

1 **SENATE FLOOR VERSION**

2 March 2, 2023

3 **AS AMENDED**

4 SENATE BILL NO. 1103

5 By: Treat and Bullard

6 An Act relating to electric utilities; creating the
7 Ratepayer Protection Act of 2023; providing short
8 title; defining terms; providing option for certain
9 electric utilities to file certain plan notice;
10 establishing provisions of plan notice; providing for
11 approval of certain plan subject to certain
12 regulation; prohibiting certain electric utilities
13 from filing certain applications prior to certain
14 date; requiring certain rates to remain in effect
15 during certain plan term subject to certain rate
16 adjustments; requiring certain electric utilities to
17 file certain information within application;
18 providing for certain testimony to plan applications
19 be submitted by certain date; requiring certain
20 response to testimony be submitted by certain date;
21 requiring the Corporation Commission to hold certain
22 hearing by certain date; requiring Commission to
23 issue final order by certain date; providing for
24 certain rates to go into immediate effect upon
issuance of final order; providing for the Commission
to require security under certain circumstances;
requiring order by Commission to specify certain
information for certain filing; requiring certain
application to utilize certain data; providing for
utility to file certain application and notice for
certain term; requiring certain approved rates to
continue in force until certain date; requiring rates
to be adjusted subject to certain provisions;
requiring certain refund to customer under certain
circumstances; requiring adjustments to only occur
once per year; requiring certain rates to continue in
force subject to certain circumstances; providing for
withdrawal process; construing provisions; requiring
certain electric utilities to offer certain rate
options; requiring utility to submit certain rate
option proposals to Commission; requiring certain
notice be provided to customers; requiring certain

1 electric utility to administer certain program;
2 establishing provisions of program; requiring
3 promulgation of rules by Commission; prohibiting an
4 electric utility from disconnecting service to a
5 customer under certain conditions; requiring electric
6 utility to maintain certain list; requiring list
7 distribution; requiring certain electric utilities
8 using natural gas electric generation to maintain
9 certain supply by certain date; providing for certain
10 electric utility to enter into certain storage
11 agreements; providing for codification; and declaring
12 an emergency.

13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 803.1 of Title 17, unless there
16 is created a duplication in numbering, reads as follows:

17 Sections 1 through 11 of this act shall be known and may be
18 cited as the "Ratepayer Protection Act of 2023".

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 803.2 of Title 17, unless there
21 is created a duplication in numbering, reads as follows:

22 As used in this act:

23 1. "Asset manager" means any third party that is authorized to
24 sell, market, or utilize excess natural gas capacity that electric
utilities do not need or are not critical for operation during non-
winter months;

2. "Commission" means the Corporation Commission;

1 3. "Customer utility bill relief program" means a program to be
2 administered by an electric utility subject to retail rate
3 regulation by the Commission, to be offered to residential customers
4 of the utility for the purposes of providing bill relief options to
5 customers;

6 4. "Earned return on equity" means the actual earned return on
7 equity during the historical year, subject to the adjustments
8 defined in this act and the utility's performance-based rate plan
9 rate schedule approved by the Commission;

10 5. "General rate case application" means a request for review
11 of an electric utility's rates and charges as prescribed by the laws
12 of this state and administrative rule of the Commission;

13 6. "Historical year" means the test period selected by the
14 electric utility in its performance-based rate plan notice;

15 7. "Natural gas electric generation" means a machine or
16 machines that use natural gas to produce capacity, energy, or other
17 electricity products;

18 8. "Performance-based rate plan" means the formula by which the
19 jurisdictional non-fuel revenue requirements of a rate-regulated
20 electric utility shall be calculated and allocated to the utility's
21 various rate schedules, subject to the jurisdiction of the
22 Commission and this act;

23 9. "Performance-based rate plan application" means one of the
24 five annual rate evaluations and adjustments filed by the electric

1 utility before the Commission during the performance-based rate plan
2 term;

3 10. "Performance-based rate plan application filing date" means
4 the last day of the year in which an electric utility shall file its
5 annual performance-based rate plan application before the
6 Commission, unless a modification to such date is requested by a
7 utility and approved by the Commission;

8 11. "Performance-based rate plan notice" means the request
9 filed before the Commission electing to utilize a performance-based
10 rate plan, which shall be included with a general rate case
11 application filed before the Commission;

12 12. "Performance-based rate plan term" means a period following
13 a final order issued in a general rate case application, inclusive
14 of five annual performance-based rate plan applications within five
15 (5) individual historical years;

16 13. "Target return on equity" means the return on shareholder
17 equity established for the electric utility in the final order
18 addressing its most recent general rate case application; and

19 14. "Winter months" means the time period between December 21
20 of a given year through March 20 of the following year.

21 SECTION 3. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 803.3 of Title 17, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. 1. An electric utility filing an application for a general
2 change to its rates and charges under this section and pursuant to
3 the rules of the Corporation Commission may, as part of a general
4 rate change application, file a performance-based rate plan notice
5 before the Commission indicating the utility is electing to have its
6 rates regulated under a performance-based rate plan as authorized
7 and defined by this act.

8 2. The performance-based rate plan notice shall define the
9 historical year to be selected by the utility and utilized in each
10 performance-based rate plan application during the performance-based
11 rate plan term.

12 B. 1. The Commission shall grant the utility's performance-
13 based rate plan notice to elect rate regulation under a performance-
14 based rate plan, as authorized and defined by this act.

15 2. The Commission shall regulate the rates of the utility in
16 accordance with the terms of this act during the performance-based
17 rate plan term and any tariff approved by the Commission that does
18 not otherwise conflict with the terms of this act.

19 C. An electric utility shall not file its first performance-
20 based rate plan application of any performance-based rate plan term
21 until at least one hundred eighty (180) days after rates have become
22 effective pursuant to the final order on the application for a
23 general change in rates.

24

1 D. The rates that are approved in the final order of the
2 utility's most recent general rate case application shall remain in
3 effect during the performance-based rate plan term, subject to the
4 rate adjustments under this section.

5 E. 1. An approved performance-based rate plan shall require
6 the utility to file the information required by the Commission
7 pursuant to this section on the performance-based rate plan
8 application filing date.

9 2. An approved performance-based rate plan shall require any
10 party, according to the Commission's rules and procedures, to file
11 with the Commission testimony in response to the utility's
12 performance-based rate plan application no later than seventy-five
13 (75) calendar days after the utility's performance-based rate plan
14 application filing date.

15 3. An approved performance-based rate plan shall require the
16 utility to file with the Commission any rebuttal to a party's
17 testimony under paragraph 1 of this subsection within ninety (90)
18 calendar days after the performance-based rate plan filing date.

19 F. 1. The Commission shall conduct a hearing on a utility's
20 performance-based rate plan application no later than one hundred
21 twenty (120) calendar days after a utility's performance-based rate
22 plan application filing date.

23 2. The Commission shall issue a final order no later than one
24 hundred eighty (180) days after a utility's performance-based rate

1 plan application filing date. If a final order has not been issued
2 by the one-hundred-eightieth day following a performance-based rate
3 plan application filing date, the rates proposed by the utility in
4 its performance-based rate plan application shall go into immediate
5 effect, at the utility's discretion, subject to refund following the
6 issuance of a final order.

7 G. The Commission may require reasonable security to assure the
8 prompt payment of any refunds, including interest, that may be
9 ordered.

10 SECTION 4. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 803.4 of Title 17, unless there
12 is created a duplication in numbering, reads as follows:

13 A. An order by the Corporation Commission approving a
14 performance-based rate application shall specify the minimum
15 information required with each annual rate review filing.

16 B. Annual performance-based rate applications filed by an
17 electric utility during a performance-based rate term shall be
18 developed using the historical year selected by the utility.

19 C. Annual performance-based rate applications shall be prepared
20 consistent with the Commission's final order on the utility's most
21 recent general rate case application.

22 D. Following the conclusion of a performance-based rate term,
23 the utility may file a general rate case application and may elect
24 to include a new performance-based rate notice with such application

1 for a new performance-based rate term. Rates approved pursuant to a
2 utility's most recent performance-based rate application shall
3 continue until a final order in the utility's next general rate case
4 application is issued and the compliance tariffs are approved.

5 SECTION 5. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 803.5 of Title 17, unless there
7 is created a duplication in numbering, reads as follows:

8 A. 1. Rates shall be adjusted in a performance-based rate
9 application based on a comparison of the earned return on equity to
10 the target return on equity.

11 2. The target return on equity shall be established in the
12 final order addressing the performance-based rate notice in the
13 electric utility's most recent general rate case application.

14 3. In a performance-based rate application, the target return
15 on equity and earned return on equity shall be calculated utilizing
16 the same capitalization structure approved by the Commission in the
17 utility's most recent general rate case application.

18 B. For the purposes of adjusting rates in a performance-based
19 rate application, a dead-band of earned returns shall be established
20 around the target return on equity set in the final order. For rate
21 adjustments pursuant to this section, the following provisions shall
22 be applied:

23 1. The dead-band shall be the target return on equity plus
24 fifty (50) basis points and the target return on equity minus fifty

1 (50) basis points, for a total dead-band of one hundred (100) basis
2 points;

3 2. In a performance-based rate application, if the earned
4 return on equity is within the established dead-band, no rate change
5 or refund shall occur; and

6 3. In a performance-based rate application, if the earned
7 return on equity is less than the dead-band, rates shall be adjusted
8 to the target return on equity prospectively.

9 C. 1. In a performance-based rate application, if the earned
10 return on equity is greater than the dead-band, a refund shall be
11 issued to customers over a twelve-month period. The refund shall be
12 seventy-five percent (75%) of such revenues associated with the
13 earned return on equity greater than the dead-band and shall be
14 credited or returned to utility customers. The remaining twenty-
15 five percent (25%) of such revenues associated with the earned
16 return on equity greater than the dead-band shall be retained by the
17 utility and reinvested in the utility's power delivery
18 infrastructure to improve reliability and resilience.

19 2. Revenues returned to customers in one performance-based rate
20 application shall not be included in the calculation of a target
21 return on equity in a subsequent performance-based rate application
22 or a general rate case application.

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1 D. Rate base and cost of service shall be computed in the same
2 manner as approved in the utility's most recent general rate case
3 application.

4 E. The utility shall file the resulting rate schedules as part
5 of any performance-based rate application final order compliance
6 filing.

7 F. Only one performance-based rate adjustment shall occur
8 during any period of three hundred sixty-five (365) days.

9 G. Rates resulting from a performance-based rate shall continue
10 until new rates have been ordered by the Commission in a subsequent
11 performance-based rate application or general rate case application.

12 H. A utility may file a general rate case application or seek
13 any other relief it may be entitled to under this act at any time
14 during the performance-based rate term.

15 SECTION 6. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 803.6 of Title 17, unless there
17 is created a duplication in numbering, reads as follows:

18 A. In the event that an electric utility files a performance-
19 based rate notice, all existing tariffs approved by the Corporation
20 Commission providing separate cost recovery outside of base rates
21 shall continue to be effective outside the performance-based rate
22 unless those tariffs are proposed to be eliminated at the discretion
23 of the utility.

24

1 B. Upon approval of a performance-based rate notice, the
2 Commission shall require the utility to file tariffs conforming to
3 this act and order of the Commission.

4 C. The utility may withdraw its election to have its rates
5 regulated pursuant to this act at any time. Upon withdrawal, all
6 existing rates and charges shall continue until a final order in the
7 utility's next general rate case application is issued and the
8 compliance tariffs are approved.

9 D. 1. Nothing in this act shall be construed to prohibit
10 utilities from requesting approval of additional optional rate
11 offerings to customers.

12 2. Nothing in this act shall be construed to repeal any other
13 provision of law and is supplemental to all other laws governing the
14 regulation of public utility rates.

15 3. Nothing in this act shall prohibit the Commission from
16 exercising its powers under any other statute or the Constitution of
17 the State of Oklahoma.

18 SECTION 7. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 804.1 of Title 17, unless there
20 is created a duplication in numbering, reads as follows:

21 A. All electric utilities subject to retail rate regulation by
22 the Corporation Commission shall offer rate options for residential
23 customers of the electric utility to protect them from price
24

1 volatility. Each utility shall, at a minimum, offer the following
2 rate options:

3 1. An average monthly billing plan; and

4 2. An annual flat bill tariff option, for a premium, that
5 results in the same total bill for a twelve-month period. The
6 tariff option shall be available to a residential customer who has
7 resided at his or her current residence for the previous twelve (12)
8 months, has had his or her electricity priced on the applicable
9 residential tariffs and riders over the past twelve (12) months, and
10 is currently in good standing with the utility.

11 B. Each utility shall submit to the Commission for approval the
12 rate options to be offered to customers under subsection A of this
13 section. Upon approval by the Commission, the options shall become
14 a part of the utility's approved tariffs in the electric utility's
15 next general review of rates and charges filed pursuant to this act.

16 C. Not less than once per calendar year, a utility under this
17 section shall give written notice to its residential customers of
18 the availability of the rate options described in subsection A of
19 this section.

20 SECTION 8. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 804.2 of Title 17, unless there
22 is created a duplication in numbering, reads as follows:

23 A. An electric utility subject to retail rate regulation by the
24 Corporation Commission shall propose and be responsible for the

1 administration of a customer utility bill relief program. Proposed
2 programs shall be filed with the Commission or included with a
3 general rate case application for approval.

4 B. A program submitted under subsection A of this section shall
5 include, but not be limited to:

6 1. A process and criteria for application by an eligible
7 customer;

8 2. Provisions and criteria for waiving or reducing late payment
9 penalties, deposits, or unpaid balances;

10 3. Extended payment plans;

11 4. Criteria for suspension of disconnection activity in
12 addition to weather disconnection moratoriums; and

13 5. Explanation of the utility's plan for recovery of prudently
14 incurred program costs and any uncollectable balances incurred as a
15 result of the program.

16 C. The Commission shall promulgate rules to implement the
17 provisions of this section.

18 SECTION 9. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 804.3 of Title 17, unless there
20 is created a duplication in numbering, reads as follows:

21 An electric utility subject to retail rate regulation by the
22 Corporation Commission shall not disconnect service to a customer
23 for any of the following reasons:

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- 1 1. Failure to pay for a different kind or classification of
2 service from that requested;
- 3 2. Failure to pay a bill correcting a previous underbilling,
4 due to misapplication of rates, unless the utility offers the
5 consumer a deferred payment agreement as provided in administrative
6 rule by the Commission;
- 7 3. Failure of a previous owner or occupant at the premises or
8 user of the service to pay an unpaid or delinquent account, except
9 where the previous occupant remains an occupant or user of the
10 utility service;
- 11 4. Failure of a customer to pay any portion of an estimated
12 billing which the customer disputes, except where the customer fails
13 to allow a utility representative access to the meter, or if the
14 customer regularly reads the customer's own meter and fails to
15 supply a current meter reading;
- 16 5. If a current customer in good standing accepts an additional
17 household member owing a previous bill to the utility, unless that
18 additional household member is listed on the lease arrangements or
19 another utility service as a responsible party, or unless the
20 household member shared service with the subscriber at a different
21 or same location;
- 22 6. If a customer or potential customer owes a previously unpaid
23 account from a different utility beyond the boundaries of the
24 utility's service territory;

1 7. In the case of a violation protested by a customer, whose
2 name was used to obtain service at another location without the
3 customer's permission or knowledge; provided, however, such misuse
4 shall be verified by the utility;

5 8. Nonpayment of an amount past due for more than three (3)
6 years if the utility cannot substantiate the charges with a copy of
7 the customer's complete billing history reflecting usage,
8 consumption, and relevant charges; and

9 9. Failure to pay a past due amount to another utility.

10 SECTION 10. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 804.4 of Title 17, unless there
12 is created a duplication in numbering, reads as follows:

13 A. 1. An electric utility subject to retail rate regulation by
14 the Corporation Commission shall compile and maintain a list
15 containing the name, address, and phone number of any known payment
16 assistance program, including information regarding any bilingual
17 services offered, that is applicable to each service area within the
18 utility's areas of operation. The list should include but not be
19 limited to local, state, federal, and tribal energy assistance
20 programs. The list shall also include any public or private
21 charitable organization that offers or has been known to offer
22 energy payment assistance; provided, the organization shall give
23 prior consent for inclusion on this list.

24

1 2. Electric utilities shall use due diligence in compiling and
2 updating this information, with updates to occur at least on an
3 annual basis.

4 3. Each electric utility subject to the provisions of this
5 section shall provide a copy of this list to any consumer who asks
6 for or requests such assistance.

7 B. The offer of any such list under this section shall be for
8 informative resource only. Failure of a customer to gain funding in
9 full or in part from any of the listed resources under this section
10 shall not result in any liability to the electric utility.

11 SECTION **11.** NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 805.1 of Title 17, unless there
13 is created a duplication in numbering, reads as follows:

14 A. An electric utility subject to retail rate regulation by the
15 Corporation Commission that utilizes natural gas electric generation
16 and has firm gas transportation contracts shall, by December 2026,
17 maintain a firm supply of enough natural gas to operate its
18 facilities at an eighty percent (80%) maximum daily quantity under
19 firm gas transportation contracts for fourteen (14) consecutive days
20 during the winter months to protect customers from adverse weather
21 events and supply chain issues. Of the above required firm supply
22 of natural gas, at least fifty percent (50%) of that firm supply
23 shall be satisfied by firm storage services, if available.

1 B. Each electric utility subject to the requirements of this
2 section may enter into storage management contracts with asset
3 managers, self-optimize its storage services to mitigate the costs
4 of the increased storage for customers, or any combination thereof.
5 One-half (1/2) of any monetary or financial benefits derived from
6 storage management contracts with an asset manager, the electric
7 utility's self-optimized services, or any combination thereof shall
8 be returned to customers to mitigate the costs of increased storage
9 capacity required in subsection A of this section.

10 C. Electric utilities subject to the provisions of this section
11 shall be entitled to recover costs for the firm supply requirements
12 of this section.

13 D. The Commission shall have the authority to promulgate any
14 rules and regulations necessary to effectuate the provisions of this
15 section.

16 SECTION 12. It being immediately necessary for the preservation
17 of the public peace, health or safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.

20 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND TELECOMMUNICATIONS
21 March 2, 2023 - DO PASS AS AMENDED
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