperative to adjust its revenues through the rider under this subchapter to maintain its authorized times interest earned ratio for expenditures associated with any construction work in progress.~~

~~(k) The commission may allow an electric distribution cooperative or an electric generation and transmission cooperative to recover through the rider under this subchapter any expenses associated with the construction of strategic investments that will not be capitalized.~~

~~(l) In calculating construction work in progress, including actual~~

~~costs and any projections, the electric distribution cooperative or the electric generation and transmission cooperative shall base all amounts on year-end information not subject to averaging beginning-of-year and end-of-year balances.~~

~~(m) For the purposes of the rider under this subchapter, the electric distribution cooperative's or the electric generation and transmission cooperative's times interest earned ratio shall be the times interest earned ratio underlying its currently approved rates, including any additional amounts to build equity of the members of the electric distribution cooperative or the electric generation and transmission cooperative.~~

~~(n)(1) On the strategic investments' being complete and in service, the commission shall authorize the electric distribution cooperative or the electric generation and transmission cooperative to adjust its revenues through the rider under this subchapter to maintain its authorized times interest earned ratio for expenditures associated with any construction work in progress costs that will ultimately be capitalized or recorded as allowance for funds used during construction when the strategic investments are complete and in service.~~

~~(2) Once the strategic investments are complete and in service, the commission shall authorize the electric distribution cooperative or the electric generation and transmission cooperative to recover through the rider under this subchapter any on-going expenses associated with the strategic investments.~~

~~(3) In the electric distribution cooperative's or the electric generation and transmission cooperative's next general rate case proceeding, the commission shall allow the electric distribution cooperative or the electric generation and transmission cooperative to include any capitalized amounts and associated expenses for completed strategic investments in its base rates.~~

~~(4)(A) In its next general rate case proceeding, the electric distribution cooperative or the electric generation and transmission cooperative shall move any amounts for any completed strategic investments from the rider under this subchapter into its base rates.~~

~~(B) The electric distribution cooperative or the electric generation and transmission cooperative shall continue to recover through the rider under this subchapter the costs and expenses associated with any~~

~~strategic investments that are not complete and in service.~~

~~(o) The revenues from the rider under this subchapter shall be included in calculating the allowed level of any rate increase for electric distribution cooperative rate adjustments under § 23-4-901 et seq. or electric generation and transmission cooperative rate adjustments under § 23-4-1101 et seq. but shall otherwise be excluded from the revenues included in electric distribution cooperative rate adjustments under § 23-4-901 et seq. or electric generation and transmission cooperative rate adjustments under § 23-4-1101 et seq.~~

~~(p) The commission shall authorize an electric distribution cooperative or an electric generation and transmission cooperative to monetize or apply any tax credits or other tax incentives, including without limitation investment tax credits and production tax credits, where possible to reduce the cost of constructing or acquiring any strategic investments for the benefit of members of the electric distribution cooperative or the electric generation and transmission cooperative.~~

~~(q)(1) An electric distribution cooperative or an electric generation and transmission cooperative shall seek federal funds and loan programs to reduce the cost of constructing, acquiring, and financing strategic investments if possible, appropriate, and available for the benefit of members of the electric distribution cooperative or the electric generation and transmission cooperative.~~

~~(2) If an electric distribution cooperative or an electric generation and transmission cooperative requests and receives federal funding to support constructing or acquiring strategic investments, the applicable amount of federal funding shall be deducted from the value of the strategic investments that are capitalized and recoverable through rates charged to members of the electric distribution cooperative or the electric generation and transmission cooperative.~~

~~(r) If an electric distribution cooperative or an electric generation and transmission cooperative has revenues above its authorized times interest earned ratio, the electric distribution cooperative or the electric generation and transmission cooperative shall not be required to adjust rates if the electric distribution cooperative or the electric generation and transmission cooperative can demonstrate that it has plans to invest in strategic investments that would qualify for recovery through the rider in~~

~~amounts equal to or greater than the amount above the authorized times interest earned ratio.~~

~~(s) Except as otherwise provided in this subchapter, this section does not alter the powers and authority of the commission.~~

~~(t) A commission review of the expenditures associated with strategic investments included in the rider under this subchapter, including evaluating whether or not any costs or expenses are reasonable and prudently incurred, shall be completed within twelve (12) calendar months after the date upon which the electric distribution cooperative or the electric generation and transmission cooperative provides notice that the strategic investments are complete and in service.~~

~~(u) An expenditure associated with strategic investments for which an application for approval is pending before the commission as of March 20, 2025, shall be eligible for recovery through the rider under this subchapter if:~~

~~(1) The costs are not otherwise included in rates approved by the commission before March 20, 2025;~~

~~(2) The electric distribution cooperative or the electric generation and transmission cooperative has an application pending that was filed before March 20, 2025, for approval:~~

~~(A) To construct a power generation facility outside of the state under § 23-18-104;~~

~~(B) To obtain a certificate of environmental compatibility and public need under the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq.;~~

~~(C) To obtain a certificate of public convenience and necessity under § 23-3-201 et seq.; or~~

~~(D) For any other application related to the siting or prudence of the decision to invest in the new strategic investments; and~~

~~(3) The commission enters an order after January 1, 2025, approving an application that was filed before March 20, 2025, for approval:~~

~~(A) To construct a power generation facility outside of the state under § 23-18-104;~~

~~(B) To obtain a certificate of environmental compatibility and public need under the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq.;~~

~~(C) To obtain a certificate of public convenience and necessity under § 23-3-201 et seq.; or~~

~~(D) For any other application related to the siting or prudence of the decision to invest in the new strategic investments.~~

~~(v)(1) If a customer pays or multiple customers pay for a portion of any strategic investments through a contribution in aid of construction or through other form of payment, the strategic investments shall continue to be considered strategic investments and classified as part of the electric distribution cooperative's or the electric generation and transmission cooperative's retail assets and recoverable through the electric distribution cooperative's or the electric generation and transmission cooperative's retail rates, either in the base rates of the electric distribution cooperative or the electric generation and transmission cooperative, through a rider under this subchapter, or rates otherwise approved by the commission.~~

~~(2)(A) A payment by a customer or customers for a portion of any strategic investments through a contribution in aid of construction shall be deducted from the cost of the strategic investments capitalized and recovered through rates.~~

~~(B) A payment by a customer or customers through any other forms of payment shall be recorded for ratemaking purposes when the strategic investments are first included in rates and shall be recognized as payment over a period not to exceed the life of the strategic investments in a manner that provides comparable benefits for other customers over the life of the strategic investments.~~

~~23-4-1307. Procedure to recover strategic investments through rider — Electric distribution cooperative and electric generation and transmission cooperative.~~

~~(a) An electric distribution cooperative or an electric generation and transmission cooperative electing to file with the Arkansas Public Service Commission a rider under this subchapter to recover strategic investments not otherwise included in rates previously approved by the commission may file an application to implement the rider any time within twelve (12) months after:~~

~~(1) A commission order approving an application under § 23-3-201 et seq. or the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq., or a notice under § 23-18-104; or~~

~~(2) Any other application related to the siting or prudence of the decision to invest in the strategic investments.~~

~~(b)(1) An electric distribution cooperative or an electric generation and transmission cooperative shall file an annual update to the rider under this subchapter to reflect the annual expenditures plus an update to any projections included in the rider under this subchapter to recover strategic investments.~~

~~(2) An electric distribution cooperative's or an electric generation and transmission cooperative's recovery through the rider shall be limited to the amounts identified by the electric distribution cooperative or the electric generation and transmission cooperative in the proceeding in which the commission approved the strategic investments unless a greater amount is subsequently authorized by the commission.~~

~~(c) The annual update required under subdivision (b)(1) of this section shall include the amounts stated in this section for strategic investments following subsequent orders from the commission approving strategic investments.~~

~~(d) An electric distribution cooperative or an electric generation and transmission cooperative shall immediately notify the commission of any significant delays or material changes in the construction schedule to include any strategic investments that are abandoned before completion or for which construction has been indefinitely suspended or material changes in costs of any strategic investments recovered through the rider in this subsection.~~

~~(e)(1) An electric distribution cooperative or an electric generation and transmission cooperative shall remove from the rider under this subchapter the cost of any strategic investments that are abandoned before completion or for which construction has been indefinitely suspended unless the commission determines, based on substantial evidence provided by the electric distribution cooperative or the electric generation and transmission cooperative, that:~~

~~(A) The costs were reasonable and prudently incurred at the time those costs were incurred;~~

~~(B) Continued recovery through the rider under this subchapter remains reasonable;~~

~~(C) The circumstance of the abandonment before completion~~

~~or indefinite construction suspension is reasonable; and~~

~~(D) Recovery of those costs is in the public interest.~~

~~(2) Upon removal of any costs for strategic investments that are abandoned or for which construction has been indefinitely suspended, an electric distribution cooperative or an electric generation and transmission cooperative may seek recovery of those costs through rates if the commission determines, based on substantial evidence provided by the electric distribution cooperative or the electric generation and transmission cooperative, that:~~

~~(A) The costs were reasonable and prudently incurred at the time those costs were incurred;~~

~~(B) The circumstance of the abandonment before completion or indefinite construction suspension is reasonable; and~~

~~(C) Recovery of those costs is in the public interest.~~

~~(3)(A) An electric distribution cooperative or an electric generation and transmission cooperative may request recovery of any costs for strategic investments that are abandoned before completion or for which construction has been indefinitely suspended and that are removed from recovery through the rider under this subchapter in a separate proceeding.~~

~~(B) The commission shall determine:~~

~~(i) Whether recovery of those costs is in the public interest; and~~

~~(ii) The form and timing of recovery through rates charged to customers.~~

~~(f)(1)(A) An electric distribution cooperative's or an electric generation and transmission cooperative's total amount of revenue increase from an annual update to the rider under this subchapter shall not result in the electric distribution cooperative's or the electric generation and transmission cooperative's rates exceeding a level ten percent (10%) below the national average for all sectors calculated using the same method as that used by the United States Energy Information Administration and published in its most recent editions of the Electric Power Annual report for electric public utilities as adopted by the commission by rule and calculated using data from the same calendar year as the United States Energy Information Administration publication to which the electric distribution cooperative's or the electric generation and transmission cooperative's revenue increase is~~

~~compared.~~

~~(B) If an electric distribution cooperative or an electric generation and transmission cooperative provides substantial evidence demonstrating that the electric distribution cooperative's or the electric generation and transmission cooperative's rates will remain capable of attracting or retaining economic development opportunities for the state even if the rates exceed a level of ten percent (10%) below national average and that doing so is in the public interest, then the commission shall approve the revenue increase.~~

~~(2)(A) If the commission approves a revenue increase for an electric distribution cooperative or an electric generation and transmission cooperative from an annual update to the rider under this subchapter that results in the electric distribution cooperative's or the electric generation and transmission cooperative's rates exceeding a level ten percent (10%) below the national average, the commission shall submit a letter to the cochairs of the Legislative Council notifying the General Assembly that the commission has approved a revenue increase for the electric distribution cooperative or the electric generation and transmission cooperative from an annual update to the rider under this subchapter that has resulted in the electric distribution cooperative's or the electric generation and transmission cooperative's total rates, inclusive of all riders, that exceeds a level ten percent (10%) below the national average.~~

~~(B) Unless the commission approves an increase in the total amount of revenue increase from an annual update to the rider under this subchapter that exceeds a level ten percent (10%) below the national average for all sectors under subdivision (f)(1)(A) of this section, the electric distribution cooperative or the electric generation and transmission cooperative shall adjust an annual update as required under subsections (a)-(c) of this section to include only a revenue increase that results in rates that are ten percent (10%) below the national average.~~

~~(C) The commission shall verify that an annual update to the rider under subsections (a)-(c) of this section does not include a revenue increase that results in rates exceeding a level ten percent (10%) below the national average unless it authorizes a greater amount under subdivision (f)(1)(A) of this section.~~

~~(g) The commission shall submit an annual report to the Legislative~~

~~Council describing the strategic investments included in the rider under this subchapter for each electric distribution cooperative or electric generation and transmission cooperative and indicating the change in rates resulting from each electric distribution cooperative's or electric generation and transmission cooperative's annual update to the rider under this subchapter on the electric distribution cooperative's or the electric generation and transmission cooperative's rates.~~

~~(h)(1) Each electric distribution cooperative or electric generation and transmission cooperative shall submit an annual report to the commission describing the electric distribution cooperative's or the electric generation and transmission cooperative's generation portfolio mix based on the generation capacity mix and based on the energy mix.~~

~~(2) The commission shall submit an annual report to the Legislative Council describing the generation portfolio mix based on the generation capacity mix and based on the energy mix for an electric distribution cooperative or an electric generation and transmission cooperative.~~

~~(i) Once strategic investments in public utility facilities are complete and in service, an electric distribution cooperative or an electric generation and transmission cooperative shall:~~

~~(1) Reconcile the actual expenditures and any projected amounts included in the rider under this subchapter to recover strategic investments;~~

~~(2) Net any differences in projected amounts and actual expenditures; and~~

~~(3) Either:~~

~~(A) Reduce the amounts ultimately capitalized by any over-collection; or~~

~~(B) Recover any under-collection through subsequent years' rider-to-recover-strategic-investments filings.~~

~~(j) For recovery through the rider, an electric distribution cooperative or an electric generation and transmission cooperative shall give priority to strategic investments in new electric generation and transmission facilities located in Arkansas, unless:~~

~~(1) The electric distribution cooperative or the electric generation and transmission cooperative demonstrates and the commission finds that a strategic investment in new electric generation and transmission~~

~~facilities located outside of Arkansas provides greater benefits to the electric distribution cooperative's or an electric generation and transmission cooperative's customers in Arkansas than a comparable strategic investment in new electric generation and transmission facilities located in Arkansas;~~

~~(2) A comparable strategic investment in a new electric generation or transmission facility is not available or cannot be constructed in Arkansas; or~~

~~(3) A customer or customers contract to pay all or a portion of the cost of the strategic investment in the resource through a special rate contract, a renewable rate schedule, a contribution in aid of construction, or other form of payment.~~

~~23-4-1308. Recovery of advanced energy technologies and feasibility studies under strategic investments rider — Definition.~~

~~(a)(1)(A) Upon a finding by the Arkansas Public Service Commission that advanced energy technologies are in the public interest, a public utility may elect to pursue strategic investments in the advanced energy technologies and shall recover strategic investments in the advanced energy technologies through the rider obtained under this subchapter after a commission order approving an application under § 23-3-201 et seq. or the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq., a notice under § 23-18-104, or any other application related to the siting or prudence of the decision to invest in strategic investments.~~

~~(B) The commission may find that advanced energy technologies are in the public interest under subdivision (a)(1)(A) of this section by considering whether those advanced energy technologies are:~~

~~(i) Technically feasible;~~

~~(ii) Commercially and financially viable; and~~

~~(iii) Otherwise beneficial to customers in Arkansas.~~

~~(2)(A) A facility using advanced energy technologies that are in use by a public utility in Arkansas to serve customers, including without limitation nuclear generation or hydroelectric generation, pumped or run-of-river, is not subject to subdivision (a)(1)(A) of this section.~~

~~(B) A public utility may recover the costs of feasibility studies and strategic investments in advanced energy technologies that are~~

~~currently being used or have been used by the public utility in Arkansas to serve customers through a rider obtained under this subchapter.~~

~~(3) As used in this section, "advanced energy technologies" includes without limitation:~~

~~(A) Modular nuclear reactors;~~

~~(B) New technologies for nuclear generation technologies;~~

~~(C) Hydrogen-fueled generation technologies;~~

~~(D) Geothermal generation technologies;~~

~~(E) Renewable natural gas technologies;~~

~~(F) Hydrogen technologies;~~

~~(G) Biomass generation technologies;~~

~~(H) Hydroelectric generation technologies; and~~

~~(I) Emissions capture and sequestration equipment or facilities associated with any new or existing major utility facility as defined in the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq., or other electric transmission facilities or natural gas transmission facilities by a public utility that are:~~

~~(i) Required by state law or rule or federal regulation;~~

~~(ii) Paid for in total or in part by a customer or customers through a special rate contract, a contribution in aid of construction, or other form of payment; or~~

~~(iii) Otherwise found by the commission to be in the public interest.~~

~~(b) A public utility shall monitor and evaluate advancements in modular nuclear reactors and other new nuclear generation technologies and evaluate the resources as part of the public utility's resource planning once those technologies become in the public interest considering without limitation whether or not those technologies become technically feasible, commercially and financially viable, and otherwise beneficial to customers in Arkansas.~~

~~(c) For strategic investments approved by the commission, a public utility may elect to, and upon election may, recover strategic investments in advanced energy technologies and feasibility studies through a rider under this section.~~

~~(d)(1) Upon election by a public utility, the commission shall~~

~~authorize a public utility to recover the reasonable and prudently incurred costs of studying the feasibility of advanced energy technologies, including the cost of engineering and economic analyses to assess the technical, financial, and commercial feasibility of implementing and using advanced energy technologies to serve customers in Arkansas through the rider to recover strategic investments under this section for feasibility studies of advanced energy technologies associated with strategic investments that are approved by the commission.~~

~~(2) For all other feasibility studies of advanced energy technologies, the commission shall authorize a public utility to recover the reasonable and prudently incurred cost of the feasibility study and shall determine the form and timing of recovery through rates charged to customers.~~

~~23-4-1309. Authorization of special rate contracts.~~

~~(a)(1) An investor-owned electric utility or an investor-owned natural gas utility may enter into a special rate contract to serve a new or existing customer location in Arkansas.~~

~~(2) If the Arkansas Public Service Commission finds that the special rate contract under subdivision (a)(1) of this section is consistent with the public interest, the commission shall enter an order approving the special rate contract within ninety (90) days after an investor-owned electric utility or an investor-owned natural gas utility files an application for approval.~~

~~(3) If the commission finds that a special rate contract in the application is inconsistent with the public interest under subdivision (b)(2) of this section, the commission shall:~~

~~(A) Enter an order describing the provisions that are not consistent with the public interest; and~~

~~(B) Provide an opportunity for the investor-owned electric utility or the investor-owned natural gas utility to file an amended application to remedy the identified insufficiencies.~~

~~(4)(A) If an investor-owned electric utility or an investor-owned natural gas utility files an amended application remedying those provisions, the commission shall enter an order approving the special rate contract in the application within thirty (30) days after the investor-owned electric utility's or the investor-owned natural gas utility's filing.~~

~~(B) If the commission determines that approving the special rate contract is inconsistent with the public interest, in its order denying approval of the special rate contract, the commission shall include a discussion of:~~

~~(i) The basis for the commission's findings; and~~

~~(ii) The specific evidence or information provided by the investor-owned electric utility or the investor-owned natural gas utility as part of its application upon which the commission relied to reach that conclusion in its order.~~

~~(C)(i) If an investor-owned electric utility or an investor-owned natural gas utility submits additional evidence or other information demonstrating that the special rate contract is in the public interest, the commission shall enter an order approving the special rate contract within thirty (30) days after its filing unless the commission determines that approving the special rate contract is inconsistent with the public interest.~~

~~(ii) If the commission determines that approving the special rate contract is inconsistent with the public interest, in its order denying approval of the special rate contract, the commission shall include a discussion of:~~

~~(a) The basis for the commission's findings; and~~

~~(b) The specific evidence or information provided by the investor-owned electric utility or the investor-owned natural gas utility as part of its application upon which the commission relied to reach that conclusion in its order.~~

~~(iii) The process outlined in this subdivision (a)(4) may continue until the commission finds that:~~

~~(a) Approving the special rate contract is in the public interest;~~

~~(b) The investor-owned electric utility or the investor-owned natural gas utility withdraws its application; or~~

~~(c) The investor-owned electric utility or the investor-owned natural gas utility appeals the commission's decision under § 23-2-423.~~

~~(b)(1) An investor-owned electric utility or an investor-owned natural~~

~~gas utility shall be authorized to develop and implement rates and other contract provisions to recover all or part of the cost of any strategic investments necessary to serve the customer as part of the special rate contract if the investor-owned electric utility or the investor-owned natural gas utility demonstrates that doing so is in the public interest.~~

~~(2) As part of a special rate contract, the investor-owned electric utility or the investor-owned natural gas utility is authorized to set forth customer rates and other contract terms attributable to all or part of the cost of any strategic investments through various cost recovery methods, including without limitation:~~

~~(A) A contribution in aid of construction;~~

~~(B) Any other contribution toward the cost of the strategic investments;~~

~~(C) As part of the customer's monthly rate;~~

~~(D) A customer prepayment or other charge;~~

~~(E) Prepaid allowance for funds used during construction; or~~

~~(F) As part of a minimum bill provision.~~

~~(c) An electric cooperative corporation that is established under the Electric Cooperative Corporation Act, § 23-18-301 et seq., including any electric generation and transmission cooperative, may facilitate the recovery of all or part of the cost in subsections (a) and (b) of this section through one (1) or more riders under this subchapter.~~

~~(d) This section does not alter or diminish the commission's authority over an electric utility's allocated service territory, including without limitation where the commission has authorized an electric utility to serve within a municipality, territorial district, or other geographic area.~~

~~23-4-1310. Authorization for alternative methods of financing.~~

~~(a) An electric utility or a natural gas utility may use alternative methods of financing for the purpose of financing strategic investments under this subchapter.~~

~~(b) The alternative methods of financing may include without limitation:~~

~~(1) Sale-leaseback agreements;~~

~~(2) Third-party financing or customer financing; or~~

~~(3) Other methods of financing.~~

~~(c)(1) The Arkansas Public Service Commission shall not disallow, impute alternative values, or adjust the financing under this section unless the commission determines based on substantial evidence that:~~

~~(A) The financing is unreasonable;~~

~~(B) The costs are not prudently incurred; or~~

~~(C) The financing is detrimental to customers.~~

~~(2)(A) If an electric utility or a natural gas utility files additional evidence or other information demonstrating that the financing is reasonable and in the public interest, the commission shall enter an order approving the financing within thirty (30) days after its filing if the commission determines that approving the financing is consistent with the public interest.~~

~~(B) If the commission determines that approving the financing is inconsistent with the public interest, in its order denying approval of the financing, the commission shall include a discussion of:~~

~~(i) The basis for the commission's findings; and~~

~~(ii) The specific evidence or information provided by the electric utility or the natural gas utility as part of its application upon which the commission relied to reach that conclusion in its order.~~

~~(C)(i) If an electric utility or a natural gas utility submits additional evidence or other information demonstrating that the financing is in the public interest, the commission shall enter an order approving the contract within thirty (30) days after its filing unless the commission determines that approving the financing is inconsistent with the public interest.~~

~~(ii) If the commission determines that approving the financing is inconsistent with the public interest, in its order denying approval of the financing, the commission shall include a discussion of:~~

~~(a) The basis for the commission's findings; and~~

~~(b) The specific evidence or information provided by the electric utility or the natural gas utility as part of its application upon which the commission relied to reach that conclusion in its order.~~

~~(D) The process outlined in this subdivision (c)(2) may~~

~~continue until the commission finds that:~~

~~(i) Approving the financing is in the public interest;~~

~~(ii) The electric utility or the natural gas utility withdraws its application; or~~

~~(iii) The electric utility or the natural gas utility appeals the commission's decision under § 23-3-423.~~

~~23-4-1311. Rules.~~

~~(a) The Arkansas Public Service Commission shall amend its rules as required to implement and administer this subchapter.~~

~~(b) The commission shall initiate a proceeding to establish any new rules or modify any existing rules necessary to administer this subchapter and any other applicable exemptions under this subchapter.~~

~~(c) The commission shall enter an order approving the rules necessary to administer this subchapter before March 31, 2026.~~

~~(d) An electric public utility or a natural gas public utility shall be authorized to file an application under this section after March 20, 2025, before the commission completes any modification to its rules necessary to carry out this section.~~

SECTION 17. Arkansas Code § 23-18-104 is amended to read as follows:

23-18-104. Construction of power-generating facilities outside Arkansas.

(a) ~~Except as provided under subsection (c) of this section, an~~ An electric public utility subject to the jurisdiction of the Arkansas Public Service Commission shall not commence construction of any ~~electric generating~~ power generating facility ~~that is a major utility facility~~ to be located outside the boundaries of this state without the express written approval of the commission.

(b)~~(1)~~ An electric public utility proposing such construction shall render adequate written notice to the commission of its intent in order that the commission may conduct any germane inspection, investigation, public hearing, or take any other action deemed appropriate by the commission.

~~(2) An electric public utility or natural gas public utility shall provide notice to the commission of its intent to recover any strategic~~

~~investments, as defined under § 23-4-1303, subject to the Generating Arkansas Jobs Act of 2025, § 23-4-1301 et seq., as part of a public utility's notice under this section or application to construct an electric generation facility under this subchapter.~~

(c) Failure on the part of any electric public utility to obtain prior approval of the commission, as established in this section, shall constitute grounds for disallowance by the commission of all costs and expenses associated with the construction and subsequent operation of the facility when computing the electric public utility's cost of service for purposes of any rate-making proceedings.

(d)~~(1) If the commission determines that approving an electric public utility's application to construct an electric generating facility located outside of Arkansas that is a major utility facility is consistent with the public interest, the commission shall enter an order granting approval of the electric public utility's application within six (6) months after the electric public utility submits its notice of intent to construct electric generating facilities under this section.~~

~~(2)(A) If the commission determines that granting approval of an application to construct an electric generating facility located outside of Arkansas that is a major utility facility is not in the public interest, the commission shall enter an order.~~

~~(B) In the order entered by the commission under subdivision (d)(2)(A) of this section, the commission shall discuss:~~

~~(i) The basis for the commission's determination; and~~

~~(ii) Any evidence or other information submitted by the electric public utility as part of its notice or application upon which the commission relied to reach that determination.~~

~~(3)(A)(i) If an electric public utility submits additional evidence or other information demonstrating that the construction of an electric generating facility located outside of Arkansas that is a major utility facility is reasonable, necessary, and in the public interest, then the commission shall enter an order granting its approval within thirty (30) days after the date of the electric public utility's filing.~~

~~(ii)(a) If the commission finds that the electric public utility's filing fails to comply with this subchapter, the~~

~~commission shall enter an order.~~

~~(b) In the order entered by the commission under subdivision (d)(3)(A)(ii)(a) of this section, the commission shall discuss:~~

~~(1) The basis for the commission's findings; and~~

~~(2) Any evidence or other information submitted by the electric public utility as part of its notice or application that the commission finds did not comply with this subchapter.~~

~~(B) The process described in subdivision (d)(2) of this section and this subdivision (d)(3) may continue until the commission finds that:~~

~~(i) The electric public utility's application complies with this subchapter;~~

~~(ii) The electric public utility withdraws its application; or~~

~~(iii) The electric public utility appeals the commission's decision under § 23-2-423.~~

~~(e)~~ Any electric public utility which does not own in whole or in part another electric public utility and which is not owned in whole or in part by a holding company and which derives less than twenty-five percent (25%) of its total revenues from Arkansas customers is exempt from this section.

SECTION 18. Arkansas Code § 23-18-202(c), concerning exemptions to the jurisdiction Arkansas Public Service Commission, is repealed.

~~(c) An approval shall not be required from the commission for borrowings, loan contracts, notes, mortgages, or guarantees from other public or private sources that have been approved by a majority of the board of directors of an electric cooperative corporation formed under the Electric Cooperative Corporation Act, § 23-18-301 et seq.~~

SECTION 19. Arkansas Code § 23-18-502(a)(4), concerning the legislative findings under the Utility Facility Environmental and Economic Protection Act, is repealed.

~~(4) Furthermore, it is necessary to reform the certification process for construction of major utility facilities under this subchapter to~~

~~expedite the certification process and reduce the regulatory and administrative burdens associated with the certification process.~~

SECTION 20. Arkansas Code § 23-18-503(6), concerning the definition of "gas transmission line" under the Utility Facility Environmental and Economic Protection Act, is repealed.

~~(6) "Gas transmission line" means a natural gas pipeline or connected series of natural gas pipelines, other than a gathering line, that:~~

~~(A) Transports gas from a gathering pipeline or natural gas storage facility to a distribution center or to a large volume customer using similar volumes of gas as a distribution center and is not located downstream from a distribution center;~~

~~(B) Has a maximum allowable operating pressure of twenty percent (20%) or more of specified minimum yield strength;~~

~~(C) Transports gas within a storage field; or~~

~~(D) Is voluntarily or otherwise designated by the operator as a transmission pipeline;~~

SECTION 21. Arkansas Code § 23-18-503(7), concerning the definition of "major utility facility" under the Utility Facility Environmental and Economic Protection Act, is amended to read as follows:

(7) "Major utility facility" means:

(A) A single electric generating plant and associated transportation and storage facilities for fuel and other facilities designed for or capable of operation at a capacity of fifty megawatts (50 MW) or more;

(B) For the sole purpose of requiring an environmental impact statement under this subchapter, an electric transmission line and associated facilities including substations of:

(i) A design voltage of one hundred kilovolts (100 kV) or more and extending a distance of more than ten (10) miles; or

(ii) A design voltage of one hundred seventy kilovolts (170 kV) or more and extending a distance of more than one (1) mile; or

(C) ~~A~~ For the sole purpose of requiring an environmental impact statement under this subchapter, a gas transmission line and associated facilities designed for or capable of transporting gas at

pressures in excess of one hundred twenty-five pounds per square inch (125 psi) and extending a distance of more than ~~five (5) miles~~ one (1) mile except gas pipelines devoted solely to the gathering of gas from gas wells constructed within the limits of any gas field as defined by the Oil and Gas Commission;

SECTION 22. Arkansas Code § 23-18-503(17), concerning the definition of "strategic investments" under the Utility Facility Environmental and Economic Protection Act, is repealed.

~~(17) "Strategic investments" means the same as defined in § 23-4-1303.~~

SECTION 23. Arkansas Code § 23-18-504(a), concerning exemptions for a major utility facility under the Utility Facility Environmental and Economic Protection Act, is amended to read as follows:

(a) This subchapter does not apply to a major utility facility:

(1) ~~That is located outside of Arkansas;~~

~~(2)~~ For which, before July 24, 1973, an application for the approval of the major utility facility was made to any federal, state, regional, or local governmental agency that possesses the jurisdiction to consider the matters prescribed for finding and determination in § 23-18-519(a) and (b);

~~(3)~~(2) For which, before July 24, 1973, the Arkansas Public Service Commission issued a certificate of convenience and necessity or otherwise approved the construction of the major utility facility;

~~(4)~~(3) Over which an agency of the United States Government has exclusive jurisdiction;

~~(5)~~(4) A majority of which is owned by one (1) or more exempt wholesale generators as defined in § 23-1-101(5);

~~(6)~~(5) That is a major utility facility for generating electric energy, if the majority of the major utility facility is owned by any person, including without limitation a public utility that will not recover the cost of the major utility facility in rates subject to regulation by the commission; or

~~(7)~~(6) That is a gas pipeline of less than five (5) miles in length constructed:

(A) Primarily for serving a single customer or a group of

customers that is under common ownership or control;

(B) For use by the customer or group of customers that have entered into a lease to facilitate the issuance of bonds under Title 14, Chapter 164 of this Code; and

(C) Entirely on land:

(i) Owned by the customer or group of customers to be served; or

(ii) Leased by the customer or group of customers to be served.

SECTION 24. Arkansas Code § 23-18-508(b) and (c), concerning rules of the Arkansas Public Service Commission, are repealed.

~~(b) The commission shall:~~

~~(1) Initiate a proceeding to modify any existing rules necessary to administer this subchapter and any other applicable exemptions under this subchapter; and~~

~~(2) Enter an order modifying any existing rules on or before March 31, 2026.~~

~~(c) An electric or natural gas public utility shall be authorized to file an application under this section after March 20, 2025, before the commission completes any modification of its rules necessary to carry out this section.~~

SECTION 25. Arkansas Code § 23-18-510 is amended to read as follows:

23-18-510. Certificate of environmental compatibility and public need — Requirement — Exceptions.

(a)(1) Except for persons exempted as provided in subsection (c) of this section and § 23-18-504(a) and § 23-18-508, a person shall not begin construction of a major utility facility in the state without first obtaining a certificate of environmental compatibility and public need for the major utility facility from the Arkansas Public Service Commission.

(2)~~(A)~~ The replacement~~, reconfiguration,~~ or expansion of an existing transmission facility with a similar facility in substantially the same location or the rebuilding, upgrading, modernizing, or reconstruction for the purposes of increasing capacity ~~or reusing a generation or transmission interconnection~~ shall not constitute construction of a major

utility facility if no increase in width of right-of-way is required.

~~(B) In the instance of a generation facility that would meet the requirements of subdivision (a)(2)(A) of this section but for an increase in the width of the right-of-way caused by replacement, reconfiguration, or expansion of a transmission or related facility, the commission shall consider the generation facility separately from any transmission or related facilities to be under separate construction.~~

(b)~~(1)~~ An entity, including without limitation a person, public utility, utility, regional transmission organization, municipality, merchant transmission provider, merchant generator, or other entity, whether regulated or not by the commission, shall not begin construction of an electric transmission line and associated facilities, as described in § 23-18-503(7)(B), within a national interest electric transmission corridor without first obtaining a certificate of environmental compatibility and public need for the facility from the commission.

~~(2) An electric public utility or a natural gas public utility shall provide notice to the commission of its intent to construct to recover any strategic investments, as defined under § 23-4-1303, subject to the Generating Arkansas Jobs Act of 2025, § 23-4-1301 et seq., as part of a public utility's application under this subchapter.~~

(c) This subchapter does not require a certificate of environmental compatibility and public need or an amendment of such a certificate for:

(1) Reconstruction, alteration, or relocation of a major utility facility that must be reconstructed, altered, or relocated because of the requirements of a federal, state, or county governmental body or agency for purposes of highway transportation, public safety, or air and water quality; or

(2) An electric transmission line and associated facilities including substations of a design voltage of one hundred kilovolts (100 kV) or more to be constructed or operated by a municipal electric utility system that is located within the territorial limits of the municipal electric utility system.

(d) An entity granted a certificate of environmental compatibility and public need pursuant to subsection (b) of this section shall have the right of eminent domain as provided by Arkansas law for the limited purpose of constructing the certificated electric transmission line and associated

facilities, as described in § 23-18-503(7)(B), to the extent that the facility is located within a national interest electric transmission corridor.

~~(c)(1) Strategic investments in major utility facilities under § 23-18-503(7)(A) located on the same or adjacent property or in the same rights-of-way or adjacent rights-of-way by a public utility are exempt from this subchapter but shall be subject to the requirements of § 23-3-201 et seq.~~

~~(2) The purchase of a major utility facility constructed by a third party for that third party, upon completion of construction or at any time after completion of construction, by a public utility is exempt from this subchapter but shall be subject to the requirements of § 23-3-201 et seq.~~

~~(3) Except as provided in this section, this section does not alter the powers and authority of the commission.~~

SECTION 26. Arkansas Code § 23-18-513 is amended to read as follows:

23-18-513. Application for certificate ~~—~~ Service or notice of application.

(a) Each public utility filing an application for a certificate of environmental compatibility and public need shall ~~provide notice of its application as the Arkansas Public Service Commission may require~~ be accompanied by~~.~~

~~(b) Each application submitted under subsection (a) of this section shall be accompanied by proof of notice of the application to~~:

(1) Proof of service of a copy of the application on:

~~(1)~~(A) The mayor of each municipality;

~~(2)~~(B) The county judge;

~~(3)~~(C) The chair of the county planning board, if any;

~~(4)~~(D) Any head of a governmental agency charged with the duty of protecting the environment or of planning land use, upon which the Arkansas Public Service Commission has by rule or order directed that service be made, in the area in which any portion of such facility is to be located, both as primarily and as alternatively proposed;

~~(5)~~(E) Each member of the General Assembly in whose district the facility or any alternative location listed in the application is to be located;

~~(6)~~(F) The office of the Governor; and

~~(7)~~(G) The director or other administrative head of the following state agencies or departments:

~~(A)~~(i) Division of Environmental Quality;

~~(B)~~(ii) Department of Health;

~~(C)~~(iii) Arkansas Economic Development Commission;

~~(D)~~(iv) Arkansas Department of Transportation;

~~(E)~~(v) Arkansas State Game and Fish Commission;

~~(F)~~(vi) Arkansas Natural Heritage Commission;

~~(G)~~(vii) Any state agency which may have the authority to assist in financing the applicant's facility;

~~(H)~~(viii) Any other state agency or department which manages or has jurisdiction over state-owned lands on which all or part of the proposed utility facility is to be or may be located;

~~(I)~~(ix) Department of Finance and Administration;

~~(J)~~(x) The office of the Attorney General; and

~~(K)~~(xi) Any other state agency or department designated by Arkansas Public Service Commission rule or order; and

(2) Proof that a copy of the application is available for public inspection at all public libraries in each county in which the proposed utility facility is to be or may be located.

~~(c)~~(b) The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed and a notice that interventions or limited appearances must be filed with the Arkansas Public Service Commission within thirty (30) days after the date set forth as the date of filing, unless good cause is shown pursuant to § 23-18-517.

~~(d)(1)~~(c)(1) Each application shall also be accompanied by proof that written notice specifying the date on or about which the application is to be filed and the date that interventions or limited appearances must be filed with the Arkansas Public Service Commission, unless good cause is shown pursuant to § 23-18-517, has been sent by certified mail to each owner of real property on the proposed route selected by the public utility on which a major utility facility is to be located or constructed.

(2) The written notice required by this subsection shall be directed to the address of the owner of the real property as it appears on

the records in the office of the county sheriff or county tax assessor for the mailing of statements for taxes as provided in § 26-35-705.

~~(e)(1)~~(d)(1) Each application shall also be accompanied by proof that public notice of the application was given to persons residing in municipalities and counties entitled to receive ~~notice~~ proof of service of the application under subsection ~~(b)~~(a)(1) of this section by the publication in a newspaper having substantial circulation in the municipalities or counties of:

(A) A summary of the application;

(B) A statement of the date on or about which it is to be filed; and

(C) A statement that intervention or limited appearances shall be filed with the Arkansas Public Service Commission within thirty (30) days after the date stated in the notice, unless good cause is shown under § 23-18-517.

(2)(A) For purposes of this subsection, an environmental impact statement submitted as an exhibit to the application need not be summarized, but the published notice shall include a statement that the impact statements are on file at the office of the Arkansas Public Service Commission and available for public inspection or are available electronically on the Arkansas Public Service Commission's website.

(B) The applicant shall also cause copies of the environmental impact statement to be furnished to at least one (1) of its local offices, if any, in the counties in which any portion of the major utility facilities are to be located, both as primarily or as alternatively proposed, to be there available for public inspection.

(C) The published notice under subdivision (d)(1) of this section shall contain a statement of the location of the local offices described in subdivision (d)(2)(B) of this section and the times the impact statements will be available for public inspection.

~~(f)~~(e) Inadvertent failure of service on or ~~notice~~ proof of service of the application under subsection ~~(b)~~(a)(1) of this section to any of the municipalities, counties, governmental agencies, or persons identified in subsections ~~(b) and (d)~~ (a) and (c) of this section may be cured pursuant to orders of the Arkansas Public Service Commission designed to afford such persons adequate notice to enable their effective participation in the

proceedings.

~~(g)~~(f) In addition, after filing, the Arkansas Public Service Commission may require the applicant to serve notice of the application or copies thereof, or both, upon such other persons and file proof thereof, as the Arkansas Public Service Commission may deem appropriate.

~~(h)~~(g) Where any personal service or notice is required in this section, the service may be made by any officer authorized by law to serve process, by personal delivery, or by certified mail.

SECTION 27. Arkansas Code § 23-18-516(a)(1), concerning hearings on applications or amendments, is amended to read as follows:

(a)(1) Upon receipt of an application complying with §§ 23-18-511 — 23-18-513 and § 23-18-532, the Arkansas Public Service Commission shall promptly fix a date for the commencement of a public hearing thereon, which date shall be not fewer than forty (40) days nor more than ~~ninety (90)~~ one hundred eighty (180) days after the receipt of the application, and shall conclude the proceedings as expeditiously as practicable.

SECTION 28. Arkansas Code § 23-18-517(a), concerning parties to certification proceedings, is amended to read as follows:

(a) The parties to a certification proceeding shall include:

(1) The applicant; ~~or~~

(2) Each municipality, county, and government agency or department or other person entitled to receive service of a copy of the application under § 23-18-513(a) if it has filed with the Arkansas Public Service Commission a notice of intervention as a party within thirty (30) days after service; or

(3) A person residing in a municipality or county that is entitled to receive service of a copy of the application under § 23-18-513(a) or any domestic nonprofit corporation formed in whole or in part to promote conservation or natural beauty, to promote energy conservation, to protect the environment, personal health, or other biological values, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located if the:

(A) Person or organization has an interest that may be directly affected by the commission's action;

(B) Interest is not adequately represented by other parties; and

(C) ~~A person as defined under § 23-1-101(8)~~ Person or corporation that has petitioned the commission for leave to intervene as a party within thirty (30) days after the date given in the public notice as the date of filing the application.

SECTION 29. Arkansas Code § 23-18-519(a)(3), concerning decisions of the Arkansas Public Service Commission and modifications of applications, is repealed.

~~(3)(A) If the commission determines that granting a certificate of environmental compatibility and public need is in the public interest, it shall enter an order granting a certificate of environmental compatibility and public need within six (6) months after the receipt of the application.~~

~~(B)(i) If the commission determines that granting a certificate of environmental compatibility and public need is not in the public interest, it shall enter an order.~~

~~(ii) An order entered under subdivision (a)(3)(B)(i) of this section shall discuss:~~

~~(a) The basis for the commission's findings; and~~

~~(b) Any evidence upon which the commission relied to reach that conclusion in its order.~~

~~(C)(i) If a public utility submits additional evidence demonstrating that the strategic investments in major utility facilities that are subject to this subchapter are reasonable, necessary, and in the public interest, the commission shall enter an order granting the certificate within thirty (30) days after the date of the public utility's filing unless the commission finds that the strategic investments subject to this subchapter are not reasonable, necessary, or in the public interest.~~

~~(ii) An order entered under subdivision (a)(3)(C)(i) of this section shall discuss:~~

~~(a) The basis for the commission's findings; and~~

~~(b) Any evidence or other information upon which the commission relied to reach that conclusion in its order.~~

~~(iii) The process outlined in subdivision (a)(3)(B) of this section and this subdivision (a)(3)(C) may continue until the commission finds that:~~

~~(a) The strategic investments subject to this subchapter are reasonable, necessary, and in the public interest;~~

~~(b) The public utility withdraws its application; or~~

~~(c) The public utility appeals the commission's decision under § 23-2-423.~~

SECTION 30. Arkansas Code § 23-18-521 is amended to read as follows:

23-18-521. Issuance of certificate — Effect.

(a) A certificate to construct and operate a major utility facility may be issued only under this subchapter ~~unless a certificate is not required under § 23-18-510(c) or § 23-18-510(e)~~.

(b)(1) A certificate issued under this subchapter to an applicant is in lieu of and exempts the applicant from the requirements of obtaining a certificate of convenience and necessity under § 23-3-201 et seq.

(2) A certificate issued under this subchapter entitles the applicant to a permit under § 23-3-501 et seq. without any further notice or hearing if the applicant has filed with the Arkansas Public Service Commission the consent or authorization required by § 23-3-504(7) and paid the damages stated in § 23-3-501 et seq.

~~(c) If the applicant is a corporation, before a certificate can be issued under § 23-18-519, a certified copy of the articles of incorporation or charter shall be on file with the commission.~~

SECTION 31. Arkansas Code Title 23, Chapter 18, Subchapter 5, is amended to add an additional section to read as follows:

23-18-531. Application for certificate — Commentary by state agencies — Deficiency letters.

(a)(1) Promptly after the filing of an application for a certificate of environmental compatibility and public need, the staff of the Arkansas Public Service Commission shall invite comments from all state agencies entitled to service under § 23-18-513 as to the adequacy of applicant's statements.

(2) The invitation to comment shall advise the state agencies that comments are required to be received within sixty (60) days of the date of mailing or delivery of the comments, unless an agency requests for cause a longer period for consideration.

(b)(1) Upon review of the comments, if any, if the staff of the commission shall determine that the applicant failed to include or adequately develop any relevant environmental or economic aspect of the facility, the commission shall issue a deficiency letter detailing all such specific deficiencies in the applicant's statements.

(2) The deficiency letter shall be prepared and served upon the applicant as promptly as possible and in no event later than twenty (20) days before the date set under § 23-18-516 for the public hearing.

(3) The applicant shall promptly respond to a deficiency letter, and the public hearing shall be deferred unless the applicant has responded to an initial deficiency letter from the commission.