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BEFORE THE ARKANSAS PUBLIC SERVICE COMMISSION

FILED

IN THE MATTER OF THE APPLICATION OF)
ENTERGY ARKANSAS, INC. FOR APPROVAL)
OF ENERGY EFFICIENCY PROGRAMS AND)
ENERGY EFFICIENCY COST RATE RIDER)

DOCKET NO. 07-085-TF

TESTIMONY

OF

BRIAN C. DONAHUE

ON BEHALF OF

ARKANSAS ELECTRIC ENERGY CONSUMERS, INC.

SUBMITTED

AUGUST 2, 2007

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1 **Q. Please state your name, business address and occupation.**

2 A. My name is Brian C. Donahue. My business address is 323 Center Street, Suite 1230
3 Little Rock, Arkansas 72201. I am employed by Arkansas Electric Energy Consumers, Inc.
4 ("AEEC"), Arkansas Gas Consumers, Inc. ("AGC"), and West Central Arkansas Gas
5 Consumers, Inc. ("WCAGC") (collectively known as "Consumers"), as legal counsel.

6 **Q. Please describe your qualifications and background.**

7 A. I received my B.A. degree from Louisiana Tech University in May 1985, and I received
8 my J.D. degree from the University of Arkansas at Little Rock Law School in 1991.

9 I have been employed by the Consumers since April 7, 2003. From August 2005 to
10 April 2006, I served as the Consumers' Interim Executive Director.

11 From 1991 to April 2003, I was engaged in the private practice of law in North Little
12 Rock, Arkansas with the firm of Zachary David Wilson, P.A. My practice included the
13 representation of a number of the State's municipal electric and water utilities.

14 During the course of my practice, I have attended a number of training programs and
15 seminars dealing with regulated utilities.

16 Since joining the Consumers, I have represented the interests of Arkansas' industrial utility
17 customers in proceedings before the Arkansas Public Service Commission ("APSC") and other
18 administrative agencies and courts. I have also assisted the Consumers in working with the
19 Arkansas General Assembly and its committees on utility related issues.

20 In addition, I represented AEEC and AGC in the APSC's Docket No. 06-004-R,
21 which the Commission developed its Rules for Conservation and Energy Efficiency

1 Programs (“EE Program Rules”). I participated in the Commission’s initial workshop in that
2 Docket during the spring of 2006. I also participated in the drafting of the AEEC / AGC
3 comments in the rulemaking proceeding. Finally, I attended many of the collaborative
4 meetings held by the Commission.

5 **Q. What is the subject matter of this proceeding?**

6 **A.** The subject matter of this proceeding is EAI’s (“EAI” or “Company”) application for
7 approval of a number of “Quick Start” energy efficiency programs and the Company’s plan for
8 recovery of the costs to develop, implement, and administer its proposed energy efficiency
9 programs

10 **Q. What is the purpose of your testimony?**

11 **A.** The purpose of my testimony is to provide the Commission with AEEC’s views on the
12 Company’s proposed energy efficiency programs and proposal for cost recovery.

13 **Q. Could you summarize EAI’s proposed energy efficiency programs?**

14 **A.** Yes. On July 1, 2007, EAI filed its application seeking approval of its Quick Start EE
15 Program Plans as required by the APSC’s EE Program Rules. Together with its Application, EAI
16 filed testimony of Oscar D. Washington and Kurtis W. Castleberry.

17 EAI’s application includes the following proposed EE programs:

- 18 • Arkansas Weatherization Program (“AWP”) (in collaboration with other utilities);
- 19 • Residential Compact Fluorescent Lighting Program (rebate program);
- 20 • Residential Home Energy Solutions Program (energy audit and prescriptive incentive);

- 1 • Residential and Commercial Air Conditioning Tune Up Program (will not begin until late
2 2008);
- 3 • Small Commercial and Industrial Energy Solutions Program (energy audit and
4 prescriptive incentive);
- 5 • Large Commercial and Industrial Energy Solutions Program (energy audits and
6 prescriptive incentive);
- 7 • Large Commercial and Industrial Standard Offer Program (industrial projects to reduce
8 peak-period electric demand and provide energy consumption savings);
- 9 • City and County Energy Solution;
- 10 • Demand Response Program; and
- 11 • Energy Efficiency Arkansas ("EEA") (joint Energy Office / utility quick start education
12 program)

13 **Q. Could you describe EAI's proposed Energy Efficiency Program Rider?**

14 **A.** Yes. To finance its EE Programs, EAI proposes to establish an EE Program Cost Recovery
15 Rider ("EECR"). The initial amount proposed to be spent by EAI during 2007- 2008 is
16 \$5,407,000. According to EAI's testimony, the EECR rate for each rate class is determined by
17 taking the projected energy efficiency costs for each rate class for the projected period and
18 dividing the costs by the projected sales for each class subject to the rider.

19 Under EAI's plan, the first EECR rate update would be filed April 1, 2009.

1 **Q. What are EAI's proposed EECR Rates?**

2 **A.** Initially, EAI has proposed the following EECR rates:

3	Class	Budget Amount	Rate
4	Residential	\$2,173,015	\$0.00023 / kWh
5	Small General Service	\$1,241,497	\$0.00022 / kWh
6	Large General Service	\$1,956,991	\$0.00017 / kWh
7	<u>Lighting</u>	<u>\$ 35,312</u>	<u>\$0.00011 / kWh</u>
8	Total	\$5,406,815	

9 These rates would cover EAI's energy efficiency program costs from October 2007
10 through December 2008. EAI's total proposed budget for its Quick Start programs beginning
11 in October 2007 and running through December 2009 is 11,886,000. Direct Testimony of
12 Kurtis W. Castleberry at page 13, lines 4-6. However, EAI is not requesting authority to
13 recover its 2009 program costs at this time.

14 **Q. Could you describe AEEC's position in this proceeding?**

15 **A.** Yes. AEEC has several concerns in this proceeding. First, the Commission, in its EE
16 Program Rules"), described the "Quick Start" programs as "limited in nature." EE Rules at
17 Section 5G. Here, this is not the case. Rather, EAI has proposed to implement an entire
18 spectrum of EE programs, including multiple programs for most of its customer classes. EAI
19 provided no testimony demonstrating that EAI's proposed programs fit the Commission's
20 concept of "Quick Start."

21 Second, the Commission's EE Rules provide, in part, at Section 7 (A) that

1 Cost recovery of conservation and energy efficiency programs shall be in
2 accordance with the provisions of Ark. Code Ann. § 23-3-401 et seq. Cost
3 recovery shall be limited to the incremental costs which represent the direct
4 program costs that are not already included in the then current rates of the utility.
5

6 EAI has made no showing that the \$5.4 million in EE program costs, it seeks to recover
7 through this docket are “incremental costs,” which are not already included in its current rates.

8 Third, EAI has proposed to collect a “Monthly Carrying Charge Rate based on the authorized
9 rate of return on rate base most recently approved for EAI by the Commission in a non-
10 appealable final order.” Direct Testimony of Oscar D. Washington at page 7. AEEC does not
11 believe that EAI’s authorized rate of return is the appropriate measure for carrying charges under
12 the EECR.

13 In Order No. 10 in Docket 06-101-U, the Commission addressed the issue of the appropriate
14 level of carrying charge to be applied under EAI’s Energy Cost Recovery Rider (“ECR”) as
15 follows:

16 Turning to the issue of the appropriate carrying cost to apply to deferred fuel
17 balances in the ECR, Staff witness Smith proposes that the carrying costs be
18 changed from the rate of return approved for EAI by the Commission in a non-
19 appealable final order to the annual Commission-approved rate of interest on
20 customer deposits. Mr. Smith makes several arguments to support Staff’s
21 position. First, Mr. Smith argues that provision of the ECR is discretionary and
22 that the ECR provides a fair balancing of interests, even without carrying charges
23 on any over- or under-recovered balances. Second, the true-up provision in the
24 ECR lowers the risk of EAI under-collecting. Third, the recovery of the deferred
25 fuel balance is not long-term in nature, but instead it is recovered through a
26 surcharge over a projected twelve month period. Finally, Mr. Smith states that
27 the Commission has used the same approach for determining carrying charges for
28 Arkansas’ gas distribution utilities. (T. 2403/17-2403/21)

29
30 EAI witness Gillam disagrees with Mr. Smith’s proposed change in the carrying
31 charge rate and states that the Company essentially finances the under-recovery of

1 fuel and purchased power expense, so that the proper rate of return here is the
2 Company's cost of money. (T. 2297)

3
4 Staff is correct regarding the appropriate carrying charge. The Commission
5 adopts Staff's position that the carrying charge rate on the ECR should be changed
6 to the Commission-approved customer deposit interest rate for the reasons
7 provided by Staff. The Commission also agrees with Staff and emphasizes that
8 the ECR is a discretionary tariff and that the new carrying charge is symmetric
9 and fair since it applies to both under- and over-recoveries; that is, if the
10 Company over-recovers, the interest rate that customers receive on that over-
11 recovery is the customer deposit interest rate as well.

12
13 Order No. 10, APSC Docket 06-101-U at page 105-106. The Commission should follow its
14 Order No. 10 logic as to the appropriate carrying charge under the ECR when addressing the
15 EAI's carrying charge associated with the EECR.

16 **Q. Does AEEC have any other concerns with regard to EAI's proposed EECR?**

17 **A. Yes.** AEEC is concerned by the fact that EAI has made no effort to segregate the costs
18 associated with the energy efficiency programs benefiting each of its classes. EAI's proposed
19 EECR should be modified to explicitly segregate the costs each customer class imposes on the
20 system, as CenterPoint has proposed in Docket No. 07-081-TF. A utility's customers should
21 only be required to pay for the energy efficiency programs in which they participate.

22 Large industrial consumers will not be eligible to participate in EAI's residential
23 weatherization program or any other program which is exclusively designed for participation by
24 residential or small commercial customers. Therefore, large industrial consumers should not be
25 required to subsidize those programs. Likewise, residential and small commercial type
26 customers will not be eligible to participate in EAI's Large Commercial and Industrial Energy
27 Solutions Program, or its Large Commercial and Industrial Standard Offer Program and should

1 not be asked to pay for them. This outcome is reasonable and would properly implement the
2 principles of cost causation, which the Commission has previously supported. It would be
3 neither just nor reasonable to force any class of ratepayers to subsidize any EE program that they
4 cannot participate in.

5 **Q. Has the Commission ever established that a customer's rates should be based on the**
6 **costs imposed on the system and that a customer should not be required to pay for**
7 **programs and equipment that are not used to provide the service?**

8 **A. Yes. APSC Docket No. 99-062-TF provides an example of the Commission's historic**
9 **reliance on cost-based rate making policy. There, the Commission considered a request by EAI**
10 **to establish certain charges related to customer activities. The Commission concluded in that**
11 **case that directly assigning costs caused by a customer's activities to that particular customer was**
12 **in the public's interest, stating, in part:**

13 . . . This represents a move toward a policy which removes interclass subsidies
14 and collects the actual costs of providing these discretionary services from those
15 customers that cause the costs to be incurred. Thus the only customers to be
16 impacted by the fee increase are those who, due to an action or inaction on their
17 part, have caused EAI to incur costs. This policy endeavors to make rates which
18 are fair to all classes.

19
20 The assignment of costs directly to customers who caused them to be incurred is
21 consistent with the Commission's policy of eliminating subsidies among
22 customer classes. . .
23

24 Entergy Arkansas, Inc., APSC Docket 99-062-TF, Order No. 3, at page 5 (1999).

25 In another docket, the Commission stated that:

26 It has been the longstanding policy of this Commission that each rate class pay

1 their cost of service. The Commission continues to hold that inter-class subsidies
2 should be eliminated in order to reduce the possibility of uneconomic bypass of
3 AOG's system by its larger customers. . . The Commission finds that the
4 Agreement achieves a balanced cost allocation among the various customer
5 classes and furthers the Commission's policy of eliminating inter-class cost
6 subsidies.
7

8 Arkansas Oklahoma Gas Corp., APSC Docket No. 02-024-U, Order No. 20 at page 17.

9 In still another case, the Commission stated:

10 It has been the long-standing policy of this Commission to eliminate such
11 interclass subsidies and to move toward true cost-of-service pricing. This
12 Commission remains committed to this policy.
13

14 Arkansas Western Gas Co., APSC Docket No. 02-227-U, Order No. 17 at page 45-46.

15 These prior cases establish the Commission's historic preference for establishment of cost-
16 based rates.

17 **Q. Does AEEC oppose EAI's proposed EECR in this docket?**

18 A. Yes. EAI has proposed to implement a number of energy efficiency programs and to recover
19 the full costs for those programs without demonstrating that they are appropriate for
20 consideration as quick start programs. Further, EAI did not establish that its proposed program
21 costs are actually "incremental costs" that are not otherwise recovered in EAI's base rates.

22 **Q. Does AEEC have any other recommendation to make in this proceeding?**

23 A. Yes. The Commission should allow large industrial customers to opt out of the
24 Commission's statewide EE programs. Under this proposal, a large industrial customer would
25 be allowed to not participate in the Commission's statewide mandate. The customer would,
26 thereby, commit not to participate in any ratepayer financed EE incentive program in exchange

1 for not being required to subsidize any other party's EE programs.

2 **Q. Why should large industrial consumers of electricity and natural gas be allowed to**
3 **“Opt Out” of EE programs?**

4 **A.** Arkansas' large industrial electric and gas consumers have already implemented a number of
5 energy efficiency measures. They are participants in global markets and as such, must compete
6 with other industries in other parts of the world. In many ways, this competition boils down to
7 who can manufacture a product for the least cost. The realities of international commerce require
8 Arkansas' industries to search out and implement as many cost effective energy, time, and money
9 saving projects as they can.

10 **Q. Have Arkansas' industries taken any action over time to implement their own energy**
11 **efficiency programs?**

12 **A.** I cannot speak for all of Arkansas' industries, but I can address some of AEEC / AGC /
13 WCAGC's members' energy efficiency efforts. Prior to the drafting of this testimony, I
14 informally polled AEEC / AGC / WCAGC's members as to any energy efficiency measures that
15 they have implemented. I received varying responses. Some of AEEC / AGC / WCAGC's
16 members consider their energy efficiency measures to be trade secrets and so declined to share
17 any specific information with me. Other AEEC / AGC / WCAGC members did provide some
18 level of information on their energy saving measures. In some of these cases, improving energy
19 efficiency was only part of the justification for implementing the identified change.

20 The narrative responses I received to my surveys can be summarized as follows.

21 AEEC / AGC / WCAGC members periodically conduct energy efficiency audits for their

1 facilities using either in house or outside engineering staff. Those audits routinely identify
2 possible projects, which would provide a reasonable return. Then each year, during the budget
3 development process, management considers potential projects and implements those projects
4 with the most attractive returns.

5 Those responses, which included specific data, are compiled on the attached Exhibit No. ____
6 (Ex. BCD-1). As you can see from this exhibit, industrial consumers of electricity and natural
7 gas have gone to considerable lengths to implement energy efficiency measures that meet their
8 own cost effectiveness criteria. They have not waited for a state program. This data supports a
9 decision to allow large industrial consumers of electricity and natural gas to opt out of their
10 utility's EE programs and charges.

11 **Q. Can you please give another reason why industrial customers should have the**
12 **opportunity to opt out of a statewide EE program?**

13 **A. Yes. The state's industrial consumers of electricity and natural gas have the ability to**
14 **conduct in-house evaluations of energy efficiency measures. In addition, they have financial**
15 **incentives to implement measures they find to be cost effective. Because of this, such industrial**
16 **consumers should not have the need to use the Commission's approved- EE programs and should**
17 **not have to pay for programs for residential and small commercial customers. A large industrial**
18 **consumer should be given the ability to opt out of the Energy Efficiency Programs and any**
19 **associated costs or rate impacts.**

20 Additionally, to the extent the Commission can keep the playing field level between those
21 industrial customers captive to Local Distribution Companies ("LDC") and those similar

1 customers directly connected to interstate pipeline systems regulated by FERC, the more
2 competitive those captive LDC customers will be. Allowing the LDC customers to “opt out” of
3 the EE programs will not only make them more competitive in the marketplace, but also make it
4 less likely that these customers will bypass the LDC.

5 **Q. Has any other states adopted an “opt out” program such as you propose in this**
6 **proceeding?**

7 **A.** I am aware of “opt out” provisions in other jurisdictions, and I consider an “opt out”
8 provision of some sort to be very reasonable and consistent with the Commission’s goal in
9 developing its EE Program Rules.

10 **Q. Does that conclude your testimony, Mr. Donahue?**

11 **A.** Yes it does. Thank you.

CERTIFICATE OF SERVICE

I, Stacy M. Hazell, do hereby certify that a copy of the foregoing instrument has been served upon the following listed persons by hand delivery and/or first class, postage prepaid, U.S. mail on this 2nd day of August, 2007:

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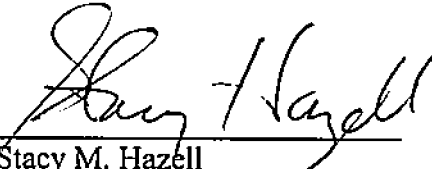
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