

1 State of Arkansas
2 95th General Assembly
3 Regular Session, 2025
4

A Bill

SENATE BILL 463

5 By: Senators M. McKee, C. Penzo, M. Johnson, R. Murdock, J. Petty, J. Boyd, J. Bryant, Caldwell, A.
6 Clark, Crowell, B. Davis, Dees, J. Dismang, J. English, Flippo, Gilmore, Hester, Hill, Irvin, B. Johnson,
7 Rice, J. Scott, Stone, G. Stubblefield, D. Wallace
8 By: Representatives M. Brown, McAlindon, Beaty Jr., Gramlich, Achor, J. Moore, R. Scott Richardson
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For An Act To Be Entitled

11 AN ACT TO REQUIRE THE ARKANSAS PUBLIC SERVICE
12 COMMISSION TO APPROVE OR DENY SETTLEMENT AGREEMENTS
13 CONCERNING CLOSING OR ELIMINATING ELECTRIC GENERATION
14 UNITS OR TRANSMISSION ASSETS BETWEEN PUBLIC UTILITIES
15 AND CERTAIN ENTITIES; AND FOR OTHER PURPOSES.
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Subtitle

19 TO REQUIRE THE ARKANSAS PUBLIC SERVICE
20 COMMISSION TO APPROVE OR DENY SETTLEMENT
21 AGREEMENTS CONCERNING CLOSING OR
22 ELIMINATING ELECTRIC GENERATION UNITS OR
23 TRANSMISSION ASSETS.
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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27 SECTION 1. Arkansas Code Title 23, Chapter 1, Subchapter 18, is
28 amended to add an additional section to read as follows:

29 23-18-111. Closure of electric generation unit or transmission asset
30 by settlement agreement – Notice and commission approval required.

31 (a)(1) A public utility shall file an application with the Arkansas
32 Public Service Commission seeking approval of a settlement agreement proposed
33 between the United States Government, an agency of the United States, or any
34 other third party if the purpose of all or part of the settlement agreement
35 is the closure, deactivation, or decommissioning of an electric generation
36 unit or a transmission asset located in this state.



1 (2) As used in this section, "settlement agreement" includes a
2 consent decree that is being proposed in a formal judicial proceeding.

3 (b) The application required under subsection (a) of this section
4 shall include:

5 (1) The terms and conditions of the proposed settlement
6 agreement; and

7 (2) An acknowledgement that the public utility shall not enter
8 into the settlement agreement until the commission approves the proposed
9 settlement agreement.

10 (c) The commission shall approve or deny a proposed settlement
11 agreement submitted under subdivision (a)(1) of this section using the
12 following standards and procedures:

13 (1) Upon receipt of a proposed settlement agreement and if
14 requested by the public utility, the commission shall implement reasonable
15 and appropriate procedures to protect confidential and proprietary
16 information, but the reasonable and appropriate procedures shall not prevent
17 the commission or the public from accessing information sufficient to
18 evaluate compliance with the standards under this section;

19 (2) The commission shall request testimony or other legal
20 pleadings from the Office of the Attorney General, including the staff
21 assigned to the Consumer Utilities Rate Advocacy Division, and other agencies
22 of the state with expertise in the legal issues giving rise to the proposed
23 settlement agreement to assist in the commission's evaluation of:

24 (A) Compliance with the standards under this section; and

25 (B) Any underlying legal issues proposed for resolution in
26 the settlement agreement; and

27 (3)(A) After testimony and legal pleadings filed as described in
28 subdivision (c)(2) of this section, in order to approve the proposed
29 settlement agreement, the commission shall determine that there is clear and
30 convincing evidence that:

31 (i) The legal claims being resolved in the proposed
32 settlement agreement are based on a reasonable interpretation of existing
33 law;

34 (ii) The proposed settlement agreement does not
35 commit the public utility to an action that exceeds regulations at a cost to
36 consumers, including without limitation an action the commission finds to be

1 driven by shareholder or a shareholder equivalent, environmental, or
2 sustainability goals rather than applicable state or federal law; and

3 (iii) The public utility's decision to enter into
4 the proposed settlement agreement is reasonable and prudent.

5 (B)(i) Clear and convincing evidence shall include without
6 limitation the production of contemporaneous documentation and other evidence
7 by the public utility supporting the prudence of the public utility's
8 decision making.

9 (ii) In the absence of the contemporaneous
10 documentation or other evidence required under subdivision (c)(3)(B)(i) of
11 this section, the public utility may obtain an independent, retrospective
12 analysis demonstrating that the public utility's actual decision to enter
13 into the settlement agreement is a reasonable and prudent course of action.

14 (d) This subchapter does not apply to any settlement, consent decree,
15 or other resolution of any litigation or legal proceeding executed or ordered
16 before the effective date of this act.

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