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## ARKANSAS PUBLIC SERVICE COMMISSION

FILED

IN THE MATTER OF AMENDMENTS TO THE )  
 ARKANSAS PUBLIC SERVICE COMMISSION'S )  
 RULES CONCERNING METER AGGREGATION )  
 AND COMBINED BILLING FOR NET-METERING )  
 CUSTOMERS )

DOCKET NO. 12-060-R  
 ORDER NO. 4

**ORDER**

On August 8, 2012, by Order No. 1 in this docket, the Arkansas Public Service Commission ("Commission") established a schedule, which included a public hearing set for October 31, 2012, to consider the issue of meter aggregation for net-metering customers. Order No. 1 directed parties to file legal briefs addressing the issue of whether the Commission has the legal authority to adopt rules allowing meter aggregation for net-metering customers. Order No. 1 also invited parties to comment on a "strawman" proposal for such rules.

On October 17, 2012, Staff submitted a *Motion for Ruling on the Legal Issue and to Cancel the Hearing* ("Motion"), which was not opposed by Entergy Arkansas Inc. ("EAI"), Southwestern Electric Power Company ("SWEPCO"), Oklahoma Gas and Electric Company ("OG&E"), The Empire District Electric Company ("Empire"), the Arkansas Attorney General ("AG"), the State Agency Group ("SAG"), William Ball (Mr. Ball) and the Arkansas Advanced Energy Association ("AAEA"). Staff, without opposition from these other parties, seeks a Commission ruling on the issue of whether the Commission has the legal authority to approve meter aggregation.

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On the same day, The Electric Cooperatives of Arkansas submitted a *Response to Staff's Motion for Ruling on the Legal Issue and to Cancel the Hearing* ("Response"). The Electric Cooperatives recommend that, given the divergence of opinion reflected in the legal briefs, the Commission should suspend all activity in this docket to allow the legislature the opportunity to provide additional guidance. *Id.* at ¶ 3.

By Order No. 3 in this docket, the Commission suspended the scheduled public hearing. Divergence of opinion among parties is a common occurrence in Commission proceedings and is an insufficient reason for the Commission to decline to interpret the statutes it regularly implements. For this reason, and to implement the legislative charge given to the Commission to promote net metering in accordance with statutory directives and limitations, this Order first addresses the Commission's authority to adopt rules concerning meter aggregation, finding that the Commission has such authority. This Order then addresses the public interest in meter aggregation for net-metering customers and proposes for comment a meter aggregation rule that takes into account comments to date by the parties to this docket.

I. The Commission's authority to adopt rules allowing meter aggregation for net-metering customers.

#### Positions of the Parties

All non-utility parties (the AG, the AAEA, Bill Ball, State Agencies and Staff) argue that the Commission is authorized by statute to adopt rules that allow meter aggregation to promote net metering. AG Brief at 1; AAEA Brief at 1-2; Ball Initial at 1; State Agency Comments at 2; Staff Brief at 1. All public utilities (EAI, SWEPCO,

Empire, OG&E and the Electric Cooperatives—collectively, “Joint Utilities”) argue that Arkansas law does not authorize the Commission to permit the type of meter aggregation outlined in Order No. 1. Joint Utilities Initial at ¶ 7. All parties address the relevance of the Arkansas Renewable Energy Development Act of 2001 (“AREDA”), which authorizes and requires the Commission to promulgate net-metering rules (“NMRs”). Some parties also find other statutory authorities or Commission rules to be relevant.

a. The Commission’s authority to adopt rules allowing meter aggregation for net-metering customers under AREDA.

Non-utility parties argue that AREDA’s findings and declarations generally charge the Commission with the promotion of net metering, and that AREDA grants the Commission broad discretion to further that purpose through meter aggregation. AG Brief at 1-2; Bill Ball Initial at 2-3; AAEA Brief at 4 and 9; State Agency Group Comments at 2; Staff Initial at 3. For instance, the AG cites AREDA’s finding that

(a) 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. More than thirty (30) other states have passed similar laws or regulations in support of net energy metering programs. Increasing the consumption of renewable energy 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 state, including the agricultural sectors; reduces environmental stresses from energy production; and provides greater consumer choices.

AG Brief at 1-2, *citing* Ark. Code Ann. § 23-18-602(a). Most of the non-utility parties find substantive authority for the Commission to approve meter aggregation in AREDA’s requirement that the Commission “shall establish appropriate rates, terms

and conditions for net-metering contracts.” AG Brief at 2; Bill Ball Initial at 1; State Agency Group Comments at 2; Staff Initial at 3, *citing* Ark. Code Ann. § 23-18-604(b)(1). For instance, Staff reasons that, because meter aggregation is a term or condition of net metering that would make net metering attractive to a larger group of customers, it would further the purpose of AREDA and is therefore authorized. *Id.* at 3.

The AG notes that AREDA’s provisions empowering the Commission to relax statutory limits on the size of net-metering facilities and the technologies employed, and to impose fees on net-metering customers in certain circumstances, reflect a legislative intent for the Commission to have considerable flexibility to regulate net metering in the public interest. AG Brief at 2-3. The AG, AAEEA, Mr. Ball, and by adoption, SAG, add that the breadth and flexibility of AREDA’s grant of power is further supported by the fact that no Arkansas statute expressly prohibits meter aggregation. AG Brief at 3; AAEEA Brief at 4; Ball Initial at 1; SAG Initial at 2.

While Staff argues that AREDA authorizes meter aggregation, Staff states that it may be subject to two limitations. Staff Initial at 3. First, because net metering under AREDA is intended primarily to offset part or all of a net-metering customer’s requirements for electricity, Staff reads the statute to require that the owner of the net-metering facility must also be a customer of the utility and that net metering may not include joint ownership of net-metering facilities for purposes beyond offsetting the net-metering customer’s individual usage. *Id.* at 4.

Second, Staff states that AREDA’s facility size limitations (25 kW for residential use and 300 kW for any other use) could be read to indicate an intent to limit the aggregation of facilities in one customer class with those in another. *Id.* at 4-5. Staff

recommends, however, that it would be most consistent with the statutory intent, which allows a customer to offset all or part of his or her requirement for electricity, to interpret these provisions to allow a single customer with multiple accounts to aggregate all accounts, either within or across customer classes. *Id.* at 5. The AG agrees with Staff that a net-metering customer should be a customer of the electric utility and that a single customer should be able to aggregate his or her meters across more than one customer class. AG Reply at 2.

The Joint Utilities argue that AREDA defines and limits the Commission's net-metering authority in a manner that confers no meter aggregation powers. Joint Utilities Reply at 4. According to the Joint Utilities, because AREDA does not expressly or by implication authorize meter aggregation, and because administrative agencies are limited to authority that is expressly granted and cannot modify the statutes that they are intended to implement, non-utility parties cannot rely on the fact that no statute expressly prohibits it. *Id.* at 2-3. Given the absence of the term "aggregate" or "aggregation" in AREDA, the Joint Utilities argue that other parties cannot reasonably assert that AREDA grants regulatory flexibility broad enough to include the authority to approve meter aggregation. *Id.* at 4. The Joint Utilities maintain that the preamble or purposes of a statute do not lend unconditional and unlimited support to any rulemaking that might serve to advance its policy objectives, and that if the General Assembly had intended to authorize meter aggregation it could have done so explicitly in the original Act in 2001 or in the 2007 amendments to the Act. *Id.* at 7.

The Joint Utilities note further that the Supreme Court of Arkansas has held that "a statute that, in effect, reposes an absolute, unregulated, and undefined discretion in

an administrative agency bestows arbitrary powers and is unlawful delegation of legislative powers.” *Id.* at 6, citing *Southwestern Bell Tel. Co. v. Ark. Pub. Serv. Comm’n.*, 69 Ark. App. 323, 328, 19 S.W.3d 197, 199 (2000); *Hobbs v. Jones*, 2012 Ark. 293, 2012 WL 2362712 (2012). The Joint Utilities suggest that, if the General Assembly intended to confer an undefined discretion to the Commission to regulate meter aggregation through AREDA, then “the entire statute would be an unlawful delegation of legislative powers.” *Id.* at 6.

The Joint Utilities also maintain that allowing customers to have multiple metering points that are aggregated on a single bill (as outlined in the Commission’s strawman proposal) is contrary to the plain language of AREDA. Joint Utilities Initial at 7. By referencing “a standard meter . . .;” a “net-metering customer;” a “net-metering facility;” and a “billing period” — each in the singular — the Joint Utilities assert that the General Assembly clearly contemplated and intended, in the context of the whole statute, to allow net metering only in the case of single meters. *Id.* at ¶ 7-8. The Joint Utilities explain that AREDA references the “customer” rather than a “meter” in § 23-18-603(5) for simplicity and clarity, because otherwise further definition would be required to specify that a meter was in fact owned by a net-metering customer. *Id.* Even if AREDA’s use of singular nouns does not explicitly prevent meter aggregation, the Joint Utilities maintain that it does not reflect an intent to allow it. *Id.* at 8.

Replying on the issue of AREDA’s use of singular nouns, the AG states that AREDA repeatedly references electricity use by “the *customer*.” AG Brief at 3 (emphasis by the AG). Had the General Assembly intended to limit the Commission’s authority to approve meter aggregation to applications with a single meter, the AG reasons that it

would instead have defined net metering as the net measurement of energy supplied and fed back through a *meter*. *Id.* The AG adds that the section of AREDA that references “meter” in the singular states that “[a]n electric utility shall allow net-metering facilities to be interconnected using a standard meter capable of registering the flow of electricity in two (2) directions.” *Id.* The AG interprets this section to direct utilities to use a “standard” meter for interconnections, and to use a meter that has the ability to register electricity flows in two directions. *Id.* at 3-4. Mr. Ball indicates that these provisions are intended to require utilities to measure the amount of energy consumed and produced by the customer, but that they do not prescribe billing arrangements. Ball at 3. Staff similarly states that this provision is a requirement for the utility to allow physical interconnection that applies to the meter attached to the net-metering facility, and does not address any other accounts a customer may have. Staff Reply at 3. In this regard, Staff indicates that meter aggregation is similar to the existing accounting function that carries forward net excess generation for net-metering customers from one month to the next. *Id.* at 3-4. The AG and Mr. Ball maintain that this provision is intended to prohibit utility metering requirements that might hinder net metering, such as requiring a customer to use multiple meters. *Id.* at 4.

Further with regard to the Joint Utilities’ argument that AREDA’s use of singular nouns precludes meter aggregation, Staff references the following statutory language for the proposition that, in Arkansas, the use of singular nouns in a statute is not determinative unless the context or subject matter precludes the use of plural construction:

(a) When any subject matter, party, or person is described or referred to by words importing the singular number or the masculine gender, several matters and persons, and females as well as males, and bodies corporate as well as individuals, shall be deemed to be included.

(b) Whenever, in any statute, words importing the plural number are used in describing or referring to any matter, parties, or persons, any single matter, party or person shall be deemed to be included, although distributive words may not be used.

Staff Reply at 3, *citing* Ark. Code Ann. § 1-2-203. Staff notes that this rule applies “in all cases, both civil and criminal, unless it is otherwise specially provided or unless there is something in the context or subject matter repugnant to that construction.” *Id.*, *citing* Ark. Code Ann. § 1-2-201. State Agencies similarly add that regulations of all types interchange terms in their singular and plural forms. State Agency Reply at 7.

The Joint Utilities also argue that, while AREDA requires utilities to register “the flow of electricity in two (2) directions,” (emphasis by Joint Utilities) meter aggregation could require utilities to register the flow of electricity in multiple directions, thereby exceeding the bounds of the statute. *Id.* at ¶ 9. The AG replies that meter aggregation will in no way require utilities to register electricity flows in any direction other than from the utility to the customer and vice versa. AG Reply at 1. The AG further states that, even if the utility were to install a meter that measured flows in more than two directions, the statute requires merely that the meter be *capable* of measuring flows in two directions and does not serve as a limitation on meters with greater capabilities. *Id.* at 1-2. Staff states that meter aggregation does not change the flow of electricity (in multiple directions or otherwise), but rather is an administrative accounting function that addresses customer accounts that are separately metered. Staff Reply at 3-4.

The Joint Utilities add that the Commission's strawman net-metering proposal will increase costs for utilities and ratepayers and will lead to impermissible cost-shifting because it does not incorporate AREDA's provision empowering the Commission to authorize an electric utility to assess a greater fee or charge on net-metering customers to cover the utility's costs. Joint Utilities Brief at ¶ 12. Mr. Ball replies that the statute only allows such fees or charges on net-metering customers upon proof that the costs of net metering outweigh the associated distribution system, environmental and public policy benefits, and that concerns raised about cost-shifting are thus far unsubstantiated. Ball at 3.

AAEA further maintains that AREDA's provision granting authority to the Commission "to expand the scope of net metering so as to include 'additional facilities that do not use renewable energy resources . . .'" precisely fits a situation where net metering is expanded to include additional meters at sites without renewable generation. *Id.* at 5, referencing Ark. Code Ann. 23-18-604(b)(4). AAEA states that such expansion "can only be done effectively" with aggregated net metering. *Id.* at 6.

b. Other statutory authorities.

The AG argues that the Commission's general power to "[f]ind and fix just, reasonable, and sufficient rates to be thereafter observed, enforced, and demanded by any public utility" provides an independent statutory authority for meter aggregation. AG Brief at 2, *citing* Ark. Code Ann. § 23-2-301(a)(1). The Joint Utilities respond that the Commission's specific powers—enumerated in Ark. Code Ann. § 23-2-304—include nothing that can be read to confer meter aggregation authority on the Commission. Joint Utilities Reply at 9. Joint Utilities maintain that the Commission's authority to fix

just and reasonable rates cannot possibly be read so broadly as to encompass meter aggregation, because that would suggest that the Commission could adopt the current net-metering rules in the absence of the express authority provided by AREDA. *Id.* The Joint Utilities reiterate that the Commission's authority to regulate net metering is defined and limited by the express authority granted in AREDA. *Id.*

The Joint Utilities remind the Commission that, in the context of gas utilities, the Commission previously declined to amend the prohibition in its *General Service Rules* on combined metering and billing. Joint Utilities Brief at 3-4. Noting that the Commission referenced the potential for cross-subsidization and the erosion of gas utility revenue, the Joint Utilities argue that similar policy considerations pertain to meter aggregation for net metering. *Id.* at 6. The Joint Utilities state that allowing a customer with accounts in multiple rate classes to aggregate meters will likely result in cost shifting among rate classes, and thus could violate the statutory prohibition on unreasonable preferences or advantages in rates. *Id.* at ¶ 10, *citing* Ark. Code Ann. § 23-3-114.

AAEA argues that the findings and purposes, and the powers granted under the Energy Conservation Endorsement Act of 1977 ("ECEA") authorize the Commission to encourage renewable energy development through meter aggregation. AAEA Brief at 2-4. AAEA notes that in the ECEA the General Assembly found that an "overriding public interest in the conservation of natural gas and oil, as well as the use of alternative forms of energy, is indisputable. *Id.* at 2, *citing* Ark. Code Ann. § 23-3-402. According to AAEA, the ECEA therefore authorized the Commission to establish energy conservation

programs, which “may include but shall not be limited to . . .” programs which “encourage the use of renewable energy technologies or sources . . .” and which

. . . result in the improvement of load factors, contribute to reduction 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 . . .”

*Id.* at 3, *citing* Ark. Code Ann. § 23-3-405(a)(1). AAEA argues that the Commission may authorize meter aggregation in pursuit of its power under the ECEA to encourage conservation generally and particularly to encourage renewable energy technologies. *Id.* at 3.

AAEA also argues that the Clean Energy Development Act (“CEDA,” at Ark. Code Ann. § 23-18-701, *et. seq.*) grants the Commission the authority to

consider, propose, develop, solicit, approve, implement, and monitor measures by electric and natural gas public utilities subject to its jurisdiction that cause the electric and natural gas public utilities to incur costs of service and investments that utilize, generate, or involve clean energy resources or renewable energy resources, or both.

*Id.* at 4, *citing* Ark. Code Ann. 23-18-701. AAEA states that this statute creates a clear mandate to the Commission to encourage renewable and clean energy resources, which can be accomplished, in part, through meter aggregation for net-metering customers.

*Id.* at 4.

#### Findings and Rulings of the Commission

As maintained by the non-utility parties, the findings and purposes of AREDA indicate general legislative support for net metering as a means of promoting renewable energy, economic and technological development, natural resource conservation and environmental benefits, independence from fossil fuel imports, and consumer choice.

Following the findings and purposes (in Ark. Code Ann. §23-18-602), AREDA has two sections: §23-18-603 provides definitions and §23-18-604 provides substantive directives and authorities.

The Commission agrees with the AG that AREDA generally defines net metering in terms of the customer and the customer's generation and electricity requirements, rather than in terms of the single meter or account. A "net-metering customer means an owner of a net-metering facility" and no party suggests that the same customer may not own other non-net-metering facilities and have several accounts and still be a net-metering customer.

"Net metering" itself "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). On its face and by its plain language, this provision can be read to encompass all of the electricity supplied by an electric utility to the customer, even if that electricity is supplied through a different meter or to a different account. The customer-centric nature of AREDA is further suggested by the definition of "net-metering facility," which, among other things, must be "intended primarily to offset part or all of the net-metering *customer requirements for electricity*." Ark. Code Ann. § 23-18-603(6) (emphasis added). "Net excess generation" similarly is defined in terms of the amount of electricity that the customer feeds back to the electric utility that exceeds "the amount of electricity *used by that customer*" (Ark. Code Ann. § 23-18-603(3); emphasis added) during the applicable billing period. In addition, as Staff points out,

the use of the words “facility,” “meter,” and “billing period” – each in the singular – may be read in the plural under Ark. Code Ann. § 1-2-203.

The Commission notes further that, by establishing separate facility size limitations for residential and non-residential customers, the General Assembly clearly intended to promote net metering not only for residential customers (who usually have one meter) but also for non-residential users who often have several meters and accounts. In this context, a net-metering facility “intended primarily to offset part or all of the net-metering customer requirements for electricity” easily can be read to encompass electricity measured at more than one meter.

The substantive directives and limitations in the final section of AREDA (Ark. Code Ann. § 23-18-604) are divided into two subsections. The first subsection reads in its entirety as follows:

(a) An electric utility shall allow net-metering facilities to be interconnected using a standard meter capable of registering the flow of electricity in two (2) directions.

Ark. Code Ann. § 23-18-604(a). While the Joint Utilities read this subsection as a limitation on the power of the Commission to allow meter aggregation, this subsection, as indicated by the AG and William Ball, is directed to “[a]n electric utility,” rather than to the Commission. In this context, as noted by those parties, one purpose of this provision is to ensure that utilities allow the interconnection of equipment necessary for net metering. A second purpose is to prohibit utilities from requiring non-standard metering or separate metering (i.e., two meters) as a condition of interconnection.<sup>1</sup>

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<sup>1</sup> The Commission notes that, absent net metering, the customer might be required to separately meter customer generation as part of an interconnection agreement pursuant to the federal Public Utility Regulatory Policies Act (“PURPA”).

While the first subsection of § 23-18-604 provides directives to electric utilities, the second, subsection (b), provides directives and authority to the Commission, in that it begins with these words: “Following notice and opportunity for public comment, the Arkansas Public Service Commission: (1) [s]hall. . .” This subsection provides three things that the Commission “shall” do and two things that the Commission “may” do. The Commission “shall” do the following things: (1) “establish appropriate rates, terms and conditions for net-metering contracts . . .;” (2) “. . . require electric utilities to credit a net-metering customer with any accumulated net excess generation in the next applicable billing period;” and (3) “provide that” net excess generation at the close of an annual billing cycle shall expire and that any renewable energy credit (“REC”) resulting from customer net generation is the property of the customer. Ark. Code Ann. §§ 23-18-604(b)(1), 23-18-604(b)(3), and 23-18-604(b)(5).<sup>2</sup> Other than setting limits on the crediting of net excess generation and on REC ownership, these provisions leave the Commission with a general charge to establish appropriate rates, terms, and conditions for net-metering contracts.

The Joint Utilities are thus correct to point out that this substantive grant of authority does not contain the words “aggregation” or “meter aggregation.” However, the manner in which a utility accounts for customer usage and charges, and the billing arrangements that notify the customer of those charges, can be incorporated, in whole or in part, within the “terms” of an interconnection contract and failing that, are at least “conditions” of that contract, which may be established by the Commission. While the

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<sup>2</sup> Act 1221 of the 2013 Regular Session of the 89<sup>th</sup> General Assembly amended AREDA, effective 90 days after adjournment, to provide that an amount of net excess generation credit equal to four months’ average usage shall carry over and be credited to the next annual net metering billing cycle.

Commission must be careful not to exceed the statutory authority granted to it by the General Assembly, it also must not err in the other direction, needlessly abandoning authority granted with the intent to flexibly pursue public interest goals. Had the General Assembly wished to parse the types of net-metering conditions that the Commission could establish, specifying some and prohibiting others, it could have done so within this provision, within AREDA's definitions, or by limitations in its purposes. The directive of the statute, however, is expressed more generally for the Commission to establish "appropriate rates, terms and conditions. . ."

Those rates, terms, and conditions must *include* a requirement for accurate metering of electricity supplied to and generated by the customer, but they do not *end* with that requirement. AREDA requires the Commission not only to ensure accurate measurement of net generation, but also to establish other "appropriate" rates, terms, and conditions that serve the overall purpose of the statute.

Such authority is expressed with adequate clarity and definiteness to satisfy the Constitution. Allowing meter aggregation does not, as Joint Utilities argue, provide "absolute, unregulated and undefined discretion" to the Commission that "bestows arbitrary powers and is unlawful delegation of legislative powers." Most importantly, the statutory definition of net metering limits its scope to facilities intended to offset part or all of a net-metering customer's requirements. This definition limits the discretion of the Commission and the potential real-world impact of net-metering generation facilities.

AREDA further limits the Commission's authority to approve net-metering facilities to certain project sizes, even if they are smaller than the customer's

requirements (unless the Commission determines, after conducting appropriate proceedings, that expansion of project sizes is in the public interest). AREDA limits net metering to single customers, as suggested by Staff, and not to customers jointly purchasing generating facilities for the purpose of offsetting the electricity requirements of more than one customer.

Also, any authority exercised by the Commission under AREDA must be promulgated “following notice and opportunity for public comment” and is thus not “unregulated.” Further, the core statutory directive for the Commission to establish net-metering rules is, itself, non-discretionary on the part of the Commission and emphasizes accurate measurement and carefully defined types of energy sources which, in total, currently form an extremely small portion of the generation in Arkansas. Within these express statutory bounds and directives, the Commission’s discretion to allow a customer to net electricity consumption at more than one meter against self-generation does not constitute an unlawful delegation of legislative power.

With regard to the two things that the Commission “may” do under AREDA: the first is to “authorize an electric utility to assess a net-metering customer a greater fee or charge of any type,” but only when certain utility costs exceed certain benefits of net metering. Ark. Code Ann. § 23-18-604(b)(2). Joint Utilities raise the concern that increased utility costs from net metering might lead to illegal preferences in rates (whether from effects analogous to the case of combined billing in natural gas service, which the Commission generally prohibits, or otherwise). AREDA, however, expressly recognizes the possibility that a utility’s “direct costs of interconnection and administration of net metering” might outweigh the system and public benefits of net

metering. *Id.* In that event, AREDA does not suggest that the Commission abandon net metering. Rather, it places a burden on the utilities and on the Commission to assess the costs and benefits (including the potential benefits of allocating the costs “among the electric utility’s entire customer base”). The statute then allows net metering nevertheless to proceed, albeit with customer fees that might offset some or all of those costs and bring any preferences among customers within reasonable bounds. *Id.* The Commission pursues a policy of avoiding unreasonable discrimination in rates; but neither the Commission’s prior decisions regarding combined billing for natural gas customers (under its general authority to regulate billing and metering), nor the statutory prohibition on unreasonable rate preferences, supersede AREDA’s provisions requiring the Commission to promote net metering with appropriate rates, terms and conditions, and to limit customer charges aimed at addressing the potential utility system costs of net metering.

The second thing the Commission “may” do is to “expand the scope of net metering to include additional facilities that do not use a renewable energy resource for a fuel or to 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)(4). While AAEA views AREDA’s additional facilities expansion provision under Ark. Code Ann. § 23-18-604(b)(4) as an authority for meter aggregation, the Commission views the provision authorizing the Commission to establish terms and conditions of net metering as the more appropriate authority for this purpose. In context, the word “facilities” within the net metering expansion authority appears to mean larger generation facilities, such as generators larger than

300 kW, or generators which do not use renewable fuel, such as co-generators that burn natural gas. Meter aggregation, on the other hand, being an administrative function of accounting and billing associated with the implementation of net metering, would be a “term” or “condition” surrounding the net-metering contract for any facility under the Act, whether or not the scope of net metering is otherwise extended.

Unlike the ECEA, which provides a general, flexible, permissive authority for the Commission to develop and implement policies to promote energy conservation and renewable energy, AREDA directs the Commission to use a specific policy mechanism (net metering) to promote distributed renewable energy to offset a customer’s electricity needs. The Commission finds that this more focused authority is intended to promote customer-owned renewable generation and to protect it from possible frustration by the utility or by the Commission itself. This is why the utility must allow interconnection with a single, standard meter rather than multiple meters or non-standard meters; why the Commission “shall” establish rules promoting customer generation; why utilities and the Commission may not impose fees on the customer except in well-defined circumstances; and why the Commission may increase the size limits or types of allowed customer-owned generation (but may not decrease those limits), so long as net-metering facilities are sized to meet the customer’s needs. In this context, the customer’s “requirements for electricity” under § 23-18-603 (6) of AREDA are more important than his or her individual meters, and the inclusion of the customer’s additional meters within the accounting and billing for his or her charges is within the Commission’s express directive to establish terms and conditions that *promote* net metering.

AREDA grants an express directive for the Commission to establish “appropriate” terms and conditions, which the Commission hereby interprets to include meter aggregation. Within the confines of AREDA, net metering facilities must be owned by the customer and customers may aggregate meters from different accounts, even if the same customer has accounts in different classes (these findings are discussed further below, because they are more extensively addressed in party comments than in the legal briefs).

II. Addressing the ratepayer impacts of, and public interest in meter aggregation, and proposing rules to allow meter aggregation for net metering customers.

Order No. 1 directed parties to address the following issues with respect to meter aggregation:

- (1) The impact of the current level of net metering on electricity rates and the impact that would be expected if meter aggregation were allowed for net metering;
- (2) The public interest benefits if the Commission were to adopt meter aggregation to promote net metering; and
- (3) Any amendments to Commission Rules that would be required if the Commission were to adopt meter aggregation to promote net metering.

Order No. 1 also invited parties to comment on whether adoption of a “strawman” proposal to amend the Commission’s General Service Rules (“GSRs”), which was based upon the provisions of the Interstate Renewable Energy Council (“IREC”) *Model Net Metering Rules* concerning meter aggregation, would be in the public interest. The Commission summarizes below the positions of parties regarding the current and expected costs of net metering and potential meter aggregation; any related public

interest benefits; and any rule amendments or changes to the proposed strawman meter aggregation rule that would be necessary to promote net metering through meter aggregation.

#### Positions of the Parties

##### a. General views on ratepayer impacts of meter aggregation.

Non-utility parties believe that the current level of net metering does not significantly impact rates. AAEA at 4; AG at 3; Staff at 2; SAG at 2-3. Staff and the AG expect that, even expanded net metering under meter aggregation would yield insignificant or immaterial rate impacts. Staff at 3; AG at 3. AAEA similarly indicates that, while the rate impact of expanded meter aggregation is uncertain and should be periodically reviewed, net metering would have to increase exponentially before it would have any measurable impact on utilities and their ratepayers. AAEA at 6. SAG indicates that expanded net metering under meter aggregation will not increase rates if certain recommended cost recovery provisions (detailed below) are adopted. SAG at 2-3. Mr. Ball comments that Austin Energy in Texas recently completed a comprehensive review of the cost impact of net metering, which found that distributed solar generation provides a value in excess of \$0.11 per kWh to the grid for Austin Energy. Ball at 1. He states that expanded net metering thus might lead either to rate increases or to rate decreases. *Id.* at 2.

Utilities generally agree that net metering currently has a minimal impact on rates. ECs Reply at 2-3; EAI Reply at 8; OG&E at 2.<sup>3</sup> Empire has no net-metering customers, so its current rate impact is zero. Empire at 3. The ECs, EAI, OG&E, and

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<sup>3</sup> SWEPCO does not state this position, but does not contest it and does indicate, as noted below, that it has few net metering customers.

SWEPCO have the following numbers of net-metering customers, respectively: 150, 82, 12 and 19. ECs at 5; EAI at 6; OG&E at 2; SWEPCO at 2. Three OG&E customers and two SWEPCO customers last year produced more electricity than they consumed during the year. OG&E at 2; SWEPCO at 2. The Electric Cooperatives comment that they cannot know or quantify the exact rate impact of current net-metering customers because it cannot be determined how much utility electricity these customers would have consumed had they not been net metering customers. ECs at 5. SWEPCO comments (and EAI agrees) that whether the financial impact is minimal should not be the deciding factor, but rather that preventing subsidization between customers is the issue. SWEPCO at 8; EAI Reply at 7. Utilities indicate, however, that if the Commission were to approve meter aggregation, while the exact impact on rates would be uncertain, both system-wide costs and subsidies within and among customer classes would increase. Empire at 3; ECs at 3-5; EAI at 4-5 and EAI Reply at 8; OG&E at 4; SWEPCO Reply at 2-3.

b. Party positions regarding the public interest in meter aggregation, including more specific views on the impact of meter aggregation on utility system operations, costs and rates.

All non-utility parties favor the adoption of rule amendments to allow meter aggregation. AAEA Brief at 8-9; AG at 2; Ball at 4; SAG at 3-4; Staff Initial at 3. All utility parties state that allowing meter aggregation for net-metering customers is not in the public interest. Electric Cooperatives ("ECs") at 2; ECs Reply at 1; Empire at 3 and 4; OG&E at 4; EAI at 8; SWEPCO at 2 and 8-9.

Differences in utility and non-utility views regarding the potential rate impacts of meter aggregation stem from different views regarding the impact of net metering on

the utility system and on ratepayers. Non-utility parties emphasize that the legislature has recognized certain environmental, energy independence, and economic development benefits of net metering, which are enumerated in AREDA's findings (*supra*, at 3). Staff Reply at 5-6, *citing* AG initial at 2; State Agency at 4; Ball at 2-3.

Mr. Ball states that net metering also strengthens the distribution system, increases reliability, promotes smart grid development, and reduces operation and maintenance costs. Ball at 2. He and AAEA indicate that solar distributed power cannot be properly valued at an average rate, because it tends to provide energy at peak times. *Id.*; AAEA Reply at 1-2. The AG adds that, while net metering will lead the utility to purchase some energy at prices above avoided cost, and while some customers may not contribute fully to fixed costs, the system will see additional benefits because customers pay for an addition of capacity to the system. AG at 2. AAEA comments that, in this respect, the net metering customer thus subsidizes other customers. AAEA Reply at 2. SAG and AAEA believe that net metering under meter aggregation has the potential to defer generation and transmission costs. SAG at 2-3; AAEA Reply at 2. SAG further argues that meter aggregation is in some cases needed for proper siting of renewable generation and is thus necessary in order to realize the purposes of the net-metering statute. SAG at 4. Mr. Ball agrees and also notes that (unlike some renewable energy generation systems) bio-energy systems provide dispatchable generation. Ball at 2.

All utilities view the crediting of the full retail value of a kilowatt hour under net metering as a subsidy to net-metering customers by other customers, which could become significant if the Commission adopts meter aggregation. EAI explains that the net-metering customer, by receiving a credit equal to the full retail rate for each kWh

generated, is compensated for all components of the retail rate, including the full cost of transmission, distribution, and customer service costs; yet, the net metering customer's generation, according to EAI, does not avoid these utility costs. EAI at 3-4; *see also*, OG&E at 3; SWEPCO at 4-5. Electric Cooperatives assert that the utility makes the same investment and incurs the same associated fixed costs for net-metering customers as it does for similar customers who do not net meter. ECs at 3. OG&E states that the generator installed by most net-metering customers supplies energy, but not capacity, and that the utility has already properly sized the customer's service to accommodate their entire load, as if the net metering facility did not exist. OG&E at 2. EAI, SWEPCO, and the Electric Cooperatives indicate that net metering does not reduce electricity demand because the utility will still have to provide the same fixed plant assets and related costs, in case customer net-metering generation fails to meet customer demand. EAI at 8; SWEPCO at 9; SWEPCO Reply at 3-4 ECs Reply at 2. The Electric Cooperatives further explain that, while expansion of certain forms of commercial or utility-owned renewable energy resources may have some potential to reduce transmission and generation needs, in the case of net metering, customer-owned wind and solar generation do not coincide with the Electric Cooperative's annual peak, which is typically at 6:00 PM during a summer month. ECs Reply at 2. Electric Cooperatives thus maintain that net-metering facilities only displace variable costs. *Id.* at 3.

EAI estimates that, based on the allocation of transmission, distribution and production demand costs to the residential and small commercial classes in its last rate case, between 77% to 82% of the revenue lost due to generation by a net-metering customer is shifted to other customers at the next rate case. EAI at 6-7. OG&E

estimates that the net-metering customer is subsidized by between 50% and 87% of the revenue lost, depending on whether the customer is offsetting on-peak or off-peak energy. OG&E at 3. Electric Cooperatives estimate that net-metering customers are subsidized by approximately six cents, plus or minus two cents, for each net kilowatt hour (kWh) generated, and they state that the subsidy often flows from less wealthy customers to more wealthy customers. ECs at 5; *see also* OG&E at 4.

In addition to the indicated subsidy of fixed costs by non-net-metering customers, SWEPCO summarizes the further costs as being erosion of revenue by customer class, difficulty in accounting for revenue and billing units by class, increased billing and administrative costs, and inconsistency with the intent of the General Service Rules, which aim in part to avoid cross-subsidies among rate classes. SWEPCO at 2 and 8. Electric Cooperatives state that utilities render bills in cycles in order to more efficiently use billing staff and software, and that meter aggregation will reduce efficiency and increase costs for billing. ECs at 4-5. SWEPCO refers to the updates to the billing system that would be necessary for meter aggregation as a costly, time-consuming “administrative nightmare.” SWEPCO at 8.

SWEPCO and the Electric Cooperatives further argue that meter aggregation constitutes retail wheeling. SWEPCO at 3; ECs at 3. SWEPCO explains that retail wheeling is an arrangement in which customers generate electricity for the purpose of serving load at a different point of service, transmitting electrical energy over the utility’s system to serve another account, without fully compensating the utility for the use of its wires or fixed generation. *Id*; *see also* ECs at 2-3. SWEPCO states that this

arrangement was not contemplated under the current NMRs and may be illegal due to the repeal of the Electric Consumer Choice Act of 1999. *Id.*; see also ECs at 3.

The AG disagrees with the utility position that customer net-metering generation does not reduce demand. AG Reply at 4. The AG asserts that net metering facilities will benefit all customers by helping to meet load growth. *Id.* at 5. SAG similarly explains that, while the cost of net metering facilities is negligible on a small scale, on large scale net-metering facilities add capacity because they will not all fail at once. SAG at 6. The AG adds that, in the case of residential customers, the full residential rate credit for net metering is roughly the same cost to the utility as the levelized cost of new generation, and in the case of other rate classes, the net metering credit is less. *Id.* The AG notes that the cost of new net-metering generation is not spread among all ratepayers, but rather is borne by the net-metering customer. AG at 3.

The AG also takes exception to EAI's suggestion that the net-metering credit for energy charges for net-metering customers in the small general service class shifts 82% of costs onto other customers, noting that these customers still pay for customer charges and minimum billing requirements. *Id.* at 8. He notes that residential ratepayers are less likely to have multiple meters, and that, for the commercial customers who are more likely to take advantage of meter aggregation, the fact that net metering credits are limited to the energy portion of the bill also limits the rate impact on other customers of aggregation. AG at 3.

Non-utility parties do not deny that net metering and meter aggregation may involve cross-subsidies, but rather argue that the statute provides for Commission approval of such subsidies when they are in the public interest (SAG at 3; SAG Reply at

3-4) and provides for charges to recoup increased billing or other costs caused by net-metering customers when the utility proves that those costs exceed the public interest benefits of net metering. AG at 4; AG Reply at 6; Staff at 7. Staff argues that, since all customers share in the benefits of net metering, it is appropriate that all customers share in its costs. Staff Reply at 6. Mr. Ball maintains that that cost-shifting is a tool that can be used by regulators to effect policy that is in the public interest. Ball at 4. The AG states that the potential downside for ratepayers is minimal, because the impacts of net metering are small now and could be remedied through ratemaking proceedings if broader net metering proves to be problematic. AG Reply at 6. Furthermore, Staff notes that AREDA specifically references allocation of the costs of net metering across the whole customer base. *Staff Reply at 6, FN 10.*

Mr. Ball adds that utilities raised concerns during debate over adoption of the original NMR's about costs for billing software upgrades and interim manual billing in connection with the month-to-month carryover of net excess generation credits, but that these concerns have not been borne out. Ball Initial at 3. SWEPCO replies that, with meter aggregation, it would have to update its current manual approach to managing net-metering accounts to an automated approach costing around \$100,000. SWEPCO Reply at 9.

Staff, SAG, and the Attorney General deny that meter aggregation is the same as retail wheeling. Staff Reply at 6; SAG Reply at 6; AG Reply at 8. Staff explains that meter aggregation does not involve wheeling power for sale from one specific location to a customer in another specific location, but rather that meter aggregation is an administrative accounting function. Staff Reply at 6. SAG adds that retail wheeling

involves the sale of electricity generated by a power supplier to a different entity, while meter aggregation involves offsetting energy consumption by the same customer. SAG Reply at 6 (emphasis in the original); *see also*, AG Reply at 8.

c. Proposed amendments to the Commission's strawman meter aggregation proposal and other alternative interpretations of law and policy suggestions proposed by parties.

Staff proposes an alternative to the "strawman" proposal which is drafted as an amendment to the NMRs rather than the GSRs, thereby keeping all net-metering provisions together within the NMRs. Staff Initial at 3. Staff and other parties note that the concepts of master metering and combined billing, as addressed in the Commission's current General Service Rules ("GSR's"), are separate and distinct from aggregated metering, as considered in this proceeding. Staff Reply at 2-3; EAI Initial at 7; SWEPCO at 9; State Agencies' Reply at 2-3; AG Reply at 7. Staff explains that combined billing is the aggregation of energy and coincident demand of multiple metering points before the application of rates, which is prohibited by GSR 5.20 except in certain cases. Staff Reply at 3. Master metering is the use of a single meter to measure energy consumption at multiple buildings or facilities. *Id.* By contrast, meter aggregation for net-metering customers is simply the administrative application of net excess kilowatt-hours to additional accounts. *Id.* According to Staff, such crediting to additional accounts would be an accounting function similar to the crediting of excess generation to the next billing period under the existing NMRs, and would affect only the kilowatt hour units of a customer's bill. *Id.* Given the distinct nature of meter aggregation, EAI, State Agencies, the AG, and Staff therefore recommend that, if the Commission authorizes meter aggregation, it should do so by amendment to the NMRs

rather than the GSRs. EAI at 7 (nevertheless, opposing meter aggregation); EAI Reply at 11; State Agency Reply at 10; AG at 3; Staff at 3.

Staff's proposal adds a definition of "net-metering customer" to the NMRs. This definition specifies that the net-metering customer must also be the owner of the net-metering facility, in conformity with AREDA's provision that "net-metering customer" means an owner of a net-metering facility." Staff at 4-5; *referencing* Ark. Code Annotated § 23-18-603(5).

SAG, AAEA, and Mr. Ball oppose restricting meter aggregation to situations in which the customer owns the net-metering facility. SAG Reply at 13; AAEA at 3; Ball at 4. SAG argues that the intent of AREDA is to promote net metering irrespective of facility ownership, and that many different types of financing and ownership arrangements are available in other states that allow meter aggregation. SAG Reply at 13; *see also*, Ball at 4.

EAI and SWEPCO agree with Staff that AREDA requires a net-metering customer to own the net-metering facilities. EAI Reply at 13-14; SWEPCO Reply at 9. EAI indicates that allowing net metering for third party owners is beyond the scope of AREDA. EAI Reply at 13-14.

Staff further recommends requiring that a customer's aggregated meters must be within the same utility service territory, and allowing customers to designate the order in which accounts are credited only once per year. Staff Reply at 5. No party opposes these recommendations.

Staff supports the strawman provision allowing a customer to aggregate meters across different rate classes, but maintains that adoption of this provision requires

statutory interpretation. *Id.* at 5. Staff acknowledges that, by establishing separate limitations on the size of residential and non-residential net-metering facilities, the statute may be interpreted to require that meters may only be aggregated within each customer class. Staff Legal Brief at 4-5. Staff, however, argues that it is more consistent with the statute's intent to allow net-metering customers to offset all or part of their requirements for electricity to interpret the net-metering facility size limitations merely as a limitation on the size of individual facilities, and to allow a customer to aggregate meters across classes. *Id.* at 5.

SWEPSCO and EAI disagree with Staff's proposal to allow aggregation of a customer's meters in different rate classes, arguing that this would be inconsistent with basic rate design principles which strictly separate residential and commercial rates, billing practices, and service parameters under the GSRs. SWEPSCO at 9-10; EAI Reply at 12-13. OG&E recommends that, if the Commission approves meter aggregation, a customer's aggregated meters should be restricted to the same class, rate schedule, and billing cycle. OG&E at 6 and OG&E Reply at 2. SAG also recommends limiting aggregated meters to the same rate class, as a means of avoiding potential cost shifting. SAG Reply at 4.

Staff's proposal eliminates the strawman provision which limits meter aggregation to meters on the customer's non-separate premises. Staff Reply at 9. Staff states that this provision does not promote the use of renewable energy and may limit customer opportunities to apply excess credits to additional accounts. *Id.* at 9-10.

The AG, SAG, AAEA, and William Ball agree with Staff that the rules should allow aggregation of meters on separate premises, in part because optimal siting is a key

consideration for the viability of renewable generation. AG at 3; State Agencies at 7; AAEA at 1, 3; Ball at 4. AAEA provides, as an illustration, the case of Rockmoore Public Water Authority (“PWA”) near Sulphur Rock, Arkansas (one of 200 similar water authorities in Arkansas) which has eleven separate, non-contiguous properties. AAEA at 2. AAEA provides spreadsheet model calculations which indicate that allowing meter aggregation across several of these properties would greatly enhance the economic viability of net metering for Rockmoore PWA. AAEA at 4-5 and Exhibit A.

EAI, the Electric Cooperatives, and SWEPCO favor restricting meter aggregation, if it is approved, to facilities located on a customer’s non-separate premises. EAI Reply at 11-12. EAI argues that the restriction is in keeping with AREDA’s finding that “[n]et 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.*” *Id.*, citing Ark. Code Ann. §23-18-602(a) (emphasis added). EAI suggests that allowing meter aggregation on separate premises would allow commercial customers with multiple facilities across the state—rather than small consumers—to garner subsidies from non-net metering customers. *Id.* at 12. EAI adds that other states that allow meter aggregation, such as Colorado, Nevada and Oregon, restrict net metering to non-separate premises. *Id.* The Electric Cooperatives and SWEPCO state that, without this restriction, meter aggregation constitutes retail wheeling. EC Reply at 3; SWEPCO Reply at 8. EAI also proposes that, if the Commission retains the non-separate premises restriction, the NMRs should use the same definition of “non-separate premises” as the GSRs, for consistency. EAI at 9.

SAG proposes that the Commission should allow both meter aggregation and combined billing of aggregated meters (such that billing would be based on the aggregated peak coincident demands of combined meters and on their aggregate energy demand). SAG Reply at 11 and 17-18. SAG states that combined billing is needed for larger customers who are billed based on separate demand and energy charges, because net-metering credits for the energy portion of a non-residential customer's bill will be insufficient economically to achieve the purpose of increasing net metering, and will not allow the customer to benefit properly from adding capacity to the utility system. *Id.* at 11-12. If the Commission does not adopt combined billing, however, SAG, is not opposed to Staff's meter aggregation proposal, with the exception that SAG opposes limiting meter aggregation to customer-owned facilities. SAG Reply at 13.

SAG proposes several further conditions on either meter aggregation or combined billing as a means of mitigating potential adverse ratepayer impacts. SAG at 5-7. These conditions include restricting combined meters to the same service territory, with the same customer ownership, and with the same delivery voltage, transformer ownership, and meter location. *Id.* at 5-7; SAG Reply at 16. Also, SAG proposes that the customer should reimburse the utility for the cost of Additional Facilities required to cover the cost of serving meters other than the billing meter, and pay a monthly fee to cover the cost of maintaining any additional facilities. SAG Reply at 16-17. SAG also recommends that, if the customer's rate class is of the declining block type, excess energy credits should be applied to the additional meters in the highest block (lowest unit cost) only. *Id.* at 18. SAG favors application of the 25 kW and 300 kW project size limits on a per-meter basis. *Id.* at 16 and 18.

The AG opposes the SAG combined billing proposal on the basis that it would allow customers to reduce their customer charges and take advantage of block rate structures without benefit to other customers and that it would weaken the combined billing prohibition in the GSRs. AG Reply at 3. The AG distinguishes between meter aggregation on the one hand, which the AG views as encouraging customer investment in generation for the benefit of all ratepayers and allowing customers to optimize siting of renewable generation, and on the other hand, combined billing, which would allow customers to avoid customer charges at the expense of other customers. *Id.* at 7.

SWEPCO, EAI and Staff also oppose the SAG combined billing proposal. SWEPCO Reply at 4; EAI Reply at 10-11 and 15; Staff Reply at 13. SWEPCO states that current rates are designed to recover costs based on individual metered non-coincident peak demand and not on combined customer coincident peak demand. SWEPCO Reply at 4. SWEPCO therefore views the SAG proposal as incompatible with current rate design. *Id.* SWEPCO also views SAG's proposal that customers would reimburse the utility for additional facilities costs as insufficient to cover all costs that would be caused by the proposal. *Id.* at 5. EAI agrees with SWEPCO that the costs that are shifted to non-net-metering customers under combined billing or meter aggregation for net metering go beyond the costs typically recovered through the customer service charge and that a fixed monthly charge would not address all of the uncompensated costs of a utility. EAI Reply at 10. EAI suggests instead a per-kW charge applied to the kW rating of the net-metering facility, or, in the alternative, crediting for the net-metering customer based upon the utility's avoided energy costs. *Id.* at 10-11.

EAI recommends that the Commission should address the issue of potential future increases in rate impacts and utility revenue erosion from expanded net metering now, while the issue is more manageable. EAI Reply at 8. EAI suggests development of a mechanism similar to Lost Contribution to Fixed Cost (“LCFC”) to apply to net-metering revenue erosion, and limitation of meter aggregation to entities that are mandated to use renewable energy or that rely on state or federal funding to do so. *Id.* at 9. EAI also suggests incorporation of limits adopted in other jurisdictions, such as aggregate limits on the MW or percentage of utility capacity met through meter aggregation, or Maryland’s limitation of meter aggregation to agricultural, non-profit, and municipal customers. *Id.* at 9-10.

EAI also recommends that, if the Commission adopts meter aggregation, it should limit the total capacity of net metering facilities for a customer with more than one net metering facility to 25 kW for residential facilities and 300 kW for non-residential facilities, rather than applying the net metering facility capacity limit at each meter. EAI Initial at 8. Staff states that this proposed limitation is not consistent with AREDA’s definition of “net metering” and also does not promote net metering. Staff Reply at 11.

OG&E suggests that net-metering customers should incur a larger fixed charge. OG&E at 4. OG&E also recommends that, if the Commission allows meter aggregation, it should open a docket to establish a requirement to allow recovery of all T&D costs and to require time-of-use-based pricing. OG&E at 6. OG&E and the Electric Cooperatives also indicate that avoided cost payments under the small power producer option

governed by the Commission's existing *Cogeneration Rules* are the appropriate method of recompensing small power producers without creating cross-subsidies. ECs at 4.

SWEPCO suggests that the most appropriate billing for net metering aggregation would be a net-metering tariff that includes functionalized charges based on generation service, transmission, distribution, customer service, and metering. SWEPCO at 6. SWEPCO also proposes that AREDA's customer-class-based limitations on the size of net metering facilities should be maintained in the aggregate, such that, for instance, if the net metering facility is comprised of solar panels that are attached to a residence, it should be limited to a 25 kW, even if other meters aggregated with it are of a different class. SWEPCO Initial at 6. Staff agrees with this SWEPCO suggestion that the meter to which the net-metering facility is attached should determine the applicable capacity limit. Staff Reply at 11.

SWEPCO also indicates that it could support meter aggregation if AREDA is amended to explicitly allow it, and if several other conditions are met. SWEPCO Initial at 7. These conditions include elimination of subsidies to net metering customers, retention of the 25 kW and 300 kW facility size limits, limitation of meter aggregation to the same rate schedule and premises, and allowance of utility recovery from net metering customers for the incremental cost of billing and utility system changes. *Id.* at 11.

OG&E recommends that a definition of "net metering credits" should be added to the NMRs, and that aggregated accounts should be placed on a time-differentiated energy tariff rate to ensure that excess production is credited against consumption within the same time-of-use. OG&E at 6. OG&E also recommends that the existing

NMRs should specify additional engineering and safety requirements. OG&E Initial at 7.

Staff states that further definition of “net metering credits” is unnecessary because the net metering meter aggregation rule should use the same definitions of “net excess generation” and “net excess generation credit” that are in AREDA and in the current NMRs. Staff Reply at 12. Staff opposes the proposal to require net metering customers to adopt time-of-use rates, on the basis that net metering customers should enjoy the same right as other customers to select a standard rate or a time-of-use rate. *Id.* Staff also opposes SWEPCO’s suggestion that utilities should create a new net-metering tariff including functionalized charges to protect other ratepayers from subsidizing net metering customers, because the Commission already decided in Docket No. 02-046-R that net metering is more appropriate for the size of generators involved. *Id.* Staff opposes adding further specific engineering and safety interconnection requirements to the NMRs, because the current NMRs ensure compliance with standards established by the Institute of Electrical and Electronics Engineers (“IEEE”) and Underwriters Laboratories (“UL”), and adequately address OG&E concern that the customer generator should use equipment compatible with the particular line segment of the utility. *Id.* Staff responds to utility suggestions that avoided cost payments under small power production tariffs are a more appropriate means of promoting distributed renewable generation by stating that these tariffs are not applicable because net metering is intended primarily to offset part or all of the net-metering customer’s requirement for electricity, not to establish a generation resource for the utility. Staff

Reply at 7. SAG also comments that, empirically, the small power production tariffs have failed to produce many customer-owned facilities. SAG Reply at 8.

Mr. Ball proposes to strike the strawman language providing that excess net metering credits expire at the end of a year. Ball at 5. Staff states that this provision is based on Ark. Code Ann. § 23-18-604(b)(5)(A) and cannot be changed through rulemaking. Staff Reply at 10.

#### Commission Proposed Rule

Pursuant to AREDA's findings that net metering is in the public interest, and based on party comments that meter aggregation will further the purposes of AREDA, promote distributed generation during periods of higher-than-average energy costs, and promote customer investment in capacity to meet system demand, the Commission promulgates for comment the attached NMR amendments proposed by Staff.<sup>4</sup>

In proposing this rule to better promote net metering, the Commission heeds the comments of the AG and Staff, who are charged in whole or in part with representing ratepayer interests, and who state that expansion of net metering through meter aggregation will not create significant adverse rate impacts, at least in the foreseeable future. Furthermore, AREDA, by its own terms, contemplates allocating the costs of net metering across the utility's entire customer base, unless such costs are proven to exceed system-wide benefits. The common agreement by all parties that net metering rate impacts are currently minimal, and the estimation by non-utility parties that foreseeable rate impacts are small, each support the conclusion that any existing or foreseeable cross-subsidies among classes cannot be determined in advance, and by rule, to be

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<sup>4</sup> The Commission also amends Staff's proposal to reflect the provisions of Act 1221 of the Regular Session of the 89<sup>th</sup> General Assembly.

unjust and that now is not the time to establish new requirements for net metering customers to use time-of-use rates, to develop rates differentiated by function as a condition of net metering, or to pay additional charges suggested by SAG or by utilities. If and when such proceedings may be required, AREDA's statutory restrictions on such charges must be satisfied. Similarly, further proceedings are not necessary at this time to add additional engineering or safety restrictions on net metering, because the issue of potential damage to the utility system caused by net metering facilities was addressed during the original adoption of the NMRs and again recently in Docket No. 12-001-R, and nothing in this proceedings expands the size or type of facilities allowed under the NMRs.

In promulgating this rule for comment, the Commission credits the Staff and utility view that AREDA restricts net metering to customer-owned facilities, and the Staff interpretation that AREDA allows a customer to aggregate meters in different customer classes. As the AG suggests, the number of cases and volume of generation represented by those customers for whom separate business and residential accounts are in the same name and for whom the premises are suitable for aggregated net metering is likely to be manageable. The Commission shares the view of Staff and the utilities that AREDA establishes a period for the expiration of net metering credits that cannot be extended by the Commission, and agrees that aggregated net metering does not constitute retail wheeling because AREDA's intent is for the customer to offset his or her own consumption, not for the customer to sell electricity to other parties.

The Commission proposes to allow aggregation of meters on separate premises. This proposal is based on the argument that the ability to site renewable generation at

the most advantageous location is essential to AREDA's purpose of promoting renewable energy, and that this core purpose should outweigh the difficulties that may be involved in developing administrative procedures to provide aggregate billing for net metering customers.

The Commission does not incorporate in the draft rule EAI's recommendation to formulate aggregate limits on a customer's net metering facilities by class, or to require other aggregate limitations on net metering that do not appear in the statute. The 25 kW and 300 kW facility size limitations in AREDA are limitations on individual facilities, not on aggregate customer investment in, ownership of, or interconnection of multiple renewable energy facilities. Also, at this time, given the track record of minimal net metering achievement in Arkansas so far, reasonable promotion of net metering, rather than further limitation, is the appropriate approach in order to fulfill the purposes of the Act.

With respect to EAI's proposal to develop mechanisms similar to the Lost Contribution to Fixed Cost ("LCFC") mechanism for recovery of a portion of utility revenues eroded by utility-funded EE programs, the Commission herein proposes rules for meter aggregation under the authority of AREDA, and not as part of an approved utility program for the promotion of energy conservation, pursuant to the ECEA.

The Commission declines to adopt SAG's combined billing proposal, heeding the concerns raised by the AG, Staff and the utilities that it might unreasonably erode fixed cost recovery from commercial customers. The Commission does not find that combined billing would necessarily violate AREDA, but rather that the record mitigates

against its adoption at this time, absent a more complete demonstration that it is merited, and that ratepayer and revenue concerns are reasonably addressed.

Accordingly, the Commission proposes to adopt the attached amendments to the Net Metering Rules. The Commission invites further comment or testimony by all parties on or before noon of May 31, 2013. A public hearing in this Docket is set for 9:30 AM on June 21, 2013 in Hearing Room No. 1 at the Commission's offices at 1000 Center St., Little Rock, AR.

BY ORDER OF THE COMMISSION,

This 15<sup>th</sup> day of May, 2013.

  
Colette D. Honorable, Chairman

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.

  
Olan W. Reeves, Commissioner

  
Elana C. Wills, Commissioner

  
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Kristi Rhude, Secretary of the Commission

Attachment 1

Proposed Revisions to the Net Metering Rules

**DEFINITIONS**

**Net-metering customer**

An owner of a net-metering facility.

**Rule 2.04. Billing for Net Metering**

C. If the kWhs generated by the net metering facility and fed back to the electric utility exceeds the kWhs supplied by the electric utility to the net metering customer during the applicable billing period, the utility shall credit the net-metering customer with any accumulated net excess generation in the next applicable billing period ~~month to month until the close of an annual billing cycle, at which time any net excess generation credit shall expire.~~

(1) Net excess generation shall first be credited to the net-metering customer's meter to which the net-metering facility is physically attached (designated meter).

(2) After application of subdivision (C)(1) and upon request of the net-metering customer pursuant to subsection (D), any remaining net excess generation shall be credited to one or more of the net-metering customer's meters (additional meters) in the rank order provided by the customer.

(3) Net excess generation shall be credited as described in subdivisions (C)(1) and (C)(2) during subsequent billing periods; net excess generation credit remaining in a net-metering customer's account at the close of an annual billing cycle, up to an amount equal to four (4) months' average usage during the annual billing cycle that is closing, shall be credited to the net-metering customer's account for use during the next annual billing cycle.

(4) Except as provided in subsection (C)(3) of this section, any net excess generation credit remaining in a net-metering customer's account at the close of an annual billing cycle shall expire.

D. Upon request from a net-metering customer an electric utility must apply net excess generation to the net-metering customer's additional meters provided that:

(1) The net-metering customer must give at least 30 days' notice to the utility.

(2) The additional meter(s) must be identified at the time of the request and must be in the net-metering customer's name, in the same utility service territory, and be used to measure only electricity used for the net-metering customer's requirements.

(3) In the event that more than one of the net-metering customer's meters is identified, the net-metering customer must designate the rank order for the additional meters to which excess kWhs are to be applied. The net-metering customer cannot designate the rank order more than once during the annual billing cycle.

(4) The net-metering customer's identified additional meters do not have to be used for the same class of service.

E. Any renewable energy credit created as a result of electricity supplied by a net-metering customer is the property of the net-metering customer that generated the renewable credit.