

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas *As Enrolled: H3/5/99 H3/15/99 H3/18/99 H3/30/99 H4/6/99*

2 82nd General Assembly

A Bill

3 Regular Session, 1999

HOUSE BILL 1707

4

5 By: Representatives Sheppard, *Napper, T. Smith*

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For An Act To Be Entitled

9 "AN ACT TO AUTHORIZE THE HOUSE AND SENATE INTERIM
10 COMMITTEES ON INSURANCE AND COMMERCE TO BEGIN THE
11 REVIEW AND EVALUATION PROCESS LEADING TO THE
12 RESTRUCTURING OF THE ELECTRIC UTILITY INDUSTRY IN
13 ARKANSAS; TO AUTHORIZE THE ARKANSAS PUBLIC SERVICE
14 COMMISSION TO PROMULGATE RULES CONCERNING
15 RESTRUCTURING; AND FOR OTHER PURPOSES. "

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Subtitle

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

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SECTION 1. It is hereby found and determined by the General Assembly that the restructuring of the electric utility industry will be a complex and time-consuming process, and that in order to ensure that consumers may realize benefits from such restructuring, it is imperative that the analytical and development process begin as soon as possible.

SECTION 2. (a) During the interim period preceding the Eighty-third General Assembly Regular Session, 2001, the House and Senate Interim Committees on Insurance and Commerce are directed to immediately begin the

1 review and evaluation process leading to the restructuring of the electric
2 utility industry in Arkansas.

3 (b) Competition in the generation and sale of retail electricity shall
4 begin January 1, 2002; provided, however, that this date may be delayed by the
5 General Assembly or the Arkansas Public Service Commission pursuant to Section
6 3 (c) of this act.

7 (c) To the extent that the committees find statutory changes are
8 necessary to be able to implement the regulatory framework for restructured
9 electric services, they shall make those recommendations to the General
10 Assembly and provide prepared legislation for a special session or the Eighty-
11 third General Assembly in order to begin the process of the restructuring of
12 the electric utility industry.

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14 SECTION 3. (a) The Arkansas Public Service Commission is directed to
15 initiate rulemaking procedures as soon as possible whereby appropriate rules
16 are promulgated to facilitate the competitive generation and sale at retail of
17 electricity, to create a restructured services framework for electric
18 utilities, electric cooperatives, and participating municipal electric
19 utilities, and, to the extent possible, to provide all electric consumers,
20 including residential and small business consumers, with the opportunity to
21 enjoy the benefits of a competitive generation market without harm. The
22 Commission is directed to require all electric utilities subject to its
23 jurisdiction to file restructured rates that unbundle all costs as directed by
24 the commission, including, at a minimum, the costs of generation,
25 transmission, and distribution.

26 (b) Following notice and hearing, the commission may make such orders
27 as necessary to ensure that the restructured rates are just, reasonable, and
28 not unduly discriminatory or preferential. The Commission is authorized to
29 take all necessary steps to determine the appropriateness of the unbundled
30 costs, including examination of all books and records that may affect those
31 costs.

32 (c) Unless determined by the commission to be materially adverse to the
33 public interest or as otherwise directed by the General Assembly, competition
34 in the generation and sale of retail electricity in Arkansas shall begin
35 January 1, 2002.

36 (d) The Commission shall, in conjunction with the Department of Finance

1 and Administration, conduct an assessment of the tax effects of electric
2 restructuring in Arkansas, including any anticipated revenue losses from gross
3 receipts, franchise, ad valorem, and other applicable taxes. During the 2001
4 legislative session, or special session, the General Assembly shall address
5 and resolve the areas of anticipated revenue shortfall and shall develop
6 alternative methods of ensuring that the tax impacts of electric restructuring
7 are revenue neutral.

8 (e) The Commission shall report to the House and Senate Interim
9 Committees on Insurance and Commerce as directed concerning the status and
10 progress of electric restructuring proceedings pending before the commission.

11 (f) Nothing in this act shall be construed to modify or abrogate any
12 existing orders. Further, no provision of this act shall preempt the
13 commission from exercising any and all existing authority to consider,
14 implement, and extend orders with conditions imposing rate freezes or any
15 other condition designed to mitigate stranded cost recovery including but not
16 limited to the application of earnings to anticipated stranded costs.

17 (g) Implementation of Retail Choice Pilot Programs. Prior to January
18 1, 2002, the commission may develop and implement retail customer choice pilot
19 programs to evaluate the implementation of customer choice programs. The
20 commission may implement retail choice pilot programs pursuant to the
21 following:

22 (1) Each jurisdictional utility shall offer customer choice
23 within existing service area to five percent (5%) of the utility's combined
24 load of all customer classes;

25 (2) Load designated for a retail pilot program shall be
26 distributed among all customer classes of a utility;

27 (3) Customers participating in a pilot program may purchase
28 electric energy from a retail electric provider certified by the commission
29 pursuant to rules and regulations that the commission may promulgate governing
30 retail electric providers. Provided, that a retail electric provider may not
31 participate in a retail choice pilot program if it is affiliated with the
32 incumbent electric provider;

33 (4) The commission shall promulgate regulations on billing,
34 unbundling of services, and other criteria necessary to carry out retail
35 choice pilot programs; and

36 (5) Nothing in this subsection shall prohibit the commission from

1 carrying out responsibilities under existing authority or duties imposed by
2 this act.

3 (h) The commission shall develop a consumer education program designed
4 to provide the following information to retail customers during the period of
5 transition to retail competition and thereafter:

6 (1) Opportunities and options in choosing (A) suppliers and
7 aggregators of electric energy and (B) any other service made competitive
8 pursuant to this chapter;

9 (2) Marketing and billing information suppliers and aggregators
10 of electric energy will be required to furnish retail customers;

11 (3) Retail customer's rights and obligations concerning the
12 purchase of electric energy and related services; and

13 (4) Such other information as the commission may deem necessary
14 and appropriate in the public interest.

15 (i) The commission shall complete the development of the consumer
16 education program described in subsection (h), and report its findings and
17 recommendations to the House and Senate Interim Committees on Insurance and
18 Commerce on or before December 31, 2000, and as frequently thereafter as may
19 be required concerning:

20 (1) Materials and media required to effectuate any such program;

21 (2) State agency and nongovernmental entity participation;

22 (3) Program duration;

23 (4) Funding requirements and mechanisms for any such program; and

24 (5) Such other findings and recommendations the commission deems
25 appropriate in the public interest.

26 (j) The commission shall develop regulations governing marketing
27 practices by public service companies, licensed suppliers, aggregators or any
28 other providers of services made competitive by this chapter, including
29 regulations to prevent unauthorized switching of suppliers, unauthorized
30 charges, and improper solicitation activities. The commission shall also
31 establish standards for marketing information to be furnished by licensed
32 suppliers, aggregators or any other providers of services made competitive by
33 this chapter during the period of transition to retail competition, and
34 thereafter, which information shall include standards concerning:

35 (1) Pricing and other key contract terms and conditions;

36 (2) To the extent feasible, fuel mix and emissions data on at

1 least an annualized basis;

2 (3) Customer's rights of cancellation following execution of any
3 contract;

4 (4) Toll-free telephone number for customer assistance; and

5 (5) Such other and further marketing information as the
6 commission may deem necessary and appropriate in the public interest.

7 (k) The commission shall also establish standards for billing
8 information to be furnished by public service companies, suppliers,
9 aggregators or any other providers of services made competitive by this
10 chapter during the period of transition to retail competition, and thereafter.

11 Such billing information standards shall require that billing formation:

12 (1) Distinguishes between charges for regulated services and
13 unregulated services;

14 (2) Itemizes any and all nonbypassable wires charges;

15 (3) Is presented in a format that complies with standards to be
16 established by the commission;

17 (4) Discloses, to the extent feasible, fuel mix and emissions
18 data on at least an annualized basis; and

19 (5) Includes such other billing information as the commission
20 deems necessary and appropriate in the public interest.

21 (l) The commission shall establish or maintain a complaint bureau for
22 the purpose of receiving, reviewing and investigating complaints by retail
23 customers against public service companies, licensed suppliers, aggregators
24 and other providers of any services made competitive under this chapter. Upon
25 the request of any interested person or the Attorney General, or upon its own
26 motion, the commission shall be authorized to inquire into possible violations
27 of this chapter and to enjoin or punish any violations thereof pursuant to
28 existing authority. The Attorney General shall have a right to participate in
29 such proceedings consistent with the commission's Rules of Practice and
30 Procedure.

31 (m) Preservation of Inter-System Agreements.

32 (1) Every electric utility that is a subsidiary of a registered
33 holding company under the Public Utility Holding Company Act shall report to
34 the commission, within thirty (30) days of the effective date of this chapter,
35 whether it is a party to a rate schedule or other filed rate subject to the
36 jurisdiction of the Federal Energy Regulatory Commission that allocates costs

1 among the electric utility subsidiaries of such holding company. Every
2 electric utility that becomes a subsidiary of a registered holding company
3 after that time, or that becomes a subsidiary of a registered holding company
4 of which it was not previously a subsidiary, shall make such report to the
5 commission within thirty (30) days after becoming such a subsidiary.

6 (2) All electric utilities that are required to make such reports
7 pursuant to subsection (A) are hereby directed to consult with the commission
8 and its staff regarding what changes, if any, may be necessary or appropriate
9 to such rate schedule or filed rate as a result of the implementation of
10 retail open access in Arkansas or any other affected state or jurisdiction.

11 (3) The commission is hereby authorized to communicate, consult,
12 and cooperate with the appropriate regulatory agencies of other affected
13 states as it deems appropriate.

14 (4) The commission shall make quarterly reports to the House and
15 Senate Interim Committees on Insurance and Commerce on the status of the
16 discussions held pursuant to this section until such time as the commission
17 determines that the matter has been appropriately resolved or that further
18 consultations will not be productive. Such reports shall not disclose any
19 matters subject to any applicable settlement privilege.

20 (n) No later than one (1) year after the passage of this act during the
21 transition period to retail competition each electric utility subject to the
22 jurisdiction of the commission shall submit a report to the commission
23 regarding the market power of each electric utility. Such reports shall
24 include:

25 (1) Enumeration of all products and services subject to the
26 jurisdiction of the commission;

27 (2) Analysis of all products and services provided and the
28 geographic destinations of each product and service including a measurement of
29 the market share and concentration of market share for a particular product or
30 service delivered within a destination market;

31 (3) Any physical, legal, contractual, or geographical barriers
32 that may restrain the entry to a destination market upon the introduction of
33 retail competition for electric energy; and

34 (4) Any other factors which the commission deems appropriate for
35 the measurement of market power.

36 (o) The commission may take action under all existing authority to

1 prescribe mitigation measures to reduce the exercise of market power in
2 advance of the introduction of retail competition for electric energy.

3 (p) Upon the commencement of retail competition for electric energy, if
4 an electric provider will control more than twenty (20) percent of generation
5 capacity for a destination market, the commission may order:

6 (1) The sale or exchange of generation assets to or with an
7 unaffiliated person;

8 (2) The auctioning of generation capacity entitlements subject to
9 commission jurisdiction;

10 (3) Any other reasonable mitigation means that the commission
11 deems acceptable.

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13 SECTION 4. (a) During the period that the municipal corporation owning
14 a municipal electric utility opts out of competition and does not provide
15 distribution services in newly annexed areas, the municipal corporation, at
16 the discretion of the governing body, shall be entitled to assess any electric
17 utility offering distribution services in annexed areas a franchise fee based
18 on services it provides in newly annexed areas that would otherwise be
19 compensated in the municipal electric utility's retail electric rates. This
20 franchise fee shall be included as a separate line item on the distribution
21 customer's bill labeled "City Franchise Fee". The franchise fee authorized by
22 this section shall be in addition to franchise fees authorized under § 14-200-
23 101(a), as it may be amended.

24 (b)(1) Notwithstanding subsection (a), and except as provided in
25 subdivision (b)(2), a municipal corporation owning a municipal electric
26 utility shall not be entitled to bring a condemnation action to extend its
27 service territory or to acquire the customers or property of an electric
28 utility for a period commencing upon the effective date of this act and
29 continuing for two (2) years after the date of retail open access established
30 by the commission. Such prohibition shall include, but not be limited to, any
31 power of condemnation a municipal corporation owning a municipal electric
32 utility may have pursuant to §14-207-101 through § 14-207-106, §14-40-301
33 through § 14-40-503, or § 18-15-301 through § 18-15-308. This prohibition
34 does not apply to actions brought for extensions of territories or acquisition
35 of customers or property within areas of annexations completed prior to the
36 effective date of this chapter as evidenced by a statement filed by the

1 municipality with the Secretary of State prior to the effective date of this
2 chapter.

3 (2)(A) During the period from the effective date of this act
4 until the date of open retail access established by the commission, a
5 municipal corporation owning a municipal electric utility may only bring a
6 condemnation action to extend its service territory or to acquire customers or
7 property of an electric utility in the event of a voluntary annexation
8 pursuant to § 14-40-601 through § 14-40-606.

9 (B) During the period from the date of retail open access
10 established by the commission and for a two (2) year period thereafter, a
11 municipal corporation owning a municipal electric utility that elects to offer
12 retail open access may bring a condemnation action to extend its service
13 territory or to acquire customers or property of an electric utility, but only
14 in the event of a voluntary annexation pursuant to § 14-40-601 through § 14-
15 40-606.

16 (3) This section is not intended to affect any condemnation or
17 related proceedings pending as of the effective date of this act.

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19 SECTION 5. All provisions of this act of a general and permanent nature
20 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
21 Revision Commission shall incorporate the same in the Code.

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23 SECTION 6. If any provision of this act or the application thereof to
24 any person or circumstance is held invalid, such invalidity shall not affect
25 other provisions or applications of the act which can be given effect without
26 the invalid provision or application, and to this end the provisions of this
27 act are declared to be severable.

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29 SECTION 7. All laws and parts of laws in conflict with this act are
30 hereby repealed.

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32 SECTION 8. EMERGENCY CLAUSE. It is hereby found and determined by the
33 Eighty-second General Assembly that the restructuring of the electric utility
34 industry should be handled in a manner that ensures it will benefit the
35 consumers of this state; that the restructuring will be a complex and time-
36 consuming process; that the analytical and development process should begin as

1 soon as possible in order to enable benefits to be derived by consumers as
2 quickly thereafter as possible; and that this act will require this process to
3 begin. Therefore, an emergency is declared to exist and this act being
4 immediately necessary for the preservation of the public peace, health and
5 safety shall become effective on the date of its approval by the Governor. If
6 the bill is neither approved nor vetoed by the Governor, it shall become
7 effective on the expiration of the period of time during which the Governor
8 may veto the bill. If the bill is vetoed by the Governor and the veto is
9 overridden, it shall become effective on the date the last house overrides the
10 veto.

11 /s/ Sheppard, et al

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