

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

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

SENATE BILL 537

By: Senators Teague, U. Lindsey, Maloch, Rice
By: Representatives Watson, Beck, Dalby, Lundstrum, Maddox

For An Act To Be Entitled

AN ACT TO ESTABLISH THE ELECTRIC RATEPAYER PROTECTION
ACT OF 2017; TO DECLARE AN EMERGENCY; AND FOR OTHER
PURPOSES.

Subtitle

TO ESTABLISH THE ELECTRIC RATEPAYER
PROTECTION ACT OF 2017; AND TO DECLARE AN
EMERGENCY.

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

SECTION 1. Arkansas Code Title 23, Chapter 18, is amended to add an additional subchapter to read as follows:

Subchapter 11 – Electric Ratepayer Protection Act of 2017

23-18-1101. Title.

This subchapter shall be known and may be cited as the “Electric Ratepayer Protection Act of 2017”.

23-18-1102. Legislative findings and intent.

(a) The General Assembly finds that:

(1) There is at present and will continue to be a risk of increased costs being imposed on the ratepayers of electric public utility companies by municipal electric utility systems and merchant transmission providers that acquire the electric transmission facilities of municipal electric utility systems without the proper prior review and approval of the



Arkansas Public Service Commission;

(2) Municipal electric utility systems and merchant transmission providers that acquire the electric transmission facilities of municipal electric utility systems have the present ability, without prior review and approval of the Arkansas Public Service Commission, to unilaterally transfer functional control of those electric transmission facilities to a regional transmission organization and thereby transfer a substantial portion of the associated annual transmission revenue requirement to the ratepayers of electric public utility companies located within the same regional transmission organization zone in which the municipal electric utility system or merchant transmission provider is located;

(3) These transactions could lead to the inclusion of the associated annual transmission revenue requirement of the electric transmission facilities in the open access transmission tariff of a regional transmission organization and thereby be recovered in part from the ratepayers of electric public utility companies;

(4) The Arkansas Public Service Commission should be empowered with the statutory authority to conduct an appropriate evidentiary review of these transactions before the transactions are consummated in order to ensure that the transactions will not impose unreasonable rate increases on the ratepayers of electric public utility companies;

(5) The Federal Energy Regulatory Commission has exclusive jurisdiction over the open access transmission tariff of a regional transmission organization, therefore this subchapter shall not be interpreted as a grant of jurisdiction or authority to the Arkansas Public Service Commission over the open access transmission tariff of a regional transmission organization or over the regional transmission organization's ability under its open access transmission tariff to determine the proper methodology or allocation of electric transmission facility costs to be recovered through operation of the open access transmission tariff; and

(6) It is essential to the public interest to minimize any adverse effect upon the ratepayers of electric public utility companies as a result of such transactions.

(b) The General Assembly declares that:

(1) It is the purpose of this subchapter to provide the Arkansas Public Service Commission with the authority to review all transactions by or

between municipal electric utility systems and merchant transmission providers, as described in § 23-18-1104(c)(2), before the transactions may be consummated; and

(2) It is essential to the public interest that the Arkansas Public Service Commission be granted the authority to conduct a formal public evidentiary proceeding to determine whether such transactions are in the overall public interest and to reject or approve such transactions based upon substantial evidence of record.

23-18-1103. Definitions.

As used in this subchapter:

(1) "Annual transmission revenue requirement" means the total annual costs of electric transmission facilities owned by a municipal electric utility system or a merchant transmission provider to be included and recovered through the zonal cost recovery allocation as defined and established under a regional transmission organization's open access transmission tariff;

(2) "Electric transmission facilities" means an interconnected group of electric power lines and associated equipment for the movement or transfer of electric energy between points of supply and points at which it is transformed for delivery to customers or is delivered to other electric systems;

(3) "Merchant transmission provider" means a person or entity that owns or operates facilities used for the transmission of electric energy and whose rates or charges are not subject to the jurisdiction of the Arkansas Public Service Commission;

(4) "Municipality" means a city, a town, an improvement district other than a county, and any other quasi-public corporation that is created or organized under the Arkansas Constitution or laws of the State of Arkansas;

(5) "Municipal electric utility system" means an electric utility system owned or operated by a municipality, including all equipment and facilities used for the generation, transmission, or distribution of electric energy at retail or wholesale;

(6) "Open access transmission tariff" means a tariff of a regional transmission organization that is mandated and approved by the

Federal Energy Regulatory Commission that is designed to allow others to use a utility's transmission and distribution facilities to move bulk power from one point to another on a nondiscriminatory basis for a cost-based fee; and

(7) "Regional transmission organization" means an entity approved by the Federal Energy Regulatory Commission to plan and operate facilities for the transmission of electric energy within a designated region.

23-18-1104. Authority of Arkansas Public Service Commission.

(a) The Arkansas Public Service Commission shall review transactions subject to this subchapter and described in subdivision (c)(2) of this section.

(b) After a full review of an application of a municipality or a merchant transmission provider and after a public hearing, unless the public hearing is waived by all parties, the commission shall enter its final written ruling based upon the evidentiary record established in the application proceeding.

(c)(1) The commission shall not approve the proposed transaction unless it determines, based upon substantial evidence of record, that the proposed transaction will serve the overall public interest, taking into consideration any costs, benefits, and financial impacts of the proposed transaction.

(2) A transaction under this section includes a municipality operating a municipal electric utility system or a merchant transmission provider that seeks to:

(1) Transfer functional control of electric transmission facilities to a regional transmission organization;

(2) Sell or otherwise convey electric transmission facilities to a merchant transmission provider; or

(3) Construct new electric transmission facilities for or on behalf of the municipality.

(d) Absent the formal approval of the commission, the municipality or merchant transmission provider shall not consummate the proposed transaction.

23-18-1105. Applicability.

(a) This subchapter applies to a municipality operating a municipal

electric utility system or a merchant transmission provider that seeks to:

- (1) Transfer functional control of electric transmission facilities to a regional transmission organization;
- (2) Sell or otherwise convey electric transmission facilities to a merchant transmission provider; or
- (3) Construct new electric transmission facilities for or on behalf of the municipality.

(b) Before executing a transaction described in subsection (a) of this section, the municipality or the merchant transmission provider, or both, shall submit to the jurisdiction and authority of the Arkansas Public Service Commission for the limited purpose of applying for and securing the review and final written approval of the commission before executing the transaction.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that there is a need for consistent application of utility regulation in this state; that the Arkansas Public Service Commission requires additional statutory authority as provided in this act in order to protect the ratepayers of electric public utilities in this state; and that this act is immediately necessary because the Arkansas Public Service Commission needs to be empowered to protect electric utility ratepayers. 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.