

**Stricken language would be deleted from and underlined language would be added to the law as it existed
prior to this session of the General Assembly.
Act 475 of the Regular Session**

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 2221

5 By: Representatives Cornwell, Allen, T. Baker, E. Brown, Cash, Davenport, Davis, S. Dobbins, Everett,
6 Gaskill, George, R. Green, Hardwick, Harrelson, Harris, Hawkins, House, Hoyt, Hyde, J. Johnson, Kidd,
7 Lowery, Overbey, Patterson, Pickett, Powers, Reep, Sumpter, Thyer, Wagner, Wells, Wills
8 By: Senators Broadway, Baker, Bookout, Bryles, Crumbly, Hendren, Luker, Salmon, Steele, R.
9 Thompson

For An Act To Be Entitled

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11
12 AN ACT TO AMEND THE UTILITY FACILITY
13 ENVIRONMENTAL AND ECONOMIC PROTECTION ACT; TO
14 AMEND THE ARKANSAS MUNICIPAL ELECTRIC UTILITY
15 INTERLOCAL COOPERATION ACT OF 2003; AND FOR OTHER
16 PURPOSES.
17

Subtitle

18
19 TO AMEND THE UTILITY FACILITY
20 ENVIRONMENTAL AND ECONOMIC PROTECTION
21 ACT AND THE ARKANSAS MUNICIPAL ELECTRIC
22 UTILITY INTERLOCAL COOPERATION ACT OF
23 2003.
24

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26
27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

28
29 SECTION 1. Arkansas Code § 23-18-530 is amended to read as follows:
30 23-18-530. Treatment of major utility facility generating plant -
31 ~~Proposals of authority.~~

32 ~~(a) Electric~~ Except as provided under § 23-18-504(a), electric utility
33 systems or facilities owned by a municipal electric consolidated authority
34 created under the Arkansas Municipal Electric Utility Interlocal Cooperation
35 Act of 2003, § 25-20-401 et seq., shall be subject to ~~the Utility Facility~~



1 ~~Environmental and Economic Protection Act, § 23-18-501 et seq., and except~~
 2 ~~with regard to major utility facilities consisting of generating plants as~~
 3 ~~defined in § 23-18-503(5)(A), subsections (b)-(f) of this section shall apply~~
 4 ~~this subchapter.~~

5 ~~(b)(1) Prior to construction by an authority of a major utility~~
 6 ~~facility consisting of a generating plant as defined in § 23-18-503(5)(A),~~
 7 ~~the Arkansas Public Service Commission shall determine the needs of the~~
 8 ~~authority for power and energy for the present and for a reasonable period in~~
 9 ~~the future as provided for in this section.~~

10 ~~(2) Notwithstanding any other provision of this chapter, in~~
 11 ~~determining the desirability of and need for a proposed major utility~~
 12 ~~facility as defined in § 23-18-503(5)(A) to be constructed by an authority,~~
 13 ~~the commission shall take into account the following:~~

14 ~~(A) The economies, efficiencies, and revenues estimated to~~
 15 ~~be achieved in acquiring, constructing, and operating the proposed major~~
 16 ~~utility facility;~~

17 ~~(B) The authority's estimated requirements based on a~~
 18 ~~comprehensive resource plan for power, energy, and reserve capacity and to~~
 19 ~~meet obligations under pooling and reserve sharing agreements reasonably~~
 20 ~~related to the need for the power and energy to which the authority is or is~~
 21 ~~anticipated to become a party;~~

22 ~~(C) The cost of existing or alternative power supply~~
 23 ~~sources;~~

24 ~~(D) The marketability of electric power in excess of the~~
 25 ~~authority's requirements;~~

26 ~~(E) The environmental impact of the major utility facility~~
 27 ~~as required by § 23-18-511(8); and~~

28 ~~(F) Any likely adverse impact on retail customers of~~
 29 ~~public utilities subject to the jurisdiction of the commission not served by~~
 30 ~~members of the authority.~~

31 ~~(c) For the purposes of subdivision (b)(2)(F) of this section, if the~~
 32 ~~authority proposes to sell electricity to any municipal electric utility,~~
 33 ~~only a public utility subject to the jurisdiction of the commission that~~
 34 ~~supplies or has previously supplied capacity and energy within the previous~~
 35 ~~five (5) years to the municipal electric utility to which a sale is proposed~~
 36 ~~and the Attorney General shall have standing to raise an objection to the~~

1 ~~sale under subdivision (b)(2)(F) of this section.~~

2 ~~(d) The commission shall not issue a certificate with regard to the~~
 3 ~~authority's major utility facility as defined in § 23-18-503(5)(A), either as~~
 4 ~~proposed or as modified by the commission, unless it finds and determines~~
 5 ~~that:~~

6 ~~(1) The authority has adequate financial, technical, and~~
 7 ~~managerial capability to assure construction and operation of the major~~
 8 ~~utility facility in continuing compliance with the terms and conditions of~~
 9 ~~the certificate;~~

10 ~~(2) The major utility facility will not unduly interfere with~~
 11 ~~the orderly development of the region or with development of the region's~~
 12 ~~integrated electric transmission system;~~

13 ~~(3) The major utility facility will not have an unreasonable~~
 14 ~~adverse effect on aesthetics, historic sites, air and water quality, the~~
 15 ~~natural environment, and public health and safety; and~~

16 ~~(4) The factors the commission must consider pursuant to~~
 17 ~~subsection (b) of this section support the issuance of a certificate.~~

18 ~~(e) If the commission determines that the location or design of all or~~
 19 ~~part of the proposed facility should be modified, it may condition its~~
 20 ~~certificate upon the modification.~~

21 ~~(f) The commission shall have the authority to review and approve~~
 22 ~~conveyance of any major utility facility, which consists of a generating~~
 23 ~~plant as defined in § 23-18-503(5)(A), by an authority holding a Certificate~~
 24 ~~of Environmental Compatibility and Public Need thereto to any entity other~~
 25 ~~than an authority or a municipal electric utility.~~

26
 27 SECTION 2. Arkansas Code § 23-18-531 is repealed.

28 ~~23-18-531. Powers of an authority.~~

29 ~~(a)(1) With the consent of the Arkansas Public Service Commission, an~~
 30 ~~authority may:~~

31 ~~(A) Purchase, acquire, or lease all or part of any~~
 32 ~~existing electric generation facility from any entity other than an authority~~
 33 ~~or a municipal electric utility; and~~

34 ~~(B) Sell wholesale power and energy to an entity that is~~
 35 ~~not a member of the authority for a term of up to three (3) years.~~

36 ~~(2) Commission consent shall not be required for a:~~

1 ~~(A) Purchase, acquisition, or lease of an existing~~
2 ~~electric generation facility by an authority from another authority or a~~
3 ~~municipal electric utility;~~

4 ~~(B) Sale of wholesale power and energy by an authority for~~
5 ~~a term of one (1) year or less; or~~

6 ~~(C) Sale of wholesale power and energy by the authority to~~
7 ~~a member of the authority.~~

8 ~~(b)(1) Application for the approval and consent of the commission~~
9 ~~shall be made by the authority and shall contain a concise statement of the~~
10 ~~proposed transaction, the reasons therefor, and such other information as may~~
11 ~~be required by the commission.~~

12 ~~(2)(A) Upon the filing of an application, the commission shall~~
13 ~~investigate it, with or without public hearing, and in the case of a public~~
14 ~~hearing, upon such notice as the commission may require.~~

15 ~~(B) If the commission finds that the proposed transaction~~
16 ~~is consistent with the public interest, the commission shall give its consent~~
17 ~~and approval in writing.~~

18 ~~(3) Any transaction required by this section to be submitted to~~
19 ~~the commission for its consent and approval shall be void unless the~~
20 ~~commission gives its consent and approval in writing.~~

21 ~~(c) In the event an authority purchases or acquires all or part of an~~
22 ~~existing generation facility from an entity other than another authority or a~~
23 ~~municipal electric utility and the entity paid taxes or made payments in lieu~~
24 ~~of taxes to a political subdivision of the state, the authority purchasing or~~
25 ~~acquiring the facility shall make payments in lieu of taxes at a rate no less~~
26 ~~than the rate at which the entity from which the facility is purchased or~~
27 ~~acquired would have otherwise been obligated to pay.~~

28
29 SECTION 3. Arkansas Code § 23-18-532 is repealed.

30 ~~23-18-532. Regulation of an authority.~~

31 ~~Except as provided specifically in the Utility Facility Environmental~~
32 ~~and Economic Protection Act, § 23-18-501 et seq., an authority shall not be~~
33 ~~subject to the jurisdiction or regulatory authority of the Arkansas Public~~
34 ~~Service Commission.~~

35
36 SECTION 4. Arkansas Code § 25-20-419 is amended to read as follows:

25-20-419. Construction.

(a)(1) This subchapter shall be liberally construed to accomplish its intent and purposes and shall be the sole authority required for the accomplishment of its purposes, and to this end it shall not be necessary to comply with the provisions of other laws relating to the issuance and sale of the bonds authorized by this subchapter.

(2) This subchapter shall be construed as an additional and alternative method for the issuance and sale of bonds.

(b) An authority shall not be subject to Arkansas Public Service Commission regulatory authority, ~~except as provided for in the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq.~~

SECTION 5. Arkansas Code § 25-20-422 is repealed.

~~25-20-422. Reliability rules and transmission upgrades.~~

~~(a) An authority shall comply with all requirements of federal law, federal regulation, reliability council rule, or regional transmission organization rule or regulation associated with reliability of electric utility operations that are generally applicable to other similarly situated, publicly owned electric projects in the region.~~

~~(b) An authority shall reimburse any entity owning or operating an electrical transmission system for the reasonable costs, as they are incurred and as established by the regulatory authority having jurisdiction, of upgrades to the system necessary to interconnect any generation plant owned, leased, or operated by the authority to the electrical transmission system. The authority shall support these participant funding principles, if applicable, before the appropriate regulatory agencies.~~

APPROVED: 3/23/2007