

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

State of Arkansas  
91st General Assembly  
Regular Session, 2017

As Engrossed: S2/13/17 H2/17/17  
**A Bill**

SENATE BILL 265

By: Senator Caldwell

*By: Representatives Vaught, M. Gray, Baltz, Barker, Beck, Bentley, Branscum, Cavenaugh, Cozart, Davis, D. Douglas, Eubanks, Fortner, M.J. Gray, Hillman, Lemons, Lynch, Maddox, Richmond, Sturch, Watson*

### **For An Act To Be Entitled**

AN ACT TO PROMOTE ECONOMIC DEVELOPMENT AND NATURAL  
GAS INFRASTRUCTURE EXPANSION; AND FOR OTHER PURPOSES.

### **Subtitle**

TO PROMOTE ECONOMIC DEVELOPMENT AND  
NATURAL GAS INFRASTRUCTURE EXPANSION.

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

SECTION 1. Arkansas Code Title 23, Chapter 3, Subchapter 6, is amended to read as follows:

#### Subchapter 6 – Gas Utilities – Extension Projects

23-3-601. Purpose – Petition for certificate.

(a) The General Assembly finds that the proportion of the state's population that is without access to service by a ~~natural~~ gas utility exceeds the proportion of the population that is without access to telephone or electric utility service. Therefore, the General Assembly declares it to be the intent and purpose of this subchapter to increase only the availability of natural gas through the procedures provided in this subchapter and not to make the procedures available to electric or telephone utilities.

(b) A gas utility may at any time petition the Arkansas Public Service Commission for a certificate of extension project. By its petition, the gas utility requests commission authorization to commence an extension project,



to expend funds on the extension project, and to concurrently seek commission approval of changes in rates and surcharges sufficient to recover, at the time the plant goes into service, the excess expenditures arising out of the ~~certificated~~ extension projects that have been granted certificates. A petition for a certificate shall provide information about the proposed extension project, including, without limitation, the following:

(1) An estimate of the cost of the extension project broken down into at least labor, materials, and overhead;

(2) A schedule of estimated completion dates;

(3) A brief description of the physical nature of the facilities, including pipe diameter and length of the extension in feet or miles;

(4) Estimated sales volumes, estimated number and types of customers, growth rates, and expected revenues; ~~and~~

(5) A calculation showing the amount of excess expenditures the gas utility expects to incur;

(6) A detailed description of the economic benefit to the gas utility and the gas utility's existing ratepayers; and

(7) An estimate of:

(A) The surcharge for each class of customer consistent with the most recent determination by the commission in its order addressing the gas utility's most recent application for a general change or modification in its rates and charges; or

(B) The increase in rates for each class of customer if the investment is to be recovered by the gas utility under a formula rate review mechanism pursuant to the Formula Rate Review Act, § 23-4-1201 et seq.

#### 23-3-602. Definitions.

As used in this subchapter, ~~unless the context otherwise requires:~~

(1) "Certificate of extension project" or "certificate" means the Arkansas Public Service Commission order authorizing a gas utility seeking the order to undertake an extension project. The certificate shall be issued contemporaneously with the commission order approving the imposition of rates and surcharges sufficient to recover the excess expenditures arising out of those extension projects that have been ~~certificated~~ granted certificates and completed pursuant to this subchapter;

(2) "Commission" means the Arkansas Public Service Commission;

~~(3) "Cost of service recovery" means the method by which the commission computes the change in rates necessary for the gas utility to recover the cost of that portion of the excess expenditures not recovered through the surcharge. Traditional cost of service principles shall be followed in adjusting rates when the cost of service recovery method is used to recover the cost of excess expenditures. The allocation of class responsibility for payment of the excess expenditures under the cost of service recovery method shall be in accordance with the most recent cost of service study approved for the applicant gas utility;~~

~~(4)~~(3) "Excess expenditures" means the difference between:

(A) Expenditures made by a gas utility for extensions of service to areas not served by a gas utility;

(B) The sum of the investment allowable under a gas utility's extension policy, plus amounts, if any initially available from other applicable sources, which include without limitation funds from:

(i) The Arkansas Economic Development Council or its successor;

(ii) Industrial development bonds, municipal bonds, city bonds, or improvement district bonds;

(iii) Special funds which may be created by particular commission orders for individual gas utilities in rate cases or other proceedings; and

(iv) Customer-provided contributions in aid of construction;

~~(5)~~(4) "Extension project" means any extension proposed by a gas utility ~~which~~ that is intended to serve areas of Arkansas not served by any gas utility or within the range of the extension policy of any gas utility, which will result in excess expenditures if constructed, and for which the gas utility seeks authorization from the commission to begin, together with the authorization to change its rates and surcharges to recover the excess expenditures as provided in this subchapter;

~~(6)~~(5) "Gas utility" means any natural gas public utility jurisdictional to the ~~Arkansas Public Service Commission~~ commission; and

~~(7)~~(6)(A) "Surcharge" means a charge ~~which~~ that the commission may authorize a gas utility to impose on ~~those~~ its customers ~~who directly~~

~~benefit from extensions funded by excess expenditures. The surcharge may recover the entire excess expenditure or a portion thereof, as the commission shall order to recover, at the time the gas utility plant goes into service, the excess expenditures arising out of the extension projects that have been granted certificates.~~

(B) The amount of the surcharge to be added to the gas utility's rate under subdivision (6)(A) of this section shall be calculated under traditional cost-of-service principles so as to produce the annual revenues equal to the additional annualized revenue requirement to which the gas utility would be entitled had the excess expenditures been included in the gas utility's most recent rate determination by the commission.

23-3-603. Grant of certificate generally.

(a) The Arkansas Public Service Commission shall grant a certificate if it finds that the proposed extension project is of economic benefit to the gas utility and its existing ratepayers and is in the public interest. Within the body of the order, the commission shall apportion the future recovery of the cost of the excess expenditures between the surcharge and cost-of-service recovery, in whatever proportions or percentages the commission finds reasonable, from zero to one hundred percent (0—100%), inclusive.

(b) Once the certificate has been granted by the commission, including the approval of the amount and allocation of rates and surcharges, the gas utility may begin construction and may expend funds on the certificated extension project that has been granted a certificate.

23-3-604. Rates and tariffs.

(a)(1) Once a certificated extension an extension project that has been granted a certificate is placed into service and is used and useful, the gas utility may collect the rates and tariffs which have been previously approved by the Arkansas Public Service Commission and which reflect the apportionment of recovery of the cost of the excess expenditures between the surcharge and cost-of-service recovery methods as ordered by the commission excess expenditures through a rate or surcharge approved by the Arkansas Public Service Commission. The tariff and rate filing made at the time of the certificate application shall include estimated excess expenditures upon

which the commission may grant the certificate.

(2) The commission may subsequently modify the previously approved rates ~~and tariffs~~ in any reasonable manner if the actual total costs and excess expenditures differ significantly from the estimated total costs and excess expenditures.

(3) ~~In the event that~~ If the actual total costs and excess expenditures significantly exceed the estimated costs and excess expenditures, and the difference is caused by imprudence or other unsatisfactory causes, the commission may disallow recovery of a portion of the actual excess expenditures in the approved rates.

(b) ~~The surcharge shall be recovered only from those customers or accounts that receive service as a direct result of the certificated extension. The surcharge shall recover its proportion of the capitalized excess expenditures, plus carrying costs. Surcharged amounts shall be treated for ratemaking purposes as customer contributions in aid of construction and shall not be added to the rate base upon which a return is earned~~ The rate or surcharge implemented under this section remains effective until the implementation of new rate schedules in connection with the next general rate filing of the gas utility wherein such extension project investments can be included in the gas utility's base rate schedules.

(c) ~~Those costs and expenses to be recovered under the cost of service recovery method shall be recovered in the same manner as they would had they been elements of a general rate application. Traditional cost of service principles shall be utilized in adjusting rates to recover the cost of excess expenditures recovered under cost of service recovery. Allocation of class responsibility for recovery of the cost of the excess expenditures shall be in accordance with the gas utility's most recently approved cost of service study or in accordance with a reasonable cost of service approach which the commission shall find acceptable~~ The rate or surcharge for each class of customer shall be determined consistent with the most recent determination by the commission in its order addressing the gas utility's most recent application for a general change or modification in its rates and charges.

(d) ~~Amounts recoverable under the cost of service recovery method which remain outstanding shall be rolled into the gas utility's next general rate application. Recovery of these outstanding expenditures shall be made within the rate approved as a result of the application for the certificate~~

~~and corresponding approval of rates.~~

23-3-605. Conditions, limitations on grant of certificates.

Certificates shall be granted under this subchapter ~~pursuant to~~ under the following provisions and conditions:

(1)~~(A)~~ Only proposed extension projects ~~shall be~~ are eligible for recovery of the cost of excess expenditures under this subchapter.

~~(B)~~ Proposed extension projects are those for which neither actual construction activity has begun nor expenditures made, other than for planning the extension project, at the time the petition for the certificate is initially filed with the Arkansas Public Service Commission;

(2) Certificates shall be granted under this subchapter only for proposed extension projects ~~which~~ that will serve areas not served by any gas utility at the time of the filing of the petition for the certificate;

(3) Certificates shall be granted under this subchapter only if the commission determines the extension project is of economic benefit to the gas utility and its existing ratepayers and is in the public interest;

~~(4)~~ Certificates shall not be granted under this subchapter to recover ~~costs~~ excess expenditures incurred in replacing existing pipelines, equipment, or plants, unless the replacement is necessary for adequate gas supply for the proposed extension project;

~~(4)(5)~~ ~~Where~~ When the commission has granted more than one (1) certificate to a gas utility, the commission may determine prospectively the sequence in which the gas utility shall commence work on pending extension projects based on whatever reasonable criteria ~~it shall develop~~ the commission develops. However, once construction has begun on any given extension project, the commission determination shall not serve to postpone or defer construction; ~~and~~

~~(5)(6)(A)~~ There ~~shall be~~ is a limitation on the total annual dollar recovery of excess expenditures to be recovered ~~pursuant to~~ under § 23-3-604 through rates or surcharges ~~resulting from proceedings other than general rate cases.~~ The limitation shall be imposed regardless of the number of certificates granted to, or projects to be completed by, a gas utility. The limitation ~~shall be~~ is a dollar amount ~~which equals one half of one percent~~ that equals five-tenths of one percent (0.5%) of the ~~difference between the gas utility's recorded gross plant at original cost less recorded~~

accumulated depreciation reserves gas utility's gross plant at original cost used in determining the gas utility's most recent application for a general change in rates and charges.

(B) "Gross As used in this subdivision (6), "gross plant" shall does not include construction work in progress or portions of eertificated extension projects that have been granted certificates and are currently receiving cost of service recovery treatment included in the gas utility's base rates; and

(7) With respect to any extension project funded under this subchapter to provide service to a project developer that also receives funds or incentives provided by the Arkansas Economic Development Commission, any agreement between a project developer and the Arkansas Economic Development Commission shall include a provision that any funds provided by a surcharge to recover the cost of an extension project under this subchapter shall be recovered from any project developer that failed to take natural gas service from such an extension project and refunded to ratepayers as directed by the Arkansas Public Service Commission.

23-3-606. Petitions not considered rate applications.

Petitions for a certificate ~~pursuant to~~ under this subchapter are not general rate applications.

23-3-607. Denial of certificate.

Denial of a certificate under this subchapter ~~shall~~ does not preclude recovery of the cost of excess expenditures under rates or surcharges, or both, approved pursuant to a gas utility's general rate case or other proceeding in which the Arkansas Public Service Commission finds recovery of the cost of excess expenditures through rates or surcharges appropriate.

*/s/Caldwell*