

*** Current through all laws of the 2017 Regular Session and 2017 First Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission. ***

Title 23 Public Utilities and Regulated Industries
Subtitle 1. Public Utilities And Carriers
Chapter 3 Regulation of Utilities and Carriers Generally
Subchapter 4 -- Energy Conservation Endorsement Act of 1977

A.C.A. § 23-3-405 (2017)

23-3-405. Authority of commission -- Rates and charges -- Exemptions.

(a) (1) (A) Except as otherwise stated in this section, the Arkansas Public Service Commission is authorized to propose, develop, solicit, approve, require, implement, and monitor measures by utility companies which cause the companies to incur costs of service and investments which conserve, as well as distribute, electrical energy and existing supplies of natural gas, oil, and other fuels.

(B) The commission is authorized to order, require, promote, or engage in energy conservation programs and measures for the benefit of utility customers who are sixty-five (65) years of age or older or who meet the income eligibility qualifications for the Low Income Home Energy Assistance Program administered by the Department of Human Services.

(2) After proper notice and hearings, the energy conservation programs and measures may be approved and ordered into effect by the commission if the commission determines that the energy conservation programs and measures will be beneficial to the ratepayers of the public utilities and to the public utilities themselves.

(3) (A) In such instances, the commission shall declare that the cost of the energy conservation programs and measures is a proper cost of providing utility service.

(B) At the time the energy conservation programs and measures are approved and ordered into effect, the commission shall also order that the affected public utility company be allowed to increase its rates or charges as necessary to recover from consumers who have not opted out of utility-sponsored energy conservation programs and measures under subdivision (c)(1) of this section any costs incurred by the public utility company as a result of its engaging in the energy conservation programs and measures.

(b) Nothing in this subchapter shall be construed as limiting or cutting down the authority of the commission to order, require, promote, or engage in other energy conservation programs and measures.

(c) (1) (A) A nonresidential business consumer that is classified within sectors 31 through 33 of the North American Industry Classification System, as it existed on January 1, 2013, or a nonresidential business consumer that is a state-supported institution of higher education may provide notice by mail or email to the commission on or before September

15 of any year of the nonresidential business consumer's decision to opt out of utility-sponsored energy conservation programs and measures and direct the nonresidential business consumer's own energy conservation programs and measures if the nonresidential business consumer:

(i) Satisfies one (1) of the following criteria:

(a) Has a peak electrical demand of at least one megawatt (1 MW) or an annual natural gas usage of seventy thousand million British Thermal Units (70,000 MMBtu) at a single facility; or

(b) Has multiple facilities with identical ownership in a single public utility's service territory with:

(1) A peak electrical demand that exceeds two hundred kilowatts (200 kW) at each location and an aggregated peak electrical demand of at least one megawatt (1 MW) for all of the locations; or

(2) An annual natural gas usage that exceeds fourteen thousand million British Thermal Units (14,000 MMBtu) at each location and an aggregated annual natural gas usage of seventy thousand million British Thermal Units (70,000 MMBtu) for all of the locations; and

(ii) In the five (5) years preceding the notice:

(a) Has not accepted:

(1) The installation of any energy conservation programs and measures by the applicable public utility; or

(2) Financing or direct monetary compensation in the form of a rebate or incentive to enable the installation of any energy conservation programs and measures by the applicable public utility; or

(b) Has accepted but returned to an applicable public utility through a separate payment to the public utility or through payment of rates approved under subdivision (a)(3) of this section any amount received from an applicable public utility calculated from the date of the installation of the last energy conservation program or measure, including any interest and directly attributable rate effects, for:

(1) The installation of any energy conservation programs and measures by the applicable public utility; or

(2) Financing or direct monetary compensation in the form of a rebate or incentive to enable the installation of any energy conservation programs and measures by the applicable public utility.

(B) After proper notice and hearings, the commission may decrease the peak demand requirements under subdivision (c)(1)(A) of this section, but the commission shall not increase the peak demand requirements under subdivision (c)(1)(A) of this section.

(2) The notice of exemption required under subdivision (c)(1) of this section shall include a sworn affidavit from an authorized employee of the nonresidential business consumer that

states either:

(A) That:

(i) The nonresidential business consumer meets the criteria stated in subdivision (c)(1)(A) of this section;

(ii) The nonresidential business consumer has implemented or will implement energy conservation programs and measures or has made or will make an investment designated to provide energy savings for the nonresidential business consumer; and

(iii) The energy conservation programs and measures implemented or to be implemented or the investment made or to be made has provided or is expected to provide energy savings for the nonresidential business consumer in an amount that is at least equal to the energy efficiency goals or standards established by the commission at the time the notice is issued under this subsection; or

(B) That:

(i) The nonresidential business consumer meets the criteria stated in subdivision (c)(1)(A) of this section;

(ii) The nonresidential business consumer has exhausted its opportunity to economically conduct further meaningful and cost-effective energy conservation programs and measures; and

(iii) The nonresidential business consumer is unable to realize adequate benefits by participating in the utility-sponsored energy conservation programs and measures for the reasons stated therein.

(d) (1) Upon receipt of a notice of exemption that meets the requirements of subsection (c) of this section, the commission shall issue an order of compliance stating that the nonresidential business consumer has met the requirements of this section and that the rights and limitations of subdivision (d)(2) of this section apply.

(2) Beginning January 1 next following the commission's order of compliance under subdivision (d)(1) of this section:

(A) The nonresidential customer is not required to participate in any utility-sponsored energy conservation programs and measures required by the commission under this section for the applicable public utility;

(B) The public utility company shall not bill a nonresidential business consumer who has been granted an exemption under this subsection for the rates and charges approved by the commission under subdivision (a)(3) of this section; and

(C) The nonresidential customer is not eligible to participate in any energy conservation programs and measures offered by the public utility company under this section.

(3) An exemption and order of compliance issued under this subsection is permanent until it is withdrawn by the nonresidential business consumer under this section.

(e) (1) A nonresidential business consumer seeking to withdraw an exemption granted

under this section shall notify the commission by September 15 of any year.

(2) Upon notification of the withdrawal of an exemption under this subsection, the commission shall notify the public utility company of the withdrawal of the exemption.

(3) Beginning with the January billing cycle in the year next following notice of the withdrawal of an exemption under this subsection:

(A) The public utility company shall begin billing the nonresidential business consumer for the rates and charges that apply at the time the exemption is withdrawn; and

(B) The nonresidential business consumer shall be eligible to participate in any energy conservation programs and measures offered by the public utility company under this section.

(f) The commission shall revise its rules and promulgate new rules only to the extent required to allow the commission to incorporate and comply with subsections (c)-(e) of this section.

HISTORY: Acts 1977, No. 748, §§ 3, 5; A.S.A. 1947, §§ 73-2503, 73-2505; Acts 2013, No. 253, § 1; 2015, No. 78, § 1; 2017, No. 309, §§ 1, 2; 2017, No. 1102, §§ 2, 3.