

Broadband Over Power Lines

This Act permits an electric utility, an affiliate of an electric utility, or a person unaffiliated with an electric utility to own, construct, maintain, and operate a broadband system and provide broadband services on an electric utility’s electric delivery system.

Submitted as:

Arkansas

[Act 739 of 2007](#)

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as the “Broadband over Power Lines
2 Enabling Act.”

3
4 Section 2. [*Definitions.*] As used in this Act:

5 (1) “Broadband affiliate” or “affiliate” means an entity that is at least [ten percent
6 (10%)] owned or controlled, directly or indirectly, by the electric utility formed to provide
7 regulated or non-regulated broadband services;

8 (2) “Broadband Internet service provider” means an entity that provides Internet
9 broadband services to others on a wholesale basis or to end-use customers on a retail basis;

10 (3) “Broadband operator” means an entity that owns or operates a broadband
11 system on the electric power lines and related facilities of an electric utility;

12 (4) “Broadband services” means the provision of regulated or non-regulated
13 connectivity to a high-speed, high-capacity transmission medium that can carry signals from
14 multiple independent network carriers over electric power lines and related facilities, whether
15 above or below ground;

16 (5) “Broadband system” means the materials, equipment, and other facilities
17 installed to facilitate the provision of broadband services;

18 (6) “Electric delivery system” means the power lines and related facilities used by
19 an electric utility to deliver electric energy;

20 (7) “Electric utility” means a public utility as defined under [insert citation] that
21 produces, generates, transmits, delivers, or furnishes electricity to or for the public for
22 compensation;

23 (8) “Non-regulated broadband services” means broadband services and
24 technologies that are not provided for the operational performance of an electric utility, including
25 without limitation, the provision of broadband services at wholesale or at retail; and

26 (9) “Regulated broadband services” means broadband services and technologies
27 that are used and useful for the operational performance and service reliability of an electric
28 utility, including without limitation:

29 (A) Automated meter reading;

30 (B) Real-time system monitoring;

31 (C) Remote service control;

32 (D) Outage detection and restoration;

33 (E) Predictive maintenance and diagnostics; and

34 (F) Monitoring and enhancement of power quality.

35
36 Section 3. [*Permissible Broadband Systems.*]

37 (a) An electric utility, an affiliate of an electric utility, or a person unaffiliated with an
38 electric utility may own, construct, maintain, and operate a broadband system and provide
39 broadband services on an electric utility's electric delivery system consistent with the
40 requirements of this Act.

41 (b) This Act does not require an electric utility to implement a broadband system, provide
42 broadband services, or allow others to install broadband facilities or use the electric utility's
43 facilities to provide broadband services.

44 (c) An electric utility, a broadband affiliate, or a broadband operator may elect to install
45 and operate a broadband system on part or all of its electric delivery system in any part or all of its
46 certified service territory.

47
48 Section 4. [*Ownership and Operation of Broadband System.*]

49 (a) An electric utility may:

50 (1) Own or operate a broadband system on the electric utility's electric delivery
51 system;

52 (2) Allow an affiliate to own or operate a broadband system on the electric utility's
53 electric delivery system;

54 (3) Allow an unaffiliated entity to own or operate a broadband system on the
55 electric utility's electric delivery system;

56 (4) Provide broadband service, including without limitation, Internet service over a
57 broadband system; and

58 (5) Allow an affiliate or unaffiliated entity to provide broadband service, including
59 without limitation, Internet service over a broadband system.

60 (b) The electric utility shall determine which broadband Internet service providers may
61 have access to broadband capacity on the broadband system.

62
63 Section 5. [*Jurisdiction.*]

64 (a) Except as provided in this Act, neither the state nor any agency, instrumentality, or
65 political subdivision of the state has jurisdiction over:

66 (1) An electric utility's ownership or operation of a broadband system; or

67 (2) The provision of broadband services by the electric utility, a broadband affiliate,
68 or a broadband operator.

69 (b) Nothing in this Act shall interfere with the [Public Service Commission's] authority to
70 regulate public utilities as defined under [insert citation].

71
72 Section 6. [*Fees and Charges.*]

73 (a) An electric utility may charge a broadband affiliate, an unaffiliated broadband Internet
74 service provider, or a broadband operator for the costs of the construction, installation, operation,
75 and maintenance of the broadband system of the broadband affiliate, unaffiliated broadband
76 Internet service provider, or broadband operator.

77 (b) (1) The costs incurred by an electric utility to own, operate, construct, and maintain
78 a broadband system and to provide broadband services on its electric delivery system either by
79 itself or through a broadband affiliate or broadband operator shall be allocated to the electric
80 utility's accounts between regulated broadband services and non-regulated broadband services in
81 accordance with applicable accounting principles and standards.

82 (2) (A) Costs allocated to non-regulated broadband services:

83 (i) Are outside the scope of an electric utility's providing of electric
84 service to the public;
85 (ii) Shall not be recoverable through its rates for the providing of
86 electric service; and
87 (iii) Are not subject to the jurisdiction of the state or any agency,
88 instrumentality, or political subdivision of the state.

89 (B) Revenues received by an electric utility attributable to the providing of
90 nonregulated broadband services shall not be included as revenues to the electric utility for
91 purposes of establishing its rates for the providing of electric service.

92 (c) (1) If all or part of a broadband system is installed on poles or other structures of a
93 telephone utility and the broadband operator is unaffiliated with the electric utility that owns the
94 electric delivery system, before installing equipment the unaffiliated broadband operator shall
95 enter into the customary agreement used by the telephone utility for access to the electrical
96 delivery system and shall pay the telephone utility an annual fee consistent with the usual and
97 customary charges for access to the space occupied by that portion of the broadband system.

98 (2) If all or part of a broadband system is installed on poles or other structures of a
99 telephone utility and the broadband operator is an electric utility or broadband affiliate, the
100 existing contract governing placement of the electric utility's attachments on poles or other
101 structures shall apply and no additional annual fee or approval shall be required if the broadband
102 system is installed within the space allocated for electric service under the contract.

103 (d) An electric utility shall not:

104 (1) Charge an affiliate under this section an amount less than the electric utility
105 would charge an unaffiliated entity for the same item or class of items; or

106 (2) Pay an affiliate under this section an amount more than the affiliate would
107 charge an unaffiliated entity for the same item or class of items.

108 (e) A transaction between an electric utility and an affiliate and allocations between an
109 electric utility account and a nonutility account with respect to broadband services and broadband
110 systems are subject to this Act.

111
112 Section 7. [*Reliability of Electric Systems Maintained.*]

113 (a) An electric utility that installs or operates or permits the installation or operation of a
114 broadband system on its electric delivery system shall employ all reasonable measures to ensure
115 that the operation of the broadband system does not interfere with or diminish the reliability of the
116 electric utility's electric delivery system.

117 (b) If a disruption in the provision of electric service occurs, the electric utility shall be
118 governed by the terms and conditions of the retail electric delivery service tariff.

119 (c) The provision of broadband services shall be at all times secondary to the reliable
120 provision of electric delivery services.

121
122 Section 8. [*Compliance with Federal Law.*]

123 (a) A broadband operator shall comply with all applicable federal laws, including those
124 protecting licensed spectrum users from interference by broadband systems.

125 (b) To the extent required by Federal Communications Commission rules, the operator of a
126 radio frequency device shall discontinue using a radio frequency device that causes harmful
127 interference.

128
129 Section 9. [*Municipal Jurisdiction to Impose Franchise Fees on Utilities that Provide*
130 *Broadband Services Over Power Lines.*]

131 (a) No city or town may impose additional franchise fees upon any provider of regulated
132 broadband services under this Broadband Over Power Lines Enabling Act.

133 (b) A city or town may impose franchise fees upon any provider of non-regulated
134 broadband services under this Broadband Over Power Lines Enabling Act at the same rates that
135 the city or town charges other providers of broadband network services.
136

137 Section 10. [*Electric Utility Broadband Service Easements.*]

138 (a) (1) (A) Any electric utility organized or domesticated under the laws of this
139 state for the purpose of generating, transmitting, distributing, or supplying electricity to or for the
140 public for compensation or for public use may construct, operate, and maintain such lines of wire,
141 cables, poles, or other structures necessary for the transmission or distribution of electricity and
142 broadband services:

143 (i) Along and over the public highways and the streets of the cities
144 and towns of the state;

145 (ii) Across or under the waters of the state;

146 (iii) Over any lands or public works belonging to the state;

147 (iv) On and over the lands of private individuals or other persons;

148 (v) Upon, along, and parallel to any railroad or turnpike of the state;

149 and

150 (vi) On and over the bridges, trestles, and structures of railroads.

151 (B) In constructing such dams as the electric utility may be authorized to
152 construct for the purpose of generating electricity by water power, the electric utility may flow the
153 lands above the dams with backwater resulting from construction.

154 (2) (A) However, the ordinary use of the public highways, streets, works,
155 railroads, bridges, trestles, or structures and turnpikes shall not be obstructed, nor the navigation of
156 the waters impeded, and just damages shall be paid to the owners of such lands, railroads, and
157 turnpikes.

158 (B) The permission of the proper municipal authorities shall be obtained for
159 the use of the streets.

160 (b) (1) In the event that an electric utility, upon application to the individual, railroad,
161 turnpike company, or other people, should fail to secure by consent, contract, or agreement, a
162 right-of-way for the purposes enumerated in subsection (a) of this section, then the electric utility
163 shall have the right to proceed to procure the condemnation of the property, lands, rights,
164 privileges, and easements in the manner prescribed in this Act.

165 (2) However, no electric utility shall be required to secure by consent, contract, or
166 agreement or to procure by condemnation the right to provide broadband services over its own
167 lines of wire, cables, poles, or other structures that are in service at the time that the electric utility
168 provides broadband services over the lines of wire, cables, poles, or other structures.

169 (c) Whenever an electric utility desires to construct its line on or along the lands of an
170 individual or other people or on the right-of-way and the structures of any railroad or upon and
171 along any turnpike, the electric utility, by its agent, shall have the right to enter peacefully upon
172 the lands, structures, or right-of-way and survey, locate, and lay out its line thereon, being liable,
173 however, for any damage that may result by reason of the acts.
174

175 Section 11. [*Petitions to Assess Damages for Installing Wire, Cables, Pole, or Other*
176 *Structures to Provide Broadband Services Over Electric Power Lines.*]

177 (a) No electric utility shall be required to petition a court in order to provide broadband
178 services over its own lines of wire, cables, poles, or other structures that are in service at the time

179 that the electric utility provides broadband services over the lines of wire, cables, poles, or other
180 structures.

181 (b) An owner of property upon which an electric utility's lines of wire, cables, poles, or
182 other structures are located may petition the [circuit court of the county in which the property is
183 situated] for any compensation to which it might be entitled under this Act.
184

185 Section 12. [*Assessment of Damages for Installing Wire, Cables, Poles, or Other*
186 *Structures to Provide Broadband Services Over Electric Power Lines.*]

187 (a) The amount of damages to be paid the owner of the lands for the right-of-way for the
188 use of the electric utility shall be determined and assessed irrespective of any other benefit that the
189 owner may receive from any improvement proposed by the electric utility.

190 (b) If an owner of property petitions a court for damages related to installing new wire,
191 cables, poles, or other structures to provide broadband services over electric power lines, the
192 amount of damages, if any, payable to the owner shall be limited to an amount sufficient to
193 compensate the property owner for the increased interference, if any, with the owner's use of the
194 property caused by any new or additional physical attachments to any existing power facilities for
195 the purpose of providing broadband services.

196 (c) Evidence of revenues or profits derived by an electric utility from providing broadband
197 services is not admissible for any purpose in a proceeding under [section 11 of this Act.]
198

199 Section 13. [*Severability.*] [Insert severability clause.]

200
201 Section 14. [*Repealer.*] [Insert repealer clause.]
202

203 Section 15. [*Effective Date.*] [Insert effective date.]