

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.

23

24

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:

24

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 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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