

ARKANSAS PUBLIC SERVICE COMMISSION 2013 DEC 16 A 11: 15

FILED

IN THE MATTER OF THE CONTINUATION,)
 EXPANSION, AND ENHANCEMENT OF)
 PUBLIC UTILITY ENERGY EFFICIENCY)
 PROGRAMS IN ARKANSAS)

DOCKET NO. 13-002-U
 ORDER NO. 12

ORDER

Order No. 7 in this docket directed the Parties Working Collaboratively (the "PWC")¹ to develop and submit on or before November 8, 2013, *inter alia*, a plan describing how the PWC would engage a facilitator(s) and other consultants to assist the PWC in developing a unified weatherization approach and weatherization program coordination and how the PWC will address standardization of core Commercial and Industrial ("C&I") Programs across fuels and utilities. On November 6, 2013, the PWC submitted confidential *Joint Comments in Response to Order No. 7 Concerning the Weatherization and C & I Collaboratives* ("Joint Comments").² Today's Order addresses the PWC's Joint Comments and recommendations regarding the Weatherization Collaborative and the C&I Collaborative. Other Commission directives set forth in Order No. 7 will be addressed by subsequent order.

¹ The PWC are comprised of the General Staff ("Staff") of the Arkansas Public Service Commission ("Commission"), the Arkansas Attorney General (the "AG"), Entergy Arkansas, Inc. ("EAI"), Southwestern Electric Power Company ("SWEPCO"), Oklahoma Gas and Electric Company ("OG&E"), The Empire District Electric Company ("Empire"), CenterPoint Energy Arkansas Gas ("CenterPoint"), SourceGas Arkansas, Inc. ("SourceGas"), Arkansas Oklahoma Gas Corporation ("AOG"), Arkansas Community Action Agencies Association ("ACAAA"), Arkansas Advanced Energy Association, Inc. ("AAEA"), Walmart Stores Arkansas LLC, Sierra Club, and Arkansas Electric Energy Consumers and Arkansas Gas Consumers ("AEEC/AGC").

² Attached to the Joint Comments are the *Final List of Qualifications and Scope of Work (Weatherization)* (Exhibit A), the *Independent Evaluation Monitor Response to the Parties Working Collaboratively's Request for Qualifications and Proposed Work Scope for the Weatherization Collaborative* (Exhibit B), the *IEM's Follow-Up RFQ Responses* (Exhibit C), and the *Final List of Qualifications and Scope of Work (C&I Standardization)* (Exhibit D).

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Positions of the Parties

In their Joint Comments, the PWC responded to that portion of Order No. 7 of this docket which directed that the utilities and Staff (and requested that the other PWC participants) submit a plan addressing: 1) standardization and coordination of weatherization programs and 2) enhanced Commercial and Industrial (“C&I”) program standardization. The Joint Comments address these requirements based upon discussions held by the Weatherization and C&I Collaborative working groups in webinars/teleconferences held during October 2013. In summary, the PWC make the following recommendations:

1. Weatherization Collaborative:
 - a. Approve the Independent Evaluation Monitor (“IEM”) as the facilitator for the Weatherization Collaborative³;
 - b. Approve the scope of work, as modified by the IEM, set forth in Exhibit B;
2. C&I Collaborative:
 - a. Approve the PWC’s recommended plan to engage a facilitator for the C&I Collaborative as set forth in Exhibit D;
 - b. Approve the facilitator’s scope of work set forth in Exhibit D;
3. PWC Process and Conduct of Meetings: Until a set of procedural guidelines is approved by the Commission following the filing of such

³ The Joint Comments note that ACAA, Audubon, and the Sierra Club take “vigorous exception” to the fact that the majority of the PWC “decided to make the threshold determination of whether the IEM team would be an appropriate facilitator without going through a final Request for Proposal (RFP) or Request for Qualification (RFQ) solicitation.” These parties voice their “dissatisfaction with the process used to recommend the selection of the facilitator for the PWC’s Weatherization Collaborative....” Joint Comments at 4-8 and 14, footnote 19. The Commission notes that notwithstanding the caveats documented in the comments, counsel for these three parties did join in signing the Joint Comments.

procedures by the PWC on January 10, 2014, approve the procedures outlined in the PWC's Joint Comments; and

4. Budgetary Considerations: Approve the recommendation to allow utility recovery of all costs associated with the Weatherization Collaborative and C&I Collaborative working groups, including but not limited to the facilitation costs, via each IOU's EECR Tariff, and authorize utilities to avoid considering such costs in their program and portfolio cost-effectiveness analyses.

The PWC request expedited consideration and approval of these recommendations so that the PWC may engage the necessary facilitation expertise and move forward with the collaborative processes in accordance with the procedural schedules and filing deadlines established by the Commission in Order No. 7.

Discussion and Ruling

The Joint Comments of the PWC indicate unanimity among the parties regarding the plan to engage a facilitator for the C&I Collaborative and the recommended scope of work for both the C&I and Weatherization collaboratives; the PWC process and conduct of meetings during the interim period before the Commission approves formal procedures for these activities; and the budgetary considerations regarding recovery of collaborative costs (including facilitation) via each utility's Energy Efficiency Cost Recovery ("EECR") tariff and authorizing utilities to avoid considering such costs in their program and portfolio cost-effectiveness analyses. The Joint Comments also contain the IEM's proposed scope of work and its "not-to-exceed" budget for the Weatherization Collaborative facilitation on a time and materials basis,

and an estimated range of costs for the C&I Collaborative facilitator. The dollar figures for these tasks were filed under the Commission's protective order. The Commission accepts the rationales advanced by the PWC on these issues and approves its recommendations, including the proposed IEM budget for the Weatherization Collaborative facilitation and the estimated range of costs for the C&I Collaborative facilitator for inclusion in the RFQ, as being reasonable and in the public interest. Joint Comments at 8-13.

The one area of disagreement among the PWC's members relates to the decision of a majority of the PWC to make the threshold determination and recommendation that the IEM team would be an appropriate facilitator without going through a formal Request for Proposal ("RFP") or Request for Qualification ("RFQ") solicitation. *Id.* at 4. According to the Joint Comments, this approach was collaboratively discussed on October 7, 2013, "with the IEM and members of the IEM's team participating," including discussion of a proposed plan developed by ACAA and circulated to the PWC on October 4, 2013. The ACAA proposal provided a listing of the desired qualifications in a facilitator and a listing of the tasks necessary to support the PWC's completion and filing of a recommendation with the Commission pursuant to Order No. 7. *Id.*

The Joint Comments state that all parties had the opportunity to revise and comment on ACAA's proposed plan and the final List of Qualifications and Scope of Work (Exhibit A), to which all parties subscribed. According to the Joint Comments, during meetings and discussions, ACAA, Audubon, and the Sierra Club fully participated, including the PWC's development of the qualifications and scope of work for the facilitator presented in Exhibit A. However, the Joint Comments note that

these same three parties “expressed a strong preference to issue a formal RFQ to provide the PWC and the Commission the opportunity to choose among qualified facilitators, including the IEM.” *Id.* at 6. These parties cited their concern, based on two submissions by the IEM, that the IEM does not have sufficient experience with federal Weatherization Assistance Program for Low-Income Persons (“WAP”) and regulations and the fact that the IEM lacks experience facilitating program design efforts. *Id.* at 7. The Joint Comments state that other PWC participants noted that several PWC participants, including ACAAA and the Arkansas Energy Office (“AEO”) do possess extensive experience in the weatherization field and would be relied upon to share such experience with the PWC during the collaborative process. Further, the Joint Comments report that several parties expressed disagreement with the assertions that the IEM does not have sufficient facilitation experience or expertise in the weatherization field, including expertise in the federal WAP. *Id.*

Furthermore, the Joint Comments state, the majority of the PWC argued that the IEM has effectively facilitated the development of the energy EE Technical Reference Manual (“TRM”) and its subsequent updates, although they note that ACAAA, Audubon, and the Sierra Club argue that this experience is related to program evaluation and not EE program design. Finally, the Joint Comments state that ACAAA, Audubon, and the Sierra Club expressed concern that the IEM is currently engaged as the independent evaluation monitor in Arkansas and that these duties, combined with its obligations in other states, might limit the IEM’s time and resources to commit to this project.

Following the meeting at which the above matters were discussed, the Joint Comments state that a majority of PWC participants expressed support for the use of the

IEM as the Weatherization Collaborative facilitator. The Joint Comments provide a series of reasons to justify the selection of the IEM as the facilitator without going through an RFP or RFQ process. These include the IEM's specific expertise and expertise in weatherization; the IEM's track record as a facilitator and familiarity with EE programs and procedures in Arkansas, the activities of the PWC, and the Commissions Orders and Rules governing EE in Arkansas; the fact that this familiarity with EE programs and processes would help keep the cost of the engagement lower; and that there is limited time between now and the April 1, 2014 deadline to submit the PWC's recommendation on weatherization to the Commission and that avoiding the 45 to 60-days required to go through a formal RFP or RFQ process and seek bids for a facilitator would provide more time for the PWC and the facilitator to apply to developing its April 1, 2014 filing.

Subsequent to the October 7, 2013 meeting the IEM submitted its *Response to the Parties Working Collaboratively's Request for Qualifications and Proposed Work Scope for the Weatherization Collaborative* ("IEM's Initial RFQ Response," Exhibit B to the Joint Comments, October 14, 2013).⁴ The PWC held a conference call on October 18, 2013, to discuss the IEM's Initial RFQ Response, which addresses a number of criteria of interest to the PWC and provides resumes of the IEM's proposed Weatherization Team and a table illustrating the qualifications and expertise relative to the requested criteria demonstrated by each Team member. *Id.* at 5.

During a teleconference on October 18, 2013, to discuss the IEM's response to the RFQ, the majority of the PWC participants "agreed that the IEM meets the requirements

⁴ The Commission notes that the IEM's *Initial RFQ Response* (Exhibit B) was submitted in response to Exhibit A, the *Final List of Qualifications and Scope of Work (Weatherization)*."

consistent with the provisions of Order No. 7” and indicated support for the IEM as the Weatherization Collaborative facilitator. *Id.* at 6. Due to the concerns of some PWC participants expressed during the October 18th meeting, Staff sent an additional request to the IEM, asking that it clarify the IEM team’s resource availability and the IEM’s experience with the Federal Weatherization Assistance Program. The IEM responded by email on October 22, 2013, attaching a supplemental memo providing additional information (“IEM’s Follow-Up RFQ Response”). *Id.* at 7-8. According to the Joint Comments, all PWC participants, including ACAA, Audubon, and the Sierra Club, fully participated in all discussions regarding the process for selecting a facilitator for the Weatherization Collaborative and all agreed upon the list of qualifications and scope of work set forth in Exhibit A. In addition, each PWC participant had the opportunity to ask questions, request information, provide information, and voice any concerns throughout all discussions. For all the reasons stated in the Joint Comments, the majority of the PWC participants recommend that the Commission approve the use of the IEM as the facilitator of the Weatherization Collaborative, while noting that ACAA, Audubon, and the Sierra Club “note their dissatisfaction with the process used to recommend the selection of the facilitator. . . .” *Id.* at 8.

Having considered the recommendation of the majority of the PWC to select the IEM as the facilitator for the Weatherization Collaborative and the objections of ACAA, Audubon, and the Sierra Club to the process used to make that recommendation, the Commission approves the recommendation. Given the magnitude of the task at hand between now and the filing deadline of April 1, 2014, the experience of the IEM and her familiarity with the Commission, the parties, and the issues, and the reasonable

assertion that making a threshold decision to utilize the facilitator services of the IEM will save both time and money, the Commission concludes that the rationales advanced for expanding the role of the IEM to include facilitation of the Weatherization Collaborative are persuasive. The recommendation is also consistent with the authorization of Order No. 7 that “[t]he IE, through a person on the IEM’s team with specific expertise in weatherization may serve as the weatherization facilitator, or the PWC may identify a person independent of all the parties and with expertise in the coordination and delivery of utility-funded and/or federally-funded weatherization services.” Order No. 7 at 63.

With respect to the C&I Collaborative, the Commission accepts the PWC’s recommended list of qualifications for the engagement of a facilitator and *The PWC Plan to Develop a Recommendation Regarding a Standardization of Core C&I Programs across Fuels and Utilities* (Exhibit D). Joint Comments at 9-11.

Likewise, for the period between now and the Commission’s adoption of more formal collaborative procedural guidelines following filings made by the PWC on or before January 10, 2014, the Commission accepts the recommendations of the PWC regarding the continued use of the existing procedures used by the PWC, including pre-meeting, meeting, and post-meeting activities and the documentation process and the sharing of these documents. The Commission also accepts the PWC’s recommendation that for the same interim period, where unanimous consensus is not reached by the collaborative, the collaborative may continue to use the PWC’s existing practice of documenting dissenting opinions in the applicable filing or through separate comments or testimony that may be filed by dissenting PWC participants. *Id.* at 11-12.

Finally, the Commission approves the PWC's recommendation to allow utility recovery of all costs associated with the Weatherization Collaborative and C&I Collaborative working groups, including but not limited to the facilitation costs, via each IOU's EECR Tariff, and authorizes the utilities to avoid considering such costs in their program and portfolio cost-effectiveness analyses. *Id.* at 12-13. The Commission directs the PWC to file in this docket as soon as possible but no later than noon on February 28, 2014, an estimate of the costs expected to be incurred for each collaborative in 2014 by category (e.g., facilitation expenses, expert consulting, travel, etc.) for Commission review and preliminary approval. The Commission further directs Staff to monitor and audit these costs prior to making a recommendation regarding their recovery through the EECR of the utilities.

Accordingly, the Commission directs as follows with respect to the four recommendations of the PWC:

1. Weatherization Collaborative:

- a. Approves the Independent Evaluation Monitor ("IEM") as the facilitator for the Weatherization Collaborative;
- b. Approves the scope of work set forth in Exhibit B (as modified by the IEM) to the PWC's Joint Comments and the IEM's proposed budget for facilitation as set forth in a redacted portion of the Joint Comments;

2. C&I Collaborative:

- a. Approves the recommended plan to engage a facilitator for the C&I Collaborative as set forth in Exhibit D;

- b. Approves the facilitator's scope of work set forth in Exhibit D and accepts as reasonable the estimated range of costs set forth in redacted portions of the Joint Comments;
3. PWC Process and Conduct of Meetings: Until a set of procedural guidelines is approved by the Commission following the filing of such procedures by the PWC on January 10, 2014, approves the procedures outlined in the PWC's Joint Comments; and
4. Budgetary Considerations: Approves, with the caveats stated above regarding reporting of estimates, monitoring, and auditing of expenses, the recommendation to allow utility recovery of all costs associated with the Weatherization Collaborative and C&I Collaborative working groups, including but not limited to the facilitation costs, via each IOU's EECR Tariff, and authorizes utilities to avoid considering such costs in their program and portfolio cost-effectiveness analyses.

BY ORDER OF THE COMMISSION,

This 11th day of December, 2013.

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

CM
Secretary of the Commission
Date 12/16/2013

Colette D. Honorable, Chairman

Olan W. Reeves, Commissioner

Elana C. Wills, Commissioner

Dallas W. Heltz,
Acting Secretary of the Commission