

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

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As Engrossed: S3/9/21 S4/7/21
A Bill

SENATE BILL 489

By: Senator B. Davis
By: Representative Maddox

For An Act To Be Entitled

AN ACT TO AMEND THE FORMULA RATE REVIEW ACT; TO
DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE FORMULA RATE REVIEW ACT; AND
TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code § 23-4-422 is amended to read as follows:
23-4-422. Cost allocation – Definition.

(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 it 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~~ January 1, 2021, 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) For the retail jurisdiction rate classes, ensure that:

(A) All electric utility production plant, production-related costs, 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; and

(B)(i) 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 Electric Utility Cost Allocation Manual, as it existed on ~~January 1, 2015~~ January 1, 2021, 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~~ 1992 National Association of Regulatory Utility Commissioners Electric Utility Cost Allocation Manual, as it existed on ~~January 1, 2015~~ January 1, 2021, or any subsequent version of the ~~manual~~ National Association of Regulatory Utility Commissioners Electric Utility Cost Allocation Manual to the extent it produces an equivalent result.

(ii) Subdivision (b)(2)(B)(i) of this section does not prescribe an allocation for a 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 gas 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, and 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 (b)(3)(A).

(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~~ January 1, 2021, or any subsequent version of the ~~manual~~ Gas Distribution Rate Design 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)(3)(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)(1) 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 except as limited under § 23-4-1205(c)(3)(B), § 23-4-1207(d), and § 23-4-1208(a)(2)(B) and (C).

(2) For an electric utility whose class of customers with the highest level of consumption per customer that has rates that include a demand component, and any successors to such a class, as they existed on January 1, 2021, has an annual usage for the class as a whole in excess of five million megawatt hours (5,000,000 MWh), and if the electric utility has a formula rate review approved and in effect under § 23-4-1208(a)(1) on or before March 15, 2021:

(A) The commission shall determine rates and charges for utility services in accord with § 23-4-422(b)(1) and (2) without regard to any findings described in § 23-4-422; and

(B) The commission shall not adjust the rates under subsection (e) or subsection (f) of this section, except as provided in § 23-4-1207(d) and § 23-4-1208(a)(2)(B) and (C).

(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 subdivisions (b)(2) and (3) of this section if the commission finds:

(1) It is in the public interest;

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

(3) Implementation of rates under subdivisions (b)(2) and (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) Effective March 27, 2015, the cost allocation provisions of this section shall apply to any pending application for a change in general rates and charges.

SECTION 2. Arkansas Code § 23-4-1205(c), concerning the procedure for a rate change under the Formula Rate Review Act, is amended to read as follows:

(c)(1)(A) A An electric or natural gas 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 effective March 27, 2015, shall be regulated under this subchapter.

(B)(i) A water or sewer 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 effective March 27, 2015, may request that the water or sewer public utility be regulated under this subchapter.

(ii) Upon a public interest determination, the commission may authorize the water or sewer public utility's request under subdivision (c)(1)(B)(i) of this section to be regulated under this subchapter.

(2)(A) 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.

(B) 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 effective March 27, 2015, 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)(A) 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.

(B) As part of an extension of the initial five-year term of a formula rate review under § 23-4-1207(d) and § 23-4-1208(a)(3), for an electric utility if the electric utility's class of customers with the highest level of consumption per customer that has rates that include a demand component, any successors to such a class, as they existed on January 1, 2021, has an annual usage for the class as a whole in excess of five million megawatt hours (5,000,000 MWh), the commission shall, and for all other utilities the commission may approve changes to the rate design within an individual customer class consistent with § 23-4-422(b)(1).

SECTION 3. Arkansas Code § 23-4-1206 is amended to read as follows:
23-4-1206. 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)(1) Annual formula rate review filings shall be prepared consistent with the ~~commission's~~ Arkansas Public Service Commission's order on the public utility's application for a general change in rates and charges.

(2) In the case of a formula rate review test period that uses a test period based on a projected year, an electing public utility may support any portion of the electing public utility's projected data through the use of information that relies on historical averages.

(d) Any costs disallowed by the ~~commission~~ Arkansas Public Service 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.

(4)(A) When calculating the adjustment to net any differences under subdivision (e)(1) of this section, the Arkansas Public Service Commission shall include the actual historical year change in revenue for a historical year, which shall be determined as follows:

(i) For the purpose of including all of the elements of the change of revenue in calculating an adjustment to net any differences under subdivision (e)(1) of this section, the Arkansas Public Service Commission shall ensure that the revenue received for the historical year shall be composed of:

(a) Prior formula rate review test period changes in revenue;

(b) Netting revenue from a prior formula rate review test period; and

(c) In order to isolate the change in revenue for the corresponding prior projected year being netted, prior projected year revenue for the year being netted; and

(ii) The Arkansas Public Service Commission shall calculate an adjustment to net any differences under subdivision (e)(1) of this section by calculating the differences between the prior formula rate review test period changes in revenue and the prior projected year revenue for the year being netted.

(B) If the prior formula rate review test period change in revenue being netted was limited by § 23-4-1207(d)(2), the Arkansas Public Service Commission shall ensure that the revenue recovered shall be either:

(i) Applied first to any revenue amounts remaining from the prior approved formula rate review test periods specified in subdivision (e)(4)(A) of this section, second to the netting adjustment specified in subdivision (e)(4)(A) of this section, and last to the prior

projected year revenue for the year being netted specified in subdivision (e)(4)(A) of this section; or

(ii) Proportioned by:

(a) Calculating the sum of:

(1) The revenue adjustment amount determined under § 23-4-1207(b); and

(2) The netting adjustment determined under subdivision (e)(2) of this section and this subdivision (e)(4);

(b) Calculating the percentage of the sum represented by:

(1) The revenue adjustment amount determined under § 23-4-1207(b); and

(2) The netting adjustment determined under subdivision (e)(2) of this section and this subdivision (e)(4); and

(c) Applying the percentages calculated in subdivision (e)(4)(B)(ii)(b) of this section to the actual historical year change in revenue for that same year.

(C)(i) For the initial term of a formula rate review mechanism approved and in effect on or before March 15, 2021, a public utility may choose to apply either subdivision (e)(4)(B)(i) or subdivision (e)(4)(B)(ii) of this section for the term of an approved formula rate review approved under § 23-4-1208(a)(1).

(ii) The Arkansas Public Service Commission shall authorize the public utility to use the chosen methodology.

(iii) Except as provided in subdivisions (e)(4)(D) and (E) of this section, the authorized methodology shall remain in effect.

(D) During the final year of the initial five-year term of any formula rate review mechanism approved and in effect before March 15, 2021, that uses a test period based upon a projected year, the public utility shall follow subdivision (e)(4)(B)(ii) of this section.

(E)(i) During any five-year extension term of a formula rate review mechanism that uses a test period based upon a projected year, the public utility shall propose, and the Arkansas Public Service Commission shall authorize, a public utility to follow subdivision (e)(4)(B)(ii) of this section for the five-year extension of the term of the formula rate review mechanism.

(ii) For any formula rate review mechanism that uses a test period based upon a projected year and has an initial term that commences after January 1, 2021, the public utility shall follow subdivision (e)(4)(B)(ii) of this section for the initial five-year term of the formula rate review mechanism.

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

(g)(1) A Except as provided in subdivision (g)(4) of this section and § 23-4-1208(a)(2)(A)(ii) and (5), a public utility or any other party to the proceeding subject to the ~~commission's~~ Arkansas Public Service Commission's rules and procedures may propose additional adjustments that are based on factors unique to the public utility.

(2) The Arkansas Public Service Commission shall not make any adjustments to the rates that are approved in the application for a general change in rates and charges during the formula rate review term except for those made under § 23-4-1205(c)(3)(B).

(3) If a public utility has designated its formula rate review test period as based on a projected year under § 23-4-1205(a)(2), the public utility shall be allowed to recover its allowance for funds used during construction that is determined according to the uniform system of accounts adopted by the Arkansas Public Service Commission and any applicable accounting guidance issued by the Federal Energy Regulatory Commission and conforms with generally accepted accounting principles, through rates developed using a projected year.

(4) Unless the Arkansas Public Service Commission finds that it is in the public interest and makes specific findings in support, the Arkansas Public Service Commission shall not approve any adjustments or changes to the formula rate review filings that are inconsistent with the findings in the Arkansas Public Service Commission's order on the public utility's application for a general change in rates or charges, including a review of all of the components of a public utility's books and records, including the balance sheet and income statement accounts as were included in the findings in the Arkansas Public Service Commission's order on the public utility's application for a general change in rates or charges, and shall continue to treat those items in a manner consistent with the findings in the

Arkansas Public Service Commission's order on the public utility's most recent application for a general change in rates or charges, except that an adjustment shall not be approved under this subsection that is inconsistent with other provisions of this chapter.

SECTION 4. Arkansas Code § 23-4-1207(d), concerning the formula for adjustments under the Formula Rate Review Act, is amended to read as follows:

(d)(1)(A) 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.

(B) As part of an extension of the five-year term of a formula rate review under § 23-4-1208(a)(3), for an electric utility if the electric utility's class of customers with the highest level of consumption per customer that has rates that include a demand component, and any successors to such a class, as they existed on January 1, 2021, has an annual usage for the class as a whole in excess of five million megawatt hours (5,000,000 MWh), the commission shall, and for all other utilities the commission may, adjust the cost allocation, with respect to the total change in the formula rate review mechanism revenue level under subdivision (d)(1)(A) of this section, to each applicable rate schedule consistent with § 23-4-422(b)(2) and § 23-4-422(d)(2) and using the public utility's most recent cost of service that was submitted under the terms of the public utility's formula rate review mechanism.

(C) The public utility shall file the resulting rate schedules as part of any formula rate review compliance filing.

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

SECTION 5. Arkansas Code § 23-4-1208 is amended to read as follows:
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)(A)(i) Upon a determination that it is in the public interest, a public utility may request and the commission may extend the term of the formula rate review mechanism by a period of no more than five (5) years beyond the initial term.

(ii) Except as provided in subdivision (a)(2)(A)(iii) of this section, as part of granting any extension of the initial term of a formula rate mechanism, the public utility may propose and the commission may make the following adjustments, consistent with this subchapter and other applicable statutory provisions for a public utility or any other party to a proceeding subject to the commission's jurisdiction that may be proposed, and the commission may approve:

(a) Reasonable and necessary revisions to the formula rate plan mechanism proposed by the parties that are necessary to ensure that the mechanism is consistent with the public interest but that do not materially change the provisions of the formula rate plan mechanism; and

(b) An increase or decrease to the utility's authorized return on equity by no more than ten (10) basis points based upon consideration of § 23-4-410(c)-(e), including making any required findings.

(iii) For an electric utility if the electric utility's class of customers with the highest level of consumption per customer that has rates that include a demand component, and any successors to such a class, as they existed on January 1, 2021, has an annual usage for the class as a whole in excess of five million megawatt hours (5,000,000 MWh):

(a) An electric utility may request, and the commission shall approve, an extension of the term of the formula rate review mechanism by a period of five (5) years beyond the initial five-year term, provided the request is made on or before March 15, 2021; and

(b) Any requests for an extension of the initial term of a formula rate plan mechanism made after March 15, 2021, shall be subject to subdivision (a)(2)(A)(i) of this section.

(B) As part of any extension of the initial term of a formula rate review, for an electric utility if the electric utility's class of customers with the highest level of consumption per customer that has

rates that include a demand component, and any successors to such a class, as they existed on January 1, 2021, has an annual usage for the class as a whole in excess of five million megawatt hours (5,000,000 MWh), the commission shall adjust the cost allocation of any adjustment with respect to the total change in the formula rate review mechanism revenue level under § 23-4-1207(d) to each applicable rate schedule consistent with § 23-4-422(b)(2) and § 23-4-422(d)(2) using the public utility's most recent cost of service that was submitted under the terms of the public utility's formula rate review mechanism, and the public utility shall file with the commission the resulting rate schedules as part of any formula rate review compliance filing.

(C) As part of any extension of the initial term of a formula rate review mechanism, for an electric utility if the electric utility's class of customers with the highest level of consumption per customer that has rates that include a demand component, and any successors to such a class, as they existed on January 1, 2021, has an annual usage for the class as a whole in excess of five million megawatt hours (5,000,000 MWh), the commission shall approve changes to the rate design within an individual customer class under § 23-4-1205(c)(3)(B) and subject to § 23-4-422(b)(1) using the public utility's most recent cost of service that was submitted under the terms of the public utility formula rate review mechanism, and the public utility shall file with the commission the resulting rate schedules as part of any formula rate review compliance filing.

(3) During the five-year term of an extension of any formula rate review mechanism with an initial five-year term approved before March 15, 2021, for an electric utility if the electric utility's class of customers with the highest level of consumption per customer that has rates that include a demand component, and any successors to such a class, as they existed on January 1, 2021, has an annual usage for the class as a whole in excess of five million megawatt hours (5,000,000 MWh):

(A)(i) If the commission as part of its order in the public utility's most recent application for a general change in rates and charges under § 23-4-401 et seq. adjusted the cost allocation to each applicable rate schedule under the then-applicable provisions of § 23-4-422, then the commission shall:

(a) Use a public utility's most recent cost of service that was submitted under the terms of the public utility's formula rate review mechanism;

(b) Adjust the revenues recoverable from each class of customers to implement the unadjusted cost allocation in an equal annual adjustment over the five-year term of an extension; and

(c) This subdivision (a)(3)(A) shall be used to adjust the amounts under § 23-4-1207(d)(1).

(ii) The commission shall not make any other adjustments to the amounts under § 23-4-1207(d);

(B) For a public utility's class of customers with the highest level of consumption per customer that has rates with a demand component, any decrease in the costs allocated to that class of customers under subdivision (a)(3)(A) of this section shall serve to lower the maximum amount of the revenue increase for that class under § 23-4-1207(d)(2);

(C) For a public utility's classes of customers other than the class of customers with the highest level of consumption per customer that has rates with a demand component, any increase in the costs allocated to those classes of customers as well as any amounts that lower the maximum revenue increase for any class of customers under subdivision (a)(3)(B) of this section shall be included in the adjustment of customer rates for those classes of customers subject to § 23-4-1207(d)(2);

(D) For a public utility's nonresidential classes of customers that have rates with a demand component other than the class of customers with the highest level of consumption per customer that has rates with a demand component, the public utility may establish and the commission shall approve a maximum level of consumption or demand to be eligible for service as part of those classes that is lower than the minimum level of consumption or demand to be eligible for the class of customers with the highest level of consumption per customer that has rates with a demand component; and

(E) If the commission as part of its order in the public utility's most recent application for a general change in rates and charges under § 23-4-401 et seq. adjusted the rate design for the class of customers with the highest level of consumption per customer that has rates with a demand component under the then-applicable provisions of § 23-4-422, then:

(i) The commission shall approve changes to the rate design within an individual customer class under § 23-4-1205(c)(3)(B) subject to § 23-4-422(b)(1) using the utility's most recent cost of service that was submitted under the terms of its formula rate review mechanism;

(ii) The commission shall modify the rate design changes required under § 23-4-422(b)(1), § 23-4-1205(c)(3)(B), and this subdivision (a)(3), as described in this subdivision (a)(3)(E); and

(iii) The commission shall adjust the rate design to the class of customers with the highest level of consumption per customer, which has rates with a demand component in an equal annual adjustment over the first three (3) years of the five-year term of an extension, and the public utility shall file the resulting rate schedules annually as part of any formula rate review compliance filing until the adjustment in this subdivision (a)(3)(E)(iii) is fully implemented.

(4) During the five-year term of an extension, for an electric public utility with a formula rate review mechanism that uses a test period based on a projected year with an initial five-year term and that was approved and in effect by the commission before March 15, 2021, for an electric utility if the electric utility's class of customers with the highest level of consumption per customer that has rates that include a demand component, and any successors to such a class, as they existed on January 1, 2021, has an annual usage for the class as a whole in excess of five million megawatt hours (5,000,000 MWh):

(A) The debt-to-equity ratio, for the purpose of setting rates, shall be fixed at a public utility's actual debt-to-equity ratio reflected in the commission order issued on December 11, 2020, addressing the annual formula rate review filing during the final year of the initial five-year term;

(B) If the commission imputes a level of short-term debt for ratemaking purposes, the amount, stated as a percentage, shall not exceed the amount included in the capital structure reflected in the commission order issued on December 11, 2020, addressing the annual formula rate review filing during the final year of the initial five-year term;

((C) The target return rate in effect during the five-year term of the formula rate review mechanism shall be set equal to an amount that is ten (10) basis points lower than the target return rate in effect

during the initial five-year term of the formula rate review mechanism;

(D) All other capital structure components, for the purpose of setting rates as well as all other components of a public utility's books and records, including the balance sheet and income statement accounts, shall be determined consistent with § 23-4-1206(g); and

(E) If the commission imputes any amount for any liabilities that are reflected in the capital structure for ratemaking purposes, it shall not include any amount stated as a percentage that exceeds the amount stated as a percentage included in the capital structure reflected in the commission order issued on December 11, 2020, addressing the annual formula rate review filing during the final year of the initial five-year term.

(5) During the five-year term of an extension, for an electric public utility with a formula rate review mechanism that uses a test period based on a projected year with an initial five-year term and that was approved and in effect by the commission before March 15, 2021, for an electric utility if the electric utility's class of customers with the highest level of consumption per customer that has rates that include a demand component, and any successors to such a class, as they existed on January 1, 2021, has an annual usage for the class as a whole in excess of five million megawatt hours (5,000,000 MWh), to the extent practicable, the public utility shall do the following with respect to providing support for its annual formula rate review evaluation reports during the five-year term of the extension:

(A)(i) The public utility shall support the purpose for and level of its projected year investments or expenses with those projections based primarily upon historical averages and making specific adjustments to those amounts instead of basing those projections primarily on the public utility's corporate budget.

(ii) The public utility shall use its four-year average historical plant balances for enumerated blanket funding projects associated with capital investment that are mandated by law or regulation, customer-driven, or necessary to maintain the reliability of the electric grid as the baseline for the investments going forward, and to complete this, the public utility may categorize investments according to the public utility's primary objective, including mandated work, preapproved projects,

storm work, and reliability work instead of using the public utility's corporate budget to determine the amount included in the projected year.

(iii) For any projects that fall outside the recurring enumerated categories that are based on the historical averaging, the public utility shall separately identify, to the extent practicable, each project and support the project as a specific adjustment to the projected year amounts, similar to the presentation of an adjustment made during an application for a general change or modification in rates and charges, and to complete this, the public utility may determine that projects should be grouped together when the projects contain a combination of proposed investments associated with both baseline reliability and load stability projects, such as pole line and circuit inspection programs, and other reliability efforts that the public utility plans to undertake in the projected year;

(B) The public utility shall use the four-year historical averages described in subdivision (a)(5)(A)(ii) of this section, except that:

(i) The public utility shall adjust the historical averages upward or downward for specific capital projects and anticipated cost increases or decreases that the utility reasonably expects are likely to occur within the projected year and for which the utility provides additional support consistent with other filing support thresholds that the commission applied to the utility's formula rate review mechanism during its initial five-year term; and

(ii) Expenses related to capital investments that the utility has already explained shall not require separate support, including depreciation and property taxes;

(C)(i) The support for the projected year, described in subdivisions (a)(5)(A) and (B) of this section, shall be applied to the transmission and generation functional areas to the extent deemed practicable by the public utility.

(ii) If not practicable, the public utility shall use reasonable efforts to establish a similar framework to present capital investment;

(D) The public utility shall use reasonable efforts to develop a similar methodology as described in subdivision (a)(4) of this section and this subdivision (a)(5) for projected year expenses; and

(E) Not less than forty-five (45) days before the public utility's annual evaluation report filing:

(i) The public utility shall make available to the other eligible parties in the formula rate review proceeding information regarding the public utility's construction projects and purchases that closed to plant during the historical year; and

(ii) To the extent reasonably practicable, the public utility shall provide an overview of its planned distribution projects describing the public utility's projected year planned distribution unadjusted investment and expenses.

(6) Subdivisions (a)(4) and (5) of this section are subject to the applicable accounting and tax requirements, including the normalization rules of the Internal Revenue Service as in effect on January 1, 2021, and generally acceptable accounting principles.

~~(3)~~(7) 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)(1) 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).

(2)(A) A public utility may file an application for a change in rates and charges under § 23-4-401 et seq. at any time during an extension of the term of a formula rate review mechanism.

(B) If the public utility, during the five-year term of an extension, for an electric public utility with a formula rate review mechanism that uses a test period based on a projected year with an initial five-year term that was approved and in effect by the commission before March 15, 2021, for an electric utility whose largest class of customers with the highest level of consumption per customer that has rates that include a demand component, and any successors to such a class, as they existed on January 1, 2021, has an annual usage for the class as a whole in excess of five million megawatt hours (5,000,000 MWh), does not file an application for a change in general rates and charges under § 23-4-401 et seq. under

subdivision (b)(2)(A) of this section before the final year of an extension term, the electric utility shall do so during the final year of the extension of the term of a formula rate review mechanism.

(3) In any application for a change in general rates and charges filed during or at the conclusion of the initial term or any extension of the term of a formula rate review mechanism that uses a test period based upon a projected year:

(A) A public utility's prior designation of a formula rate review test period based upon a projected year under § 23-4-1205(a)(2) shall not affect the public utility's right to designate a test period to justify new rates under § 23-4-406;

(B) A public utility's formula rate review test period based upon a projected year under § 23-4-1205(a)(2) may include, at the public utility's discretion, all or part of the same historical periods or projected periods as those included in a test period to justify new rates under § 23-4-406; and

(C) An application described in this subdivision (b)(3) shall not limit subdivision (b)(1) of this section.

SECTION 6. DO NOT CODIFY. Retroactivity. This act applies to any formula rate review approved and in effect under the Formula Rate Review Act, § 23-4-1201 et seq., on or before March 15, 2021.

SECTION 7. DO NOT CODIFY. Applicability. This act applies to any formula rate review approved and in effect under the Formula Rate Review Act, § 23-4-1201 et seq., on or before March 15, 2021.

SECTION 8. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that investments by public utilities that provide utility service in Arkansas are required to provide reliable service at reasonable rates, but the costs that drive public utility rates are changing; that public utilities need to have procedures that permit the rates to change in response to those changing conditions that affect costs and address the allocation of costs and design of rates; and that this act is immediately necessary to maintain stable rates and to mitigate the magnitude of future rate changes by public utilities by clarification of the

regulatory framework to ease the investment procedure for public utilities. 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/B. Davis