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STUDY OF THE IMPACTS OF REGULATIONS
AFFECTING THE ACCEPTANCE OF
INTEGRATED COMMUNITY ENERGY SYSTEMS

PRELIMINARY BACKGROUND REPORT

MASTER

Public Utility, Energy Facility
Siting and Municipal Franchising
Regulatory Programs in Arkansas

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UNITED STATES DEPARTMENT OF ENERGY

Division of Buildings and Community Systems
under Contract No. DE-AC02-78CS20289

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ABSTRACT

This report is one of a series of preliminary reports describing the laws and regulatory programs of the United States and each of the 50 states affecting the siting and operation of energy generating facilities likely to be used in Integrated Community Energy Systems (ICES). Public utility regulatory statutes, energy facility siting programs, and municipal franchising authority are examined to identify how they may impact on the ability of an organization, whether or not it be a regulated utility, to construct and operate an ICES.

This report describes laws and regulatory programs in Arkansas. Subsequent reports will (1) describe public utility rate regulatory procedures and practices as they might affect an ICES, (2) analyze each of the aforementioned regulatory programs to identify impediments to the development of ICES and (3) recommend potential changes in legislation and regulatory practices and procedures to overcome such impediments.

CHAPTER 1
INTRODUCTION

One response to current concerns about the adequacy of the nation's energy supplies is to make more efficient use of existing energy sources. The United States Department of Energy (DOE) has funded research, development and demonstration programs to determine the feasibility of applying proven cogeneration technologies in decentralized energy systems, known as Integrated Community Energy Systems (ICES), to provide heating, cooling and electrical services to entire "communities" in an energy conserving and economic manner.

The relevant "community" which will be appropriate for ICES development will typically consist of a combination of current energy "wasters" -- i.e., installations with large energy conversion facilities which now exhaust usable amounts of waste heat or mechanical energy -- and current energy users -- i.e., commercial or residential structures which currently obtain electricity and gas from a traditional central utility and convert part of it on customer premises to space heating and cooling purposes.

In most current applications, energy conversion facilities burn fuels such as coal, oil or natural gas to produce a single energy stream, such as process steam or electricity, for various industrial processes or for sale to other parties. However, the technology exists to produce

more than one energy stream from most energy conversion processes so that the input of a given amount of fuel could lead to the production and use of far more usable energy than is presently produced. This technology is the foundation of the ICES concept. Current examples of the technology can be found on university campuses, industrial or hospital complexes and other developments where a central power plant provides not only electricity but also thermal energy to the relevant community.

It is generally assumed by DOE that ICES will be designed to produce sufficient thermal energy to meet all the demands of the relevant community. With a given level of thermal energy output, an ICES generation facility will be capable of producing a level of electricity which may or may not coincide with the demand for electricity in the community at that time. Thus, an ICES will also be interconnected with the existing electric utility grid. Through an interconnection, the ICES will be able to purchase electricity when its community's need for electricity exceeds the amount can be produced from the level of operations needed to meet the community's thermal needs. In addition, when operations to meet thermal needs result in generation of more electricity than necessary for the ICES community, the ICES will be able to sell excess electricity through the interconnection with the grid.

ICES may take a variety of forms, from a single owner-user such as massive industrial complex or university campus where all energy generated is used by the owner without sales to other customers, to a large residential community in which a central power plant produces heat and electricity which is sold at retail to residents of the community. Since successful operation of an ICES presupposes that the ICES will be able to use or sell all energy produced, it can be anticipated that all ICES will at some point seek to sell energy to customers or to the electric utility grid from which the electricity will be sold to customers. By their very nature ICES are likely to be public utilities under the laws of many, or even all, states.

The Chicago law firm of Ross, Hardies, O'Keefe, Babcock & Parsons has undertaken a contract with the Department of Energy to identify impediments to the implementation of the ICES concept found in existing institutional structures established to regulate the construction and operation of traditional public utilities which would normally be the suppliers to a community of the type of energy produced by an ICES.

These structures have been developed in light of policy decisions which have determined that the most effective means of providing utility services to the public is by means of regulated monopolies serving areas large enough to permit economies of scale while avoiding wasteful

duplication of production and delivery facilities. These existing institutional structures have led to an energy delivery system characterized by the construction and operation of large central power plants, in many cases some distance from the principal population centers being served.

In contrast, effective implementation of ICES depends to some extent upon the concept of small scale operations supplying a limited market in an area which may already be served by one or more traditional suppliers of similar utility services. ICES may in many instances involve both existing regulated utilities and a variety of non-utility energy producers and consumers who have not traditionally been subject to public utility type regulation. It will also require a variety of non-traditional relationships between existing regulated utilities and non-regulated energy producers and consumers.

Ross, Hardies, O'Keefe, Babcock & Parsons is being assisted in this study by Deloitte Haskins & Sells, independent public accountants, Hittman Associates, Inc., engineering consultants, and Professor Edmund Kitch, Professor of Law at the University of Chicago Law School.

The purpose of this report is to generally describe the existing programs of public utility regulation, energy facility siting and municipal franchising likely to relate to the development and operation of an ICES, and the construction of ICES facilities in Arkansas. Attention is given

to the problems of the entry of an ICES into a market for energy which has traditionally been characterized by a form of regulated monopoly where only one utility has been authorized to implement the ICES concept and a series of recommendations for responding to those impediments. orized to serve a given area and to the necessary relationships between the ICES and the existing utility. In many jurisdictions legal issues similar to those likely to arise in the implementation of the ICES concept have not previously been faced. Thus, this report cannot give definitive guidance as to what will in fact be the response of existing institutions when faced with the issues arising from efforts at ICES implementation. Rather, this report is descriptive of present institutional frameworks as reflected in the public record.

Further reports are being prepared describing the determination and apportionment of relevant costs of service, rates of return and rate structures for the sale and purchase of energy by an ICES. Impediments presented by existing institutional mechanisms to development of ICES will be identified and analyzed. In addition to identifying the existing institutional mechanisms and the problems they present to implementation of ICES, future reports will suggest possible modifications of existing statutes, regulations and regulatory practices to minimize impediments to ICES.

This report is one of a series of preliminary reports covering the laws of all 50 states and the federal government. In addition to the reports on individual states, Ross, Hardies, O'Keefe, Babcock & Parsons is preparing a summary report which will provide a national overview of the existing regulatory mechanisms and impediments to effective implementation of the ICES concept and a series of recommendations for responding to those impediments.

CHAPTER 2

REGULATION OF PUBLIC UTILITIES IN ARKANSAS

I. PUBLIC AGENCIES WHICH REGULATE PUBLIC UTILITIES

The Arkansas state constitution contains no provision dealing with public utility regulation. Title 73 of the Arkansas Statutes specifically provides for the regulation of public utilities. The Arkansas Public Service Commission (Commission) is established by statute as a sub-agency of the Department of Commerce and is responsible for regulating electric, steam heating, and certain other kinds of utilities.^{1/} The Commission consists of three members, each appointed by the governor with the approval of the Senate for a term of six years.^{2/} The Commission has authority over all matters pertaining to the regulation and operation of gas companies, electric companies, and hydro-electric companies among other utilities enumerated in the statute.^{3/}

The role of local governments in the regulation of public utilities has been reduced by recent legislation. Municipal councils formerly had the power to regulate rate-making for investor owned utilities operating within their boundaries. However, as a result of 1977 amendments to the Public Utilities Act, ratemaking for privately owned electric, gas, telephone, and sewer utilities is now within the exclusive jurisdiction of the Public Service Commission.^{4/}

The Arkansas Public Service Commission is hereby vested with the sole and exclusive

jurisdiction and authority to determine the rates to be charged for each kind of product or service to be furnished or rendered by electric, gas, telephone, or sewer public utilities in Arkansas

Cities and towns in this State shall have no authority acting either through their governing bodies or by the initiative of their citizens to assume or exercise any jurisdiction or authority to fix and determine rates charged in Arkansas by electric, gas or telephone public utilities. 5/

II. JURISDICTION OF THE COMMISSION

The Arkansas statutes contain two definitions of "public utility," one for general statutory purposes and one for ratemaking purposes only. The general statutory definition includes persons and corporations owning or operating facilities for production, generation, transmission or delivery of gas, electricity or steam for the production of light, heat or power to or for the public for compensation. 6/ The definition of "public utility" for ratemaking purposes encompasses the above definition and also includes persons and corporations producing, generating, transmitting, delivering or furnishing gas, electric or steam services to any other person or corporation for resale or distribution to or for the public for compensations. 7/ Thus, while the Commission will regulate rates charged on sales for resale or indirect sales, an entity involved only in indirect sales apparently is not subject to the general regulatory jurisdiction of the Commission. No reported judicial or administrative decisions have discussed this distinction. Both

definitions of "public utility" require that there must be a receipt of "compensation" for the service to be subject to jurisdiction.^{8/} As noted above, indirect sales may be regulated only for ratemaking purposes.^{9/} However, the Commission does not in practice regulate wholesale sales of electric power and considers this matter to be under the jurisdiction of the Federal Energy Regulatory Commission.^{10/}

Both definitions also require that the service be provided to the "public."^{11/} However, the term "public" has not been defined except in certain limited respects described below. There have been few administrative or court decisions construing "public." In Re Arkansas Louisiana Gas Co.,^{12/} a gas company produced natural gas in Louisiana, transported it by pipeline into Arkansas, and there sold it to forty large industrial customers and five local gas distributing companies. After rejecting the company's contention that it was engaged in interstate commerce and therefore not subject to state regulation, the Department of Public Utilities (predecessor to the Commission) considered the company's second argument that it had never held itself out to serve any and all industries.^{13/} The department held, without discussing its rationale, that the gas company was a "public" utility subject to regulation even though it sold only to industries of its own selection.^{14/}

In Arkansas-Louisiana Electric Cooperative, Inc. v. Arkansas Public Service Commission,^{15/} a complaint was brought by several regulated electric companies charging

that the defendant, a Louisiana cooperative doing business in Arkansas, had become a public utility by selling electricity to a non-member customer. The court held that "the furnishing of electric power to one customer under a private contract does not constitute the furnishing agency a public utility."^{16/} Noting that the single customer cited was an aluminum plant of the Defense Plant Corporation and that the electricity was furnished during a wartime power shortage, the court held that the defendant had not dedicated its property to the use of the public and was therefore not a public utility.

One provision of the Arkansas statute expressly exempts interstate commerce from regulation by the Commission.^{17/} The generation of energy for private or tenant use is also exempted from Commission's regulation.

"The term 'public utility' shall not include any person or corporation, who or which furnishes the services or commodity exclusively to himself or itself, or to his or its employees or tenants, when such service or commodity is not resold to, or used by others."^{18/}

Another provision specifies that special improvement districts and municipalities owning or operating public utilities are exempt from regulation by the Commission.^{19/} Although this statutory exemption does not so state, another statutory provision requires Commission approval of extensions of service by municipally-owned utilities beyond the corporate boundaries.^{20/} The Commission has jurisdiction over electric

cooperatives ". . . to the same extent as . . . provided by law for the regulation, supervision or control of public utilities."^{21/}

III. POWERS OF THE COMMISSION

The statute contains a general powers provision which gives the Commission the authority and duty:

to supervise and regulate every public utility in this Act defined and to do all things, whether herein specifically designated, that may be necessary or expedient in the exercise of such power and jurisdiction, or in the discharge of its duty. ^{22/}

The Commission has regulatory jurisdiction over rates for sales to the public.^{23/} As mentioned before, the statute gives the Commission authority to regulate sales to a party for resale to the public, but the Commission does not in practice regulate wholesales of electric power. Capitalization and issuance of securities are regulated.^{24/} The Commission prescribes a uniform system of accounts^{25/} and may require public utilities to carry a proper and adequate depreciation account.^{26/} Mergers, consolidations, and affiliated interest transactions are regulated.^{27/}

Agreements or arrangements between utilities are not generally regulated.^{28/} Sales or leases of utility plant by a public utility require the consent and approval of the Commission.^{29/} Initiation of service and construction, expansion or operation of facilities must be authorized by the Commission through the issue of a certificate of public

convenience and necessity.^{30/} The transfer of franchises or property requires Commission approval.^{31/}

IV. AUTHORITY TO ASSIGN RIGHTS TO PROVIDE SERVICE IN A GIVEN AREA

The present statute provides that utility operations may not be initiated or extended and that no construction may be undertaken without issuance of a certificate of public convenience and necessity. A certificate is not needed for construction or operations commenced under a limited or conditional certificate,^{33/} an extension within a municipality where service has previously been lawfully supplied,^{34/} or for any extension within territory then being served or necessary in the ordinary course of business.^{35/} In addition, under the Arkansas statute a utility may extend service within any municipality in which it lawfully operated prior to the effective date of the statute (1935), but otherwise extensions of service are limited to the territory specified in its certificate.^{36/} A preliminary order of the Commission may authorize a utility to exercise a franchise before the formal granting of a certificate.^{37/}

A municipality can construct a utility plant in conjunction with the operation of a municipally-owned utility without obtaining a certificate from the Commission.^{38/} However, if a municipally-owned utility plans to extend its operations into a contiguous rural area, it must obtain a certificate from the Commission and the extra-municipal.

portion of its operations will be subject to Commission regulation.^{39/} The Commission has sanctioned such an extension into an area already served by an investor-owned utility where the service offered by the investor-owned utility was exorbitantly priced.^{40/}

Competition between privately owned electric utilities and electric cooperatives is forbidden. The statute provides that:

Notwithstanding the provisions of this Act or any other provisions of law, or the terms of any certificate of convenience and necessity, franchise, permit, license, or other authority granted to a public utility or electric cooperative corporation by the State or a Municipality, no public utility or electric cooperative corporation shall furnish, or offer to furnish, electric service at retail and not for resale in any area heretofore or hereafter allocated by the Commission to another electric cooperative corporation or public utility. ^{41/}

This particular provision omits municipally owned utilities from its coverage. Electric utilities are the only class of utilities governed by such a statutory provision, but a policy of non-competition seems to be followed for other types of utility services as well.^{42/} In at least one instance, however, a rival natural gas supplier was granted a certificate to take away customers from an established gas utility when discovery of a new natural gas deposit enabled it to offer the same service at a substantially lower price.^{43/}

To obtain a certificate of public convenience and necessity a utility must file an application with the Com-

mission, and must show that it has received the necessary franchise, permit, ordinance, or other authority of the proper municipality or other public authority as required. The Commission is authorized, after hearing, to issue the requested certificate, or to refuse to issue the same, or to issue it for the construction or operation of a portion of the contemplated facility or extension.^{44/} The statute provides for notice and public hearing, but no time limits are mentioned. Agency regulations contain further information for electric utilities:

When application is made by an electric utility for a certificate of public convenience and necessity, it shall include:

(a) Facts showing that the proposed new construction is or will be required by public convenience and necessity.

(b) A description of the proposed location or route of the new construction and a description of the manner in which the same will be constructed.

(c) A map or maps to suitable scale shall be furnished showing the location or route of the proposed new construction, locations of nearby airports, and references to all allocation boundaries.

(d) Applicant shall furnish all such data, including an estimate of cost, as is necessary to a complete understanding of the situation.

(e) The manner in which it is proposed to finance the new construction or extension.^{45/}

The factors or criteria considered by the Commission in granting a certificate are not enumerated in the statute or regulations, nor does the Commission employ any special list of factors.^{46/} There is no special procedure for transfer

of a certificate from one utility to another.^{47/}

There is no statutory mechanism to resolve service area disputes. However, when new construction or operation is commenced by a utility without having secured a certificate, any interested person may file a complaint with the Commission. The Commission may then order the utility to cease and desist.^{48/} The statute provides for penalties and compensatory damages where a utility fails to serve adequately a municipality from which it received a franchise.^{49/}

V. APPEALS OF COMMISSION DECISIONS

The Arkansas statute provides that any party aggrieved by an order of the Commission may, within thirty days after the service of such order, apply for a rehearing.^{50/} Application for rehearing is a prerequisite to seeking judicial review.^{51/} The Commission may grant or deny rehearing, abrogate or modify its order without further hearing, or re-open the record for the purpose of receiving and considering additional evidence. Failure to act on the rehearing within thirty days after filing constitutes a denial.^{52/} The party must, within 30 days, file with the circuit court a written petition briefly stating the nature of the proceeding before the Commission, identifying the order or orders complained of and the reasons that such order is unlawful. The clerk of the Circuit Court is to transmit the aggrieved party's petition to the Secretary of the Commission and "thereupon the Commission shall within

thirty (30) days from the service of such notice" answer the petition and file the record upon which the order complained of was entered with the circuit court. The record is to consist of a complete transcript of the case made before the Commission, including a copy of all pleadings, proceedings, testimony, exhibits, orders, findings and opinions in the case, unless the parties otherwise stipulate. ^{53/} The standard of review on appeal is as follows:

No objection to the order of the Commission shall be considered by the circuit court unless such obligation shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure to do so. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. The review shall not be extended further than to determine whether the Commission's findings are so supported by substantial evidence, and whether the Commission has regularly pursued its authority, including a determination of whether the order or decision under review violated any right of the petitioner under the laws or Constitution of the United States or of the State of Arkansas. All evidence before the Commission shall be considered by the court regardless of any technical rule which might have rendered the same inadmissible if originally offered in the trial of any action at law or in equity. ^{54/}

FOOTNOTES

1. Ark. Stat. Ann. §5-916(6) (1967), §73-201 (Supp. 1977), §73-202(1957).
2. Id. §73-101(1957).
3. Id. §73-115.
4. Id. §§73-202a, b (Supp. 1977).
5. Ibid.
6. Id. §73-201(d).
7. Id. §73-201(d) (3).
8. Id. §73-201(d).
9. Id. §73-201(d) (3).
10. Mr. M. O'Malley, Counsel to Ark. PSC, telephone conv. 9/1/78.
11. Ark. Stat. Ann. §73-201(d) (Supp. 1977).
12. 14 P.U.R. 150, 151 (1936).
13. Id. at 162.
14. Ibid.
15. 210 Ark. 84, 194 S.W. 2d 673 (1946).
16. Id. 194 S.W. 2d at 678.
17. Ark. Stat. Ann. §73-203 (1957).
18. Id. §73-201(d) (8) (Supp. 1977).
19. Id. §73-265 (1957).
20. Id. §73-264.
21. Id. §73-202.1 (Supp. 1977). See also Id. §77-1131.
22. Id. §73-202(a) (1957).
23. Id. §73-218(a).
24. Id. §73-254.
25. Id. §73-221(a).

26. Id. §73-218(5).
27. Id. §73-253(1), (2).
28. Mr. M. O'Malley, Counsel to Ark. PSC, telephone conversation, 9/1/78.
29. Ark. Stat. Ann. §73-253(3) (1957).
30. Id. §73-240.
31. Id. §73-253(3) (1957).
32. Id. §§73-204(b), 73-218(2) (3).
33. Id. §73-242.
34. Id. §73-240.
35. Ibid.
36. Ark. Stat. Ann. §73-240 (Supp. 1977).
37. Id. §73-242 (1957).
38. Kitchens v. City of Paragould, 191 Ark. 940, 88 S.W. 2d 843 (1935).
39. Ark. Stat. Ann. §73-264 (1957).
40. Re Municipal Light & Power Plant, 12 P.U.R. (N.J.) 103 (1935).
41. Ark. Stat. Ann. §73-240 (Supp. 1977).
42. Priest, 1 Principles of Public Utility Regulation 362 (1969).
43. Dep't. of Public Utilities v. Arkansas Louisiana Gas Co., 200 Ark. 983, 142 S.W. 2d 213 (1940).
44. Ark. Stat. Ann. §73-242 (1957).
45. Ark. Pub. Serv. Comm'n. Rule 7.04 (1977).
46. Mr. M. O'Malley, Counsel to Ark. PSC, telephone conversation, 9/1/78.
47. Ibid.
48. Ark. Stat. Ann. §73-243 (1957).
49. Id. §73-213.
50. Id. §73-229.1(a) (Supp. 1977).

51. Id. §73-229.1(b).
52. Id. §73-229.1(a).
53. Id. §73-229.1(b) (Supp. 1977).
54. Ibid.

CHAPTER 3

SITING OF ENERGY FACILITIES IN ARKANSAS

I. PUBLIC AGENCIES WHICH ADMINISTER SITING LAWS

The Utility Facility Environmental and Economic Protection Act^{1/} governs the siting of energy facilities in Arkansas. The responsibility for administering the siting statute is vested in the Public Service Commission (Commission). See Chapter 2 for a discussion of the make-up and appointment of the Commission. Under the siting statute, the jurisdiction of the Commission extends to the siting of electric generating plants and their associated fuel supplies and to electric and gas transmission lines.^{2/} With respect to the siting of such energy facilities, the authority of the Commission pre-empts all other state and local agencies except the Department of Pollution Control and Ecology (described more fully below).^{3/} Other state and local agencies may participate in the approval process as parties to the certification proceeding.^{4/}

II. SCOPE OF SITING JURISDICTION

Under the siting statute, no "person" may construct a "major utility facility" in the state, except those in exempted categories, without first having obtained a certificate of environmental compatibility and public need issued by the Commission.^{5/} The words "major utility facility" are defined as follows:

1. Electric generating plant and associated fuel supply and other facilities designed for, or capable of, operation at a capacity of fifty (50) megawatts or more;

2. for the sole purpose of requiring an environmental impact statement hereunder, an electric transmission line and associated facilities, including substations, of a design voltage of one hundred (100) kilovolts or more, extending a distance of more than ten (10) miles, or of one hundred seventy (170) kilovolts or more, extending a distance of more than one (1) mile; and

3. for the sole purpose of requiring an environmental impact statement hereunder, a gas transmission line and associated facilities designed for, or capable of, transporting gas at pressures in excess of one hundred twenty-five (125) pounds per square inch, extending a distance of more than one (1) mile, excepting, however, those gas pipelines devoted solely to the gathering of gas from gas wells constructed within the limits of any gas field as defined by the Arkansas Oil and Gas Commission. 6/

"Persons" subject to the siting statute are defined to include "any individual, group, firm, partnership, corporation, cooperative association(s), municipality, government subdivision, government agency, local government or other organization." 7/

No person may "commence to construct" a major utility facility under the statute without a certificate. 8/

The term "commence to construct" is defined as:

any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route of a major utility facility 9/

The statute, however, also provides that the Commission may create exemptions from "the requirements of this Act for the construction, reconstruction or expansion" of certain

utility facilities which are unlikely to have a major adverse environmental or economic impact.^{10/} This provision suggests that, absent an exemption, the statute covers not only new construction, but also replacement or extension of existing facilities.

Although the statutory definition of electric generating plants subject to the siting statute requires that they have a fifty megawatt or greater capacity, the statute also provides for a developer to waive the exclusion:

Any person intending to construct any utility facility excluded or exempted from this Act may elect to waive such exclusion or exemption by delivering notice of such waiver to the Commission. This Act shall thereafter apply to each such major utility facility identified in such notice from the date of its receipt by the Commission. ^{11/}

The statute also contains a grandfather clause exemption which would be waivable under the above provision:

This Act shall not apply to any major utility facility: (1) for which prior to the effective date [July 5, 1977] of this Act, an application for the approval of same has been made to any Federal, State, regional or local governmental agency, which possesses the jurisdiction to consider the matters prescribed for finding and determination in Subsection (a) of Section 9 [§73-276.8] of this Act; (2) for which, prior to the effective date of this Act, the Commission has issued a certificate of convenience and necessity or otherwise approved the construction of same. ^{12/}

Two other exemptions are provided in the siting statute. First, the statute does not apply to any major utility facility "over which an agency of the Federal Government has exclusive jurisdiction."^{13/} Second, the statute

provides that no certificate of environmental compatibility is required for "reconstruction, alteration or relocation of any major utility facility which must be reconstructed, altered, or relocated because of the requirements of any Federal, State, or county governmental body or agency for highway transportation purposes, public safety, or air and water quality."^{14/}

The Commission also issues certificates of public convenience and necessity to electric utilities.^{15/} See Chapter 2. There is no direct statutory connection between the granting of a certificate of environmental compatibility and public need, and the granting of a certificate of public convenience and necessity. As a practical matter, though, it would be unlikely that the Commission would grant one certificate if it intended to deny issuance of the other.^{16/} The Commission has authority to monitor facilities after construction.^{17/} The Commission may adopt rules pertaining to the operation and rates of public utilities and rules of practice and procedure for proceedings before the Commission.^{18/} No rules establishing exemptions or otherwise further defining siting statute jurisdiction have been issued.^{19/} There have been no court cases concerning the scope of the Commission's siting jurisdiction.^{20/}

As noted, the Commission's jurisdiction under the siting statute preempts the jurisdiction of all other state and local agencies except that of the Department of

Pollution Control and Ecology ("Department"). With respect to the Department, the siting statute provides that:

Nothing herein contained shall affect the jurisdiction of the Department of Pollution Control and Ecology with respect to water and/or air pollution control or other matters within its jurisdiction or the requirement that a person apply for and obtain a permit from said Department as provided by the Arkansas Water and Air Pollution Control Act [§§82-1901-82-1909, 82-1931-82-1943], as amended (Ark. Stats. Ann. Section 84-1901 et seq.); nor shall anything herein contained confer upon the Public Service Commission any authority or jurisdiction conferred by law upon the Department of Pollution Control and Ecology or be deemed to amend said Arkansas Water and Air Pollution Control Act. 21/

Two permits issued by the Department under its statutory jurisdiction are permits for water pollution sources and air contaminant sources. 22/ There is no statutory procedure for resolving differences between the Commission and the Department. It appears, therefore, that the Department could veto a power plant proposal by refusing to issue a needed permit.

III. CERTIFICATION PROCEDURES

Applicants for a certificate of environmental compatibility and public need must file with the Commission a verified application which must contain, among other detailed information, the following:

- (1) a general description of the location and type of the major utility facility proposed to be built;
- (2) a general description of any reasonable alternate location or locations considered for the proposed facility;

(3) a statement of the need and reason for construction of the facility;

* * *

(7) an analysis of the projected economic or financial impact on the applicant and the local community . . . ;

(8) an analysis of the estimated effects on energy costs to the consumer . . . ;

(9) [A]n Environmental Impact Statement
23/

In filing an application, the burden of providing notice to affected agencies and individuals falls upon the applicant:

Each application shall be accompanied by proof of service of a copy of such application on the Mayor of each municipality, the County Judge, the Chairman of the County Planning Board, if any, and on any head of a government agency charged with the duty of protecting the environment or of planning land use upon which the Commission has by regulation or order directed service be made, in the area in which any portion of such facility is to be located, both as primarily and as alternatively proposed, on each member of the legislature in whose district the facility or any alternative location listed in the application is to be located, on the Office of the Governor, and upon the director or other administrative head of [numerous named] State agencies or departments 24/

The applicant is also charged with providing newspaper publication of the siting proposal in affected local areas and with making the environmental impact statement available in the locality. 25/ A filing fee of five hundred dollars must accompany each application. 26/

An additional requirement for public utilities is an annual forecast of loads and resources. 27/ Forecasts must

describe the major utility facilities that will be required to supply the system demands for the forecast period.^{28/} A forecast must cover the next two-year period or such longer period as the Commission may prescribe.^{29/} The statute mentions no penalty for failing to anticipate a request for new facilities.

Upon receiving an application for a certificate of environmental compatibility and public need, and before holding any public hearing, the Commission invites comments from other state agencies which are given 60 days within which to file such comments. If, based on the comments, the Commission staff determines that the applicant failed to include or adequately develop any environmental or economic aspect of the facility, it issues a deficiency letter pointing out the specific deficiencies. The deficiency letter must be served on the applicant at least 20 days before the date set for the public hearing. The applicant is required to respond to any deficiency letter and the public hearing is deferred unless the applicant has responded.^{30/}

A public hearing is required in the case of all new energy facilities.^{31/} The public hearing must commence not less than forty nor more than ninety days after receipt of an application.^{32/} On an application for an amendment to a certificate, a public hearing is required if the Commission finds from the application that the proposed change to the facility would have a material environmental or economic

impact or if the application calls for a substantial change in the location of the facilities. ^{33/}

Parties to a certification proceeding include:

(1) the applicant;

(2) each municipality, county and government agency or department or other person entitled to receive service of a copy of the application . . . if it has filed with the Commission a notice of intervention as a party within thirty (30) days after said service;

(3) any person residing in a municipality or county which is entitled to receive service of a copy of the application . . . , or any domestic nonprofit corporation, formed in whole or in part to promote conservation or natural beauty, to promote energy conservation, to protect the environment, personal health or other biological values, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located, where such person or organization has an interest which may be directly affected by the Commission's action and which interest is not adequately represented by other parties, if such a person or corporation has petitioned the Commission for leave to intervene as a party within thirty (30) days after the date given in the public notice as the date of filing the application. ^{34/}

The Commission is required to make a record of the hearing and of all testimony. ^{35/} A decision must be reached within sixty days after the conclusion of the hearing. ^{36/} The Commission must serve a copy of the decision and any order issued therewith upon each party to the proceeding. ^{37/} The statute does not state to what extent, if any, the Commission must specify the reasons for its decision. ^{38/}

Any party aggrieved by any decision issued on an

application for a certificate may apply for a rehearing.^{39/}
Rehearings or appeals of siting decisions are conducted in
the same manner as rehearings and appeals of other Commission
decisions.^{40/} The relevant procedures and standards are dis-
cussed in Part V of Chapter 2.

IV. CERTIFICATION STANDARDS

The statement of legislative intent in the siting
statute lists certain broad factors to be used by the Commission
in considering applications. These broad goals include
minimizing any likely adverse effect on the environment,
minimizing any adverse effect on the quality of life, and
minimizing the cost of reliable, clean, safe and adequate
energy supplies. Additionally, the practices relating to
the location, financing, construction and operation of
utility facilities should protect environmental values,
encourage the development of alternate renewable and non-
renewable energy technologies which are energy-efficient,
and take into account the total cost to society of such
facilities. Undue costly delays in new construction and
the development of energy technologies which are relatively
inefficient are to be avoided.^{41/} The statute establishes
specific criteria to be used in evaluating an applicant's
compliance with these factors. The Commission may not grant
a certificate for the location, financing, construction,
operation and maintenance of a major utility facility,
either as proposed or as modified by the Commission, unless

it finds and determines:

- (1) the basis of the need for the facility;
- (2) that the facility will serve the public interest, convenience and necessity;
- (3) the nature of the probable environmental impact of the facility;
- (4) that the facility represents an acceptable adverse environmental impact, considering the state of available technology, the requirements of the customers of the applicant for utility service, the nature and economics of the proposal and the various alternatives, if any, and other pertinent considerations;
- (5) the nature of the probable economic impact of the facility;
- (6) that the facility financing method either as proposed or as modified by the Commission represents an acceptable economic impact, considering economic conditions and the need for and cost of additional public utility services;
- (7) in the case of an electric transmission line, that such facility is not inconsistent with known plans of other electric systems serving the State, which have been filed with the Commission;
- (8) in the case of a gas transmission line, that the location of the line will not pose an undue hazard to persons or property along the area to be traversed by the line;
- (9) (and) that the energy efficiency of the power production facility has been given significant weight in the decision-making process; and
- (10) that the location of the facility as proposed conforms as closely as practicable to applicable State, regional and local laws and regulations issued thereunder, except that the Commission may refuse to apply all or any part of any regional or local law or regulation if it finds that, as applied to the proposed facility, such law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of the directly affected government subdivisions. 42/

It should be noted that of the criteria set forth in subdivisions (7) and (8) above apply only to transmission lines.^{43/}

As noted, the siting statute provides for other state agencies to submit comments in response to invitations for such responses served upon those agencies by the Commission. The statute provides no standard to be followed by the Commission in overriding the negative recommendation of other state agencies. Local and regional restrictions may be ignored in whole or part if the Commission finds that they are unreasonably restrictive in view of existing technology, factors of cost or economics or the needs of consumers. The statute does provide that an applicant may be ordered to correct deficiencies in his description of environmental and economic impact contained in his application as a result of negative agency comments.^{44/} Also, as noted above, the Department has power to essentially veto the approval of a site for failure to comply with water or air quality standards by refusing to issue necessary permits.^{45/}

Commission rules provide no additional standards for approving sites.^{46/} There have been no administrative decisions nor court cases, decided or pending, which have developed additional standards or raised important issues on this point.^{47/}

V. LOCATION AND PLANNING OF DEVELOPMENTS GENERALLY

Because of the size limitations contained in its

definition of "major utility facility," the Arkansas siting statute may not apply to some energy facilities that might be considered for construction in the state;^{48/} in those cases the authority and jurisdiction of several separate agencies becomes relevant.

A. Environmental Agency

It is unlawful for any person without a permit issued by the Department to construct, modify, or operate any plant or facility, the operation of which would result in discharge into the waters of the state of any sewage or industrial waste.^{49/} Construction or operation of a liquid waste disposal system requires a similar permit.^{50/}

The Department may require the submission of plans and specifications in connection with the issuance of permits.^{51/} The Department also has powers with respect to the issuance of permits for construction or alteration of air contaminant sources.^{52/}

B. Planning Authorities

The overall planning agency of the state of Arkansas is the Office of Planning, an agency established within the office of the governor.^{53/} The Office of Planning is responsible for preparing an official state plan for the physical development of the state.^{54/} The official state plan may include the location of utilities, power transmission facilities, and public buildings.^{55/} After adoption of the official state plan, no improvements may be made or authorized

and no property may be acquired by "any State or public agency" which has a definite part in, or relation to, the official state plan unless the proposal has been submitted to and approved by the Office of Planning.^{56/}

Arkansas counties may establish county planning boards to prepare an official county plan.^{57/} Upon recommendation by the County Planning Board, the County Quorum Court may adopt the official plan and may provide the means of enforcing the official plan by such zoning, subdivision, set-back, and entry control ordinances as it deems appropriate.^{58/}

Arkansas municipalities have the power to regulate the erection, construction, reconstruction, alteration, and repair of buildings.^{59/} Cities of the first and second class and incorporated towns may create a municipal planning commission to develop a comprehensive plan for the coordinated development of the municipality.^{60/} The municipal planning commission transmits to the legislative body of the municipality recommended zoning ordinances and regulations to implement the plan.^{61/}

Any two or more adjoining cities or counties may jointly cooperate in the exercise of planning powers, duties and functions.^{62/} Such cities or counties may establish a metropolitan or regional commission to carry out the planning functions authorized for the component local governments that each may under existing law separately perform.^{63/} The plans are expressly authorized to include recommendations

for public utilities.^{64/}

The Department of Arkansas Natural and Cultural Heritage is charged with developing a statewide program of historic preservation.^{65/} It does not appear that the Department has any statutory authority to prohibit developments which violate the program.^{66/} However, historic district commissions have power to prohibit nonconforming developments within a designated historic district.^{67/} Municipalities may not issue a building permit for purposes of constructing or altering structures within an historic district until the local historic district commission has granted a certificate of appropriateness.^{68/}

The Arkansas Water Conservation Commission is responsible for formulating an Arkansas Water Plan for the orderly development and management of the state's water and related land resources.^{69/} The Water Conservation Commission issues certificates of registration to any person diverting water from any stream, pond, or lake.^{70/}

Two agencies charged with preparing plans for the development of outdoor recreation resources in the state are the Department of Local Services and the Department of Parks and Tourism, but neither department has power to prohibit nonconforming developments.^{71/}

FOOTNOTES

1. Ark. Stat. Ann. §§73-276 to 73-276.18 (Supp. 1977).
2. Id. §§73-276.2(b), 73-276.3(a).
3. Id. §§73-276.1, 73-276.18.
4. Id. §73-276.6.
5. Id. §73-276.3(a).
6. Id. §73-276.2(b).
7. Id. §73-276.2(e).
8. Id. §73-276.3(a).
9. Id. §73-276.2(c).
10. Id. §73-276.3(f).
11. Id. §73-276.3(g).
12. Id. §73-276.3(d)(1), (2).
13. Id. §73-276.3(d)(3).
14. Id. §73-276.3(e).
15. Id. §73-240.
16. Mr. M. O'Malley, Counsel to the Commission, Telephone conversation, August 28, 1978.
17. Ibid.
18. Ark. Stat. Ann. §73-202(c)(1957).
19. Mr. M. O'Malley, Counsel to the Commission, Telephone conversation, August 28, 1978.
20. Ibid.
21. Ark. Stat. Ann. §73-276.18 (Supp. 1977).
22. Id. §§82-1908, 82-1935(j)(1976).
23. Id. §73-276.4(a)(Supp. 1977).
24. Id. §73-276.4(b).
25. Id. §73-276.4(c).

26. Id. §73-276.4(g).
27. Id. §73.276.14.
28. Ibid.
29. Ibid.
30. Id. §73-276.4(a)(11).
31. Id. §73-276.5(a).
32. Ibid.
33. Id. §73-276.5(b).
34. Id. §73-276.6(a).
35. Id. §73-276.7.
36. Id. §73-276.8(d).
37. Id. §73-276.6.8.
38. Ibid.
39. Id. §73-276.10.
40. Ibid.
41. Id. §73-276.1.
42. Id. §73-276.8(a).
43. Id. §73-276.8(a)(7), (8).
44. Id. §73-276.4(a)(11).
45. Id. §§73-276.1, 73-276.2, 73-276.18.
46. Mr. M. O'Malley, Counsel to the Commission, Telephone conversation, September 1, 1978.
47. Ibid.
48. Ark. Stat. Ann. §73-276.2(b) (Supp. 1977).
49. Id. §82-1908(2) (1976).
50. Ibid.
51. Id. §82-1908(3).
52. Id. §82-1935(j).

53. Id. §5-904.
54. Id. §9-301.
55. Ibid.
56. Id. §9-305.
57. Id. §§17-1101 to 17-1116 (Supp. 1977).
58. Ibid.
59. Id. §19-2801(1968).
60. Id. §19-2825.
61. Id. §19-2829.
62. Id. §19-2820.
63. Ibid.
64. Id. §19-2821.
65. Id. §8-906 (Supp. 1977).
66. Id. §§8-904 to 8-913.
67. Id. §19-5005 (1968).
68. Ibid.
69. Id. §21-1318 (Supp. 1977).
70. Id. §21-1316.
71. Id. §9-319 (1976).

CHAPTER 4

FRANCHISING PUBLIC UTILITIES IN ARKANSAS

I. EXPRESS AUTHORITY TO GRANT FRANCHISES

There is no constitutional grant of franchising authority to local governments in Arkansas. However an express grant of franchising authority is contained in the following statutory provision:

For the purpose of providing water, gas, electric lights, heat, power, cold storage, street railroads, and other public utility necessities for itself and for the inhabitants of any municipality, the mayor and City Council or the other governing bodies of municipalities having a commission form of government, may contract on its own behalf and on behalf of the inhabitants of such municipality, with any person, persons or company to construct and operate such utility and may grant to such person, persons or company for a time which may be agreed on, for the privilege, exclusive or otherwise, of using the streets, alleys, and public grounds of such municipality for such purposes, on such rates, charges and terms as may be agreed upon; and may authorize such person, persons, or company to assign such contract or privileges and to transfer such utility to any other person, persons or company having authority to conduct any such business in the municipality with full authority to assignee or transferee to enjoy and use the same in like manner and to the same extent as the assignor could have done; and all such assignments and transfers which have heretofore been made, are hereby ratified and approved; Provided, that nothing herein shall affect the right of a municipality to regulate the

rates of all public utilities as are now operating in such municipality and which have not contracted with such municipality under the terms of this act.^{1/}

The statute specifies that a franchise may be granted to "any person, persons or company" for the purpose of providing "public utility" services.^{2/} The statute expressly mentions water, gas, electric, heating, power, cold storage, and street railway services, but also allows for "other public utility necessities."^{3/}

It is clear that the state cannot authorize a utility to bypass municipal franchising requirements. Thus, a state statute granting an electric power company the right to construct its lines did not grant the company the right to use town streets absent permission from the local authorities.^{4/} A municipality's only restriction on franchising seems to be that it cannot authorize a use inconsistent with the right of the public to the reasonable use and enjoyment of its public ways.^{5/}

II. PROCEDURES FOR GRANTING FRANCHISES

For municipalities with the aldermanic form of government, franchises are granted in accordance with the regular provisions for adoption of ordinances. The statute specifies that:

All by-laws, ordinances, resolutions or orders for the appropriation of money, shall require for their passage or adoption the concurrence of a majority of the Aldermen of any municipal corporation. All by-laws and ordinances of a general or permanent nature shall be

fully and distinctly read on three (3) different days, unless two-thirds (2/3) of the members composing the Council shall dispense with the rule. No by-law or ordinance shall contain more than one (1) subject, which shall be clearly expressed in its title.^{7/}

Under Arkansas law, an ordinance granting a franchise is considered a "special contract" and not "of a general or permanent nature."^{8/} For this reason, it has been held in two cases involving electric light plants that the statutory requirement for reading of the proposed ordinance on three different days does not apply to grants of a franchise.^{9/}

Another statutory requirement for adoption of an ordinance is that:

On the passage of every by-law or ordinance, resolution or order, to enter into a contract, by any Council of any municipal corporation, the yeas and nays shall be called and recorded; and to pass any by-law or ordinance, resolution or order, a concurrence of a majority of a whole number of members elected to the Council shall be required.^{10/}

In one case an ordinance purporting to grant an exclusive franchise to furnish gas was found to be invalid because the yeas and nays had not been recorded in accordance with the statute.^{11/} Where the town, however, permitted the company to lay its gas mains and to operate its system for several years, the town was held to be estopped to deny the validity of the ordinance.^{12/}

All by-laws or ordinances after their passage shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer

of the governing body and the clerk or recorder, and all by-laws or ordinances of a general or permanent nature and all those imposing any fine, penalty or forfeiture shall be published in some newspaper of general ^{13/}circulation in the corporation. . . .

The publication requirement has been held to be not applicable to an ordinance granting a franchise.^{14/}

There is no statutory requirement of free and open competition, payments to the local government, or filing of a written acceptance by the grantee. The statute provides for an optional referendum by the voters before passage of any ordinance: "The City Council, or governing body, of any municipality may, by a majority vote of its members, refer any proposed ordinance to the people for adoption or rejection."^{15/} The city council may also, by two-thirds vote within thirty days after its adoption, refer any ordinance to the electors for their acceptance or rejection.

An additional requirement applies to municipal corporations with management or city administrator forms of government:

Every ordinance or resolution granting any public utility franchise, or granting the right to occupy the streets, highways, bridges or other public places in the city for any purpose, shall be completed in the form in which it is finally passed and remain on file with the City Clerk for public inspection at least one (1) week before the ^{17/}final passage or adoption thereof.

A public utility need not obtain a certificate of public convenience and necessity from the Public Service Commission before it can be granted a franchise. On the contrary, a franchise is a precondition for issuance of a certificate.^{18/} No other procedural requirements for the granting of a franchise are prescribed either in the statutes or in judicial decisions. There are no specific criteria to be used in evaluating a franchise request other than those criteria listed above.

III. CHARACTERISTICS OF A FRANCHISE

A. Duration and Termination

The statutes granting franchising authority to municipalities stipulates that the duration of a franchise may be "for a time which may be agreed on."^{19/} A difficult question is to what extent this provision may be superceded by the following more recent statute:

All permits, licenses, or franchises hereafter granted by any municipality to any public utility authorizing it to occupy the streets, highways, alleys and other public ways in such municipality, for the purpose of constructing and maintaining any facilities for the supplying of any public service or commodity, shall be unlimited as to time and the said utility or its successors and assigns shall hold such permit, license, or franchise in accordance with the terms, conditions and limitations of this Act and any future regulatory acts. Such permit, license or franchise shall continue in force until such time as a municipality having authority so to do shall purchase the property operating

under such permit, license or franchise in accordance with the provisions of this Act, or until termination according to the law for misuser or nonuser.^{20/}

The latter provision seems to imply that all public utility franchises are to be considered perpetual. One recent case arose over an exclusive five-year airport limousine franchise granted by a city council.^{21/} The court upheld the franchise as valid, but the duration of the grant was not an issue in the case.^{22/} The case may also be inapplicable because it involved limousine and taxicab service. Neither of these services is defined as a "public utility" except for ratemaking purposes.^{23/} No other cases provide clarification of the duration issue.

The statute provides that a franchise may be "terminated according to the law for misuser or nonuser," but gives no details as to how termination might come about.^{24/} There are no decisions on whether the occurrence of certain conditions will result in automatic surrender of a franchise. There is also no authority directly on point as to whether a franchisee may be forced to remove its facilities and to cease providing service upon expiration or termination of its franchise.

B. Exclusivity

The statute expressly permits the granting of "exclusive privileges" for public utility services.^{25/} "Under this section the city council may grant an exclusive

privilege or not, as in their judgment seems best."^{26/} In one case, however, the court held that a municipal ordinance setting up a taxicab monopoly was unconstitutional.^{27/} The state constitutional provision at issue declares that, "Perpetuities and monopolies are contrary to the genius of a republic, and shall not be allowed. . . ."^{28/} The court explicitly rejected the argument that because common carriers were regulated, the ordinance was not unconstitutional. "Merely because taxicabs might be called public carriers does not merge the fundamental difference that it is one thing to regulate and tax a public carrier, and yet another thing to grant it a monopoly in the teeth of the constitutional inhibition."^{29/} By contrast, the court upheld an exclusive five-year limousine franchise granted by the city of Hot Springs.^{30/} Distinguishing the two cases, the court explained:

We pointed out [in North Little Rock Transportation] that the company seeking the monopoly was under no obligation to continue its service for any length of time. Here, by contrast, Bridges is bound to provide service for the life of the franchise. His exclusive right is a narrow one, embracing only the maintenance of the limousine stand at the airport. Bridges concedes in his brief that competing cab companies may deliver departing passengers to the airport and that incoming passengers may telephone for the cab of their choice if they like. The city council's resolution specifically found that there was not enough business for the service to be maintained upon a competitive basis. In view of all these facts we cannot say that the exclusive franchise offends the constitution.^{31/}

The constitutional issue does not appear to have been raised in any case involving electric utilities. In one case, without mentioning the constitutional limitation, the court upheld the validity of an exclusive franchise granted to an electric company and affirmed an award for damages from an unauthorized competitor.^{32/}

Franchises will be strictly construed as not granting exclusive franchises in the absence of express language to the contrary. In a case involving successive grants to competing gas companies, the court held that every grant from a city acting in its sovereign capacity is to be construed strictly against the grantee and in favor of the city, and that where a corporation alleges that the city granted an exclusive franchise, such grant of power will not be presumed unless the city appears unmistakable and deliberately to have surrendered its power of improvement and public accomodation.^{33/}

C. Other Characteristics

As discussed above, the franchising statute expressly mentions certain utility services, but allows municipalities to make grants for "other public utility necessities."^{34/} There are no pertinent cases defining the services for which the franchises might be granted. No mandatory franchise tax that must be paid to the municipality is specified by statute.

However, the statute does provide for penalties and compensatory damages in cases of abandonment of a franchise or failure to furnish adequate service under a franchise.^{35/}

In one court decision it was held that in the course of granting a franchise, a city may impose proper conditions to secure suitable service, and cannot contract or convey away its right of regulation.^{36/}

FOOTNOTES

1. Ark. Stat. Ann. §19-2319 (1968). The provision in this section is in direct conflict with a recent statutory amendment giving the Public Service Commission exclusive jurisdiction over public utility rates and specifically withdrawing any municipal authority with respect to these votes. Id. §73-276 3 (0) (Supp. 1977). No judicial or administrative decision have discussed this conflict.
2. Id. §19-2319 (1968).
3. Ibid.
4. Arkansas Power & Light Co. v. West Memphis Power & Light Co., 187 Ark. 41, 58 S.W.2d 206 (1933).
5. State ex rel Lotta v. Marianna, 183 Ark, 927, 39 S.W.2d 301 (1931).
6. Ark. Stat. Ann. §§19-2401 to 2404, 19-2428 to 19-2430 (1968).
7. Id., §19-2402.
8. Barnett v. Mays, 153 Ark. 1, 239 S.W. 379, 380 (1922).
9. Id.; City of El Dorado v. Citizens' Light & Power Co., 158 Ark. 550, 250 S.W. 882, 884 (1923).
10. Ark. Stat. Ann. §19-2403 (1968).
11. Natural Gas & Fuel Corp. v. Norphlet Gas & Water Co., 173 Ark. 174, 294 S.W. 52 (1927).
12. Id.
13. Ark. Stat. Ann. §19-2404 (1968).
14. Barnett v. Mays, 153 Ark. 1, 239 S.W. 379 (1922); City of El Dorado v. Citizens' Light and Power Co., 158 Ark, 550, 250 S.W. 882 (1923) (ordinances granting electric and water service franchises).
15. Ark. Stat. Ann. §19-2428 (1968).
16. Id., §19-2429.

17. Id., §§19-715, 19-814.
18. Id., §73-242 (1957).
19. Id., §19-2319 (1968).
20. Id., §73-243 (1957).
21. Bridges v. Yellow Cab Co., 241 Ark. 204, 406 S.W.2d 879 (1966).
22. Id.
23. Ark. Stat. Ann. §73-201(d)(3),(6) (Supp. 1977).
24. Id., §73-243 (1957).
25. Id., §19-2319 (1968).
26. El Dorado v. Coats, 175 Ark. 289, 299 S.W. 355 (1927).
27. North Little Rock Transportation Co. v. City of North Little Rock, 207 Ark. 976, 184 S.W.2d 52 (1944).
28. Ark. Const. art. 2, §19.
29. North Little Rock Transportation Co. v. City of North Little Rock, 207 Ark. 976, 184 S.W.2d 52, 55 (1944).
30. Bridges v. Yellow Cab Co., 241 Ark, 204, 406 S.W.2d 879 (1966).
31. Id., 406 S.W.2d at 880.
32. Arkansas Power & Light Co. v. West Memphis Power & Water Co., 187 Ark. 41, 58 S.W.2d 206 (1933).
33. City of El Dorado v. Coats, 175 Ark. 289, 299 S.W. 355 (1927).
34. Ark. Stat. Ann. §19-2319 (1968).
35. Id., §73-213 (957).
36. Hunt v. Marianna Electric Co., 114 Ark. 498, 170 S.W. 96 (1914).