

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

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A Bill

SENATE BILL 145

By: Senators D. Wallace, Hester

For An Act To Be Entitled

AN ACT TO AMEND CERTAIN DEFINITIONS UNDER THE
ARKANSAS RENEWABLE ENERGY DEVELOPMENT ACT OF 2001; TO
AMEND THE LAW CONCERNING THE AUTHORITY OF THE
ARKANSAS PUBLIC SERVICE COMMISSION; AND FOR OTHER
PURPOSES.

Subtitle

TO AMEND CERTAIN DEFINITIONS UNDER THE
ARKANSAS RENEWABLE ENERGY DEVELOPMENT ACT
OF 2001; AND TO AMEND THE LAW CONCERNING
THE AUTHORITY OF THE ARKANSAS PUBLIC
SERVICE COMMISSION.

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

*SECTION 1. Arkansas Code § 23-18-603 is amended to read as follows:
23-18-603. Definitions.*

As used in this subchapter:

(1) "Avoided cost" means:

(A) For an electric utility other than a municipal utility, the costs to an electric utility of electric energy or capacity, or both, that, but for the generation from the net metering facility or facilities, the utility would generate itself or purchase from another source, as determined by a commission consistent with § 23-3-701 et seq.; or

(B) For a municipal utility, the definition provided by the governing body of the municipal utility;

~~(1)~~(2) "Commission" means the Arkansas Public Service Commission



or other appropriate governing body for an electric utility as defined in subdivision ~~(2)~~ (3) of this section;

~~(2)~~(3) "Electric utility" means a public or investor-owned utility, an electric cooperative, ~~municipal utility~~, or any private power supplier or marketer that is engaged in the business of supplying electric energy to the ultimate consumer or any customer classes within the state;

(4)(A) "Municipal utility" means a utility system owned or operated by a municipality that provides electricity.

(B) "Municipal utility" includes without limitation a:

(i) Utility system managed or operated by a nonprofit corporation under § 14-199-701 et seq.; and

(ii) Utility system owned or operated by a municipality or by a consolidated utility district under the General Consolidated Public Utility System Improvement District Law, § 14-217-101 et seq.;

~~(3)~~(5) "Net excess generation" means the amount of electricity as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate that a net-metering customer has fed back to the electric utility that exceeds the amount of electricity as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate used by that customer during the applicable period determined by a commission;

~~(4)~~(6) "Net metering" means measuring the difference ~~between~~ in amount of electricity as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate supplied by an electric utility to a net metering customer and the electricity generated by a net-metering customer and fed back to the electric utility over the applicable ~~billing~~ period determined by a commission;

~~(5)~~(7) "Net-metering customer" means ~~an owner of a net-metering facility;~~ a customer of an electric utility that:

(A) Is an owner of a net-metering facility;

(B) Leases a net-metering facility subject to the following limitations:

(i) A lease shall not permit the sale of electric energy measured in kilowatt hours or electric capacity measured in kilowatts between the lessor and lessee; and

(ii) A lease shall not include any charge per

kilowatt hour or any charge per kilowatt; or

(C) Is a government entity or other entity that is exempt from state and federal income tax, and that, for the sole purpose of this subchapter, obtains electric energy from a net metering facility under a service contract qualifying for safe-harbor protection as provided under 26 U.S.C. § 7701(e)(3)(A), as in effect on the effective date of this act;

~~(6)~~(8) "Net-metering facility" means a facility for the production of ~~electrical~~ electric energy that:

(A) Uses solar, wind, hydroelectric, geothermal, or biomass resources to generate electricity, including, but not limited to, fuel cells and micro turbines that generate electricity if the fuel source is entirely derived from renewable resources;

(B) Has a generating capacity of not more than:

(i) The greater of twenty-five kilowatts (25 kW) or one hundred percent (100%) of the net-metering customer's highest monthly usage in the previous twelve (12) months for residential use; ~~or~~

(ii) ~~Three hundred kilowatts (300 kW)~~ For customers of electric utilities, one thousand kilowatts (1,000 kW) for any other use other than residential use unless otherwise allowed by a commission under § 23-18-604(b)(5) 23-18-604; or

(iii) For customers of a municipal utility, the limits established by the governing body of the municipal utility under § 23-18-605;

(C) Is located in Arkansas;

(D) Can operate in parallel with an electric utility's existing transmission and distribution facilities; ~~and~~

(E) Is intended primarily to offset part or all of the net-metering customer requirements for electricity; and

(F)(i) May include an energy storage device that is configured to receive electric energy solely from a net metering facility.

(ii) The capacity of an energy storage device shall not be used to calculate the capacity limits listed in subdivision (8)(B) of this section if the energy storage device is configured to receive electric energy solely from a net metering facility;

(9) "Quantifiable benefits" means the:

(A) Reasonably demonstrated costs that:

(i) Are related to the provision of electric service and based on the utility's most recent cost-of-service study filed with the commission; and

(ii) Will be avoided by the utility by the use of net metering;

(B) Monetary value provided to a utility by the use of net metering as specified by a market mechanism, if any, of the regional transmission organization of which the electric utility is a member; and

(C) Monetary value provided to a utility by the use of net metering as specified by a market mechanism, if any, that measures utility distribution system benefits; and

~~(7)~~(10) "Renewable energy credit" means the environmental, economic, and social attributes of a unit of electricity, such as a megawatt hour, generated from renewable fuels that can be sold or traded separately.

SECTION 2. Arkansas Code § 23-18-604 is amended to read as follows:

23-18-604. Commission authority – Definition.

(a) An electric utility shall allow net-metering facilities to be interconnected using a standard meter capable of registering the flow of electricity in two (2) directions.

(b) Following notice and opportunity for public comment, a commission:

(1) ~~Shall establish appropriate rates, terms, and conditions for net-metering contracts, including:~~ net metering;

~~(A)(i) A requirement that the rates charged to each net-metering customer recover the electric utility's entire cost of providing service to each net-metering customer within each of the electric utility's class of customers.~~

~~(ii) The electric utility's entire cost of providing service to each net-metering customer within each of the electric utility's class of customers under subdivision (b)(1)(A)(i) of this section:~~

~~(a) Includes without limitation any quantifiable additional cost associated with the net-metering customer's use of the electric utility's capacity, distribution system, or transmission system and any effect on the electric utility's reliability; and~~

~~(b) Is net of any quantifiable benefits associated with the interconnection with and providing service to the net-~~

~~metering customer, including without limitation benefits to the electric utility's capacity, reliability, distribution system, or transmission system; and~~

(2) For net-metering customers who receive service under a rate that does not include a demand component, may:

(A) Require an electric utility to credit the net-metering customer with any accumulated net excess generation as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate in the next applicable billing period and base the bill of the net-metering customer on the net amount of electricity as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate that the net-metering customer has received from or fed back to the electric utility during the billing period;

(B) Take the following actions if those actions are in the public interest and doing so will not result in an unreasonable allocation of or increase in costs to other utility customers:

(i) Separately meter the electric energy, measured in kilowatt hours, supplied by the electric utility to the net-metering customer and the electric energy, measured in kilowatt hours, that is generated by the net-metering customer's net-metering facility that is fed back to the electric utility at any time during the applicable billing period;

(ii) Apply the commission-approved retail rate to all kilowatt hours that are supplied by the electric utility to a net-metering customer by the electric utility during the applicable period determined by a commission;

(iii) Apply the avoided cost of the electric utility plus any additional sum determined under subdivision (b)(2)(B)(iv) of this section to all kilowatt hours supplied to the electric utility by a net-metering customer, during the period determined by a commission, which shall be credited to the total bill of the net-metering customer in a dollar value; and

(iv) The additional sum added to the avoided cost of the electric utility may be applied after the demonstration of quantifiable benefits by the net-metering customer and shall not exceed forty percent (40%) of the avoided cost of the electric utility;

(C) Authorize an electric utility to assess a net-metering

customer that is being charged a rate that does not include a demand component a per-kilowatt-hour fee or charge to recover the quantifiable direct demand-related distribution cost of the electric utility for providing electricity to the net-metering customer that is not:

(i) Avoided as a result of the generation of electricity by the net-metering facility; and

(ii) Offset by quantifiable benefits; or

(D) Take other actions that are in the public interest and do not result in an unreasonable allocation of costs to other utility customers.

~~(B)(3)~~ ~~A requirement~~ Shall require that net-metering equipment be installed to accurately measure the electricity:

~~(i)(A)~~ Supplied by the electric utility to each net-metering customer; and

~~(ii)(B)~~ Generated by each net-metering customer that is fed back to the electric utility over the applicable billing period;

~~(2)(4)~~ May authorize an electric utility to assess a net-metering customer a greater fee or charge of any type, if the electric utility's direct costs of interconnection and administration of net metering outweigh the distribution system, environmental, and public policy benefits of allocating the costs among the electric utility's entire customer base;

~~(3)(5)~~ ~~Shall~~ For net-metering customers who receive service under a rate that does not include a demand component, shall require an electric utility to credit a net-metering customer with the amount of any accumulated net excess generation as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate in the next applicable billing period;

(6) Except as provided in subdivision (b)(9) of this section, for net-metering customers who receive service under a rate that includes a demand component, shall require an electric utility to credit the net-metering customer with any accumulated net excess generation in the next applicable billing period and base the bill of the net-metering customer on the net amount of electricity that the net-metering customer has received from or fed back to the electric utility during the billing period;

~~(4)(7)~~ May expand the scope of net metering to include additional facilities that do not use a renewable energy resource for a fuel

if so doing results in distribution system, environmental, or public policy benefits;

~~(5) May increase the generating capacity limits for individual net-metering facilities if doing so results in distribution system, environmental, or public policy benefits;~~

~~(6)(8) Shall provide that:~~

(A)(i) The amount of the net excess generation credit as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate remaining in a net-metering customer's account at the close of a billing cycle shall not expire and shall be carried forward to subsequent billing cycles indefinitely.

(ii) However, for net excess generation credits older than twenty-four (24) months, a net-metering customer may elect to have the electric utility purchase the net excess generation credits in the net-metering customer's account at the electric utility's ~~estimated annual average avoided cost, rate for wholesale energy plus any additional sum determined under this section,~~ if the sum to be paid to the net-metering customer is at least one hundred dollars (\$100).

(iii) An electric utility shall purchase at the electric utility's ~~estimated annual average avoided cost, rate for wholesale energy plus any additional sum determined under this section,~~ any net excess generation credit remaining in a net-metering customer's account when the net-metering customer:

(a) Ceases to be a customer of the electric utility;

(b) Ceases to operate the net-metering facility; or

(c) Transfers the net-metering facility to another person; and

(B) A renewable energy credit created as the result of electricity supplied by a net-metering customer is the property of the net-metering customer that generated the renewable energy credit; and

~~(7)(9) May allow a net-metering facility with a generating capacity that exceeds three hundred kilowatts (300 kW) the limits provided under § 23-18-603(8)(ii) or § 23-18-603(8)(iii) of up to twenty thousand kilowatts (20,000 kW) if:~~

(A) For any net-metering facility with a generating capacity of less than five thousand kilowatts (5,000 kW):

(i) The net-metering facility is not for residential use;

(ii) Increasing the generating capacity limits for individual net-metering facilities results in distribution system, environmental, or public policy benefits, or allowing an increased generating capacity for the net-metering facility would increase the state's ability to attract businesses to Arkansas; and

(iii) Allowing an increased generating capacity for the net-metering facility is in the public interest; or

(B) For any net-metering facility with a generating capacity of greater than five thousand kilowatts (5,000 kW):

(i) The net-metering facility is not for residential use;

(ii) Increasing the generating capacity limits for individual net-metering facilities results in distribution system, environmental, or public policy benefits, or allowing an increased generating capacity for the net-metering facility would increase the ability of the state to attract business to Arkansas;

(iii) Allowing an increased generating capacity for the net-metering facility does not result in an unreasonable allocation of costs to other utility customers; and

(iv) Allowing an increased generating capacity for the net-metering facility is in the public interest; and

~~(A) The net-metering facility is not for residential use; and~~

~~(B) Allowing an increased generating capacity for the net-metering facility would increase the state's ability to attract businesses to Arkansas.~~

(10)(A) Shall allow the net-metering facility of a net-metering customer who has submitted a standard interconnection agreement, as referred to in the rules of the Arkansas Public Service Commission, to the electric utility after the effective date of this act but before December 31, 2022, to remain under the rate structure in effect when the net-metering contract was signed, for a period not to exceed twenty (20) years, subject to approval by

a commission.

(B) A net-metering facility under subdivision (b)(10)(A) of this section remains subject to any other change or modification in rates, terms, and conditions.

~~(c)(1) As used in this section, “avoided costs”:~~

~~(A) For the Arkansas Public Service Commission, means the same as defined in § 23-3-702; and~~

~~(B) For a municipal utility, is defined by the governing body of the municipal utility.~~

~~(2) Avoided costs shall be determined under § 23-3-704.~~

~~(d)(1) Except as provided in subdivision ~~(d)(2)(c)(2)~~ of this section, an electric utility shall separately meter, bill, and credit each net-metering facility even if one (1) or more net-metering facilities are under common ownership.~~

~~(2)(A)(i) At the net-metering customer’s discretion, an electric utility may apply net-metering credits from a net-metering facility to the bill for another meter location if the net-metering facility and the separate meter location are under common ownership within a single electric utility’s service area.~~

(ii) Subdivision (c)(2)(A)(i) of this section does not apply if more than two (2) customers that are governmental entities or other entities that are exempt from state and federal income tax defined under § 23-18-603(7)(C) co-locate at a site hosting the net-metering facility.

~~(B) Net excess generation shall be credited first to the net-metering customer’s meter to which the net-metering facility is physically attached.~~

~~(C) After applying net excess generation under subdivision ~~(d)(2)(B)(c)(2)(B)~~ of this section and upon request of the net-metering customer under subdivision ~~(d)(2)(A)(c)(2)(A)~~ of this section, any remaining net excess generation shall be credited to one (1) or more of the net-metering customer’s meters in the rank order provided by the net-metering customer.~~

(d) A person who acts as a lessor or service provider as described in § 23-18-603(7)(B) or (C) shall not be considered a public utility as defined in § 23-1-101(9).

SECTION 3. Arkansas Code Title 23, Chapter 18, Subchapter 6 is amended to add an additional section to read as follows:

23-18-605. Municipal utilities.

(a) A municipal utility shall allow a net-metering facilities to be interconnected according to the ordinances, rules or regulations established by the governing body of the municipal utility.

(b) The governing body of municipal utility may elect to follow procedures under § 23-18-604 or may adopt ordinances, rules or regulations establishing the rates, terms and conditions allowing the interconnection of net-metering facilities, including generation facilities and energy storage devices whether owned or leased by a customer or operated by a third-party on behalf of a customer.

(c) The governing body of a municipal utility may limit the generating capacity of a net-metering facility to less than twenty-five kilowatts (25 kW) for residential customers or three hundred kilowatts (300 kW) for nonresidential customers only after the governing body finds that the capacity limit is necessary for reliable utility operations or the public health, safety, or welfare.

(d) The governing body of a municipal utility shall not establish a rate or fee that reduces the value of electric energy from a net-metering facility to below the avoided cost of the municipal utility.

(e) For customers who receive service under a rate that includes a demand component, the governing body of the municipal utility shall require a municipal utility to credit a net-metering customer with any accumulated net excess generation in the next applicable billing period and base the bill of the customer on the net amount of electricity that the net-metering customer has received from or fed back to the municipal utility during the billing period.

/s/D. Wallace