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ARKANSAS PUBLIC SERVICE COMMISSION

FILED

IN THE MATTER OF A NOTICE OF)
INQUIRY REGARDING A RULEMAKING)
FOR DEVELOPING AND IMPLEMENTING)
ENERGY EFFICIENCY PROGRAMS)

DOCKET NO. 06-004-R
ORDER NO. 12

ORDER

The above-styled rulemaking was established by the Commission on January 12, 2006, with the entry of Order No. 1 in this docket. In Order No. 1, the Commission found that the initiation of this proceeding is consistent with the requirements of the Energy Conservation Endorsement Act of 1977 (“ECEA” or “the Act”)¹, and the recent passage of the Federal Energy Policy Act of 2005 (“EPAct”)². The Commission stated in Order No. 1 that, “with this Notice of Inquiry (‘NOI’), it is initiating an investigation into: (1) the potential magnitude of opportunities for cost-effective energy efficiency and conservation measures in Arkansas; (2) the degree to which utility programs can cost-effectively reduce consumption and result in more efficient energy use; (3) the types of programs that will produce the quickest and most cost-effective results for the various customer classes within Arkansas; and (4) best methods for tracking and measuring program penetration and effectiveness.”³ The Commission further stated in Order No. 1 that it was interested in seeking information related to the following issues:

- *Goals of Energy Efficiency (“EE”) Programs* - The goals of the initiative which can take the form of standards, codes, or programs. The Commission recognized that goals can be competing. Parties were encouraged to describe barriers that may exist to the implementation of programs and how to address such barriers.

¹ Ark. Code Ann. §23-3-402, §23-3-402, and §23-3-405.

² Order No. 1, pg. 1-2.

³ Order No. 1, pg. 2.

- *The Experiences of Other States and Regions* – The Commission was interested in understanding how the approaches adopted in other states might be useful in Arkansas. This included the pros and cons of various programs adopted in other states and the parties' experiences in other states.
- *EE and Resource Planning* – How the Commission would incorporate EE programs into a resource planning process in Arkansas and into a broader, regional resource planning process.
- *Cost Recovery* – Should program costs be expensed in the year incurred or instead, should they be deferred and amortized over a period of time.
- *Technologies* – The scope of technologies and/or measures that could be included as part of the development of EE programs.
- *Education and Public Awareness* – What measures should be considered in order to make the public aware of EE programs and their benefits?
- *Financial Incentives* – The use of various financial incentives that may encourage utilities to invest in EE. This would include, among others, shared savings mechanisms, recovery of lost revenues, and a higher return for EE programs.
- *Funding Levels* – How should an overall funding level for EE and conservation programs be determined?
- *EE Services* – Parties were encouraged to discuss what services should be offered as part of either statewide generic EE programs or company specific programs.
- *Metrics and Program Evaluation* – What are the appropriate metrics to be used to determine overall program effectiveness and benefits to the state and ratepayers?
- *Development Process* – Whether a collaborative process should be used to provide a forum for stakeholders and third parties to assist the Commission in developing EE policies and programs. Further, if such a process is used should it be used to address issues over a longer time period or to only initiate EE policy.⁴

Procedural History

Pursuant to Order No. 1, on February 21, 2006 the Commission convened a workshop to begin a formal inquiry into the issues related to EE programs in Arkansas. The participants in this workshop included the U.S. Environmental Protection Agency

("EPA"), representatives from the public, gas and electric utility companies, energy managers, the Commission, the Attorney General of Arkansas, industrial customers, and commercial customers, among others.⁵ Attachment A is the agenda for this workshop.

Pursuant to Commission orders, General Staff of the Arkansas Public Service Commission ("Staff"), the Attorney General of Arkansas ("AG"), the Arkansas Electric Energy Consumers, Inc. and the Arkansas Gas Consumers, Inc. (collectively "AEEC"), Entergy Arkansas, Inc. ("EAI"), Southwestern Electric Power Company ("Swepco"), Oklahoma Gas and Electric Company ("OGE"), Empire District Electric Company ("Empire"), the Electric Cooperative of Arkansas ("Coops"), CenterPoint Energy Arkansas Gas ("CenterPoint"), Arkansas Western Gas Company ("AWG"), Arkansas Oklahoma Gas Corporation ("AOG"), and Nucor-Yamato Steel Company and Nucor Steel-Arkansas (collectively "Nucor") are official parties to this proceeding. Order No. 1 directed parties to file comments not later than March 24, 2006 that address the issues discussed in the order and at the February 21, 2006 workshop. Comments were filed by the Staff, the AG, AEEC, EAI, Swepco, OGE, Empire, the Coops, CenterPoint, AWG, and AOG. Public Comments were also received by Wal-Mart Stores, Inc. ("Wal-Mart"), the Arkansas Community Action Agencies Association, Inc. ("ACAA"), the Arkansas Energy Office ("AEO") and CLEAResult Consulting, Inc. ("CLEAResult").

After the workshop and review of the comments of the parties, the Commission, pursuant to Order No. 3 issued on June 30, 2006, initiated a collaborative process to address the following seven issues:

⁴ Order No. 1, pgs. 3-8.

⁵ The transcripts of this workshop are on the Commission's website.

1. The nature and design of EE and conservation programs that can be started quickly and produce near-term benefits for Arkansas.
2. The appropriate incentives and standards for customers and utilities.
3. The development of EE market structure principles and guidelines.
4. The advantages of fostering cooperative gas and electric EE program templates.
5. Possible development of a “deemed savings approach” for Arkansas.
6. The development of uniform standards and mechanisms for evaluating, measuring and validating EE programs.
7. The proper economic tests to use in determining whether a program is in the public interest.

Order No. 3 also directed the parties to submit a report of the parties’ findings to the Commission. Order No. 4 issued on July 25, 2006, identified Mr. Richard Sedano of the Regulatory Assistance Project as the facilitator for the collaborative process (“collaborative”) and the person responsible for the collaborative report (“Report”) and draft Rules to be submitted to the Commission at the conclusion of the collaborative. Order No. 6, issued on August 8, 2006, directed entities to file comments not later than October 27, 2006 that address (1) EPAct provisions related to smart metering and demand response, and (2) responses to questions related to legal, procedural, and programmatic EE issues. Responsive comments were filed by the Staff, the AG, Swepco, OGE, Empire, CenterPoint, AWG, EAI, Coops, and Nucor.⁶

By Order No. 10 of this docket the Commission set forth the procedural schedule for the remaining collaborative meeting dates. Order No. 10 further directed that the collaborative report and recommended Rules be filed in this docket on or before October

⁶ EPAct-related issues raised in Order No. 6 will be addressed in a subsequent order.

31, 2006. Collaborative meetings were held on August 28, 2006; September 11-12, 2006; September 25-26, 2006; October 9-10, 2006; and October 26-27, 2006. Prior to each collaborative, an agenda for the upcoming collaborative was mailed electronically to all parties and individuals who had registered for the collaborative. The agendas were also posted to the Commission website. Attachment B contains the agendas for each collaborative.

The participants in the collaborative process included: staff of the Commission, staff of the AG, staff of the Arkansas Energy Office, staff of the EPA, representatives from the public, Arkansas investor-owned gas and electric utility companies, Coops, renewable energy companies, Arkansas Community Action Agencies (“ACAA”), energy consulting companies, commercial customers, and industrial customers. Attachment C reflects the participants in the collaborative.

The collaborative of August 28, 2006 discussed the expectations of the collaborative process, including the process for developing a collaborative report. This collaborative meeting also discussed similarities between Arkansas and other states regarding EE; began a discussion of cost recovery issues; discussed why Arkansas should be interested in EE; and began to discuss EE program design issues.

During the September 11-12, 2006 collaborative, there were presentations from the Public Utility Commission of Texas (“PUCT”), the EPA, and Frontier Associates LLC (“Frontier”). Theresa Gross, PUCT, provided an overview of the initiation and process for implementing EE programs in Texas. Jay Zarnikau, Frontier, discussed what approaches to implementing and designing EE programs in Texas are working well and

what needs additional work. Joe Bryson, EPA, presented the EPA efforts regarding the Energy Star program and the National Action Plan on Energy Efficiency.

In addition, the participants in the September 11-12 collaborative discussed the issues of customer and utility incentives, monitoring and verification, demand response, EE best practices applicable to Arkansas, deemed savings, state wide goals and targets, and the role of benefit/cost tests in evaluating EE programs.

On September 25-26, the collaborative discussion focused on numerous issues including quick start, cost-effective EE programs; monitoring and verification of EE programs; cost recovery and utility incentives for EE programs; principles for EE programs, the scale of quick start programs, the scope and detail of PSC rules, rate design, decoupling, codes and standards, performance measurement. The participants also discussed issues best deferred for a later stage of program development.

The October 9-10 collaborative focused on the initial review of sections of the draft collaborative report. This review was completed at the concluding collaborative meeting on October 26-27, which also addressed the draft Rules. The issues of deemed savings and an economic evaluation workbook developed by Swepeco were also discussed.

The Report and draft Rules were filed by Mr. Sedano, on November 2, 2006. On November 6, 2006, after evaluating the draft Rules and the Report, the Commission issued its own proposed EE Rules ("EERs") as an attachment to Order No. 11. Initial and Reply Comments on the proposed EERs were filed by Staff, the AG, Swepeco, CenterPoint, AOG, Empire, OGE, Nucor, EAI, Coops, ACAA, AEEC, and AWG. Public Comments were also received from the Demand Response and Advanced Metering

Coalition. A public hearing on the proposed EERs was conducted by the Commission on December 13, 2006.

Background and Authority of the Commission

As noted in Order No. 1, this rulemaking is founded on the ECEA. This law authorizing Commission action on conservation and EE has been on the books for three decades, but until January 2006, when this docket was established, it had been neither implemented nor invoked by the Commission in a rulemaking or other proceeding.

During this long period the Commission, as noted in the comments of AEEC, acting under a federal mandate (the Public Utility Regulatory Policies Act of 1978, amended by the federal Energy Policy Act of 1992) did “consider” the adoption of a standard for implementing Demand-Side Management (“DSM”) programs (at that time the commonly-used term for conservation and EE programs), Docket No. 94-031-U. Following comments on the proposed PURPA standard and a hearing, the Commission, in October 1994, decided that developments suggesting benefits from increased competition in wholesale and retail electricity markets made it unnecessary to implement comprehensive utility DSM programs at that time in Arkansas.

Furthermore, in another PURPA ratemaking docket required by EPAct of 1992, Docket No. 94-342-U, the Commission considered and decided not to adopt the Integrated Resource Planning standard and EE investments standard suggested by Congress. As AEEC notes in their Reply Comments in this docket (pp. 9-10), the Commission stated:

The energy efficiency investments standard is better achieved through increasing competitive pressures on the utility rather than increasing regulatory pressures. The implementation of incentive or performance-based regulation may be considered in the future, as perhaps applicable

during a transition to a competitive market industry. *The standard should not be adopted now, but may be considered as one component of an evolving regulatory scheme at the appropriate time.*⁷

It appears that at no time during these federally mandated “considerations” or subsequently in the proceedings cited by the Industrials in their initial and reply comments, was the subject of ECEA or its provisions raised or addressed by the Commission or parties before it. Towards the end of the 1990’s, competitive pressures did increase across the nation and in Arkansas, leading the General Assembly to enact legislation in 1999 to de-regulate retail electricity markets by January 1, 2002. In 2001 the Arkansas General Assembly delayed the effectiveness of the law until 2003. Before this law could be implemented, however, events in California and elsewhere led the Commission to urge repeal of the deregulation law, which occurred in 2003.

For more than a decade after the PURPA/EPAct dockets were closed in late 1994, there was little consideration given to energy efficiency as a utility resource in Arkansas. But as the risks and infirmities of deregulation and increased retail competition became apparent, especially as prices for the natural gas commodity rose to historically high levels early in this decade, it became apparent to the Commission that the time was appropriate for EE to become an important “component of the evolving regulatory scheme.” In opening this docket, the Commission noted that “energy prices in the United States have increased significantly and risks of sustained future price increases threaten the social and economic well-being of Arkansas.”⁸

⁷ Docket No. 94-342-U, Order No. 4, pg. 8. (Emphasis supplied.)

⁸ Order No. 1, pgs. 1-2.

We note that, under the general jurisdiction and powers granted by the General Assembly, the Commission has the duty to supervise and regulate every public utility, and “to do all things, whether specifically designated in this act, that may be necessary or expedient in the exercise of such power and jurisdiction, or in the discharge of its duty.”⁹ The Commission is also empowered to “determine the reasonable, safe, adequate, and sufficient service to be observed, furnished, enforced, or employed by any public utility and to fix this service by its order, rule, or regulation” after notice and hearing to make, alter, or amend “such reasonable rules pertaining to the operation, accounting, service, and rates of public utilities” as it “may deem proper.”¹⁰

‘Energy Efficiency’, as defined in Section 3 of the Rules promulgated in this Docket, includes all conservation and demand response programs. Under ECEA (discussed more fully below), energy conservation programs, projects, and practices are deemed “a proper and essential function of public utilities” to “engage in” – in short, a service regulated by the Commission.¹¹

Although the Commission does not specifically rely upon them in promulgating this rule under ECEA, there are other statutes passed by the General Assembly that confirm our authority and responsibility to encourage energy efficiency, renewable resources, and protect environmental values. The principal statute is the Utility Facility Environmental and Economic Protection Act of 1973, as amended, Ark. Code Ann. §23-18-502, which contains the following legislative findings:

(c) The General Assembly further finds that present laws and practices relating to the location, financing, construction, and operation of the utility facilities should be strengthened to protect environmental values, to

⁹ Ark. Code Ann. §23-2-301

¹⁰ Ark. Code Ann. §23-2-305

¹¹ Ark. Code Ann. §23-3-404

encourage the development of alternative renewable and nonrenewable energy technologies which are energy-efficient, and to take into account the total cost to society of such facilities....

Beginning in 1999, tightening supply and demand fundamentals in the natural gas industry produced a permanent upward shift in the price of gas, which remains at historically high levels, and with great price volatility. As described by the state's three natural gas distribution companies in the collaborative, these high prices are driving increased conservation through increases in the price elasticity of demand for customers of all classes. The gas distribution companies state that they are experiencing losses of customers and lost sales per customer as a direct result. This has led to a growing number of gas rate case filings with the Commission, in which the companies invariably request rate increases that, if granted, can be expected to exacerbate the financial problems of the companies and their customers.

Unlike the gas companies, the electric utilities have continued to experience growth in customers and sales, despite increases in electric prices through the fuel adjustment clause that allows increased fuel costs to be passed along to customers.

Due to the current level and expected increases in energy prices for both electricity and natural gas infrastructure and commodity purchases, as well as the minimal level of EE programs in Arkansas, the Commission determined that action regarding EE is now necessary and has developed Rules for conservation and EE programs to be developed and implemented by electric and gas utilities in the state pursuant to ECEA.

Because of its foundational importance to this proceeding, the statute is reproduced below in its entirety and will be referenced throughout this Order.

23-3-401. Title.

This subchapter shall be known and may be cited as the "Energy Conservation Endorsement Act of 1977".

23-3-402. Legislative findings.

The General Assembly finds that the United States is confronted with a severe and very real energy crisis. Simply stated, the demand for fuels has outstripped the available supplies. The President of the United States has established energy conservation as a high-priority national goal and has called on all Americans to participate in and perhaps make sacrifices toward attaining that goal. The General Assembly recognizes that enormous amounts of energy are wasted by consumers of all classes and economic levels due to inadequate insulation of buildings and other inefficiencies in the use of energy. The overriding public interest in the conservation of natural gas and oil, as well as the use of alternative forms of energy, is indisputable.

23-3-403. Energy conservation programs and measures defined.

As used in this subchapter, unless the context otherwise requires, "energy conservation programs and measures" may include, but shall not be limited to:

(1) Programs of residential, commercial, or industrial insulation, including measures to facilitate the financing of such insulation;

(2) Programs which result in the improvement of load factors, contribute to reductions in peak power demands, and promote efficient load management, including the adoption of interruptible service equipment and alternative or additional metering equipment designed to implement new rate structures; and

(3) Programs which encourage the use of renewable energy technologies, including solar energy, wind power, geothermal energy, biomass conversion, or the energy available from municipal, industrial, silvicultural, or agricultural wastes.

23-3-404. Conservation a proper utility function.

It shall be considered a proper and essential function of public utilities regulated by the Arkansas Public Service Commission to engage in energy conservation programs, projects, and practices which conserve, as well as distribute, electrical energy and supplies of natural gas, oil, and other fuels.

23-3-405. Authority of Arkansas Public Service Commission -- Rates and charges.

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

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

(3) In such instances, the commission shall declare that the cost of such conservation measures is a proper cost of providing utility service. At the time any such programs or measures are approved and ordered into effect, the commission shall also order that the affected public utility company be allowed to increase its rates or charges as necessary to recover any costs incurred by the public utility company as a result of its engaging in any such program or measure.

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

In one of their arguments, AEEC contends that the Commission is without authority to implement social programs that would redistribute income among Arkansas ratepayers, citing *Arkansas Gas Consumers, Inc. v. Arkansas Public Service Commission*, 354 Ark. 37, 118 S.W. 3d 109 (2004). But that case can easily be distinguished from the current docket. The Court held in *Arkansas Gas Consumers* that the Commission's general authority to supervise and regulate public utilities does not include the authority to make public policy regarding low-income assistance or the authority to provide funds for such assistance by assessing all ratepayers for the bad-debt expense of low-income consumers. In short, the Court held that the Commission did not have the legislative authority to establish the "Temporary Low Income Customer Gas Reconnection Policy". In this docket, however, the Commission is specifically relying upon a clear, direct, expansive, and unambiguous legislative grant of authority

under the ECEA to establish EE programs. Neither the ECEA, nor the Commission's general authority to supervise and regulate public utilities specifically addresses the issues of income redistribution or social programs. There can be no doubt, however, that the Commission possesses broad powers to ensure just and reasonable rates, including specifically enumerated powers to capture the benefits of EE and demand response through requiring utilities to engage in programs, practices, measures and initiatives such as those addressed in this docket.

AEEC also argues that the Commission is without authority to implement any tax, which they assert is the nature of the proposed cost recovery mechanism (a surcharge) proposed in the EERs. Consequently, they assert, the collection of the surcharge by the utilities under the proposed Rules would be an illegal exaction, which is proscribed by Ark. Const., art. 16, sec. 13. Once again, the language of the ECEA grants the Commission clear, unambiguous authority to allow the utilities to recover their costs of engaging in any EE program that it approves and orders: "At the time any such programs or measures are approved and ordered into effect, the commission shall also order that the affected public utility company be allowed to increase its rates or charges as necessary to recover any costs incurred by the public utility company as a result of engaging in any such program or measure."¹² Although not an exclusive method of assuring timely cost recovery, a surcharge is certainly an often-used regulatory tool for doing so.

In support of their tax/illegal exaction claim, AEEC curiously cites and immediately seeks to distinguish a case that seriously undercuts their argument, *Austin*

¹² Ark. Code Ann. §23-3-405

v. CenterPoint Energy Arkla, et al., 365 Ark. 138, ___SW3d ___ (2006 Ark. Lexis 83, decided February 2, 2006). The Supreme Court cuts to the heart of the argument and dismisses it in the following passage:

In order for Austin to have a valid illegal exaction claim, there must necessarily be a tax. In *McGhee v. Arkansas State Board of Collection Agencies*, 360 Ark. 363, ___ S.W.3d ___ (Jan. 20, 2005), this court explained that two types of illegal-exaction cases can arise under Ark. Const. art. 16, § 13: 1) “public funds” cases, where the plaintiff contends that public funds generated from tax dollars are being misapplied or illegally spent, and 2) “illegal-tax” cases, where the plaintiff asserts that the tax itself is illegal. See also *City of West Helena v. Sullivan*, 353 Ark. 420, 108 S.W.3d 615 (2003); *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992).

The surcharge imposed by the gas companies at the insistence of the PSC was simply not a tax. A “tax” is a “burden imposed by a government upon a taxpayer for the use and benefit of that government.” *City of Hot Springs v. Vapors Theatre Restaurant, Inc.*, 298 Ark. 444, 769 S.W.2d 1 (1989). *Black's Law Dictionary* defines a tax as a “monetary charge imposed by the government on persons, entities, or property to yield public revenue.” *Black's Law Dictionary* 1498 (8th ed. 2004) (emphasis added). In the instant case, the surcharges were not levied by the PSC, nor were the monies paid to the PSC. Rather, the surcharges were paid by gas customers to the gas companies, which are privately-owned corporate entities, not arms of the State. In addition, the surcharges did not yield public revenue; they were a mechanism by which the gas companies could recover some of the bad debt incurred as a result of the implementation of the Policy. Accordingly, Austin did not have a valid illegal exaction claim to be heard in circuit court.

Id at 365 Ark. 143

In exactly the same way and for the same reasons, the surcharge that would be collected from customers for EE programs under the ECEA would neither be levied by nor paid to the Commission, but to the electric and gas utilities implementing the programs pursuant to Commission rules and orders. And those funds would be collected from customers for the purposes of reimbursing the public utilities for “any costs” incurred by them as a result of engaging in EE programs under the Act. The amounts collected by

the utilities would therefore be neither “public funds” nor a “tax.” Thus, AEEC’s argument that the surcharge or other means of cost recovery constitute a tax or illegal exaction falls of its own weight.

The Proposed EERs

The basis for the EERs proposed by the Commission and attached to Order No. 11 was provided by Mr. Sedano through the collaborative and the EERs proposed by the Commission were very similar to those provided by Mr. Sedano. The proposed EERs were intended to provide an appropriate level of flexibility to utilities in order to quickly begin the process of establishing EE programs in Arkansas. They were also designed with appropriate levels of checks and balances. The proposed EERs included sections on goals of EE programs, definitions of terms, administration and implementation of EE programs, filing requirements, benefit/cost tests, cost recovery, program plans, reporting requirements and record keeping and availability. The proposed EERs also included an attachment which was “EE Measure/Program/Portfolio Economic Evaluation Model”.

AEEC argues that the Commission should reject both the Report and proposed EERs filed by Mr. Sedano. An early theme struck by AEEC in this proceeding is that the Commission should not implement any ratepayer-financed EE programs until such time as it has implemented appropriate cost-based, time-sensitive rates and eliminated any interclass subsidies they assert exist. However, AEEC cites neither statutory authority declaring these steps to be predicates to action under ECEA nor any other requirement that these rate issues be addressed in this docket, which focuses solely on energy conservation and EE matters. The Commission thus finds this argument to have no

merit and rejects AEEC's assertion that the moderator of the collaborative should have discussed these particular rate design concerns in the Report or the proposed EERs or that the Commission is required to do so. AEEC has had and used every opportunity to make this argument in the collaborative and in their comments, all of which the Commission has heard, considered, and found wanting.

AEEC also argues that the Commission has rushed to develop policies and rules to initiate EE programs in Arkansas.¹³ This assertion is simply wrong. The twelve months since initiating this docket have seen a very large group of different stakeholders work together to assist the Commission in its efforts to get EE policies and programs in place that will benefit all ratepayers and the state. This inclusive process has led to the rules adopted herein. The Commission notes that twelve months is a longer time period than the Commission has to decide a major rate case. It appears that AEEC is simply unhappy that the Commission is moving in a new policy direction for Arkansas. Most of the parties have been diligent in working with the Commission collaboratively in developing an understanding of the EE issues in this docket. Evidence of this can be found throughout the Report from Mr. Sedano. It is time for Arkansas to begin the intentional process of initiating EE programs that will benefit ratepayers and reduce electricity and gas costs to the state as a whole. AEEC's statement that "the Commission has absolutely abandoned the reality of reasoned decision making in this case" could not be further from the truth. (Tr. 36-37) AEEC is almost alone in believing that the last twelve months of work has been a rush to judgment.

¹³ AOG also raised this issue. (Tr. 290-291)

The AG was another party that was not supportive of the Commission proposal. However, their objection was not that the Commission had rushed to develop EE policies. Instead, a primary objection of the AG was that the Commission had not included a requirement that a third party, independent administrator for EE programs be used instead of a utility administrator.

The remaining parties were generally supportive of the Commission's proposed EERs. EAI noted that the proposed EERs remove a regulatory barrier that has existed in Arkansas to provide EE programs. EAI observes that "[a] barrier to providing energy efficiency programs has been the lack of an efficient regulatory framework under which to seek approval of such services and recovery of the cost of delivering those services to customers. The Rules remove that barrier and allow a utility to move forward in offering energy efficiency programs to its customers." (Tr. 74) Furthermore, the Coops strongly agree with the goals provided in the proposed EERs. (Tr. 128) CenterPoint states that "the proposed EERs provide a practical framework for the successful implementation of EE programs in Arkansas." (Tr. 148)

While most of the parties support the direction proposed by the Commission, all of the parties offered modifications to the proposed EERs. Two general issues that were discussed include applicability of the EERs to the Coops, and use of the *Commission Rules and Regulations Governing Promotional Practices of Electric and Gas Public Utilities* ("PPR") in conjunction with the EERs.

The Coops support the goals in the proposed EERs. However, the Coops requested an exemption from the proposed EERs. In support of their exemption request, the Coops provided information on their history in offering EE and demand

response programs to their members. More importantly, the Coops noted that “their business model and operational characteristics are so unique that the proposed EERs are unnecessary to encourage energy efficiency programs within the Electric Cooperatives”. (Tr. 128) The Coops also state that, if exempted from the EERs, they would not seek the use of a surcharge or rider to recover program costs associated with EE programs nor would they request special incentives to provide EE programs. (Tr. 137)

The AG and AOG oppose a blanket exemption as requested by the Coops. (Tr. 63) AWG also opposes the request to the extent that the Coops EE programs are load building or fuel switching programs. (Tr. 276)

Given their unique business model in the electric utility sector, the Commission approves the request of the Coops for an exemption from the EERs as conditioned below. However, as reflected in the Rules adopted herein, the Commission finds neither load building nor fuel switching programs to be EE programs. Load building programs and fuel switching programs will continue to be evaluated under the Commission’s PPRs and not the EERs.

As a condition for the Coops to retain an exemption beyond December 31, 2009, the Commission will require that each Coop report annually to the Commission on its EE programs and their results. The Commission will not dictate a form for this report, except that it should be comparable to the reports filed by other utilities in conformance with the EERs. The Commission recognizes that the characteristics of the EE program portfolio of a Coop may differ from that of investor-owned utilities. The Commission, however, should have the tools to compare the program and portfolio results of all

utilities to assure that all Arkansans are benefiting from this initiative. After 2009, the Commission may reconsider continuing the exemption based on the performance of Coop programs.

Discussion and Findings on the Proposed EERs

Section 1: Purpose

Three parties recommended modifications to this Section. Staff recommended adding language to clarify that the Rules apply to providers of utility service who are subject to the Commission's jurisdiction. CenterPoint and AWG both suggested revisions to this Section by providing clarifying language. The Rules approved herein include Staff's clarification.

Section 2: Goals of Energy Efficiency Programs

As proposed, this Section was supported by the Coops. EAI, OGE, and Nucor suggested changes to the proposed language regarding "peak demand reduction". EAI also suggested other minor changes. AEEC argues that the ECEA limits the goals of EE and conservation programs. They state that because of this limitation many of the proposed goals are not "conservation" related and should be struck. (Tr. 15-16) The Commission rejects the argument of AEEC on this issue.

In their initial comments on specific provisions of the proposed EERs, AEEC argues that the Commission has exceeded its authority under the ECEA by proposing a number of "goals" in this Section that could be served by an EE initiative. AEEC makes the statement that, "Establishing any program in order to provide energy security,

reduce commodity costs, reduce greenhouse gasses,¹⁴ or otherwise are completely unrelated to the delivery of natural gas and electric service to Arkansas ratepayers.” (Tr. 26, emphasis added.) Looking to the specific language of the ECEA for guidance, we note that the legislative findings section,¹⁵ points to the establishment of energy conservation as a national goal, and the General Assembly recognized the enormous waste of energy by consumers of all classes and economic levels due to inadequate insulation of buildings and other inefficiencies in energy use.

While nothing in the Act details state goals for EE, it is a tautology that the purpose of an EE and conservation program is to encourage and enable consumers to make the most efficient use of utility capacity and energy and to discourage inefficient and wasteful use. That is the gist of the ECEA. Upon review of the Commission’s general and specific statutory authorities, we find that the Commission is charged with the responsibility to regulate utilities in such a manner as to further virtually all of the ends listed in proposed EER, Section 2. Indeed, most of these benefits and objectives lie at the core of the Commission’s mission and many of them are specifically provided for in the general powers section of the statutes governing the Commission. For example, Ark. Code Ann. §23-2-304 provides, variously, that

¹⁴ It should be noted that nowhere in the proposed Rule is there mention of the asserted goal “to reduce greenhouse gasses,” although Section 2 does list “environmental benefits” among the objectives to be assessed. Further, we note that AEEC assert in their Reply Comments (pp. 6-7) that the Commission has “abandoned any thought of consistency with prior precedent” by, among other things, considering “environmental externalities” when evaluating EE programs in this docket, citing Order No. 12 in Docket No. 90-205-R where we declined to consider environmental externalities as part of demand-side program evaluations in revisions to the PPRs. But the fact is that in that docket more than 16 years ago we said, *“The exclusion of an evaluation of environmental externalities in the analysis of proposed promotional practices rules or a specific promotional practice does not result in the exclusion of such an evaluation in the regulatory arena. Rather, it leaves the evaluation of environmental externalities within more appropriate Commission proceedings.”* (p. 8.) The Commission certainly has the statutory authority to change its policies based on changes in circumstances. It is thus our determination that, given changes in circumstances since 1990, this EE initiative is the appropriate proceeding in which to consider the objectives of the proposed EERs.

¹⁵ Ark. Code Ann. §23-3-402

“The Commission shall have the power to:

(2) Determine the reasonable safe, adequate, and sufficient service to be observed,...;

(3) Ascertain and fix adequate and reasonable standards, classifications, regulations, practices, and services to be furnished, imposed, observed, and followed by any or all public utilities;... and

(9) Assure that retail customers should have access to safe, reliable, and affordable electricity, ...”

Should the Commission take the opposite position and disavow any responsibility to further the goals and objectives identified in the proposed EER, we would be in violation of our express statutory responsibilities, and could be challenged by the source of our authority – the Arkansas General Assembly – for that dereliction of clear and unambiguous statutory duty.

Turning to other parties, the AG argues that the major objectives of the proposed EERs are “energy cost savings and cost-effectiveness” and “implementing programs in an efficient manner”. Furthermore, they state that these two objectives should be “threshold requirements for all measures, programs and portfolios of programs”. Alternatively, CenterPoint proposed moving this Section and replacing objectives in the proposed EERs with a goal from EE portfolios of achieving “a specified level of energy efficiency savings”. (Tr. 151)

The Commission does not agree with the assertions of either the AG or CenterPoint. The objectives of EE programs could easily change in importance over time. For the Commission to find that one or two objectives are of primary importance would unnecessarily bind the Commission in the future.

While the Commission believes its inquiry and actions to implement the Act are thus appropriately guided by recognition that certain benefits and objectives can be expected to be achieved if the initiative is successfully pursued by the implementing utilities, we take this opportunity to further refine EER Section 2 to read as reflected in the Rules adopted herein.

Section 3: Definitions

Numerous parties provided suggestions on changes to the definitions. Staff recommended modifying the proposed definition of 'Energy Efficient Savings' to specifically reference Deemed Savings. Staff also recommends clarifications to the terms 'Measure' and 'Program'. (Tr. 342-343)

Swepeco suggests changing the definition of 'administrator' to "The entity responsible for creating and managing an energy efficiency program or portfolio of programs." Swepeco also recommends expanding the definition of 'Deemed Savings' and modifying the definitions 'Program' and 'Program Plan'. They also propose that 'Program Year' be clarified to include the phrase that "a program year shall be considered a calendar year, January 1 through December 31." (Tr. 95-97) The AG supports Swepeco's modified definitions of 'deemed savings' and 'implementer' but disagrees with the company's suggestion that the utility should have 'some say in the choice of an independent administrator'. (Tr. 62-63)

EAI suggests a number of non-substantive changes to the definitions of 'Energy Efficiency', 'Energy Efficiency Savings', 'Measure', and 'Program'. OGE suggests that the definition of 'Demand Response' be broadened to "changes in energy use by end use customers..." The proposed Rules specify "electric use", not "energy use". (Tr. 111)

Nucor proposes changing the definition of 'Cost Effective' by replacing "aggregate ratepayer benefits to the majority of utility customers" with "cost benefits to the majority of ratepayers". (Tr. 305-306)

CenterPoint and AWG submitted complete rewrites of the proposed EERs. While an attempt to provide clarity for those parties may have been an objective, it is apparent that the changes they offer to the definitions were to include definitions and policies that would guarantee recovery for lost revenues and promote decoupling. For example, the definition proposed by CenterPoint for 'Total Cost' includes overhead, program funding and lost revenue costs. Given that the issues of recovery of lost revenue and decoupling are addressed elsewhere in this Order, the Commission declines to adopt the proposals to this Section of the EERs offered by CenterPoint and AWG.

In conclusion, the Commission finds that the many of the modifications to this Section proposed by OGE, Swepeco and EAI clarify the EERs and are herein adopted. Specifically, EAI's proposed definitions of 'Energy Efficiency', 'Energy Efficiency Savings', and 'Measure' are adopted. Swepeco's proposed definitions of 'Administrator', 'Deemed Savings', 'Implementer', 'Program', 'Program Plan', and 'Program Year' are also adopted. OGE's proposed definition of 'Demand Response' is also adopted.

Section 4: Administration and Implementation of Energy Efficiency Programs

Under the proposed EERs, an 'Administrator' is "[t]he Entity responsible for creating and managing an energy efficiency portfolio," which is the entire group of programs offered by an administrator. CenterPoint argues against inclusion of language in the proposed EERs that would provide that the Commission may designate an administrator independent of the utilities, although the utility will ultimately retain the

responsibility for compliance with the Rules. Noting that this may be the only substantive disagreement that CenterPoint has with the proposed Rules, the company argues not only that exclusive utility administration would be more effective but also that the ECEA prohibits independent administration. They argue that a program administered by a Commission-appointed, independent third-party would not be a program “by” a utility; rather it would be a program “by” someone else.

The Commission does not agree with CenterPoint’s reading of the applicable statutory provision.¹⁶ The statute is broad in granting the Commission authority to see that EE programs accomplish their purpose. It states that the Commission “is authorized to *propose, develop, solicit, approve, require, implement, and monitor measures by utility companies which cause the companies to incur costs...*” (Emphasis supplied). By virtue of this very extensive and descriptive list of authorities granted to the Commission by the General Assembly, it is hard to envision any type of implementation mechanism that the General Assembly would not want the Commission to pursue if it otherwise satisfied the objectives and requirements of the statute. Again, as with the education program costs discussed elsewhere in this Order, the pertinent section of the statute speaks of “measures” by utilities, not (as CenterPoint would have it) of “programs” by utilities. We interpret the statute as clearly permitting the Commission to mandate (or permit by approving) actions by utilities that cause them to incur costs of third-party program administration should we determine that it would be a better approach for conserving electrical energy and natural gas. The Commission may even propose, develop, solicit, implement and monitor such administration under

¹⁶ Ark. Code Ann. §23-3-405

this statute. However, we have not proposed to do any of those things at this time, since, at least initially, we agree that utility administration is the appropriate path to begin the process of achieving our statewide objectives, and those of the statute, with this EE initiative and Rules.

In response to the AG's contention that independent administration is critical to the success of the EE initiative, we remain unconvinced. Our view and understanding of the many EE initiatives that have been instituted throughout the United States over the past 30 years is that there are more examples of utility administration than independent administration, and some states have tried both (e.g., California). The very fact that, as the AG puts it, Arkansas "has a very dispersed electric and natural gas infrastructure, rudimentary customer EE awareness, diverse EE markets, and modest economic conditions" is a principal reason to rely on the utilities to jump-start the delivery of energy efficiency programs. (Tr. 47-48) For example, as we heard throughout the collaborative, the differences among the electric utilities and the electric cooperatives with respect to their loads, generation, geography, and cost structures, are very great.

We are not convinced at this point that a one-size-fits-all approach to designing, implementing and delivering services for all EE programs via an independent third-party administrator is the right course. For some programs, however, we tend to favor a statewide approach that will bring consistency and standardization to messages and services. We are directing that course for some programs.

At the same time, as we gain experience with the Quick Start and then the follow-on Comprehensive programs, we reserve the right to re-visit this issue. Meanwhile, we

will remain open to learning from successes that may be achieved in other places via the independent administrator route.

Finally, we note that at least one company, AWG, has expressed openness to contracting out its administrative responsibilities to another utility company (be it gas or electric). This reminds us that the utilities always have the option to pursue an approach similar to that which exists in Texas, where the electric utilities coordinated the development of EE program templates and a uniform set of deemed savings estimates, all of which were ultimately blessed by the PUCT for use throughout the state. Likewise, the option exists for the companies here to join together and engage via contract a single statewide (or regional, or multi-utility) administrator, or to outsource all or parts of program administration. No matter which approach is taken for convenience, economy, or administrative efficiency, we find that each utility remains “responsible for the administration and implementation of cost-effective energy efficiency programs within their service territories.”

In short, should the Commission decide to mandate or the utilities reach unanimity that a single statewide administrator of all EE programs is the best and most cost-effective implementation framework for Arkansas, then the companies would collect the funds for the programs, hire a third party to implement them, and then monitor the effectiveness of that delivery system. However, we would continue to look to the utilities to be the proper stewards of the money, and ultimately be responsible for the services and resources that are entrusted to them through their public utility service obligations.

Section 5: Portfolio and Program Filing Requirements

The topic in this Section of the proposed EERs that drew the most response was the topic of Deemed Savings. Many of the parties strongly support the use of Deemed Savings in establishing programs that have a successful history in other states. OGE goes so far to propose that the subsection 'Deemed Savings Estimates' be modified to state that "[d]eemed savings approved by the Commission prior to plan implementation, should be used as part of the evaluation process. Program administrators are encouraged to implement a deemed savings approach, wherever possible, to minimize program costs." (Tr. 112) Swepco also suggests replacement language in this Section for Deemed Savings as well as other clarifying language for this Section of the EERs. (Tr. 98-100) ACAA supports the use of Deemed Savings with the ability to adjust the savings to reflect actual results in Arkansas and states that "[t]he Commission should establish a process for reviewing deemed savings estimates for Quick Start programs. This process should conclude by April 1, 2007, in order to permit filing of Quick Start programs on July 1, 2007, for implementation by October 1, 2007." (Tr. 323)

In contrast to most of the parties, the AG did not embrace the concept of Deemed Savings but advocated that every EE measure, program, and portfolio should be subjected to an after-the-fact evaluation, measurement and verification process to confirm that energy savings have been achieved. The AG did not, however, cite or suggest legal authority in support of this position. The Commission believes that the Deemed Savings approach, which has been used in Texas and other states, offers substantial administrative cost benefits, in that for EE measures for which it is appropriate, the end result of using Deemed Savings is that evaluators can verify savings

by counting the number of measures installed, rather than conduct after-the-fact, per measure metering tests. There are many measures and products for which the Deemed Savings approach appears to be well-established, conservative estimates of what can be expected after installation, deriving their efficiency and logical, verifiable usefulness from years' worth of experience and data gleaned from numerous applications at other utilities across the country.

The Commission understands that it is common practice in virtually all states with significant EE programs for the program administrator to utilize and draw upon estimates of energy savings for EE measures, technologies, and strategies employed in their programs (particularly in their DSM application for approval to spend ratepayer dollars). This EE toolbox of measure savings is called by different names in different states – but it is commonly referred to as the EE Technical Reference Manual (“TRM”). These estimates of EE savings are the product of conservative engineering analysis of EE measures, spot field measurements of kW savings from various technologies (e.g. lighting) augmented by field measurements of hours of operation of different types of facilities (e.g. offices, schools), and program evaluations that rely on analysis of utility bills. Over time, the EE program administrator assesses and continually refines the TRM to incorporate the results of periodic evaluations, includes savings estimates for new measures/technologies, etc. These updated values are used by the program administrator in subsequent applications/filings for EE programs and their cost-effectiveness. The Deemed Savings approach is used initially to establish the cost-effectiveness of measures and a portfolio. The Deemed Savings approach does not solely rely on engineering estimates; it is typically a living document that is augmented over

time based on field experience.¹⁷ For some measures, the utilities will count and report the number of measures installed to augment their engineering estimate of average savings/household (say for a window retrofit program). But even for this type of program, an evaluation of the program is conducted every 3-4 years to refine the Deemed Savings estimate.

The Commission agrees with most of the parties that Deemed Savings, with adjustments to reflect actual results in Arkansas, should lead to quicker and more cost-effective implementation of EE programs. The Commission also recognizes that the collaborative made significant progress on this issue. Therefore, the Commission directs the parties to pursue the Deemed Savings approach and orders the parties to engage in a collaborative process with an experienced, independent entity, such as Frontier, as the facilitator, and to submit a report by April 1, 2007, in this Docket on the estimated Deemed Savings associated with the Quick Start programs; with the exception of the public education program that is established statewide herein and discussed elsewhere in this Order. We also note that there are measures, processes, portfolios, and programs for which Deemed Savings are not appropriate, and we will require post-installation measurements, perhaps using sampling techniques, to verify the savings for these.

In addition, Swepco offered clarifying language to this Section on other topics. The Commission finds that Swepco's proposed amendments to this Section are reasonable and are reflected in the approved EERs.

¹⁷ This was mentioned during the collaborative by persons familiar with the Texas deemed savings manual, which was developed by a consultant sponsored jointly by the state's electric utilities and which requires formal Commission action every time a change is made – something the utilities and others urged this Commission to avoid by not including the savings estimates as a formal part of the Rules.

The Staff requests clarification from the Commission concerning adopting “an industry accepted protocol” for evaluation, measurement, and verification (“EM&V”). The collaborative discussed the International Performance Measurement and Verification Protocol (“IPMVP”) and its use in the U.S.¹⁸ The Commission will rely on the utilities to resolve this matter in their Program Plans and observes that Commission review will be aided by a consistent approach to EM&V by all utilities.

The AG opposed program plans that include EM&V responsibilities remaining with the responsible utility. The AG would require that EM&V be accomplished by a single independent entity for the programs of all utilities with no ties to utilities. The Commission agrees with Mr. Sedano’s Report that “credible EM&V is essential for successful energy efficiency programs, noting that this concern is typical in US energy efficiency programs.”¹⁹ The Commission is not persuaded at this time that the utilities cannot administer an objective and valuable EM&V component of an EE program if the proper controls are in place. The Commission notes that the Report at Section 6 provides extensive guidance on this point, and that this is an issue well developed in other states. Utilities are advised to pay close attention to ensuring that the EM&V process retains an objective and questioning point of view designed to produce accurate reports and guide efforts toward continuous program improvement.

Section 6: Benefit/Cost Tests

Most parties responded with recommendations on this Section of the proposed EERs. Mr. Sedano, in the Report, states that the participants to the collaborative have

¹⁸ Collaborative Report, pg. 41

¹⁹ Collaborative Report, pg. 40

different views on the appropriate benefit/cost test to use in evaluating EE programs. He continues, “[m]ost participants support an approach that diminishes the importance of any one economic test. This approach would have the Commission use several tests, as well as a comparison to an applicable avoided cost to identify programs that are likely to be cost-effective in Arkansas.”²⁰ Furthermore, the Report indicates that use of an avoided cost test may be acceptable by Staff for use in review of “Quick Start” EE programs.

EAI and Nucor support the approach in the proposed EERs which moves away from strict adherence on the California Manual.²¹ (Tr. 78, 307) Nucor states that “[t]he Commission’s hands should not be tied, nor its flexibility limited, by placing undue reliance on the California Standard Practice Manual...” (Tr. 307) Other parties proposed use of specific tests that are contained in the California Manual.

AEEC adamantly supports the use of only the Ratepayer Impact Measure test (“RIM”). (Tr. 20) Their position is consistent with the position they have maintained in virtually all proceedings considering EE and DSM programs since 1990. AEEC’s argument in this proceeding is that the Commission can only approve a conservation program under the ECEA if it benefits all ratepayers by not raising rates in the short term. In short, AEEC advocates the exclusive use of the RIM test for determining whether EE measure expenditures are cost-effective. They contend that Ark. Code Ann. §23-3-405(a)(2) requires that there be “no losers” as the result of implementation of a

²⁰ Collaborative Report, pg. 45

²¹ State of California (Governor’s Office of Planning and Research), *California Standard Practice Manual: Economic Analysis of Demand-Side Programs and Projects (July 2002)*.

DSM program and therefore the Commission should disregard all of the tests in the California Manual except the RIM test.

As pointed out by the ACAA, under AEEC's exclusive use of the RIM metric a utility's investment in a transmission line or a generation plant to assure adequate supply would, in the current increasing cost environment, always fail the RIM test. Indeed, even such an obviously public benefit as the trimming of trees after an ice storm would fail the RIM test if customers in high-rise apartments that have no trees nearby were required to pay their share of the trimming costs. It is important to consider the scale of time over which benefits from any utility expenditures or investments are calculated. AEEC complains that because all customers cannot become "participants" in EE programs in one fell swoop, the non-participating customers will be "losers" since they will receive no benefit from the mandated DSM but will be forced to pay for it. (Tr. 21) Again, if EE programs are properly designed and screened for cost-effectiveness, all ratepayers will be "winners" over the long run. The fact is there is no principle of regulatory law that requires that every expenditure or investment by a utility company redound to the specific benefit of every customer at the moment it is made. Ark. Code Ann. §23-3-405(a)(2) does not mandate that there be no losers or that the RIM test be used to the exclusion of all others.

AEEC supports its argument by use of a hypothetical that purports to show that the evaluation of resources using the Total Resource Cost Test and the Participant Test would produce an inequitable burden on customers who are "losers" under the RIM test. (Tr. 20-21) However, this hypothetical suffers from its oversimplification in creating a utility universe with only three customers and in ignoring the resource and time value of

capturing EE resources for all customers. Under the reasoning advanced by the example, one might conclude that even price-induced conservation (i.e., “doing without” because one cannot afford to pay the bill) is an evil to be avoided, since every kilowatt-hour or therm saved by a customer who insulates her attic will produce a shortfall to the utility, which may seek a rate increase from “non-participants.” By that reasoning, perhaps the utility should be urging people to use more energy, so that the company’s costs can be spread over a larger and larger base of commodity sales and allow rates to be reduced.²² The flawed example shows the infirmity of focusing solely on rates and ignoring the importance of bills to end-use customers. Our choice under the proposed EERs to select from among all of the California Standard Practice tests, including RIM, and others that may be advanced by utilities proposing EE programs, is a balanced one that will allow us to fairly evaluate long- and short-term resources to meet the utilities’ obligation to serve, along with the long-established requirement to produce just and reasonable rates for customers.

Finally, with respect to AEEC’s claim that all ratepayers will have higher rates so that only a “few ratepayers” can have lower bills,²³ it must be remembered that unless we are to do nothing, there must always be a starting point for any initiative whose purpose is to produce a “high probability of providing aggregate ratepayer benefits to the majority of ratepayers.” Our clearly stated intent is to have utilities offer programs

²² Even this reasoning would not make sense in an increasing-cost industry, where more production results in higher cost per unit. The California Manual makes this point when it says in discussing weaknesses of the RIM test (p. 15), “[U]nder conditions where marginal costs are less than average costs, a program that promotes an inefficient appliance may give a more favorable test result than a program that promotes an efficient appliance. Though the results of the RIM test accurately reflect rate impacts, the implications for long-term conservation efforts need to be considered.”

²³ There is also an argument that efficiency lowers all bills below what they would otherwise be, even though participants in energy efficiency programs get more for the purchase of their negawatts – just as a truck dealer benefits more than his customers from the economic replacement of trucks.

to customers in all classes and, over time, to reach as many customers as possible who would like assistance in capturing the benefits of energy efficiency. The fact that programs cannot reach all of the customers in the state on day one is a reality with which we must deal. Indeed, the fact that only a small percentage of customers can receive assistance in any given program year is a fiscal and practical reality that has one beneficial result: the rate impact on any customer in a given program year – participant or non-participant – will be very small. The Commission’s oversight of the funding mechanism and size of the programs implemented by each utility will ensure that the rate impacts are minimal, especially in the Quick Start phase of the initiative. As time passes and programs ramp up, more customers in all classes will be able to access direct program benefits by becoming program participants. Our expectation is that the programs will target the least-efficient energy use applications first, capturing the least expensive negawatts²⁴ and negawatthours available in each customer class and eliminating wasteful uses for all.

Although AEEC asserts that most of the State’s industries “have already implemented cost-effective DSM measures on their own without the need for a state program and subsidies,” AEEC offered no specific evidence to that effect. During the collaborative, Mr. Sedano cited several instances from other states of industrial customers that sought either exemption from paying for EE program costs or, alternatively, to self-direct funds that would otherwise be collected in rates for EE. In a number of those cases, he said, the industrial customers ultimately decided they could

²⁴ The saving of a megawatt of power by reducing consumption or increasing efficiency. (The Dictionary of Sustainable Management, <http://www.sustainabilitydictionary.com/n/negawatt.php> (January 6, 2007) Negawatt is a term coined by Amory Lovins in a March 1989 address to the Green Energy Conference of the Canadian Coalition for Nuclear Responsibility. <http://www.ccnr.org/amory.html> (January 6, 2007)

save more energy by becoming active participants in the utilities' programs, and they did so. It is doubtful that EE is a resource that has been exhausted by any customer; technology is constantly creating new ways to save energy and improve the efficiency of industrial processes. That is the nature of the competitive world in which industries operate in this country.

Finally, AEEC asserts that the RIM test guarantees that "there are no losers" (Tr. 20), when in fact the opposite is true – the RIM test would fail many expenditures that would provide long-run cost reduction or even short-run reliability benefits. The irony of AEEC's argument is that EE measures that have very low out-of-pocket costs and produce large "bang for the buck" energy savings – like compact fluorescent lamps – would likely fail the RIM test because they work "too well." They save "too much" energy and reduce utility revenues (thereby producing slight upward pressure on utility rates) to pass that test. Since conservation and EE are, by definition, going to reduce energy usage and utility revenues, it is likely that the programs that are most likely to pass the Industrials' preferred test are demand-response or load management programs that reduce kW demand without much reducing energy (kWh) usage.²⁵ The ECEA clearly empowers the Commission to pursue both energy and demand savings. Indeed, it provides that energy conservation programs, projects and practices, "shall be considered

²⁵ An example of a program that would almost certainly pass the RIM test is the installation of air conditioner, water heater, and agricultural irrigation load-control switches, such as those being used by the Coops. These programs, as well as industrial curtailable and interruptible programs, are demand-response programs and often save little or no energy, since the devices shift energy usage to a non-peak time in the day, and the energy not used during a peak-load condition is usually "made-up" once the switches are deactivated and customers either cool their homes down in the evening or pump water in cooler times of day. Such programs are valuable to utility ratepayers as a whole, since they allow the utility to avoid purchasing expensive power or generating electricity with high-cost peaking units. They are included as program options in Section 8 of the EEGs in this docket because they are a peaking efficiency resource that can provide benefits to the majority of customers through delaying the need for new generation or avoiding the purchase of high-cost energy.

a proper and *essential* function of public utilities....”²⁶ (Ark. Code Ann. §23-3-404, emphasis supplied.)

In determining cost effectiveness, it is critically important to bear in mind the distinction between energy and demand and to examine the long-term resource value (i.e., all of the benefits) available from EE programs. It would be nonsensical for the Commission to adopt a rule that resulted only in the approval of demand-response measures and required energy conservation programs not to save energy, so as to ensure that the utility did not lose sales and thereby could avoid upward pressure on rates. The fact is, the Commission is authorized to implement both energy and demand-savings programs, and will do so with a constant eye to assuring that customers’ bills are given as much consideration as the rates they pay. That is because bills are the product of rates and energy usage over time, and EE programs focus on improving the productivity of energy usage.

In looking at the cost effectiveness of EE programs, we note that state commissions that direct utilities to administer EE programs typically require the portfolio of EE programs to pass participant, TRC and utility cost tests and ask utilities to estimate the levelized rate impacts. The RIM test is just a screening test and, for the reasons cited above, EE measures very rarely pass it, in part because of how existing rates are designed. Utilities and policymakers have found it more useful to look at the levelized rate impacts on non-participants over time (which typically is small), as a way of assessing whether rate impacts of these EE expenditures are acceptable for those non-

²⁶ Ark. Code Ann. §23-3-404 (Emphasis supplied.)

participants. This kind of levelized rate impact analysis assesses the impact on the overall utility bills of all customers, which includes those that participate and reduce their energy usage (when multiplied by the new rates, their bills go down). We thus direct the utilities to calculate for their proposed portfolios of EE programs the levelized rate impacts on participants and non-participants.

Turning to other issues raised in this Section of the proposed EERs, a number of parties recommend that the economic evaluation tool that was offered for consideration by Swepco be removed from the EERs. This tool provides an excellent addition for the parties to use in evaluating potential EE and conservation programs. The tool was offered by Swepco late in the collaborative process and has not been verified by all the parties. For this reason, the tool will not be part of the EERs adopted. However, parties are encouraged to complete evaluation of the tool and, as suggested by EAI, the tool will be posted on the Commission's website once the evaluation by the parties has been completed.

The AG asks that the Commission add clarifying language in this Section regarding the life of the program being evaluated. (Tr. 51-52) Swepco offers a very similar recommendation. The Commission finds that the language suggested by Swepco provides clarity and adopts that language in the approved Rules.

Section 7: Cost Recovery

Turning to the issue of cost recovery, AEEC argues that State law does not give the Commission the general authority to impose surcharges on utility customers. However, the Commission does not rely on its general authority in proposing to allow utilities to seek cost recovery through a surcharge or rider for all incremental costs of the

EE program that are not already included in current rates. On the contrary, the very specific language of the ECEA authorizes the Commission to allow utilities to recover their costs via a surcharge or rider. Specifically, the ECEA provides that after notice and hearings on EE programs before the Commission and a finding that the programs will be beneficial to both ratepayers and utilities:

*“(3) In such instances the commission shall declare that the cost of such conservation measures is a proper cost of providing utility service. At the time any such programs or measures are approved and ordered into effect, the commission shall also order that the affected public utility company be allowed to increase its rates or charges as necessary to recover any costs incurred by the public utility company as a result of its engaging in any such program or measure.” [Emphasis added]*²⁷

The language of the law could hardly be clearer. The statute does not mention the need to wait for a rate case. Indeed, it would be impossible to comply with this statutory provision if utility companies were mandated to seek cost recovery only through a rate case filing. While the companies, under the proposed EER, may elect to seek recovery through a rate case or other means, they are provided with the opportunity that the statute requires: to recover their costs simultaneously with the effectiveness of their approved programs. The traditional means of doing so is through a surcharge or rider.

Turning to arguments regarding the “used and useful test”, AEEC proposes a requirement that costs of EE pass the “used and useful test”. (Tr. 23-24) Although the Commission reaffirms that the used and useful principle is an important protection for ratepayers to ensure that capital investments are both used (i.e., not excess compared to the need for investment), and useful (i.e., economic), we note that the investor-owned

²⁷ Ark. Code Ann. §23-3-405(a)(3)

utilities have indicated their intention to treat EE expenditures as expenses, not investments.²⁸ Because such expenditures will not be capitalized (and, as noted by AEEC during the collaborative meetings, because most of the expenditures will be to provide measures that are not owned by the utilities but by the customers), the Commission finds that application of the used and useful test to EE expenses is legally irrelevant, and we thus reject AEEC's argument.

The AG suggests a number of changes regarding cost recovery. They state that cost recovery should only be allowed (1) after the program has been in effect for some time and (2) after cost-effective energy reductions have occurred and been evaluated through an independent entity. The AG further states that cost recovery should not include "incidental costs of EE such as lost revenues". (Tr. 52) As stated above, the Act is clear on the implementation of a rider or surcharge at the time a conservation or EE program is approved, not in the next rate case of the utility.

Other parties recommend modifications that would expand what is recoverable under a cost recovery rider or surcharge to include the recovery of lost revenues and incentives. (Tr. 101, 113) In particular, the gas utilities' recommended modifications to the proposed EERs would provide for immediate recovery of all costs, including lost revenues, either directly or indirectly through a decoupling mechanism.

Staff supports the proposed EER regarding cost recovery and responds convincingly to the arguments offered for implementing decoupling mechanisms. Staff and AOG note that it will be very difficult to isolate revenue losses that are the direct result of implementing EE programs under these rules. (Tr. 351-352) Staff, AOG and

²⁸ Collaborative Report, pg. 25.

ACAA state that such revenue losses may well be offset by customer retention and reductions in non-energy costs. Given the position of the gas utilities since this proceeding was initiated, Staff recommends that a “thorough examination of the issues related to lost revenues can most appropriately be addressed in a utility’s rate case.” (Tr. 352) Staff states that this approach is consistent with the recommendations contained in the National Action Plan for Energy Efficiency which states that “Implementing decoupling normally begins with a traditional revenue requirement rate case.”²⁹ The Commission agrees with Staff that the appropriate starting point to evaluate inclusion of lost revenues or decoupling mechanisms is in a rate case.

EAI suggests a minor, clarifying wording change to paragraph 3 that would substitute the word “reflected” with “included”. EAI also recommends moving a provision in proposed Section 9 related to reporting to the end of this Section. (Tr. 80-81) These are clarifying changes and are reflected in the approved Rules.

Section 8: Program Plans

AEEC was uniquely opposed to the program proposed for Severely Energy-inefficient Homes, and makes the assertion that supporters of this program are deliberately attempting to evade Arkansas law. (Tr. 14) On the contrary, as pointed out by ACAA, this program was designed in response to the very concern that a low-income program, per se, may be contrary to Arkansas law. (Tr. 334) Although several parties made it clear during the collaborative meetings and in their comments that they do not subscribe to the view that low-income efficiency programs are prohibited by Arkansas

²⁹ Appendix A-I of the National Action Plan for Energy Efficiency, entitled Additional Guidance on Removing the Throughput Incentive.

law, ACAA and others agreed that they did not wish to test the question with protracted litigation. Thus, instead of crafting a program specifically for low-income residential customers, they designed a program to maintain compliance with any rule of law that may prohibit low-income efficiency programs. This program appears to respond to the question: how can a residential program be designed to provide access to EE services by all residential customers, including low-income households?

The ECEA in no way constrains the Commission from designing or approving an EE program specifically intended to ensure equitable access to services by customers of all economic levels. The Act provides that “Nothing,...shall be construed as limiting or cutting down the authority of the commission to order, require, promote, or engage in other energy conserving actions or measures.” However, the Commission notes that both the Quick-Start and Comprehensive aspects of this program are open to all residential customers meeting its requirements, regardless of income. There is no means testing of eligibility for this utility program, which would deliver weatherization services to owner-occupied homes screened as severely energy-inefficient. Screening would be based on the age of the home, whether it is mobile or manufactured, and the existence of basic air sealing measures such as insulation, storm windows, and unfilled holes. It should be noted that the screening is of the home, not the householder. Moreover, the ECEA itself highlights within its express legislative purpose, the achievement of certain objectives, such as better insulation, that would be provided by the Severely Energy-inefficient Home program.

The parties proposing this program³⁰ have proposed the administrative approach adopted in many other states – “piggybacking” onto the federal Weatherization Assistance Program (“WAP”) that is currently delivered statewide by the network of community action agencies to low-income Arkansans. The sponsoring parties are attempting to rely on the existing weatherization agencies, which have agreed to offer their delivery of services to all eligible residential customers, regardless of income. Furthermore, proposing to make federal weatherization funds available to defray 50 percent of the co-payment required of participating customers in the utility program is a way for low-income customers to participate in a program that would otherwise be likely to serve only non-low-income residential customers. Because the program design optimizes residential access to EE, it thereby addresses the concern of the General Assembly as stated in the legislative findings of ECEA that “enormous amounts of energy are wasted by consumers of all classes and economic levels” and furthers the “indisputable” ... “public interest in the conservation of natural gas and oil...”³¹

While we agree that “piggybacking” on the efforts of existing weatherization agencies is appropriate and can be an effective and expeditious way to assure availability of program benefits to all residential customers, and we support statewide consistency for the EE program serving severely energy-inefficient homes, we are not convinced at this time that administration through the local weatherization agencies is the only way, or in all cases the best way, to secure these objectives. Therefore, consistent with the principle discussed elsewhere in this Order that the utilities have the responsibility to

³⁰ ACAA, AOG, AWG and EAI support a quick start program for severely energy inefficient homes.

³¹ Ark. Code Ann. §23-3-402 (Emphasis supplied.)

deliver EE programs, the utilities will have discretion to cooperate with the weatherization agencies, or to employ other means to assure that the Severely-inefficient Homes program, and all other residential programs, are effectively available to all customers, consistent with the timeframe for initial program plan filings.

The Commission finds that a program to serve Severely Energy-inefficient Homes would comport with the ECEA if it was designed to save the most energy per home by targeting severely energy-inefficient homes in Arkansas. By providing EE services to these homes, the proposed program, with the modifications discussed below, appears to be a cost-effective program for the residential sector and thus will benefit all utilities and their ratepayers.

The Commission finds that the existing WAP Network is equipped to perform a Quick-Start and Comprehensive Severely Energy-inefficient Homes program on the proposed schedule. The Network has an established network of contractors who implement the WAP, carry all appropriate insurance, and are certified in lead-safe work practices. The Arkansas Department of Health and Human Services ("DHHS") conducts annual trainings, supplemented by regional DOE weatherization training, and national community action agency training. Procedures are already established to monitor all work for quality assurance and quality control – agencies monitor contractors, DHHS monitors agencies. Thus, the WAP Network is poised to implement this program. The Network's administrative process is already in place, at a federally-reviewed cost of 13 percent; these costs may compare favorably with those in other states and are below the federal maximum allowed for agencies. While the Commission does not direct in this Order the implementation of the proposal of ACAA and the utilities proposing this

program for a one-percent administrative fee to cover the cost of ACAA in coordinating the Network and its relationship to the utilities and of participating in future Commission collaborative proceedings, the Commission finds that these terms form the outline of a prudent relationship between a utility and geographically appropriate Network members if the utility chooses to deliver this program in this way.

Having found the proposed Quick Start and Comprehensive Severely Energy-inefficient Homes program to be in the public interest, as modified, the Commission directs that this program shall be offered by all of the State's investor-owned electric and gas utilities in a consistent manner. Each utility shall report to the Commission by July 1, 2007 with a plan to this effect. The existence of a 2300-home waiting list for the existing WAP illustrates the need for this program to be implemented as soon as possible and consistently across the state.

As discussed elsewhere in this Order, the Coops have requested and will be granted exemption from the EERs and the specific programs of this initiative. However, we encourage the Coops to work in collaborative fashion with ACAA to find ways of determining whether existing programs are indeed adequate to serve those customers. The Coops and ACAA are further directed to file with the Commission on or before the commencement of the Quick Start program (October 1, 2007) a report addressing this issue and outlining ways in which the Coops might coordinate their programs with the agencies to improve residential access to the program by customers residing in areas jointly served by the community action agencies and the Coops.

The other Quick Start EE program that most parties to this proceeding support is a statewide education program. In this instance, AEEC equates utility advertising with

an EE education program and argues that all expenditures to educate customers and builders and installers of EE equipment must be made directly by utilities and not delegated to the AEO, as proposed by AWG. (Tr. 273-274) While the Commission acknowledges that Ark. Code Ann. §23-4-207 specifically authorizes utilities to advertise and the Commission to allow recovery of the costs of advertising promoting more efficient use of energy, neither that Act nor the ECEA limit the authority of the Commission to require or permit an EE education program for customers, contractors, builders, etc. Nor does either of those laws require that the education program, standing alone, meet any particular cost-effectiveness test. The Commission agrees with most of the parties in this Docket and believes that education of customers and other relevant stakeholders is an essential component in ensuring that the programs we ultimately approve for implementation are successful.

With regard to whether separate education programs must be delivered individually by each utility or can, in whole or in part, be delivered more efficiently on a statewide basis by another state agency with experience in the subject (e.g., AEO), we note that the ECEA permits the Commission to “propose, develop, solicit, approve, require, implement, and monitor measures by utility companies which cause the companies to incur costs of service and investments which conserve....”³² In interpreting the broad statutory authority granted in this Section, we consider “measures” (as used here) to be actions, steps, or procedures intended as a means to an end. There are many measures that utilities take to carry out their business by contracting, outsourcing to, or cooperating with third parties to get the job done.

³² Ark. Code Ann. §23-3-405(a)(1)

Hence, the utilities' education measure that we contemplate here is for utilities to take actions jointly with the AEO to design, construct, and fund a statewide education program that has a consistent message promoting the efficient use of electricity and natural gas. Engaging in such actions will undoubtedly cause the utilities "to incur costs" under the statute, which costs will be recoverable if they are beneficial to the utilities and ratepayers. We thus find no limitation placed by the statute on this Commission's ability to require and approve a statewide education program funded by the utilities and administered by a sister agency of state government with expertise in the matter.

AOG and AWG suggested that state-wide Quick Start programs be limited to these two programs, while CenterPoint recommends that the list of Quick Start programs in the proposed EERs should not be exclusive. The AG recommends that an additional program for retail point of sale discounts for Energy Star appliances and equipment be established. (Tr. 54, 152-153, 212-213, 291-292) The Commission finds that the list of permissible Quick Start programs in Section 8 of the proposed EERs provides the utilities with the flexibility to provide a variety of programs on an accelerated basis to their customers. However, if a utility would choose to propose a Quick Start EE program that is not on this list, they are free to do so.

Most of the parties voiced concern over the timing for implementation of Quick Start programs. The Commission recognizes that it will take time to implement any Quick Start programs, particularly since we have ordered the initiation of another collaborative to address Deemed Savings with the filing of a report to the Commission by April 1, 2007.

AWG states that Deemed Savings estimates should be approved by the Commission that “will be applied to all quick start programs”. They continue that the “Commission should immediately retain an expert, such as Frontier Associates, to develop deemed savings for Arkansas within a 90 day time frame and approved by the Commission by April 1, 2007.” They further propose that “once Deemed Savings are in place, two quick start programs could be filed by July 1, 2007 and implemented by October 1, 2007.” They recommend focusing on the Severely Energy-inefficient Housing Program and the statewide EE education program that have been discussed earlier. AWG concludes by stating that if focused on these two programs, utilities could turn their resources on internal staffing, designing comprehensive programs, performing cost/benefit analysis, etc. (Tr. 212-213) In addition to AWG, Swepco, ACAA, CenterPoint, OGE, and EAI all provide suggested modifications to the timeline in this Section of the proposed EERs. OGE also proposed a change to the list of “Initial Program Categories” in this Section of the proposed EERs. The company suggests replacing the category “Commercial and industrial process improvement program” with “Commercial and industrial prescriptive incentive programs”. This change was supported by Empire as well. To support its recommendation, OGE states that “process improvements can not be implemented effectively within the “Quick Start” timeframe. However, prescriptive programs have been demonstrated to achieve the desired results with relatively short timeframes.” (Tr. 114) The Commission is aware that OGE has a number of conservation and EE programs in Oklahoma and assumes that through the proposal here, Arkansas would benefit from their expertise. For this reason, this proposal by OGE is approved.

EAI argues that a full review as contemplated under Section 5 of the proposed EERs will not be possible if the targeted implementation date is September 1, 2007 for the Quick Start programs. The company suggests instead a streamlined review with no hearing. (Tr. 81-82) However, the Commission finds that Ark. Code Ann. §23-3-405 (a)(2) requires notice and hearing on conservation and EE programs initiated pursuant to the ECEA.

In order to accommodate the development of Deemed Savings and considering the comments of the parties, the Commission hereby establishes a new schedule for filing and implementation of program plans. This Section of the proposed EERs as rewritten by Swepeco will replace that section of the proposed EERs. However, under the subsection "Initial Plan Filings", the last sentence will now state: "Proposed "quick start" or pilot programs for program year 2007 shall be filed not later than July 1, 2007 with review to be completed and implementation to occur not later than October 1, 2007."

While the collaborative generated a great deal of discussion regarding the budget levels associated with EE programs, the Commission will decline to establish a level for these programs at this time. However, the Commission directs the utilities to explain in their initial program filings their choices on budget and savings levels. After reviewing this information, the Commission may direct budget or savings modifications of the programs.

Section 9: Annual Reporting Requirements

Staff recommends that the Commission modify this Section to include the year that the first annual report will be filed. EAI goes further and suggests that the language be clarified to state that the annual report to be filed on April 1st of each year will reflect the EE programs' performance that were in effect for the preceding calendar year. EAI also suggests that "the report should discuss the utility goals for its portfolio in quantitative terms, progress toward those goals, and estimates of actual savings achieved." (Tr. 83) The AG offers a similar recommendation to this Section. The Commission agrees with the intent of these parties comments and adopts the changed language as proposed by the AG.

Section 10: Records

Few parties provided comments on this Section of the proposed EERs. However, Staff recommends adding language to this Section stating that "this Section does not limit the existing authority of the Arkansas Public Service Commission". The Commission adopts this recommendation.

Conclusion

In issuing and implementing the attached rules, the Commission begins a strong, statewide commitment to the legislative intent and directives of Arkansas' Energy Conservation and Endorsement Act, as well as contributes to our national government's conservation, energy efficiency, and demand response goals. It is vital to the interests and economic well-being of all Arkansas citizens and businesses that we integrate rational energy use decisions into our broader planning and preparatory efforts to maintain cost-effective, reasonably priced, and reliable energy services. The


Commission views its charge and its statutory responsibilities in this regard with the utmost resolve and seriousness. Accordingly, we are deeply grateful to the multitude of parties and participants in this proceeding who spent countless hours over the past year helping to structure Arkansas' first regulatory framework for energy efficiency. We look forward to continued work, dialogue, and continued development and refinement of both the process and the programs. We are confident that this hallmark effort and product will be of great benefit to the State of Arkansas and its citizens.

Therefore, the Commission finds that the Energy Efficiency Rules, Attachment D, are in the public interest and, therefore, should be and hereby are adopted.

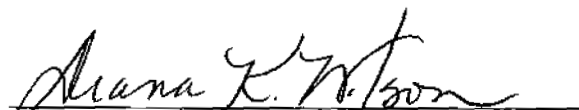
BY ORDER OF THE COMMISSION.

This 11th day of January, 2007.

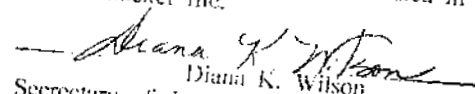

Sandra L. Hochstetter, Chairman


Daryl E. Bassett, Commissioner


Randy Bynum, Commissioner


Diana K. Wilson
Secretary of the Commission

I hereby certify that the following order issued by the Arkansas Public Service Commission has been served on all parties of record this date by U.S. mail with postage prepaid, using the address of each party as indicated in the official docket file.


Diana K. Wilson
Secretary of the Commission

Date

1-11-07

**Workshop for the Notice of Inquiry Regarding a Rulemaking for
Developing and Implementing Energy Efficiency Programs
Docket No. 06-004-R**

Arkansas Cooperative Extension Service Auditorium
2301 So. University, Little Rock, Arkansas
February 21, 2006
8:30 a.m. to 4:30 p.m.

AGENDA

8:30 – 8:45 am ***Welcome and General Overview
by Chairman Sandy Hochstetter***

8:45 – 10:15 am ***First Session: Why Energy Efficiency is Important***

The purpose of this session is to explore why it is a good idea to increase use of cost effective energy efficiency in both the electric and natural gas sectors. Issues to discuss include high prices, reliability concerns, economic effects, environmental benefits, and deferred investment in incremental utility infrastructure.

Opening Remarks and Moderator: Stacy Angel, U.S. Environmental Protection Agency

Speakers: Bill Prindle, Deputy Director, American Council for an Energy-Efficient Economy

Rich Sedano, Director, The Regulatory Assistance Project

William B. Marcus, Principal Economist, JBS Energy, Inc.

10:15 – 10:30 am ***Break***

10:30 am – Noon ***Second Session: Energy Efficiency Success in Other States***

The purpose of this session is to identify and discuss energy efficiency success stories in other states, discuss "lessons learned," and explore potential applicability to Arkansas.

Moderator: Rich Sedano, Director, The Regulatory Assistance Project

Speakers: Susan Nathan, Kansas City Power and Light

Angie Kline, Centerpoint Energy Minnegasco

Bob Balzar, Nevada Power and Sierra Pacific

Noon – 1:15 pm *Lunch on your own*

1:15 – 2:30 pm ***Third Session: Regulatory Issues***

The purpose of this session is to provide an overview of regulatory issues related to utility implementation of energy efficiency and conservation programs.

Moderator: Rich Sedano, Director, The Regulatory Assistance Project

Speakers: Michael Dworkin, Director of the Vermont Institute for Energy and the Environment and former Chair of Vermont Public Service Board

Jess Totten, Director, Electric Division, Texas Public Utility Commission

Miles Keogh, Director of Grants and Research, National Association of Regulatory Utility Commissioners

2:30 – 2:45 pm *Break*

2:45 – 3:45 pm ***Fourth Session: Stakeholder Discussion and Feedback***

The purpose of this session is to provide a forum for stakeholders to share their thoughts and reactions to the issues raised in the NOI and during the day's meeting.

Facilitator: Chairman Sandy Hochstetter, Arkansas Public Service Commission

3:45 - 4:00 pm *Break*

4:00 - 4:30 pm ***Wrap-up and Suggested Action Steps***

Facilitator: Chairman Sandy Hochstetter, Arkansas Public Service Commission

ARKANSAS PUBLIC SERVICE COMMISSION

AGENDA

ENERGY EFFICIENCY COLLABORATIVE

DOCKET NO/ 06-004-R

MEETING #1 – AUGUST 28, 2006

Welcome

Expectations for This Collaborative Process

- Conduct of meetings – cooperation promotes order
- Plan for future meetings in the collaborative
- Consensus
- Minority views
- Report to the PSC and contributions from participants

Expectations for Today

- Surface many issues about the process and about energy efficiency
- Resolve some

Introductions of Participants

Item 1: How is Arkansas the same or different from other states with respect to energy efficiency?

Item 2: Cost Recovery issues

Item 3: Why is Arkansas Interested in Energy Efficiency? (topics for discussion)

- To help all consumers manage their energy bills
- As a resource to minimize need for new assets and purchases
- To promote reliability and to manage power supply risks
- To promote air quality and to manage risks accompanying environmental controls

Item 4: Introduction to Energy Efficiency Program Design issues

- What qualities should Arkansas energy efficiency programs have?
- What are quick start, and good return candidate programs?
- Can Arkansas apply programs and practices in use in other states?
- How similar should programs be across all utilities?
- Are there any limits beyond Benefit/Cost to the use of customer incentives?
- Is there a preferred method of customer incentive
- Any special issues for natural gas programs compared with electric?
- Good over perfection: what will we want to know later that we don't need now?

Item 5: Homework for Future Meetings (we may add to this list during the day)

- Information the collaborative needs to know.
- Information that program administrators will need to know to develop consumer-oriented programs, especially concerning coordinating gas and electric programs.
- Where do we get this information?
- Formation of subgroups, as needed.
- Discussion of future agendas

**Arkansas Public Service Commission
Energy Efficiency Collaborative
Docket No/ 06-004-R
Meeting #2 September 11-12, 2006
Arkansas Electric Cooperative Corp
1 Cooperative Way, Little Rock, Arkansas
<http://www.aecc.com/>**

Monday, September 11

8:30 AM Welcome and Introductions

Recap of the Collaborative Process

Summary of Meeting #1
Conference call of September 5, 2006
Report to the PSC and contributions from participants

Expectations for Today

Energy Efficiency Program Approaches and Choices
Energy Efficiency Program Elements
Best Practices
Distinctions: electric – electric, electric – gas, north – south, others

Presentation of Theresa Gross, Texas PUC, Discussion

This presentation provides information about energy efficiency programs in Texas, how they were designed, and how they are performing

Presentation of Joe Bryson, U.S. EPA, Discussion

This presentation will discuss how Energy Star can contribute to the success of energy efficiency programs, and how the National Action Plan for Energy Efficiency provides useful insights for developing new energy efficiency programs and infrastructure

Noon Lunch

1:15 PM Discussion of Energy Efficiency Program Issues

Coverage of programs: everyone, or targeted at specific customers
Methods of statewide communication
Role of customer incentives
Role of monitoring and verification (M&V)
Connections with Demand Response
Best Practices applicable to Arkansas, considering electric, gas, and climate zones
Distinction between important issues in the short run and important issues in the long run

5 PM Adjourn

Tuesday, September 12

8:30 AM Welcome

Recap of Monday session, tie up loose ends

Expectations for Today

**Energy Efficiency Regulatory and Business Issues
Plan to complete the Collaborative Report**

Presentation of Jay Zarnikau, Frontier Associates

This presentation provides an assessment of success of several choices for energy efficiency program development made by Texas parties

Discussion of Energy Efficiency Business and Regulatory Issues

Energy Efficiency Workforce
Deemed Savings
Statewide Goals, Targets

Noon Lunch

1:15 PM Continued...

Role of Benefit/Cost Test
Utility (performance) incentives, and addressing disincentives

Discussion of the Final Report, conference calls and writing assignments

Information the collaborative still needs to know?
Information needed for program development – is it accessible?

Discussion of Future Agendas

5 PM Adjourn

N.B.: At this meeting, we will have power point capability. All presentations will be posted on the Arkansas PSC website. If participants anticipate wishing to show a small number of slides to make a point on some item or items on the agenda, please both e-mail the file to rapsedano@aol.com and to [Sam Loudenslager@psc.state.ar.us](mailto:Sam.Loudenslager@psc.state.ar.us), and also bring the file on CD to the meeting. Any slides presented at the meeting will be posted on the website.

Arkansas Public Service Commission
Energy Efficiency Collaborative
Docket No/ 06-004-R
Meeting #3 September 25-26, 2006
Arkansas Electric Cooperative Corp
1 Cooperative Way, Little Rock, Arkansas
<http://www.aecc.com/>

Monday, September 25

8:30 AM Welcome and Introductions

Recap of the Collaborative Work

Summary of Meeting #2

Process recap of subgroup activity since Meeting #2

Cost Recovery

Program costs

Net lost revenues

Utility incentives

Programs

Program options

Customer incentives

Sub-standard Housing

Gas-Electric Coordination

Use of Benefit Cost tests

Monitoring and Verification

Deemed Savings

Report to the PSC and knitting it together

Expectations for Today

Subgroup reports and ensuing discussions

Identify issues of consensus ("can live with it")

Identify issues that need more work

Identify issues of impasse and clearly describe differences and reasons

Discussion of Quick start, Cost-Effective Energy Efficiency Programs

Discussion of Monitoring and Verification of Energy Efficiency Programs

Noon Lunch

1:20 PM Discussion of Cost Recovery and Utility Incentives for Energy Efficiency Programs

5 PM Adjourn

Tuesday, September 26

8:30 AM Welcome

Recap of Monday session

Expectations for Today

Finish Subgroup Discussions

Review PSC Order #3, canvass participants for issues not covered in subgroups that will need coverage in the final report and draft rules

Decide on value of a 5th meeting of the collaborative (one day?)

Discussion of Order #3 and Other Issues for the Final Report and Rules (N.B. If there is an issue that you want to appear in the final report and it has not yet been discussed, it is important that it be raised now)

Principles for Energy Efficiency Programs, for example:

Characterization of utility responsibility

Energy Efficiency as a Resource

Goals or Targets for Savings

Use of third parties

Programs preferences

Scale of the Quick Start Energy Efficiency Program

Discussion of the scope and detail of PSC rules

Discussion of related policies, such as rate design, decoupling, codes and standards

Suggestions for legislation

Measuring performance and success

Issues best deferred to a later stage in program development

Noon Lunch

1:20 PM Continued...

Discussion of the Final Report preparation, conference calls and writing assignments

Information the collaborative still needs to know?

Discussion of Future Agendas

5 PM Adjourn

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**Arkansas Public Service Commission
Energy Efficiency Collaborative
Docket No/ 06-004-R
Meeting #4 October 9-10, 2006
Arkansas Electric Cooperative Corp
1 Cooperative Way, Little Rock, Arkansas
<http://www.aecc.com/>**

Monday, October 9

8:30 AM Welcome, Announcements and Introductions

Recap of the Collaborative Work

Summary of Meeting #3

Process recap of subgroup activity since Meeting #3

Cost Recovery

Net lost revenues

Programs

Program options

Inefficient Housing

Use of Benefit Cost tests

Draft Report to the PSC

Expectations for Today

Subgroup reports and ensuing discussions

Run through report and identify issues of consensus (“can live with it”) and necessary changes in content and tone

Identify issues that need more work and determine what is possible

Identify issues of impasse and clearly describe differences and reasons

No need to re-enact debates we have already had

Discuss Report Section 3: Report Principles

Discuss Report Section 1: Programs

An aside about New Orleans

An aside about Iowa

Information about the CAP agencies of Arkansas

The inefficiency housing program

Discuss Report Section 4: Gas-Electric Coordination

Discuss Report Section 2a: Customer Program incentives

Noon Lunch

Monday, October 9 (continued)

1:20 PM **Discuss Report Section 2b: Cost recovery, defining recoverable costs, utility incentives**

Discuss Report Section 7: Economic Tests and Program Selection
Review Cost Test Factor Spreadsheet

Discuss Report Section 6: EM&V

Discuss Report Section 5: Deemed Savings
Responses to call for proposal from last meeting

5 PM **Adjourn**

Tuesday, October 10

8:30 AM **Welcome, Recap of Monday session**

Expectations for Today
Finish Discussions of Draft Report
Discussion of PSC rule on Energy Efficiency

Finish Discussions of Draft Report
Discuss Ancillary Issues and Issues not needed for “quick start” programs
Consensus Recommendations (what to do and not do)

Discussion of PSC rule on Energy Efficiency
Scope and Content of Rule

Noon **Lunch**

1:20 PM **Continued...**

Discussion of the Final Report preparation, conference calls and writing assignments
Information the collaborative still needs to know?

Discussion of October 26-27 Agenda

5 PM **Adjourn**

N.B.: We will have power point capability. If participants wish to show slides to make a point on items on the agenda, please e-mail the file to rapsedano@aol.com and to [Sam Loudenslager@psc.state.ar.us](mailto:Sam.Loudenslager@psc.state.ar.us), and also bring the file on CD to the meeting. Any slides presented at the meeting will be posted on the website.

**Arkansas Public Service Commission
Energy Efficiency Collaborative
Docket No/ 06-004-R
Meeting #5 October 26-27, 2006
Arkansas Electric Cooperative Corp
1 Cooperative Way, Little Rock, Arkansas
<http://www.aecc.com/>**

Thursday, October 26

9:00 AM Welcome, Announcements and Introductions

Recap of the Collaborative Work

Summary of Meeting #4

Subgroup Work

Benefit/cost factor spreadsheet

Inefficient Housing Program

Draft Report to the PSC

Expectations for Today

Finalize Report to the Commission

No need to re-enact debates we have already had

Discuss Draft Report

How often should benefit cost analysis be done on programs already underway?

Criteria for self-directed energy efficiency, if this option is available

Rate treatment of energy efficiency (per kWh or something else?)

Issues identified in comments in the draft report

Participants' concerns

Noon Lunch

1:20 PM Discuss Frontier Proposal on Deemed Savings and other Implementation Issues

Discuss Economic Evaluation Workbook developed by AEP

**2:30 Resume Discussion of Draft Report
Begin Discussion of Draft Rule if time allows**

5 PM Adjourn

Friday, October 27

8:30 AM **Welcome, Recap of Thursday session**

Expectations for Today

Discuss Draft Rule

Clarify next steps

Impressions of the process

Discussions of Draft Rule

Noon **Lunch**

1:20 PM **Continued...**
Next steps

3 PM **Adjourn**

N.B.: We will have power point capability. If participants wish to show slides to make a point on items on the agenda, please e-mail the file to rapsedano@aol.com and to [Sam Loudenslager@psc.state.ar.us](mailto:Sam.Loudenslager@psc.state.ar.us), and also bring the file on CD to the meeting.

List of Collaborative Process Participants

Participants

Alan Henry
Alan Stewart
Alice Wright
Angela Beehler
Angie Kline
Bill Brooks
Bill Conine
Bill Rue
Bill Wilkerson
Billy G. Berny
Billy Martin
Bob Drawe
Bob Lyford
Brian Donahue
Brian Duncan
Bruce Bennet
C. Wayne Whitaker
Carl Horton
Chris Benson
Cynthia Mitchell
Dan Baw
Dane Cowling
Daryl Bassett
Dave Slaton
David Lewis
David Matthews
David Smith
Denise Baker
Don Moncrief
Doug White
Elizabeth Stephens
Fred Kirkwood
Garrett Stone
Gene Sweat
Glenn Garland
Greg Smith
Harry Hamlin
Holly Whitcombe
James Sanders
James Sowerby
James Thompson
Jamie Stringfellow
Jeff Dangeau

Representing

Centerpoint
AWG
PSC Staff
Wal-Mart
Centerpoint
Frontier
SCAEC
AVECC
OGE
SWEPCO
Woodruff Electric
OGE
AECC
AEEC/AGC
Craighead
Consultant
SWREA
Woodruff
Energy Office
For the AG
Individual
Baldor Electric
PSC
PSC
PSC
SWEPCO
Clay County Electric
AEEC
SWEPCO
AECC
SWEPCO
AOG
Brickfield, Burchette, Ritts & Stone
Farmers Coop
CLEAResult
C&L Electric
Mitchell, Williams, Selig
AEEC/AGC
Carroll Electric
Entergy
Entergy
Entergy
AWG

Jerrold Oppenheim
Jerry Estes
Jerry L. Johnson
Jess Galura
Jim Stimmet
Joe Bryson
John Bethel
John Malinowski
John Rogers
Judy Gallo Assante
Karen McKee
Kelly Lassiter
Ken Grant
Ken Baker
Kenny Henderson
Konnie Coleman
Lana Deville
Larry Chisenhal
Larry Hellums
Laura Wiltshire
Lean Rowel
Leon Howell
Linda Barnes
Linda Baynham
Lori Burrows
Mark Cayce
Mel Coleman
Mickey Moon
Mike Callan
Mike Gier
Mitchell Johnson
Myron Adams
Neal Frizzell
Nick Manatt
Paul Dougan
Paul Ford
Paul Means
Perry Johnson
Phil Watkins
Randy Bynum
Rich Sedano
Ricky Gunter
Rob Boaz
Robert Booth
Robert Shields
Ronald S. Moore
Rose Adams
Russell Hooks
Sam Bratton
Sam Loudenslager

CAA
North Arkansas Electric
SWEPCO
Wal-Mart
CLEAResult
US EPA
PSC Staff
Baldor Electric
AWG
SWEPCO
North Arkansas Electric
SWEPCO
OGE
Wal-Mart
Centerpoint
North Arkansas Electric
SWEPCO
AOG
Mississippi County Electric Coop
NUCOR
North Arkansas Electric
OGE
Entergy
Entergy
PSC Staff
OECC
North Arkansas Electric
Centerpoint
AOG
OGE
Ozark
SWEPCO
First Electric
Clay County
Ozark
Entergy
Entergy
OECC
SWEPCO
PSC
RAP
SWN
Carroll
PSC Staff
AECC
Ashley-Chicot
CAA
CAA
Individual
PSC

Sandra Hochstetter
Sarah Tacker
Scott Kennedy
Scott Rorex
Shawn McMurray
Sheri Moore
Sherry Jackson
Sherry McCormack
Stacy Angel
Stephanie Self
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ARKANSAS PUBLIC SERVICE COMMISSION
ATTACHMENT D TO ORDER NO. 12 – DOCKET NO. 06-112-R
RULES FOR CONSERVATION AND ENERGY EFFICIENCY
PROGRAMS

Section 1: Purpose

In the Energy Conservation Endorsement Act of 1977, Ark. Code Ann. §§23-3-401 to 405 (2003), (“the Act”), the Arkansas General Assembly recognized that “enormous amounts of energy are wasted by consumers of all classes and economic levels due to inadequate insulation of buildings and other inefficiencies in the use of energy.”¹ The Act broadly defines “energy conservation programs and measures,”² and states that “energy conservation programs and measures” are broadly defined and that “[i]t shall be considered a proper and essential function of public utilities regulated by the Arkansas Public Service Commission to engage in energy conservation programs, projects, and practices which conserve, as well as distribute, electrical energy and supplies of natural gas, oil, and other fuels.”³

Furthermore, the Act provides the Commission with the authority to “propose, develop, solicit, approve, require, implement, and monitor” energy efficiency programs “by utility companies” if the Commission finds that such programs and measures “will be beneficial to the ratepayers of such public utilities and to the utilities themselves.”⁴ “At the time any such programs or measures are approved and ordered into effect” by the Commission, the Act requires that the affected utility also “be allowed to increase its rates or charges as necessary to recover any costs incurred by the public utility company as a result of its engaging in any such program or measure.”⁵

Due to the current level and expected increases in energy prices for both infrastructure investment and commodity purchases, along with the minimal level of energy efficiency programs in Arkansas, Commission action regarding energy efficiency is necessary. Consequently, the Commission has developed these rules. These rules apply to the provision of both electricity and natural gas service subject to the jurisdiction of the Arkansas Public Service Commission.

¹ Ark. Code Ann. §23-3-402.

² Ark. Code Ann. §23-3-403.

³ Ark. Code Ann. §23-3-404.

⁴ Ark. Code Ann. §23-3-405(a)(1)-(2)

⁵ Ark. Code Ann. §23-3-405(a)(3).

Section 2: Benefits and Objectives of Energy Efficiency Programs

- A. An overriding focus for any energy efficiency initiative should be the benefits and objectives of the initiative. The overall objectives of the initiative are to encourage and enable utility customers to make the most efficient use of utility capacity and energy and to discourage inefficient and wasteful use of energy. Objectives can take the form of standards, codes, or programs. When proposing any one or a combination of energy efficiency programs, standards, or codes, a utility shall describe how its proposal furthers or accomplishes any or all of the following objectives or ancillary benefits in support of energy efficiency:
- Energy savings directly attributable to program activities;
 - Long-term and permanent changes in behavior, attitudes, awareness, and knowledge about energy savings and use of energy efficient technologies in order to achieve energy savings;
 - Permanent peak electric demand reduction;
 - Energy cost savings and cost-effectiveness;
 - Reliability enhancements;
 - Energy security benefits;
 - Environmental benefits;
 - Economic development/competitiveness benefits;
 - Increases in system-wide capacity;
 - Accelerating the commercialization of advanced or emerging technologies;
 - Improving affordability of energy for all customers; and
 - Implementing programs in an efficient manner;
- B. When providing information on these objectives, utilities are directed to describe, in quantitative terms, the benefits and costs of these different aspects of the program, standard, or code, and to comment on the barriers that impede accomplishment of these energy efficiency objectives and how to overcome these barriers. Utilities are also encouraged to provide estimates of the energy efficiency potential (including demand savings) in Arkansas associated with these options.

Section 3: Definitions

Administrator – The entity responsible for creating and managing an energy efficiency program or portfolio of programs.

Cost-effective – A standard used to describe a “net beneficial” result for programs to be implemented, determined through a process that includes a review of

relevant benefit/cost tests. A “cost-effective” program would be one that has a high probability of providing aggregate ratepayer benefits to the majority of utility customers.

Deemed Savings – Pre-determined, validated estimates of energy and peak demand savings attributable to particular energy efficiency measures, based upon engineering calculations, baseline studies and/or reasonable assumptions. Such savings are generally those representing the difference between standard efficiency measures and energy efficient measures. Deemed savings values must be revised periodically to reflect new technologies, new federal, state or local policies and codes.

Demand Response – Changes in energy use by end use customers from their normal consumption patterns in response to changes in the price of energy over time, or in response to incentive payments designed to induce lower energy use at times of high wholesale market prices or when system reliability is jeopardized.

Energy Efficiency – Reducing the rate at which energy is used by equipment and/or processes while maintaining or improving the customer’s existing level of comfort and end-use functionality at a lower customer cost. Reduction in the rate of energy used may be achieved by substituting more advanced technology or by reorganizing the process to reduce waste heat, waste cooling, or energy. Demand response is a form of energy efficiency.

Energy Efficiency Savings – Energy efficiency (kW, kWh, ccf) savings are determined by comparing measured energy use before and after implementation of an energy efficiency measure.

Evaluation, Measurement, and Verification (EM&V) – The performance of studies and activities intended to determine the actual savings and other effects from energy efficiency programs and measures.

Implementer – An entity charged by a utility to deliver programs to customers. Implementers, Administrators, and utilities may be the same entity, or related by a contract.

Market transformation – Strategic efforts to induce lasting structural or behavioral changes in the market that result in increased adoption of energy efficient technologies, services and practices. Energy savings from market transformation programs must be beyond that which would be achieved through compliance with building codes and appliance and equipment efficiency standards.

Measure – The equipment, materials and practices that when installed and used at a customer site result in a measurable and verifiable reduction in either purchased energy consumption, measured energy or peak demand or both.

Portfolio – The entire group of programs offered by an administrator

Program – A particular energy efficiency service or set of services to a particular target population.

Program Plan – A plan to deliver a portfolio of energy efficiency programs which includes a set of benefit/cost test results, specific objectives that can be evaluated using quantifiable measures, and provisions to evaluate, monitor and verify results.

Program Year – The year in which programs are administered and delivered, for the purposes of planning and reporting, a program year shall be considered a calendar year, January 1 through December 31.

Section 4: Administration and Implementation of Energy Efficiency Programs

- A. All electric and gas utilities in Arkansas under the jurisdiction of the Commission shall propose and be responsible for the administration and implementation of cost-effective energy efficiency programs within their service territories. Each utility shall file an application for approval by the Commission of its portfolio of energy efficiency programs. The energy efficiency program portfolio of each utility shall include programs for all customer classes.
- B. Waivers
Exemptions from these rules may be granted by the Commission in accordance with Rule 1.03 of the Commission's Rules of Practice and Procedure. Nothing in these Rules shall preclude the Commission from modifying these Rules on its own initiative or in response to a party's motion and after notice and hearing.
- C. Independent Administrator
The Commission may designate an administrator independent of the utilities, although the utility will ultimately retain the responsibility for compliance with these rules.

Section 5: Plan Filing Requirements

A. General Requirements

Administrators shall propose general program designs, specific programs, and specific measures. Administrators may propose programs and/or measures in any combination. All programs should include the following general elements:

- A showing of high probability of providing aggregate ratepayer benefits to the majority of ratepayers.
- The identification of the specific objectives of the program.
- The identification of the specific EM&V procedures that will be used to determine whether the program has achieved its stated objectives.

B. Portfolio Description and Support

Each plan filing shall address the following:

- demonstration that the scope of programs serves all customer classes;
- plan benefit/cost analysis listing total costs and benefits, including expected savings goals for the portfolio of programs;
- cost recovery proposal; and
- any additional supporting information the administrator may propose.

C. Program Description and Support

Each program filing shall address the following:

- services to be provided;
- target population;
- all barriers being addressed and how they are being addressed;
- proposed customer incentives (if any);
- an evaluation, measurement and verification plan using an industry accepted protocol approved by the Commission;
- timeframe if the program term is limited;
- a plan for addressing over-subscription to the program;
- an analysis demonstrating that the program or measure is beneficial including the prescribed cost / benefit analyses;
- estimated energy and peak demand savings and the basis for these savings estimates, which may include Deemed Savings as approved by the Commission; and
- any additional analyses the administrator may propose.

D. Uniformity of Programs

Programs addressing both electric and gas customers shall be coordinated to the extent reasonable.

Fuel switching and load building programs shall not be included as energy efficiency programs.

E. Customer Incentives

Programs may include incentives to encourage customers to make energy efficient investments if the incentives are cost justified and are a component of a program that has a high probability of providing aggregate ratepayer benefits to the majority of utility customers.

Incentives may include information, technical assistance, leasing programs, product giveaways and direct financial inducements. Financial inducements may include but are not limited to rebates, discounted products and services, and low rate financing.

All customer incentives shall be considered in the benefit/cost testing of programs. Costs of customer incentives shall be considered a direct program cost.

Incentives should not be any higher than necessary to overcome the customers' barriers to invest in the measure and should be reduced or eliminated as the measure becomes more of a standard practice.

F. Statewide Programs

The Commission, after notice and hearing, may direct utilities to offer uniform statewide energy efficiency and conservation programs if it determines such standardization to be the most cost-effective result and in the public interest. Utilities may request approval to offer statewide or region-wide programs for which public messages, commercial terms and conditions, and customer reception are best served by such an approach.

G. Pilot Programs

The Commission may approve pilot energy efficiency programs. Such programs shall have characteristics from among the following:

- Addressing a new end use;
- Applying a new technology or a new delivery method;
- Implementing initial 'quick start' programs.

A pilot program design is distinct from program designs in that it shall include explicit questions that the pilot will address; explicit EM&V designed to address pilot questions; estimates of program costs and savings; a provisional benefit/cost evaluation; and shall be of limited duration until reassessment after a pre-determined period.

All costs for pilot programs shall be considered eligible for cost recovery.

H. Program Filing Procedures and Schedule

A program filed under these rules shall not be implemented until a Commission order is issued expressly approving the program.

The period from the filing date to the date of the Commission order shall be no more than one hundred and eighty days which will permit investigation, analysis, and adjudication of the program.

The Commission shall establish a procedural schedule for the review of each program filing.

Section 6: Benefit/Cost Tests

- A. Administrators shall present sufficiently detailed calculations, sensitivity analyses, and supporting testimony of the effect of the proposed conservation and energy efficiency program using each of the following tests set forth in the *California Standard Practice Manual (October 2001)* ("Manual"): The Participant Test, The Ratepayer Impact Measure Test, The Total Resource Cost Test, and the Program Administrator Cost Test.

The Commission will rely on the formulae found in the Manual. However, the Commission may rely on some inputs contained in the Manual and not on others. Furthermore, the costs and benefits contained in the Manual are suggestions and are not endorsed by the Commission for every program. For this reason, the Commission will not limit the costs and benefits that can be considered in the benefit/cost tests to those listed therein.

Administrators may submit additional economic analyses and benefit/cost test information in support of a proposed program.

- B. A utility shall use an evaluation period of either ten years (a gas utility may use an evaluation period of fifteen years), or the actual measure lives for each measure in a program to evaluate a program or program portfolio.

Results of the tests shall be presented consistent with the descriptions shown in Table 1, or by other means as approved by the Commission.

TABLE I
Cost-Effectiveness Tests
with Primary and Secondary Means of Expressing Test Results

<i>Participant Test</i>	
Primary	Secondary
Net present value (all participants)	Discounted payback (years) Benefit-cost ratio ("BCR") Net present value (average participant)
<i>Ratepayer Impact Measure</i>	
Lifecycle revenue impact per Unit of energy (kWh or therm) or demand customer (kW)	Lifecycle revenue impact per unit Annual revenue impact (by year, per kWh, kW, ccf, or customer) First-year revenue impact (per kWh, kW, ccf, or customer)
Net present value	BCR
<i>Total Resource Cost</i>	
Net present value (NPV)	BCR Levelized cost (cents or dollars per unit of energy or demand) Societal (NPV, BCR)
<i>Program Administrator Cost</i>	
Net present value	BCR Levelized cost (cents or dollars per unit of energy or demand)

Section 7: Cost Recovery

- A. Cost recovery of conservation and energy efficiency programs shall be in accordance with the provisions of Ark. Code Ann. §23-3-401 *et. seq.* Cost recovery shall be limited to the incremental costs which represent the direct program costs that are not already included in the then current rates of the utility.
- B. A utility may request cost recovery through a surcharge or rider. If a utility requests cost recovery through a surcharge or rider, the cost recovery through that mechanism shall be limited to the incremental costs

of providing the program that are not already included in the then current rates of the utility.

- C. A utility may request that costs from approved program budgets be included in the rider.
- D. Demand response programs that involve rates (e.g., interruptible service, curtailment, off-peak service, time of use rates) shall not be included in any surcharge or rider. The rates for those mechanisms will be established through utility-specific rate or tariff proceedings.
- E. If a utility is recovering conservation and energy efficiency program costs through a surcharge or rider, the utility shall file, contemporaneous with the Annual Report under Section 9, a redetermined Energy Efficiency Cost Rate ("EECR"). In support of this redetermined rate, the utility shall file a schedule of actual program costs for the reporting period, actual amounts collected under the rider for the reporting period, and approved program budgets for the current calendar year. The EECR shall be adjusted to reflect a reconciliation of any over or under recovery for the prior year and the approved budget for the current calendar year.

Section 8: Program Plans

Program plans shall cover at least one year and may cover up to three years.

All programs filed by gas and electric utilities should be consistent and should be fuel neutral, *i.e.*, should not encourage fuel switching as a primary purpose.

Program plans shall reflect the effects of all energy efficiency programs in the electric resource plans or natural gas procurement plans of the electric and natural gas utilities respectively. Furthermore, all energy efficiency programs shall be consistent with each utility's current electric resource plans or natural gas procurement plans.

A. Initial Plan Filings

The initial filings of energy efficiency programs, will cover program years 2007-2009. (Program year 2007 will tie a partial calendar year, while 2008 and 2009 will be full calendar years.) They should initially include energy efficiency measures that can be implemented on a relatively "quick start and/or pilot" basis. The initial programs should be limited in nature in order to enable implementation in the 2007 program year. Proposed "quick start" or pilot programs for program year 2007 shall be filed not later than July 1, 2007 with review to be completed and implementation to occur not later than October 1, 2007. Electric and gas utilities should file energy efficiency programs choosing

individual programs from within the following general list of Initial Program Categories:

Education: This would include the education of customers of all classes on energy efficiency and conservation. It should, to the greatest extent possible, be a consistent statewide group of messages. It should include education of builders and installers of equipment. All messages should be fuel neutral. The messages should encourage the efficient use of electricity and gas. The messages should increase awareness of opportunities to use electricity and natural gas more efficiently. This category of programs would apply to all customer classes.

Energy Audits, Evaluations leading to savings: This would include home and commercial energy audits and audits of commercial and industrial processes and equipment. The audits and evaluations would produce recommendations for opportunities to implement site specific efficiency and conservation measures. Programs would be designed for audits to lead to savings results, and could include cost-effective and economically justified customer incentives to encourage the implementation of site specific measures. This category of programs would apply to all customer classes. A training component to increase the number and quality of auditors will be needed.

Inspection and tune up of heating and air conditioning systems: This would be applicable to residential, commercial, and industrial systems. This category of programs would apply to all customer classes.

Lighting: Improved lighting for residential, commercial, and industrial customers. This category of programs would apply to all customer classes.

Increased deployment of demand response programs: Many programs already exist. This would look for additional opportunities to offer demand response programs including interruptible service, curtailment service, off-peak service, etc. In the near term, this category of programs would apply to commercial and industrial customer classes and may eventually extend to residential customers.

Weatherization: A Residential weatherization program that would be based solely on efficiency criteria, targeting least efficient homes first. Establish clear criteria to target the least efficient homes first. This category of programs would apply to the residential customer class.

Commercial and industrial prescriptive incentive programs: these programs offer a fixed-dollar incentive for multiple defined prescriptive measures (i.e. lighting, HVAC replacements, occupancy sensors, motors, etc).

All programs filed from the above category list should have a high probability of providing ratepayer benefits to the majority of customers. Program plans for program years 2008 and 2009 may contain additional programs beyond those included in the above category list.

B. Comprehensive Plan Filings

Beginning April 1, 2009, each electric and gas utility shall file a comprehensive set of program plans (for program years 2010 and later) unless administration of programs has been previously delegated by the Commission, in which case each administrator shall file a comprehensive set of program plans by that date.

The programs proposed may continue to include, but are not limited to, the "quick start and/or pilot" programs contained in the List of Initial Program Categories.

Section 9: Annual Reporting Requirements

By April 1 annually, each electric and gas utility shall file an annual report addressing the performance of all approved conservation and energy efficiency programs.

The report shall present the results of the prescribed EM&V measures for each program.

The report shall present the EM&V measures for the utility's portfolio.

The report shall include a measure of each program's savings.

The report shall present the amounts spent on each conservation and energy efficiency program and the total amounts spent on all programs.

Section 10: Records

All energy efficiency measures are subject to inspection by the Commission.

All records of energy efficiency programs shall be maintained in sufficient detail to permit a thorough audit and evaluation of all program costs and program performance. This section does not limit the existing authority of the Arkansas Public Service Commission.