

State of Arkansas  
90th General Assembly  
Regular Session, 2015

# A Bill

SENATE BILL 392

By: Senator L. Chesterfield

## For An Act To Be Entitled

AN ACT TO PROVIDE ALTERNATIVE ELECTRICITY SERVICE TO THE CITIZENS OF ARKANSAS; TO AUTHORIZE THE INSTALLATION AND USE OF DISTRIBUTED GENERATION OF ELECTRICITY; TO PROVIDE FOR OVERSIGHT BY THE ARKANSAS PUBLIC SERVICE COMMISSION; AND FOR OTHER PURPOSES.

## Subtitle

TO AUTHORIZE THE INSTALLATION AND USE OF DISTRIBUTED GENERATION OF ELECTRICITY; AND TO PROVIDE FOR OVERSIGHT BY THE ARKANSAS PUBLIC SERVICE COMMISSION.

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

SECTION 1. Arkansas Code Title 23, Chapter 3, is amended to add an additional subchapter to read as follows:

### Subchapter 8 – Distributed Generation

#### 23-3-801. Definitions.

##### As used in this subchapter:

(1) "Avoided cost" means the incremental energy cost an electricity supplier avoids by receiving electricity from a customer that uses distributed generation rather than by purchasing the electricity from another party or generating the electricity itself;

(2) "Customer" means a person that:

(A) Receives electric service from an electricity supplier; and



(B) Is not billed a monthly demand charge for peak demand for electric kilowatts;

(3)(A) "Distributed generation" means the generation of electricity by equipment that is:

(i) Located on the customer's premises;

(ii) Owned, operated, leased, or otherwise used by the customer; and

(iii) Interconnected and operated in parallel with the electricity supplier's facilities.

(B) "Distributed generation" does not include an electric generator used exclusively for emergency purposes;

(4) "Electricity supplier" means a public utility, a local district rural electric membership corporation, or a municipally owned electric utility that furnishes retail electric service to the public;

(5) "Fixed charge" means a charge that reflects the fixed costs of the customer's electricity supplier, including without limitation:

(A) A fixed monthly charge;

(B) A basic service charge; and

(C) Other charges that are not derived from the volume of energy consumed by a customer;

(6)(A) "Fixed cost" means a cost that:

(i) Is incurred by an electricity supplier as part of its cost of service; and

(ii) Does not vary directly with the number of kilowatt hours sold or delivered.

(B) "Fixed cost" includes capital and operating costs;

(7) "Nonvolumetric rate design" means a flat monthly fee regardless of the volume of gas delivered; and

(8) "Subsidy" means a cost attributable to a customer that is allocated or assigned on a basis other than the cost of service to a different customer in the same customer class of service.

23-3-802. Nonvolumetric rate design.

(a) An electricity supplier may petition the Arkansas Public Service Commission to authorize rates and charges, including fixed charges, based on a nonvolumetric rate design.

(b) If the commission finds that the nonvolumetric rate design is based on principles of cost causation, the commission shall authorize the rates and charges.

23-3-803. Fixed charge – Distributed generation.

(a) Upon petition by an electricity supplier, the Arkansas Public Service Commission may authorize the electricity supplier to establish and impose a fixed charge to avoid, reduce, or eliminate a subsidy to customers of the electricity supplier that use distributed generation.

(b) A fixed charge authorized under this section applies only to a customer that places distributed generation equipment into service after December 31, 2014.

23-3-804. Tariff petition – Arkansas Public Service Commission approval.

(a) An electricity supplier may petition the Arkansas Public Service Commission to approve a tariff that provides a credit on a customer bill for electric service to a customer that:

- (1) Uses distributed generation; and
- (2) Delivers electricity to the electricity supplier.

(b) The commission shall approve a tariff under subsection (a) of this section if the commission finds that:

(1) The customer will be charged for all electricity that the customer consumes at the applicable rate schedule for sales to that customer class;

(2) The amount of the credit on the customer's bill equals the electricity supplier's avoided cost that is attributable to the electricity provided by the customer to the electricity supplier; and

(3) An unused portion of a credit issued to a customer during a billing cycle will carry forward and be applied against a charge billed to the customer during a subsequent billing cycle.

(c) A tariff approved under this section applies only to a customer that places distributed generation equipment into service after December 31, 2014.

23-3-805. Tariff petition – Proceedings.

A petition under this subchapter:

(1) Shall be in the manner and form prescribed by the Arkansas Public Service Commission; and

(2) May be submitted to the commission as part of:

(A) A general basic rate proceeding;

(B) A proceeding limited to examining cost allocation and rate design methods proposed to set rates for an electricity supplier that do not change the total retail revenues previously authorized for the electricity supplier by the commission; or

(C) A proceeding concerning net metering to revise a tariff approved by the commission.

23-3-806. Subsidy prohibited.

The Arkansas Public Service Commission shall not approve a tariff or authorize rates and charges that include a subsidy for a customer that uses distributed generation.

23-3-807. Applicability.

(a) This subchapter does not affect the following:

(1) An agreement entered into or a tariff approved by the Arkansas Public Service Commission before May 14, 2015, for the purchase of electricity from a customer that uses distributed generation; or

(2) An agreement entered into before May 14, 2015, to provide a credit on a customer's bill for the intermittent delivery of excess electricity from the customer that uses distributed generation to an electricity supplier under a net metering tariff.

(b) Notwithstanding subsection (a) of this section or § 23-3-805, an electricity supplier that is a party to an agreement or a tariff described in subdivision (a)(1) of this section may petition the commission to renew, modify, or supplant the agreement or tariff.

23-3-808. Electricity supplier authority.

An electricity supplier may offer distributed generation and other renewable energy services to customers.

23-3-809. Standards compliance.

(a) A customer that uses distributed generation shall comply with applicable safety, performance, and reliability standards established by the following:

- (1) The Arkansas Public Service Commission;
- (2) An electricity supplier, subject to approval by the commission;
- (3) The National Electric Code;
- (4) The National Electrical Safety Code;
- (5) The Institute of Electrical and Electronics Engineers;
- (6) Underwriters Laboratories;
- (7) The Federal Energy Regulatory Commission; and
- (8) Local regulatory authorities.

(b) An electricity supplier and a customer that uses distributed generation shall comply with applicable interconnection rules and standards established by the following:

- (1) The commission; and
- (2) An electricity supplier, subject to approval by the commission.

#### 23-3-810. Customer rights.

(a) Regarding the installation, ownership, and leasing of distributed generation equipment, a customer that uses distributed generation has the right to know:

- (1) That the Attorney General is authorized to enforce this section, including without limitation by receiving complaints concerning the installation, ownership, or leasing of distributed generation equipment;
- (2) The expected amount of electricity that will be produced by the distributed generation equipment that the customer is purchasing or leasing;
- (3) The costs associated with installing distributed generation equipment, including without limitation taxes for which the customer is liable;
- (4) The value of federal, state, or local tax credits, electricity supplier rate credits, and other incentives or rebates that the customer may receive or, if applicable, assign to the provider of distributed generation;

(5) The rate at which the customer will be credited for electricity produced by the customer's distributed generation equipment and delivered to an electricity supplier;

(6) Information regarding lease payments and interest rates over the life of a lease for distributed generation equipment;

(7) Whether a provider of distributed generation insures the distributed generation equipment against damage or loss and, if applicable, circumstances under which the provider does not insure against or otherwise cover damage to or loss of the distributed generation equipment;

(8) The responsibilities of a provider of distributed generation with respect to installing or removing distributed generation equipment, including during the life of a lease; and

(9) Which party to a lease for distributed generation equipment is responsible for the balance of the lease if before the end of the lease:

(A) The premises on which the distributed generation equipment is located is sold; or

(B) The customer dies.

(b) The Attorney General, in consultation with the Arkansas Public Service Commission, may enforce this subchapter.

23-3-811. Regulation of distributed generation equipment – Municipality, county, or town.

(a) A municipality, county, or town shall not enact or enforce an ordinance, a resolution, or an order that prohibits the construction or operation of distributed generation equipment.

(b) If a municipality, county, or town adopts an ordinance, resolution, or order involving the construction, placement, size, or operation of distributed generation equipment based on health, safety, or aesthetic conditions, the ordinance, resolution, or order shall:

(1) Reasonably accommodate distributed generation; and

(2) Represent the minimal regulation practicable to accomplish the legitimate purpose of the municipality, county, or town.

(c) This subchapter does not prohibit a municipality, county, or town from taking action to protect or preserve a historic, a historical, or an architectural district that is established by the municipality, county, or town or under state or federal law.