

## **Title 14. Local Government**

### **Chapter I. Arkansas Natural Resources Commission, Department of Agriculture**

#### **Subchapter A. Generally**

#### **Part 2. Oversight of Retail Water Providers**

##### **Subpart 1. Generally**

###### **14 CAR § 2-101. Purpose.**

(a) The purpose of this part is to:

(1) Implement Arkansas Code § 14-234-801 et seq.;

(2) Provide oversight of retail water providers to promote efficiency in service and stability in fiscal management;

(3) Provide training and education to governing bodies of retail water providers; and

(4) Provide training of local, state, and federal leaders on the issues surrounding provider:

- (A) Personnel;
- (B) Finances;
- (C) Compliance; and
- (D) Environmental factors.

(b) This part shall be read in conjunction with Arkansas Code § 14-234-801 et seq.

**Authority.** Arkansas Code § 14-234-806.

###### **14 CAR § 2-102. Definitions.**

The following definitions are supplemental to the definitions in Arkansas Code § 14-234-801 et seq.:

(1) "Annualized revenue requirement" means the projected revenue if the recommended increase, as well as all previous recommended increases, is in effect for the full twelve-month period;

- (2) "Commission" means the Arkansas Natural Resources Commission;
- (3) "Debt service coverage ratio" means net operating income divided by total debt service;
- (4) "Department" means the Department of Agriculture, including the Natural Resources Division thereof;
- (5) "Future capital expenses" means the design and construction of new and replacement infrastructure, including any associated labor and fees;
- (6) "Net operating income" means earnings before interest, tax, depreciation, and amortization less capital expenditures;
- (7) "Nonoperating revenue" means revenue derived from sources other than water use charges;
- (8) "Provider board" as used herein shall have the definition provided in Arkansas Code § 14-234-801(b)(3);
- (9) "System" means:
- (A) For a provider that provides water service only, the provider's water system;
  - (B) For a provider that provides water service and sewer service, but where the water system and the sewer system are not operated as a joint and integrated undertaking (i.e., when a separate audit is prepared for water and for sewer), the provider's water system; and
  - (C) For a provider that provides water service and sewer service, and the water facilities are operated as a joint and integrated undertaking (i.e., when water and sewer are combined in a single audit), the provider's joint and integrated water and sewer system; and
- (10) "Total debt service" means current debt obligations, including but not limited to any interest, principal, sinking fund, and lease payments due in a given year.

**Authority.** Arkansas Code § 14-234-806.

**14 CAR § 2-103. Refurbishment and replacement account.**

(a) Providers may designate existing depreciation or replacement accounts as the refurbishment and replacement account required by Arkansas Code § 14-234-802(e), so long as the amount deposited therein complies with the provisions of Arkansas Code § 14-234-802(e).

(b) The calculation of the amount required to be deposited into a refurbishment and replacement account pursuant to this part and Arkansas Code § 14-234-802(e) shall be based on the gross operating revenues of a system.

(c) Utilization of funds from the refurbishment and replacement account must be approved by the provider board prior to its use.

**Authority.** Arkansas Code § 14-234-806.

**14 CAR § 2-104. Rate studies for retail water providers.**

(a) Retail water providers shall obtain rate studies pursuant to the requirements in Arkansas Code § 14-234-802.

(b)(1) Rate studies shall be based on the guidelines of the American Water Works Association and the Water Environment Federation.

(2) The rate studies shall include:

(A) Reports containing the following information for the current year and projections for the next five (5) years:

(i) A comprehensive cost analysis, including:

(a) Operations and maintenance (O&M) expenses;

(b) Financing expenses, including but not limited to debt service payments, bond issuance costs, and commercial paper fees, if applicable;

(c) Any required cash reserves unavailable to pay for expenses, including but not limited to the annual refurbishment and replacement account deposit requirement as set out in Arkansas Code § 14-234-802(e);

(d) Depreciation expenses;

(e) Future capital expenses;

(f) Expenses required for an annual audit or agreed-upon

procedures and compilation report;

(g) Expenses required for rate studies required under Arkansas Code § 14-234-802; and

(h) Any other expenses not accounted for in subdivisions (b)(2)(A)(i)(a) – (g) of this section;

(ii) A comprehensive revenue earnings analysis, including:

(a) Available cash balance;

(b) Nonrate revenue; and

(c) Rate revenue without recommended increases;

(iii) For the five (5) projected years, recommended rate increases and the projected additional revenue derived therefrom;

(iv) Debt service coverage ratios;

(v) The number of days that the available cash balance could cover O&M expenses without additional revenue; and

(vi) Annualized revenue requirement;

(B) The provider's asset management plan, including:

(i) Inventory of essential assets and for each essential asset, without limitation, the following information:

(a) Asset type;

(b) Annual maintenance costs;

(c) Year installed;

(d) Vendor-specified useful life, if available;

(e) Anticipated date of replacement;

(f) Installation or replacement cost estimate; and

(g) Projected consequence of failure; and

(ii) The provider's plan for replacement of essential assets;

(C) Proposed changes in rates should be based on achieving and maintaining a debt service coverage ratio of 1.1 or higher;

(D) An explanation of the provider's chosen rate design;

(E) Recommendations for any changes to the provider's operations,

including a plan on how the changes should be implemented; and

(F) Certification by the entity performing the rate study that such study complies with:

(i) Arkansas Code § 14-234-801 et seq.; and

(ii) This part.

(3) Rate studies shall be provided to the Department of Agriculture at the time they are provided to Arkansas Legislative Audit under Arkansas Code § 14-234-802(i).

(4) The Arkansas Natural Resources Commission may request further information necessary to determine a provider's fiscal status, and providers shall cooperate with the commission's requests.

(5) The commission may waive any one (1) or more requirement in subdivision (b)(2) of this section, upon written request.

(c) Rate studies for providers that operate a joint and integrated water and sewer system shall analyze the total system.

(d) Rate studies performed shall be an objective and unbiased review of the provider's fiscal status.

(e)(1) The commission will maintain a list of approved entities to conduct rate studies as required under Arkansas Code § 14-234-802(f)(1).

(2) The commission may remove an approved entity from its list of approved entities if it determines that an entity violated Arkansas law or commission rules in performing a rate study.

**Authority.** Arkansas Code § 14-234-806.

**\_\_\_ 14 CAR § 2-105. Determinations of fiscal distress.**

(a) A provider will be in fiscal distress if the provider fails to:

(1) Obtain a rate study as required;

(2) Implement the rates contained in the completed rate study within the time requirements provided under Arkansas Code § 14-234-802(c)(2)(B)(ii) – (iv); or

(3) Maintain a debt service coverage ratio of 1.05 or higher.

(b) A provider may be determined to be in fiscal distress if the provider:

(1) Does not comply with the training required by:

(A) Arkansas Code § 14-234-805; and

(B) 14 CAR § 2-107;

(2) Fails to file with Arkansas Legislative Audit an audit report or agreed-upon procedures and compilation report required by Arkansas Code § 14-234-120;

(3) Fails to maintain unencumbered cash or cash equivalents in an amount equal to one-twelfth (1/12) of the total expenses from the most recent fiscal year;

(4) Fails to adopt a budget before the beginning of a new fiscal year providing for sufficient revenues to meet or exceed anticipated expenses during that fiscal year;

(5) Fails to make all required payments due to the:

(A) Internal Revenue Service;

(B) Department of Finance and Administration; or

(C) Department of Health;

(6) Fails to make any bond, loan, or lease payment; or

(7) Fails to comply with an administrative order of the Environmental Protection Agency, Department of Health, or Division of Environmental Quality concerning operation and maintenance of the system.

(c) Providers determined to be in fiscal distress shall submit to the Department of Agriculture an improvement plan as required in Arkansas Code § 14-234-802(k) detailing in writing the provider's plan to resolve:

(1) The violation or violations of rule or law; or

(2) Its fiscal insufficiency that caused it to be considered in fiscal distress.

(d) A provider will be determined by the Arkansas Natural Resources Commission to no longer be in fiscal distress if the provider:

(1) Resolves the violation of rule or law that caused it to be considered in fiscal distress and obtains written verification from the commission that the violation has been resolved; or

(2) Implements a change of rates that is shown by the study to resolve the provider's fiscal insufficiency.

**Authority.** Arkansas Code § 14-234-806.

**14 CAR § 2-106. Miscellaneous.**

(a) A provider seeking approval from the Arkansas Natural Resources Commission under Arkansas Code § 14-234-802(g) shall demonstrate its fiscal sustainability by submitting to the commission a business plan demonstrating its technical, financial, and managerial capacity.

(b)(1) Pursuant to provisions relating to commission intervention under the conditions provided for in Arkansas Code § 14-234-804(d), upon request of a municipal provider or a customer or unserved customer of a municipal provider, the Department of Agriculture will assist in the resolution of the issue or issues if the party or parties involved demonstrate that all parties involved made a good faith effort to resolve the issue or issues.

(2) Such intervention may include without limitation negotiation or mediation with the party or parties involved.

(3) If the department determines that a party is not acting in good faith, the department may end its intervention.

**Authority.** Arkansas Code § 14-234-806.

**14 CAR § 2-107. Training.**

(a) A majority of the members of provider boards shall receive a minimum of eight (8) hours of provider training.

(b) If a change in membership of a provider board causes the provider board to have less than a majority of members who have undergone provider training, enough members of the provider board shall receive provider training within one (1) year of the change in membership such that a majority of the board has received training.

(c) Each provider board shall report the following information annually, by January 31, to the Department of Agriculture:

- (1) The names and contact information of each member on the provider board;
- (2) An identification of which members have obtained eight (8) hours of provider training; and
- (3) An identification of which members:
  - (A) Have served on the board for more than ten (10) years; and
  - (B) Are exempt from the training requirement pursuant to Arkansas Code § 14-234-805(c).

**Authority.** Arkansas Code § 14-234-806.