ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE CONSIDERATION OF INNOVATIVE APPROACHES TO RATEBASE RATE OF RETURN RATEMAKING INCLUDING, BUT NOT LIMITED TO, ANNUAL EARNINGS REVIEWS, FORMULA RATES, AND INCENTIVE RATES FOR JURISDICTIONAL ELECTRIC AND NATURAL GAS UTILITIES	)	DOCKET NO. 08-137-U ORDER NO. 14

ORDER APPROVING JOINT UTILITY MOTION FOR LOST CONTRIBUTIONS TO FIXED COSTS, AS MODIFIED

By this Order No. 14, the Commission approves the joint motion of investor-owned public utilities for the Commission to allow the awarding of lost contributions to fixed costs that result from utility energy efficiency ("EE") programs, as modified.

The term "lost contributions to fixed costs" ("LCFC") refers to that portion of reduction in potential electricity or natural gas sales revenue which is caused by public-utility-funded EE programs, and which was otherwise approved in a general rate case in order to reflect the fixed costs of utility service that do not vary based on a reduction in energy sales volume. Utilities have argued, and many jurisdictions around the nation have agreed, that while EE programs are cost effective for ratepayers, utilities face a disincentive to implement programs that fully develop this cost-effective resource, so long as such programs cause them to lose revenues attributable to fixed cost recovery. Through this order, this

Commission agrees and establishes guidelines for the approval of LCFC collection in Arkansas.

Statutory Authority and Positions of the Parties.

The Commission's general ratemaking authority and the Arkansas Energy Conservation Endorsement Act of 1977 ("ECEA," codified at Ark. Code Annotated § 23-3-401, *et. seq.*) each provide adequate statutory authority to allow the Commission to approve the collection of LCFC.

Parties to this docket disagree as to whether statute grants the Commission the authority to approve collection from ratepayers of LCFC, and if so, whether LCFC collection is required. Arkansas Electric Energy Consumers and Arkansas Gas Consumers ("AEEC/AGC") argue that the Commission has no authority to approve LCFC collection. AEEC/AGC base this argument on an interpretation of the following language from the ECEA:

> [T]he Commission shall . . . order that the affected public utility company be allowed to increased 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

(Brief of Arkansas Electric Energy Consumers, Inc., and Arkansas Gas Consumers, Inc.'s On Legal Issues [*sic*] at 3 (November 9, 2010)), *citing* Ark. Code Ann. § 23-3-405(a)(3). AEEC/AGC argue that the statute references "costs," which by the statute's plain language are direct program costs and not lost revenues. If the Commission determines that it must go beyond the plain meaning, AEEC/AGC cautions that "a fundamental principle of statutory construction called "*expression* *unius est exclusion alterius*" dictates that the legislature's explicit allowance of energy conservation program cost recovery means that, by contrast, it excluded other kinds of related revenue recovery. (*Id.* at 5). Further, AEEC/AGC note that the statute designates energy conservation as a "proper utility function," which is in the nature of a duty, and not something that the utility may be "paid extra to do" if convenient. (*Id.* at 3, *citing* Ark. Code Ann. § 23-3-404).

Utilities reading the same statute arrive at the opposite conclusion—that it requires the Commission to approve some form of recovery of a portion of revenues forgone due to EE program implementation. Utilities note that the statute only allows the Commission to order energy conservation programs into effect "if it determines they will be beneficial to the ratepayers of such public utilities and to the utilities themselves." (Ark. Code Ann. § 23-3-405(a)(2)). (*See, e.g.*, Legal Brief of Entergy Arkansas, Inc. at 2 (November 8, 2010)). Utilities reason that energy efficiency programs cannot be beneficial to utilities if the programs cause net reductions in revenues and earnings.[1] (*Id.* at 6). Thus, utilities argue that, if the Commission orders EE programs into effect, it must approve collection of not only direct costs, but also some mechanism to recover revenues lost to the utility and an earnings opportunity, such as LCFC and incentives. (*Id.*; *see also, e.g.*, Post-Hearing Brief of CenterPoint Energy Resources Corp. ("Post-Hearing CenterPoint") at 3, November 9, 2010).

[1] The Commission addressed this issue at some length in Docket No. 07-077-TF, Order No. 18 at 3-15 (February 3, 2010).

Under this theory, LCFC and incentives are a program "cost" that must be contemporaneously recovered under the ECEA. (*Id.* at 9). For instance, CenterPoint argues that, by requiring immediate recovery of "**any cost** incurred by [the utility] as a result of its engaging an any such program or measure," the statute intends a broad reading of the word "cost" that can accommodate lost revenues. (Post-Hearing CenterPoint at 3-4, and FN 4 (**Emphasis in original**)). Arkansas Western Gas Company also argues that the statutory duty to provide energy conservation services does not preclude recovery of revenues above the level of direct program costs, any more than other utility duties to provide utility service preclude recovery of a Commission-approved opportunity to earn a profit margin. (AWG witness Paul D. Smith's Testimony at 11: 26—12:1 (March 26, 2010)).

Other parties argue that the Commission has discretion either to approve or not approve recovery of LCFC, when approving or requiring the implementation of EE programs: "The position of the Attorney General is that the statute neither mandates nor forbids recovery of incentives or lost contributions to fixed costs as either a program component or as an indirect cost." (AG's Legal Brief Regarding Shareholder Incentives and Lost Contributions to Fixed Costs at 2 (Nov. 9, 2010)). Fundamentally, the AG argues that the statute must be read to further its purpose of authorizing the Commission to pursue "the overriding public interest" in the conservation of natural gas and oil and to respond to a "very real energy crisis." (*Id.* at 3, *citing* Ark. Code. Ann. § 23-3-402). "The statute only <u>requires</u> recovery of the direct program costs, but allows the Commission broad discretion in declaring what is a 'cost,' and how to structure recovery of incentives and other indirect costs." (*Id.*). The AG notes the statute's express provision that "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." (*Id.* at 3, *citing* Ark. Code Ann. § 23-4-405(b)).

The AG further responds more specifically to the utility argument that the ECEA requires Commission approval of lost revenue recovery: because EE programs generally involve expenses, rather than investments that put shareholder capital at risk, the statutorily-required recovery of direct costs are sufficient to hold the utility economically harmless. (AG's Reply Brief at 2 (November 12, 2010)). Thus, once the Commission has approved direct cost recovery, a finding of any further benefit to the utility—and not necessarily the award of lost revenues or incentives—is sufficient for a finding that the utility benefits from the program. (*Id.*).

General Staff agrees with the AG regarding the Commission's flexible authority to approve or not approve LCFC recovery: "The [Energy Conservation Endorsement Act] gives the Commission wide discretion to propose, develop, solicit, approve, require, implement, and monitor" EE measures and states that "nothing in this subchapter shall be construed as limiting" the Commission's authority to promote other energy conservation. (General Staff's Legal Brief at 2, (November 9, 2010)). Staff notes that in prior Docket No. 05-111-P, the

Commission approved lost revenues as an EE program cost "eligible for recovery pursuant to the ECEA." (*Id.* at 3).

Federal Agencies testify that Commission approval of a lost revenue mechanism would be "just and reasonable," an allusion to the general ratemaking authority of this Commission and similar commissions in every other state to ensure that all public utility rates are "just and reasonable." (FEA witness Larry Blank's Testimony at 4 (March 26, 2010); Ark. Code Ann. §§ 23-4-103 and 23-4-104). The Commission's ratemaking power is a subset of its vested power, jurisdiction and duty to regulate utilities 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." (Ark. Code Ann. § 23-2-301).

Wal-Mart argues that LCFC approval at this time is statutorily questionable. Lost revenues are not a "cost" under the plain language of the ECEA. (Wal-Mart's Post-Hearing Reply Brief at 5 (November 12, 2010)). The ECEA statute only authorizes the recovery of the "cost" of a program, which by its plain language does not include reduced revenues. (*Id.*). Further, Commission rules are even more restrictive, allowing recovery of "direct program costs." (*Id.* at 6). Even if lost revenues may be characterized as a cost, Wal-Mart argues that no evidence in this record establishes that any revenues have been lost. (*Id.* at 1). Wal-Mart argues that approval of LCFC prior to such proof may violate the ECEA's statutory requirement that any increased rates or charges be approved "at the time any such programs or measures are approved and ordered into effect . . ." (*Id.* at 3, *citing* Ark. Code Ann. § 23-3-405(a)(3)).

Commission Decision Regarding Authority to Award LCFC

The Commission agrees with the Attorney General, the General Staff and the Federal Agencies that the Commission may approve, but is not required to approve, the collection of an LCFC mechanism as part of a general approach to promote energy conservation that is beneficial to ratepayers and to the utilities themselves. Therefore, the Commission finds that, given its broad authority under the Arkansas ECEA, the Commission may allow utilities to recover LCFC with ratemaking measures designed to remove utility disincentives to implement the energy efficiency and conservation programs, particularly when, as here, such costs are included within an overall cost-benefit analysis that indicates net system and ratepayer economic benefits.

The express statutory provision preserving all other regulatory authorities to promote energy conservation (Ark. Code Ann. § 23-3-405(a)) dispels any possible doubt on this point. The Commission is charged with achieving an "overriding public interest" in energy conservation. It currently pursues this goal, by limitation of its own rules, through the approval of public utility program portfolios that are more cost effective than competing strategies to meet energy demand. The Commission reasonably intends to achieve other system benefits through these measures such as fuel cost reduction, reduction in exposure to energy and capacity price volatility, reduced regulatory risks, greater consumer awareness and satisfaction, and other benefits within the Commission's regulatory purview.

The fact that many ratemaking approaches, including those intended to promote energy conservation, are encompassed by the Commission's general authority and duties, is underscored by the initial broad scope of the instant docket. This docket was not established particularly to consider revenues lost due to potential EE programs. Rather, it broadly considers "Innovative Approaches to Ratebase Rate of Return Ratemaking, Including...Annual Earnings Reviews, Formula Rates and Incentive Rates...." (Order No. 1 at 1). Given the changing and complex nature of utility service, the Commission may reasonably base rates on costs of service, performance towards goals that serve market efficiency and other goals in the public interest, or other factors. The particular design of rates, so long as they are just and reasonable, can take a multitude of forms, including contemporaneous collection of LCFC. Furthermore, at this point, the Commission does not approve the particular application for LCFC of any individual public utility. Rather, the Commission signals its intent to consider applications for LCFC recovery as part of the annual EE tariff process. Both the ECEA and the Commission's general ratemaking authority authorize, and in no way impede, the approval of a general policy allowing collection of LCFC as a means for the Commission to pursue its essential duty to promote energy conservation under Arkansas's ECEA.

The EE Utilities' Joint Proposal for an LCFC Mechanism.

On October 6, 2010, Arkansas Oklahoma Gas Corporation ("AOG"), Arkansas Western Gas Company ("AWG"), CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Arkansas Gas ("CenterPoint"), The Empire District Electric Company ("Empire"), Entergy Arkansas, Inc. ("EAI"), Oklahoma Gas and Electric Company ("OG&E"), and Southwestern Electric Power Company ("SWEPCO") (collectively, the Energy Efficiency Utilities, or "EE Utilities") requested approval of an LCFC recovery mechanism, filing both a Joint Motion to that effect and Joint Comments supporting the Motion. Under that mechanism, utilities would individually seek recovery of LCFC as part of the current annual EE program tariff docket. (Joint Motion to Request Approval of a Recovery Mechanism for the Lost Contributions to Fixed Costs ("Joint Motion") at 4-5, (October 6, 2010)).

The amount of LCFC would usually be calculated using an approved list of deemed savings values, representing engineering estimates of energy savings that would result from the implementation of particular measures or types of equipment. For programs that implement measures for which approved deemed savings values exist, reductions in sales volumes would be calculated by multiplying the number of measures implemented times the deemed savings values. For programs implementing customized measures, or those for which no prior-approved deemed savings values exist, estimated reduced sales volumes would be based on industry standard evaluation, measurement and verification ("EM&V") protocols. (*Id.* at 6).

LCFC would then initially be calculated as the reduction in energy sales volumes resulting from measures implemented under planned EE programs, times a Lost Contribution Rate ("LCR"). The LCR would be the currently approved base rate revenues, less customer charge revenues, on an average dollar per kWh or CCF basis by rate class.

Gas utilities currently operate under a Billing Determinant Adjustment ("BDA") tariff that recovers some revenues that could be included in an LCFC mechanism. Therefore, EE utilities propose that the BDA tariff would be amended to ensure that LCFC revenue is not double-counted in the annual BDA filing.

In summary, the EE utility LCFC proposal has the following key characteristics:

(1) Annual, contemporaneous LCFC recovery as a component of Rider EECR;

(2) Reliance on approved deemed savings, when they are available, to estimate the amount of reduced energy sales that will result from planning programs for the prospective year;

(3) Reliance on industry-standard EM&V protocols in the absence of deemed savings;

(4) Use of estimated energy savings, multiplied by an LCR to estimate lost revenues; the LCR would be calculated as the currently-

approved base rate revenues minus customer charge revenues on an average dollar per kWh or CCF basis by rate class.

(5) True-up of prior-year LCFC to account for the actual energy saving impacts of measures installed, actual demand and energy fixed cost rates involved, and differences between expected and actual collections;

(6) Adjustment of BDA to prevent double-counting for gas utilities; and

(7) Accounting for prospective revenues lost due to prior-year EE program measures implemented between the time of the last general rate case and the LCFC filing.

Comments of the Parties Regarding the Joint Proposal of the EE Utilities.

The EE Utilities argue that traditional rates recover costs (including both fixed and variable costs) through rates based on unit sales of energy. (Joint Comments Regarding an Appropriate Mechanism for Recovery of the Lost Contributions to Fixed Costs at 2-3 (October 6, 2010)). Each unit sale (a kilowatt hour of electricity or therm of natural gas) allows the recovery in rates of amounts approved to recover fixed costs, amounts to recover variable costs, and an earnings opportunity. While variable costs are a "pass through," the utility recovers its fixed costs and earns its return on investment through kilowatt sales multiplied by approved base rates. If utility EE programs succeed, they reduce sales and thus reduce the fixed cost recovery and fair opportunity for earnings that formed the basis for Commission-approved rates. (*Id.* at 4). Such reduction in sales causes a "real, not just theoretical" negative financial impact, which in turn is a broadly-acknowledged disincentive to utility EE program implementation. (*Id.; see also,* Empire's Reply Comments to Questions Presented in Order Nos. 12 and 13 at 1 (October 20, 2010)).

OG&E more generally argues that, while there are many possible approaches to address the disincentive to reduce energy sales, an LCFC approach that targets sales reductions resulting from EE programs is more appropriate for electric utilities experiencing sales growth caused by multiple economic and regulatory factors. (OG&E's Reply Comments at 2-3 (March 26, 2010)). OG&E argues that decoupling is more appropriate for gas utilities facing predictable sales declines caused by fewer factors. (*Id.).*

To summarize, the EE utilities argue that the following policy considerations support approval of their proposed LCFC mechanism:

(1) EE programs reduce approved levels of fixed cost recovery, endangering full recovery of fixed costs;

(2) EE programs reduce approved earnings opportunities; and

(3) These reductions are a disincentive to robust program implementation.

General Staff "is in general agreement with [the] provisions" of the EE Utilities' joint proposal. (Staff's Reply Comments ("Staff Reply") at 3 (October 20, 2010)). Staff reasons that effective EE programs "may adversely impact the utility's ability to recover its revenue requirement providing a disincentive for implementing EE programs." (Tr. at 49). Staff recommends two modifications to the EE utility proposal. First, Staff recommends "reversing the order of preference" so that EM&V protocols, when such protocols have been approved by the Commission, would be preferred over deemed savings for the purpose of determining energy savings values. (Staff Reply at 3). Staff also recommends that utilities track the specific lives of individual energy savings measures so that energy savings attributable to a measure will not be counted beyond the end of the measure's life. (*Id.* at 4).

While the Attorney General argues, as noted above, that the Commission has the authority to approve LCFC, he "opposes the [EE utility] Motion . . ." (AG's Reply Comments to Orders No. 12 and 13 ("AG's Reply to Order 12") at 6:13-14 (Oct. 20, 2010)). The AG supports broad revenue stabilization (along the lines of the current gas utility BDA), with an adjustment to equity return reflecting lower risk, rather than attempts to parse the sales effects of EE programs. (*Id.* at 6). Central to the AG's opposition is his concern that electric utilities will collect LCFC even in situations where electricity sales rise overall, raising the question of whether any contribution to fixed costs are in fact lost. (AG's Initial Comments on Energy Efficiency Incentives and Lost Revenue Recovery at 17:4-7 (October 6, 2010)).

However, the AG notes that approval of an LCFC mechanism

> would be less unfavorable to consumers under two conditions: (1) if it were only offered in the context of significant efficiency goals that utilities were expected to meet, and (2) significant M&V supported any savings values.

(AG's Reply to Order 12 at 7:9-13). For purposes of any LCFC calculation, the AG strongly opposes the use of pre-approved deemed savings as the basis for calculating the energy savings. (AG's Reply to Order 12 at 7). Rather, the AG would require after-the-fact, independent EM&V to verify the net energy savings delivered by each program. The AG recommends discounting by half, for the purpose of any LCFC calculation, any energy savings not independently verified after the fact.

While not opposing the concept of LCFC recovery, Audubon argues that the EE utility proposal will "systematically misestimate[*sic*] lost revenues." (Audubon's Reply Testimony of Paul Chernick ("Audubon Reply") at 11 (October 20, 2010)). Audubon argues that accuracy is more important for LCFC computation than for the program planning and approval purposes for which the Commission has thus far sought savings estimates. (*Id.*, Exhibit PLC-R1, at 14). Audubon recommends that any approved LCFC mechanism include the following features:

> a. A data tracking system that will track data about the installation adequate to verify the number of installations and to reasonably estimate the sales effects of installations; such data might include the size and efficiency of installed equipment, the location of the installation, the hours of operation for the equipment, the orientation of building surfaces treated, the date of the installation, the seasonality of equipment (i.e., an air conditioner installed in November

may not save energy until the following summer); and the load shape of equipment;

b. A data tracking system that records information about the customer and the customer's rate class and schedule adequate to reasonably estimate the revenue impacts of installation; such data might include applicable rate schedules, riders, demand rates and demand ratchets, and block rates.

c. A method of adjusting estimated sales reductions to reflect savings that would have occurred without the program and the extent to which the program affects actions taken outside the program (i.e. "net" energy savings rather than "gross" savings);

(*Id.* at 10).

Audubon states that it recommended these changes in the context of EAI's rate case, and that EAI accepted some of them, but that they are not reflected in the current EE utility proposal. (*Id.* at 12-13). Among the accepted recommendations was an EAI commitment to develop EM&V procedures that would assess "the level of savings that can be attributed to the program" [i.e., "net savings."] (*Id.* at 14). Audubon urges in addition that the Commission rule that utilities must use the best information available at the time of LCFC reconciliation to calculate LCFC, rather than relying by default on prior-approved deemed savings. (*Id.*, Exhibit PLC R1, at 15).

Federal Executive Agencies ("FEA") argue that EE utilities did not submit detailed tariff language to allow adequate review. (FEA's Reply Comments to the Joint Utilities' request for approval of an LCFC Mechanism ("Federal Agencies Reply") at 1 (October 20, 2010)). FEA also opposes the Joint Motion on the basis that it allows cost shifting between rate classes in the case of utilities that calculate only one LCR rate. (*Id.*) FEA urges that fixed cost recovery issues must be addressed within a rate case, and not within the EE cost recovery tariff proceeding, to allow proper allocation of fixed costs. (*Id.*). However, FEA would support approval of an LCFC rider as just and reasonable if it met the following criteria:

(a) LCFC would be directly linked to Commission-approved EE programs;
(b) LCFC would avoid cost-shifting among classes;
(c) LCFC would be based on detailed engineering studies supported for each EE program supported by the expert testimony of a Professional Engineer;
(d) LCFC would be trued-up based on actual customer participation and revised engineering studies;
(e) LCFC would be re-set to zero after each general rate case, and;
(f) financial and rate calculation would be based on sworn expert testimony.

(FEA witness Larry Blank's Testimony at 5:12 through 6:18 (March 26, 2010)).

AEEC/AGC oppose the Joint Motion, recommending alternative, rate-based approaches to promote energy efficiency. (AEEC/AGC's Reply Comments to Order No. 12 and 13 at 2 (October 20, 2010)). AEEC/AGC particularly opposes any cost-shifting among customer classes. (*Id.*).

Wal-Mart states that although it "has no objection to the recovery of demonstrated LCFC for the successful implementation of energy efficiency measures, we do object to the methodology and implementation timing proposed by the Utilities." (Reply Comments of Wal-Mart Stores, LLC, and Sam's West, Inc., ("Wal-Mart Reply Comments") at 2 (October 20, 2010)). Like FEA, Wal-Mart argues that the general rate case is the proper venue in which to vet claims of lost contributions to fixed costs. (*Id.*). Like the AG, Wal-Mart notes that LCFC may reduce utility financial risk, meriting a reduction in the authorized rate of return. (*Ib.*). Wal-Mart cautions that utilities should be required to prove that contributions to fixed costs actually are lost, prior to allowing any recovery, particularly during difficult economic times. (*Id.*) Wal-Mart asserts that no such loss has been proven in these proceedings, so that any Commission approval of an LCFC mechanism at this time is premature. (Wal-Mart's Post-Hearing Reply Brief at 1-2 (November 12, 2010)). Wal-Mart argues that the Joint Motion simplistically attributes every dollar in lost revenue to energy conservation programs. (*Id.* at 3).

DISCUSSION:

The Commission hereby approves, as modified, the EE utilities' proposal that utilities be allowed to submit applications within the annual EE tariff filing process to collect LCFC contemporaneously with program implementation. The modifications to the EE utility proposal on LCFC are that, in order for the EE utilities to collect LCFC their proposed programs must be: (1) comprehensive within the context of being designed to be a significant effort toward meeting efficiency goals; and (2) subject to an independent and robust EM&V true-up approved by the Commission in each year following a year in which LCFC is claimed.

The Commission agrees that, at this stage, lost revenues caused by EE programs are a significant disincentive to EE program implementation that must be addressed. While decoupling may eventually prove to be a better way to tame the "throughput incentive," the Commission at this time accepts the EE Utilities' argument that an LCFC mechanism is more appropriate for electric utilities, which expect growth in sales, and that the combination of LCFC and a modified BDA is appropriate for gas utilities.

The Commission commits to approval of LCFC recovery only in the context of significant goal setting and the development of robust EM&V, as detailed in other orders issued contemporaneously with this Order.[2] Thus, recovery of revenues lost is not an independent right of utilities, but rather a component of a coordinated group of policies reasonably calculated to deliver overall benefits to ratepayers, to utilities, and to society in a cost-effective manner. Approval of an LCFC application within this context would be beneficial to ratepayers and to utilities, in that it would secure more cost-effective utility service with less risk of future energy and regulatory costs and cost fluctuations. LCFC approval, and contemporaneous program cost recovery under the ECEA, would hold the utility harmless from possible detrimental financial effects resulting from robust and successful EE program implementation. Such approval would promote important, but currently non-quantifiable benefits to ratepayers and utilities alike, including increased energy independence and national security and reduced environmental impact. Ratepayers and utilities also would benefit from the improved relations that stem from enhanced service.

[2] *See also* Docket No. 08-137-U, Order Nos. 15, 16; Docket No. 08-144-U, Order No. 17; Docket No. 10-100-R, Order No. 1 (all issued on December 10, 2010).

Generally, the Commission accepts the recommendations of various parties aimed at ensuring the accuracy of LCFC calculation. LCFC calculation shall accurately reflect energy savings caused by utility energy efficiency programs, and thus not sales reductions due to weather, changes in population, or background increases or decreases in customer's self-funded energy efficiency efforts. Utilities shall maintain and report adequate data to support accurate calculation of revenues lost. Such data collection shall ensure that LCFC is not collected for measures for which the measure life has expired between rate cases. EM&V reflecting standard protocols and best practices in the EM&V profession shall be preferred over deemed savings where such EM&V is available. Utilities shall base LCFC applications and calculations on the best information available at the time of the application. As detailed in separate orders, utilities shall rely on independent EM&V for the purpose of measuring energy savings caused by EE programs, for the true-up of 2011 program year savings and for LCFC calculation in program years 2012 and beyond. Projected LCFC collection shall be included in program cost-effectiveness calculations.

Companion orders establishing energy savings goals over a three-year period suggest a natural point at which the Commission could review the LCFC policy to determine whether it is preferable to more complete decoupling, and whether the challenges associated with calculating LCFC due to energy efficiency outweigh the benefits. Until then, the Commission determines that a general policy of approving an accurate application for LCFC, as an included component of a portfolio of programs likely to achieve the maximum achievable level of cost-effective energy efficiency, is a necessary and expedient means to achieve the development of energy efficiency as a utility resource in Arkansas.

Approval of the Joint Utility Proposal, as Modified.

The Joint Utility Motion is approved, with the following clarifications and modifications:

1. Utilities will track data about the installation adequate to verify the timing and number of installations and to reasonably estimate the sales effects of installations; such data shall include, without limitation, the size and efficiency of installed equipment, the location of the installation, the hours of operation for the equipment, and where appropriate, the orientation of building surfaces treated, the date of the installation, the seasonality of equipment; and the load shape of equipment;
2. Utilities shall track data that records information about the customer and the customer's rate class and schedule adequate to reasonably estimate the revenue impacts of installation, including, without limitation, applicable rate schedules, riders, demand rates and demand ratchets, and block rates;
3. LCFC shall be calculated on a rate class and rate schedule basis, thereby accurately reflecting and appropriately attributing the fixed

cost portion of revenues foregone due to the energy savings caused by utility energy efficiency programs;

4. LCFC shall be based on the best available data (which may include "deemed savings" pursuant to final determinations by the Commission on that subject now pending in Docket No. 07-152-TF) at the time of the application for approval of the Utilities' EE programs which will be followed by annual independent EM&V true-up calculations approved by the Commission that shall be based on the best available data at the time of the true-up calculation and that most accurately reflect the actual LCFC from utility-sponsored EE programs;

5. General Staff is directed to re-convene the Energy Efficiency Reporting Needs Working Group, to include any parties to this docket, to modify current EE program reporting forms to enable the EE Utilities to meet the above requirements;

6. To the degree that LCFC calculations rely on deemed savings for the 2011 program year, the deemed energy savings resulting from more efficient cooling shall be allocated to months using cooling-degree days, heating savings shall be allocated using heating-degree days, and outdoor lighting savings shall be allocated using the monthly hours of darkness; this allocation is an interim measure pending the

development of more refined estimates of the seasonal impacts of efficiency measures;

7. The Commission will approve LCFC true-up calculations based upon after-the-fact, net energy savings, as determined by independent EM&V, as compared to utility-estimated deemed savings, in the approval of true-up LCFC calculations. The EE utilities, the General Staff and Parties to this Docket shall develop a joint EM&V program, pursuant to a separate order issued today, for this purpose and shall propose how carrying costs—for both utilities and ratepayers—shall be calculated;

8. No retroactive ratemaking is authorized by this order. Only measures implemented after the issuance of this Order may be included in LCFC calculations; and

9. Natural gas utility BDA shall be adjusted so as to avoid double-counting sales reductions included in the LCFC mechanism.

BY ORDER OF THE COMMISSION.

This 10th day of December 2010.

Paul Suskie, Chairman

Colette D. Honorable, Commissioner

Olan W. Reeves, Commissioner

Cynthia M Uzzell-Fathers (Acting)
Jan Sanders
Secretary of the Commission

I hereby certify that this order, issued by the Arkansas Public Service Commission, has been served on all parties of record on this date by the following method:

___U.S. mail with postage prepaid using the mailing address of each party as indicated in the official docket file, or
_✓_Electronic mail using the email address of each party as indicated in the official docket file.