

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

1 State of Arkansas *As Engrossed: H3/13/15 H3/17/15 H3/19/15*

2 90th General Assembly

# A Bill

3 Regular Session, 2015

HOUSE BILL 1655

5 By: Representative Collins

## For An Act To Be Entitled

8 *AN ACT TO REFORM RATE MAKING OF PUBLIC UTILITIES; TO*  
9 *DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.*

### Subtitle

13 *TO REFORM RATE MAKING OF PUBLIC*  
14 *UTILITIES; AND TO DECLARE AN EMERGENCY.*

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

19 *SECTION 1. Arkansas Code § 23-4-410, concerning the authority of the*  
20 *Arkansas Public Service Commission, is amended to add additional subsections*  
21 *to read as follows:*

22 *(c) The public utility or any party to a proceeding before the*  
23 *commission to consider an application for a general change in rates and*  
24 *charges may, according to the commission's rules and procedures, present*  
25 *evidence regarding a requested return on common equity in a filing, including*  
26 *without limitation:*

27 *(1) The basis for the requested return on common equity,*  
28 *including quantitative analysis based on widely accepted methodologies,*  
29 *current market data, qualitative discussion, and analysis of factors that*  
30 *influence the requested return on common equity;*

31 *(2) Evidence that the requested return on common equity is*  
32 *comparable to values that have recently been approved for public utilities*  
33 *that are delivering similar services with corresponding risks within this*  
34 *state and in other similar regulatory jurisdictions in the same general part*  
35 *of the country;*

36 *(3) Evidence of the financial, business, and other risks faced*



1 by the utility, including regulatory oversight, numbers and types of  
2 customers, rate mechanisms, cost allocation methods, rate levels, rate  
3 design, reliability, and quality of service, as compared to those faced by  
4 utilities delivering similar services within this state and in other similar  
5 regulatory jurisdictions in the same general part of the country; and

6 (4) Any other information, including without limitation:

7 (A) Macroeconomic data;

8 (B) Relevant commentary from ratings agencies and  
9 investment analysts;

10 (C) Independent analysis of utility industry trends;

11 (D) Customer impact; and

12 (E) Any other relevant information.

13 (d) If any evidence is presented as described in subsection (c) of  
14 this section, the commission shall discuss that evidence and demonstrate in  
15 its order that it considered the evidence in making its findings. The  
16 commission shall make its findings based on substantial evidence.

17 (e) The allowance for funds used during construction that will be  
18 accrued and capitalized and included as a component of the costs recoverable  
19 through rates approved by the commission shall be determined according to the  
20 requirements of the uniform system of accounts adopted by the commission in  
21 its rules. The rate of return on common equity to be used shall be the rate  
22 of return on common equity most recently approved by the commission for the  
23 utility.

24 (f) An electric cooperative corporation established under the Electric  
25 Cooperative Corporation Act, § 23-18-301 et seq., is not subject to  
26 subsections (c) and (d) of this section.

27  
28 SECTION 2. Arkansas Code Title 23, Chapter 4, Subchapter 4, is amended  
29 to add an additional section to read as follows:

30 23-4-422. Cost allocation.

31 (a)(1) The Arkansas Public Service Commission shall establish and  
32 regulate the rates and charges of a public utility under this subchapter and  
33 shall allocate or assign costs among all classes of customers of the public  
34 utility.

35 (2) In determining the rates for utility services and the cost  
36 allocation among all of a public utility's classes of customers, the

1 commission shall:

2 (A) Consider the costs and expenses incurred by the public  
3 utility in providing the utility services to customers in each class;

4 (B) Consider the economic impact of the proposed rates and  
5 charges for utility services by giving equal consideration to each class of  
6 customers; and

7 (C) Make findings that are based on substantial evidence.

8 (b) Notwithstanding the commission's authority to otherwise determine  
9 and fix rates for all classes of customers, including allocating or assigning  
10 costs and designing rates, if the commission finds that it will be beneficial  
11 to economic development or the promotion of employment opportunities, and  
12 that will result in just and reasonable rates for all classes of customers,  
13 the commission shall determine rates and charges for utility services that:

14 (1) For the class of customers with the highest level of  
15 consumption per customer which has rates that include a demand component, and  
16 any successors to such class, as they existed on January 1, 2015, ensure that  
17 all costs and expenses related to demand and capacity, are identified and  
18 allocated on a demand basis and recovered from customers in those classes  
19 through a demand rate component and not through a volumetric rate component  
20 unless the commission determines that the rates should be adjusted under  
21 subsections (e) and (f) of this section;

22 (2)(A) For the retail jurisdiction rate classes, ensure that all  
23 electric utility production plant, production related costs, all nonfuel  
24 production-related costs, purchased capacity costs, and any energy costs  
25 incurred resulting from the electric utility's environmental compliance are  
26 classified as production demand costs.

27 (B) Ensure that production demand costs are allocated to  
28 each customer class pursuant to the average and excess method shown in Table  
29 4-10B on page 51 of the 1992 National Association of Regulatory Utility  
30 Commissioners Manual, as it existed on January 1, 2015, using the average of  
31 the four (4) monthly coincident peaks for the months of June, July, August,  
32 and September for each class for the coincident peak referenced in Table 4-  
33 10B of the manual, as it existed on January 1, 2015, or any subsequent  
34 version of the manual to the extent it produces an equivalent result.

35 (C) Subdivision (b)(2)(B) of this section does not  
36 prescribe an allocation for wind production plant; and

1 (3)(A)(i) For purposes of allocation of natural gas distribution  
2 plant costs, including costs in distribution mains and related distribution  
3 plant expenses, among the state's retail jurisdiction rate classes, ensure  
4 that each natural public utility classifies all natural gas distribution  
5 plant costs as customer-related or capacity-related.

6 (ii) For purposes of subdivision (b)(3)(A)(i) of  
7 this section, the natural gas distribution plant costs shall include:

8 (a) Amounts charged to account numbers 374  
9 through 387, as defined under the account numbering system in the Uniform  
10 System of Accounts prescribed for natural gas public utilities by the rules  
11 of the commission; and

12 (b) Related depreciation, return on  
13 investment, property insurance and taxes, excluding state and federal income  
14 taxes, fixed operation and maintenance expense charged to account numbers 870  
15 through 894, as defined under the account numbering system in the Uniform  
16 System of Accounts prescribed for natural gas public utilities by the rules  
17 of the commission, including all labor-related costs for the expenses  
18 described in this subdivision.

19 (iii) To develop a cost allocation method under this  
20 section for natural gas utilities, the commission shall use the Gas  
21 Distribution Rate Design Manual, June 1989 edition, as prepared by the  
22 National Association of Regulatory Utility Commissioners, as it existed on  
23 January 1, 2015, or any subsequent version of the manual, to the extent it  
24 produces an equivalent result.

25 (B)(i) The customer-related natural gas distribution plant  
26 costs shall be allocated to each customer class based on the number of  
27 customers in each class.

28 (ii) The customer-related portion of natural gas  
29 distribution plant costs related to account numbers 374 through 376, as  
30 defined under the account numbering system in the Uniform System of Accounts  
31 prescribed for natural gas public utilities by the rules of the commission,  
32 shall be the percentage of the average cost of all mains that is represented  
33 by the average cost of the minimum size main and computed using a cost  
34 allocation method based upon the predominant size main that is installed by  
35 the natural gas public utility that is at least two inches (2") in diameter,  
36 with the investment costs of the predominant size mains set as the minimum

1 size.

2 (iii) The customer-related portion of natural gas  
3 distribution costs related to account numbers 377 through 387, as defined  
4 under the account numbering system in the Uniform System of Accounts  
5 prescribed for natural gas public utilities by the rules of the commission,  
6 shall be computed using a study that reflects the investments required to  
7 meter, regulate, and connect each class of customers to the natural gas  
8 utility's system.

9 (iv) Any remaining natural gas distribution plant  
10 costs shall be classified as capacity-related costs.

11 (C)(i) Except for natural gas distribution plant costs  
12 related to account numbers 380 through 385, as defined under the account  
13 numbering system in the Uniform System of Accounts prescribed for natural gas  
14 public utilities by the rules of the commission, the natural gas distribution  
15 plant costs classified as capacity-related costs shall be allocated to the  
16 customer classes based on the contribution to peak day demand that is made by  
17 each customer class.

18 (ii) As used in subdivision (b)(2)(C)(i) of this  
19 section, "peak day demand" means the computed quantity of gas that would be  
20 supplied to each customer class calculated using the coldest day in a recent  
21 thirty-year period for each gas utility.

22 (c) In an application for a general change or modification in a public  
23 utility's rates and charges under this subchapter:

24 (1) A public utility may present evidence that demonstrates that  
25 the implementation of rates under subsection (b) of this section will result  
26 in rates that will be beneficial to economic development or the promotion of  
27 employment opportunities and result in just and reasonable rates for all  
28 classes of customers; and

29 (2) A public utility shall present evidence of whether or not  
30 rate design in subdivision (b)(1) of this section results in an increase to  
31 the base rate charges that are billed to customers in the affected class of  
32 more than ten percent (10%) as compared to the then currently approved base  
33 rate charges of the applicable rate schedules.

34 (d) Unless the commission adjusts the rates under subsection (e) or  
35 subsection (f) of this section, the commission shall by order establish and  
36 design rates, allocate or assign costs to all classes of customers, and

1 regulate the rates for each class of customers of a public utility according  
2 to this section.

3 (e) Pursuant to the commission's authority to otherwise determine and  
4 fix rates for all classes of customers, including allocating or assigning  
5 costs and designing rates, the commission may adjust rates under subdivision  
6 (b)(2) and (b)(3) of this section if the commission finds:

7 (1) It is in the public interest;

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

9 (3) Implementation of rates under subdivision (b)(2) and (b)(3)  
10 of this section will result in rates that are not beneficial to economic  
11 development or the promotion of employment opportunities.

12 (f) If implementation of rates under subdivision (b)(1) of this  
13 section will result in an increase in the base rate charges billed to  
14 customers in the affected class of more than ten percent (10%) as compared to  
15 the currently approved base rate charges of the applicable rate schedules,  
16 the commission may adjust the rates to ensure that the greatest increase in  
17 the base rate charges billed to customers in the affected class is ten  
18 percent (10%) as compared to the then currently approved base rate charges of  
19 the applicable rate schedules.

20 (g) If the commission makes any adjustment under subsections (e) and  
21 (f) of this section, the commission shall provide in an order the rationale  
22 for determining that rates under subsection (b) of this section may not be  
23 just and reasonable and the rationale for determining that the rates adjusted  
24 in the order of the commission are just and reasonable and in the public  
25 interest. The commission shall make its findings based on substantial  
26 evidence.

27 (h) An electric cooperative corporation established under the Electric  
28 Cooperative Corporation Act, § 23-18-301 et seq., is not subject to this  
29 section.

30 (i) The cost allocation provisions of this section shall apply to any  
31 pending application for a change in general rates and charges when this act  
32 becomes effective.

33  
34 SECTION 3. Arkansas Code Title 23, Chapter 4, is amended to add an  
35 additional subchapter to read as follows:

36 Subchapter 12 — Formula Rate Review

1  
2 23-4-1201. Title.

3 This subchapter shall be known and may be cited as the "Formula Rate  
4 Review Act".

5  
6 23-4-1202. Findings and intent.

7 (a) The General Assembly finds that:

8 (1) Electricity and natural gas services are essential to the  
9 public health and safety of citizens of this state; and

10 (2) Affordable electricity and natural gas encourage economic  
11 activity within the state and benefit the state's industrial, commercial, and  
12 agricultural industries to increase the number of available jobs and to  
13 attract new business and industry to the state.

14 (b) The intent of this act is to establish a regulatory  
15 framework that implements rate reforms to provide just and reasonable rates  
16 to consumers in this state and enables public utilities in this state to  
17 provide reliable service while maintaining stable rates.

18  
19 23-4-1203. Definitions.

20 As used in this subchapter:

21 (1)(A) "Earned return rate" means a public utility's return on  
22 common equity for a formula rate review test period that is based on the  
23 numbers or values of the formula rate review test period and calculated by  
24 dividing the weighted earned common equity rate by the common equity ratio  
25 percentage.

26 (B) As used in subdivision (1)(A) of this section,  
27 "weighted earned common equity rate" means the weighted formula rate review  
28 test period cost rate for common equity minus the operating income  
29 deficiency, or excess, divided by a public utility's rate base;

30 (2) "Formula rate review test period" means a test period as  
31 stated in § 23-4-406 or a projected year;

32 (3) "Historical year" means, when using a formula rate review  
33 test period containing projections, the twelve (12) consecutive months that  
34 precede the second and any subsequent formula rate review test period;

35 (4) "Projected year" means the twelve (12) months following the  
36 proposed effective date under § 23-4-1205 for the first formula rate review

1 filing and each subsequent consecutive twelve-month period; and

2 (5) "Target return rate" means a cost rate of common equity  
3 value as established by the Arkansas Public Service Commission in the  
4 commission's order addressing the public utility's most recent application  
5 for a general change in rates and charges.

6  
7 23-4-1204. Formula rate review — Authorized.

8 (a) A formula rate review is authorized to provide an annual  
9 streamlined review of a public utility's rates to determine if adjustments  
10 are needed to comply with this subchapter.

11 (b) An electric cooperative corporation established under the Electric  
12 Cooperative Corporation Act, § 23-18-301 et seq., shall not be regulated by a  
13 formula rate review.

14  
15 23-4-1205. Filing — Procedure.

16 (a)(1) A public utility filing an application for a general change or  
17 modification to its rates and charges under § 23-4-401 et seq., may as part  
18 of its application, file a notice with the Arkansas Public Service Commission  
19 that the public utility is electing to have its rates regulated under a  
20 formula rate review mechanism as authorized by this subchapter.

21 (2) The notice shall designate the formula rate review test  
22 period based upon either a projected year or a test period under § 23-4-406.

23 (b) Upon receipt of a notice as described in subdivision (a)(1) of  
24 this section, the commission shall:

25 (1) Regulate the rates of the public utility according to this  
26 subchapter; and

27 (2) Be required to approve a formula rate review mechanism  
28 utilizing the formula rate review test period designated by the public  
29 utility.

30 (c)(1) A public utility that has filed a notice of intent or has an  
31 application for a general change in rates and charges pending under § 23-4-  
32 401 et seq. that contains a notice of election to be regulated under a  
33 formula rate review when this subchapter becomes effective shall be regulated  
34 under this subchapter.

35 (2) A public utility shall not file for an initial formula rate  
36 review until at least one hundred eighty (180) days after rates have become



1 effective pursuant to the final order on the application for a general change  
2 in rates. A public utility that has filed a notice of intent or has an  
3 application for a general change in rates and charges pending under § 23-4-  
4 401 et seq. that contains a notice of election to be regulated under a  
5 formula rate review when this subchapter becomes effective may file for the  
6 initial formula rate review one hundred fifty (150) days after rates have  
7 become effective pursuant to the final order in the general rate case.

8 (3) The rates that are approved in the application for a general  
9 change in rates and charges shall remain in effect during the formula rate  
10 review term under § 23-4-1208, subject to the rate adjustments under this  
11 subchapter.

12 (d) An approved formula rate review mechanism shall require the public  
13 utility to file the information required by the commission under this  
14 subchapter not more than one hundred eighty (180) days before the date on  
15 which the rates determined by the formula rate review mechanism will go into  
16 effect for each year.

17 (e) An approved formula rate review mechanism shall require any party  
18 according to the commission's rules and procedures to file with the  
19 commission a statement of the errors or objections at least ninety (90) days  
20 before the date on which rates determined by the formula rate review  
21 mechanism will go into effect for each year.

22 (f) An approved formula rate review mechanism shall require the public  
23 utility to file with the commission any corrections or a rebuttal to the  
24 errors or objections raised by the parties at least seventy-five (75) days  
25 before the date on which rates determined by the formula rate review  
26 mechanism will go into effect for each year.

27 (g)(1) The commission shall conduct a hearing, unless waived by the  
28 parties, at least fifty (50) days before the date on which rates determined  
29 by the formula rate review mechanism will go into effect for each year.

30 (2) The commission shall issue a final order at least twenty  
31 (20) days before the date on which rates determined by the formula rate  
32 review mechanism will go into effect for each year.

33 (3)(A) If a final order is not issued at least twenty (20) days  
34 before the date on which rates determined by the formula rate review  
35 mechanism will go into effect for each year, the public utility may put the  
36 proposed formula rate rider changes into effect subject to refund.

1 (B) The commission may require reasonable security to  
2 assure the prompt payment of any refunds, including interest, that may be  
3 ordered.

4  
5 23-4-1206. Utility formula rate review — Required information.

6 (a) A formula rate review mechanism approved by the Arkansas Public  
7 Service Commission shall specify the minimum information required with each  
8 annual rate review filing.

9 (b) Annual formula rate review filings under an approved formula rate  
10 review mechanism shall be developed using the formula rate review test period  
11 designated by the public utility under § 23-4-1205(a)(2).

12 (c) Annual formula rate review filings shall be prepared consistent  
13 with the commission's order on the public utility's application for a general  
14 change in rates and charges.

15 (d) Any costs disallowed by the commission in its order on the public  
16 utility's application for a general change in rates and charges shall not be  
17 eligible for recovery under a formula rate review mechanism.

18 (e)(1) If a formula rate review test period utilizes projected data  
19 under § 23-4-406 or a projected year, rate changes under § 23-4-1207 shall  
20 include an adjustment to net any differences between the prior formula rate  
21 review test period change in revenue and the actual historical year change in  
22 revenue for that same year.

23 (2) A public utility shall report any differences between the  
24 prior formula rate review test period change in revenue and the historical  
25 year change in revenue for the same year.

26 (3) Netting shall not begin until a public utility has  
27 accumulated a full twelve (12) months of a historical year to prepare a  
28 report.

29 (f) The public utility shall submit documentation fully supporting all  
30 calculations and adjustments as required by the rules of the commission.

31 (g) A public utility, or any other party to the proceeding subject to  
32 the commission's rules and procedures, may propose additional adjustments  
33 that are based on factors unique to the utility.

34  
35 23-4-1207. Formula — Adjustment of customer rates.

36 (a) Customer rates shall be adjusted in a formula rate review

1 mechanism based on a comparison of the earned return rate to the target  
2 return rate.

3 (b) Adjustments of customer rates shall be calculated using the  
4 following formula:

5 (1) If the earned return rate is less than the target return  
6 rate minus five-tenths percent (0.5%), the formula rate review mechanism  
7 revenue level for the formula rate review test period shall be increased by  
8 an amount necessary to increase the earned return rate to the target return  
9 rate;

10 (2) If the earned return rate is greater than the target return  
11 rate plus five-tenths percent (0.5%), the formula rate review mechanism  
12 revenue level for the formula rate review test period shall be decreased by  
13 an amount necessary to decrease the earned return rate to the target return  
14 rate; or

15 (3) If the earned return rate is less than or equal to the  
16 target return rate plus five-tenths percent (0.5%), and greater than or equal  
17 to the target return rate minus five-tenths percent (0.5%), the formula rate  
18 review mechanism revenue level for the formula rate review test period shall  
19 not change or be adjusted.

20 (c) If a formula rate review test period utilizes projected data under  
21 § 23-4-406 or a projected year, rates shall be adjusted by the netting of  
22 historical year differences under § 23-4-1206.

23 (d)(1) The total change in the formula rate review mechanism revenue  
24 level shall be allocated to each applicable rate schedule based on an equal  
25 percentage of the base rate revenue used in the development of rates in the  
26 Arkansas Public Service Commission's order addressing the public utility's  
27 last application for a general change in rates and charges.

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

32 (e) Only one (1) rate review adjustment shall occur during any period  
33 of three hundred sixty-five (365) days.

34  
35 23-4-1208. Term — Formula rate review.

36 (a)(1) The term of any formula rate review approved by the Arkansas

1 Public Service Commission shall not exceed five (5) years from the date of  
2 the commission's final order on the application by the public utility for a  
3 general change in rates and charges.

4 (2) Upon a determination that it is in the public interest, the  
5 commission may extend the term by a period of no more than five (5) years  
6 beyond the initial term.

7 (3) The rate review mechanism shall continue until all  
8 historical years have been netted under § 23-4-1206(e)(1) and rates have been  
9 adjusted under § 23-4-1207(c).

10 (b) A formula rate review shall continue until a final order is issued  
11 on an application for a general change in rates and charges filed by a public  
12 utility or an application for a change in general rates and charges filed by  
13 the public utility as ordered by the commission. The rate review mechanism  
14 shall continue until all historical years have been netted under § 23-4-  
15 1206(e)(1) and rates have been adjusted under § 23-4-1207(c).

16  
17 23-4-1209. Construction.

18 (a) This subchapter does not repeal any other provision in this  
19 chapter and is supplemental to other laws governing the regulation of public  
20 utility rates.

21 (b) This subchapter shall not prohibit the Arkansas Public Service  
22 Commission from exercising its powers under any other statute.

23  
24 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the  
25 General Assembly of the State of Arkansas that the costs that drive public  
26 utility rates are changing; that public utilities need to have procedures  
27 that permit their rates to change in response to those changing conditions;  
28 that there is a need to address the allocation of costs and design of rates;  
29 that there is a need to maintain stable rates and to mitigate the magnitude  
30 of future rate changes; and that affordable electricity and natural gas  
31 encourage economic activity within the state and benefit the state's  
32 industries to increase the number of available jobs and to attract new  
33 businesses and industries to the state. Therefore, an emergency is declared  
34 to exist, and this act being immediately necessary for the preservation of  
35 the public peace, health, and safety shall become effective on:

36 (1) The date of its approval by the Governor;

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(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/Collins