

ARK. PUB. SERVICE COM. &
SECRETARY OF COMM.
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ARKANSAS PUBLIC SERVICE COMMISSION 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. 8

ORDER

On August 9, 2013, the Arkansas Energy Office (“AEO”) filed a Petition to Intervene (“Petition”) as a party in this proceeding pursuant to Rule 3.04 of the Arkansas Public Service Commission’s (“Commission’s”) *Rules of Practice and Procedure* (“RPPs”). Following the filing of procedural responses to the Petition by the General Staff (“Staff”) of the Commission and Entergy Arkansas, Inc., on August 12 and 19, 2013, respectively, the Commission issued Order No. 6 on August 29, 2013, ruling that in accordance with Rule 3.04(b)(1) of the Commission’s *Rules of Practice and Procedure* (“Rules”), AEO does not fall within the ambit of Order No. 1’s provision that parties to Docket No. 07-083-TF or any of the other Energy Efficiency (“EE”) TF dockets would automatically be made parties to this Docket if they filed comments in response to Order No. 1 in this docket. The Commission directed Staff and EAI to respond to the merits of AEO’s Petition to Intervene on or before noon on September 13, 2013. Pending these filings, the Commission declared that a ruling on AEO’s pending Petition remained under advisement. On September 12 and 13, 2013, respectively, EAI and Staff filed Responses to the AEO Petition.

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Positions of the Parties

AEO's position in support of its Petition was set forth by the Commission in Order No. 6, which directed Staff and EAI to respond to the merits of the Petition.

EAI's Response pursuant to Order No. 6 states that there is currently no procedural schedule in this docket setting out additional actions for the parties to take. Nonetheless, EAI acknowledges that the Commission may schedule additional actions, including a hearing, and that although Order No. 6 recognized that the comment period originally established had expired, in light of the issuance of Order No. 7 on September 9, 2013, there is uncertainty as to whether additional written comments will be scheduled. EAI states that it perceives the following primary issue presented by AEO's Petition: Does the AEO Petition sufficiently set out an interest in this proceeding to be protected by AEO's intervention as a full party, or in the alternative, by intervention in its role as administrator of the Energy Efficiency Arkansas ("EEA") Program implemented in Docket No. 07-083-TF? EAI Response at 2.

EAI observes that AEO does not suggest what actions it might take in this proceeding to protect its interest if it were allowed to intervene, noting that AEO primarily relies on four duties assigned to it in the enabling legislation that created AEO, the Arkansas Energy Reorganization and Policy Act of 1981 ("AERPA"), Act 7 of 1981, Ark. Code Ann. § 15-10-201 *et seq.* EAI further states that AEO fails to tie the four duties to the subject matter of this proceeding or explain how those statutory duties cannot be fulfilled without intervenor status. *Id.* at 3.

With respect to the first duty – coordinating and planning the execution of comprehensive energy conservation programs (Ark. Code Ann. § 15-10-202(5)) – EAI

observes that, aside from its role as administrator of the EEA Program, AEO has not been assigned by statute, by Commission order, or by public utilities any role related to coordinating and planning the energy efficiency programs undertaken by public utilities. Thus, EAI asserts, the first duty cited does not justify intervention as a full party with interests to protect in this docket. EAI further notes that although the first duty may relate generically to administering the EEA Program, such program and its administration are not issues in this docket. *Id.*

With regard to the second duty asserted by AEO (proposing executive and legislative measures on energy-related matters (Ark. Code Ann. § 15-10-205(a)(5))), EAI notes that that duty does not include proposing regulatory measures such as those considered in proceedings at the Commission. Further, EAI states, proposing executive and legislative measures is not an interest to be protected by AEO's intervention in this docket. *Id.* at 3-4

EAI states that the third asserted duty, EAI states – monitoring and evaluating proposed laws, policies, regulations, and orders of state and federal governments in energy matters – (Ark. Code Ann. 15-10-205(a)(7)) can be performed without AEO's intervention in this docket, and intervention in this docket is not essential to these duties. *Id.* at 4.

EAI states that the fourth duty – advising the governor and legislature on energy matters – (Ark. Code Ann. § 15-10-204) also does not require intervention in this docket. *Id.* In sum, EAI argues, no provision of the AERPA either establishes a duty for, or authorizes, AEO to make regulatory proposals to a state or federal regulatory body on energy matters. In support of this position, EAI contrasts the enabling

legislation for the predecessor agency of AEO, the Arkansas Department of Energy (“ADOE”), Act 255 of 1979 of the Arkansas General Assembly, which in Section 3(c) established a policy of promoting the efficient use of energy and an energy delivery system for the state that stressed the use of renewable energy. To do that, EAI notes that under Sections 4(B) (1) (g) and (h) of Act 255, respectively, ADOE was assigned duties and responsibilities, including “[p]roposing executive, legislative and **regulatory** measures on energy related matters,” and providing **expert testimony** before state and federal **regulatory** bodies in matters related to energy, as needed.” (Emphasis EAI’s). Further, EAI points out, Section 4(B) (2) (a) of Act 255 granted ADOE the authority to “provide **expert testimony** before state and federal **regulatory** bodies in energy matters relevant to Arkansas.” *Id.*, footnote 9. EAI adds that such provisions for proposing regulatory measures and providing expert testimony in regulatory proceedings are not found in the enabling legislation for AEO, noting that the ADOE legislation was repealed when AEO was created by Act 7 of 1981.

EAI states that neither the Commission by order in this docket nor the parties through their filed comments have addressed any review of, or changes to, the EEA Program and its administration, adding that if AEO has reasons to believe that its intervention in this docket at this stage, and in light of Order No. 7, is important to its role in administering the EEA Program, then it would be helpful if AEO presented those reasons. Absent those reasons, EAI argues that the Petition at this time does not sufficiently set out an interest in this proceeding to be protected by AEO’s intervention as a full party, or intervention in its role as administrator of the EEA Program. *Id.* at 5.

EAI concludes its Response by emphasizing that it values the role of AEO in administering the EEA Program, adding that its response to the Petition in this docket based on the information AEO has provided is not necessarily an indication of the Company's future positions on whether AEO may be a proper intervening party in other proceedings before the Commission. *Id.*

Staff's Response also recites the four duties argued by AEO as the basis for its intervention. Like EAI, Staff argues that AEO is not required to intervene in this proceeding to exercise the four powers and duties cited in the Petition. Staff Response at 2. In fact, Staff asserts, AEO has been performing its functions to date in this and other dockets without the necessity of intervenor status. Staff argues that AEO's powers and duties pursuant to AERPA do not constitute a basis for intervention pursuant to Rules 3.04(a) and (b) of the RPPs and that intervenor status is not necessary for AEO to carry out its legislative duties. *Id.* Like EAI, Staff also cites the differences in the enabling legislation of AEO's predecessor, ADOE, which under Act 255 of 1979 was also given specific duties and responsibilities, including the provision of expert testimony before state and federal regulatory bodies and the authority to provide testimony in energy matters relevant to Arkansas. Staff notes that when AEO was created, these duties, responsibilities, and authority of the office "were deleted or expressly curtailed in the legislative mandate." *Id.* Staff notes that providing expert testimony is not a duty or responsibility of AEO; instead, AEO is merely authorized to provide comments before state and federal bodies in energy matters. Given this legislative history, Staff states, AERPA does not grant AEO a statutory right to participate as a party or intervenor in

Commission proceedings and should not be granted intervenor status in this docket based on the provisions of AERPA. *Id.* at 2-3.

In response to AEO's assertion that it must coordinate the planning and execution of comprehensive energy conservation programs, Staff notes that this not a specific power or duty of AEO granted by AERPA under § 15-10-204 or -205 but a general declaration of legislative policy in Ark. Code Ann. § 15-10-201 [sic § 15-10-202]. Staff states that the powers and duties actually delegated to by Ark. Code Ann. § 15-10-205 have a much narrower focus on specific energy matters. *Id.* at 3. Staff thus argues that the general declaration of policy in Ark. Code Ann. § 15-10-201 [sic § 15-10-202] should be interpreted as limited by the specific statutory grants of powers and duties in Ark. Code Ann. § 15-10-205, citing *Ozark Gas Pipeline Corporation v. Arkansas Public Service Commission*, 342 Ark. 591, 602, 29 S.W.3d 730, 736 (2000) (stating that "[t]he rule is well settled that a general statute must yield when there is a specific statute involved the particular matter"). *Id.*

Furthermore, Staff states, even if this coordination is considered a duty of AEO, intervention is not required to fulfill this duty as is alleged in AEO's Petition. According to Staff, intervention does not provide AEO with any ability to coordinate programs that it does not already possess. *Id.* In addition, Staff notes that through the Parties Working Collaboratively ("PWC") process, the AEO has the ability to directly participate in discussions regarding energy efficiency programs. Observing that AEO has been an active participant in the PWC for several years, Staff states that through those discussions, the PWC are able to develop, evaluate, modify, improve, promote, and formulate recommendations regarding energy efficiency programs in Arkansas. *Id.*

With respect to AEO's assertion that it must propose executive and legislative measures on energy-related matters, Staff responds that intervenor status in this docket does not affect AEO's ability to propose such measures, which it may continue to propose to the Governor or the General Assembly. In addition, Staff notes, AEO may continue to participate in the PWC and may offer public comments for the Commission's consideration, as do other state agencies without intervenor status. *Id.* at 4.

Staff also states that intervenor status in this docket does not affect AEO's ability to monitor and evaluate existing and proposed actions, laws, policies, regulations and orders of the state and federal governments in energy matters relevant to Arkansas, adding that AEO has always been provided that opportunity and that AEO has monitored and evaluated issues before the PWC and has provided input in that process without the necessity of becoming an intervenor in that or any other docket. *Id.*

Finally, although Staff does not support AEO's request to intervene in this docket, it acknowledges AEO's contributions to the development and implementation of EE programs in Arkansas and welcomes and supports its continued participation as the EEA Administrator, PWC participant, and through the provision of public comments in this and other Commission proceedings. *Id.* at 4-5.

Findings and Ruling

Having considered AEO's Petition and the responses of Staff and EAI to the merits of the Petition, as well as the record of this Docket and that of Docket No. 07-083-TF, the Commission finds that the arguments of Staff and EAI in opposition to granting AEO intervenor status in this docket are meritorious. The rationales advanced by Staff and EAI for denying the Petition, as stated above, are thus hereby adopted by

the Commission as the basis for the denial of AEO's Petition to Intervene. However, the Commission also agrees with Staff and EAI that AEO's continued participation as the EEA Administrator, PWC participant, and through the provision of public comment in this and other Commission proceedings are appropriate and welcomed as constructive contributions to the development and implementation of energy efficiency programs in Arkansas. Accordingly, the Petition to Intervene is denied.

BY ORDER OF THE COMMISSION,

This 15th day of October, 2013.

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.

Colette D. Honorable, Chairman

Olan W. Reeves, Commissioner

Elana C. Wills, Commissioner

Kristi Rhude, Secretary of the Commission