

**BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION**

IN THE MATTER OF THE CONTINUATION,)
EXPANSION, AND ENHANCEMENT OF) DOCKET NO. 13-002-U
PUBLIC UTILITY ENERGY EFFICIENCY)
PROGRAMS IN ARKANSAS)

**JOINT COMMENTS IN RESPONSE TO ORDER NO. 7
CONCERNING THE PROPOSED PWC PROCEDURAL GUIDELINES**

Come now General Staff (Staff) of the Arkansas Public Service Commission (Commission); the Consumer Utilities Rate Advocacy Division of the Arkansas Attorney General’s Office; Entergy Arkansas, Inc.; CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Arkansas Gas; Southwestern Electric Power Company; SourceGas Arkansas Inc. (f/k/a Arkansas Western Gas Company); Arkansas Oklahoma Gas Corporation; The Empire District Electric Company; Oklahoma Gas and Electric Company; Arkansas Community Action Agencies Association, Inc.(ACAAA) ; Arkansas Advanced Energy Association, Inc.; the National Audubon Society, Inc. (Audubon); and the Sierra Club (for the purposes of these comments, these entities will be collectively referred to as the Parties Working Collaboratively or the PWC), and for their Joint Comments, state as follows:

I. BACKGROUND

The PWC consist of a diverse group of stakeholders with a common interest in the successful development and implementation of energy efficiency (EE) programs serving the customers of investor-owned public utility companies in Arkansas. The

PWC develops and reports findings and recommendations to the Commission in accordance with Commission directives.

In Order No. 7 of this Docket, issued on September 9, 2013, the Commission directed that general meetings of the PWC should follow certain basic procedural guidelines to govern meetings and deliberations of the PWC, which must be submitted to the Commission for approval on or before noon on January 10, 2014. The Commission requested that such guidelines address the designation of a facilitator for meetings, notice and development of agendas, the timely provision of information and materials, and the manner in which decisions are made and recorded, including the recording of any dissenting opinions (pp. 62-63). These Joint Comments are provided in response to the Commission's directives in Order No. 7.

II. RECOMMENDED PWC PROCEDURAL GUIDELINES

To address the Commission's directives, the PWC developed procedural guidelines governing the conduct of their business, including scheduling of meetings, selection of a facilitator, meeting facilitation, decision process, and the roles of PWC participants. The PWC held a series of meeting to discuss and develop a proposal for filing with the Commission. Throughout the course of the collaborative process, modifications and refinements were made to the draft and alternate proposals were considered.

The purpose of the procedural guidelines is to formally document the processes and procedures that the PWC will follow in addressing issues. The procedures and process set forth in the attached guidelines are substantially consistent with the

procedures the Parties have followed in conducting meetings and workshops since the Commission's initial EE workshops in Docket No. 06-004-R, the proceeding in which the Commission first adopted the Rules for Conservation and Energy Efficiency Programs. The guidelines include PWC participant definitions, pre-meeting guidelines, meeting guidelines, post-meeting guidelines, roles and responsibilities of participants, and an illustrative PWC organizational structure. The PWC have reached complete consensus on all sections of the proposed procedural guidelines (attached hereto as Exhibit "A") with the exception of one issue in Section 1. The majority of the Parties support Exhibit A in its entirety. Three Parties developed an alternative proposal for Section 1, paragraphs 1.4 and 1.5 (attached hereto as Exhibit "B"). The sections of the guidelines are generally described below, including the one issue of non-agreement.

1. Parties Working Collaboratively Participants

Section 1 of the guidelines defines the PWC and a participant's status within the PWC and how each group participates in the process. This section defines four different groups. First is the Party or Parties, which refer to an official party to the applicable open EE docket as defined by the Rules of Practice and Procedures 1.01 (bb). Second are other interested persons or groups who are not Parties to the applicable open EE docket. Third are technical experts or advisors to the Parties. And the fourth and final group is the third party independent monitors, facilitators, or consultants retained by the PWC.

Section 1 also addresses the participation of technical experts, advisors, third party independent monitors, or consultants. Section 1 notes that one or more Parties

may request that such technical experts, advisors, third party independent monitors, or consultants be excluded from certain PWC discussions if one or more Parties identify potential conflicts of interest created by the participation of such entities. Unfortunately, the PWC are unable to reach complete consensus on the issue. Paragraphs 1.4 and 1.5 of the guidelines address participation of technical experts, advisors, third party independent monitors, or consultants and allow for Parties to the applicable open EE docket to request that a technical expert or advisor to the Parties or a third party independent monitor, facilitator, or consultant retained by the PWC be excluded from PWC discussions that may create a potential conflict of interest for such participants. All of the PWC support avoiding conflicts of interest, real or perceived, regarding the participation of any technical experts, advisors, third party independent monitors, or consultants in PWC processes. All of the PWC, with the exception of ACAA, Audubon, and the Sierra Club, propose that if the Parties to the applicable open EE docket are not able to reach complete consensus on whether to exclude such participants from the PWC discussions because of a potential conflict of interest, then the General Staff would make the final decision after consulting the Parties as is set forth in paragraphs 1.4 and 1.5 of Exhibit A attached hereto. This is the sole point of disagreement among the PWC regarding these guidelines.

ACAAA, Audubon, and the Sierra Club believe that the PWC should be very careful to avoid even the appearance of conflicts of interest in its technical consultants and advisors who might be participating in subsequent competitive bidding processes, as such conflicts would compromise the capacity of the consultants to perform their contractual obligation to the PWC to provide impartial expert advice and could

undermine the competitive procurement process. Also, ACAAA, Audubon, and the Sierra Club contend that allowing the General Staff to make a final determination as to the existence of a conflict, or the participation of an advisor notwithstanding such a conflict in the absence of complete consensus is inconsistent with the general procedure of consensus decision-making described in paragraph 3.11 of the proposed guidelines. ACAAA, Audubon, and the Sierra Club therefore propose to automatically make any participants in PWC discussions directly resulting in an RFP or contract ineligible for such RFP or contract. The language proposed by ACAAA, Audubon, and Sierra Club for paragraphs 1.4 and 1.5 is provided in Exhibit B attached hereto.

The majority of the PWC do not want to create an environment that would create uncertainty for experts participating in PWC discussions because of a perceived conflict of interest. The majority of the PWC find that the knowledge these experts provide the PWC is very valuable and including such restrictions would limit the valuable insight that these experts can provide, but recognize that, in certain circumstances, it may be appropriate to exclude potential participants because of conflicts of interest. At this point, however, the PWC has neither defined what should qualify as a potential "conflict of interest" or how any such exclusion should be applied to parties who may have such potential conflicts. In addition, the majority of the PWC recognize that paragraphs 1.4 and 1.5 specifically state that such experts are not able to vote on any issues before the PWC that require a decision, a point that goes to the materiality of their participation in PWC discussions. The proposed language reflects the efforts of the Parties who support paragraphs 1.4 and 1.5 of Exhibit A to address the concerns of ACAAA, Audubon, and Sierra Club on this issue. Under that proposal, if consensus on exclusion

is not possible, then the nature of the work before the PWC requires an expeditious means of resolving such disputes. Finally, the majority of the PWC believes that the General Staff is in the best position to render a decision consistent with the need for an informed, expeditious decision with as little bias as reasonably possible. If the participation of such experts, advisors, facilitators, or consultants creates a conflict of interest that would affect future activities, the Parties can address those issues when making future decisions pursuant to the provisions of the guidelines, including paragraph 3.11 of the guidelines.

The provisions of paragraphs 1.4 and 1.5 provide an adequate and appropriate framework for the participation of experts, advisors, facilitators, or consultants. Paragraphs 1.4 and 1.5 address the participation of experts, advisors, facilitators, or consultants in PWC meetings and do not address the decision-making process of the PWC. Those paragraphs are separate and distinct from paragraph 3.11 that address the PWC decision-making procedures. For all the reasons stated herein, the majority of the PWC participants recommend the Commission approve paragraphs 1.4 and 1.5 of the PWC proposed procedural guidelines as shown in Exhibit A.

2. Pre-Meeting Activities

Section 2 outlines how all pre-meeting activities of the PWC will be conducted, including scheduling of in-person and telephone conference calls, the selection of the facilitator, and the development of meeting agendas. In addition, this section describes how the PWC maintains its communication list. As outlined in paragraph 2.1.1, Staff maintains a current list of all Parties and other PWC participants that wish to be notified

of PWC meetings. This distribution list must be used by all participants when communicating PWC business. The distribution list is limited to four contacts for each participant, and those participants are responsible for notifying other individuals representing the participant as the participant deems necessary. The limit of four contacts is used to help Staff maintain a manageable distribution list.

3. Meeting Activities

Section 3 outlines how all PWC meetings are to be generally conducted. This includes guidelines for meeting minutes, the requirement for a dial-in conference number and/or a web-based presentation, and how the facilitator should conduct the flow of the meeting. In addition, Section 3.11 outlines the decision making process that the Parties will follow when developing recommendations for the Commission. This includes the goal of reaching complete consensus on each issue and how to proceed when the Parties are unable to reach complete consensus.

4. Post-Meeting Activities

Section 4 outlines the responsibilities of the facilitator after each meeting. The responsibilities include providing meeting minutes, following up on action items and monitoring the progress of any further actions assigned to PWC participants.

5. Roles and Responsibilities

Section 5 outlines certain roles and responsibilities for PWC participants including the General Staff, Parties to the applicable EE docket, facilitators, program

administrators/technical experts/advisors to the Parties, EM&V contractors, and other non-party PWC participants.

III. SUMMARY OF RECOMMENDATIONS

These Joint Comments address the requirements related to the procedural guidelines that govern all PWC activities as directed in Order No. 7 and the PWC recommend that the Commission approve the procedural guidelines set forth in Exhibit A with the exception of paragraphs 1.4 and 1.5. Regarding paragraphs 1.4 and 1.5, the majority of the PWC recommend that the Commission approve paragraphs presented in Exhibit A, while ACAA, Audubon, and Sierra Club recommend that the Commission approve the paragraphs presented in Exhibit B.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on all parties of record by electronic mail via the Electronic Filing System on this 10th day of January, 2014.

/s/ Fran C. Hickman
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EXHIBIT A:

PWC Proposed Procedural Guidelines

PARTIES WORKING COLLABORATIVELY (PWC) PROPOSED PROCEDURAL GUIDELINES

Preamble

The Parties Working Collaboratively (PWC) develops and reports findings and recommendations to the Arkansas Public Service Commission (Commission) in accordance with Commission directives. In order to promote transparency and effective collaboration the PWC adopt the following Procedural Guidelines.

1 Parties Working Collaboratively Participants

- 1.1 The PWC are a collaborative working group that include parties to the applicable open energy efficiency (EE) dockets, whether the applicable open EE docket is generic or company specific, and other interested persons or groups who are not parties. The PWC was initiated to address a number of EE program related issues in various dockets. The PWC strives to arrive at consensus decisions on issues presented to it by the Commission, to the greatest extent possible, in a collaborative manner. A participant's status is determined by its role in the applicable open EE docket in which the PWC is working at the time. A participant's role may change depending on whether the participant is an official party to the applicable open EE docket upon which the PWC is working.
- 1.2 Party or Parties refers to an official party to the applicable open EE docket as defined by the Rules of Practice and Procedures 1.01 (bb). Parties may attend and participate in PWC meetings. Parties to the applicable EE docket are able to fully participate in PWC discussions and are permitted to vote on issues before the PWC that require a decision. Parties to the EE docket are the only PWC participants that are permitted to vote on matters before the PWC that require a decision.
- 1.3 Other interested persons or groups who are not Parties to the applicable open EE docket may attend and participate in PWC meetings. Such non-party participants are not permitted to vote on any issues before the PWC that require a decision.
- 1.4 Technical experts or advisors to the Parties to the applicable open EE docket may attend and participate in PWC meetings. Such technical experts or advisors are not permitted to vote on issues before the PWC that require a decision. One or more of the Parties to the applicable open EE docket may request that technical experts or advisors to the Parties be excluded from PWC discussions that may affect those entities or create a potential conflict of interest for such technical experts or advisors. If the Parties to the applicable open EE docket are not able to reach complete consensus on whether to exclude such technical experts or advisors from the PWC discussions because of a potential conflict of interest, General Staff will make the final decision after consulting the Parties.
- 1.5 Third party independent monitors, facilitators, or consultants retained by the PWC may attend and participate in PWC meetings. Such third party independent monitors, facilitators, or consultants retained by the PWC are not permitted to vote on issues before the PWC that require a decision. One or more of the Parties to the applicable open EE docket may request that such third party independent monitors, facilitators, or consultants be excluded from PWC discussions that may affect those entities or create a potential conflict of interest for such third party independent monitors, facilitators, or consultants. If the Parties to the applicable open EE docket are not able to reach complete consensus on whether to exclude such third party independent monitors, facilitator, or consultants from

the PWC discussions because of a potential conflict of interest, General Staff will make the final decision after consulting the Parties.

2 Pre-Meeting Activities

2.1 Procedure for Scheduling Meetings

The Parties and other PWC meeting participants have established the following procedural guidelines to facilitate scheduling of both in-person and telephone conference calls. A facilitator will lead general meetings of the PWC. The meeting facilitator (e.g., Staff or the IEM) shall send out a notice of possible meeting dates during a specific time period, along with a link to an online group scheduling software tool. This tool will allow all meeting invitees to indicate their availability for a meeting for all potential meeting dates. The meeting time and date that is most convenient to the largest number of PWC meeting participants will be selected. Each PWC meeting participant¹ will receive one vote in determining meeting times and dates.

- 2.1.1 Staff will maintain a current list of Parties and other PWC meeting participants that wish to be notified of every PWC meeting. All participants will use the PWC distribution list, at a minimum, to address all formal communications concerning PWC business and transmission of documents for review. The distribution list is limited to four contacts per participant. The four designated contacts for each participant are responsible for notifying other individuals representing the participant as the participant deems necessary.
- 2.1.2 The facilitator will either be General Staff or another PWC participant who has been designated by the PWC or the Commission to serve in that capacity.
- 2.1.3 The facilitator shall send meeting notices out at least two weeks in advance, when feasible. However, there may be occasions when shorter timeframes are required due to the deadlines to complete particular tasks.
- 2.1.4 The facilitator shall send out an email confirming the meeting time, date, location, and providing dial-in instructions to the Parties and other PWC meeting participants.

2.2 Meeting Agenda

The meeting facilitator will assume responsibility of developing a draft agenda for the upcoming meeting and send it out for review and comment to all Parties and other PWC meeting participants in advance of the meeting.

- 2.2.1 The facilitator shall provide the Parties and other PWC meeting participants a draft agenda no later than one week in advance of the meeting, except when the deadlines require shorter time periods.
- 2.2.2 The draft agenda will describe the meeting's goals and objectives, lists the order of business and provide a recommended time limit for each discussion topic.
- 2.2.3 Comments to the draft agenda are required back from the Parties and other PWC meeting participants within three days of the scheduled meeting.
- 2.2.4 The facilitator shall send out the final meeting agenda and any presentation materials to the Parties and other PWC meeting participants at least one day prior to the meeting. Documents that must be reviewed prior to the meeting will be distributed no fewer than three working days prior to the meeting, except when the deadlines require shorter time periods.

¹ Participant is the organization or group and not the individual attendees participating on behalf of the participant.

3 Meeting Activities

- 3.1 The facilitator shall make a reasonable effort to start and end each meeting on time.
- 3.2 The facilitator shall designate an individual(s) to take meeting minutes. For telephone calls, these meetings may be recorded to ensure that all comments are recorded to accurately reflect the meeting outcomes.
- 3.3 The facilitator shall take roll of all attendees and their participant organizations. For in-person meetings, the facilitator shall circulate a sign-in sheet to ensure that all attendees' contact details are accurately reflected in the meeting minutes.
- 3.4 The facilitator shall manage the meeting following the proposed agenda. First, the facilitator shall review the agenda; then the facilitator shall facilitate the meeting in reasonable accordance with the agenda and reasonable time limits.
- 3.5 All meetings should include a dial-in conference call number and/or a web-based presentation format so all meeting attendees can fully participate.
- 3.6 The facilitator should actively encourage discussion from all attendees to ensure active participation with the group. This may include soliciting input from the non-party PWC participants. All attendees will be afforded the opportunity to offer input, ask questions, request additional information, and otherwise fully participate in the meeting.
- 3.7 The facilitator will maintain decorum by ensuring that the attendees do not talk over each other or otherwise make it difficult for those attending on the telephone to follow along in the discussions.
- 3.8 The facilitator shall identify action items that require additional follow up as they arise during the course of the discussions.
- 3.9 The facilitator also identifies issues that may be beyond the scope of the current discussion, notes them for the minutes, and includes them in subsequent agendas.
- 3.10 At the end of each presentation topic, the facilitator shall poll the group to ensure that all Parties and other PWC participants have had an opportunity to provide input. While 100% consensus is the goal, all opinions expressed by the attendees will be reflected in the meeting minutes.
- 3.11 Decision Making Process
 - 3.11.1 The PWC will strive to achieve the highest level of consensus possible on every decision. There should be a concerted effort to work toward a decision with which all Parties agree.
 - 3.11.2 If one or more Parties require more time or information to form an opinion, then the PWC may table the matter and discussion for a subsequent meeting. However, all future discussions should be maintained within a reasonable time constraint.
 - 3.11.3 All Parties and other PWC participants should make good faith effort to present constructive proposals that address the interests of all PWC participants and give due consideration to proposed modifications and alternatives that will move the group closer to a consensus position.
 - 3.11.4 Consensus will be determined by a vote. The Parties to the applicable open EE docket are the only PWC participants that are permitted to vote on matters before the PWC related to that applicable open EE docket that requires a decision. Each Party to the applicable open EE docket receives one vote. If complete consensus among the Parties is achieved on a particular topic that requires a final decision, all Parties agree to

support the issue and/or join in a filing on behalf of the PWC as necessary.

- 3.11.5 The PWC, under the guidance of the facilitator, will determine the assignment of responsibilities to develop and present proposals and draft documents for consideration after discussion of the scope and purpose of the proposal. If the PWC have not reached complete consensus on the substance of the proposal, then either the proposal must recognize the points for disagreement, pending subsequent resolution, or alternative proposals must be presented for consideration.
- 3.11.6 In the event that the PWC cannot achieve complete consensus, the PWC will make a concerted effort to identify an alternative that is acceptable to all Parties. The facilitator may solicit the participation of a subset of PWC participants who represent conflicting positions to jointly develop an alternative for presentation to the PWC.
- 3.11.7 If the Parties, after a good faith effort, are unable to reach complete consensus, the Parties will present the disputed issue or issues to the Commission for resolution. The Parties may present the disputed issues to the Commission in joint filings or in separate filings.
- 3.11.8 To the greatest extent practicable, the Parties should strive to present their recommendations to the Commission in a single joint filing and to keep the number of separate, individual Party filings before the Commission to a reasonable minimum, unless otherwise directed by the Commission.

4 Post-Meeting Activities

- 4.1 The facilitator assumes responsibility of the meeting minutes and, if possible, within three days of the meeting, forward the minutes to all Parties and other PWC meeting participants for review and comment. The final approved meeting minutes shall be sent electronically to the Parties and other PWC meeting participants. Staff will maintain a record of all meeting minutes. In the event of a disagreement over the contents of the minutes, that disagreement shall be noted.
- 4.2 The facilitator shall follow up on any action items identified in the meeting, including contacting specific meeting attendees for clarification, researching questions that may have arisen during the discussion, and addressing any other issues as appropriate. The resolution of the action items is reflected in subsequent meeting agendas.
- 4.3 The facilitator shall send all Parties and other PWC meeting participants copies of any presentations, materials, or any other relevant information within three business days of the meeting.
- 4.4 The facilitator shall monitor the progress of assignments made to meeting participants and provides timely updates to the Parties and other PWC meeting participants. These activities may include sending out copies of draft documents for the Parties and other PWC meeting participants to review and comment on electronically in order to meet task deadlines.
- 4.5 The facilitator may meet with individual Parties or other PWC meeting participants to clarify issues discussed during a meeting. The outcome of these discussions should be included in the next meeting's agenda.

5 Roles and Responsibilities

The PWC has also developed the following descriptions of the roles and responsibilities for all Parties and other PWC participants.

- **General Staff**
 - Provides general leadership to the PWC activities
 - Serves as the facilitator or coordinates with the facilitator to ensure that the Pre-Meeting Activities; Meeting Activities; and Post-Meeting Activities are properly and timely completed
 - Coordinates and manages the activities of selected third party independent monitors, facilitators, or consultants retained by the PWC
 - Ensures coordination between facilitators and the Parties and other PWC meeting participants
 - Works with the Parties and other PWC meeting participants to identify specific issues; needs; concerns; and other matters that need to be discussed by the PWC
 - Provide feedback and advice on proposed actions as developed by the Parties and other PWC meeting participants
 - Offer suggestions and assistance as appropriate to bring matters to resolution
 - Develop supporting testimony as appropriate
 - Oversees the filing of any testimony from facilitators and outside experts to support the PWC's recommendations
 - Maintains record of meeting minutes
 - Works cooperatively with the Parties and other PWC meeting participants to achieve consensus to the greatest extent practicable on issues discussed by the PWC
 - Maintains the PWC distribution list of all Parties and other PWC participants
- **Parties to the Applicable EE Docket**
 - Must be a party to the applicable docket as defined by RPP 1.01 (bb)
 - Identify specific issues; needs; concerns; and other matters that need to be discussed by the PWC
 - Provide feedback and advice on proposed actions as developed by the Parties and other PWC participants
 - Offer suggestions and assistance as appropriate to bring matters to resolution
 - Provide technical expertise and input as appropriate to inform the PWC
 - Give feedback on draft materials as appropriate
 - Develop supporting testimony or other filings as required
- **Facilitator**
 - Ensures that the proposed activities of the PWC conform to industry "best practices" to the greatest extent practicable
 - Provides guidance and insight regarding critical issues facing the PWC
 - Facilitates the discussion among the Parties and other PWC meeting participants and coordinates the Pre-Meeting Activities; Meeting Activities; and Post-Meeting Activities as described above
 - Consolidates comments received on the draft materials and shares revised materials with the Parties and other PWC meeting participants in a timely manner
 - Works towards a positive resolution of all issues related to its assigned work scope
 - Works cooperatively with the Parties and other PWC meeting participants to achieve consensus to the greatest extent practicable on issues discussed by the PWC

- **Program Administrators/Technical Experts/Advisors to the Parties**
 - Provide technical expertise and input as appropriate to inform the PWC
 - Give feedback on draft materials as appropriate
 - Participate in formal discussion when needed and appropriate
- **EM&V Contractors (Technical Experts/Advisors to the Parties)**
 - Perform program evaluation – includes statewide market assessment and baseline studies, savings impact studies (to measure the change in energy and / or demand use attributed to EE), and other EE program evaluation activities
 - Verify annual energy and capacity savings claims of each program and portfolio
 - Participate in formal discussion when needed, especially regarding best practices in other jurisdictions
- **Other Non-Party PWC Participants**
 - Attend PWC meetings
 - Participate in discussions
 - Provide information to the Parties and other PWC meeting participants

PWC Organizational Structure

With Commission Order No. 7 in Docket No. 13-002-U, the PWC will develop specialized working groups that will focus on specific topics. The proposed structure for such PWC working groups is illustrated below.

Illustrative PWC Organizational Chart

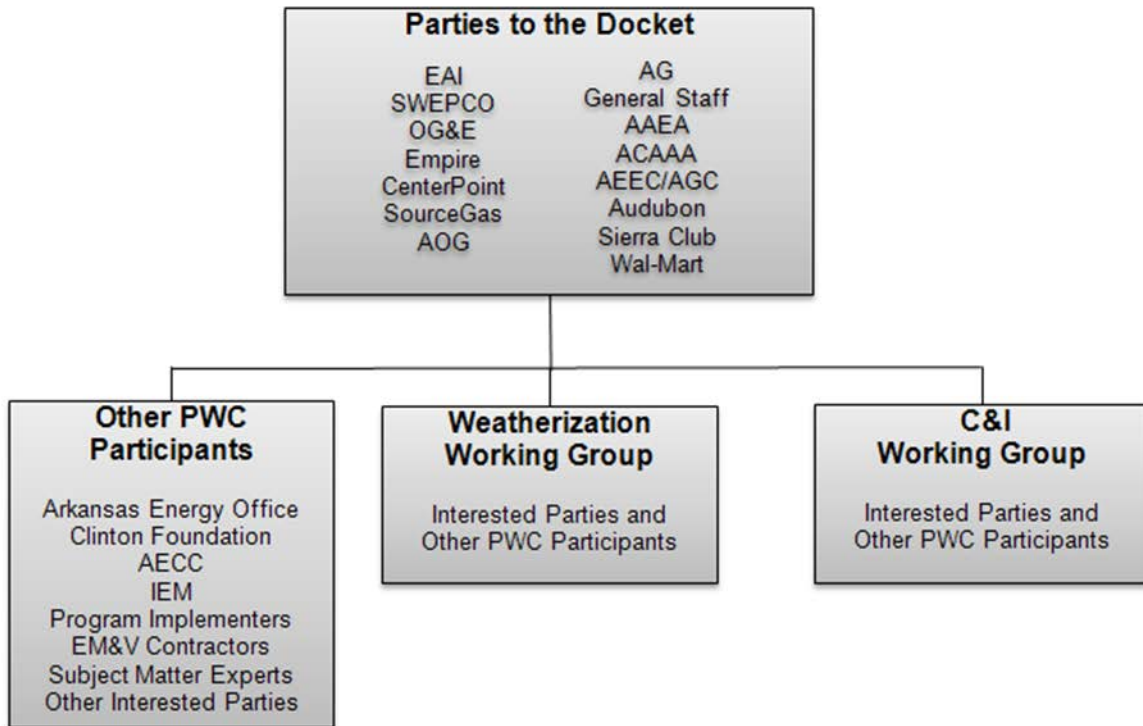


EXHIBIT B:

Conflict of Interest Resolution Language Proposed by

ACAAA, Audubon and Sierra Club

Proposed alternative language:

- 1.4 Technical experts or advisors to the Parties to the applicable open EE docket may attend and participate in PWC meetings. Such technical experts or advisors are not permitted to vote on issues before the PWC that require a decision. If such technical experts or advisors attends and participates in a PWC meeting on a particular issue resulting in a subsequent RFP or contract, that technical expert or advisor will not be eligible to bid on or accept such contract.
- 1.5 Third party independent monitors, facilitators, or consultants retained by the PWC may attend and participate in PWC meetings. Such third party independent monitors, facilitators, or consultants retained by the PWC are not permitted to vote on issues before the PWC that require a decision. If such third party independent monitor, facilitator or consultant attends and participates in a PWC meeting on a particular issue resulting in a subsequent RFP or contract, that third party independent monitor, facilitator, or consultant will not be eligible to bid on or accept such contract.