

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

State of Arkansas      *As Engrossed: H3/13/15 H3/17/15 H3/19/15*  
90th General Assembly      **A Bill**  
Regular Session, 2015

HOUSE BILL 1655

By: Representative Collins

**For An Act To Be Entitled**

*AN ACT TO REFORM RATE MAKING OF PUBLIC UTILITIES; TO  
DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.*

**Subtitle**

*TO REFORM RATE MAKING OF PUBLIC  
UTILITIES; AND TO DECLARE AN EMERGENCY.*

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

*SECTION 1. Arkansas Code § 23-4-410, concerning the authority of the Arkansas Public Service Commission, is amended to add additional subsections to read as follows:*

*(c) The public utility or any party to a proceeding before the commission to consider an application for a general change in rates and charges may, according to the commission's rules and procedures, present evidence regarding a requested return on common equity in a filing, including without limitation:*

*(1) The basis for the requested return on common equity, including quantitative analysis based on widely accepted methodologies, current market data, qualitative discussion, and analysis of factors that influence the requested return on common equity;*

*(2) Evidence that the requested return on common equity is comparable to values that have recently been approved for public utilities that are delivering similar services with corresponding risks within this state and in other similar regulatory jurisdictions in the same general part of the country;*

*(3) Evidence of the financial, business, and other risks faced*



by the utility, including regulatory oversight, numbers and types of customers, rate mechanisms, cost allocation methods, rate levels, rate design, reliability, and quality of service, as compared to those faced by utilities delivering similar services within this state and in other similar regulatory jurisdictions in the same general part of the country; and

(4) Any other information, including without limitation:

(A) Macroeconomic data;

(B) Relevant commentary from ratings agencies and investment analysts;

(C) Independent analysis of utility industry trends;

(D) Customer impact; and

(E) Any other relevant information.

(d) If any evidence is presented as described in subsection (c) of this section, the commission shall discuss that evidence and demonstrate in its order that it considered the evidence in making its findings. The commission shall make its findings based on substantial evidence.

(e) The allowance for funds used during construction that will be accrued and capitalized and included as a component of the costs recoverable through rates approved by the commission shall be determined according to the requirements of the uniform system of accounts adopted by the commission in its rules. The rate of return on common equity to be used shall be the rate of return on common equity most recently approved by the commission for the utility.

(f) An electric cooperative corporation established under the Electric Cooperative Corporation Act, § 23-18-301 et seq., is not subject to subsections (c) and (d) of this section.

SECTION 2. Arkansas Code Title 23, Chapter 4, Subchapter 4, is amended to add an additional section to read as follows:

23-4-422. Cost allocation.

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

(2) In determining the rates for utility services and the cost allocation among all of a public utility's classes of customers, the

commission shall:

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

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

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

(b) Notwithstanding the commission's authority to otherwise determine and fix rates for all classes of customers, including allocating or assigning costs and designing rates, if the commission finds that it will be beneficial to economic development or the promotion of employment opportunities, and that will result in just and reasonable rates for all classes of customers, the commission shall determine rates and charges for utility services that:

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

(2)(A) For the retail jurisdiction rate classes, ensure that all electric utility production plant, production related costs, all nonfuel production-related costs, purchased capacity costs, and any energy costs incurred resulting from the electric utility's environmental compliance are classified as production demand costs.

(B) Ensure that production demand costs are allocated to each customer class pursuant to the average and excess method shown in Table 4-10B on page 51 of the 1992 National Association of Regulatory Utility Commissioners Manual, as it existed on January 1, 2015, using the average of the four (4) monthly coincident peaks for the months of June, July, August, and September for each class for the coincident peak referenced in Table 4-10B of the manual, as it existed on January 1, 2015, or any subsequent version of the manual to the extent it produces an equivalent result.

(C) Subdivision (b)(2)(B) of this section does not prescribe an allocation for wind production plant; and

(3)(A)(i) For purposes of allocation of natural gas distribution plant costs, including costs in distribution mains and related distribution plant expenses, among the state's retail jurisdiction rate classes, ensure that each natural public utility classifies all natural gas distribution plant costs as customer-related or capacity-related.

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

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

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

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

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

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

size.

(iii) The customer-related portion of natural gas distribution costs related to account numbers 377 through 387, as defined under the account numbering system in the Uniform System of Accounts prescribed for natural gas public utilities by the rules of the commission, shall be computed using a study that reflects the investments required to meter, regulate, and connect each class of customers to the natural gas utility's system.

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

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

(ii) As used in subdivision (b)(2)(C)(i) of this section, "peak day demand" means the computed quantity of gas that would be supplied to each customer class calculated using the coldest day in a recent thirty-year period for each gas utility.

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

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

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

(d) Unless the commission adjusts the rates under subsection (e) or subsection (f) of this section, the commission shall by order establish and design rates, allocate or assign costs to all classes of customers, and

regulate the rates for each class of customers of a public utility according to this section.

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

(1) It is in the public interest;

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

(3) Implementation of rates under subdivision (b)(2) and (b)(3)

of this section will result in rates that are not beneficial to economic development or the promotion of employment opportunities.

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

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

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

(i) The cost allocation provisions of this section shall apply to any pending application for a change in general rates and charges when this act becomes effective.

SECTION 3. Arkansas Code Title 23, Chapter 4, is amended to add an additional subchapter to read as follows:

Subchapter 12 — Formula Rate Review

23-4-1201. Title.

This subchapter shall be known and may be cited as the "Formula Rate Review Act".

23-4-1202. Findings and intent.

(a) The General Assembly finds that:

(1) Electricity and natural gas services are essential to the public health and safety of citizens of this state; and

(2) Affordable electricity and natural gas encourage economic activity within the state and benefit the state's industrial, commercial, and agricultural industries to increase the number of available jobs and to attract new business and industry to the state.

(b) The intent of this act is to establish a regulatory framework that implements rate reforms to provide just and reasonable rates to consumers in this state and enables public utilities in this state to provide reliable service while maintaining stable rates.

23-4-1203. Definitions.

As used in this subchapter:

(1)(A) "Earned return rate" means a public utility's return on common equity for a formula rate review test period that is based on the numbers or values of the formula rate review test period and calculated by dividing the weighted earned common equity rate by the common equity ratio percentage.

(B) As used in subdivision (1)(A) of this section, "weighted earned common equity rate" means the weighted formula rate review test period cost rate for common equity minus the operating income deficiency, or excess, divided by a public utility's rate base;

(2) "Formula rate review test period" means a test period as stated in § 23-4-406 or a projected year;

(3) "Historical year" means, when using a formula rate review test period containing projections, the twelve (12) consecutive months that precede the second and any subsequent formula rate review test period;

(4) "Projected year" means the twelve (12) months following the proposed effective date under § 23-4-1205 for the first formula rate review

filing and each subsequent consecutive twelve-month period; and

(5) "Target return rate" means a cost rate of common equity value as established by the Arkansas Public Service Commission in the commission's order addressing the public utility's most recent application for a general change in rates and charges.

23-4-1204. Formula rate review — Authorized.

(a) A formula rate review is authorized to provide an annual streamlined review of a public utility's rates to determine if adjustments are needed to comply with this subchapter.

(b) An electric cooperative corporation established under the Electric Cooperative Corporation Act, § 23-18-301 et seq., shall not be regulated by a formula rate review.

23-4-1205. Filing — Procedure.

(a)(1) A public utility filing an application for a general change or modification to its rates and charges under § 23-4-401 et seq., may as part of its application, file a notice with the Arkansas Public Service Commission that the public utility is electing to have its rates regulated under a formula rate review mechanism as authorized by this subchapter.

(2) The notice shall designate the formula rate review test period based upon either a projected year or a test period under § 23-4-406.

(b) Upon receipt of a notice as described in subdivision (a)(1) of this section, the commission shall:

(1) Regulate the rates of the public utility according to this subchapter; and

(2) Be required to approve a formula rate review mechanism utilizing the formula rate review test period designated by the public utility.

(c)(1) A public utility that has filed a notice of intent or has an application for a general change in rates and charges pending under § 23-4-401 et seq. that contains a notice of election to be regulated under a formula rate review when this subchapter becomes effective shall be regulated under this subchapter.

(2) A public utility shall not file for an initial formula rate review until at least one hundred eighty (180) days after rates have become

effective pursuant to the final order on the application for a general change in rates. A public utility that has filed a notice of intent or has an application for a general change in rates and charges pending under § 23-4-401 et seq. that contains a notice of election to be regulated under a formula rate review when this subchapter becomes effective may file for the initial formula rate review one hundred fifty (150) days after rates have become effective pursuant to the final order in the general rate case.

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

(d) An approved formula rate review mechanism shall require the public utility to file the information required by the commission under this subchapter not more than one hundred eighty (180) days before the date on which the rates determined by the formula rate review mechanism will go into effect for each year.

(e) An approved formula rate review mechanism shall require any party according to the commission's rules and procedures to file with the commission a statement of the errors or objections at least ninety (90) days before the date on which rates determined by the formula rate review mechanism will go into effect for each year.

(f) An approved formula rate review mechanism shall require the public utility to file with the commission any corrections or a rebuttal to the errors or objections raised by the parties at least seventy-five (75) days before the date on which rates determined by the formula rate review mechanism will go into effect for each year.

(g)(1) The commission shall conduct a hearing, unless waived by the parties, at least fifty (50) days before the date on which rates determined by the formula rate review mechanism will go into effect for each year.

(2) The commission shall issue a final order at least twenty (20) days before the date on which rates determined by the formula rate review mechanism will go into effect for each year.

(3)(A) If a final order is not issued at least twenty (20) days before the date on which rates determined by the formula rate review mechanism will go into effect for each year, the public utility may put the proposed formula rate rider changes into effect subject to refund.

(B) The commission may require reasonable security to assure the prompt payment of any refunds, including interest, that may be ordered.

23-4-1206. Utility formula rate review — Required information.

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

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

(c) Annual formula rate review filings shall be prepared consistent with the commission's order on the public utility's application for a general change in rates and charges.

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

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

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

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

(f) The public utility shall submit documentation fully supporting all calculations and adjustments as required by the rules of the commission.

(g) A public utility, or any other party to the proceeding subject to the commission's rules and procedures, may propose additional adjustments that are based on factors unique to the utility.

23-4-1207. Formula — Adjustment of customer rates.

(a) Customer rates shall be adjusted in a formula rate review

mechanism based on a comparison of the earned return rate to the target return rate.

(b) Adjustments of customer rates shall be calculated using the following formula:

(1) If the earned return rate is less than the target return rate minus five-tenths percent (0.5%), the formula rate review mechanism revenue level for the formula rate review test period shall be increased by an amount necessary to increase the earned return rate to the target return rate;

(2) If the earned return rate is greater than the target return rate plus five-tenths percent (0.5%), the formula rate review mechanism revenue level for the formula rate review test period shall be decreased by an amount necessary to decrease the earned return rate to the target return rate; or

(3) If the earned return rate is less than or equal to the target return rate plus five-tenths percent (0.5%), and greater than or equal to the target return rate minus five-tenths percent (0.5%), the formula rate review mechanism revenue level for the formula rate review test period shall not change or be adjusted.

(c) If a formula rate review test period utilizes projected data under § 23-4-406 or a projected year, rates shall be adjusted by the netting of historical year differences under § 23-4-1206.

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

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

(e) Only one (1) rate review adjustment shall occur during any period of three hundred sixty-five (365) days.

23-4-1208. Term — Formula rate review.

(a)(1) The term of any formula rate review approved by the Arkansas

Public Service Commission shall not exceed five (5) years from the date of the commission's final order on the application by the public utility for a general change in rates and charges.

(2) Upon a determination that it is in the public interest, the commission may extend the term by a period of no more than five (5) years beyond the initial term.

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

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

23-4-1209. Construction.

(a) This subchapter does not repeal any other provision in this chapter and is supplemental to other laws governing the regulation of public utility rates.

(b) This subchapter shall not prohibit the Arkansas Public Service Commission from exercising its powers under any other statute.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the costs that drive public utility rates are changing; that public utilities need to have procedures that permit their rates to change in response to those changing conditions; that there is a need to address the allocation of costs and design of rates; that there is a need to maintain stable rates and to mitigate the magnitude of future rate changes; and that affordable electricity and natural gas encourage economic activity within the state and benefit the state's industries to increase the number of available jobs and to attract new businesses and industries to the state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

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

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

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

*/s/Collins*