

BEFORE THE ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF AMENDMENTS TO THE)
ARKANSAS PUBLIC SERVICE COMMISSION'S)
RULES CONCERNING METER AGGREGATION AND) DOCKET NO. 12-060-R
COMBINED BILLING FOR NET-METERING)
CUSTOMERS)

JOINT UTILITIES' INITIAL BRIEF

1. Entergy Arkansas, Inc. Southwestern Electric Power Company, The Empire District Electric Company, Oklahoma Gas and Electric Company, and the Electric Cooperatives of Arkansas¹ (Joint Utilities) submit this Initial Brief pursuant to Order No. 1 issued in the above-referenced Docket on August 8, 2012, regarding the Commission's legal authority to adopt some form of meter aggregation or combined billing to promote net metering.

THE COMMISSION'S STATUTORY & RULE-BASED AUTHORITY

2. Regarding net metering, Arkansas law provides that:

Net energy metering encourages the use of renewable energy resources and renewable energy technologies by reducing utility interconnection and administrative costs for small consumers of electricity. ...Increasing the consumption of renewable resources promotes the wise use of Arkansas' natural energy resources to meet a growing energy demand; increases Arkansas' use of indigenous energy fuels while reducing dependence on imported fossil fuels; fosters investments in emerging renewable technologies to stimulate economic development and job creation in the

¹ Arkansas Valley Electric Cooperative Corporation; Ashley-Chicot Electric Cooperative, Incorporated; C&L Electric Cooperative Corporation; Carroll Electric Cooperative Corporation; Clay County Electric Cooperative Corporation; Craighead Electric Cooperative; Farmers Electric Cooperative Corporation; First Electric Cooperative Corporation; Mississippi County Electric Cooperative, Inc.; North Arkansas Electric Cooperative, Incorporated; Ouachita Electric Cooperative Corporation; Ozarks Electric Cooperative Corporation; Petit Jean Electric Cooperative Corporation; Rich Mountain Electric Cooperative, Incorporated; South Central Arkansas Electric Cooperative, Incorporated; Southwest Arkansas Electric Cooperative Corporation; Woodruff Electric Cooperative Corporation; and Arkansas Electric Cooperative Corporation.

state, including the agricultural sectors; reduces environmental stresses from energy production; and provides greater consumer choices. ...Net metering would help to further attract energy technology manufacturers, to provide a foothold for these technologies in the Arkansas economy, and to make it easier for customer access to these technologies. ...Therefore, the General Assembly finds that it is in Arkansas' long-term interest to adopt this subchapter.

Ark. Code Ann. § 23-3-404(a)-(b). In addition, "net metering" means measuring the difference between electricity supplied by an electric utility and the electricity generated by a net-metering customer and fed back to the electric utility over the applicable billing period." Ark. Code Ann. § 23-18-603(4). A "net metering facility" is:

[A] facility for the production of electrical energy that:

- (A) Uses solar, wind, hydroelectric, geothermal, or biomass resources to generate electricity, including, but not limited to, fuel cells and micro turbines that generate electricity if the fuel source is entirely derived from renewable resources;
- (B) Has a generating capacity of not more than twenty-five kilowatts (25 kW) for residential use or three hundred kilowatts (300 kW) for any other use;
- (C) Is located in Arkansas;
- (D) Can operate in parallel with an electric utility's existing transmission and distribution facilities; and
- (E) Is intended primarily to offset part or all of the net-metering customer requirements for electricity[....]

Ark. Code Ann. § 23-18-603(6).

3. The Commission was empowered by Act 1781 of 2001 entitled "The Arkansas Renewable Energy Development Act of 2001," (AREDA) codified at Ark. Code Ann. §§ 23-18-601—604, to:

[E]stablish appropriate rates, terms, and conditions for net-metering contracts, including a requirement that metering equipment be installed to both accurately measure the electricity supplied by the electric utility to each net-metering customer and also to accurately measure the electricity generated by each net-metering customer that is fed back to the electric utility over the applicable billing period;

...[A]uthorize an electric utility to assess a net-metering customer a greater fee or charge of any type, if the electric utility's direct costs of interconnection and administration of net metering outweigh the distribution system, environmental, and public policy benefits of allocating the costs among the electric utility's entire customer base;

...[R]equire electric utilities to credit a net-metering customer with any accumulated net excess generation in the next applicable billing period; [and]

...[E]xpand the scope of net metering to include additional facilities that do not use a renewable energy resource for a fuel or may increase the peak limits for individual net-metering facilities, if so doing results in desirable distribution system, environmental, or public policy benefits[.]

Ark. Code Ann. § 23-18-604(b)(1)-(4). It was pursuant to these statutory directives, after notice and hearing, that the Commission adopted *Net Metering Rules* (NMRs) on July 26, 2002, in Docket No. 02-046-R. The NMRs were amended subsequently through Docket No. 12-001-R regarding the standard interconnection agreement for net-metering facilities, but comments regarding meter aggregation and/or combined billing were filed in that Docket, and such comments gave rise to this Docket and the matters being discussed herein.

4. There currently exist restrictions² on Master Metering and Combined Billing, found in the Commission's *General Service Rules* (GSR), Rule 5.20, which states (excerpted):

B. General Requirements

Utilities shall separately meter and bill separate premises³ even if under common ownership. Utilities may not combine

² The Commission's *Rules of Practice and Procedure* (RPPs) permit the Commission, following due process, when it is in the public interest and for good cause shown, to waive the applicability or exempt from application any of its rules. See RPP Rule 1.03.

³ GSR Rule 5.20(A)(2)(a) defines "separate premises" as premises that are "on different non-contiguous tracts of land."

metering and billing unless some other part of this Rule allows it.

Gas and electric utilities may not install master meters or combine the bills of individual customers in any newly constructed residential, commercial, and industrial complexes of 2 stories or fewer, and mobile home parks. This Rule does not apply to dormitories, hotels, and motels. Gas and electric utilities shall offer to provide individual meters for all premises not covered by this Rule where multiple individual usage of gas and electricity could occur and where master metering would also be possible.

It is to this section of the GSRs that the Commission suggested additional language found in Attachment A to Order No. 1 in this Docket for the Parties' consideration for the presumed purpose of facilitating meter aggregation and combined billing in compliance with and furtherance of net metering.

5. Notably, the question of adopting master metering and combined billing (MMCB) policies was addressed previously—albeit limited only in application to gas utilities,⁴—through Docket No. 05-138-R styled “*In The Matter of a Petition for Revisions to Arkansas Public Service Commission's General Service Rules, Rule 5.20.*” That MMCB rulemaking docket was opened in response to policy recommendations made by the Commercial Energy Users Group⁵ (CEUG) in three separate gas companies' general rate cases filed in the years 2004-2005. In the MMCB rulemaking docket, after detailing the policy reasons CEUG's witness provided in support of MMCB—at least one

⁴ See Docket No. 05-138-R, Order No. 3, fn. 1 (January 10, 2007). The Order noted that any prospective application to electric utilities would require a separate, new rulemaking docket. *Id.*

⁵ The Commission made CEUG an official party to the rulemaking docket without CEUG having to formally petition to intervene, but in the rate cases, CEUG identified itself as “an association of entities owning or representing commercial facilities located throughout the [respective gas company's] service territory in Arkansas.” See Docket No. 04-121-U, CEUG's Petition to Intervene at 1 (April 25, 2005); Docket No. 04-176-U, CEUG's Petition to Intervene at 1 (June 14, 2005); and Docket No. 05-006-U, CEUG's Petition to Intervene at 1 (July 20, 2005). Attached to each of the Petitions to Intervene was an Exhibit A that listed all of CEUG's members in the respective proceeding.

of which was economic development—and noting the General Staff's and the Attorney General's opposition to CEUG's position, the Commission declined to adopt the proposed MMCB positions CEUG advanced holding:

[B]y its explicit terms, Rule 5.20 clearly prohibits master metering and combined billing except in certain cases as specified within the Rule.⁶ ... If adopted, CEUG's proposed MMCB policy would likely result in lower gas utility bills for a small group of gas customers without corresponding benefits for the general body of ratepayers. ...

If adopted, CEUG's proposed MMCB policy would likely increase the number of master metering and combined billing arrangements which would likely produce an overall reduction in the gas utilities' net revenue collections, by virtue of the reduced customer charge revenues and distribution rate revenues from CEUG's members, which would almost certainly lead to the shifting of costs from CEUG's members to the general body of ratepayers....

Rule 5.20 spells out the conditions under which master metering is allowed in order to protect other utility ratepayers. There are valid reasons why the current rules restrict the conditions under which customers may master meter. Expanding these conditions and allowing combined billing without first master metering, would likely result in shifting costs from CEUG's members to the general body of ratepayers. ... CEUG has not persuasively supported its allegation that its proposed MMCB policy is necessary to promote economic development or that it is necessary to prevent unreasonable discrimination. ... CEUG has not persuasively demonstrated that its proposed MMCB policy is in the overall public interest. ... Therefore, CEUG's proposed MMCB policy will not be adopted.

Docket No. 05-138-R, Order No. 3 at 18-19 (footnote in original). Slightly more than a month after Order No. 3 was issued, the MMCB rulemaking docket was closed and no timely appeals were taken of the Commission's holding or decision.

⁶ "As Arkansas law has determined, an agency's or department's interpretation of its own rules and regulations is not binding upon the courts but is nevertheless highly persuasive; the agency's interpretation of its own rules is controlling unless plainly erroneous or inconsistent. *General Tel. Co. of the Southwest v. Arkansas Pub. Serv. Comm'n*, 23 Ark. App. 73, 87, 744 S.W.2d 392, 400 (1988) *aff'd* 295 Ark. 595, 751 S.W.2d 1 (1988). It is quite clear that the Commission has the right to interpret the meaning of Rule 5.20." Docket No. 05-138-R, Order No. 3 at 18, fn. 7 (footnote in original).

DISCUSSION

6. The questions presented in this Docket are focused on whether to amend GSR Rule 5.20 regarding net metering and the policy considerations between this Docket and the MNCB Rulemaking Docket No. 05-138-R are strikingly similar, despite the differences in the gas and electric utility sectors. The benefits to a net-metering customer of aggregating meters and/or combining bills appears to be a potential increase in energy production to offset energy consumption as well as a potential decrease in administrative or power costs for the usage represented on a combined bill. These potential benefits presumably inure to the net-metered customers, but such benefits must be considered in the context of the costs to the utility for providing such services as well as to other ratepayers for defraying any additional costs not borne by the meter-aggregated/combined-billed customers, which are the same considerations that were addressed by the Commission in the 2005 MNCB rulemaking docket.

7. Regarding the Commission's legal authority to facilitate meter aggregation or combined billing, the Joint Utilities respectfully submit that the current state of Arkansas law does not permit the Commission to expand the NMRs to permit the type of meter aggregation outlined in Order No. 1. As discussed in the joint utilities' filings in Docket No. 12-001-R, AREDA does not contemplate the meter aggregation proposed by the Commission's Attachment A. Specifically, the proposed amendment to GSR 5.20 indicates that customers could have multiple metering points that are aggregated on a single bill:

For the purpose of measuring electricity usage under the Net Metering Rules, an electric utility must, upon request from a net-metering customer, aggregate for billing purposes a meter to which the net metering facility is

physically attached (designated meter) with one or more meters (additional meter) in the manner set out in this subsection.

Order No. 1, Attachment A, proposed new GSR 5.20(D)(1)(i). This is contrary to the plain language of AREDA.

8. AREDA includes the requirement of an electric utility to interconnect a net-metering customer using a “standard meter capable of registering the flow of electricity in two (2) directions.” Ark. Code Ann. § 23-18-604(a). In addition, AREDA applies to a “net-metering customer” that owns a “net-metering facility.” Ark. Code Ann. § 23-18-603(5)—(6). These two provisions alone which use singular nouns, and certainly in conjunction with the rest of the statutory language, indicate a clear intent to have a single meter that measures the flow of electricity between the utility and a single customer via a single meter.

9. Similarly, permitting multiple meters with multiple data points (called “additional meters” in Attachment A) to be aggregated onto a single bill goes beyond the statutory language that requires utilities to register “the flow of electricity in two (2) directions.” Ark. Code Ann. § 23-18-604(a) (emphasis added). Combined billing of multiple meters could require utilities to register the flow of electricity in multiple directions, then aggregate multiple usage points to create a single net-metered customer (possibly across multiple rate classes) for the sole purpose of creating a single bill,. This obligation to field multiple-direction communication is at odds with the statute’s plain language. If adopted, the proposed addition to GSR Rule 5.20 would impermissibly expand AREDA beyond the Commission’s statutory authority.

10. As similarly discussed by the joint utilities in Docket No. 12-001-R, to the extent meters are aggregated or bills are combined to facilitate net metering in the

manner proposed, allowing customers with meters in multiple rate classes to aggregate their consumption/meters could facilitate the very type of cost shifting the Commission previously rejected as unsound in Docket No. 05-138-R. The proposed GSR 5.20 amendment would allow customers to aggregate meters even if “all meters” are not on the same rate schedule. See Order No. 1, Attachment A, proposed new GSR 5.20(D)(1)(v). Permitting a customer who takes service under multiple rate schedules to aggregate its meters and combine its bills could, and likely will, result in cost shifting among rate classes. Such a result is at odds with a basic tenet of utility regulation that unreasonable preferences or advantages in rates cannot be offered by a jurisdictional utility or sanctioned by the Commission. See Ark. Code Ann. § 23-3-114.

11. As Staff and the AG persuasively stated in the gas utility context, master metering is permissible currently, under certain circumstances, pursuant to GSR Rule 5.20. See Docket No. 05-138-R, Order No. 3 at 8-11. To expand the Rule as proposed in Attachment A to permit meter aggregation or combined billing in a manner at odds with AREDA is not in the public interest and sacrifices good public policy in favor of the promotion of individual interests.

12. For example, AREDA empowers the Commission to “authorize an electric utility to assess a net-metering customer a greater fee or charge of any type, if the electric utility's direct costs of interconnection and administration of net metering outweigh the distribution system, environmental, and public policy benefits of allocating the costs among the electric utility's entire customer base[,]” but Attachment A makes no such provision. As the utilities jointly noted in Docket No. 12-001-R, the type of meter aggregation and combined billing advanced in that—and this proceeding by Order No.

1—would undoubtedly increase the utilities' costs, and as a result other ratepayers' costs, with no offsetting contribution by its net-metering customers. Again, Arkansas law and sound public policy require the rejection of such cost-shifting.

CONCLUSION

13. The Joint Utilities acknowledge that the Arkansas General Assembly, through its passage of AREDA, and the Commission, through its adoption of the NMRs, support the implementation of net metering as a mechanism to foster renewable energy development and reduce utilities' costs by reducing interconnections, but the proposed Attachment A expands GSR Rule 5.20 and the concepts of meter aggregation and combined billing in a manner that goes beyond the Commission's statutory authority and has cost-shifting consequences that are not in the public interest. As a result, the Joint Utilities oppose the adoption of proposed GSR Rule 5.20(D).

Respectfully submitted,

JOINT UTILITIES

By: /s/ Tucker Raney

Tucker Raney (78106)
Entergy Services, Inc.
425 West Capitol Avenue
P.O. Box 551
Little Rock, AR 72203
(501) 377-5876

**ATTORNEY FOR ENTERGY
ARKANSAS, INC.**

By: /s/ Stephen K. Cuffman

Stephen K. Cuffman (75026)
Gill Ragon Owen, P.A.
425 W. Capitol Ave., Suite 3801
Little Rock, AR 72201
(501) 376-3800
cuffman@gill-law.com

**ATTORNEY FOR
SOUTHWESTERN
ELECTRIC POWER COMPANY**

By: /s/ Lawrence E. Chisenhall, Jr.

Lawrence E. Chisenhall, Jr. (74023)
Chisenhall Nestrud & Julian, PA
2840 Regions Center
400 West Capitol
Little Rock, AR 72201
(501) 372-5800

**ATTORNEY FOR THE EMPIRE
DISTRICT ELECTRIC COMPANY &
OKLAHOMA GAS &
ELECTRIC COMPANY**

By: /s/ Stephen P. Williams

Robert M. Lyford (72078)
Senior Vice President & General

Counsel
(501) 570-2268
bob.lyford@aecc.com

Stephen P. Williams (85211)
Assistant General Counsel
(501) 570-2269
steve.williams@aecc.com

Arkansas Electric Cooperative Corp.
1 Cooperative Way
P.O. Box 194208
Little Rock, AR 72219-4208

**ATTORNEYS FOR THE ELECTRIC
COOPERATIVES OF ARKANSAS**

CERTIFICATE OF SERVICE

I, Stephen P. Williams, do hereby certify that a copy of the foregoing has been served upon all parties of record by forwarding the same by electronic mail and/or first class mail, postage prepaid, on September 10, 2012.

/s/ Stephen P. Williams
Stephen P. Williams