

Title 23. Public Utilities and Regulated Industries

Chapter XVI. Arkansas Public Service Commission

Subchapter A. Generally

Part 469. Wind Energy Development Rules

Subpart 1. Generally

23 CAR § 469-101. Authority.

This part is developed pursuant to the Arkansas Wind Energy Development Act, Arkansas Code § 23-18-1401 et seq.

Authority. Arkansas Code § 23-18-1419.

History. Ark. R. 2026-50 (eff. July 3, 2026)

23 CAR § 469-102. Purpose.

(a) Consistent with the Arkansas Wind Energy Development Act, Arkansas Code § 23-18-1401 et seq., this part is adopted to establish standards and criteria for permitting and regulating wind energy facilities and promote, preserve, and protect the public peace, health, safety, and welfare through effective permitting and regulation of wind energy facilities

(b) This part is not intended to supersede or contradict any of the requirements under the Utility Facility Environmental and Economic Protection Act, Arkansas Code § 23-18-501 et seq, or Arkansas Code § 23-3-201 et seq.

Authority. Arkansas Code § 23-18-1419.

History. Ark. R. 2026-50 (eff. July 3, 2026)

23 CAR § 469-103. Definitions.

The following definitions shall apply to this part, and any references to this part shall include these definitions, except as required by context:

(1) "Abandonment" means the failure to generate electricity in commercial quantities for a period of one hundred eighty (180) consecutive days unless the termination of electricity was:

(A) Mandated by state or federal law; or

(B) Authorized by the Arkansas Public Service Commission;

(2) "Adversely affect" means to cause any significant and widespread adverse effect, which may be reasonably anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas;

(3)(A) "Commercial quantities" means an amount of electrical energy sufficient to sell or use offsite from a wind energy facility.

(B) "Commercial quantities" does not include amounts of electrical energy only used for the maintenance or testing of the wind energy facility or components of the wind energy facility;

(4)(A) "Construct" means the activity of clearing land, excavation, relocation of utilities, a wind energy facility expansion, or other action that would adversely affect the natural environment of the proposed site.

(B) "Construct" does not include the activity of:

(i) An erection of a meteorological tower;

(ii) An environmental assessment;

(iii) A survey;

(iv) Any necessary borings to ascertain foundation conditions;

(v) Any preliminary engineering; or

(vi) Any other activities associated with an assessment of development of wind resources on a given parcel of property;

(5) "Financial security" means a surety bond, collateral bond, irrevocable letter of credit, parent guaranty, cash, cashier's check, certificate of deposit, bank joint custody receipt, or other approved negotiated instrument, or any combination of these

items in the amount of one hundred percent (100 %) of the estimate of the total cost to decommission and remove the wind energy facility as determined by an independent consultant, selected and paid for by the applicant;

(6)(A) "Generation Interconnection Agreement" means a legally binding document that outlines the terms and conditions for connecting a generation facility to an electricity transmission or distribution network.

(B) Where a regional transmission organization that provides generation interconnection service in Arkansas maintains a tariff for such services on file with the Federal Energy Regulatory Commission, "Generation Interconnection Agreement" shall mean an agreement that conforms with the terms and conditions of the regional transmission organization's pro forma Generator Interconnection Agreement under said regional transmission organization tariff;

(7) "Local government" means:

- (A) A county;
- (B) A city of the first class or city of the second class;
- (C) An incorporated town; or
- (D) Any other political subdivision of this state;

(8) "Local legislation" means:

- (A) An ordinance enacted by a local legislative body;
- (B) A resolution passed by a local legislative body;
- (C) A motion made by a local legislative body;
- (D) An amendment adopted by a local legislative body; or
- (E) A rule or regulation promulgated by a local legislative body;

(9) "Local legislative body" means the governing body of a local government;

(10) "Nonparticipating landowner" means a landowner that is not under a lease or other property agreement with the owner or operator of a wind energy facility;

(11)(A) "Operate" means an activity associated with the management, operation, and maintenance of a completed wind energy facility.

(B) "Operate" includes without limitation installing or improving a wind energy facility;

(12) "Operator" means a person that operates a wind energy facility;

(13) "Owner" means a person that has a majority equity interest in a wind energy facility;

(14) "Person" means a natural person, corporation, limited liability company, partnership, joint venture, or other private business entity;

(15)(A) "Proprietary information" means commercial or financial information that:

(i) Is used directly or indirectly in the business of an applicant submitting information to a local government under the Arkansas Wind Energy Development Act, Arkansas Code § 23-18-1401 et seq.; and

(ii) Gives an applicant submitting information to a local government under the Arkansas Wind Energy Development Act an advantage or an opportunity to obtain an advantage over a competitor that does not know of, or otherwise use, the information.

(B) "Proprietary information" includes trade secrets;

(16)(A) "Redevelop" means the process of replanning, reconstructing, or redesigning a wind energy facility, including the acquisition, clearance, development, or disposal, or any combination of these activities, of a wind energy facility.

(B) "Redevelop" does not include maintenance and repairs, including replacements and disposal of components of a wind energy facility, necessary for continued operations consistent with the original design;

(17) "Regional transmission organization" means an organization in the United States that is an electric power transmission system operator responsible for coordinating, controlling, and monitoring a multi-state electric grid;

(18)(A) "Transmission facility" means a power cable, distribution line, or other equipment that delivers electricity from a wind turbine located in Arkansas to the point of interconnection with a power distribution grid, long-distance power transmission grid, or other facility by and through which the electricity is distributed or transmitted to one (1) or more customers.

(B) "Transmission facility" does not include distribution, transmission, or other facilities that are located beyond the point of interconnection with the power distribution grid or transmission grid;

(19) "Under development" means:

(A) Executed land leases;

(B) Commenced necessary state and federal studies related to construction of a wind energy facility; or

(C) Commenced construction of a wind energy facility;

(20) "Useful life" means the amount of time during which a wind energy facility is generating electricity in commercial quantities;

(21)(A) "Wind energy facility" means an electrical energy generation facility consisting of one (1) or more wind turbines under common ownership or operating control, that cumulatively, with any other wind energy facility:

(i) Has a rated capacity of five megawatts (5 MW) or more of electrical energy; and

(ii) Is more than two hundred feet (200') in height.

(B) "Wind energy facility" includes turbines, towers, buildings, transmission facilities, meteorological towers, transformers, control systems, and other associated facilities used to support the operation of the wind energy facility.

(C) "Wind energy facility" does not include equipment that when installed in connection with a dwelling transmits or uses wind energy to produce electrical energy in a useful form for residential purposes and is less than two hundred feet (200') in total height;

(22) "Wind energy facility expansion" means an activity that:

(A) Adds or substantially modifies a wind energy facility, including without limitation increasing the height or the number of the wind turbines, transmission facilities, or other equipment; or

(B) Increases the environmental footprint of a wind energy facility; and

(23)(A) "Wind turbine" means a wind energy conversion system that converts wind energy into electricity using a wind turbine generator.

(B) "Wind turbine" includes a turbine, blade, tower, base, and pad transformer, if any.

Authority. Arkansas Code § 23-18-1419.

History. Ark. R. 2026-50 (eff. July 3, 2026)

23 CAR § 469-104. Applicability.

This part applies to wind energy facilities and wind energy facility expansions, as defined in Arkansas Code § 23-18-1403 and 23 CAR § 469-103.

Authority. Arkansas Code § 23-18-1419.

History. Ark. R. 2026-50 (eff. July 3, 2026)

23 CAR § 469-105. Procedures.

Unless otherwise specified, the Rules of Practice and Procedure, 23 CAR pt. 462, shall govern procedural matters initiated under this part.

Authority. Arkansas Code § 23-18-1419.

History. Ark. R. 2026-50 (eff. July 3, 2026)

23 CAR § 469-106. Information subject to disclosure.

(a) Pursuant to Arkansas Code § 23-18-1416, proprietary information contained in a wind energy facility or wind energy facility expansion permit application or in documents submitted in support of the permit application to the Arkansas Public Service Commission or documents used by the Arkansas Public Service Commission to evaluate and approve or deny a permit application shall remain confidential and is not subject to disclosure to the public under the Arkansas Wind Energy Development Act, Arkansas

Code § 23-18-1416 et seq., the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., or any other law.

(b) Regarding records that are protected pursuant to Arkansas Code § 23-18-1416, if it becomes necessary to file records with the Arkansas Public Service Commission, provide records to the General Staff of the Arkansas Public Service Commission, or provide records to a party to an Arkansas Public Service Commission proceeding pursuant to this part, any such records shall be filed or provided in the same manner as information submitted pursuant to a protective order issued by the Arkansas Public Service Commission pursuant to the Rules of Practice and Procedure, 23 CAR pt. 462.

(c) Any party may contest a claim of confidentiality of the records submitted by written motion within five (5) days of the filing of the records or may contest continuing entitlement to protection in accordance with the Rules of Practice and Procedure, 23 CAR pt. 462.

(d) Challenge of the status of any record claimed as protected shall be pursuant to the Rules of Practice and Procedure, 23 CAR § 462.

(e) Disclosure of records provided as confidential pursuant to this section will be limited to those persons who sign an affidavit of nondisclosure in the form prescribed by the Arkansas Public Service Commission.

(f) Affidavits of nondisclosure signed pursuant to this section shall comply with the requirements contained in the Rules of Practice and Procedure, 23 CAR pt. 462.

(g) Any Arkansas Public Service Commission employee or agent participating in any inspection of wind energy facility or wind energy facility expansion records that are protected pursuant to statute or Arkansas Public Service Commission order shall execute an affidavit of nondisclosure pursuant to the Rules of Practice and Procedure, 23 CAR § 462, in the form prescribed by the Arkansas Public Service Commission.

(h) Any Arkansas Public Service Commission employee or agent investigating any informal (undocketed) complaint that involves wind energy facility or wind energy facility expansion records that are protected pursuant to statute or Arkansas Public Service Commission order shall execute an affidavit of nondisclosure pursuant to

Proceedings, 23 CAR § 462-401 et seq., in the form prescribed by the Arkansas Public Service Commission.

(i) Affidavits of nondisclosure executed regarding an inspection or informal (undocketed) complaint shall be filed in the docket that granted the wind energy facility or wind energy facility expansion applicant its permit to construct, operate, or redevelop the facility or the Arkansas Public Service Commission may open a docket in which the affidavits of nondisclosure may be filed.

(j) A party may request an interim protective order pursuant to Proceedings, 23 CAR § 462-401 et seq., for confidential information not covered by this section.

Authority. Arkansas Code § 23-18-1419.

History. Ark. R. 2026-50 (eff. July 3, 2026)

Subpart 2. Permit Application

23 CAR § 469-201. Permit required.

A person shall not construct, operate, or redevelop a wind energy facility or wind energy facility expansion in this state without first having obtained a permit to construct, operate, or redevelop a wind energy facility or wind energy facility expansion from the Arkansas Public Service Commission.

Authority. Arkansas Code § 23-18-1419.

History. Ark. R. 2026-50 (eff. July 3, 2026)

23 CAR § 469-202. Permit application and requirements.

(a)(1) A permit application shall be submitted in accordance with this part and the Rules of Practice and Procedure, 23 CAR pt. 462.

(2) To the extent applicable, an application may also simultaneously address the requirements under the Utility Facility Environmental and Economic Protection Act, Arkansas Code § 23-18-501 et seq., or Arkansas Code § 23-3-201 et seq.

(b) Each permit application shall include:

(1) The applicant's exact name as registered with the Secretary of State, physical and mailing addresses, phone number, email address, and company website address;

(2)(A) Unless already on file with the Arkansas Public Service Commission, a copy of the articles of partnership or a certified copy of the Articles of Incorporation or other articles of organization.

(B) A copy of the Certificate of Authority of a Foreign Corporation shall be included unless incorporated under Arkansas law;

(3) A copy of the written determination of no hazard by the Federal Aviation Administration pursuant to Arkansas Code § 23-18-1407;

(4) A copy of the development and management plan pursuant to Arkansas Code § 23-18-1407;

(5) Information demonstrating that the insurance requirements of Arkansas Code § 23-18-1409 have been or will be met before commencement of construction;

(6) Information demonstrating that the financial security requirements of Arkansas Code § 23-18-1408 have been or will be met before commencement of construction;

(7) A demonstration that the construction, operation, or redevelopment of a proposed wind energy facility or wind energy facility expansion will meet the minimum requirements established in Arkansas Code § 23-18-1406 and Subpart 3 of this part;

(8) A copy of the environmental impact assessment conducted pursuant to Arkansas Code § 23-18-1406;

(9) Information demonstrating that the acoustics requirements of Arkansas Code § 23-18-1406 have been or will be met before commencement of construction;

(10) Copies of all covenants, easements, or similar documentation from the abutting landowners providing access to wind sufficient for the adequate operation of

the proposed wind energy facility or wind energy facility expansion, unless adequate accessibility to the wind is provided on the site; and

(11) Information demonstrating that the applicant has submitted the information required under Arkansas Code § 23-18-1404(f) to the Oil and Gas Commission and has obtained approval or conditional approval from the Oil and Gas Commission under Arkansas Code § 23-18-1404(f), if applicable.

(c) Each permit application shall be accompanied by proof of service by certified mail of a copy of the application on:

- (1) A person listed in Arkansas Code § 23-18-513;
- (2) The Department of Parks, Heritage, and Tourism;
- (3) The circuit clerk of each county in which the proposed wind energy facility or wind energy facility expansion will be located;
- (4) Any landowner and residents located within four (4) miles of the proposed location of the wind energy facility or wind energy facility expansion;
- (5) All public libraries in each county in which the proposed wind energy facility or wind energy facility expansion is to be or may be located; and
- (6) All operators or lessees of oil and gas leases in the locations described in Arkansas Code § 23-18-1405(e), if applicable.

(d) Each permit application shall be accompanied by payment of an initial filing fee of two thousand five hundred dollars (\$2,500).

(e) After a permit has been granted by the Arkansas Public Service Commission, but at least thirty (30) days before the applicant has commenced construction of the wind energy facility or wind energy facility expansion, the applicant shall file in the same docket in which it received its permit the following documents:

- (1) A copy of the insurance policy pursuant to Arkansas Code § 23-18-1409(a);
- (2) A cost estimate for the decommissioning and removal of the wind energy facility or wind energy facility expansion and a copy of financial security pursuant Arkansas Code § 23-18-1408(b); and
- (3) A copy of the acoustics expert report pursuant to Arkansas Code § 23-18-1406(c).

(f)(1) Once the Arkansas Public Service Commission has granted a permit to an applicant, the agency shall have the right to suspend or revoke the permit for noncompliance with the Arkansas Wind Energy Development Act, Arkansas Code § 23-18-1401 et seq., this part, and any other requirements contained with the permit.

(2) If the applicant seeks to restore its permit, the applicant shall file a renewal application that complies with subsections (b), (c), and (d) of this section.

Authority. Arkansas Code § 23-18-1419.

History. Ark. R. 2026-50 (eff. July 3, 2026)

23 CAR § 469-203. Notice.

(a) Notice of the wind energy facility or wind energy facility expansion permit application shall be given by the applicant as required by Arkansas Code § 23-18-1405 and in the following manner, unless the Arkansas Public Service Commission otherwise provides:

(1) By publication in a newspaper of substantial circulation in each market within which the applicant intends to operate, once per week for two (2) consecutive weeks within the thirty (30) days before filing the application in accordance with Arkansas Code § 23-18-1405 (d); and

(2) By publication on the applicant's website or any other form of electronic application controlled by the applicant, or both.

(b) Notice shall include at a minimum a brief description of the permit application and the ability to intervene or comment on the application in accordance with the Rules of Practice and Procedure, 23 CAR pt. 462, in addition to the requirements of Arkansas Code § 23-18-1405(b).

Authority. Arkansas Code § 23-18-1419.

History. Ark. R. 2026-50 (eff. July 3, 2026)

23 CAR § 469-204. Basis for denial.

The application for a permit may be denied if the applicant fails to demonstrate to the Arkansas Public Service Commission's satisfaction that the information, procedures, and methods provided by the applicant in response to this part will ensure statutory compliance, or for any other just cause as determined pursuant to the Arkansas Public Service Commission's authority.

Authority. Arkansas Code § 23-18-1419.

History. Ark. R. 2026-50 (eff. July 3, 2026)

Subpart 3. Minimum Requirements

23 CAR § 469-301. Installation

In addition to meeting the minimum requirements detailed in Arkansas Code § 23-18-1406, an applicant also shall meet the following wind energy facility or wind energy facility expansion installation requirements:

- (1) The distance from any tower support base to any tower support base of another wind energy facility under other ownership shall be a minimum of five (5) rotor diameter distances figured by the size of the largest rotor;
- (2) The wind energy facility operation shall not cause interference to the radio, television, or internet reception on any adjoining property; and
- (3) To limit climbing access to the tower, a fence that is a minimum of six feet (6') high with a locking portal shall be placed around the tower base, the tower climbing apparatus shall be limited to no less than twelve feet (12') from the ground, or the tower utilizes an internal climbing structure that is only accessible through a locked portal.

Authority. Arkansas Code § 23-18-1419.

History. Ark. R. 2026-50 (eff. July 3, 2026)

23 CAR § 469-302. Acoustics expert standards.

Pursuant to Arkansas Code § 23-18-1406, all qualified, third-party acoustics experts retained by the applicant shall abide by the American National Standards Institute Standard 12.9 and other applicable American National Standards Institute standards.

Authority. Arkansas Code § 23-18-1419.

History. Ark. R. 2026-50 (eff. July 3, 2026)

Subpart 4. Decommissioning

23 CAR § 469-401. Decommissioning and removal.

(a) Pursuant to Arkansas Code § 23-18-1408, an owner is responsible, at the owner's expense, for the proper decommissioning of a wind energy facility.

(b) After a permit has been granted by the Arkansas Public Service Commission, but at least thirty (30) days before the applicant has commenced construction of the wind energy facility or wind energy facility expansion, the applicant shall:

(1) File, in the same docket, a cost estimate for the decommissioning and removal of the wind energy facility, net of any estimated salvage value, produced by a qualified independent party selected by the applicant and at the applicant's expense; and

(2) File, in the same docket and pursuant to Arkansas Code § 23-18-1408(b)(2), proof that the applicant has established financial security in one (1) of the forms provided under Arkansas Code § 23-18-1408(b)(2) for the purpose of decommissioning and removing the wind energy facility and in the amount required under Arkansas Code § 23-18-1408(b)(1) is held by an independent fiduciary at the applicant's expense or held in a means the Arkansas Public Service Commission

determines will satisfy the requirements of the statute until released by order of the Arkansas Public Service Commission.

(c)(1) In accordance with Arkansas Code § 23-18-1408(e), every five (5) years following the issuance of a permit by the Arkansas Public Service Commission, the applicant shall file information relating to updated estimated decommissioning and removal costs in the same docket in which it received its permit.

(2) The Arkansas Public Service Commission, at its own discretion, upon reasonable notice, may request more frequent updates from the applicant.

Authority. Arkansas Code § 23-18-1419.

History. Ark. R. 2026-50 (eff. July 3, 2026)

Subpart 5. Interconnection

23 CAR § 469-501. Interconnection with the grid.

(a) If the operator of a wind energy facility or wind energy facility expansion seeks to interconnect into the grid, the operator shall provide any approved Generation Interconnection Agreement with any relevant regional transmission organization, independent transmission system operator, or similar organization, or with any relevant transmission owner, or reference to any such Federal Energy Regulatory Commission docket in which such Generation Interconnection Agreement was approved.

(b) The operator shall provide this information in the same docket in which it received the permit for the wind energy facility or wind energy facility expansion.

Authority. Arkansas Code § 23-18-1419.

History. Ark. R. 2026-50 (eff. July 3, 2026)

Subpart 6. Site Visits and Enforcement

23 CAR § 469-601. Site visits.

(a) Employees or agents acting on behalf of the Arkansas Public Service Commission shall have the right to enter the wind energy facility or wind energy facility expansion site upon reasonable notice and during normal business hours to verify ongoing compliance with the Arkansas Wind Energy Development Act, Arkansas Code § 23-18-1401 et seq., this part, and any other permit requirements established by the Arkansas Public Service Commission.

(b) Visitors must also adhere to safety requirements, and an employee will need to be present to provide access.

Authority. Arkansas Code § 23-18-1419.

History. Ark. R. 2026-50 (eff. July 3, 2026)

23 CAR § 469-602. Enforcement.

(a) Compliance with all statutory requirements, this part, and any other permit requirements established by the Arkansas Public Service Commission is required.

(b) In addition to such other remedies available under law, the Arkansas Public Service Commission shall conduct enforcement activities in accordance with the Rules of Practice and Procedure, 23 CAR pt. 462.

Authority. Arkansas Code § 23-18-1419.

History. Ark. R. 2026-50 (eff. July 3, 2026)